

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of the 30th June 2025

Application no.: 58/2023 JPG

Case no.: 31

AJ

Vs

**Advocate Doctor Elaine Gingell
LittleJohn as the special mandatory
in order to represent the absent
GKJ**

**And in virtue of a decree dated 20th
May 2023, GKJ assumed the acts in
his own name.**

The Court:

Having seen the sworn Application filed by AJ dated 20th March 2023, at page 1 et seq. and translation at page 9 et seq. wherein it was held:

- 1. That Plaintiff is a R national and is residing in Malta, whereas Defendant is a*

- F national and is residing – as far as Plaintiff is aware -in D;*
2. *That the parties signed an agreement of a Civil Union dated the 28th of April 2017 at the F Embassy in Malta (**Doc. A**).*
 3. *That during the said Civil Union the parties acquired properties and other goods, both in their joint names as well in the name of one party which property so acquired belongs to the said parties jointly between them by operation of the said agreement and F right;*
 4. *That in the said agreement, the parties agreed that in the event that the parties separate from each other, the Defendant pays to the Plaintiff monthly maintenance of three thousand Euro (€3,000);*
 5. *That the parties then married on the 24th of July 2021 in Malta (**Doc.B**) and prior to the parties' marriage, the parties entered into, on the insistence and pressure of the Defendant, a marriage contract published in the records of Notary Clinton Bellizzi, on the 12th of July 2021(Doc. C);*
 6. *That from this marriage and from their relationship, the parties have no children;*
 7. *That following the parties' marriage in Malta, they went to live in D;*
 8. *That on December of the year 2021, the parties' marriage broke down completely because of Defendant's bad behaviour, adultery, excesses and grave offences of the Defendant against the Plaintiff, his wife. This led to the Plaintiff being constrained to leave the home where the parties were residing in D.*
 9. *That the Plaintiff subsequently returned to Malta and continued to live in the parties' commonly rented apartment, in Sliema. That after one year – and therefore after the first mediation sitting – the Defendant initiated a series of attacks against the Plaintiff his wife, that taken together, were considered to be making grave economic pressure on her, such that, amongst other things, he terminated their joint lease of the apartment in Sliema, and as a result Plaintiff is currently living in another apartment rented by her only in Marsascala;*
 10. *That because parties' marriage has irretrievably broken down, the Plaintiff was constrained to start mediation proceedings for separation against Defendant her husband with the intention that the parties come to an amicable agreement. That no agreement was possible due to the fact that Defendant refused to cooperate in reaching such amicable agreement, and because of his behaviour as described in the proceeding paragraph;*
 11. *That according to the said Advocate Dr. Elaine Gingell Littlejohn, the Defendant*

has appointed her as his special mandatory;

12. That the Plaintiff knows of these facts personally;

13. That the parties have been duly authorised to file a lawsuit for separation by decree in this sense delivered by this Honourable Court on 20th January 2023 (Doc. D).

For these reasons, the Plaintiff humbly prays that this Honourable Court, for the reasons set out above, to:

- i. Declare and pronounce the personal separation between the parties for the reasons attributable to the Defendant and, for the purpose of Article 48(c) of the Civil Code (Chap.16), establishes the date when the said Defendant is to be considered that he is guilty of the separation, adultery, excesses, cruelty, threats and grave injuries and/or other reasons which will cause the application of the dispositions of Article 48 of the Civil Code (Chap.16);*
- ii. Authorises the Plaintiff to live separately from the Defendant her husband;*
- iii. Following, if such be necessary, a declaration that stated and agreed by the parties in the marriage contract dated the 12th July 2021, and published in the records of Notary Dr. Clinton Bellizzi, regarding the maintenance payable to the Plaintiff binds the parties, even though the Plaintiff pretends a superior payment of maintenance or otherwise the Defendant pretends payment in a lesser sum and condemns the Defendant to pay the Plaintiff maintenance payable by the Defendant for the needs of the Plaintiff, in the amount of three thousand Euro (€3,000) per month as agreed between the parties in clause number 10 of the said agreement dated the 12th July 2021;*
- iv. In the event that, for whatever reason, the preceeding demand is not upheld, orders the Defendant to pay the Plaintiff that appropriate and adequate amount of maintenance to be fixed by the said Court, according to the means of the Defendant and the needs of the Plaintiff, payable by the Defendant to the said Plaintiff, weekly or monthly as ordered by this Court, or if it deems appropriate to the said Court, orders the Defendant to pay the Plaintiff in lieu of all or part of that maintenance, a lump sum which, in the opinion of the said Court, it will be sufficient for the Plaintiff to be financially independent or less dependent on the Defendant;*
- v. Applies against the Defendant in whole or in part, as may be deemed*

- appropriate to this Honourable Court after having regard to the conduct of the Defendant, the dispositions of article 48 of the Civil Code (Chap 16);*
- vi. *Orders the Defendant to consign to the Plaintiff all her paraphernal property, that is those acquired by the Plaintiff before the Civil Union was contracted, or those acquired by her following the marriage of the parties, and for these reasons, orders that the Plaintiff has the administration of her paraphernal property;*
 - vii. *Liquidates Plaintiff's paraphernal claims, as explained in the previous demand, and qualifies same as the Plaintiff's claims against the Defendant, being his paraphernal estate, which claims and the corresponding debts are to be included in the scheme of division of common assets and debts being requested;*
 - viii. *Following that if such be necessary, declares that the Civil Union agreement dated the 28th April 2017 signed in the F Embassy in Malta, had led to the property and debts acquired by the parties, or either of one them, during the period of time that this Union was in force, appertained or burdened the parties jointly, dissolves this community and any other community of property of debts existing between the parties, also that debt and property acquired and contracted by the parties together, or by either one of them, during the period when the Civil Union was in force between them;*
 - ix. *Declares dissolved any community of property existent between the parties, order that all the common property of the parties be accumulated, as well as those common credits of the parties against the Defendant's estate, and orders that the said property and common debts, accumulated as provided in this demand, or otherwise as ordered by this Court, be divided in two portions composed as ordered and established by this Honourable Court, which portions are to be assigned one to the Defendant and the other to the Plaintiff;*
 - x. *Authorises the Plaintiff to register, that is to enter, in the Public Registry the judgment eventually delivered by this Court;*

With cost, including those suffered by the Plaintiff in the mediation proceedings, against the Defendant who is summoned for reference to his oath.

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

Having seen the sworn reply filed by GKJ dated 9th May 2023, at page 34 et seq. and translation at page 44 et seq. wherein it was held:

1. *That by way of a preliminary plea this Honourable Court lacks jurisdiction to hear and determine in relation to the civil union agreement dated twenty-eight (28th) April of the year two thousand and seventeen (2017), inter alia, the eight and ninth claim of the Plaintiff, since the said civil union agreement, constitutes a civil union deed drawn up in F jurisdiction and regulated in terms of F Law, as per specific reference to articles 515-1 to 515-7 of the civil code, the latter evidently being the F one, and additionally the said union was registered in F.*
2. *That without prejudice to the first plea, and also by of a further preliminary plea, the contract of civil union signed between the parties on the twenty-eight (28th) of April of the year two thousand and seventeen (2017) is null and void, and can have no effect, since although the parties declared fixing their communal residence in Malta, they failed to make any form of declaration at the registry of the Family Court in Malta, as was required in terms of article four (4) of the said civil union agreement. Consequently, also in terms of the said article, the civil union could have no binding effect between the parties.*
3. *That strictly without prejudice to the former pleas, and also by way of a further preliminary plea, the afore-mentioned contract of civil union is, in any case, null and void under Maltese law, on the basis of lack of form, since the contract of civil union was not done by way of a public deed, which is an essential requirement in terms of clause three (3) of the Cohabitation Act, Chapter 614 of the Laws of Malta.*
4. *That, by of preliminary plea, even in the unlikely event that this Honourable Court deems the civil union agreement signed on the twenty-eight (28th) April of the year two thousand and seventeen (2017), as being binding and valid under Maltese law, it would still nonetheless be deemed to be terminated in terms of Article 25(1) of the Cohabitation Act, Chapter 614 of the Laws of Malta, as a result of the marriage contracted between the parties on the twenty-fourth (24th) of July of the year two thousand and twenty one (2021).*
5. *That, strictly without prejudice to the above, and also by way of a preliminary plea, even if this Honourable Court, had to declare that it has jurisdiction to determine and consider the claims the claims made by the Plaintiff in relation to the F civil union agreement signed between the parties, the said agreement would still have no effect since, without prejudice to the previous pleas raised, the parties clearly declared in their pre-nuptial deed of the twelfth (12th) July of the year two thousand and twenty-one (2021) that they*

*have not entered into any other agreement to regulate their matrimonial regime, in terms of third premise of the said deed, and furthermore the parties specifically declared that all property acquired in the name of either spouse shall be paraphernal property of the respective spouse **whether acquired before** or after entering the marriage, as per clause one (1) of the said deed, which superseded the civil union agreement signed between the parties.*

- 6. That strictly without prejudice to the afore- mentioned pleas, and by way of preliminary plea, this Honourable Court lacks the competence to hear and determine the eighth (8th) and ninth (9th) claim in relation to the civil union agreement of the 28th April 2017, since the current judicial proceedings initiated by the Plaintiff, relate to a personal separation between the parties and thus may only regulate the rights and liabilities resulting from the marriage contracted between the parties. Consequently, this Honourable Court is not the proper forum to address matters which may possibly have regulated a state of cohabitation, which, in any case, was superseded by marriage. It thus follows that all claims in relation to this agreement, being the eighth (8th) and ninth (9th) claim are to be rejected in their entirety. Evidently, the intention of the Plaintiff is to use this Honourable Court as a one stop shop, when the competence of this Honourable Court, in the present case, is evidently limited exclusively to matrimonial issues.*
- 7. That, with regards to the merit of the case, the Defendant respectfully submits that the Plaintiff's claims are completely unfounded in fact and at law and are to be rejected in their entirety, with costs against the Plaintiff.*
- 8. That as regards the first claim, the Defendant agrees that this Honourable Court should declare and pronounce the personal separation between the parties, but this not for the reasons stated by the Plaintiff, but for reasons attributable to the said Plaintiff, who is solely and exclusively responsible for the breakdown of the marriage, having rendered herself guilty of adultery, excesses, cruelty, threats and grievous injuries against the Defendant, such that consequently the dispositions of article 48 of the Civil Code should not be applied against the Defendant but against the Plaintiff.*
- 9. That there is no objection to the second claim, which authorisation should also apply to the Defendant, to live separately from his wife, the Plaintiff.*
- 10. That the third claim ought to be rejected, since the Plaintiff has forfeited her right to claim and/or receive maintenance, as a consequence of her adultery, resulting in the breakdown of the marriage, which adultery occurred merely a few months following the celebration of the marriage.*
- 11. That the Defendant opposes the fourth claim, which is completely unfounded in fact and*

at law, since the Plaintiff has forfeited her right to maintenance, and additionally she is financially independent, over and above being young, in employment, as stated also in the pre-nuptial deed signed between the Parties in Malta on the twelfth (12) day of July of the year two thousand and twenty -one (2021) and, in any case, is fully capable of working.

- 12. That the Defendant opposes the fifth claim since there exist no circumstances at law to justify such request, and moreover such sanctions should be applied against the Plaintiff, who is solely responsible for the breakdown of the marriage.*
- 13. That the sixth claim is unfounded, in fact and at law, and should be rejected since the Defendant has no paraphernal property belonging to the Plaintiff, which are all in her possession and there are no paraphernal assets belonging to the Plaintiff which need to be liquidated or be assigned to her. Consequently, the Plaintiff's claim to be accorded the full administration of her paraphernal property was done gratuitously and should not be upheld since such effects have always been under the Plaintiff's administration.*
- 14. That the seventh claim ought to be rejected since the Plaintiff has no paraphernal claims against the Defendant.*
- 15. That the eighth and ninth claim ought to be rejected, in their entirety, on the ground raised in the Defendant's preliminary pleas.*
- 16. That the ninth claim is not contested limitedly to the division and liquidation of the common property of the parties, if applicable, and that each party takes, possession of any paraphernal property, provided this shall be construed within the context of the regime of separation of estates endorsed by the parties in terms of the public deed signed between the parties on the 24th July of the year 2021, in the acts of Notary Clinton Bellizzi.*
- 17. That an agreement could not be reached because of the Plaintiff's intransigence.*
- 18. That Defendant reserves the right to make further pleas.*
- 19. With costs against the Plaintiff.*

Having seen the sworn counter-claim filed by GKJ dated 9th May 2023, at page 49 et seq. wherein it was held:

- 1. That the parties got married at the Public Registry, in Valletta, Malta, on the twenty-fourth (24th) day of July of the year two thousand and twenty-one (2021), as per marriage certificate attached herewith and marked as **Doc. 'A'**.*

2. *That by virtue of a pre-nuptial deed dated the twelfth (12th) of July of the year two thousand and twenty-one (2021), in the acts of Notary Clinton Bellizzi, the parties excluded the regime of Community of Acquests and, by agreement between them, and in accordance with their wishes, they established that their matrimonial relationship would be governed by the Separation of Estates.*
3. *That, as a matter of fact, the only asset the parties own together is a company registered in HK, as also confirmed in article nine (9) of their pre-nuptial deed.*
4. *That no children were born from the said marriage.*
5. *That just a few months after the celebration of their marriage, namely in December of the year two thousand and twenty-one (2021), matrimonial life became no longer possible and the marriage between the parties broke down, on account of adultery, excesses, cruelty, threats, and grievous injuries on the part of the reconvened Plaintiff, as will be shown throughout the hearing of the case.*
6. *That at the same time, the reconvened Plaintiff also left the matrimonial home, while she persisted with her abusive behaviour towards the reconvened Plaintiff who, throughout the marriage, as well as throughout the relationship between the parties, was extremely supportive towards the reconvened Plaintiff, both from an emotional, psychological and financial point of view.*
7. *That the reconvened Plaintiff abused of the Defendant's generosity, and notwithstanding her adultery, she insisted that the parties remain together, so the reconvened Plaintiff would obtain her permanent residence in Malta as well as her European passport from R, and as he did on so many other matters, throughout the marriage, the Defendant, accommodated her request, as shall be duly explained.*
8. *That however, as soon as the reconvened Plaintiff obtained her residency and her European passport, she proceeded with a personal separation and with several false accusations against the Defendant, portraying her true character, and confirming her intention that she only married the Defendant for financial gain and status, as well as her residency and passport.*
9. *That even throughout the mediation the reconvened Plaintiff failed to cooperate from the start, and it was impossible for the parties to reach an amicable settlement, in view of the Plaintiff's intransigence.*
10. *That the parties were authorised to proceed with a personal separation in terms of a decree granted by this Honourable Court and dated the twentieth (20th) day of January of the year two thousand and twenty-three (2023), a copy of which is hereby being attached and marked as 'Doc. B'.*

11. That the facts herein stated are personally known to the Defendant.

For these reasons the Defendant humbly prays this Honourable Court to:

- 1. Declare and pronounce the personal separation between the parties for reasons attributable to the reconvened Plaintiff who rendered herself guilty of adultery, excesses, cruelty, threats and grievous injuries towards the Defendant and, for the purpose of Article 48 (c) of Chapter sixteen (16) of the law of Malta, establish the date on which the reconvened Plaintiff should be considered responsible for the separation between the parties.*
- 2. Authorizes the parties to live separately from each other.*
- 3. Orders and declares that the reconvened Plaintiff has forfeited her right to receive and/or claim maintenance from the Defendant.*
- 4. Apply against the reconvened Plaintiff, in whole or in part, the effects of the provisions of articles 48 and 51 of Chapter 16 of the Laws of Malta, after taking into account the abusive and deplorable behaviour of the reconvened Plaintiff.*
- 5. Order the reconvened Plaintiff to deliver to the Defendant all the Defendant's dotal and paraphernal property and order that the Defendant be accorded the full administration of his paraphernal property.*
- 6. Order the dissolution and liquidation of the common assets of the parties, if applicable, and that each party takes possession of any paraphernal property, provided this shall be construed within the context of the regime of separation of estates endorsed by the parties in terms of the public deed signed between the parties on the 24th of July of the year 2021, in the acts of Notary Clinton Bellizzi.*
- 7. Liquidate the Defendant's paraphernal claims, qualify same as credits of the Defendant against the reconvened Plaintiff and order the reconvened Plaintiff to assign the said credits to the Defendant.*

8. *Declare that the parties have no rights and/or claims of succession in respect of each other's estates and to the reserved portion.*
9. *Prohibit the reconvened Plaintiff from continuing to use the Defendant's surname, upon the pronouncement of the parties' separation, and order the reconvened Plaintiff to revert to her maiden surname, namely 'S'.*
10. *Order the relative annotation of the judgment eventually delivered by this Honourable Court in the public registry.*

With costs against the reconvened Plaintiff, including those incurred in mediation proceedings, who is summoned for reference to her oath.

Having seen the sworn reply filed by AJ to the counter-claim dated 19th June 2023, at page 63 et seq. wherein it was held:

Pleas:

1. *That primarily the action , that is the counter-claim, submitted by the reconvened Defendant is null and inadmissible since it is being made without the authorization required according to Law since the period of two months allowed by Law for the lawsuit to be filed has lapsed and closed.*
2. *That without prejudice to that previously stated, with regards to the Defendant's pleas in her counterclaim the following is stated:*
 - a. *That with regards to the **first demand**, the Plaintiff agrees that the personal separation should be declared, however the Plaintiff is opposing the grounds stated by Defendant, such that it was the Defendant himself who gave rise to the breakdown of the marriage of the parties as stated in Plaintiff's sworn application, and it is absolutely not true that the Plaintiff ever gave rise to the personal separation, as shall result during the hearing of the lawsuit.*
 - b. *That the **second demand** is not opposed;*

- c. That the **third demand** is opposed since the Plaintiff has not with her behaviour forfeited her right to receive and/or claim maintenance from the Defendant and this since as has been stated – and as shall be proven during the hearing of the suit - the Plaintiff never in any way gave rise to the separation of the parties.
- d. That the **fourth demand** is also opposed since Plaintiff never in any way gave rise to the separation of the parties. Plaintiff will repeat that it was Defendant's behaviour which led to the breakdown of the parties' marriage, and therefore the dispositions quoted by Defendant, should be applied against him.
- e. That the **fifth demand** is opposed only because the Plaintiff does not hold any dotal and paraphernal property owned by the Defendant, rather it is Defendant who holds movables belonging to the Plaintiff and has refused to return them to her. The Plaintiff clarifies that she agrees with Defendant that the Court of Malta do indeed possess jurisdiction over paraphernal property.
- f. That the **sixth demand** is not opposed in so far as it relates to the dissolution and liquidation of common assets of the parties, and that such demand should be processed in accordance with the law, as is demanded by Plaintiff in her sworn application. Provided further that this should be done within the context of the Civil Union Agreement dated the 28th April 2017, and not merely within the "context of the regime of separation of estates" signed on the 24th of July, 2021.
- g. The **seventh demand** is opposed only because the Defendant does not hold any paraphernal claims. The Plaintiff clarifies that she agrees with Defendant that the Court of Malta do indeed possess jurisdiction over paraphernal property.
- h. That the **eighth demand** is not opposed in so far as it concerns the rights and claims of succession of Defendant over the estate of the Plaintiff. The demand is opposed in so far as the declaration is sought that dispositions of the law be applied against Plaintiff, since as stated Plaintiff has not given rise to the application against her of the sanctions contemplated in Articles 48 and 51 of Chapter 16 of the laws of Malta.

- i. That the **ninth demand** is opposed since no grave prejudice will be caused to the reconvened Defendant by the continued use of the surname by the Plaintiff.
- j. The **tenth demand** is not opposed.
- k. That the demand regarding the **judicial expenses** is opposed since it is the Defendant who is guilty of separation, and it is the behaviour of the same Defendant which led to these proceedings being filed and thus all judicial expenses are to be borne by him.

Plaintiff's Declaration of Facts:

Respectfully submits and solemnly declares:-

1. That Plaintiff is a R national and is residing in Malta, whereas Defendant is a F national.
2. That the parties signed an agreement of a Civil Union dated the 28th of April 2017 at the F Embassy in Malta. That during the said Civil Union the parties acquired properties and other goods, both in their joint names as well in the name of one party which property so acquired belongs to the said parties jointly between them by operation of the said agreement and F right.
3. That the parties married on the 24th of July 2021 in Malta and prior to the parties' marriage, the parties entered into, on the insistence and pressure of the Defendant, a marriage contract published in the records of Notary Clinton Bellizzi, on the 12th of July 2021. in the said agreement, the parties agreed that in the event that the parties separate from each other, the Defendant pays to the Plaintiff monthly maintenance of three thousand Euro (€3,000);
4. That from this marriage and from their relationship, the parties have no children;
5. That following the parties' marriage in Malta, they went to live in D;
6. That on December of the year 2021, the parties' marriage broke down completely because of Defendant's bad behaviour, adultery, excesses and grave offences of the Defendant against the Plaintiff, his wife. This led to the Plaintiff being constrained to leave the home where the parties were residing in D.

7. *That the Plaintiff subsequently returned to Malta and continued to live in the parties' commonly rented apartment, in Sliema. That after one year – and therefore after the first mediation sitting – the Defendant initiated a series of attacks against the Plaintiff his wife, that taken together, were considered to be making grave economic pressure on her, such that, amongst other things, he terminated their joint lease of the apartment in Sliema, and as a result Plaintiff is currently living in another apartment rented by her only in Marsascala;*
8. *That because parties' marriage has irretrievably broken down, the Plaintiff was constrained to start mediation proceedings for separation against Defendant her husband with the intention that the parties come to an amicable agreement. That no agreement was possible due to the fact that Defendant refused to cooperate in reaching such amicable agreement, and because of his behaviour as described in the preceding paragraphs;*
9. *That in his counter claim Defendant has resorted to false accusations, and lies, not only by blaming the Plaintiff for the breakdown of the marriage, but also in alleging that she "abused of his generosity" and used him to obtain her permanent residence in Malta and a European Passport in R. The Plaintiff will re-iterate that **none of what was alleged by Defendant is true**, as shall be proven during the hearing of this suit*

Having heard the evidence on oath;

Having seen the exhibited documents and all the case acts;

Considers:

Briefly and succinctly the facts of the case as adduced by the parties relevant to the preliminary pleas, are as follows:

- Plaintiff is a R national residing in Malta. Defendant is a F national residing in D;
- The parties entered into a civil union agreement on the 28th April 2017 at the F Embassy in Malta where they agreed on a regime of joint ownership of all assets acquired whether separately or jointly applicable from the date of registration of the said contract;
- The parties were married in Malta on 24th July 2021;

- Prior to the marriage, the parties entered into a pre-nuptial agreement in Malta in the acts of Notary Dr. Clinton Bellizzi on 12th July 2021;
- No children were born from this marriage;
- After their marriage, the parties moved to D;
- In December 2021, the parties relationship ended, both parties accusing the other of adultery, excesses and grave offences. Defendant remained resident in D, Plaintiff returned to Malta and resided in apartment in Sliema which had been rented jointly by the parties since the 20th March 2017. Defendant unilaterally terminated the rental agreement on 20th December 2022 following the initiation of the separation proceedings by Plaintiff;
- The parties retain Maltese Residency Cards;
- Defendant incorporated a company in Malta YMMIT Services LTD in March 2019 employing Plaintiff as manager;
- Defendant applied for Maltese citizenship in 2020 which was denied in March 2021;
- The parties filed joint tax returns for years of assessment from 2018 to 2023, both years included;
- Both parties specifically indicated their intention to continue residing in Malta in their pre-nuptial agreement dated 2021;

Considers:

This is a partial judgment regarding the preliminary pleas raised by the Defendant to Plaintiff's requests which pleas challenge the jurisdiction of this Court to hear and determine the merits of these proceedings. The Defendant justifies the preliminary plea of lack of jurisdiction with the fact that the parties had signed a co-habitation agreement between them in 2017 in the F Embassy in Malta according to F legislation and thus maintains that any liquidation and division of property that came to be owned by the parties during such time, should be decided by the F Courts according to F Law. The Plaintiff disagrees with the Defendant's position since she claims that the Maltese Courts have jurisdiction to hear and determine all matters relating to the marital breakdown of the parties given that the Plaintiff is habitually resident in Malta whereas the Defendant is resident in a non-EU country, that the parties had intended to live together here in Malta and that the co-habitation agreement signed in 2017 was superseded by the pre-nuptial agreement they had entered into here in Malta just before they contracted marriage in July 2021.

This Court considers that the Defendant maintains that this Court has jurisdiction to hear and decide on the marital breakdown of the parties but lacks jurisdiction with regard to the division and assignment of property owned by the parties during the years of their co-habitation, when the Civil Solidarity Pact (PACS) was binding between them, that is between 2017 and 2021.

This Court does not uphold the latter part of such reasoning. This Court refers to the Brussels IIa Regulation (EC) No 2201/2003 which governs jurisdiction in matters of divorce, legal separation and marriage annulment, particularly in cross-border marriages . Moreover, Council Regulation (EU) 2016/1103 addresses the subject of jurisdiction in matters of matrimonial property regimes. Article 5 of this Regulation¹ states that the Courts that have jurisdiction under Brussels IIa to hear and determine the divorce or separation proceedings, are also accorded jurisdiction over matters regarding matrimonial property regime arising in connection with those proceedings. Thus this EU Regulation promotes what is referred to as “**concentration of jurisdiction**” by having the same Court hearing and determining all matters relating to the breakdown of the marriage of any two spouses. It is understood that this **concentration of jurisdiction** leads to efficiency in legal proceedings and avoids conflicting judgments.

In the legal publication *The EU Regulations on the Property Regimes of International Couples*, **Ilaria Viarengo** makes the following observation in relation to article 5 of Council Regulation (EU) 2016/1103:

“The quest for coordination plays an essential role in the jurisdictional rules of the Property Regimes Regulations. Both Regulations aim at concentrating litigation before the Courts of one State. Jurisdictional rules are, in principle, inspired by the aim to enable citizens to have the various related procedures handled by the Courts of the same Member State. As with Article 4, Article 5 provides, in principle, that where a Court of a Member State is seised to rule on a dissolution or annulment of either a marriage or a registered partnership the Courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising

¹ Article 5 Jurisdiction in cases of divorce, legal separation or marriage annulment

1. Without prejudice to paragraph 2, where a Court of a Member State is seised to rule on an application for divorce, legal separation or marriage annulment pursuant to Regulation (EC) No 2201/2003, the Courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that application.

in connection with that case of dissolution or annulment.²”

Thus, it is clear that the Defendant may not pick and choose the particular areas over which this Court has jurisdiction, objecting to the hearing and determination of disputes regarding property acquired during a specific period of time under the PACS agreement, but accepting this Court’s jurisdiction over the remaining disputes including the matrimonial breakdown. Since jurisdiction has to be determined as a whole, this Court will now examine whether it has jurisdiction to continue with the hearing of the proceedings **in their entirety**:

To substantiate his objection to the jurisdiction of this Court, the Defendant brought forward two different and somewhat contradictory arguments. Firstly, the Defendant objected to this Court having jurisdiction since the Defendant is not habitually resident in Malta but in D, and that D was the last state in which the parties resided in jointly. The second argument is that the Agreement that the parties entered into between themselves in 2017 is subject to F law and thus disputes arising from such Agreement should be settled by a F Court according to F Law.

The Court will examine these two grounds separately. In his note of submissions, the Defendant examines the grounds provided in article 6 of Regulation 2016/1104 and argues that these grounds are not applicable since the Plaintiff was not in Malta but in D when the initial letter to institute mediation proceedings was filed. Moreover, the parties were also not living together but in different countries so there was no element of a common habitual residence. Defendant maintains that the last habitual residence that the parties shared was in fact in D.

Defendant pursuant to this line of reasoning, holds that the choice of jurisdiction would be either Malta where Plaintiff is habitually resident or D, where the Defendant is habitually resident. If these were the choices of possible jurisdictions to determine the matrimonial breakdown of the parties, then it would follow that Council Regulation (EU) 2016/1104 is not applicable since this Regulation apply between Member States of the EU and more specifically, to countries that are signatories and have ratified it. Defendant argues that this Council Regulation does not apply because D is not an EU member state and currently there is no specific International Treaty between the EU and the E governing jurisdiction in matters related to registered partnerships or matrimonial regimes. Where EU Regulation is not applicable, the Court must necessarily

² Viarengo et al. *The EU Regulations on the Property Regimes of International Couples: A Commentary*; Edward Elgar Publishing, 2020

determine the matter of jurisdiction according to the Private International Law of that State.

Jurisdiction under Maltese legislation is regulated by article 742 of Chapter 12 of the Laws of Malta which states as follows:

742. (1) Save as otherwise expressly provided by law, the civil Courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned:

(a) citizens of Malta, provided they have not fixed their domicile elsewhere;

(b) any person as long as he is either domiciled or resident or present in Malta;

(c) any person, in matters relating to property situate or existing in Malta;

(d) any person who has contracted any obligation in Malta, but only in regard to actions touching such obligation and provided such person is present in Malta;

(e) any person who, having contracted an obligation in some other country, has nevertheless agreed to carry out such obligation in Malta, or who has contracted any obligation which must necessarily be carried into effect in Malta, provided in either case such person is present in Malta;

(f) any person, in regard to any obligation contracted in favour of a citizen or resident of Malta or of a body having a distinct legal personality or association of persons incorporated or operating in Malta, if the judgment can be enforced in Malta;

(g) any person who expressly or tacitly, voluntarily submits or has agreed to submit to the jurisdiction of the Court.

From an examination of the above article at law, this Court concludes that the Plaintiff was correct in filing proceedings in Malta since she is resident in Malta and from the facts adduced and substantiated by the evidence brought forward before this Court, the intention of the parties was in fact to be domiciled in Malta. The requisites of domicile or residence or presence are alternate and thus the fact that the Plaintiff was not physically present in Malta when the letter of mediation was filed in the Court Registry is irrelevant. Physical presence for the validity of an act is required when the act needs to be sworn in.

It is this Court's considered opinion that Article 742 (g) Chapter 12 of the Laws of Malta is

applicable to this case. Indeed, the parties entered into a prenuptial agreement here in Malta on 12th July 2021 in the acts of Notary Clinton Bellizzi (fol. 25). This prenuptial agreement specifically states the following:

“The parties premise and declare that:

[...]

*They have **not** entered into any other agreement to regulate their matrimonial regime, also in terms of Regulation of the Council of Europe one thousand one hundred and three and one thousand one hundred and four of the year two thousand and sixteen (EU 2016/1103 and EU 2016/1104.”*

(emphasise of this Court)

Thus the parties themselves renounced the Agreement that they had concluded in 2017 and entered into the prenuptial agreement with the specific intention that it would be this prenuptial agreement of 2021 that would regulate their marriage and patrimony during the marriage and in case of matrimonial breakdown. The Defendant may not unilaterally countermand what he expressly agreed to in such prenuptial agreement and argue that the previous co-habitation agreement of 2017 is applicable. **On the question of jurisdiction, the parties specifically agreed the following in clause 12 of the same prenuptial agreement:**

“12. The Parties agree that their matrimonial domicile shall be Malta and the marriage and all ancillary matrimonial matters shall be governed by the Laws of Malta and shall be subject to the exclusive jurisdiction of the Maltese Courts of Law, unless otherwise agreed between the parties.”

Thus this Court is convinced that the prenuptial agreement between the parties **superseded** any previous agreement concluded between the parties including the PACS which the parties did not even acknowledge in the prenuptial agreement and therefore tacitly renounced it. Secondly, the parties' intention was in fact to be domiciled and resident in Malta. Apart from the indisputable clause 12 in the Prenuptial Agreement, this Court also makes reference to the fact that both parties have valid Maltese Residency Cards, Defendant's expiring in April 2027 (fol. 147). Indeed, Defendant applied for Maltese citizenship, both parties filed tax returns in Malta since 2018 and held onto their rented property in Malta even when the parties were residing in D . It is clear that the intention of the parties was to apply for Maltese citizenship and continue to reside in Malta ,

operating the company incorporated by the Defendant (in which Plaintiff occupied managerial status) in Malta and paying taxes in Malta. The plans of the Defendant changed when (i) his application for Maltese citizenship was rejected and (ii) the Plaintiff returned to Malta and filed separation proceedings.

Thus from the above considerations, this Court holds that sub-articles (b) and (g) of article 742 of Chapter 12 of the Laws of Malta apply to the proceedings in question and thus these grant jurisdiction to this Court to proceed with the hearing of the case and to determine all matters relevant to the marriage of the parties and ancillary matters there to.

Indeed the submission to the jurisdiction of the Maltese Courts as per Article 12 of the pre-nuptial agreement of 2021 also grounds jurisdiction as per Article 22 of EC Regulation 2201/2003 .

The second argument brought forward by the Defendant in his note of submissions i.e. that the parties had entered into a Civil Solidarity Pact in April 2017 which they signed in the F Embassy of Malta, in terms of F law, registered in F and thus, as a consequence thereof, F Courts have jurisdiction to hear and determine disputes arising between the parties in relation to any property acquired during the time that this Agreement was operative i.e. between 28th April 2017 and 12th July 2021.

The Court notes that in the 2017 co-habitation Agreement there is no specific clause determining the jurisdiction of the Courts in case of future disputes. The Defendant makes reference to the provisions of the F Civil Code cited in the Agreement. The Court holds that these provisions were in fact cited as the legal basis for the conclusion of such Agreement. Thus these provisions refer to the applicable law of the Agreement. Applicable law refers to the set of legal rules that the Court must apply to resolve the dispute between the parties whereas jurisdiction refers to the Court of a specific country which has the authority to hear and decide the case. The Defendant refers to the Applicable law of the 2017 agreement i.e. the F Civil Code, but this does not automatically confer jurisdiction to the F Courts. It implies that the competent Court vested with jurisdiction to hear the dispute, shall apply F law to determine that dispute. Indeed, this Court makes reference to Article 4 of the same 2017 PACS which states as follows:

“The partners undertake to make a joint declaration at the registry of the district Court in whose jurisdiction they have fixed their communal

residence”.

In the initial part of the same PACS, the parties declared that their communal residence at the time was: **“37 – Flat 5 – Tigne Seafront – SLIEMA (Malta)”**.

Thus, the only reference in the PACS agreement to the question of jurisdiction, tacitly implies that the parties agreed this to be the Maltese Courts.

This Court, whilst reiterating its position that the PACS Agreement was superseded by the Prenuptial Agreement signed in 2021, holds that everything points towards the Maltese Courts as being the Court-of-choice of the parties as well as the most legally suited to hear and determine the parties’ disputes.

For these reasons, the Court rejects the preliminary pleas of the Defendant as above stated and orders the continuation of the hearing of the proceedings with the Plaintiff adducing evidence on the merits.

Costs are reserved for final judgement.

Read.

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

Lorraine Dalli

Deputy Registrar