

**CIVIL COURT  
(FAMILY SECTION)**

**MADAM JUSTICE  
JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

**Today the 29th January 2025**

**Sworn App No.: 9/2023 JPG**

**Case No : 17**

**KS in his own name and in virtue  
of a decree dated 7<sup>th</sup> February 2023  
Dr. Victor Bugeja and PL Gerald  
Bonello were nominated to  
represent the minor LB  
Vs  
DB  
and  
the Director of the Public Registry**

**The Court:**

Having seen the Sworn Application of KS proprio et nomine dated 18th January 2023, a fol 1, as translated at page 38 et seq which reads as follows:

- 1. That from a relation between the applicant KS and the Defendant DB, the minor LB was born on X as proven from the Birth Certificate herewith attached and marked as Dok A;*
- 2. That the minor LB was indicated as the son of “an unknown father” in the Birth Certificate;*
- 3. That the applicant proceeded with a legal letter bearing the number 46/2022, against DB so that he officially recognises his son for all intents and purposes of he law; but she*

*remained in default, and this, in spite of the fact that a DNA genetic test was carried out and he was confirmed as the biological father of the minor (Dok B);*

4. *That consequently the applicant had to proceed with this sworn application so that the minor is recognized as his son for all intents and purposes of the law;*

*Therefore in view of the above the applicant humbly asks this Honorable Court to:*

1. *Declares and decides that the applicant KS is the natural and biological father of the minor LB and consequently:*
2. *Orders the correction of the birth certificate of LB by that in the coloumn whereby in the column where there is indicated "Name and Surname of the Father" of the minor; The words "Unknown Father" are deleted and replaced by the name and surname of the applicant; that is, "KS" and also orders that the particulars relative to the profession, trade or another state, to the age, place of birth and residence, and to the name and surname and if Living or deceased which hence refer to his father will be contextually corrected and be substituted with those particulars that are going to result during the hearing of the witness.*
3. *Orders that in spite of this recognition, the minor will still be known by the name of "L" and with the surname "B";*
4. *Orders, if need be; the correction if any other relative act or document, subsequent to the correction in the birth certificate of LB;*
5. *Consequently orders the Plaintiff the Director of the Public Registry to effect the above mentioned corrections;*
6. *Expunged;*

*With all expenses against the Plaintiffs or whoever is liable at law.*

Having seen the decree dated 23<sup>rd</sup> January 2023 (a fol 21);

Having seen that the application and documents, the decree and notice of hearing have been duly notified according to law;

Having seen the note of the Court Registry dated 7<sup>th</sup> February 2023 (a fol 22);

Having seen the sworn reply of the Director of Public Registry dated 15 March 2023, (at page 25 et seqq);

Having seen that DB was declared contumacious at law (at page 29);

Having seen the note of Public Registry (at page 70) wherein the Director declared that he has no further evidence to submit ;

**Considers:**

Before entering into the merits of the case the Court is expunging from the record of the proceedings the sixth request filed by Plaintiff in terms of Article 994 of Chapter 12 of the Laws of Malta, a request that is not reflected in the Maltese version of the application.

In this cause, the Plaintiff is requesting this Court to declare minor child LB as his biological child. The Plaintiff filed, together with his sworn application, a copy of the DNA results that he obtained when he and the child underwent genetic testing at a private laboratory affiliated with a UK laboratory. The consultant forensic scientist who performed such test gave evidence before this Court on 19<sup>th</sup> January 2024 (fol. 58). The witness confirmed that there is a 99.99% probability that the Plaintiff is the natural father of LB.

Furthermore, the Plaintiff gave evidence before this Court on 19<sup>th</sup> January 2024 (fol. 63). The Plaintiff stated that he had met with the Defendant through his brother. They never lived together but they would spend time at each other's residences. They have two children together. LB was born in X and at that time the mother was being assisted by the social services in Malta so she had decided to return to her mother's residence. The Plaintiff stated that he was not indicated as the child's father on the birth certificate and this for financial reasons. The Plaintiff also filed an authenticated copy of the birth certificate of the minor child together with his sworn application (fol. 9). This Court notes that on such certificate, the child was registered as having an "unknown father" and thus the child carries the surname of the Defendant mother.

The Defendant, although duly notified, failed to submit a sworn reply. Moreover, she only appeared once before this Court, on 3<sup>rd</sup> May 2023 and thereafter did not produce any evidence. Moreover, this Court notes that in his sworn application, the Plaintiff made reference to the judicial letter sent to the mother (reference number 46/2022) in terms of the proviso to Article 86

of Cap. 16 of the Laws of Malta. Although a legal copy was not filed in the acts of the proceedings, no objection was raised by any other party.

**Considers:**

Filiation of a child by the biological father is provided for in article 86 of the Civil Code which stipulates as follows:

*86. (1) A child conceived or born out of wedlock may be acknowledged by the parents, either jointly or separately:*

*Provided that the acknowledgement of a child born out of wedlock by a person claiming to be the parent who did not give birth, made separately from the parent who gave birth, shall not have effect and shall not be registered unless the latter, or the latter's heirs in the case of death, and the child himself if he is of age, shall have been served with a judicial letter by any person interested stating that such person intends to apply for the registration of such acknowledgement, and the parent who gave birth or the heirs, as the case may be, and the child, shall not have within a period of two months from such service, by a note filed in the acts of the said judicial letter, agreed to such registration, in which case the said judicial letter and agreement note showing agreement shall be served upon the Director of the Public Registry who shall register the said acknowledgement in the relative acts of civil status:*

*Provided further that where the parent who gave birth, or the child, where he is of age, does not as aforesaid agree to such registration, any person interested may proceed by application before the competent court against the person or persons who shall not have so agreed, for the court to declare that the person making the acknowledgement is the parent who did not give birth, and to order the registration of such acknowledgement in the relative acts of civil status.*

*(2) Where both parents, or the heirs of the parent who gave birth, where that parent who gave birth is dead, agree to change the surname indicated in the act of birth at the point of registration, a reference to such agreement shall be made in the judicial letter and relative note as mentioned in sub-article (1), provided that such surname is permissible in terms of article 92(1).*

The Court notes that today the minor in question is seventeen (17) years old. However, it also makes reference to the pronouncement of this Court otherwise presided in the case *AB vs DC et*<sup>1</sup> wherein this Court stated as follows:

*Wara li l-Qorti hasbet fit-tul dwar din il-vertenza b'mod partikolari fir-rigward tad-drittijiet tal-minuri, waslet ghall-konkluzzjoni illi tenut kont tal-fatt li fic-certifikat tat-twelid il-minuri huwa indikat u deskritt bil-kliem "unknown father", il-Qorti hi tal-fehma illi ghalkemm illum jirrizulta li l-minuri qed jghix go familja stabbli ffurmata minnu, minn ommu, mis-sieheb taghha u binthom, jibqa' l-fatt li legalment m'ghandux missier. U meta tul hajtu, minn ckunitu sakemm jikber, ser ikun mehtieg li jigi pprezentat ic-certifikat tat-twelid tieghu, jekk is-sitwazzjoni tibqa' dik attwali bil-kliem "missier mhux maghruf", il-minuri ser ikun pregudikat serjament. Fl-ghazla bejn certifikat tat-twelid b'missier mhux maghruf fuq naha u certifikat tat-twelid bl-isem, kunjom u l-konnotati kollha tal-missier fuq in-naha l-ohra, il-Qorti taghzel dan l-ahhar xenarju fl-ahjar interess tal-minuri<sup>2</sup>.*

With regards to Plaintiff's third request, that is, for the minor child to take on Defendant's surname which is "B", the Court understands that neither one of the Defendants objected to this. The Court considers that the child is seventeen (17) years of age and therefore has developed his sense of identity and his social circle of friends. On these lines, this Court makes reference to the judgment in the names **Daniela Seisun pro et noe vs Aaron Magro et, 7 ta' Frar 2019** wherein the Court held:

*"Din il-Qorti taqbel ma' dawn il-konsiderazzjonijiet li huma applikabbli ghal kaz odjern tenut kont tal-fatt li l-wild il-kbir illum ghandu 16-il sena u li qieghed fi zmien tal-adoloxzenza fejn persuna tkun qed tiffaccja sitwazzjonijiet li*

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<sup>1</sup> Decided on 27<sup>th</sup> November 2014, reference number 193/2013 RGM

<sup>2</sup> "After this Court thought at length about the matter in particular regarding the rights of the minor, it arrived to the conclusion that in view of the fact that in the birth certificate the minor is indicated and described with the word "unknown father", this Court is of the opinion that although at present it results that the minor is living in a stable family which is established of himself, his mother, the mother's partner and their daughter, the fact remains that legally this minor is still without a father. And when throughout his life, if the current situation of the certificate with the words "unknown father" persists, the minor will be seriously prejudiced. In the choice of having a birth certificate with unknown father on the one hand and a certificate with the name, surname and all the connotations of the father on the other hand, the Court chooses the latter scenario in the best interest of the minor".

*normalment huma assocjati ma' dan iz-zmien f'hajjitha u li l-identita` taghha hija ferm stabbilita bil-kunjom ta' Seisun u, wkoll wara li semghet il-minuri koncernat u anke lil huh ta' 11-il sena, il-Qorti ma tistax taqbel mar-ragunament tal-ewwel Qorti li l-bidla fil-kunjom tkun tirrifletti ahjar dak li issa gie xjentifikament u defenittivament stabbiliet li l-konvenut huwa missierhom".*

This Court notes that Article 92 of Cap. 16 of the Laws of Malta provides as follows relative to this cause:

*92. (1) If a child conceived and born out of wedlock has been acknowledged by the parent who did not give birth, that child shall assume the surname of any of the parents, or the surname of both parents, in the order they choose.*

In view of the fact that Article 92 allows different possibilities, in view of the age of the minor who is almost of age himself, in view of the fact that the reason put forward for not recognizing his son beforehand was for “financial reasons” and in view of the fact that nothing was said in connection to the relationship, if any, between father and son, this Court holds that it would be in the best interest of the minor child to retain the surname of the mother which is “B”.

Finally, in relation to the legal expenses, from the acts of the proceedings it is evident that the Plaintiff had no option other than to file these proceedings since the Defendant had failed to reply to his judicial letter. In view of this, all expenses including those of the judicial letter shall be borne by the Defendant mother.

**For the above reasons, this Court has deliberated and decides as follows:**

- 1) Upholds the first request that declares that the applicant KS is the natural and biological father of the minor LB;**
- 2) Upholds the second request and orders the correction of the birth certificate of LB such that the following details are inserted in the respective columns:**

**Name and Surname of Father: KS**

**Identification Document: 217180M**

**Age of father at the time of the  
child's birth:**

**27**

**Place of Birth:**

**St. Paul's Bay**

**Place of Residence:**

**St. Paul's Bay**

**Name and surname of paternal  
grandfather and whether alive  
at the time of child's birth:**

**JS (Deceased);**

- 3) Upholds the third request and orders the child to retain the surname "B";**
- 4) Rejects the fourth request as no evidence was produced of any other act requiring correction;**
- 5) Upholds limitedly the fifth request and orders the Director of Public Registry to effect the corrections hereabove stipulated within one month from this judgment;**
- 6) Abstains from taking cognizance of the sixth request since this was expunged by order of this Court.**

**Expenses shall be borne by the Defendant DB including the expenses of the Director of Public Registry.**

**Read**

**Mdm Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Nicole Caruana  
Deputy Registrar**