



**CIVIL COURT  
(FAMILY SECTION)**

**MR. JUSTICE ANTHONY G. VELLA**

**Sitting of Thursday 10<sup>th</sup> April 2025**

**Application number:196/2023 AGV**

**In the case of :-**

**AP**

**VS**

**MAT**

**THE Court;**

**Having seen the sworn application of AP ;**

Humbly states and on oath confirms:

- 1) That the parties got married in Malta on 29 April 2011 and from this marriage the parties had three children namely AP who was born on 10 June 2011, NLP who was born on 9 May 2013 and KMP who was born on 28 February 2019.
- 2) That they separated by means of a contract of 3 June 2022 (a true copy is attached here and marked **Document A**) and by means of this contract, apart from the fact that the joint acquisitions were terminated and liquidated and the obligations and personal rights of the contenders, the care and custody, access and maintenance of the minor children of the contenders were regulated.
- 3) That the parties had to submit the separation contract several times before it was authorized.
- 4) That according to the same contract i.e. clause 4(i) the care and custody of the minor children was vested in the hands of the parties conjunctively given that the minor children were to reside together with the respondent mother, access in favor of the father according to the provisions of clause 4(iii).
- 5) That the applicant has an excellent relationship with the minor children, so much so that almost immediately after the separation contract the minor children began to reside with the applicant their father who is taking care of all their needs.

- 6) That the respondent gives priority to her personal life and entertainment. Apart from that, and worse than that, the respondent is associating herself and corresponding with persons of bad reputation and even dangerous, including individuals incarcerated both in Malta and abroad.
- 7) That therefore, the applicant believes that in the circumstances, and in the best interest of the minor, that the minor children, should reside together with him and that the care and custody is vested exclusively to him.
- 8) That even though she was asked to attend the mediation, the respondent never attended the mediation hearings and therefore no progress could be registered and therefore this case had to be filed.
- 9) That the plaintiff has been duly authorized to present a case of separation against the respondent by a decree in this sense given by our Honorable Court of 28 June 2023 (**Document B**).

Therefore, the plaintiff respectfully requests that this Honorable Court please:

- i. Vary the above mentioned contract of 3 June 2022 by revoking clause number 4(i) of the same and ordering instead that the care and custody of the minor children should be entrusted to the applicant their father;

- ii. Vary the above mentioned contract of 3 June 2022 by revoking clause number 4(iii) of the same and ordering instead that the main residence of the minor children should be with the applicant their father and agreeing access to the mother according to the principle of the best interest of the minor;
- iii. Vary the above mentioned contract of 3 June 2022 by revoking clause number 4(vi) of the same and ordering instead that the maintenance for the needs of the minor children should be paid by the respondent mother to the applicant father;

With the costs, including those incurred in the mediation procedures, against the defendant who is from now on subpoenaed for reference to her oath.

**Having seen the SWORN REPLY of\_ MAT ;**

MAT submits and confirms on oath the following facts:-

Regarding the facts:

1. That the facts as declared by the plaintiff in the first and second paragraph of the sworn application are not being contested and it is being pointed out that the contract of separation that was signed on the 3<sup>rd</sup> June 2022. In the acts of Notary Doctor Fiona Zammit Armeni which a true copy of the aforesaid was attached to the said sworn application, was carried out in good faith and blinding in regards to the matters therein expressed and the plaintiff entered into this contract willingly knowing full well his obligations that arise from this contract and it is worth nothing that nothing results from the sworn application which shows that there was a substantive. Bearing in mind that this contract of separation was endorsed by this Honorable Court as representing the children`s best interests;
  
3. That in regard to the fourth paragraph it is being said that what was agreed to by both parties is in fact contained in the separation agreement and it is the obligation of both parties to honor their promises and fulfil their obligation under this contract and that thus the defendant is not contesting the reference being made to two clauses found within the said separation agreement;

4. That the defendant strongly contests the allegation raised in the fifth paragraph since as will results during submissions the defendant is the primary carer of the children who live with her and she takes care of all their needs not to mention the fact that the children have an excellent relationship with their mother. It is the facts that the children have an obligations accordance with the law and that contained within the contract of separation since it is the plaintiff who unilaterally left them without maintenance and this in breach of his obligations. In fact due to the lack of payment of the maintenance agreed to the defend has had to search for work in order to able to support herself and her children;

5. That the allegations raised the sixth paragraph are unfounded in facts and at law and this as will be proven in the curses of the proceeding. The defendant has always ditched herself to the needs of her children and still does so today. The accusations brought forward by the plaintiff is clearly fabricated and in fact it is being said that it is the plaintiff who is associated with such persons as described in the sworn application and not the defendant and this as will results in the submissions delivered;

6. That in regards to the seventh paragraph this being for reasons as explained above as well as for reasons as will results from the submissions that it is the best interest of the children that they continued to reside with their mother and that in actual fact the requests made by the plaintiff are not in the best interest of the children;

7. That in relationship to that stated in the eighth and ninth paragraph of the sworn application while it is true to defendant did not attend the mentioned sittings this was not due to destines on her part but her non-attendance was the results of her being intimidated by the plaintiff not reasons as described above the Honorable Court authorized the parties to proceed by filing which has already taken place and was authorized by this Honorable Court over a year ago and published on the 3<sup>rd</sup> June 2022, but to instituted but instead custody proceedings;

As a result in view of the above the defendant is putting forward the following pleas in contestation of the requests put forward the plaintiff:

1. That in terms of the first request the defendant rejects said request as this is not in the best interest of the children and this as will be

evident from the submissions delivered since there is no justification why this request should succeed since should a change in children and is surly not in their best interests;

2. For the same reasons as described above which are the best inters of the children the defendant is rejecting the second request made to change the children's main residence when it is a known fact that in accordance with the agreement between the parties which authorized by this Honorable Court that since the primary carer it is in the best interest of the minor children to reside with their mother;
3. That consequences the third request is also being rejected because ultimately it is the plaintiff who should start honored his obligation as per Clause 4(vi) of the contract of separation to pay the maintenance due and agreed to for his children due to the facts that has continuously been in default of this obligations of paying the agreed maintenance to his children for over a year. Furthermore it is being said that the plaintiff has also been in default of the obligations imposed upon him in regard to his obligation to pay maintenance to the defendant in accordance with Clause 2 of the said contract of separation;



4. That the requests brought forward by the plaintiff are unfounded in facts and at law

5. Save for further please as permissible at law;

With costs reserving the right to pursue any further actions by the defendant against the plaintiff, including any claim for damages and reserving the right to maintenance arrears due.

**Having seen all the acts and documents exhibited.**

**Having heard all the evidence.**

**Having heard the parties' submissions.**

**CONSIDERS:**

**Facts**

1. Plaintiff claims that he had met Defendant whilst they were both working at the Havana Club. From the start Defendant showed that she was a jealous and possessive person, but since he was very much in love with her, he accepted the issues he had with her.

By the end of 2009, Defendant had moved in with him and she was expecting a child. They decided to get married civilly and they celebrated the wedding on the 29th April, 2010 and their son A was born on the 10th June, 2010.

He explains that it was around such time that he met Defendant's parents and he sensed that her mother suffered from some mental illness, but Defendant never told him much.

At one point, Defendant's parents came to Malta from Bulgaria and he gathered they did not have much money as when they visited them they lived in a poor area of Bulgaria.

Since Defendant's parents were not coping with the rent of the place they were living in St. Julians, Plaintiff found them an apartment close to them in St. Pauls' Bay and he even found a job at his work place for his father-in-law. He admits that they provided for the deposit and monthly rent of this place.

He adds that Defendant's father was constantly asking him for money whilst they were at their working place and at times he would

have to stay waiting for him to give him a lift home only to find out that he would go to Gzira seeking the prostitutes there. From that day onwards he refused to give him any more money and refused to wait for him.

This led to various arguments with Defendant, although he did not tell her the reason why.

Some time later, since they were struggling financially, Plaintiff started to work in real estate and he convinced Defendant so they move in temporarily with his mother who owned a big house and meanwhile, until they become more financially stable, they would rent out their penthouse.

There were issues with the rent where Defendant's parents were living and for this reason they eventually left back to Bulgaria, where he paid the flights for them.

Once he started to gain ground in real estate they moved back to their apartment and in 2012 they discovered that Defendant was expecting another child. Their apartment was around 70m<sup>2</sup>, so rather small and they only had one single double bedroom he used to sleep on the floor.

Most of the problems that they faced in their marriage, were related to Defendant's lack of proper upkeep of the children, feeding them too much sweets and unhealthy food. He could confirm this because he works as a nutritionist and a fitness instructor. His son C had to have about eight teeth removed because of their damage and he saw Defendant giving him sweets once again.

She also lacked interest in the children's medical needs, her personal hygiene, the upkeep of the house and the fact that she spent a great deal of time on her mobile. She used to tell him that she would leave the garbage until it attracted maggots. They also had issues related to her inability to administer their finances properly.

Plaintiff admits that he tried to please Defendant in every way and when she wanted pets, he bought her a cat and even a bulldog, but she did not help out with them and it became his job to take care of these pets.

Throughout the marriage, he confirms that he has purchased three cars for Defendant, a Seat Ibiza, and a Nissan Qashqai and he used to have to pay for their maintenance.

There were also issues with Defendant working up late and if he tried to wake her up she tended to become aggressive.

In 2018, Plaintiff decided to go freelance as he had gained enough experience in the field of real estate and Defendant started working at a convenience store for twelve hours around five days a week and as a result he ended up having to take care of the children. However, once she discovered that she was expecting their third child, she stopped working. On being cross-examined he confirms that it was Defendant who told him that she worked five times a week and she had a low wage. He admits that nonetheless he always provided for her and the boys. Defendant used to receive the childrens allowance and it was only on one occasion that he used the allowance on himself.

In 2019, Plaintiff explains that they were contacted by the Qawra public school, which their son N attended. They were advised that he was having some difficulties in keeping up with the other pupils and they were referred to the CDAU unit at St.Luke's hospital, to determine what has to be done to improve his learning skills. This screening took around a year and he was the one who always took the minor, perhaps Defendant attended once, until they acquired a psychologist assessment report.<sup>1</sup>

Around 2020, Plaintiff states that he started noticing that Defendant was becoming more secretive and she was showing interest in firearms and tattoos.<sup>2</sup> She used to want to go to the shooting range.

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<sup>1</sup> **Doc PIC No.1**

<sup>2</sup> Doc. PIC No.2

During such time, Defendant wanted to start taking their younger child K to child care so that she could go back to work. Although initially she was helping with taking him to the childcare, she asked Plaintiff to start dropping him off since she started work at 10am. He ended up taking all the children to school and dropping them off when they are done.

He was more and more convinced that Defendant was becoming more secretive than ever before, he would call her and she would not reply and she was constantly on her mobile, even at night in bed.<sup>3</sup>

It was towards the end of April 2021 when Plaintiff had been trying to contact Defendant but to no avail. He messaged her to inform her that their relation could not progress as it was and they had to discuss. When she did eventually turn up she asked for a divorce. It was then he admits that he moved out and went to live with his mother. Defendant used to bring the children to him at his mother's residence and she would disappear, at times even for a week. There was one episode when she told Plaintiff that she was unwell and could not take the children with her, only to find out that she went out, although she denied it.

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<sup>3</sup> Dok. PIC No.37

As a result of this situation Plaintiff admits that he started suffering from anxiety attacks when he knew the children were sleeping with Defendant. Ever since he has been following online therapy with the help of Dr Claudette Portelli.<sup>4</sup>

Since the boys were spending more time with him, he discussed with Defendant that it made more sense for him to move back into their apartment, and meanwhile she rented out her friend's apartment from the Housing Authority and he assisted her to apply for the subsidy.

He took the apartment in a dirty and careless state as evidenced by the pictures he exhibited.<sup>5</sup>

Ever since they separated, Plaintiff explains that Defendant kept the Nissan that was in his name. He was aware however that this car was being used and driven by a certain R H as he recognised the number plate MAG 584.<sup>6</sup> He admits that he has asked Defendant to transfer her car on her name and she accepted.

After Defendant moved, the boys used to be with her between once and twice a week and whenever they were with her she would leave them running around in a building site. In June, 2021 there was an

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<sup>4</sup> Doc. PIC

<sup>5</sup> Doc PIC 6, 7, 8

<sup>6</sup> Doc. PIC No.11 and nO. 12

episode when they could not find the children after Defendant had let them play outside. They then found them at Defendant's friend T

As to maintenance he states that after Defendant left the house he was paying her €600 a month. He also admits that there were times he did not pay because he had to start his real-estate job from scratch because Defendant broke his laptop and so he lost all his data.

He confirms that he had placed a steel bar behind the door of the apartment and he also placed cameras in the common parts.

### Separation

In 2021 they went to seek advice together from Dr Deborah Schembri to proceed with a divorce. They eventually did the mediation, however Dr. Schembri informed them that the contract was not approved by the Court and needed to be amended.

Plaintiff explains further that Defendant did not generally ask her for money, but although the children were with him most of the time, he still gave her some money when he could. There were occasions when she did however and in one instance he had even sold a ring that his father had given so as to be able to give her the money she required.

He also admits that Defendant still has the keys to the apartment and there are times when she goes over and dines and watches a film with them.



Plaintiff goes on further to show that he had serious concerns that Defendant was unfaithful to him, He found various messages on Messenger exchanged with other men.<sup>7</sup>

He found messages whereby she was requesting what she had to do to send a letter to a prisoner. He also discovered that she had applied for a job at Corradino Correctional facility.<sup>8</sup>

On one occasion, he was asked by Defendant to go to her apartment to fix something for her and whilst he was there he discovered a letter on the table, whose sender was the US prison. He later found out that the prisoner was a certain Kai Moffitt who had been imprisoned for murdering his father.

He decided to confront Defendant, but when she found out that he had taken a photo of this letter, she took his phone and erased all pictures he had stored. She was very evasive when he asked her about this person.

Defendant asked him to return the keys she had given him and he asked for his, but she refused.

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<sup>7</sup> Doc PIC 22 and PIC 30, PIC 23, PIC 36, PIC 24 and PIC 25

<sup>8</sup> Doc PIC 28

Plaintiff refers to various other incidents that happened between him and Defendant between 2021 and 2023. Despite these incidents, Defendant would still visit their home and she would dine with them.

Plaintiff claims that he had initiated custody proceedings before the Court because he wants full care and custody and he also filed a warrant of prohibitory injunction to impede Defendant from taking the children out of the Maltese islands, since she had threatened to do so on a number of occasions.

When they were notified with the mediation proceedings, Defendant failed to appear, but when she found out that Plaintiff was trying to take full care and custody of the children, she became very aggressive. It was subsequent to this that she said she had got a person from Serbia to live with her to help her look after the children.<sup>9</sup>

Plaintiff admits that he has a very close relation with A and also with his other son N, with whom he does homework as well as other activities. He also liaises with his LSE and he confirms that they are seeing improvement in N .

He also has a good relationship with his third son K and their bond is growing day by day. He also accompanies him to school and

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<sup>9</sup> Docs, REC No. 23, 1 min 40<sup>th</sup> sec and 24

informs the school when he is not able to attend. Plaintiff also explains that when the boys sleep at Defendant they sleep late at night and once they get to school they are obviously very tired. Moreover, he states that she keeps the house in an untidy way.

As to Defendant he explains that she has a very poor financial management and therefore unable to give the children a proper upbringing.

He is also concerned that Defendant is not hanging around with the right people and because of this she is placing the children's life in jeopardy.

Plaintiff explains that since June 2021, the boys spent more time with him and he admits that he is also the person who takes the children to school.<sup>10</sup> When the children used to be with Defendant he used to have to contact her to make sure she wakes the children up. She also used to keep the children dirty, so much so that they had contacted him from school.<sup>11</sup>

Plaintiff also mentions various episodes that reflect Defendant is an irresponsible mother and negligent with respect to the children.<sup>12</sup>

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<sup>10</sup> Doc REC No.12

<sup>11</sup> Doc. Rec No.16

<sup>12</sup> A fol. 13-14

From 2021, Plaintiff confirms that A went to live with him exclusively and he accompanies him to all his extra-curricular activities, including Tae Kwon do. However, he admits that for the time being he has stopped this activity as it is too expensive and they intend to resume once they are settled.

2. Defendant explains that she met Plaintiff when they both worked at Havana. Plaintiff worked as a security guard and he was considered to be a bully and a fighter. Infact, she states that his nickname is « Tigra .» She adds that he was always boasting that he had good contacts with ministers and even with police and if he had to do something they would cover up for him.

When their relationship started to get more serious, Plaintiff gave her the keys to his apartment and she moved in with him, only to find out sometime later that she was expecting a child. She decided to stop working at Havana considering it not to be a suitable environment for a pregnant woman.

Since Defendant was not a Maltese citizen there were issues regarding her giving birth in Malta where she would have to pay for it. Plaintiff felt it was too expensive so as an alternative he proposed that they get married, which they did on the 29th April, 2011 and on the 10th June, 2011 their first son A was born.

Defendant explains that there was a period when her parents lived in Malta, opposite them in Bugibba, but Plaintiff was not nice to them and she used to end up taking more care of his mother, than her own mother.

After the birth of their first child, Defendant stayed at home to look after their son, but she had expressed the wish to return to work at some point. Initially, Plaintiff refused, because he would lose his benefits, but eventually, he accepted and she went to work for around two months at Suncrest Hotels, but she had to stop so soon because she was expecting their second child.

Defendant goes on to state that Plaintiff cared very much for his reputation and always wanted more money for himself. Since he was getting into a lot of fights, she asked him to leave Havana and he started working as an estate agent and they were coping financially, but he was stingy with his money, even with his own son.

To cope further financially, they decided to rent out their apartment and they spent a year living with Defendant's mother, but she describes this to have been a bad mistake and overall a bad experience, because his mother used to hide food from them, the house was full of rats and even Plaintiff himself excused himself for having taken this decision.

Once they returned to their apartment it was bliss and then they decided to add a room and meanwhile, they went to live in a rented apartment. Defendant admits that she was a good mother, who used

to cook healthy food for the children and on the other hand, it was Plaintiff who used to give his children lots of sweets.<sup>13</sup>

Defendant explains that they used to argue often because he used to hit the children with the belt and lock them in the bathroom without light. He used to argue with her if the children made noise, because he would want to sleep. He used to work long hours and come home late, so if there were issues with the children's health she used to have to take care of them. He would also spend a lot of time on the phone with his friends and colleagues and even attend parties, which he prohibited her from attending. She also admits that Plaintiff used to smoke marijuana at their apartment.

He hardly spent time or communicated with the children and since she was not working she was finding it difficult to make ends meet, and she used to have to ask her mother-in-law to give her money which Plaintiff used to hide at her place to be able to buy the necessities for the children.

She adds that Plaintiff had brought home a cat and a dog as pets and she ended up having to take care of them and clean after them to have a clean environment.

She was also finding it difficult to travel around, since she did not have a car, so they decided to buy a car so she could take the

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<sup>13</sup> Doc .MAG 3 and MAG 4

children around. As to maintenance of the car, Plaintiff used to insist that he would carry it out himself as she was inexperienced.

At one point, Defendant felt that she needed to visit her parents in Bulgaria so that they could also spend sometime with their grandchildren. They stayed with her cousin GBT , but since Plaintiff was against going to Bulgaria from the start he was very angry and frustated when they were there and he started to be aggressive towards her. Once she threatened him that she was going to call the police, he stopped because he feared being in a foreign country.

She explains that her cousin advised her to leave him, but she admitted to her that she was reluctant to do so because she wanted to bring her children up within a family.

After this trip, so as to be able to visit Bulgaria, she used to take her sisters-in-law with her as it was the only way that Plaintiff would give in.

During such a period, with the help of her sister-in-law she managed to start working again at a convenience store around three times a week, but evenutally she stopped and sometime later she discovered that she was pregnant with their third son K

Their relationship did not change much with the birth of K . There were times Plaintiff would spend some time with them. They were also informed by the school that N had some learning difficulties and as a result, he was referred to a psychologist and there were occasions when Plaintiff would take him alone, since she would be

at home looking after the other children. However, there were times when they went together.

Defendant also explains that she feels Plaintiff is not a responsible parents because has been involved in incidents that have led to criminal proceedings, such as when he attended a protest against illegal immigarnts, and he ended up being arrested.<sup>14</sup>

In May 2021, they separated as they were not living like a family, with Plaintiff trying to control her. Initially Plaintiff went to live with his mother and after a month he asked Defendant to leave the apartment and she rented elsewhere.

She explains that she had give a set of keys of her apartment to Nicholas, but Plaintiff managed to take them and he went unexpectedly to her apartment.

Ever since she moved out, she states that she would still visit their matrimonial home and also sleep there if the children were with their father, because she did not trust him with them. She also admits that Plaintiff was very irresponsible when it came to the children's education and he missed exams, did not help them with their homework and he would also fail to take them to activities. So, it was always a huge effort to try to make up for these problems.

She states that whenever she sends the children to their father, he never returns the clothes she gives him, whereas he does. She also

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<sup>14</sup> Doc MAG 7a and Doc MAG 7d



faces regular problems in that he does not answer his phone when the children are with him.

Contrary to her upkeep of their apartment, she states that today Plaintiff leaves it in a complete mess and everything is all over the place.<sup>15</sup> He also does not feed the children properly.

She also complains that unlike her Plaintiff does not stay with the children when they are with him. Instead he sleeps and allows them to stay up late. He even allowed N, to go to the football ground alone, which entailed that he had to cross a very busy road.

Defendant also admits that Plaintiff had no problems telling her that he used to look for dates through Tinder.

Eventually they reached an amicable settlement when they went together to Dr. Deborah Schembri, She also explained that there were issues with the maintenance agreed upon and the Judge was not willing to approve the contract. They had to agree to €600 a month for the three children and this contract was approved by the Court.

At one point, Plaintiff wanted to stop paying the maintenance because he owed his sister a substantial amount of money as he was building two apartments and his sister was lending him the money. They had gone to the lawyer together, who informed Plaintiff that he could not reduce the amount of maintenance in such a way.

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<sup>15</sup> Docs. MAG 16, MAG 17 and Video I.

It was September/October, 2023, when Defendant confirms that she received some papers from Court and she went to speak to her lawyer, who informed her that Plaintiff was seeking to take full care and custody of the children and was also claiming maintenance from him. He had also instituted proceedings asking the Court to impede her from travelling with the children abroad and this was after the minor children asked her to take them to Bulgaria to see their grandparents and the snow.

Defendant also further explains that Plaintiff only paid maintenance twice and to date he has failed to pay, so much so that she had to report him to the Police.<sup>16</sup> Meanwhile, Plaintiff finds no problems on spending money on himself, buying a new car, doing a hair transplant and also purchasing a new mobile.

He kept on insisting with her to amend the contract and he removes his obligation to pay maintenance because he was having problems with the Bank who were refusing to grant him a loan so he could finance the building of the two apartments. Since she opposed he instituted the proceedings.

Defendant confirmed that at present she works at Compass Lounge Sliema as a bar tender. She admits to working between eight and twelve hours, but they are not fixed as she works on a shift basis, at times in the mornings and at times in the evening.

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<sup>16</sup> Doc. MAG 25

Her income is that of around €1,000/€1,100 a month. She admits to being paid €7 an hour and she has been doing this job for the last three years. She also admits to be seeking a job as an estate agent so as to be able to spend more time with her children.

As to Plaintiff she confirms that he is an estate agent and whilst she is working, the children are generally with Plaintiff or with his mother.

Defendant explains that she has no choice , but to go out to work, since Plaintiff does not give her any maintenance. If she did not need to work full-time she would be able to spend more time with the children. She also confirms that at present the children spend time with her and also with their father, where they also have sleepovers.

As to their son A , she believes that Plaintiff has told him lies about her such as that she was leaving him for another man and for this reason he wants to live with his father.

Defendant is also concerned that Plaintiff tends to follow her. He wanted to know who her friend RH is and he also managed to access her Facebook account and also her personal Yahoo account.

Due to this she has also filed a report with the police too.<sup>17</sup>

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<sup>17</sup> Doc. MAG 28

Defendant also complained that Plaintiff was taking N ' phone and using it to take recordings where he complains about Plaintiff and she realised this because she tends to check her children's mobile. Then she understood why Plaintiff always asked for N ' mobile.

She even found, through searching N 'S history, that he was viewing pornography and she told Plaintiff off so he controls more.

She also confirms that at present Plaintiff is in a relationship with I C and he is more interested in helping her out with her separation than taking care of his family.

Defendant goes on to explain that Plaintiff would spend money on buying a Playstation and a computer and a laptop for his house so that the children remain occupied, other than buying them the necessities, such as books for school.

In September, 2024 she explains that she was offered by her boss to work as a waitress and this makes a difference because she is able to work mornings only, thereby allowing her to be home when the children arrive from school.

She was also concerned about the fact that the children told her they had witnessed Plaintiff hitting his sister and this happened a number of times and Defendant admits that she was aware that they did not have a good relationship.

The children had also started speaking badly and swearing and this is due to their father's influence.<sup>18</sup>

Defendant insists that she should be granted the care and custody of their children, even more so when they are happy to be with her . She is upset because Plaintiff had insisted that they should remain close for the boys' sake, but instead he betrayed her and opened this court case.

3. **CD** explains that he had met Plaintiff at Taekwondo where both their children attended. Whilst they would be waiting for them to finish their lesson, they had become friends.
4. **CC** as ground manager of Sirens Football club explains that he would generally be at the club between 3 pm till the club closes practically every day. He confirms that he sees Plaintiff at the club around two to three times a week as he comes there with the children. He admits that he did not know Defendant personally but he had been told who she was when she happened to be at the club once.
5. **C R T** on behalf of Maria Regina College, Qawra Primary testified about the attendance and academic performance of N and C P . She

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<sup>18</sup> Doc. MAG 29

explained that the attendance appeared to be regular. She exhibited their attendance document.<sup>19</sup>

Regarding academic performance, she explains that N had an LSE and she presented his individual educational review. This is held twice during the scholastic year. This informs the parents as to what N would be doing during the scholastic year and which improvements they would be trying to work on.<sup>20</sup>

This review was signed by both parties, therefore both parents must have been present for it.

She also admits that the children come to school on foot, generally accompanied by the Plaintiff, but there have been times where they have been accompanied by the Defendant.

6. **Dr Andrew Grima** on behalf of Mater Dei exhibited three medical files of Nicholas, Christian and Anthony Portelli respectively.<sup>21</sup>

7. **RG** as Head of School of Naxxar Middle School, Marina Regina College confirmed that AP J attended school regularly.<sup>22</sup> He also confirmed that both parents are marked as guardians and therefore both parents receive official correspondence by email from the

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<sup>19</sup> Dok. CT 1

<sup>20</sup> Doks. CT 2 and CT 3

<sup>21</sup> Dok. AG 1

<sup>22</sup> Dok. RG 1

school, including the attendance notifications. All correspondence was taken care of by the father.<sup>23</sup>

He also exhibited the correspondent exchanged between the school and the parents.<sup>24</sup> As to behaviour and hygiene he confirms that there were very minor issues and the child was well-behaved and also well looked after. He exhibited the behaviour report in this regard.<sup>25</sup>

He also confirmed that the guidance teacher had informed him that the minor child visits his mother.

8. **PC 598 Calvin Farrugia** exhibited Plaintiff's police conduct. There was also a report on Domestic Violence.<sup>26</sup>

9. **PS 2213 Josanne Borg Scerri**, stationed at the Domestic Violence Unit confirms that there resulted one report which Defendant made on the 14th November, 2023. The report was taken, but no charges were brought forward.<sup>27</sup>

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<sup>23</sup> Dok. RG 2

<sup>24</sup> Dok. RG 3

<sup>25</sup> Dok. RG 4

<sup>26</sup> Doc. CF 1

<sup>27</sup> Doc. JBS 1

10. **PC 1407 Cayden Arding**, stationed at the Qawra Police Station, confirmed that with reference to any reports or criminal complaints filed against the Plaintiff by Defendant, two reports were related to maintenance and the other was based on a referral to the Domestic Violence Unit. He confirmed that no charges were brought forward with respect to the last report.<sup>28</sup>

11. **Marica Mifsud** on behalf of the Registrar of Criminal Courts presented various judgments relevant to the case, firstly a case decided by Magistrate Dr Doreen Clarke decided on the 3rd November, 2008, another decided on the 31st January, 2013, which case was appealed and decided by Dr. Lawrence Quintano decided on the 16th January, 2014.<sup>29</sup>

There was another case of Plaintiff decided on the 25<sup>th</sup> April, 2007 decided by Mgt. Dr Natasha Galea Sciberras, further to which there was an appeal decided on the 20<sup>th</sup> September by Mr Justice Vincent Degaetano.<sup>30</sup>

There was another case where the appeal was decided on the 3<sup>rd</sup> February, 2005 and another judgment decided by Mgt. Dr Consuelo Scerri Herrera on the 22<sup>nd</sup> June, 2006, wherein the appeal was

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<sup>28</sup> Docs. KA1, KA2 and KA 3

<sup>29</sup> Doc. MM1

<sup>30</sup> Doc. MM 2



decided on the 22<sup>nd</sup> November, 2006. There was also a judgement delivered on the 19<sup>th</sup> June, 2014. (1072/2011).

12. **JD** Head of School, Qawra Primary confirms that she has known the parties for quite a long while and she is Head of both A and K. She confirms also to having a good relation with the parties and they always cooperate with her and attend school to pick up or drop off the children.

She also confirms that Defendant does show an interest in her children's education. She also explains that N has an LSE . They generally contact Plaintiff for most of the things, but they also inform Defendant.

13. **EA** is a close friend of Defendant and she states that she is aware of the fact the Plaintiff does not help out with the parties' three sons. She said that Plaintiff used to tell their sons not to go to school and that they did not need to work and he would provide everything for them. Defendant was very worried and angry with this attitude. She adds that Defendant is a very good mother and she will always fight for her children. She also confirms that she was aware that A spends more time at his father's house and this because he has two playstations there. N and K loved their mother very much and they constantly search for her when she is not around.

She explains that between October and December, 2023 she lived with Defendant and she could see that when the children would come back from their father, they would come dirty, not showered and there were occasions where they would have been wearing their uniform for around two consecutive days.

She describes a normal day routine and how dedicated Defendant is, so much so that she would even try to change her shifts were necessary to attend the children's extra-curricular activities.

She adds that Defendant was facing problems because Plaintiff was not always regular in paying his maintenance and it is difficult for her to cope since she does not have a good salary.

14. **GI** is a colleague of Defendant and he confirms knowing her for the last three years. He considers her to be very reliable and a person who spoke about her children most of the time. He also confirms that she used to liaise with them to work around her children's timetables. He considers her to be a very responsible person at work.

15. **GB T**, a first cousin to Defendant, who had met Plaintiff when they went to visit them in Bulgaria and they spent two weeks with them. She witnessed Plaintiff's aggressive behaviour throwing glasses and plates and also he showed signs of physical and mental abuse. He forbade Defendant from speaking to her in Bulgarian and he did not allow her to go out alone.

She also had to stop him from being physically aggressive towards Defendant and children and in turn he was also very disrespectful towards her. She added that Defendant was scared to leave Plaintiff because he threatened that he would take the children and she would not see her again.

### **Considerations**

It has long been established that a consensual separation contract between the spouses regulates their separation agreement and the said terms and conditions are binding “pacta sunt servanda.” However, jurisprudence has developed this strict notion and the Courts are willing to overturn those clauses related to the minor children where a variation is to their complete advantage and in the best interests of the minor children. This principle emanates from article 992 of the Civil Code that contemplates :-

*“(1) Il-kuntratti maghmula skond il-ligi ghandhom sahha ta’ ligi ghal dawk li jkunu ghamluhom.*

*(2) Dawn il-kuntratti ma jistghux jigu mhassra hlief bil-kunsens ta’ xulxin tal-partijiet jew ghal ragunijiet maghrufin mil-ligi.”*

The Courts are burdened with the responsibility of ensuring that their decisions are always taken to safeguard the best interests of the minor children. This responsibility is regulated under Article 149 of the Civil Code:-

*“B’dak kollu li jinsab f’kull disposizzjoni ohra ta’ dan il-Kodici, il-Qorti tista’, jekk tigi murija raguni tajba, taghti dawk l-ordnijiet dwar il-persuna jew il-proprijeta’ ta’ persuna li tkun that l-eta’ kif jidhrilha xieraq fl-interessi tat-tifel.”*

Judgments have interpreted this responsibility as follows. In the case **II. Bonnici vs Onor J. Raynaud**<sup>31</sup> the Court ruled that: *“Il-principju li ghandu jipprimeggja, meta l-Qorti tigi biex taghti provvedimenti dwar il-kura tat-tfal huwa dak li huwa suggerit mill-aktar utilita’ u dak tal-aqwa vantagg ghall-interess tal-istess tfal,”* In the case **Dr. V. Randon vs J. Randon u Scifo Diamantino vs M. Scifo Diamantino** the Court reiterated that *“r-regola generali f’din il-materja hi l-ahjar interess u vantagg tat-tfal.”*

In the case **Jennifer Portelli pro.et noe. Vs. John Portelli**<sup>32</sup> the Court enunciated that *“ illi nghad 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 meta jisseparaw ruhhom għudizzjarjament,*

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<sup>31</sup> **Deciza 25/06/2003 mill-Prim Awla tal-Qorti Civili Ċitazz Numru2668/1996/2RCP**

<sup>32</sup> **. Rik.Gen.Nru.:571/2021JPG**

*sew meta jiġu biex jisseparaw konsenswalment.”*

Illi fil-kawza fl-ismijiet **Miriam Cauchi vs Francis Cauchi** deciza

mill-Qorti tal-Appell fit-3 ta' Ottubru, 2008 intqal li, *“fejn jidhlu l-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.”*

First and foremost, what the Court has to assess on what grounds Plaintiff is requesting that the contract of separation be varied, in the sense that he be granted the full care and custody of the child.

Plaintiff bases most of his arguments on the fact that after signing the separation, the minor children are spending more time with him than with Defendant.

In his evidence he refers in detail to facts and incidents that led to the separation. What interests this Court at this point in time is whether the situation post separation has led to circumstances that in the best interests of the children and to their advantage, the care and custody has to cease being joint and instead be granted exclusively to Plaintiff.

The accusations and shortcomings brought forward by Plaintiff with respect to Defendant relate to the fact that she is an irresponsible mother who feeds her children unhealthy food and a substantial

number of sweets that have led to N having severe dental problems. The Court is convinced that suddenly Plaintiff has raised his concerns because he is working as a gym and fitness instructor and therefore his awareness of leading and following a healthy nutrition is essential.

Plaintiff also laments that Defendant leaves the apartment where she resides in a very untidy way and this is not the right environment and moreover, she does not take care of the children's health, so much so that when Nicholas' school informed them that he needed an LSE it was he who took care of organising the sessions with a psychologist so his son could reap the benefits.

Plaintiff insists that he was the one who always accompanied his sons to their extra-curricular activities. In fact, he produced a friend of his CC whose son attends Taekwondo together with Plaintiff's son. Although at present Plaintiff admits that he has stopped taking his son due to the fact that it is quite costly. He also spends time at Sirens where he takes one of his sons for football. This was confirmed by CD.

Plaintiff produced various representatives of the schools the children attend. They all seemed to be consistent in their evidence, that more often than not it is the Plaintiff who is there either to drop off or pick up the children, although there are occasions when Defendant would be there too.

There were very little complaints from the school heads, attendance was regular and there was a slight issue with cleanliness. They were also consistent in the sense that both parents cooperated with the school and they kept both of them updated with anything related to the children.

The parties, however, have contrasting views on this, Plaintiff insists that Defendant did not follow the children's education and moreover, did not give it the importance it needs. Defendant, on the other hand accuses Plaintiff as slacking towards the children's education and there were occasions when A missed an exam, or they arrive late to school or there were occasions when the homework was not submitted.

Plaintiff exhibited a number of emails which show the corresponding between him and the school and undoubtedly, they definitely reflect an interest on Plaintiff's part in the children's education. Defendant too exhibited a number of emails which she exchanged with the school, wherein there is proof that there a number of absences that went unjustified, there were reports of delays in homework.

The Court agrees with Plaintiff too that Defendant confirms that the children spend a lot of time with their father, when Defendant insists that Plaintiff had failed to return A's books back to the school, once there was a change in his school.

Plaintiff's also emphasized Defendant's negligence as a mother, in that she leaves the children to play in a construction site and to this effect he has produced photos that show the children playing. In fact, he admits that he is not comfortable with this and many a time he has gone down next to them to ensure that they are fine.

Plaintiff was also concerned about the fact that Defendant is secretive about her life and he was aware that she was seeing someone. Apart from that he was aware that she spent a lot of time on her mobile and he discovered that she was in contact with a prisoner who was found guilty of having murdered his mother and also with DM who was also accused before the Courts. He feels that Defendant is frequenting shady people and this does not prove to be in the best interests of the children.

Similarly, Defendant rebuts Plaintiff's allegations whereby she claims that he wins over the children by being very materialistic with them such as purchasing them all the latest PlayStation, computers and laptops and this is what attracts the children to go to their father. In addition, Plaintiff too has a criminal record, and they are all related to aggressive and violent incidents, even at times related to grievous injuries. The Court understands that most incidents are related to Plaintiff's previous work as a security at a club in Paceville, where he has acquired himself the nickname "Toni t-Tigra," which leaves no doubt that he had to act aggressively where necessary to avoid fights or any brawls. Nonetheless, this does not convince the Court



that he has all the qualities to make him the most responsible parent, as it takes more than just picking up and dropping off children at school and attending their extra-curricular activities.

Plaintiff also refers to the fact that the separation has caused him a great deal of stress, that he has also ended up following a therapist Dr Claudette Portelli, but he failed to produce her to prove what his preoccupations with regards Defendant are.

Likewise, Plaintiff has also failed to substantiate his evidence regarding the allegations that she frequents criminals, except for the fact that she admittedly sent a request to the prison Corradino Correctional Facility inquiring whether they had a job for her.

All in all, the Court is not convinced that both parties are being honest in their versions of facts. The parties seem to have implemented the terms of the separation contract and exercise a joint care and custody, which seemed to be working. To a certain extent, the Court has to believe Defendant, who not receiving any maintenance which Plaintiff admits he has failed to pay in accordance with the contract, had no choice but to employ herself full-time. In fact, throughout the proceedings, she admits that she was seeking a job as an estate agent so as to be able to spend more time with her children.

The allegations made by Plaintiff with respect to Defendant have not essentially been substantiated, except for a substantial number of photos to show that the children spend most of the time with him., that he feeds them well, they also do homework together. However, for the Court, he has failed to produce evidence that convinces this Court that the children should be granted within the full care and custody of Plaintiff. His case based upon Defendant's irresponsibility and negligence is unfounded, due to the fact that there might have been one or two incidents that reflected this, but there was nothing drastic and in this respect the Court feels that there is no advantage and also any best interests for the children by being granted within the full care and custody of Plaintiff, as had it felt the need to delve deeper it would have done so, but the circumstances seemed to have remained at a status quo, the sole reason behind these proceedings being that Defendant has threatened to leave Malta with the children and moreover not receiving maintenance requires her to work long hours and as a consequence she needs to rely on Plaintiff since he is their father too and he has to share in their responsibilities.

### **Maintenance**

Plaintiff's claims for Defendant to start paying maintenance is related to the claim wherein he has asked to be granted full care and custody of the minor children.

According to the separation contract, Plaintiff was meant to contribute maintenance towards the minor children in the sum of

€600 monthly, however Defendant claims that he has only effected two payments. Plaintiff admits that he has not effected payments because he was building two apartments and he was finding problems to get loans from the bank due to the maintenance that was due by him towards the minor children.

Moreover, he had debts with his sister because she had lent him money to finance the building of these two apartments.

Presently, Plaintiff works as a gym instructor, where in actual fact he has opened his own gym and he also works a nutritionist. Defendant did not produce evidence to indicate what income Plaintiff receives as a self-employed.

Money and finances have always been an issue with Plaintiff, so much so that since he did not help out at all and found problems to spend more than €5 on food for his son, as well as giving him €2 for muffin day at school, leaving no choice for Defendant but to find an employment, where presently she works at Compass Lounge and earns around €1000/€1200 monthly. However, Plaintiff has money to purchase a car and also carry out a hair transplant.

Plaintiff claims that since 2021, the children have been living with him and Defendant also confirms that since she works there are days and times when the children have to stay with their father or their paternal grandfather, including sleepovers there. A junior has

moved permanently with his father, but Defendant is convinced that it is due to lies Plaintiff told him that she left him for another man.

At present, however, Defendant admits that her boss has offered her a job as a waitress and that would mean that she would work mornings only and be in a position to be at home when the children return. Nonetheless, she has failed to produce her employer as a witness to confirm such offer, when this was something crucial in this case.

In consideration of the above circumstances, the Court considers that it would be in the best interests for the children to have their principal residence as that of Plaintiff and this considering that when Defendant and Plaintiff are both at work, they can always rely on their paternal grandmother and this spares the inconvenience to Plaintiff to move to and fro to drop off and pick up the children.

Considering the above, the Court feels that since the children are spending more time with the Plaintiff, then four times a week they should reside with him and the remaining three days with Defendant, who must inform Plaintiff of the days she would like to exercise her care and custody, including sleepovers, unless this is not possible due to work restrictions, in which case she would have to inform Plaintiff in advance of his unavailability.

This arrangement, consequently, must have its impact on the issue of maintenance in that since the Court has granted the principal residence of the minor children to be that of Plaintiff's, the maintenance due to Defendant must be reduced to €450 for the three children respectively, and education and health expenses, including extracurricular activities have to be shared equally between the parties.

The children's allowance too is to be perceived by Defendant considering that her income must be lower than that of Plaintiff who is presently running his own gym.

**DECIDE:**

Considering all the above, the Court concludes and decides as follows:-

1. Rejects Plaintiff's first claim and confirms the validity of Clause 4(i) of the separation contract dated 3<sup>rd</sup> June, 2022.
2. Partially upholds Plaintiff's second claim in that it varies clause number 4 (iii) by ordering that the principal residence of the minor children shall be that of the Plaintiff, whereby they shall reside with him four times a week and

the remaining three days with Defendant, who must inform Plaintiff of the days she would like to exercise her care and custody, including sleepovers (at least once during the week and once during the weekend) unless this is not possible due to work restrictions, in which case she would have to inform Plaintiff in advance of her unavailability.

3. Partially Upholds Plaintiff's third claim in that clause number 4 (vi) has to be varied only in the sense that "maintenance" is to be paid by Plaintiff to Defendant in the sum of €450 monthly. All education, health and extra-curricular expenses are to be shared equally between the parties.

The children's allowance is to be perceived by Defendant.

Costs are to be borne as two-thirds by Plaintiff and a third by Defendant.

**Onor Dr Anthony J. Vella**

**Judge**

**Cettina Gauci**

## **Deputy Registrar**