



COURT OF APPEAL

JUDGES

**THE HON. CHIEF JUSTICE MARK CHETCUTI
THE HON. MR. JUSTICE CHRISTIAN FALZON SCERRI
THE HON. MADAM JUSTICE JOSETTE DEMICOLI**

Sitting of Tuesday, 8th of April 2025.

Number: 4

Application Number: 18/2017/1 AGV

AB

v.

CB

The Court:

1. This is a judgment following an appeal lodged by AB from a decision delivered by the Civil Court (Family Section) on the 4th of July 2024 in relation to the pronouncement of the parties' personal separation, and the habitual residence, care and custody of the litigants' minor child. The First Court vested Plaintiff with the exclusive care of the parties' minor child and ordered that the custody of the same be vested in both parents. The Father was ordered to pay monthly maintenance for the

minor child. The Community of Acquests was also liquidated.

Introduction:

2. By means of a judgment delivered on the 4th of July 2024, the Civil Court (Family Section) the First Court decided as follows:

«Having seen all acts and documents related to the case. Having considered that this case is being decided in conjunction with the case in the names BLJ vs AJ, Application Number 38/17 and for such intents and purposes at law, the evidence collected and the considerations made in this case apply in toto to this case.»

3. By means of an application dated 31st July, 2024¹ appellant AB lodged an appeal requesting this Court to:

(a) Vary in part the second request and whilst confirming that the exclusive care of the minor child D be awarded to appellant, orders that the custody of the minor child is entrusted solely to her and authorises her to take all decisions in respect of health, education and travelling decisions on her own.

(b) Varies in part the fifth request and orders appellee to pay appellant the sum of EUR2209.29 representing her share of Ramsey Crookall funds, the sum of GBP 1332.68 representing monies that she paid towards the joint mortgage, EUR 7679.14 representing monies that appellant paid for the joint mortgage, EUR 1287.96 representing appellee's share of legal fees paid and EUR 3000 representing the appellant's share of the rental deposit.

(c) Upholds the sixth request and applies against appellee all the dispositions in articles 48 *et sequitur* of the Civil Code.

(d) Varies in part the seventh request and whilst confirming the way the paraphernal property was decided, orders that appellee

¹ Appellant Annabelle Muriel Jordan filed two identical appeal applications on the 31st of July, 2024; one from the judgment pronounced in the proceedings with number 38/2017 and one from the proceedings with number 18/2017.

pays appellant the sum of GBP11,256.73 representing her paraphernal monies held in her bank account before marriage.

4. By means of a reply dated 30th December 2024, the father contended that that the linking of the cause of the breakdown of the marriage and the custody of the child together is both legally and factually incorrect, since in both cases, the temporal elements should have been a guiding factor. Whereas this period of time may be relevant to the cause for the breakdown of the marriage, it is not relevant to the issue of custody. He adds that appellant failed to produce any evidence of any major disagreements which in any way affected the daily life of the minor child, disagreements which could have led to custody being assigned to one party. With reference to appellant's monetary claims, he affirms that with regards to the funds (stocks) held with Ramsey Crookall, of which appellant is due the sum of €2,209.29, respondent agrees that these should be paid to appellant from his share of the monies currently held under the custody of the courts. With reference to the amount of £1332.68 paid towards the loan, this was paid by appellant during the existence of the community of acquests and as such is not due. This also applies to the amount of €1,655 referred to in paragraph 21 of the appeal application.

5. Respondent also contends that appellant's claim with regards to the amount of £5,132.55, should be rejected. Additionally, respondent added that the sum of €6,024.14 which appellant paid towards the loan

repayments, following the termination of the community of acquests, should be paid to her from his share of the monies currently held under the custody of the courts but does not agree with the payment of legal fees in the amount of €1,287.96, since these fees were already split between the parties. Nor does respondent agree with paying the half undivided share of €6,000 regarding the deposit to appellant.

6. With regards to appellant's third grievance, respondent argues that appellant failed to provide any valid reason to justify the application of **Article 48 of the Civil Code** against him. Respondent adds that the argument being made by appellant in this regard is frivolous and devoid of any legal merit, as there are no grounds for the discretion of the First Court, or its appreciation of the evidence produced to be disturbed and therefore this grievance should also be rejected. With reference to appellant's fourth grievance, and the sum of £11,256.73 being claimed by appellant, respondent contends that appellant failed to prove that this sum was used for the benefit of the community of acquests.

7. After a comprehensive review of all the case documents, the Court has concluded that an oral hearing for these appeals was unnecessary. As a result, the Court will promptly hand down judgment in accordance with **Article 152(5) of the Code of Organization and Civil Procedure**.

Considerations:

8. From the records of the case it appears that AB filed a sworn application on the 26th January 2017 wherein she *inter alia* requested the Court to: (i) declare and pronounce personal separation between the parties on the ground of excesses, cruelty, threats and grievous injury, amongst other valid grounds at law, committed by the Defendant and consequently authorise the Plaintiff to live separately from the Defendant; (ii) entrust her with the exclusive care and custody of the parties' minor son; (iii) determine and liquidates an adequate amount of maintenance which should be payable by the Defendant to the Plaintiff for herself and the minor child; (iv) order Defendant to pay all of the expenses related with the health and education of the same minor until he is studying; (v) order the cessation, and liquidation of the existing community of acquests between the parties; (vi) apply against Defendant in whole or in part the dispositions of **Articles 48, 51 and 66 of the Civil Code**; and (vii) condemn Defendant to return to Plaintiff all her paraphernal things².

9. In his sworn reply, dated 16th May 2017, CB denied the allegations made in his regard by Plaintiff, and affirmed that the marriage has irretrievably broken down due to Plaintiff's excesses, cruelty, and threats,

² From the acts of the case, it transpires, that CB also filed proceedings for separation against her husband, application number 38/2017 RGM and in fact the two applications were being heard concurrently.

so much so that she abandoned the matrimonial home in March 2016.

10. The Court refers to the judgment delivered today in the proceedings with number 38/2017/1 between the same parties, and the considerations made therein, which considerations and conclusions are applicable *in toto* to this appeal and decides on the grievances put forth by appellant in this appeal in the same manner.

Decision:

For these reasons, the Court:

- (i) Rejects the first and third grievance in their entirety;
- (ii) Rejects the first limb of the second grievance;
- (iii) Upholds the second limb of the second grievance insofar as compatible with the considerations made above and varies the judgment of the First Court insofar as compatible with the considerations made above, namely by:
 - (a) Ordering that with regards to the investment held with *Ramsey Crookall*, the said sum of €2,209.29 is to be paid to appellant from respondent's share of the monies currently held under the custody and authority of the courts;
 - (b) Ordering that in light of the agreement evidenced in the acts, the amount of €6,024.14 is to be paid to appellant from respondent's share of the monies currently held under the custody of the courts;
 - (c) Ordering that the sum of €1,287.96 is to be reimbursed to appellant by respondent, which sum

represents respondent's shares of legal fees relating to the sale of the property in Isle of Man. In this regard the Court orders that should the amount deposited under the authority of this Court be sufficient, said amount is to be paid from the amount so deposited;

- (d) Ordering that the sum of €3,000 is to be paid to appellant and is to be deducted from respondent's share of the money held under the Court's authority, which amount represents appellant's share from the rental deposit;
- (e) Authorizing appellant to withdraw her share from the money deposited under the authority of the Court, and to withdraw from respondent's share solely and up to the amount that in accordance with this judgment and that of the First Court has been ordered to be paid to her from respondent's share of said amount.

(iv) The Court confirms the rest of the judgement of the First Court.

Two-thirds (2/3) of the costs are to be borne by Appellant, whereas respondent is to bear the remaining third (1/3).

Mark Chetcuti
Chief Justice

Christian Falzon Scerri
Judge

Josette Demicoli
Judge

Deputy Registrar
da