

**CIVIL COURT
(FAMILY SECTION)**

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

Today, 4th February 2025

Sworn Application no. : 22/2020 JPG

Case number : 2

JM

Vs

DM

The Court:

Having seen the application filed by Plaintiff dated 28th of January 2020 at page 1 as translated in English at page 31 et seqq., wherein it stated:

*That the parties contracted marriage on the thirteenth (13th) of June of the year two thousand and nine (2009) as per attached marriage certificate (**Dok A**)*

*From this marriage a minor son, DM was born on X as per attached birth certificate (**Dok B**).*

That the marriage of the parties irretrievably broke down for reasons attributable to the Respondent, including alcoholism, conflicts which demeanor is commonly known at Maltese Law as 'servizzi', excesses, grievous injuries, and offences including domestic violence committed on his wife, threats of death

and finally the abandonment of the family home. This made it impossible to continue living as a married couple.

That Plaintiff tried several times to reconcile with the Respondent to no avail;

That mediation proceedings could not proceed since Respondent did not want to reach a compromise and insisted that he is given half of Plaintiff's paraphernal property which property was passed to her and her children as a donation in life by her terminally ill father which property forms part of their matrimonial home thus the Plaintiff had to take this action;

That the Plaintiff has been duly authorised to proceed with personal separation, by means of a decree given by the Civil Court (Family Section) on the 5th of December 2019 by her Honour Jaqueline Padovani Grima. (Doc C attached)

For these reasons, the applicant therefore, humbly asks that this Honourably Court:

- 1. **To pronounce and declare** the personal separation between the parties for reasons attributable to the Respondent , including excesses, threats, grievous injuries, grievous, offences committed on his wife, so much so that the matrimonial life of the parties is no longer possible and their marriage has irretrievably broken down;*
- 2. **To order** and entrust the care and custody of DM exclusively to the Plaintiff, and orders that the Minor continues to reside with, as per the decree of the 12th November 2019 (Dok D) and order that the Mother is able to take all decisions, both ordinary and extraordinary in relation to the child's health and education, including applying and obtaining a passport for the minor, on her own, without the need of the Respondent 's consent or signature.*
- 3. **To establish and liquidate** maintenance for the Plaintiff and the minor child, with such modalities the Court deems fit to order according to the Plaintiff's*

needs and which maintenance would be paid in time on a date as this Honourable Court so wishes;

- 4. To dissolve and extinguish the community of acquests between the parties and liquidate the same in such a way as to establish the portions in division and assign to the parties, and also to establish a date since when the Respondent is considered to have forfeited any acquisition made by the work and ability of the applicant; and this with appointed experts to estimate the property involved if the need arises and with the appointment of a notary public so as to publish the appropriate act and curators to represent the Respondent on the same act;*
- 5. To order Respondent to return to the applicant her paraphernal assets and credits which will result during the case, in a stipulated time which shall be fixed by this Court;*
- 6. To apply entirely, or in part, against the Respondent the sanctions established in articles 48 up to 53 of Chapter 16 of the Laws of Malta including a declaration that he has forfeited his right to inherit applicant;*
- 7. To authorize the Director of the Public Registry to register in the Public Registry the Court judgements as given by this Honourable Court;*
- 8. To authorize the Plaintiff to revert to her maiden surname Z whilst keeping M as a second surname for the minor's benefit; ZM;*

Having seen that the sworn application and this Court's decree, been duly notified according to law;

Having seen DM's reply dated 31st of July 2020 at page 41 et seqq and English translation vide 46 et seqq., wherein it was stated:

1. *With regard to the first demand by the applicant, DM agrees with the pronouncement of the personal separation between the parties, but this not for reasons attributable to the Respondent, but for reasons attributable to the Plaintiff so much so that the matrimonial life of the parties is no longer possible and their marriage has irretrievably broken down as will be proven during this case.*
2. *With regard to the second demand, regarding the care and custody of the minor DM, the Respondent completely disagrees with the applicant's continuous actions to use the minor son against his father (the Respondent) in these proceedings. The marital issues between the parties do not include the minor, thus now choosing to ask this Honourable Court to order that all decisions relating to the minor are taken by the applicant and excluding the Respondent from all decisions related to the minor are primarily unfounded and secondly completely unnecessary. As was pointed out by this Honourable Court in the Case **App Civ 234/13AL, deċiża mil-Qorti tal-Appell fl-20 ta' Lulju 2020, fejn il-Qorti argumentat illi "dak illi sehh bejn il-partijiet relattiv mar-relazzjoni tagħhom, bl-ebda mod m'ghandu jimpingi u jaffettwa l-jeddiġiet tal-ġenituri"**. The Respondent wishes to be involved with such important decisions regarding his son, and not excluded as if he was non-existent.*
3. *With regard to the third demand, in so far as the Plaintiff requested maintenance for herself, this should be rejected by this Honourable Court as there exist no sufficient reasons justifying such a 'requirement'.*
4. *In so far as the third demand concerns maintenance for the minor child, the Respondent currently pays the amount of €210 monthly every 5th day of the month by means of a standing order. Other than that, the Respondent also settles in cash other payments demanded by the Plaintiff in order to meet the requirements of the child whilst also paying €20 directly to the child on a weekly basis as pocket money. In such a view, the third demand should also be rejected by this Honourable Court.*

5. *With regard to the fourth demand, DM agrees with the dissolution of the community of acquests. However, no such appointment of curators is deemed necessary since the Respondent is a Maltese citizen who is present in Malta, thus such a demand should only be partially acceded.*
6. *With regard to the fifth demand, the Respondent insists that he is not in possession of any of the Plaintiff's paraphernal property and thus such a demand should be rejected by this Honourable Court.*
7. *With regard to the sixth demand, the Respondent agrees with the forfeiture of his right to inherit the applicant, however the part of the demand which concerns the application of sanctions established in articles 48 up to 53 of Chapter 16 of the Laws of Malta should be rejected by this Honourable Court.*
8. *The Respondent agrees with the seventh demand as submitted by the applicant.*

Saving ulterior pleas necessary

With expenses against JM .

DECLARATION of DM

1. *The present disagrees with the pronouncement of facts as stated by the applicant in the application.*

Pronouncement of personal separation

2. *With regard to the first demand, DM agrees with the pronouncement of personal separation between the parties, however such not for reasons attributable to any of his own fault, but for reasons solely pertinent to his wife, as will be proven throughout this lawsuit.*

Care, Custody and Access

3. *The second demand, regarding the exclusive care and custody of the minor, such is not in the best interest of his minor son and thus such should be rejected.*
4. *DM currently only sees his son once a week and such in the presence of his estranged wife. For him to have a healthy and normal relationship with his son, he requires that access is held without the presence of Mrs JM and such as is indicated in DM 's counter-application.*

Maintenance

5. *The applicant is financially independent from the Respondent and thus the Respondent should not be liable to pay any maintenance for herself. The applicant has always been in employment ever since the parties met. Moreover, the Respondent has been paying maintenance for his son ever since the parties stopped residing together on a regular basis, and he intends on continuing maintaining his son, and thus the third demand as made by the applicant should be rejected.*

Community of Acquests

6. *The Respondent agrees with the dissolution of the community of acquests, and suggests that the cut off date of August 2019 being the date that the parties stopped residing together as the date on which the parties forfeited any acquisitions made by each other. The Respondent disagrees with the appointment of curators to represent him, since he is present in Malta and is able to represent himself.*
7. *The Respondent does not possess any of the applicant's paraphernal assets and credits, it is however the applicant who possesses credits relating to the Respondent 's own paraphernal property, thus the fifth demand by the applicant should be rejected on such grounds.*
8. *The demand for the application of sanctions established by articles 48-53 against the Respondent have been included in a generic manner and are*

completely unfounded, such sanctions should in any case be applied against the applicant herself as will be explained in further details during the proceedings of this suit.

9. *The Respondent further agrees that the Director of Public Registry should be authorised to register the Court Judgement as given by this Honourable Court in the Public Registry.*

Having seen the counter-claim filed by DM (Id 27115L) at page 51 et seq. vide English translation at page 56 et seq., wherein it stated:

1. *The parties started cohabiting together in two thousand and five (2005) and contracted marriage on the thirteenth (13th) of June of the year two thousand and nine (2009) as per attached marriage certificate (Doc X).*
2. *On the twenty-third (23) of June of two thousand and ten (2010) their son DM was born, the minor is ten (10) years old today.*
3. *During their marriage, and even before their marriage, the Respondent used to also maintain the applicant's daughter, KM by supporting her educational fees at a private school.*
4. *The parties' marriage has today irretrievably broken down and they are currently undergoing these proceedings aimed at the obtainment of their personal separation. Moreover, the Respondent had voluntarily and momentarily moved out of the matrimonial home without prejudice to his rights during the period when the parties were undergoing mediation in August 2019 to avoid further conflict between him and the applicant, and especially for the benefit of the minor child to stop witnessing arguments and conflict between the parties, which conflict is wholly attributable to applicant's demeanour, commonly known at Maltese Law as 'sevizzi'. Additionally, during such period, the police were often called to the matrimonial home. Such police officers had advised the Respondent to*

temporarily move out of the matrimonial home to avoid further arguments with the applicant.

5. *The reconvened applicant JM rendered herself responsible of the marital breakdown by seeking to exclude the Respondent of his rights pertaining to the investments he made in their matrimonial home, which investments inter alia, consisted of his paraphernal credit. To make matters worse, it was only via postal mail received at the matrimonial home did the Respondent realise that his wife had started to seek ways to betray him.*
6. *Such a discovery lead to conflict between the parties and following such the Respondent also realised that the applicant had started to instigate arguments and then record sections of conversations and arguments between the parties, without Respondent's permission in order to use to her advantage- which conditions the Respondent found very hard to live by.*
7. *The Parties had been duly authorised to proceed with personal separation by means of a decree given by this Honourable Court on the 5th December 2019 (Doc X1).*
8. *The applicant knows of these facts personally.*

For these reasons, the applicant humbly asks this Honourable Court to:

1. *Pronounce the personal separation between the Parties.*
2. *Declare that the breakdown of the marriage is solely attributable to JM for the reasons in this sworn Application.*
3. *To establish a date as to when JM caused the marital breakdown between the parties and to apply in toto or in parte against her the sanctions established in articles 48 up to 53 of Chapter 16 of the Laws of Malta, including a declaration that the applicant has forfeited to her right to inherit the Respondent.*

4. *To order the care and custody of the minor DM, including the decisions to be taken concerning health, education, extra-curriculum activities as well as the issuance of any passport to be taken by both parties together.*
5. *Order for the minor to continue residing with his mother, and for the Respondent to be granted access, without the presence of the applicant mother at least during the weekend in the following manner: On alternate Saturdays from 14:00pm onwards with a sleepover until 10:00 am on Sunday morning, and on the following week on Sunday from 10am until 19:00.*
6. *To appoint experts to value of the matrimonial home, the improvements made to the matrimonial home and to value Apartment 4, no 52 Triq Patri Guzepp Calleja, St Paul's Bay.*
7. *To dissolve, extinguish and liquidate the community of acquests between the parties.*
8. *To assign the relative portions to each party respectively;*
9. *To assign a date as to when the applicant is considered to have forfeited any acquisition made by the work and ability of the Respondent .*
10. *To order the applicant to return the Respondent 's paraphernal assets and credits which will result during this suit by a date as determined by this Honourable Court.*
11. *The authorise the Director of the Public Registry to register in the Public Registry the Court judgement as pronounced by this Honourable Court.*

With costs against the applicant.

Having seen JM 's reply and counterclaim dated 18th of September 2020 at page 65 et seqq and English translation vide 69 et seqq., wherein it was stated:

1. *It is the truth that the Respondent and the applicant started living together in two thousand and five and got married in two thousand and nine however the Respondent never held any conjoined accounts with the applicant and never maintained or assisted KM in her daily expenses and even less in her educational fees. (Affidavit Dok. A)*
2. *It was the sole responsibility of the applicant to take care of all the needs of her daughter who was born from her previous marriage especially since her daughter's father had committed suicide. This will be proven during the course of this case as witnessed by a number of witnesses and relevant documentation.*
3. *In regards to point 4 as mentioned in the Respondent's counter-claim he states that he left the matrimonial home (paraphernal property of the applicant) in good will. If by good will is meant, that due to his acute alcohol problem and the domestic violence that the applicant and her children were suffering due to his aggressive and abusive acts, he decided to leave the house so as not to be of further damage to the applicant and her family, than yes we agree that he left in good will.*
4. *That it is worth reminding the Honourable Court that the arguments between the couple had been ongoing since two thousand eighteen and that in one of the many domestic violence incidences that took place whilst the Respondent was drunk he got a kitchen knife and threatened the applicant that he will kill her and chop her into pieces. (Dok R1 – Mediation File 75/19 Police Report). This happened in the presence of their minor son. Therefore, it is very clear that the sevizzi mentioned by the Respondent are nothing but a lie against the applicant. Even after such a serious attempt to her health she still wanted to give him another chance and compromised that she would drop all charges against him if he attended an Alcohol Misuse Sedqa Programme.*
5. *That even when this attempt to save the marriage failed since the Respondent did not take the prescribed medicine anymore and he commenced once again with his odious and abusive acts against the applicant she had to decide to proceed with this case. That the few times she managed to film the Respondent during his many abusive acts against her and her children cannot be assumed to be a provocation or sevizzi. This was the only way the applicant had to defend herself and the life of her minor children against further abuse by the*

Respondent . It is very far from the truth if one is to construe such behaviour as further provoking the Respondent who always returned home in a drunken stupor. (Dok B-Police reports).

6. *During these courts proceedings it will be proven that it was the Respondent who on several occasions tried to tease, provoke and disturb all family activities even the simplest of acts that the appellant and her minor children used to do during the daily routines. So much so that even DM his minor son used to be bothered by his pestering and used to tell him to stop acting in such a way.*
7. *That what the Respondent is conveniently mentioning as an investment in the matrimonial home and that he has a right to such investment is that of the donation of property by the applicant's parents to her. That if anything the applicant already lived in this property during her first marriage which was always owed by her parents. -The Z. That since the applicant's father was terminally ill he decided to donate the property to the applicant and her sibling whilst he was still alive. That due to this the applicant had to take a personal loan of one thousand six hundred euro to pay any taxes related to the transfer of said property. Other expenses related to the building, permits and construction were paid by her father as shown in Dok C. That is was then that she asked her husband the Respondent to sign for her for this personal loan. That this loan was always paid `by the applicant directly from her salary bank account and thus the Respondent never paid any part of the said amount. (Dok C- Copy of the Donation transfer and receipts of permit and construction related payments)*
8. *Not only the Respondent never pay anything for the said act or anything else for the matter but he felt so aggrieved that he had to **verbally abuse a terminally ill person berating him on how selfish and ashamed he should be of having divided his property in such a way that the Respondent himself was not going to gain anything personally.** This was overheard by DM his minor son who told everything to the applicant as soon as she returned home as he had seen his grandfather crying when the Respondent was verbally abusing him.*
9. *That both parties always kept their earning separate and whilst the applicant used to buy all the necessities for daily needs, pay utility bills and see to the minors educational and physical needs, the Respondent used to spend his way in bars and rarely gave the applicant any money for daily needs so much so that*

he had bought a fridge in the matrimonial home solely for his food and beverages so as no one else would touch what he buys.

- 10. That during the mediation process the applicant had proposed several times that the community of acquests should be divided equally between them. That the community of acquests consists of the residence in St. Paul's Bay, the fridge which he had both and he can take, the car marked Citroen C3 with the number plate ACR-096 that he had bought with his insurance money and that she is ready to let him take if he does not request that he is to part-take for any improvement expenses to the Qormi apartment which the applicant did from her own liquidation of her personal insurance so it could be enjoyed by all the family.*
- 11. That there is an agreement with the suggestion that this Honourable Court appoints an expert to evaluate the property in St. Paul's Bay. The applicant suggested that on sale of the apartment they pay the bank loan, the Respondent takes back the deposit of €17,000 which is his credit, she takes her €8,000 credit and then split the remainder equally between them.*
- 12. That access to the minor DM has never been exercised under supervision of Appogg as was decreed by this Honourable Court since the Respondent never managed to reach an agreement with the Supervisors of Appogg. However, instead of keeping the minor away from the father the applicant did her utmost to reach an agreement with the Respondent to take the minor to the St. Paul's Bay apartment for the same number of hours as was decreed.*
- 13. That during the access the Respondent never tries to play with the minor or tries to start a discussion with him so much so that the applicant has to kick start the conversation between them herself. Most of the time the applicant invites the Respondent to meet with them wherever she takes the minor however these attempts have mostly failed because the Respondent either is holding a beer in his hands or starts drinking without communicating with the minor and at other times he picks and leaves without informing anyone.*
- 14. That at the said access at the St. Paul's Bay apartment it was noticed that the Respondent more than once has asked the applicant for money because he could not make ends meet. The applicant never refused such assistance as she knows well that he would repay her back from his next wage. However, on trying to question him as to why he could not make ends meet he never answered her*

back until she noticed several receipts left on the kitchen cupboards which copy is being presented in Dok E. (Dok D – Shopping receipts).

- 15. That as one can see from these receipts the Respondent still has an alcohol addiction problem so much so that **from the twentieth of April 2020 up to the twenty-eighth of May 2020 he bought 10 bottles of whisky, twenty-seven cans of beer and 4 bottles of wine.** This was during the Covid restrictions; Never mind what happens when the bars are open?*
- 16. That due to this fact the minor should never be alone in the presence of his father unless the Respondent decides to attend an alcohol addiction program and show that he has been rehabilitated. This is being requested because when he is drunk he is not able to care for the minor properly and is not conscious of any acts that he may likely commit and that can put the minor in danger.*
- 17. The Respondent has always been on time with the maintenance payments towards the minor of two hundred and ten euro monthly however very often he asks the applicant to lend him money as stated before. In regards to the twenty euro that is mentioned in the Respondent sworn application that he states gives directly to the minor; Often this pocket money is not given to DM and very rarely he is given just ten euro which the minor proceeds to save for any games he would like to buy in the future.*
- 18. That if the court is to assign a date as to who or when any of the parties have forfeited any acquisition made by their work and ability it is to be the date when the Respondent has consciously started drinking once again and made everyone's life hell. A number of witnesses will testify during court proceedings that they did see a change in the Respondent's behaviour when he stopped taking the medicine recommended by the doctors at Sedqa. (Antabuse medication) (Dok E and Dok F – Affidavits).*
- 19. The applicant humbly feels that for the same reasons already mentioned above she cannot agree that she is responsible for the breakup of their marriage and instead these should be solely attributed to the Respondent who was responsible for the break down in their relationship and marriage as established in articles 48,51,52 and 53 of the Civil Code.*

Saving ulterior pleas necessary

With costs and interests, against the Respondent , who is summoned so that a reference to his evidence be made.

Having heard the testimony on oath;

Having examined all acts of the case;

Having heard final submissions;

Considerations:

1) The Present Cause

This Court has before it a cause for the personal separation of the parties and for the regulation of matters relating to their only child who is currently fourteen (14) years old. Whilst Plaintiff states that the cause of their separation was Respondent's alcohol addiction and the violent behaviour displayed by him when drunk. Respondent states that the separation was caused by the abusive behaviour displayed by the Wife. The main bone of contention however is the division of the community of acquests.

This Court notes that during the sitting of the 18th November 2020, this Court ordered the Respondent to attend Sedqa twice a week to give urine samples even though he denied having an alcohol addiction (fol. 126).

This Court has seen that the Respondent could not attend supervised access due to his work duties and thus during the sitting of 18th November 2020, this Court ordered access to be exercised on Saturdays under the supervision from afar of the Plaintiff (fol. 127)

This Court has seen again the urgent application filed by the Plaintiff on 18th May 2021 outlining the harassing interactions she and her son had had with the Respondent in the days before, produced proof of the Respondent being in a drunken state and requested that the Respondent access to his son be under the supervision of a representative of Appogg; that the Respondent be ordered to attend an Alcohol

Addiction Residential Programme; and that Plaintiff be authorised to send her son to therapy. The Respondent replied on 19th July 2021 wherein he stated that the Plaintiff has largely exaggerated his social drinking. He maintained that he was not addicted to alcohol and that this was only done in an effort to tarnish his image. He states that he has enquired about supervised access visits and was informed that it would cost him around two hundred euro (Eur200) per month to do so, an expense which he could not afford. By virtue of the decree dated 10th of August 2021 (fol. 134M) the Court ordered Respondent to give urine samples again at Sedqa and the modality of access remained the same.

2) Evidence produced by the parties

The Version of the Plaintiff and Evidence produced by her:

The Plaintiff filed an affidavit as Dok E together with her sworn application (fol. 19 et seq.) which affidavit was duly confirmed on oath on 28th January 2020.

She states that that the parties met in 2005 and started living together in Plaintiff's residence in 2007. Although this residence belonged to Plaintiff's parents, she had been living there with her late husband. At the time, the Respondent used to drink moderately and only became drunk around his friends. After their son was born in 2010, they bought their summer residence in St. Paul's Bay. After this purchase, their financial situation deteriorated and Plaintiff took on a part-time job. The Respondent, on the other hand, started drinking uncontrollably, even at his place of work. He used to become aggressive and even assaulted the Plaintiff. The parties lived apart twice and Respondent moved into their summer residence however they reconciled. In the second reconciliation, the Respondent had sought help from Sedqa and the Plaintiff had initially attended a few meetings with him.

The house in which they lived was shared with Plaintiff's family although they occupy a floor of their own. The parties were offered to move to a higher storey which had a larger area. To do this, Plaintiff's father planned to do all manual work for the parties. However, he became ill and so he asked his brother (Plaintiff's uncle) to do the works instead. When her father's health deteriorated, Plaintiff stopped her insurance cover and received the sum of twenty-two thousand euro (eur22,000) which she used to pay for

the remaining works and other pending expenses. Eventually the parties moved in the new storey, Respondent was too drunk to help and his friend R helped instead. Still Respondent watched and reviled all the people helping out.

In December 2018, the Plaintiff and the son of the parties attended a family party. Plaintiff had asked the Respondent not to attend since he was drunk. When they went back to their residence, they found that the Respondent had removed the television lead. The son called his father an “idiot” and this infuriated the Respondent. This led to him threatening the Plaintiff that he would kill her and chop her up in pieces. She left the matrimonial home and went to file a police report. When the police spoke to the Respondent, he agreed to move out and went to live in their summer residence. In January 2019, on Orthodox Christmas, Respondent called the Plaintiff as he was too drunk to drive his car. He was so drunk that he had damaged the car. The Plaintiff parked it properly despite having her foot in a cast. The Respondent that night had slept at her residence. After that he had called her to schedule an appointment with Sedqa. To encourage him, she used to go and spend weekends with him at their residence. He went back again to reside with them and at that point she used to count the pills he had in the bottle to see whether he had taken his prescribed medication.

Upon catching him red handed drinking again, she informed him that she was going to file for separation but he threatened to kill her with a hammer.

In July 2019, the Plaintiff was at a weekend break. The Respondent started calling her and threatening her to destroy her parents’ possessions if she did not go to open for him. Eventually she had to leave to go open for him where she found him drunk. She locked herself in the bedroom as she was afraid of him. He, on the other hand, filed a police report claiming to have been abused by his wife. A few days later Plaintiff was at work and the Respondent started calling her about money. Then her son called her that his father would not let him be even though he had a headache. When she got home, she found her son angry as his father was saying nasty things about his sister. The Respondent continued teasing him in front of her and their son got so angry that he lift a chair to hit his father.

Later on, they were locked in one of the bedrooms and the Respondent got really angry about this. He told the Plaintiff that he knew he had lost their son and so there was going to be blood shed. This really upset their son and so the Plaintiff filed a police report. During the time she was at the station, the Respondent called her that the air-conditioner was on in her daughter's room so he was going to force open the door to switch it off. When she went back to their residence, the lock to her daughter's room was damaged.

On 15th August 2019, the Plaintiff had planned to bake some sweets with her children. Whilst doing so, the Respondent repeatedly touched the baking items and videoed them. Plaintiff's daughter moved Plaintiff's mobile not to get wet, the Respondent tried to assault her. The Plaintiff moved in-between them whilst their son ran down to get assistance from Plaintiff's relatives. Plaintiff's mother and Plaintiff's sister came to her assistance. They filed a police report on that incident too.

The Mediation proceedings were declared closed since the parties failed to reach an agreement as the Respondent insisted that he had brought with him from Serbia sixty thousand euro (Eur60,000) and had invested them in Plaintiff's property. Plaintiff denies this and was willing to return the deposit he had paid on the flat and an extra ten thousand (Eur10,000). She insists that the property that they resided in was donated to her by her father on condition that the property passes onto her son when he became of age.

The Plaintiff testified before this Court during the sitting of the 12th of July 2021 and filed a set of photos (fol. 138) showing construction works being done by Plaintiff's father and brother-in-law. The Plaintiff also explained that the apartment they bought as a summer residence, was paid by means of a loan that partly covered the purchase price and partly covered the furnishings. However, she had contributed eight thousand euro (8,000) whilst the Respondent had contributed seventeen thousand euro (Eur17,000) which he had inherited. The only contribution that the Respondent gave was painting the inside of the apartment that was allocated to them but yet again, even the paint was bought by the Plaintiff. With reference to the apartment in St. Paul's, this

was bought in shell form and Plaintiff's father did all the manual works inside the apartment at no cost to the parties¹.

The Plaintiff stated that the Respondent does not have a relationship with his own relatives. Indeed although they went twice to Serbia, they never visited his relatives. His mother has never seen her grandchild.

During the sitting held before this Court on 7th November 2022, the Plaintiff filed a note together with a copy of a letter addressed to the Respondent which letter had been sent to her residence (fol. 408). The letter (fol. 409) sent by the Respondent's employer, Vassallo Group, recounted how on 1st June 2022 the Respondent had shown "erratic behaviour" due to being in "a state of inebriation". The Respondent was asked to appear before his employer to defend himself and was warned that such behaviour usually led to dismissal.

In order to substantiate her version, the Plaintiff brought forward the following evidence:

KM, (at page 188 dorso) Plaintiff's daughter testified that Respondent never acted towards her as a father but that did not bother her. Her mother provided for all her needs. Respondent's attitude towards the witness changed considerably after the birth of her brother. She remembers the incident that led to her not talking to him anymore. She was fourteen and they had gone to pick up her brother from playschool. Respondent was drunk and was driving dangerously. When he noticed that the witness was scared he started insulting her and used foul language. On returning back home, she locked herself up in her bedroom together with her brother as she was scared of him. Respondent phoned up her mother and KC heard him tell her mother that, she (KC) could go ahead and kill herself like her father had and this was repeated several times. After this incident KC stated that she never spoke to respondent again.

The witness remembers Respondent as being almost always drunk and there used to be a lot of fighting because of his drinking. Then he used to assault Plaintiff and whenever

¹ Testimony given by Plaintiff during the sitting of 17th November 2021 (fol. 171)

the witness used to try to intervene to protect her mother, Respondent had no qualms about hitting her as well however Plaintiff used to protect her.

The witness describes Respondent as a jealous person and a liar. She states that Respondent ruined every family occasion with his drinking and fighting.

In December 2018, she returned from a vacation to find her mother with a foot in a cast and she explained to her that there had been a fight and that Respondent had threatened to kill her. She had filed a report and the Respondent had left their home. After some months, Respondent promised her mother that he was going to seek help for his drinking and so they reconciled.

In July 2019 the witness was in her room adjacent to her brother's. She heard her brother telling the Respondent to leave him alone and when Respondent left the room, her brother locked the door. This angered the Respondent who started banging on the door. When he went to his room, her mother and brother came running to her room and she locked her door. The Respondent got angrier but the Plaintiff confronted him outside the room. At one point the witness heard him say that he knew he had lost his son and that blood was going to be shed. Her brother started crying and only calmed down when the mother decided to file a police report. When they were at the police station, Respondent called her mother alleging that the air conditioner in the witnesses' room was on and that he was forcing open the door to switch it off. Upon returning home, the witness could not unlock the door because Respondent had forced the lock.

In August 2019, her brother had just finished washing the floor when the Respondent came out of his room and made footsteps everywhere. This despite having been asked before the washing whether he needed to pass. This made her brother angry but Plaintiff intervened. On the same day, they were baking together when the Respondent went near them to spite them. He started touching the Plaintiff in front of her children, he was video recording them, touching all the baking things. Because of this, her brother spilt a cup of milk and an argument between the parties ensued. The Respondent tried to grab the witness' face and dropped her glasses; he also kicked her. Her brother ran down so that her maternal relatives would call the Police. A report was filed but she was told by the Police that she could not undergo a risk assessment because he was not

her father. On that day, her mother packed some clothes to start residing with her parents whilst the witness went to live temporarily with her boyfriend. After 3 days Respondent left the matrimonial home so they returned to live together.

A copy of the police reports filed by the parties was filed by Plaintiff (vide fol. 60 et seq.)

A copy of the deed of donation published on 12th November 2018 in the acts of Notary Dr Gerard Spiteri Maempel was filed (fol. 95). By means of this donation, Plaintiff's parents donated the apartment on the second floor to the Plaintiff. Moreover, a set of receipts issued to the father of the Plaintiff by the Planning Authority was filed to show that relative expenses to the construction of the apartment so donated were paid for by the father of the Plaintiff almost two years prior to the donation².

MC , Plaintiff's sister testified by affidavit³ and stated that at the beginning there seemed to be no problems with the Respondent who had helped her move into a new residence. After the son of the parties was born, the witness let Respondent's sister stay in her apartment rather than at a hotel. The witness stated that she discovered that there were problems between the parties on the day that she received a phone call from her niece telling her to call the police. The witness ran upstairs to her sister's apartment and found the Respondent holding Plaintiff against the kitchen sink and hitting her with the telephone. After that incident, the witness stated that things calmed down.

The witness testified how she realized that the Respondent was a very jealous person. Soon after she got a new car, the Respondent made her sister sell her car and get a new one but he was still angry about it as theirs came without a screen.

When the Plaintiff used to invite her family over, the Respondent would either not eat with them or else be drunk and act in a way that made Plaintiff uncomfortable to the point that they would argue in front of the family members.

² Video fol. 102 et seq.

³ Duly sworn on 18/09/2020 fol. 116

The witnesses' parents decided to restructure their house into four apartments and to donate one apartment to each of their grandchildren. The Respondent had told the witness' husband that they were not going to gain anything by helping in the development, as the property was never going to be in their name. The witness recounts an episode when they were taking it in turns to stay with her father as he was doing manual work. When it was Respondent's turn, he was very late and very drunk. The witness left as she was going in for a night shift but soon after she heard a loud noise. Her father was hanging on to a rope as the structure had given way. After she and her husband helped her dad, they went looking for the Respondent and found him asleep on a piece of wood.

The witness recounts how after the parties reconciled, their son would not stay alone with his dad. He used to prefer to go down to the witness' residence and stay with her in the absence of his mother.

The witness recounts that in July 2019, her sister was at a weekend break and she was entertaining guests at their residence. There was loud music emanating from the parties' apartment all night so much so that the witness' mother could not sleep. The following day the witness had joined the Plaintiff and she found out that the Plaintiff had received a call from the Respondent to the effect that she had locked the computer room when the parties did not own a computer. The witness explained that their mother had called Respondent several times to lower the volume but he never answered. When they were together, the Respondent called the Plaintiff and threatened to break her parents' apartment if she did not return immediately so the Plaintiff left the hotel and went back home.

After a few days, they were away and her father called her that the Respondent had asked him for a hammer to open Plaintiff's daughter's room. The witness got scared that he could access her apartment through the balcony and harm her dog. When they returned home, the door lock was damaged and it could not open. Her niece's boyfriend had to go up a ladder to her room to retrieve some clothes for her niece. The witness confronted the Respondent who started shouting. She called the Police and when they went to her residence, the Respondent remarked that she was dark-skinned. She also asked the Police to order the Respondent to move his car from in front of her garage

but the police said they could not do that as he was drunk and therefore not in a position to drive.

The witness recounts how on 15th August 2019, she received a phone call from her daughter and she could hear the son of the parties crying. Her daughter asked her to leave work and go home because the Respondent was hitting her sister and her niece. When she returned home with the police, she found both children locked in one of her bedrooms and the son of the parties asked her if he could stay downstairs with her.

When the witness testified during the sitting of 9th November 2021, she clarified that she did not involve her husband when they were discussing the development of their parents' house but the Respondent would intrude into the family discussions.

RZ, testified by an affidavit⁴ and stated that before their marriage, the relationship between her and the Respondent was good and the Respondent treated Plaintiff well. This changed after the birth of the parties' son.

Since the witness used to reside in the storey underneath the one of the parties, she used to hear them arguing quite often. In 2011, the witness spent the summer months residing with the parties in their summer residence. There they realized that the Respondent was drinking a lot as he used to go to the bar and come back drunk. Sometimes he would come back drunk even from his workplace. He would wash and go to sleep till the next morning. Respondent used to avoid eating with the family and the witness describes him as moody with inconsistent behaviour, an inconsiderate - putting on loud music even during the night.

The witness confirms that the Plaintiff split up twice because of the drinking problem and then they would reconcile because he would reassure her that he was going to seek help. In 2016 he started attending Sedqa and the witness could notice a positive change in him until he decided to stop his medication against his addiction.

⁴ Duly sworn on 18/09/2020 and found at fol. 121

In 2016 the witness and her husband proposed to their daughters that they were willing to restructure their house into four apartments, one for each grandchild. The Respondent was not happy about this and he said that it would cost them a lot of money. The witness and her husband went ahead with the development and her late husband used to do a lot of manual work until he got diagnosed with cancer and started getting weaker. At that point they engaged his brother to do the works for them and they paid him accordingly. The Respondent had said in front of the witness that he was not willing to incur any expenses since the flat was not going to be his. Hence a lot of the expenses for the inside works and furnishings were incurred by the witness and her husband.

The witness testified that once when the Plaintiff had gone out, the Respondent had told her and her late husband that they should be ashamed for having allocated the groundfloor apartment, according to him the most valuable, to the grandchild of their other daughter. Due to this he insisted that the parties should have been compensated by the allocation of two garages.

In December 2018, the witness remembers hearing a lot of shouting and her daughter went down to her place crying. She went to the police station and filed a police report against the Respondent. The Respondent came back to their residence accompanied by police officers to take some clothes and left the residence. After that incident, the parties reconciled again after the Respondent had called Plaintiff to make arrangements for him to attend Sedqa.

After they were back together, the Plaintiff seemed upset most of the time whilst the son of the parties was angry all the time.

On the day of the last incident between the parties, the witness had heard a lot of arguing and then heard the son coming down the stairs shouting that his father was hurting his sister and his mother was blocking him and he was asking the relatives to call the Police. After three days, the Respondent left their residence. Since then Plaintiff and her children have experienced peace but multiple times the Respondent called the Plaintiff because he would have locked himself out.

Melchior Ellul, in his role as social worker with Agenzija Sedqa testified before this Court during the sitting of the 20th of January 2022 (**fol. 193**). He explained that the Respondent had approached their services in March 2016 and attended on and off for a year. He then lost contact but went again to use their services towards the end of the year 2018 for a couple of months. He approached their services for alcohol dependency. The Respondent had been seen by a doctor who works at Sedqa who prescribed anti-abuse medication for him. Services were terminated simply because the Respondent no longer attended appointments. The witness was aware that the Respondent had gone back for a consultation with the same doctor but at a private clinic and the doctor had referred him back to Sedqa. The witness knew this directly from the doctor in question.

Rowena Azzopardi, (a fol 194) in representation of BNF Bank, testified before the Judicial Assistant on 4th February 2022 and declared that the Respondent was not a customer of the represented bank.

Daniel Azzopardi, in representation of the same bank testified during the sitting of 5th April 2022 to confirm that neither of the parties had a banking relationship with the represented bank (fol. 390).

Lorraine Attard, (a fol 196) in representation of HSBC Bank Malta p.l.c., testified before the Judicial Assistant on 4th February 2022 and declared that the Respondent was not a customer of the represented bank. She testified again during the sitting of 5th April 2022 and declared that the Plaintiff had a current bank account with the represented bank which was closed in February 2021 (fol. 389) and two savings accounts which were closed in February 2021.

Jeanette Lepre, (a fol 198) in representation of Lombard Bank, testified before the Judicial Assistant on 4th February 2022 and declared that the Respondent was not a customer of the represented bank.

Patrizia Salerno, (a fol 199A) in representation of APS Bank p.l.c., testified before the Judicial Assistant on 4th February 2022 and declared that the Respondent was not a customer of the represented bank.

Charmaine Psaila Ragi, (a fol 385) in representation of APS Bank p.l.c., testified before the Judicial Assistant on 5th April 2022 and declared that neither of the parties was a customer of the represented Bank.

Joseph Debono-Meli, (a fol 386) in representation of the Commissioner for Revenue, testified before the Judicial Assistant on 5th April 2022 and declared that the Plaintiff had registered a loan in 2019. The witness confirmed that the Plaintiff declared both a full-time income as well as a part-time (fol. 387). According to the witness' records, the parties were already being treated as separated for tax purposes even though they were not *de jure* separated.

Dr Cynthia Tomasuolo, (a fol 391 dorso) in representation of Identity Malta, testified during the sitting of 5th April 2022 and confirmed that the Respondent enjoyed an exempt status because he was married to a Maltese citizenship. His last residence card was valid between 2014 and 2019.

Louis Buhagiar, (a fol 391 dorso) in representation of Identity Malta, testified during the sitting held on 5th April 2022 and filed the employment history of both parties.

Dr Christopher Spiteri, in representation of Transport Malta, testified during the sitting held on 24th May 2022 and filed a copy of the records of the authority in relation to the parties. The records show that each of the parties had one car registered in her/his name (**fol. 397**).

Johanna Bartolo, in representation of Bank of Valletta p.l.c., testified during the sitting held on 24th May 2022. The witness stated that the Plaintiff has two saving accounts and a current account with the represented bank which were still open at the time of the sitting (**fol. 398**). She also had another savings account which was closed in January 2019. She also has a credit card account. Moreover, the Respondent held a savings account in his name and a credit card account. The parties have a joint account that was still open at the time of the sitting and this was tied to their house loan. They also had a motor loan account which was closed in 2022 and another loan account that was closed in December 2021.

The same witness testified before this Court during the sitting of the 25th January 2024 (Fol. 498A).

Saviour Theuma, (fol 401) in representation of the Social Security department, testified The witness filed records held by the Department showing the social benefits received by each of the parties.

Patrick Bugeja, in representation of Identity Malta Msida, (**fol. 402**), testified that the Respondent used to enjoy an exempt status because he was married to a Maltese citizen. In 2014, he became a Maltese citizen himself. If he were still enjoying the exempt status, the current proceedings would jeopardize his status but this is not apply given that he is now a Maltese citizen. During the same sitting a copy of the citizenship certificate was filed by another witness representing the same entity i.e. **Joseph Rivans**.

The Version of the Respondent and Evidence produced by him:

The Respondent testified (fol. 416)., that he had had a serious accident and was for a time recovering in the Intensive Care Unit. The Respondent explained that he had met the Plaintiff in 2005 through a mutual friend. They started dating and in March 2006, he moved in with her and her daughter. In fact when he moved in, Plaintiff's daughter used to sleep between the parties. The Respondent had bought a TV for that residence. He also wanted to get married but the Plaintiff was still going through annulment proceedings in relation to her first marriage. The Respondent explained that he worked for Vassallo Builders on many big projects in Malta and his role was that of a supervisor. He stated that he used to get paid every fortnight in the amount of around three hundred and twenty-four Maltese liri (Lm324). Apart from that he used to be paid extra for each project but this varied in the amount. However, he was aware that he must have earned more than twenty-four thousand euro (Eur24,000) per year since he was allocated a Gold Visa credit card whereas this was not allocated to the Plaintiff.

The Respondent stated that the Plaintiff has financial obligations such as paying for her daughter's private school fees. On the other hand, she came from a large family so

every week they had some sort of celebration. She was always ending up without money and the Respondent would support her. He even bought a fridge-freezer for his own food, he bought a dishwasher, a microwave, and a sandwich toaster. He also paid to have the main door of the residence replaced as it was not closing properly. He had brought machinery from his place of work to break the front balcony and convert it into a terrace. The Respondent helped the Plaintiff convert a sitting room into a bedroom for her daughter. He also paid for a TV that they placed in the bedroom together with a bracket for it to be stuck to the wall. The Respondent stated that by the time that the family wanted to demolish the residence to build the apartments, he had financed the furnishing of every room including the ensuite bathroom. The only exception was the main bathroom. According to the Respondent, he paid between 40 and 60 thousand euro in furnishing the Plaintiff's residence.

The Respondent continued testifying (pg. 436). that Plaintiff's father could not take the situation anymore of having to live with his wife, his daughter and her family and at first he started looking at buying another property. However he realized that he was going to pay huge amounts of interest to the bank. That made him decide to restructure his house. It was Plaintiff's father who had asked him to be present when the architect went over with the plans of the development and even she was impressed that the Respondent could read the plans so well. The permit was granted for four (4) floors and a penthouse but they built four (4) floors and a washroom.

The Respondent stated that it was Plaintiff's cousin, who is a contractor with a small company, that built the flats. The contractor was paid by the Plaintiff's dad but he spent a lot of money in materials since he would be on site and he would leave to buy the materials that were needed. When questioned specifically on the tasks that he did himself, the Respondent testified that he did the shuttering in the flats. The plastering and the wall-painting in the flats were outsourced to a Syrian worker and the Respondent did the wall-painting of the washroom. The Respondent testified that Plaintiff's parents and himself paid for the construction. When asked about the amount and modality of payment, he testified that he would make cash payment according to need.

The Respondent stated that he had come from work and checked the letterbox. He had found an envelope addressed to the Plaintiff but it had a Notary stamp on it so he opened it and found a copy of the contract of donation wherein it was specified who each of the storeys was transferred on. He got angry as he felt cheated, he had invested his money in a property that was not going to be his.

In relation to the property in St Paul's Bay, the Respondent testified that they bought it in shell form and he had helped Plaintiff's father to finish it. The Respondent stated that he inherited around thirty thousand euro (Eur30,000) after his dad passed away in Serbia. Some of that amount he transferred to Malta and invested in the St Paul's property. He then said that he had paid for everything related to the finishings of the St. Paul's property.

When asked about his son, the Respondent stated that he always had a good relationship with his son as he used to play with him on the bed or at the swings. However, this changed when he left the matrimonial home and he is now scared that as a teenager, he would not involve his father in his life. At the time of the sitting, the Respondent was seeing his son once a week on a Sunday.

The Respondent testified that on 2nd July 2022, whilst he was working, some pipes fell onto his head. At first he had a helmet on but this broke so that the next pipes hit him directly on his head. He was bleeding profusely and an ambulance was called. Due to this incident, he was not working at the time of the sitting as he was made redundant and was living on social services. No doctor was willing to sign a fit for work certificate. He was getting by on the money his sister was transferring to him and funds collected by his ex-colleagues. Due to this incident, he became epileptic.

The Respondent also filed an affidavit⁵ in which he stated that before marrying the Plaintiff he had renovated the apartment in which they lived together over the span of two years. He calculated that he spent around fifteen thousand euro (Eur15,000) over such works. He also listed a number of appliances that he said he bought himself and he estimates that he had spent around seven thousand euro (Eur7,000). He states that he also spent twelve thousand euro (Eur12,000) on a Peugeot 207 prior to the marriage.

⁵ Duly sworn on 6th November 2023 (fol. 464)

He stated that after his dad's passing he had received the amount of seventy thousand euro (Eur70,000) from his father's inheritance and a donation from his mother. He added the amount of twenty thousand euro (Eur20,000) which he had in a Serbian bank account and transferred all the amount to Malta. He invested most of this amount in the St. Pauls' property. He insists that he did all the internal works needed which works cost him around ten thousand euro (Eur10,000). He also bought a number of appliances and furnishings which he estimates to have cost him around six thousand and five hundred euro (Eur6,500).

He clarifies that during their marriage, the parties bought a Peugeot 208 and paid fifteen thousand euro (Eur15,000) for it. This vehicle is still being used by the Plaintiff.

The Respondent stated that before the development of the house in Qormi, his father-in-law had approached him to help him out with the costs and the construction. In return he had promised to transfer two (2) apartments onto the parties themselves. On the basis of this promise, the Respondent started investing in the property both money as well as by carrying out works himself. He states that for three years, he used to go there every day after his full-time work as well as on weekends. He estimates that he spent twenty thousand euro (Eur20,000) for the construction materials used. He then spent around eight thousand euro (Eur8,000) to finish the apartment that they were going to reside in.

The Respondent filed a copy of the bank statements of the bank account held by him with BOV p.l.c. was filed (fol. 473 et seq.), These statements show the income of the Respondent from Vassallo Builders which averages at six hundred and fifty-one euro and eighty-six cents (Eur651.86) every fortnight. The same records show two transfers made from a foreign bank in November 2010 in the amounts of seven thousand and two hundred euro (Eur7,200) and ten thousand euro (Eur10,000)⁶ and then two handwritten markings show point towards the amount of nine thousand euro (Eur9,000) withdrawn on 10th December 2010 for the promise of sale (fol. 477) and a withdrawal on 31st January 2011 in the amount of seven thousand (Eur7,000) (fol. 478) for Notary Spiteri.

⁶ Vide fol. 476

The Respondent testified (fol. 483 et seq.) that at that point in time he was living on disability social benefits in the amount of five hundred and eighty euro (Eur580) every month. The Respondent informed the Court that the apartment in St Paul's Bay had been taken over by the bank due to the outstanding loan and there was a promise of sale pending at the time. With regards to Plaintiff's car, the Respondent states that he used to pay the monthly instalment on the loan they took out of seventy euro (Eur70) for five years. Moreover, he had invested one thousand euro (Eur1000) initially as the deposit for the company to bring it overseas. He bought a Peugeot 207 a few months before getting married. Then he sold it to the same company and bought a new Citroen C3 for sixteen thousand euro (Eur16,000). He eventually sold it and paid off the loan.

The Respondent testified yet again during the sitting of the 22nd May 2024 and presented before this Court a translated declaration made by Respondent's sister that together with her husband she had transferred to him the amount of seventeen thousand and two hundred euro (Eur17,200) in order for him to purchase the apartment in St Paul's Bay. Also she confirmed that following his injury at work, they have been supporting him but transferring money to him. The Respondent also filed the case summary from Mater Dei Hospital of the day he was admitted into hospital on 2nd July 2022 (fol. 905). This Court notes that this case summary states that the Respondent had sustained a fall, which fall he had not mentioned in his testimony.

When Respondent testified on 22nd May 2024 (fol. 916) he stated that he was sharing an apartment with a friend of his since their apartment had been sold by the Bank. He was contributing towards half the rent. He was still living on disability benefits. Moreover, he had received the sum of seventy-seven thousand euro (Eur77,000) as his share of the apartment after the loan was paid off. He still insists that he needs to receive the five thousand euro (Eur5,000) that he had paid prior to the purchase of the apartment on the promise of sale.

Terence Schembri in representation of Bonnici Brothers Ltd. testified (at pg 934), that the Respondent worked with the witness for two or three months. Prior to that, he used to work with the Respondent at Vassallo Group for two years. The witness said that the Respondent had felt dizzy and fell down on the day of the accident but he had not seen it happen. The Respondent used to know how to do his work well. Even when they

were working at Vassallo Group, he used to work well. At Vassallo Group they used to be paid with a salary and piece work, i.e. if they worked beyond their salary, they would be paid a commission. This commission depended on the project, sometimes it could be four hundred euro (Eur400) and sometimes it could be five thousand euro (Eur5000).

3) Legal Doctrine applicable to this Cause:

Article 40 of the Civil Code stipulates that:

“Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or grievous injury on the part of the other against the Plaintiff, or against any of his or her children, or on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down.”

In relation to excesses, it has been established that these consist of:

“tutti quegli atti di violenza che eccedono ogni misura e che possono mettere in pericolo la vita del coniuge”. Baudry Lacantinerie jghallem illi “Gli eccessi sono atti di violenza compiuti da uno dei coniugi verso l’altro e che possono porre in pericolo la salute e per fino la vita della vittima.”

In the judgment in the names *Josephine Bonello pro et noe vs John Bonello* decided by the First Hall Civil Court on 12th November 1999, and cited with approval by this Court otherwise presided, it was held as follows:

“fil-fehma tal-Qorti, il-fatt li r-raġel iċahhad lil martu minn manteniment xieraq u jkun xhih maghha f’dan ir-rigward, b`mod li jwassalha biex tirrikorri ghal ghand il-familjari taghha ghall-flus jew ghal stratagemmi bhal ma jidher li wettqet l-attribi, jammonta ghall-leccessi fis-sens tal-artikolu 40 tal-Kodiċi Ċivili”⁷.

⁷ “in the opinion of his Court, the fact that a husband denies his wife from adequate maintenance and is a miser with her in this regard, in a way that leads her to resort to her family for money or for strategies

In regard to cruelty, this was defined as follows:

“daww l-atti abitwali li joffendu l-persuna u l-animu tal-konjugi li lilu huma diretti, u li jaslu biex joholqu ezarcerbazzjoni f’dak il-konjugi hekk offiz, u avverzjoni profonda għall-konjugi l-iehor li jikkommetti daww l-atti.” Filfatt, Baudry Lacantinerie jghallem illi “Le sevizie rappresentano una attenuazione degli eccessi. Consistono in cattivi trattamenti, in vie di fatto che, pur senza minacciare la vita o la salute, rendono pero’ insopportabile la coabitazione”. Fis-sentenza fl-ismijiet Maria Mifsud vs Vincenzo Mifsud deciza mill-Prim’Awla tal-Qorti Civili fit-30 ta’ Gunju 1961 intqal illi “Certi fatti, kliem u modi ta’ azzjoni jew atteggiamenti illi jistghu jirrendu l-hajja komuni insopportabbli, huma ritenuti mid-dottrina bhala sevizzi.”⁸

It has been held that:

“...mhux kull nuqqas da parti ta’ konjugi versu l-konjugi l-iehor jwassal għall-sevizzi, minac’i jew ingurja gravi fit-termini tal-Artikolu tal-Kodiċi Civili u huma biss daww in-nuqqasijiet li, magħmula ripetutament u abitwalment, iweggħu u jferu lill-konjugi sal-grad li l-konvivenza matrimonjali ssir wahda diffiċli u insopportabbli. Kif jinsab ritenut fil-ġurisprudenza patria: “Per sevizie nel senso della legge s’intendono atti abituali di crudelta’ che offendono la persona o l-Fadda, Giurisprudenza, Art.150, para. 214. 2 Trattato Teorico Pratico di Diritto Civile, Delle Persone, Vol.IV, para. 35. 3 Giuseppa Agius vs Pacifiko Agius, Qorti tal-Appell Civili, deciza 10 ta’ Dic cembru 1951.

as it seems that the Plaintiff appears to have undertaken, amounts to excesses in the sense of article 40 of the Civil Code.”

⁸ “those habitual acts that offend the person and the spirit of the spouse towards whom they are directed, and that lead to create exacerbation in that offended spouse, and a deep aversion towards the other spouse that commits those acts.” In fact, Baudry Lacantinerie teaches that “Acts of cruelty represent an attenuation from excesses. They consist in cruel treatment, in ways of dealing that, without threatening the life or the health, they make cohabitation unbearable.” In the judgment in the names Maria Mifsud vs Vincenzo Mifsud decided by the First Hall, Civil Court on 30th June 1961 it was said that “Certain acts, words and ways of acting and behaviour that can cause cohabitation to be unbearable, have been held in legal doctrine to be cruelty.”

4 Trattato Teorico Pratico di Diritto Civile, Delle Persone, Vol.IV, para. 35. Rik.nru: 265/2018 JPG 11 l'animo di colui e sono diretti al punto da ingenerare in lui perturbazione, un dolore ed un aversione verso chi commette tali atti. [PA Camilleri utrinque, 16 Marzu 1898].”⁹

The Court has seen that in the judgment in the names *Emanuela sive Lilly Montebello vs John Mary sive Jimmy Montebello* decided by the Court of Appeal on 25th November 2016, it was stated that:

“Dan il-komportament abitwali [b’referenza ghal vjolenza fizika u morali] da parti tal-intimat, li eventwalment wassal ghat-tifrik taz-zwieg bejn il-partijiet, jikkwalifika bhala ‘sevizzi’ fit-termini tal-Artikolu 40 tal-Kodici Civili, stante li minhabba l-persistenza tieghu rrenda difficli hafna ghar-rikorrenti l-konvivenza matrimonjali. Minn barra dan, il-fatt li dan il-komportament tal-intimat kien beda jigi ezercitat sa mill-bidu tal-hajja konjugali fil-konfront tar-rikorrenti li minn naha taghha kienet tissaporti dan il-komportament ta’ zewgha filwaqt li, minkejja dan l-agir abitwali ta’ zewgha, kienet assumiet wahedha l-oneru tat-trobbija tat-tfal taghhom, jattira fil-konfront tal-intimat l-applikazzjoni tal-Artikolu 48 [1] [a] [c] [d] tal-Kodici Civili.”¹⁰

⁹ “...not every fault on the part of the spouse towards the other spouse leads to the presence of cruelty, threats or grievous injury in terms of the articles of the Civil Code and they are only those lackings that, done repeatedly and habitually, hurt and injure the spouse to the state that matrimonial cohabitation becomes difficult and unbearable. As has been retained in our jurisprudence: “For cruelty in the legal sense, it is meant habitual acts of cruelty that offend the person or 1 Fadda, Jurisprudence, Art.150, para. 214. 2 Theoretical Practical Treatise on Civil Law, of Persons, Vol.IV, para. 35. 3 Giuseppa Agius vs Pacifiko Agius, Qorti tal-Appell Civili, decided 10 December 1951. 4 Theoretical and Practical Treatise on Civil Law, Delle Persone, Vol.IV, para. 35. Applic No 265/2018 JPG 11 the spirit of which they are directed to the point of generating disturbance, pain and an aversion towards who committed those acts (PA Camilleri utrinque, 16th March 1898).”

¹⁰ “This habitual behaviour (with reference to physical or moral violence) by the Respondent , that eventually led to the breakdown of the marriage between the parties, qualifies as ‘cruelty’ in terms of Article 40 of the Civil Code, given that due to its persistence, it made matrimonial cohabitation very difficult for the Plaintiff. Apart from this, the fact that this behaviour of the Respondent was being shown towards the Plaintiff from the start of the conjugal life and that from her end, she endured this behaviour of her husband whilst assuming on her own the responsibility of the raising of their children, leads to the application of article 48 (1)(a) (c) (d) of the Civil Code.”

In regards to grievous offences, in the judgment in the names *Marthese Vella pro et noe vs George Vella* decided by the First Hall, Civil Court on 28th February 2003, it was stated that:

“l-ingurji gravi ma gewx specifikament dezinjati mid-duttrina, imma l-karattru generali tagghom gie dejjem imholli fis-sagacja u l-kuxjenza ta’ l-Imhallef sabiex jivvalutahom.”¹¹

This Court has seen that in the judgment in the names AB vs CB decided on the 28th June 2018, this Court otherwise presided had considered that the fact that the Plaintiff’s husband used to leave her without money, and the fact that he was guilty of emotional abuse due to various offences and insults uttered by him against his wife, led him to being found at fault of causing cruelty and grievous offences against his wife and therefore he had to shoulder responsibility for the breakdown of the marriage.

Care and custody

The Plaintiff is requesting that she is entrusted with the exclusive care and custody of the minor child of the parties.

It has been established in our jurisprudence that in situations similar to this the *best interest of the minor* has to prevail above everything.¹² In the cause *Jennifer Portelli pro.et noe. vs. John Portelli*¹³ it was established that:

Jinghad illi l-kura tat-tfal komuni [tal-mizzewgin], sew fil-ligi antika u sew fil-ligi vigenti, kif ukoll fil-gurisprudenza estera u f’dik lokali hija regolata mill-principju tal-aqwa utilita’ u l-akbar vantagg għall-interess tal-istess tfal li c-cirkustanzi tal-kaz u l-koefficienti tal-fatti partikulari tal-mument ikunu jissuggerixxu. Illi in konsegwenza, ir-regola sovrana fuq enuncjata għandha tipprevali dwar il-kustodja u l-edukazzjoni tat-tfal

¹¹ “grievous offences have not been specifically designated by doctrine, by their character in general has always been left up to the discretion and the conscience of the Judge to evaluate them.”

¹² Emphasis by this Court.

¹³ Decided on 25/06/2003 by the First Hall, Civil Court Applic No. 2668/1996/2RCP.

komuni tal-mizzewgin sew meta jisseparaw ruhhom ġudizzjarjament, sew meta jiġu biex jisseparaw konsenswalment¹⁴.

In the judgment in the names *Maria Dolores sive Doris Scicluna vs Anthony Scicluna* decided by the First Hall, Civil Court on the 27th November 2003, it was held that:

“apparti l-hsieb ta’ ordni morali u dak ta’ ordni legali, li għandhom setgħa fil-materja ta’ kura u kustodja tat-tfal in ġenerali, il-prinċipju dominanti ‘in subjecta materia’, li jiddetermina normalment u ġeneralment il-kwistjonijiet bħal din insorta f’dina l-kawża, huwa dak tal-aktar utilita’ u dak tal-aqwa vantaġġ u nteress tal-istess minuri fl- isfond taċ-ċirkostanzi personali u ‘de facto’ li jkunu jirriżultaw mill-provi tal-każ li jrid jiġi riżolut...”¹⁵

That in the cause in the names *Susan Ellen Lawless vs. Il Reverendo George Lawless¹⁶*, the Court had stated that:

La cura ed educazione dei figli, nel caso che la moglie non continua ad abitara col marito, deve essere commessa ed affidata a colui frai u conjugj che si rinconoscera piu atto ed idoneo a curarli ed educarli, avuto riguardo alla lora eta’ ed a tutte le circostanza del caso sotto quei provvedimenti che si reputino spediti pel vantaggio di tali figli.

¹⁴ It has to be stated that the care of the children in common (of the spouses), whether under the old law or whether under the current applicable law, as well as foreign jurisprudence and in the local one, it is regulated by the principle of the highest need and the highest advantage in the interest of the children the circumstances of the case and the coefficients of the particular facts of the moment would suggest. As a consequence, the supreme rule hereabove stipulated should prevail regarding the custody and the education of the common children of the spouses both when they separate judicially, as well as when they separate consensually.

¹⁵ “apart from the thought of moral order and that of legal order, that have authority in the subject of care and custody of the children in general, the dominant principle ‘in subjecta materia’, that normally and generally determines matters like those in this cause, is that of the highest utility and that of the best advantage and interest of the same minors in light of the personal circumstances and ‘de facto’ that result from the evidence of the case that has to be resolved...”

¹⁶ Decided by the First Hall, Civil Court on 8th December 1858.

The Court thus has the authority to entrust only one of the parents with the care and custody of the minor children, if it results to be in the best interest of the same children, and this according to article 56 of the Civil Code.¹⁷ As this Court had the opportunity to state several times, the interest of the children is supreme to the rights of the parents. In the judgment of this Court otherwise presided in the names *Frances Farrugia vs. Duncan Caruana*, decided on 31st May 2017, this Court stated:¹⁸

Il-Qorti tirrileva illi filwaqt li dejjem taghti piz ghad-drittijiet tal-genituri, l-interess supreme li zzomm quddiemha huwa dejjem dak tal-minuri kif anke mghallma mill-gurisprudenza kostanti taghna hawn 'il fuq iccitata.¹⁹

Legally, reference is made to the cause in the names *Cedric Caruana vs Nicolette Mifsud*²⁰ wherein the Court emphasised that where children are involved:

'huwa ta' applikazzjoni assoluta l-Artiklu 149 tal-Kap 16 li jaghti poter lill-Qorti taghti kwalsiasi ordni fl-interess suprem tal-minuri. Fil-fehma tal-Qorti, l-Artiklu 149 tal-Kap 16 jaghmilha cara illi fejn jikkoncerna l-interess suprem tal-minuri, idejn il-Qorti m'hiex imxekla b'regoli stretti ta' procedura... fejn jidhlu d-drittijiet u l-interess suprem tal-minuri il-Qrati taghna ghandhom diskrezzjoni wiesgha hafna.... Addirittura l-Qorti tal-Familja ghandha s-setgha li tiehu kull provvediment fl-ahjar interess tal-minuri.²¹

¹⁷ Cap 16 of the Laws of Malta.

¹⁸ Vide Sworn Application 268/11AL.

¹⁹ "The Court holds that whilst it always gives weight to the rights of the parents, the supreme interest that it has to hold primarily before it is that of the minors as is also taught by the constant local jurisprudence here cited."

²⁰ Decided by the Court of Appeal on 4/3/2014.

²¹ Vide A sive BC vs D sive EC decided 30/6/2015 u Joseph Micallef vs Lesya Micallef decided 14/12/2018.

'it is absolutely applicable article 149 of Cap. 16 that gives power to this Court to give whatever orders it would hold to be in the supreme interest of the minors. In the opinion of this Court, Article 149 of the Cap. 16 makes it clear that where the supreme interest of minors is concerned, the hands of the Court are not to be hindered by strict rules of procedure... where rights of children and their supreme interests are involved, our Courts have very wide discretion ... So much so that the Family Court has the power to give any order in the best interest of the minor.'

In the words of the Court of Appeal in the judgment in the names: *L Darmanin vs Annalise Cassar*.²²

*“.....meta tigi biex tiddeciedi dwar kura u kustodja ta’ minuru, il-Qorti ma ghandhiex tkun iddettata u kondizzjonata mil-meriti u dimeriti tal-partijiet ‘ut sic’ izda biss x’inhu l-ahhjar interess tal-minuri”.*²³

This Court makes reference to the pronouncement of the Court of Appeal (Superior Jurisdiction) in its judgment delivered on 25th November 1998 in the names *Sylvia Melfi vs. Philip Vassallo* wherein it held that:

In this case the Court must seek to do what is in the sole interest of the minor child in its decision whether the care and custody of the child should be given to one parent or the other the Court must solely be guided by what is most beneficial to the child [...] The Court should at all times seek the best interests of the child irrespective of the allegation, true or false, made against each other by the parties. Such allegations often serve to distance oneself from the truth and serve to render almost impossible the search of the Court for the truth. This is why it is the duty of the court to always look for the interests of the child. Exaggerated controversies between the parties often make one wonder how much the parents have at heart the interest of their children. Sometimes parents are only interested at getting at each other and all they want is to pay back the other party through their minor child.

That this Court makes its own in particular the thinking of the Court of Appeal in the cause in the names *Miriam Cauchi vs Francis Cauchi* decided on 3rd October 2008 wherein it was correctly observed that:

²² Decided by the Court of Appeal on 31st of October 2014.

²³ Emphasis of this Court.

“.... When it comes to decide upon the care and custody of the minors, this Court should not be constrained and conditioned by the merits and demerits of the parties ‘ut sic’ but only by the best interest of the minors.”

“Din il-Qorti tibda biex taghmilha cara li, fejn jidhlu minuri, m’hemmx dritt għall-access, izda obbligu tal-genituri li t-tnejn jikkontribwixxu għall-izvilupp tal-minuri li, għal dan il-ghan, jehtigilha jkollha kuntatt ma’ ommha u anke ma’ missierha. Kwindi lil min jigi fdat bil-kura tal-minuri u kif jigi provdut l-access jiddependi mill-htigijiet tat-tifla u mhux mill-interess tal-genituri.”²⁴ Huma l-genituri li jridu jakkomodaw lit-tfal, u mhux viceversa. L-importanti hu l-istabilita’ emozzjonali tat-tifla, u li din jkollha kuntatt mal-genituri tagħha bl-anqas disturb possibbli.”²⁵

Maintenance towards the needs of the child:

The legal principle surrounding maintenance towards children is based on article 7(1) of the Civil Code which stipulates as follows:

7. (1) Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in article 3B of this Code.

As results from the articles of the Law, both parents have the same responsibility towards their children, and thus both parents have to contribute towards the raising of their children. The obligation of both parents towards their children is determined according to the means of each of the parents, calculated according to the needs determined in article 20 of the Civil Code.

Article 20 of the Civil Code provides that:

(1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.

²⁴ Emphasis by this Court.

²⁵ “This Court starts by making it clear that, where minors are involved, there is no right of access, but a responsibility of the parents for both of them to contribute towards the development of the minors that, for this objective, require contact with her mother as well as with her father. Therefore who is entrusted with the care of the minor and how access is determined depends on the needs of the child and not on the interest of the parents. It is the parents that need to accommodate the children, and not the other way round. The important thing is the emotional stability of the child, and that she has contact with her parents with the least disturbance possible.”

(2) In examining whether the claimant can otherwise provide for his own maintenance, regard shall also be had to his ability to exercise some profession, art, or trade.

(3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.

(4) A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.

(5) In estimating the means of the person claiming maintenance regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust.

As held in our jurisprudence:

.....Il-Qorti dejjem irriteriet illi l-ġenituri ma jistghux jabdikaw mir-responsabilità tagħhom li jmantnu lil uliedhom materjalment, hu kemm hu l-introjtu tagħhom. Dejjem kienet tal-fehma illi kull ġenitur għandu l-obbligu li jmantni lil uliedu anke jekk il-meżżi tiegħu huma baxxi jew jinsab diżokkupat. Il-Qorti ma tista qatt taċċetta li persuna ġġib it-tfal fid-dinja u titlaq kull responsabbiltà tagħhom fuq il-ġenitur l-iehor jew inkella fuq l-istat.” (Ara Tiziana Caruana vs Redent Muscat (272/2018) deċiża mill-Prim’ Awla Qorti Ċivili fl-24 ta’ Ġunju 2019; Liza Spiteri vs Luke Farrugia (219/2018) deċiża mill-Prim’ Awla Qorti Ċivili fit-2 ta’ Ottubru 2019).²⁶

²⁶ “.....The Court always held that the parents cannot abdicate from their responsibility to maintain their children materially, no matter how much their income is. It was always of the opinion that every parent has the obligation to maintain his children even if his means are low or he is unemployed. This Court can never accept that a person brings children into this world and leaves all responsibility onto the other parent or else on the State. (See Tiziana Caruana vs Redent Muscat (272/2018) decided by the First Hall, Civil Court on the 24th of June 2019; Liza Spiteri vs Luke Farrugia (219/2018) decided by the First Hall, Civil Court on 2nd October 2019).”

In the case Portelli Jennifer pro et noe vs Portelli John (Applic. No. 2668/1996) decided by the First Hall, Civil Court on 2nd October 2003, it was held that:

“.....l-obbligu taż-żewg ġenituri lejn l-ulied jibqa’ bażikament l-istess dettat kull wiehed skont il-meżzi tiegħu, ikkalkulati skont id- dispozizzjonijiet tal-Artikolu 20 tal-istess Kap u l-bżonnijiet tal-minuri, u fl-interess tal-istess minuri.”²⁷

4) Considerations

Responsibility for the Breakdown of the Marriage

The Court has before it a request for the personal separation of the parties for diverse reasons and two conflicting versions of events. The Plaintiff insists that the Respondent was overtaken by his alcohol addiction so much so that he was constantly in a drunken state and he would become aggressive and violent in such a state. This version of the Plaintiff was substantiated by other witnesses, with recordings of the phone calls and incidents of violence that occurred within the matrimonial home, with police reports of each of the incidents that the Plaintiff and her relatives recounted and also with events that occurred throughout the cause such as the letter of warning that the Respondent received from his place of work on being in a “state of inebriation” (Fol. 409)

On the other hand, this Court has the version of the Respondent himself that the cause of the separation was the conflict that emerged between the spouses due to the donation of the apartments to the children rather than to the parties and therefore the Respondent felt cheated out of all the investment he had made in the same apartment. This Court finds that Respondent failed to substantiate his claim. The Court found the testimony of the Respondent as not credible after taking note of untruths or half-truths that emerged in view of the evidence produced before it. The Respondent denied that he has an alcohol addiction. When testifying before this Court, this Court asked him directly whether he was a social drinker or whether he had an addiction and he said he was only a social drinker and could go on for days or weeks without an alcoholic drink.

²⁷ “...the obligation of both parents towards their children remains basically the same, each dictated by the means of that parent, calculated according to the dispositions of Article 20 of the same Cap and the needs of the minor, and in the interest of the same minor.”

This despite that the Respondent had at that time psoriasis of the liver and therefore should not have been drinking at all. This statement is not credible in view of the hospital records filed by the Respondent himself which clearly state that the Respondent had a history of “alcohol dependency” (fol. 905), the witness representing Sedqa Melchior Ellul who declared that the Respondent had used their services for alcohol dependency in 2016 and 2018 (fol. 193) and he was prescribed the anti-abuse pill to control the addiction. Moreover, this Court also makes reference to the letter sent to the Respondent by Vassallo Group referring to his “erratic behaviour” and “state of inebriation” on the work place so much so that the Respondent had to appear before a disciplinary board (fol. 409). This Court also did not find the Respondent as credible when recounting what happened on 2nd July 2022 at his place of work when he said that pipes fell on his head and did not mention in any way the fall that was documented in the hospital records, that the foreman from his workplace, Terence Schembri, mentioned in his testimony.

Moreover, the Court noted the Respondent’s behaviour with court officials. The Court makes reference to the application that the Judicial Assistant had to file due to the belligerent attitude displayed by the Respondent during the sitting held by her which needed the interference of three lawyers (fol. 458).

This Court however understands that Respondent felt mortality wounded and betrayed by Plaintiff and Plaintiff’s family when the matrimonial home in which he maintains that he invested money and labour in constructing the shuttering to the construction and in effecting the paint work of the same, only to discover that Plaintiff’s father had donated the apartment to the parties son, thus, in Respondent’s view, eliminating him from any possible investment in the matrimonial home. This Court also understands that the property never belonged to Plaintiff and that Plaintiff’s father had every right to dispose of the property as he willed. However, the Court notes that neither Plaintiff nor her family informed the Respondent **before** he effected the manual labour, of Plaintiff’s father decision to donate the apartment to the parties son. Indeed, Respondent only found out about the said ‘donation’ inadvertently when he noticed the notary’s letter containing the deed. **The fact that the intended donation was kept under wraps may well have denied Respondent from conserving receipts indicating and proving his disbursements to the matrimonial home.**

This Court finds the version of the Plaintiff as largely acceptable and concludes that the cause for the breakdown of the marriage of the parties was two fold : the perceived betrayal on the part of the Plaintiff against the Respondent regarding the matrimonial home as above explained; and the alcohol addiction of the Respondent and the aggressive and violent behaviour that he displayed in regards to his wife when drunk. Even behaviour as annoying their son and being cruel to the daughter of the Plaintiff led to multiple incidents between the parties. This Court makes reference to the threats that the Respondent subjected the Wife to i.e. having subjected her to threats over her life. This Court refers to other threats made in a more generic manner i.e. that blood would be spilt leaving the Plaintiff to fear for the safety of her loved ones. This Court also notes the domestic violence that the Plaintiff endured such as being beaten by a cordless phone which was witnessed by the relatives of the Plaintiff and for the son of the parties to live in a constant state of fear to run down and seek assistance from the maternal relatives.

Aspects relative to the Minor Child

This Court notes that during the mediation proceedings, this Court ordered that the Respondent was to exercise access to his son under the supervision of Agenzija Appogg at the time. This did not happen because of the work duties of the Respondent himself and instead the parties found an alternative that worked in the circumstances of access taking place under the supervision of the Wife. The Court commends the Plaintiff for taking such a role and facilitating access despite what she had gone through with the Respondent. The Court notes that during the sitting of 18th November 2020, it ordered that access is to take place on Saturdays afternoons in a public place and the Wife is to supervise the access from afar. Access of Respondent to his child on public holidays, Christmas and the New Year, on Father's Day and on Respondent's birthday shall be from 10:00am to 13:00pm under the same supervision as above explained.

With regards to maintenance, this Court notes the request by the Respondent made during his testimony (fol. 484) to reduce the maintenance being paid for the needs of his son DM. The reason behind this is that he is now living on disability benefits, he has to pay half the rent of the apartment which he is sharing with his friend and live.

However, the Court also notes that throughout the marriage of the parties, the Respondent did not have any mortgage or rent to pay for the matrimonial home. He did not invest his income but chose to spend a substantial amount on alcohol. The Court has seen the very frequent transactions made from his BOV account throughout the marriage to sustain his addiction as well the very frequent cash withdrawals that he made throughout. Jurisprudence has always been clear that the maintenance obligation does not depend on income but upon the means of the party. Had the Respondent acted more responsibly, he may have saved up considerably throughout his marriage. Moreover, the Court is aware that after the sale of the apartment in St. Paul's Bay, the Respondent received the amount of seventy-seven thousand euro (Eur77,000). Therefore he has the means to continue to pay the minimal maintenance that he paid for his son – an amount which the parties came to an agreement upon it between them and informed this Court about such agreement when testifying during the mediation proceedings. Hence the Court orders that maintenance for the son of the parties shall be in the amount of two hundred euro (Eur200) per month. This maintenance is to increase every year according to the index of inflation published by the government. It is to be paid at the start of each month by bank transfer and it shall continue to be paid until the son of the parties reaches the age of eighteen (18) years if the minor child stops pursuing his studies and starts working on a full-time basis or payable up to the age of twenty-three (23) years if the minor child decides to pursue his studies on a full-time basis; This maintenance allowance includes Respondent's share of the child's educational, medical and extra-curricular activities.

With regards to the care and custody of the son of the parties, this Court notes that for a very long time, it has been the Plaintiff who acted as the primary and sole carer of the child DM. The Court has noted the past irresponsibility of the Respondent and his past behaviour. This Court believes that Respondent has made significant improvement in relation to his alcohol addiction. However, in view of the fact that his medical condition after his accident has deteriorated greatly, the Court deems it would not be in the interest of the child to have joint care and custody. The Respondent is now suffering from medical conditions which might make him unavailable for days on end when receiving treatment and thus it is in the child's best interest for the Wife to be able to act unilaterally on behalf of her son.

The liquidation of the Community of Acquests:

This Court notes that the community of acquests between the parties at the time of the breakdown of the marriage consisted of the apartment in St. Paul's Bay, two cars bought during the marriage, jewellery, appliances bought for the matrimonial home and claims by the Respondent in terms of investment of monies in the construction and finishings of the apartment in Qormi which constituted the matrimonial home of the parties.

The Court notes that the apartment in St. Paul's Bay was sold off by the Bank owing to outstanding payments on the mortgage burdening the property (fol. 901). The Court was informed during the sitting of 22nd May 2024 that each of the parties received the amount of seventy-seven thousand euro (Eur77,000) as their share from the proceeds after the loan was paid off. The Respondent still brought a claim that he had disbursed sums for the deposit and the Notarial fees. Since the division of the proceeds was done independently of this Court, the Court abstains from taking further cognisance of such requests. Any such claims should have been addressed prior to the distribution of the proceeds. Hence there is nothing further for this Court to decide in relation to such property.

With regards to the property in Qormi which constituted the matrimonial home of the parties, it has been proven that this property does not form part of the community of acquests between the parties. The property was donated to the Plaintiff by her parents as per deed published on 12th November 2018 (fol. 95). The Respondent claims that he invested a lot of his earnings into the construction development of the apartment apart from putting in manual works himself. The Plaintiff adamantly declared that the Respondent did nothing apart from wall-painting the washroom after having bought the painting herself. The witness produced by the Plaintiff also declared that the Respondent did not work himself and stated that the one-time that he had to help and keep an eye on the Plaintiff's father whilst he was painting the shaft, Respondent was found asleep on a piece of wood in a drunken state and with a bottle of alcohol in his hands.

This Court has heard the Respondent declare that he would many times bring tools and machinery from his work to be used during the construction of the works. This does not

seem to have carried any expenses. He also declared that he would go and buy materials needed for the construction as the need arises. This Court has thoroughly examined the statements of the bank accounts of the Respondent and has not found any transaction from a hardware store or a construction material store that could substantiate the claim of the Respondent. The statements show very frequent purchases from “Piscopo Cash and Carry” and from “Guido Vella Cash and Carry”, they show very frequent withdrawals from ATMs and other purchases from LIDL, Aliexpress and Teamsport but no transaction related to construction or furnishings. One could possibly argue that he made such purchases from the cash withdrawals since they were so frequent, however it was expected from Respondent to prove this. In absence of such proof, Respondent’s claim cannot be upheld.

Another claim of the Respondent is that he bought many of the appliances that he left behind in the matrimonial home. Again no proof was produced in this regard to substantiate this claim. At the very least, the Respondent could have cross-examined the Plaintiff regarding his claim but this was not possible for the Respondent since the legal counsels engaged renounced to his brief and then he did not engage a third legal counsel when he was rejected by Legal Aid Malta.

This Court notes that during her testimony before this Court, the Plaintiff had testified that they had not come to an agreement during the mediation process despite her having offered the sum of ten thousand euro (Eur10,000) as settlement for any appliances. This Court notes that the Respondent mentioned a list of appliances that he allegedly bought but the only confirmed appliances (since it was also stated by the Plaintiff) were the fridge-freezer that he had bought for his own food and drinks and the TVs in the different rooms of the apartment. This Court is assigning these appliances to the Respondent and the Plaintiff is to make the necessary arrangements for them to be transferred to the place where the Respondent is residing. If these appliances are no longer in a functioning state, the Plaintiff is to compensate the Respondent with the current market value of these appliances.

The Respondent also claimed to have invested the inheritance of his father and a donation from his mother into the development of the property. Again this Court reiterates that it has thoroughly examined the banking statements of the Respondent

and nowhere did it find a transfer from Serbia in the amounts cited by the Respondent – an exercise that ought to have been done by the Respondent himself or his legal counsel had he engaged one. The only transfer that is found in the acts of these proceedings is that from Respondent's sister and her husband in the amount of seventeen thousand, two hundred euro (Eur17,200) which he invested in the St. Paul's apartment. In view of these results, and for reasons already cited above, this Court cannot entertain this claim any further.

When testifying the Respondent also claimed to have left behind him gold jewellery which he had bought as an investment. The Plaintiff did not deny this but claimed that this jewellery was a gift to her. When Respondent was testifying, he gave the impression that this was male jewellery. Irrespectively, since the presence of the jewellery was confirmed by the Plaintiff, this Court orders the Plaintiff to return the gold jewellery that the Respondent left behind him in the matrimonial home within one month from this judgement. If this jewellery is no longer in the possession of the Plaintiff, then the Plaintiff shall compensate the Respondent with the current market value of such jewellery.

Lastly, this Court addresses the claim about the cars in the possession of the parties. From the evidence produced, it has resulted to this Court that the Plaintiff drives a Peugeot whereas the Respondent had or has a Citroen. Both vehicles were bought during the marriage and were paid in instalments. Whereas the Plaintiff paid off the instalments of her car, the Respondent had initially bought a Peugeot as well. He later traded it in to have a new Citroen and thus extended his loan. **Thus both cars belonged to the community of acquests.** This Court is assigning the Peugeot to the Plaintiff and the Citroen to the Respondent. No claim was brought with regards to a different in the market value of the vehicles. Since the instalments were paid during the marriage, no compensation is due by one party to the other. The claim brought forward by the Respondent is that he had forked out one thousand euro (Eur1,000) himself (fol. 489A) as a deposit for Plaintiff's car to be brought from overseas. This was in 2016, the parties got married in 2009 hence any deposits paid, were paid from the community of acquests. It is true that the parties administered their incomes and financial responsibilities separately because the Plaintiff had to provide for the daughter from her previous marriage however, should the parties intended to keep everything separate

and to be compensated for each and every transaction carried out on behalf of the other spouse, then they should have opted for the regime of the separation of assets when contracting marriage. This Court therefore rejects the claim of the Respondent.

For all intents and purposes, this Court is ordered that any joint accounts that are still open between the parties are to be closed off and any balances are to be divided in two equal shares. The parties are to retain monies in the accounts held solely by each of them since no claim for compensation was made by either of them and this Court is bound by the claims filed by the parties.

For these reasons, the Court disposes of the sworn application, sworn reply and counter-claim as follows:

- 1. Pronounces the personal separation of the parties on the basis that the parties' marriage has irretrievably broken down owing to the addiction and the excesses, threats, grievous injuries and grievous offences committed by the Respondent and grievous offences committed by Plaintiff on Respondent. The parties are authorized to live separately, and to undertake all acts of a civil nature, without the consent, signature or authorization of the other party;**
- 2. Orders that the care and custody of the minor child DM shall be entrusted exclusively in the hands of the Plaintiff and that the minor child is to continue to reside with the Plaintiff. Orders that the Plaintiff shall be authorized to make all decisions, both ordinary and extraordinary in relation to the child's health and education, including applying and obtaining a passport for the minor, on her own, without the need of the Respondent's consent, signature or presence; The Court orders moreover that Respondent shall have access to his son DM on Saturdays afternoons in a public place which access shall be supervised by Plaintiff at a distance of 20 metres. Access of Respondent to his child on public holidays, Christmas and the New Year, on Father's Day and on Respondent's birthday shall be from 10:00am to 13:00pm under the same supervision.**

- 3. Rejects in part the third request regarding maintenance for the Wife since it has been proven that the Wife has her own means. Upholds the second part of the request and orders that the Respondent is to pay maintenance for the son of the parties in the amount of two hundred euro (Eur200) per month. This maintenance is to increase every year according to the index of inflation published by the government. It is to be paid at the start of each month by bank transfer and it has to continue to be paid until the son of the parties reaches the age of eighteen (18) years if the minor child stops pursuing his studies and starts working on a full-time basis or payable up to the age of twenty-three (23) years if the minor child decides to pursue his studies on a full-time basis This maintenance allowance includes Respondent's share of the child's educational, medical and extra-curricular activities.**
- 4. Upholds the fourth request of the Plaintiff. Declares the 15th August 2019 as the day when the marriage irretrievably broke down and the day the Respondent forfeited any acquisition made by the work and ability of the Plaintiff. Orders the community of acquests between the parties to be terminated, dissolved and liquidated as follows:**

 - i. Orders that in the event that the parties hold bank accounts and/or investments in their name, said accounts and/or investments are assigned to the party in whose name such account and/or investment is designated, and each party is thus to retain full ownership of the bank account and/or investment in his or her name;**
 - ii. Authorizes Plaintiff to reside exclusively in the matrimonial home together with her children;**
 - iii. Assigns the fridge-freezer and T.V.s and the gold jewellery in the Qormi apartment to the Respondent who shall receive the same within one month from this judgement ;**
 - iv. Assigns the vehicle Peugeot 208 with registration number FCG 387 to Plaintiff, and assigns the vehicle Citroen C3 with registration number ACR 096 to Respondent .**

- v. Orders that in the eventuality that there are other debts which burden the community of acquests, such debts or obligations are the sole responsibility of the party who contracted said debt or obligation. The Court reserves the parties' right to institute proceedings against the other party for restitution, in case of undue payment;**
- 5. Rejects the fifth request since no evidence was brought forward on any paraphernal assets and credits as being in the possession of the Respondent ;**
- 6. Upholds the sixth request;**
- 7. Authorises the parties to register this judgment in the Public Registry of Malta.**
- 8. Authorize the Plaintiff to revert to her maiden surname Z whilst keeping M and thus for the Plaintiff to start using the surname "ZM";**

Upholds or denies Respondent's requests in the counter-claim accordingly.

Two thirds of the costs shall be borne by Respondent and one third of the costs shall be borne by Plaintiff.

Read.

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

**Nicole Caruana
Deputy Registrar**