CIVIL COURTS

(FAMILY SECTION)

MADAM JUSTICE

JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)

Hearing of the 24th March 2025

Application no.: 237/2021

Case no.: 21

CM

VS

AM

The Court:

Having seen the sworn application filed by CM dated the 29th of September 2020, (vide translation at page 224 et seqq.), wherein it was held:

1. That the parties were married on December 22, 2013, at the Public Registry, and from this marriage, two children were born: T, born on X, and E, born on Y;

2. That this marriage has irretrievably broken down, and the Plaintiffs requesting personal separation under Article 40 of the Civil Code, as well as on the grounds of incompatibility of character and other legally permissible reasons for obtaining personal separation;

3. That the marriage between the Plaintiff and her husband, the Respondent , was not governed by the community of acquests, but they had signed a property separation agreement dated August 4, 2020, an informal copy of which is attached here as ***Document CM01****;*

4. That despite the Plaintiff giving the Respondent several opportunities to reform himself so that their marriage could be saved, all these efforts were in vain, which is why the Plaintiff initiated the mediation process;

5. That due to the Respondent 's character, the Plaintiff was also compelled to file an

application requesting the Court to issue a protection order in her favor and in favor of their two minor children; to consequently order the Respondent , AM, to vacate the matrimonial home; to prohibit the Respondent , AM, from picking up the minor children, T and E, from the school they attend; as well as to schedule the application for a hearing;

6. That after hearing both parties, the Court upheld the Plaintiff's request and ordered the Respondent to vacate the matrimonial home. This happened after the Court determined that the Respondent 's behavior was causing serious harm to the mental health of the minor children as well as to the Plaintiff herself, who is responsible for their care. This decree, dated May 12, 2021, is attached as ***Document CM02****;*

7. That although an attempt was made to reach an amicable agreement, the Defendant never cooperated, and therefore, no agreement was reached. Consequently, the Plaintiff was compelled to initiate the proceedings through a sworn application, which she was authorized to do by a decree dated;

8. That after the Plaintiff submitted an application to extend the deadline for filing the sworn application, which was accepted, the deadline was extended until September 30, 2021, by a decree dated July 12, 2021 ***Document CM03;***

9. That the Plaintiff has personal knowledge of these facts;

Requests the Respondent to state why this Court should not:

1. Pronounce the personal separation between the contesting spouses solely due to the fault of the Defendant;

2. Order that the care and custody of the minor children, T and E, be entrusted exclusively to the Plaintiff;

3. Order that, if any access to the minor children T and E is granted, it should be supervised, in their best interest, and order anything else necessary in the children's best interest;

4. Liquidate child maintenance for T and E and order the Respondent to pay for the children's legally due financial support, including all necessary payment modalities, such as periodic increases to cover the cost of living, to be determined by this Honorable Court;

5. Order the Respondent to pay such maintenance as liquidated every four weeks into a bank account specified by the Plaintiff;

6. Order the Respondent to pay the Plaintiff half of the costs related to the children's

health, education, and extracurricular activities;

7. Order that the children's allowance and any benefits that may be received by parents be given exclusively to the Plaintiff;

8. Authorize the Plaintiff to receive such maintenance directly from the Respondent 's salary or from any department or authority from which he receives income and/or benefits;

9. Order that decisions related to the minor children be taken exclusively by the Plaintiff;

10. Declare that the aforementioned minor children should live exclusively with their mother, the Plaintiff;

11. Declare and decide that the Respondent has forfeited his right to maintenance;

12. Apply against the Defendant the effects of Articles 48, 51, 53, and 54 of Chapter 16, in whole or in part;

13. Order that the Protection Order already issued by the Court in favor of the Plaintiff and their two minor children, under Article 37 of Chapter 16 of the Laws of Malta, remain in effect;

With costs, including all expenses incurred by the Plaintiff against the Defendant, as of now in subjection.

Having seen the sworn reply of AM dated 7th December 2021 (vide fol 32 et seqq. and translation vide page 230 et seqq.), wherein it was held:

It is not contested that the parties were married on December 22, 2013, at the Public Registry and that two children were born from this marriage: T, born on X, and E, born on Y;

The allegations made by CM in the initiating application are neither proven nor truthful;

The Respondent believes that the relationship has not irreparably broken down and that there is still hope for reconciliation. Therefore, the family, which has existed for over ten years, should not be destroyed;

The allegations that the Respondent was repeatedly asked to reform himself are

unsubstantiated. In fact, the abuse against the Respondent began when he was diagnosed with a serious illness, and the Respondent believes this caused his spouse to feel burdened by him;

Consequently, the Respondent believes that, in light of unproven allegations, he should be allowed to continue residing in the matrimonial home, for which he has made monthly payments under a loan taken out for the same property;

There are currently pending criminal proceedings against CM in the case The Police (Insp. S. Magri) vs. CM, scheduled for November 26, 2021, at 11:40 a.m.;

The Respondent disagrees with the decree issued by this Honorable Court dated May 12, 2021, against him, as he was neither present nor legally represented. As a result, he was unable to present his defense. This occurred in the context of criminal charges against CM, and the Respondent feels aggrieved by this decree;

Despite having suffered and continuing to suffer, the Respondent is willing to forgive the abuse against him so that the family may reconcile, even though this occurred in the context of his serious illness, fibromyalgia;

The Respondent does not believe he should bear the costs of these proceedings;

The Respondent affirms these facts based on personal knowledge;

Therefore, he requests this Honorable Court to:

1. *Dismiss the claims of CM;*
2. *Revoke the protection order issued against the Respondent , as there is no evidence of harm either to the mother or the minors, and the allegations remain unproven and untrue;*
3. *Without prejudice to the above, order joint custody of the minors, T and E, and that the expenses for the minors be shared equally between the parties;*

With costs, including those of all proceedings incurred by the Respondent against

the applicant, who is hereby being notified that the Respondent reserves the right to furnish evidence by reference to the Plaintiff's oath.

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

Having heard the testimony on oath;

Having seen all the case acts;

Having heard final submissions by counsel to both parties;

Considers:

This Court notes that during the sitting of 5th October 2022 (fol. 50) the Court ordered access of Defendant to the minor children of the parties twice weekly under the supervision of the Directorate of Alternative Care.

This Court notes that during the sitting of October 2023, it was agreed that the Defendant exercises access to his children once a week between 6pm and 8pm and once on the weekend between 5pm and 8pm at a shopping mall according to the work schedule of the Plaintiff. Moreover, the Defendant undertook the obligation to pay maintenance in the amount of two hundred euro (Eur200) **for both** his children since he was subsisting on social welfare benefits which amount would increase should he find gainful employment. During the sitting of 8th October 2024, this increase in the amount of maintenance was set to two hundred euro (Eur200) per child once the Defendant finds regular employment (fol. 197).
Subsequently, during the sitting of 14th February 2024, this Court was informed that the Defendant had been admitted into Mount Carmel Hospital and thus access was reduced to one hour every week until such circumstance subsisted. The Court notes that during the sitting of 15th July 2024, the Defendant was ordered to explain why he had missed access without informing the Plaintiff. On 8th August 2024, the Defendant filed a note with an email attached explaining that his health was deteriorating and was unpredictable. Sometimes he cannot get out of bed despite having slept the night before. This Court, whilst it sympathises with the Defendant's medical condition, understands that a few hours prior to access, the Defendant should have been aware that his health condition on that day was poor and therefore the Court does not find this as a justifiable excuse

for the lack of information to the Plaintiff for not exercising access.

This Court also took note of the report filed by the Directorate for Child Protection on 6th December 2024 wherein it stated that the Directorate had made contact with both parties and established that access has been on-going at a public place under the supervision of the Plaintiff. Days and times were not fixed but were agreed upon by the parties. In view of the parties being able to communicate and carry out access, the Directorate recommended that the Supervised Access Visits (SAVS) service were not necessary.

Plaintiff testified by means of an affidavit duly confirmed on oath on the 19th of November 2021[1]. She stated that at the start of the relationship, the Defendant gave her a lot of attention and they had their first child together. He had a stable job and was eager to build his life here in Malta, given that Defendant is originally from Romania.

Plaintiff stopped working when they had their child. They went abroad after they got married and there, the Defendant started acting in a strange manner, saying that he was constantly tired and not feeling well without explaining further. He started visiting doctors upon their return to Malta but they did not diagnose anything in particular. He would argue with them and some even referred him to psychiatrists. All the doctors were saying that he was suffering from mental illnesses.

The Defendant started making scenes in public, being verbally aggressive with the Plaintiff. He started calling in sick, and sometimes, when he would be visited by the company's doctor, he would exaggerate being unwell in front of him. He was told that he was suffering from Obsessive Compulsive Disorder (OCD) and bi-polarity. He would accept treatment temporarily but then he would stop it unilaterally. This started creating a lot of stress for the Plaintiff and disagreement within the marriage. Plaintiff was scared to leave the child alone with him.

Plaintiff felt that she had to cope with looking after their young daughter, looking after their residence and even looking after Defendant to see that he was taking his medication. After the birth of their second daughter, the situation got worse and the Plaintiff felt that she had to look after three individuals not just the two children. She felt that the Defendant was not acting as a married man.

In 2016, the Defendant lost his job due to his arrogance. He could not hold jobs as he was being fired from every job due to his arrogant attitude and due to excessive sick leave.

The Plaintiff used to insist that they go out as a family but this would lead to the children

[1] Video fol. 39

experiencing a lot of tension. No one was allowed to speak in the car so as not to disturb the Defendant when driving and if the children did, he would shout at them. The atmosphere at home was always one of sadness. He started being verbally aggressive towards his family members.

After the Defendant ended up unemployed, the Plaintiff wanted to work herself to gain financial independence but she felt unable due to having to look after the house and the children. She started using up her savings whilst the Defendant was applying for social services.

In 2020 the Defendant was physically aggressive towards the Plaintiff. She had requested Police assistance and then sought legal counsel. At that time, it was difficult for her to separate but she insisted on having separation of assets. At that time, the family was getting by on Plaintiff's savings and on the inheritance that the Plaintiff received when her mother passed away.

In 2021 the Defendant expected the Plaintiff to transfer half the amount of her savings into his account. When she refused to do so, he assaulted her. At that point, she decided to proceed with the separation.

Plaintiff states that she had paid the house loan on her own. At the time of the affidavit, the Defendant had already moved out of the matrimonial home and was living in a rented apartment in Qawra.

The Plaintiff states that the Defendant was constantly talking about his illness and his medication, even with the children. He used to leave his medicine lying around the house and left pills on the floor if he dropped them.

After the parties separated *de facto*, the Plaintiff had tried to facilitate access with the children by taking them to meet the Defendant at the swings or near the sea. There were times when they agreed to meet and then the Defendant failed to attend.

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

Dr Mark Xuereb, in his role as psychiatrist, testified before this Court during the sitting of 27th March 2023 (fol. 97). The witness stated that he met the Defendant in crisis when being recovered at Mater Dei hospital. The witness described the history of the Defendant as complex and chronic. He stated that the Defendant having had various relapses. He suffered from a personality disorder. The Defendant engaged in self-medication sometimes and even overdosed himself. His personality is a consequence primarily of the chaos that happened throughout his upbringing. The witness described the Defendant's disorder as being characterized by anxiety, manipulation hypochondriacal inclinations and obsession that he is ill with a plethora of diseases such as Lymes Disease, arthritis etc.. He was also diagnosed with Munchausen's disorder which is a condition where one clings on to an "illness" to get attention and care. He shopped around doctors to have

his self-diagnosis validated. The witness recommended short access to the children as they are aware of their father's condition. Moreover, it would be helpful to the Defendant to be hospitalised and monitored by only one consultant.

Louis Buhagiar, in representation of JobsPlus, testified on 5th April 2023 (fol. 112). He filed a copy of the employment history of the Plaintiff (fol. 140) which shows that the Plaintiff worked different jobs up to 2011. The employment history of the Defendant (fol. 142) shows that the Defendant had a stable job with Trannel (International) Limited for six (6) years and after that he held different jobs, some for just a few months and even for a number of days. The last job he was registered for was for twenty days in July 2022.

PS 2213 Joanne Borg Scerri, in representation of the Gender-Based Violence Unit, testified (fol. 113) that the Plaintiff had filed a report with GBDV in February 2021 whereas the Defendant had filed a report in May 2021. The witness filed a copy of the minutes of the sittings held by Magistrate Lara Lanfranco on 22nd September 2022 which state that the parties entered into reciprocal guarantee to keep the public peace between them.

PC 2080 Rachel McKay, in representation of Naxxar Police Station testified (fol. 115) and exhibited copies of reports filed against the Defendant.

Franklin Calleja, in his role as Criminal Courts Registrar, testified (fol. 115) and exhibited a copy of a judgment delivered by Magistrate Doreen Clarke against the Defendant on 7th July 2016.

Dr Daniel Vella Fondacaro testified (fol. 177) that his team started following the minor child T in October 2023 due to anxiety experienced after witnessing disagreements between the parents. The Defendant was adamantly opposed to the child being administered medication. When the witness had a follow-up meeting with the child in January 2024m she was taking the medication and she attended only with the Plaintiff mother. The witness' nurse could not reach the Defendant to update him. The child may be assessed for mental conditions. The witness stated that the child was progressing well with the medication even at school.

Defendant testified by means of an affidavit (fol. 199), and stated that the parties bought their residence together and paid together one hundred and twenty thousand euro (Eur120,000). He stated that together they took out a mortgage of the same amount. He used to pay the monthly

mortgage when he was in employment and calculates that he paid in total around fifty thousand euro (Eur50,000).

In 2024 he was diagnosed with chronic fatigue syndrome so much that sometimes he cannot get out of bed despite prior sleep. Due to this sometimes he missed access with his children however he believes that the children still need him. At present, he is subsisting on social welfare benefits, paying rent from these benefits so he can only buy treats for his children.
He concluded that he would like to see his children twice a week in addition to a sleepover and he can go to Naxxar to exercise access. He presented a certificate issued by Mater Dei Hospital diagnosing him with chronic fatigue syndrome and fibromyalgia (fol. 200). He filed for the sickness assistance benefits which is signed by a doctor declaring that the Defendant also suffers from bipolar depression in 2023 (fol. 201, 202).

1. Legal doctrine applicable to this cause:

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 iċaħħad lil martu minn manteniment xieraq u jkun xħiħ magħha f`dan ir-rigward, b`mod li jwassalha biex tirrikorri għal għand il-familjari tagħha għall-flus jew għal stratażemmi bħal ma jidher li wettqet l-attriċi, jammonta għall-leċċessi fis-sens tal-artikolu 40 tal-Kodiċi Ċivili"[2].***

In regard to cruelty, this was defined as follows:

[2] "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 as it seems that the Plaintiffappears to have undertaken, amounts to excesses in the sense of article 40 of the Civil Code."

"dawk 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 ghall-konjugi l-iehor li jikkommetti dawk 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 atteggjamenti illi jistghu jirrendu l-hajja komuni insopportabbli, huma ritenuti mid-dottrina bhala sevizzi."[3]

It has been held that:

"…mhux kull nuqqas da parti ta' konjuġi versu l-konjugġi l-ieħor jwassal għall-sevizzi, minaċċi jew inġurja gravi fit-termini tal-Artikolu tal-Kodiċi Civili u huma biss dawk in-nuqqasijiet li, magħmula ripetutament u abitwalment, iweġġgħu u jferu lill-konjuġi sal-grad li l-konvivenza matrimonjali ssir waħda diffiċli u insapportabbli. Kif jinsab ritenut fil-ġurisprudenza patria: "Per sevizie nel senso della legge s'intendono atti abituali di crudelta' che offendono la persona o 1 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. 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]."[4]

[3] "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 behavious that can cause cohabitation to be unbearable, have been held in legal doctrine to be cruelty."

[4] "...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 injur 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

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."***[5]

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 taghhom gie dejjem imholli fis-sagacja u l-kuxjenza ta' l-Imhallef sabiex jivvalutahom."***[6]

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

---

Theoretical and Practical Treatise on Civil Law, Delle Persons, 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)."

[5] "This habitual behaviour (with reference to physical or moral violence) by the Defendant , 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 Defendant 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."

[6] "grievous offences have not been specifically delignated by doctrine, by their character in general has always been left up to the discretion and the conscience of the Judge to evaluate them."

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 Plaintiffs requesting that she is entrusted with the exclusive care and custody of the minor children of the parties T and E .

It has been established in our jurisprudence that in situations similar to this the ***best interest of the minor*** has to prevail above everything**.** [7] In the cause ***Jennifer Portelli pro.et noe. vs. John Portelli***[8] 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 ghall-interess tal-istess tfal li c-cirkustanzi tal-kaz u l-koefficjenti tal-fatti partikulari tal-mument ikunu jissuggerixxu. Illi in konsegwenza, ir-regola sovrana fuq enuncjata ghandha tipprevali dwar il-kustodja u l-edukazzjoni tat-tfal komuni tal-mizzewgin sew meta jisseparaw ruhhom ġudizzjarjament, sew meta jiġu biex jisseparaw konsenswalment[9].***

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-ħsieb 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***

[7] Emphasis by this Court.
[8] Decided on 25/06/2003 by the First Hall, Civil Court App. No. 2668/1996/2RCP.
[9] 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.

tal-każ li jrid jiġi riżolut...”[10]

That in the cause in the names ***Susan Ellen Lawless vs. Il Reverendo George Lawless***[11]**,** 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 conjugi 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 spedienti pel vantaggio di tali figli.***

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.[12] 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:[13]

> ***Il-Qorti tirrileva illi filwaqt li dejjem taghti piz ghad-dritijiet tal-genituri, l-interess supreme li zzomm quddiemha huwa dejjem dak tal-minuri kif anke mghallma mill-gurisprudenza kostanti taghna hawn 'il fuq iccitata.***[14]

Legally, reference is made to the cause in the names ***Cedric Caruana vs Nicolette Mifsud***[15] 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,***

[10] "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…"

[11] Decided by the First Hall, Civil Court on 8th December 1858.
[12] Cap 16 of the Laws of Malta.
[13] Vide Sworn Application 268/11AL.
[14] "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."
[15] Decided by the Court of Appeal on 4/3/2014.

> ***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.'***[16]

In the words of the Court of Appeal in the judgment in the names: ***L Darmanin vs Annalise Cassar***:[17]

> *"……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".***[18]

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

[16] 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."
[17] Decided by the Court of Appeal on 31st of October 2014.
[18] 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."

names ***Miriam Cauchi vs Francis Cauchi*** decided on 3rd October 2008 wherein it was correctly observed that:

> ***"Din il-Qorti tibda biex taghmilha cara li, fejn jidhlu minuri, m'hemmx dritt ghall-access, izda obbligu tal-genituri li t-tnejn jikkontribwixxu ghall-izvilupp tal-minuri li, ghal 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.[19] Huma l-genituri li jridu jakkomodaw lit-tfal, u mhux vice versa. L-importanti hu l-istabilita' emozzjonali tat-tifla, u li din jkollha kuntatt mal-genituri taghha bl-anqas disturb possibbli."[20]***

Maintainance 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.***
> ***(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,***

[19] Emphasis by this Court.
[20] "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."

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 irriteniet illi l-ġenituri ma jistgħux jabdikaw mir-responsabilita` 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-mezzi tiegħu huma baxxi jew jinsab diżokkupat. Il-Qorti ma tista qatt taċċetta li persuna ġġib it-tfal fid-dinja u titlaq kull responsabbilta` 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).[21]

In the case **Portelli Jennifer pro et noe vs Portelli John** (Applic. No. 2668/1996) decied 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 wieħed skont il-mezzi tiegħu, ikkalkulati skont id- dispozizzjonijiet tal-Artikolu 20 tal-

[21] "……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)."

istess Kap u l-bżonnijiet tal-minuri, u fl-interess tal-istess minuri."[22]

Considerations:

This Court has before it a cause for personal separation and the regulation of aspects relating to the minor children of the parties. The Plaintiff holds that the matrimonial life between the parties had been rendered impossible to live with by the Defendant. On the other hand, the Defendant claims that the Plaintiff abandoned him because of his illness.

When this Court examined the evidence produced and the acts of the case, it was clear that the Plaintiff's version of events is more credible. The Plaintiff substantiated her version by filing Police Reports and Court judgments together with the testimony of professionals. It is symptomatic that the minor child of the parties has already, at such an early age, required psychiatric assistance. Even here, the Court makes reference to the testimony of Dr Daniel Vella Fondacaro who claimed that the mother understood the need for medication whilst the father needed a lot of convincing and his only reason for objecting was that the child shall be bullied in school.

On the other hand, the Court notes that the Defendant was represented by three different legal counsels from the Legal Aid Office. In addition, another two legal counsels were appointed and objected to his brief. Three legal counsels renounced to Defendant 's brief due to his attitude, to his lack of understanding of boundaries and his general mistrust of professionals. This Court also noted the Defendant's behaviour in the courtroom during the sitting of 16th June 2022 which warranted various warnings by this Court and ultimately for the Defendant to be ordered to leave the court hall. All this follows the fact that this cause was originally assigned to a different member of the judiciary presiding over the Family Court who abstained from hearing the cause due to the Defendant 's insistence to make personal contact with the Judge. The Court equally notes that Defendant's demeanour changed drastically for the better, following admission to Mount Carmel Hospital and his compliance in taking the medication that he needs.

Thus, in view of the above, as well as Plaintiff's accurate and substantiated rendition of what happened during their marriage, this Court deems the Defendant responsible for the breakdown

[22] "….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."

of the parties' marriage.

With regards to the children of the parties, this Court makes reference to the testimony of psychiatrist Dr Mark Xuereb who various times pointed out that the children are healthy and having their needs met, as a result of the mother's presence and efforts. This Court commends the mother for facilitating access for her children to meet their father twice a week in a public place. There is no evidence to indicate that there are any concerns regarding the children of the parties. On the contrary, the mother took one of the minor children of the parties for psychiatric assessment and help upon seeing the need and complied with the recommendations made by the professionals. So much so that in his testimony Dr Daniel Vella Fondacaro stated that the child had already made improvements.

Given that everything before this Court points towards the mother as having fulfilled the role of parents to the children and seen to all their needs, unilaterally, this Court is entrusting the mother with the exclusive care and custody of the children of the parties.

With regards to maintenance, this Court is aware of the precarious situation of the Defendant. However, this Court also notes that the Defendant found strength to travel back to Romania to take care of his sick mother in April 2024. Having examined all the documentation filed by the Defendant substantiating his claims that he is sick and subsisting on social welfare benefits, understanding that the Defendant is bipolar and also suffers fibromyalgia which diagnosis are treatable but incurable; taking into consideration that his responsibility to contribute towards the needs of his children is absolute[23], this Court orders that the Defendant continues to pay maintenance as established during these proceedings which maintenance shall increase should the Defendant be in gainful employment.

Lastly, from the evidence before it, this Court has concluded that the property that used to constitute the matrimonial home was bought during the marriage and both parties are co-owners. The Plaintiff declared that disbursed the amount that constituted the initial deposit, a statement that has not been rebutted or objected to by the Defendant at any point during these proceedings. When the Defendant was in gainful employment, he paid the repayment of the outstanding loan on this property and when he was not, the Plaintiff did. Moreover, when Plaintiff inherited assets from her mother, she paid off the outstanding loan from her inheritance. No evidence was brought forward as to the amounts that each party actually paid. No bank account statements were

[23] As established by a number of judgments including by way of example ABC vs DE (Ref 250/20AL)

produced. This Court only has a declaration by the Defendant that he calculates that he disbursed circa fifty thousand euro (Eur 50,000) as loan repayments (fol. 199). This was not substantiated in any way. This Court makes reference to the fact that the Plaintiff had made reconciliation conditional on signing a separation of estates which the parties had signed. This Court notes that the Defendant only made his expectation of being refunded the amount he put into the property in his affidavit. This is not the proper way of procedure of how claims are put forward a Court of Law and thus this Court cannot take cognisance of such an expectation. This Court is bound by the claims put forward in the sworn application given that no counter-claim was filed. However, this Court notes that both parties have agreed in their versions that the Defendant did pay some repayments. These payments were made before the separation of assets of the parties was signed and therefore on behalf of the community of acquests. Hence the Defendant would be entitled to half the amount he actually paid, had such amount been quantified and substantiated by documentary evidence.

Given the current financial position of the Defendant which limits drastically his contribution towards the upbringing of the parties' daughters and their needs, this Court deems that it would be in the children's supreme interest that the amount the Defendant disbursed in the matrimonial home which is also serving as the children's residence is set off as a lump sum contribution towards the needs of the children particularly their health and educational needs, which Defendant has not paid his share of and does not seems to be in a financial position to start to do so.

DECIDE:

For the reasons hereabove stipulated, this Court decides and determines the pleas of the Plaintiff in the following manner:

1) **Upholds the first request and pronounces the personal separation between the parties attributing the fault for the breakdown of their marriage solely to the Defendant ;**
2) **Upholds the second request and entrusts the care and custody of the minor children T and E <u>exclusively</u> onto the Plaintiff, authorising the same Plaintiff to take all decisions ordinary and extraordinary, relating to the minor child, including those relating to the health, religion, issuing of passports and their renewal, residence permit, travel, and education of the minor children on her own without the need for consent, authorisation, signature or presence of the Defendant;**

3) Upholds the third request and orders that the Defendant exercises access to his minor children, under the supervision of the Plaintiff, once during the week and once on the weekend for three hours each, in a public place as agreed beforehand between the parties. Should the Defendant be in excess of half an hour late, from the time agreed upon between the parties, the Defendant shall be deemed to have forfeited his access for that day;

4) **Upholds the fourth request and orders that the Defendant is to pay the amount of one hundred euro (€100) on the first day of each month for each of his daughters as long as he remains on social benefits and the amount of two hundred euro (€200) per child if he is in gainful employment. Such maintenance should be deducted directly from the social welfare benefits or the salary allocated to the Defendant and paid directly to the Plaintiff. This amount shall increase every year according to the yearly increase in cost of living. The Defendant has to continue paying such maintenance until the minor children reach the age of eighteen (18) years and if either of the minor children stops pursuing their studies and start working on a full-time basis or payable up to the age of twenty-three (23) years should the minor children decide to pursue their studies on a full-time basis;**

5) **Upholds the fifth request and orders the Defendant to make the necessary arrangements for the maintenance to be paid directly into the bank account of the Plaintiff's choice;**

6) **Upholds the sixth request limitedly in the sense that this Court allocates the share of the Defendant from the property that used to constitute the matrimonial home as his contribution towards the health and education expenses of the minor children;**

7) **Upholds the seventh request;**

8) **Upholds the eight request in line with what has been provided in the fourth decide;**

9) **Upholds the ninth request;**

10) Upholds the tenth request;

11) Upholds the eleventh request;

12) Upholds the twelfth request;

13) Rejects the thirteenth request due to what has been provided in third decide;

Expenses related to this cause against the Defendant ;

Read,

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

Lorraine Dalli
Deputy Registrar

***** By virtue of a decree dated the 15th April 2025 the Identity Card of Defendant AM was corrected to read as XXX.**

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

Lorraine Dalli
Deputy Registrar