

**CIVIL COURT  
(FAMILY SECTION)**

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

**Today 8th May 2025**

**Sworn App. No.:227 /2023 JPG**

**Cause No.: 29**

**IP**

**vs**

**Dr Leontine Calleja and PL  
Marie Claire Bartolo, Deputy  
Curators appointed to  
represent the absent DD by  
virtue of the decree of the 22<sup>nd</sup>  
of February 2024**

**The Court**

Having seen the Sworn Application of IP dated 2<sup>nd</sup> October 2023, at page 1, and translated version at page 5 wherein it was held:

1. *Whereas the applicant is of Polish nationality while the respondent is of a Dominican nationality;*

2. *Whereas the parties first met in 2011 in England but their relationship was short-lived because shortly after moving to the Caribbean, the respondent began to be abusive towards the applicant;*
3. *Whereas from the relationship between the parties, on X, the minor DP was born, holding Maltese residence document number Y (“Doc A” attached) and who today is almost X years old;*
4. *Whereas the relationship of the parties came to an end and effectively the applicant immediately undertook to proceed with appropriate procedures in Poland to regulate the maintenance of the minor;*
5. *Whereas it results that since the relationship of the parties came to an end, the respondent has not only provided the minor child with very little maintenance, but has chosen to barely exercise access to him and this despite the insistence of the applicant knowing that the child needs both parents in his life;*
6. *Whereas despite the fact that there is already a judgement given by the District Court of Swidnica in Poland (**certified copy attached and marked as “Doc B”**) whereby the respondent was ordered to pay in favour of the applicant the sum of four hundred (400) PLN per month, equivalent to the eight-four Euro and three cents (€84.03), this sum is not satisfactory to cover all the expenses necessary for the applicant to maintain their son. Therefore, the applicant wishes that, that amount be increased to a higher sum reflecting those costs as will be proven during these proceedings;*
7. *Whereas the Polish Court, in its judgment, had not given any decision on the care and custody, residence, and access of the minor;*
8. *Whereas the applicant is currently working and residing in Malta together with her husband and her minor son DP;*
9. *Whereas the applicant does not have any information about the actual residence of the respondent although she tried to contact him several times of this point;*
10. *Whereas the applicant has not had any effective communication with the respondent for the last seven (7) years;*
11. *Whereas it must be stated that the parties could never reach a compromise or an amicable settlement, since the respondent chose not to attend any mediation sessions, which sessions commenced on the twenty-ninth (29<sup>th</sup>) of May 2023;*
12. *Whereas the parties were authorized to proceed with this sworn application by means of a decree given by this Honourable Court, dated 4<sup>th</sup> August 2023 (**Marked and attached as “Doc C”**);*

*13. Whereas the applicant personally knows about these facts.*

*Therefore, for the abovementioned reasons, the applicant humbly asks this Honourable Court to:*

- a) Entrust the full care and custody of the minor exclusively to the applicant, namely that all decisions concerning the minor, both ordinary and those of an extraordinary nature, including those of education and health and decisions concerning the issuance and renewal of the passport of the minor, are taken exclusively by the applicant without the requirement of the respondent's consent, signature and presence;*
- b) Liquidate and fix a satisfactory amount of maintenance for the minor until he reaches the age of eighteen years if he decides to give up his studies and start working on a full-time basis, or up to twenty-three years if he decides to continue his studies on a full-time basis;*
- c) Order the respondent to pay maintenance as liquidated in all those modalities of payment this Court this deems fit, including the periodic increase to compensate for the cost of living, as well as costs related to health, education and extracurricular activities of the same child;*
- d) Order that the said maintenance be deducted directly from the respondent's salary or earning, from the employment or work which he or may have, or from any social benefits which he may be receiving from time to time;*
- e) Liquidate the amount of compensation to be paid by the respondent to the applicant in respect of the costs of raising the minor, maintenance and health costs, education and extracurricular activities, from him not paid to date;*
- f) Accord the right of access of the respondent to the minor as it deems fit;*
- g) Give all appropriate and opportune measures concerning the minor, including but not limited to how the minor's travel is to be regulated, the attendance of the minor at school and other educational and extracurricular activities, and all this under any appropriate and opportune measures made by this Honourable Court.*

*With costs to be borne by the respondent who is hereby being immediately summoned to give evidence with reference to the Oath.*

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

Having seen the note filed by IP dated 16 January 2024 at page 38;

Having seen the note filed by IP dated 6<sup>th</sup> May 2024 at page 92;

Having seen the note filed IP dated 26<sup>th</sup> June 2024 at page 231;

Having seen the note filed by Dr Leontine Calleja dated 26<sup>th</sup> June 2024 at page 226;

Having seen the order given during the sitting of 23<sup>rd</sup> October 2024 (fol. 251) whereby this Court granted the Plaintiff pendente lite the authority to decide all matters relating to the minor child relating to education, health, travel and extra curricular activities as well as to effect applications for official documents without the consent, authorization or presence of the Defendant.

Having seen Dr Leontine Calleja's attempt to contact the Defendant she represents through various sources and that Defendant failed to reply. Therefore Dr Leontine Calleja nomine declared that she had no evidence to adduce (verbal at page 258);

Having heard the testimony on oath;

Having examined all the acts of the case;

**Considers:**

The Plaintiff testified by means of an affidavit which she filed during the sitting of 6th May 2024 (fol. 92). She stated that she met the father of her son, DD, in London in 2009 and during the time they were together in a relationship, they travelled a lot. She knew that the Defendant was unfaithful to her during the relationship many times. When they were living in the Dominican Republic, they broke up for some time but the Defendant used to wait outside her residence and then force himself inside the premises when she would try to go out.

She fell pregnant when they were living in Saint Martin. He promised her that he would provide for her so that she would not need to work. However following his failure to provide, she went back to work when she was four months pregnant. She was even scared of being evicted from the rented apartment because she could not pay the rent. **She finally had to tell the Defendant to leave her residence when she caught him stealing her money.**

When their child was about six months of age, Plaintiff wanted to return to her home country, Poland, in order for her son to be granted Polish citizenship as well as to escape her partner's abuse. Her partner did not object since he was facing criminal charges of domestic violence perpetrated on her there in Saint Martin. He wanted her to leave so that she would not be able to testify against him. Plaintiff returned to her family home and went to therapy as a domestic violence victim. Her partner would message her sporadically except for the period when he would be in a relationship with another woman during which he would block her.

In Poland, the Plaintiff obtained a court decision that ordered the father of her son to pay maintenance towards their son. He paid two instalments and then stopped paying maintenance. He told her that he was unemployed but then would send her photos of himself wearing branded clothes and with a lot of cash so as to taunt her.

She came to Malta to make a fresh start and here she met her current husband. Despite not being present in his son's life, the Defendant stopped their son from attending the Plaintiff's wedding in Tunisia by not signing the necessary papers. The same situation happened again in relation to the child's Holy Communion. Plaintiff requested the father to sign the relative papers so that their son would be able to receive Holy Communion with his classmates but the father refused and did not pay anything. The only reason for Defendant's objection was that he found Christianity evil.

The father would fail to contact Plaintiff for months on end, but then would request daily contact if not more, for a period of time. He would promise their son that he was going to visit him and bring him birthday presents but these remained unfulfilled promises. He used communication with his son either to speak badly about his partners or to learn about the Plaintiff's personal life. He told the Plaintiff that he would like to come to Malta to keep her on edge but as far as she knows, he has never actually travelled to Malta.

Plaintiff states that the Defendant was wanted by the police in the United Kingdom, France and the Caribbean. She was also contacted by the Police in Saint Martin when she was living in Poland as they were looking for him in connection with a robbery that had been committed. Plaintiff is blocked from Defendant's social media accounts and thus does not know his current whereabouts moreover he has changed his mobile phone number multiple times. She tried in vain, to send him photos of receipts of expenses she incurred in relation to their son, on his last known phone number, to no avail.

Plaintiff states that Defendant was an absent father but uses his joint parental rights to stop his son from moving forward in his life without him. She states that the last contribution that the father made for his son was in June 2021 in the amount of two hundred and thirty-one euro and twenty-nine cents (Eur231.39).

Plaintiff testified before this Court (fol. 235) and stated that the relationship with the Defendant used to be perfect until she found out that he had been cheating on her, He would strike relationships with other women for short periods of time to enjoy a luxurious life during such time. Whenever Plaintiff discovered his infidelity, he would turn abusive towards her. He had moved back with her just before she was due to give birth promising her that he was going to help her but, instead after giving birth, she found out that he was cheating on her again. After that, she asked him to move out of her residence. She used to receive money from Defendant's father to buy things for the baby but instead of helping, Defendant would wait outside her door. Once she opened the door, he would force himself inside, take whatever money she had and run, and this inspite of the fact that she was not managing to pay her bills and was under constant danger of being evicted. Plaintiff stated that the Defendant's father had confirmed to her that the Defendant had received the acts of this case from Maltese Court. The last time the father physically saw his son was in the year 2016 when he dropped them off at the airport in Saint Martin.

Plaintiff, in cross-examination, (fol. 258). stated that she is currently going through divorce so she went back to England and made contact with the father to see if would like to meet his son after nine (9) years. The father was in the Caribbean at that time. During these nine years, sometimes the father called Plaintiff and saw his son via video call. During the video call they had when she was in the UK, the conversation revolved more about the Plaintiff's husband. The father did not ask about how the child's progress at school or whether he attends any extra curricular activities. The Plaintiff said that she has kept contact with the paternal grandparents in that she sends them photos of their grandchild from time to time. She also recounted how the Defendant had promised their son, just before his X birthday, that he was going to buy him a bike and then he went silent on him again, not even calling his son on his birthday. The son experienced a huge disappointment especially since he really wanted a bicycle.

To corroborate her testimony, Plaintiff produced the following evidence:

**Saviour Theuma**, in representation of the Department of Social Security, who testified (fol. 106) and filed a copy of the records kept by the Department showing the benefits paid to the Plaintiff. These benefits consisted of children's allowance payments as from April 2018 (fol. 107 et seq.). The witness confirmed that the Department does not hold any records in relation to the Defendant.

**Cettina Zammit**, in representation of HSBC Bank Malta p.l.c. testified (fol. 106) and filed a copy of the bank statements of an account held by Plaintiff. These bank statements (fol. 115 et seq.) show transactions as from March 2023 and show that the Plaintiff earned a salary of an average of one thousand and six hundred euro (Eur1,600) per month. This salary was reduced to less than a thousand euro (Eur1000) from January 2024 (fol. 122). Plaintiff also seems to have a smaller income from an AirBNB in Luxembourg which income is inconsistent and varies in the amount (vide fol. 156 as an example). The witness also confirmed that the Defendant does not have a banking history with the represented bank.

**Johanna Bartolo**, in representation of Bank of Valletta p.l.c. testified (fol. 106) and filed a copy of the bank statements of an account held in the name of the Plaintiff. The witness confirmed that the Defendant does not have any banking accounts with the represented bank.

**Louis Buhagiar**, in representation of Jobsplus testified (fol. 106) and filed a copy of the Plaintiff's employment history (fol. 222) which shows that the Plaintiff has been employed in Malta since February 2017 and has been in her current employment with Seifert Systems Limited since April 2019 to date. The witness also confirmed that the represented entity does not have any record in relation to the Defendant.

**HK**, Plaintiff's husband, testified (fol. 232). that he met the Plaintiff online and then they met in Tunisia. The parties' relationship became serious from the start even though he knew that the Plaintiff had a son. He could not come to Malta at the time and then came to live with her here in Malta after they were married and he was issued a spousal visa. The Plaintiff's son was not present for their wedding in Tunisia as according to the Plaintiff, Defendant had not signed the relative papers that allowed him to travel. He did not do this when they wanted to travel again to Tunisia to see the witness' parents. The witness was concerned about the son growing up without a father so he stepped up and worked together with the Plaintiff to see to the child's needs. He had spoken to the father of the child via WhatsApp a few days after their wedding. The father was more interested to speak about his former partner rather than about his son. For months on end the father would not contact his son and then he would contact either the Plaintiff or the witness again. The witness heard voice messages sent by Defendant to his wife which messages used an aggressive and threatening tone, stating that he would find Plaintiff here in Malta. The witness does not believe that the father has ever been to Malta but he mentioned that he had a friend living here.

**PC 801 Clyde Gauci**, in representation of the Immigration Department who testified and stated that the Department does not have any records in relation to the movements of the Defendant outside of Schengen Area. The Department does not retain data of movements within the Schengen area. This does not exclude the possibility that the Defendant had travelled outside the Schengen area from another country within the Schengen area.



**Adrian Tanti**, in representation of HSBC Bank Malta p.l.c. testified and filed a copy of the bank statements of the accounts held by the Plaintiff jointly with her husband HK.

The Deputy Curator Dr Calleja, filed a note during the sitting held on 26<sup>th</sup> June 2024 of a copy of the message she sent to the Defendant via the platform WhatsApp (fol. 226) as well as a copy of the letter sent by her to the same Defendant in his last known address.

**Deliberates:**

It has been established in our jurisprudence that in litigation involving minor children the *best interest of the minor* has to prevail.<sup>1</sup> In the judgement *Jennifer Portelli pro.et noe. vs. John Portelli*<sup>2</sup> 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 gudizzjarjament, sew meta jigu biex jisseparaw konsenswalment*<sup>3</sup>.

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

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<sup>1</sup> Emphasis by this Court.

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

<sup>3</sup> 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.

*“apparti l-hsieb ta’ ordni morali u dak ta’ ordni legali, li ghandhom setgha 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 ta’ l-istess minuri fl- isfond taċ-ċirkostanzi personali u ‘de facto’ li jkunu jirriżultaw mill-provi tal-każ li jrid jiġi riżolut...”<sup>4</sup>*

In the judgement in the names *Susan Ellen Lawless vs. Il Reverendo George Lawless*<sup>5</sup>, the Court stated that:

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

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.<sup>6</sup> As this Court had the opportunity to state several times, the interest of the children is supreme and shall prevail over the rights of parents. In the judgment of this Court otherwise presided in the names *Frances Farrugia vs. Duncan Caruana*, decided on 31<sup>st</sup> May 2017, this Court stated:<sup>7</sup>

*Il-Qorti tirrileva illi filwaqt li dejjem taghti piz ghad-drittijiet tal-genituri, l-interess supreme li zzomm quddiemha huwa dejjem dak tal-minuri kif anke mghallma mill-gurisprudenza kostanti taghna hawn ‘il fuq iccitata.’<sup>8</sup>*

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<sup>4</sup> “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...”

<sup>5</sup> Decided by the First Hall, Civil Court on 8<sup>th</sup> December 1858.

<sup>6</sup> Cap 16 of the Laws of Malta.

<sup>7</sup> Vide Sworn Application 268/11AL.

<sup>8</sup> “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.”

Reference is also being made to the cause in the names *Cedric Caruana vs Nicolette Mifsud*<sup>9</sup> wherein the Court emphasised that where children are involved:

*‘huwa ta’ applikazzjoni assoluta l-Artiklu 149 tal-Kap 16 li jaghti poter lill-Qorti taghti kwalsiasi ordni fl-interess suprem tal-minuri. Fil-fehma tal-Qorti, l-Artiklu 149 tal-Kap 16 jaghmilha cara illi fejn jikkoncerna l-interess suprem tal-minuri, idejn il-Qorti m’hiex imxekla b’revoli 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.’<sup>10</sup>*

In the words of the **Court of Appeal** in the judgment in the names: *L Darmanin vs Annalise Cassar*:<sup>11</sup>

*“.....meta tigi biex tiddeciedi dwar kura u kustodja ta’ minuri, il-Qorti ma ghandhiex tkun iddettata u kondizzjonata mil-meriti u dimeriti tal-partijiet ‘ut sic’ izda biss x’inhw l-ahhjar interess tal-minuri”.*<sup>12</sup>

This Court makes reference to the pronouncement of the Court of Appeal (Superior Jurisdiction) in its judgment delivered on 25<sup>th</sup> 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*

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<sup>9</sup> Decided by the Court of Appeal on 4/3/2014.

<sup>10</sup> 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.”

<sup>11</sup> Decided by the Court of Appeal on 31<sup>st</sup> of October 2014.

<sup>12</sup> 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.”

*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.*

Indeed the Court of Appeal in the cause in the names *Miriam Cauchi vs Francis Cauchi* decided on 3<sup>rd</sup> October 2008 observed that:

*“Din il-Qorti tibda biex taghmilha cara li, fejn jidhlu minuri, m’hemmx dritt għall-access, izda obbligu tal-genituri li t-tnejn jikkontribwixxu għall-izvilupp tal-minuri li, għal dan il-ghan, jehtigilha jkollha kuntatt ma’ ommha u anke ma’ missierha. Kwindi lil min jigi fdat bil-kura tal-minuri u kif jigi provdut l-access jiddependi mill-htigijiet tat-tifla u mhux mill-interess tal-genituri.<sup>13</sup> Huma l-genituri li jridu jakkomodaw lit-tfal, u mhux viceversa. L-importanti hu l-istabilita’ emozzjonali tat-tifla, u li din jkollha kuntatt mal-genituri tagħha bl-anqas disturb possibbli.”<sup>14</sup>*

#### ***Maintenance towards the needs of the child:***

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

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

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<sup>13</sup> Emphasis by this Court.

<sup>14</sup> “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.”

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, or trade.*

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

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

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

As held in our jurisprudence:

*.....Il-Qorti dejjem irriteriet illi l-ġenituri ma jistghux jabdikaw mir-responsabbiltà 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-meżzi tiegħu huma baxxi jew jinsab diżokkupat. Il-Qorti ma tista qatt taċċetta li persuna ġġib it-tfal fid-dinja u titlaq kull responsabbiltà tagħhom fuq il-ġenitur l-iehor jew inkella fuq l-istat.” (Ara Tiziana*

*Caruana vs Redent Muscat (272/2018) deċiża mill-Prim' Awla Qorti Ċivili fl-24 ta' Ġunju 2019; Liza Spiteri vs Luke Farrugia (219/2018) deċiża mill-Prim' Awla Qorti Ċivili fit-2 ta' Ottubru 2019).*<sup>15</sup>

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

*“.....l-obbligu taż-żewg ġenituri lejn l-ulied jibqa' bażikament l-istess dettat kull wiehed skont il-meżzi tiegħu, ikkalkulati skont id- dispozizzjonijiet tal-Artikolu 20 tal-istess Kap u l-bżonnijiet tal-minuri, u fl-interess tal-istess minuri.”*<sup>16</sup>

#### **Deliberates:**

This Court is examining requests filed by the Plaintiff as a sole carer of the child DP that she be legally authorized by this Court to make all decisions in relation to said child unilaterally and this without the consent, authorization, signature or presence of the father who has largely been an absent father. Plaintiff has also requested that this Court establish an adequate amount as maintenance for the same child despite having a Court Order issued by the Competent Court in Poland, and to determine any access to be exercised by the father.

Plaintiff has produced sufficient evidence to convince this Court that she is raising the son of the parties, single handedly, without any help or contribution from the father. The Plaintiff has proven satisfactorily that the father has not shown any interest in his son, has not seen him physically for the past nine (9) years, having made contact with his son sporadically and never visiting him despite his travelling to Europe.

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<sup>15</sup> “.....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 24<sup>th</sup> of June 2019; Liza Spiteri vs Luke Farrugia (219/2018) decided by the First Hall, Civil Court on 2<sup>nd</sup> October 2019).”

<sup>16</sup> “....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.”

The evidence brought before this Court shows that the Defendant has no footprint whatsoever here in Malta. By the testimony of the representative of the Immigration Department, Plaintiff has proven that the father has never visited his son here in Malta despite the child having lived here for the past eight (8) years since the Plaintiff came to Malta with the child in 2017. The bank accounts in the name of the Plaintiff show that no transfer has ever been effected by the Defendant although Plaintiff did not file a statement of her Revolut account – which is the account into which the last meagre contribution was made by the Defendant back in 2021.

Despite the Defendant shouldering no responsibility whatsoever in the raising of his son, he decided to refuse to sign the necessary papers for his son to travel to Tunisia and attend his mother's wedding or to meet his mother's in laws and family. Moreover, Plaintiff testified that Defendant objected to his son receiving Holy Communion with the rest of his classmates in Malta despite the fact that he was ignorant of the back ground and culture in which his son was being brought up in or the wishes of his own son. The reason given by the Defendant for not signing the papers was purely egoistical and did not take into consideration his child's best interest. Similarly, this Court has heard how the father made contact with his son and promised him a bicycle for his X birthday but then, not only failed to fulfil his promise, but did not even deign to phone him on his birthday. This left the child lost, hurt and utterly disappointed whilst Plaintiff was left to pick up the pieces.

This Court therefore concludes that the Defendant failed to shoulder any of the responsibility that parenthood brings with it but seems to relish retaining control over his son's and his ex partner's lives. It is this Court considered opinion that wellbeing of the child DP is not to be subjected to the whims and unpredictable demands of an absent father. Therefore this Court entrusts Plaintiff with the exclusive care and custody of the child DP, as she has been factually doing since the child's birth.

As to request for maintenance, this Court is aware of the judgment delivered by the Competent Court in Poland by means of which the Defendant was ordered to pay the equivalent amount of eighty four euro and three cents (Eur84.03) per month. However, since the Plaintiff is residing in Malta with the child, and has done so since 2017, this Court considers that this amount is insufficient to offer the child a decent standard of living especially when the minimum maintenance for a child in Malta is two hundred Euros (€200) a month. This Court has no evidence before it as to whether the Defendant is currently in employment, however from the testimonies in the acts, this Court understands that the father's income is sufficient

enough to allow him to travel rather frequently. Maltese law refers to the means of the parent and not to his income and thus the order of maintenance is not subject to the employment or otherwise of the parent concerned. This avoids abuses whereby a parent would officially remain ‘unemployed’ or with a low ‘declared’ income to avoid having a higher maintenance order. In this particular case, this Court has heard that the Defendant was involved in robberies, robbed money from the Plaintiff when she was struggling financially but on the other hand, has no qualms in uploading photos as profile images of himself with stacks of cash or near luxurious cars and swimming pools. Taking all this into consideration this Court orders that the maintenance of the child be in the amount of two hundred and fifty euros (Eur250) with an additional fifty euro (Eur50) as Defendant’s contribution towards the expenses of the child relating to his education, health and extracurricular activities. Thus in total the Defendant is being ordered to pay the amount of three hundred euro (Eur300) every month which maintenance has to be paid on the first day of each month by means of a bank transfer into a bank account in the name of the Plaintiff. This maintenance shall be paid until the child is of age; in the event that the child continues in full-time education, the maintenance payable by Defendant shall be sustained until the child completes his studies or until the child reaches the age of twenty-three years –whichever happens first.

## **DECIDE**

**Therefore, for the above reasons, this Court, with regard to the sworn application filed by the Plaintiff IP on 2nd October 2023:**

- 1) Upholds the first request of the Plaintiff and entrust the full care and custody of the minor child DP exclusively to the Plaintiff, such that all decisions concerning the minor, both ordinary and those of an extraordinary nature, including those relating to education and health and decisions concerning the issuance and renewal of the passport of the minor be taken exclusively by the Plaintiff alone without the requirement of the Defendant’s consent, signature and presence;**
- 2) Upholds the second request and orders Defendant to pay the amount of three hundred euro (Eur300) every month towards the needs of his son DP until the child becomes of age; in the event that the child continues in full-time education, the**



**maintenance shall be paid either until the child completes his studies or until the child reaches the age of twenty-three years – whichever happens first.**

- 3) Upholds the third request and orders that the maintenance as per decide number 2 is subjected to a yearly increase in line with the annual cost of living increases;**
- 4) Upholds the fourth request and orders that should the Defendant be in gainful employment or receiving social benefits, the maintenance as per decide number 2 is deducted by Defendant's employer from Defendant's salary or by the competent authority from his social welfare benefits and paid directly to the Plaintiff;**
- 5) Rejects the fifth request since up to the date of this judgment, the decision of the Polish court was operative and binding;**
- 6) Rejects the sixth request and in the best interests of the minor child DP, orders that any access of the child with Defendant be suspended until such time that the child himself, of his own volition, seeks contact with his father;**
- 7) Upholds the seventh request and in line with the order given during the hearing dated 23rd October 2024, grants the Plaintiff the authority to decide alone without the need for the consent, signature or presence of the Defendant father, all matters, ordinary or extraordinary relating to DP's education, health, travel and extracurricular activities including submission of applications for the passport and or identity card of the child and the renewal thereof and the retrieving of such documents.**

**Expenses shall be borne by the Defendant but shall provisionally be paid by Plaintiff.**

**Read in open court.**

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

**Lorraine Dalli  
Deputy Registrar**