

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of 20th February 2025

Application No.: 123 /21 JPG

Case no: 17

**LPR
and by virtue of a decree
dated 20th February 2025
Plaintiff's surname was
corrected to read as
BA
Vs
APR**

The Court:

Having seen the Application filed by LBA dated 30th April 2021, at page 1, as translated into English at pg 6, wherein it was held on oath:

A. Declaration of the Plaintiff

- i. That the parties got married in the Marriage Registry in Valletta on the twenty-eight (28) of June of the year two thousand and eighteen (2018), which marriage was registered and enrolled in the Public*

Registry with reference 1248/2018 (true copy of the marriage certificate is herein attached and marked Dok. A);

- ii. That from this marriage the parties had no children;*
- iii. That this marriage has irretrievably broken down due to excesses, threats and injury on the part of the Defendant as well as incompatibility of character and other reasons at Law deemed as ground for separation;*
- iv. That the parties have been authorised to proceed and file for personal separation by means of a decree given on the first (1) of April of the year two thousand and twenty one(2021) in the acts of the letter of mediation no. 1182/20, which decree is attached and marked Dok. B;*

The Defendant is therefore solicited to declare, with reference to the above declaration, the reasons as to why this Honourable Court should not decide as follows:

- 1. Declare and pronounce the personal separation between the parties for reasons uniquely attributable to the defendant;*
- 2. Declare and decide that the Defendant has forfeited his right to maintenance;*
- 3. Apply in entirety or in part against the Defendant the effects of Article 48 to 53 of the Civil Code , Chapter 16 of the Laws of Malta;*
- 4. Declare that the community of acquests existing between the parties be dissolved and consequently liquidates and divides it into two portions to be assigned to each of the parties, provided that the sanctions mentioned in the third request are applied, and this with the assistance of nominated Court experts;*
- 5. Condemn the Defendant to pay the Plaintiff maintenance due in terms of Law with those modalities of payment, including any increase and adjustments reflecting the cost of living increase and provides by*

making a direct order from the Defendant's income, and this in accordance with those modalities which this Honourable Court deems fit to impose;

- 6. Orders that the Plaintiff is given back and/or refunded and is given control over any dotal and paraphernal property;*
- 7. Orders that the Plaintiff reverts back to her maiden surname 'BA' in accordance with Article 62 of the Civil Code;*

With costs and fees against the Defendant, who is by means of the present summoned to take the oath of the adversary.

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

Having seen the Reply filed by APR dated 13th September 2021 at page 20, translation at page 24 et seqq. wherein it was held:

- 1. That as was stated in the sworn application submitted by the Plaintiff, the parties got married at the Marriage Registry in Valletta on the 28th of June 2018 and no children were born from this marriage;*
- 2. That the Respondent agrees that personal separation is pronounced but that this separation was caused solely by reasons attributed to the Plaintiff, particularly her abandonment of the matrimonial home, extra-marital relationship and the fact that she has a child from another man, besides the fact that she used the Respondent's dual Italian citizenship to obtain a residence permit to reside in Malta, as he is the holder of Italian Passport Number X, as shall be demonstrated during the hearing of the case and in the counter-claim that is being filed together with this sworn reply;*
- 3. That the second plea is being opposed as under the present circumstances there is no*

reason for the Respondent to forfeit his right to maintenance as the breakdown of the marriage is not attributable to him;

- 4. That regarding the third plea, the Respondent is opposing this plea as he is not responsible for the breakdown of the relationship between the parties;*
- 5. That with regard to the fourth plea, the Respondent agrees that the community of acquests between the parties is terminated. That nonetheless, the Respondent disagrees with the manner stated by the Plaintiff as the Respondent did not forfeit any of his rights according to the Law;*
- 6. That regarding the fifth plea, the Respondent is once again stating that the Plaintiff is not due any maintenance in view of the fact that the same Plaintiff is solely responsible for the breakdown of the marriage, that the Plaintiff is gainfully employed and has a reasonable income and that she is also being maintained by her partner, who is also the father of their child;*
- 7. That the sixth plea is being opposed since as shall be demonstrated during the hearing of this case the Respondent does not owe anything to the Plaintiff with regards to any dotal or paraphernal property and that rather it is the Plaintiff who owes compensation to the Respondent and in this regards a counter-claim is being filed with this sworn application;*
- 8. That there is no objection to the seventh plea;*

With the exception of further replies.

With costs against the Plaintiff, who is by means of the present summoned to take the oath of the adversary.

Having seen the counter claim by APR dated 13 September 2021 at pg 28 et seqq. and

translated version at pg 33 et seqq. wherein it was held:

1. *That the parties got married at the Marriage Registry in Valletta on the twenty eight (28) of June of the year two thousand and eighteen (2018);*
2. *That no children were born from this marriage;*
3. *That the marriage broke down solely through the fault of the Plaintiff, particularly when she abandoned the matrimonial home, had an extramarital relationship and today has a child from another partner, as well as excesses, threats and injury of a serious nature that rendered married life impossible and the irremediably broke down the relationship between the parties;*
4. *That despite the fact that the Respondent made several attempts to rebuild the relationship between the parties this did not happen due to reasons that are solely attributable to the Plaintiff;*
5. *That this is why these procedures had to be undertaken;*
6. *That the Respondent is making use of the same decree issued by the Civil Court (Family Section to be able to present this sworn application;*
7. *That the Respondent knows of these facts personally;*

The Plaintiff is therefore solicited to declare, with reference to the above declaration, on the reasons why this Honourable Court should not, save for any necessary order or declaration and with due regard to all necessary and opportune provisions under these circumstances,:

1. *Declare and pronounce the personal separation between the parties for reasons solely attributable to the Plaintiff, and this as the marriage has broken down irretrievably due to incompatibility of the parties' character, and with reference to Article 51 of Chapter 16 and the application of Article 48 of the Civil Code establish a date when the Plaintiff shall be considered to have been at fault of the breakdown of the marriage;*
2. *Apply against the Plaintiff, in toto or in parte, the provisions of Article 18 and/or Articles 51 to 55 A of the Civil Code and declare that the Plaintiff forfeited any rights aforementioned and declare that moreover, she forfeited her rights to half of the acquisitions which were made through the efforts of the Respondent after the date*

established by this Honourable Court as the date when the Plaintiff caused the breakdown of the marriage, which acquisitions shall remain with the Respondent and for this purpose, all relevant contributions according to the law shall be taken into account;

3. Declare that the Plaintiff forfeited the right to claim maintenance from the Respondent with effect from the date established through the First Plea and consequently order the Plaintiff to refund to the Respondent any maintenance that could have been issued pendente lite from this Honourable Court in accordance with the provisions of Article 15 (2) of Chapter 16 of the Laws of Malta, as well as any other amount which may have been given to the Plaintiff with legal interest;

4. Authorize the Respondent to reside in the matrimonial home vita durante at the apartment bearing the address Y;

5. Condemn the Plaintiff to return to the Respondent any dotal and paraphernal assets and separately order that the Respondent be given the full administrative rights of his paraphernal property;

6. Liquidate the paraphernal assets, that is the financial assets of the Respondent and qualify the same assets as credit of the same Respondent against the community of acquests of the parties;

7. Dissolve the community of acquests existing between the parties, liquidate the same community of acquests and order that the objects forming part of this community of acquests to be divided into two portions composed as established by this Court until the date established by this Honourable Court as the date when the Plaintiff caused the breakdown of the marriage, which portions are to be assigned to the parties;

8. Declare that the Plaintiff forfeited her rights to any acquisition made by the Respondent through his efforts according to Law and is to be declared solely and exclusively responsible for any debts and obligations assumed by herself from the date established by this Honourable Court that the Plaintiff is to be held responsible for the breakdown of the marriage, as well as for any other debts made in bad faith;

9. *Authorise the Respondent to register in the Public Registry and judgement issued by this Honourable Court.*

With costs, including the expenses at mediation stage, against the Plaintiff, who is by means of the present summoned to take the oath of the adversary.

Having seen sworn reply for the counter claim by LBA, dated 25 November 2021 a fol 42 et seqq., translated version at page 46 et seqq., wherein it was held:

1. *That the Defendant's request as put forward in the counter-claim should be rejected both in fact and at law insofar as they are based on premises which are unfounded and untrue;*
2. *That the first (1) and second (2) premise as put forward by Defendant are not being contested, however with respect to the third (3) and fourth (4) premise, Plaintiff reiterates that the marriage has irretrievably broken down due to excesses, threats and injury, as well as incompatibility of character and violence by the Defendant, as shall be proven during these proceedings;*
3. *That therefore, the first (1), second (2), third(3) and eighth (8) claims of the Defendant should be rejected in their entirety;*
4. *That with respect to the fourth (4) claim of the Defendant, Plaintiff declares that she finds no objection that Defendant remains residing at Y. Plaintiff moreover declares that the mentioned premises is neither property of the parties nor paraphernal property of the Defendant;*
5. *That with respect to the fifth (5) claim of the Defendant that Plaintiff is to return any dotal and paraphernal assets of the Defendant, Plaintiff declares that this request is vexatious insofar as Plaintiff is not in possession of any dotal and/or paraphernal property of the same Defendant and that same Defendant is aware of this fact;*
6. *That in view of the above submission, the Defendant's sixth (6) claim as put forward in the counter-claim should also not be upheld;*
7. *That with reference to the seventh (7) request put forward by Defendant in*

reconvention, Plaintiff declares that there is agreement that the community of acquests be dissolved and consequently liquidated and divided it into two portions to be assigned to each of the parties, provided that the sanctions in terms of Articles 48 to 53 of the Civil Code, Chapter 16 of the Laws of Malta are applied against the Defendant;

8. *Save further pleas as allowed by law;*

Having seen the request of the parties to have proceedings conducted in the English language since both parties are foreign and do not comprehend the Maltese language and thus this Court ordered that proceedings were to be conducted in the English language during the sitting held on 1st July 2021 (see page 17).

Having heard the testimony on Oath and examined the evidence given by means of sworn affidavits;

Having seen the exhibited documents and all the acts of the case;

Having seen that the application filed by the Plaintiff on 15th February 2022 by means of which she requested this Court considers the requests in the sworn application as being requests for the pronouncement of divorce (at page 224).

Having seen that the parties separated by means of the deed of personal separation, duly authorised by this Court, and published in the acts of Notary Joseph Smith La Rosa on 27th September 2024 and that a copy of the published deed was filed in the acts of this case (see page 464).

Having seen that the parties withdrew the claim and counter-claim in the acts of the proceedings relating to personal separation and limited their requests to the pronouncement of divorce;

Having seen that the Court declared ceded all requests made in the claim and the counter-claim of the parties barring the request for divorce;

Considers:

Plaintiff testified before this Court that the parties met in Venezuela in 2014. They decided to come to Malta to study English and got married here in June 2018. She stated that the marriage broke down because of the controlling and possessive nature of the Defendant. After exhausting her evidence before this Court, the parties signed a deed of personal separation, duly authorised by this Court and published in the acts of Notary Joseph Smith La Rosa on 27th September 2024, a copy of the published deed was filed in the acts of this case (see page 464). The record shows how the parties have been living separately prior to the initiation of proceedings before this Court by the Plaintiff. Defendant had left Malta and was living in Madrid at the time. Plaintiff testified that the last time she had seen the Defendant was when she left the apartment they were residing in, with the assistance of the Police on 13th August 2020 – this statement was also included in the deed of personal separation in the first clause. No obligation of maintenance arises from the deed of personal separation as both parties renounced to their right to claim and, or receive maintenance from one another. No children were born of this marriage.

Defendant declared during the sitting of 18th April 2024 that he does not object to the grant of divorce (see page 453).

Deliberates:

According to Law, it is confirmed in Articles 66A and 66B of Chapter 16 of laws of Malta:

66A. (1) Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement.

(omisis)

66B. Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:

- (a) upon a demand made jointly by the two spouses, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least 6 months out of the preceding year: Provided that when the demand is made by one of the spouses against the other spouse, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least one year out of the preceding two years; or*
- (b) on the date of commencement of the divorce proceedings, the spouses are separated by means of a contract or court judgment; and*
- (c) there is no reasonable prospect of reconciliation between the spouses; and*
- (d) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:*

Provided that the spouses may, at any time, renounce their right to maintenance: Provided further that for purposes of this paragraph, maintenance ordered by the court by a judgement of separation or agreed to between the spouses in a contract of separation, shall be deemed to be adequate maintenance:

Provided further that a divorce pronounced between spouses who were separated by a contract or by a judgement shall not bring about any change in what was ordered or agreed to between them, except for the effects of divorce resulting from the law.

Considers:

The Court has seen that the parties were married on 16th July 2018, which Marriage bears the Certificate Number 1996/2018 (vide page 11) and no children were born from this marriage;

The record shows that the marriage broke down and the parties obtained a personal separation by means of a public deed in the acts of Notary Joseph Smith La Rosa (see page 464) and had lived separately since 13th August 2020. Therefore, it is established that the parties have been separated in excess of the timeframe required by law.

The record shows that there are no pending maintenance arrears, and both parties have renounced to their right to claim and receive maintenance from the other party. Moreover, the Court deems that there is no reasonable prospect of a reconciliation between the parties.

For these reasons, the Court pronounces the dissolution of the marriage between the parties by divorce, which Marriage bears the Certificate Number 1996/2018 and orders the Court Registrar to advise the Director of the Public Registry of the dissolution of the marriage between the parties so that this may be noted in the Public Registry.

Each party shall bear its own costs.

Read.

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

**Lorraine Dalli
Deputy Registrar**