



**QORTI CIVILI
(SEZZJONI TAL-FAMILJA)**

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tat-28 ta' Jannar, 2009

Citazzjoni Numru. 40/2008

The Court,

Having seen the sworn application by virtue of which plaintiff premised: that on the 7th May 2005 he married defendant C D, but no children were born of this marriage; that the couple separated de facto in August 2005, and never cohabited again ever since; that on the 23rd April 2007 the K parties signed a contract of personal separation; that on the 1st August 2007 E F was born of K defendant from an extra matrimonial relationship with defendant G H I J K; that this child was registered in the Act of Birth with the surname 'B' in view of the fact that her marriage with plaintiff was still valid; on the strength of the above, requests: [1] that the child E F B be declared that she is not the natural child of plaintiff; [2] that the Director of Public Registry inserts in the relative birth certificate number 4128/2007 the relative corrections and alterations; and [3] that defendant G H I J K be declared the natural father of the child;

Having seen the sworn reply filed by defendants C D and G H I J K, by virtue of which they agreed with plaintiff's requests, and that the necessary corrections be made in the Act of Birth, inserting the K I J K, as the father of the child instead of the plaintiff, together with the relative particulars;

Having seen the sworn reply filed by the deputy curators, at fols.25 and 26 of the records; and that of the Director of Public Registry as fols.33 to 35

Having seen the scientific reports¹ [DNA] presented by Analyst and Pharmacist Marisa Cassar, together with her affidavits;

Having seen the notice published in the Government Gazette in terms of article 254 of Chapter 16 of the Laws of Malta;

Having considered:

The Action

That by virtue of the present proceedings plaintiff is requesting this court to declare that he is not the biological father of the child E F B born of defendant C D. On her part the latter together with defendant I J, whilst accepting as true plaintiff's request, declares that I J is the natural father of the child.

Facts

That from the evidence adduced, it results that plaintiff and defendant C D were married on the 7th May 2005, and that a few months after, the partes separated de facto, and on the 23rd April 2007 they separated legally. On the 11th April 2008 the marriage was declared null by this court.

In the meantime, during September 2006, defendant D had entered into a relationship with defendant I J, and from this relationship E F was born on the 1st. August 2007.

¹ Fols.44 - 48

In her affidavit defendant C D declares that since the 13th October 2005 she did not have any intimate relations with plaintiff, and that from the time she started her relationship with I J in September 2006 onwards she had intimate relations with the latter only.

That the scientific reports confirm the version of facts as stated by the parties, and scientifically confirm that plaintiff is not the father of the child, and that her natural father is in fact defendant I Tanauli.

In view of the above, the Court is of the opinion that plaintiff requests are justified in fact and in law.

Decision

On the strength of the above, accedes to plaintiff's requests; and declares that the minor child E F is not the biological child of plaintiff, but is the biological child of defendant G H I J K; and orders the necessary corrections to be made in the child's Act of Birth [number 4128/2007], substituting the name 'A B' and the plaintiff's particulars with the name 'G H I J K' and his particulars, as well as to cancel the words "wife of the K A B"

All costs are to be borne by defendants C D and I J, in equal shares.

< Sentenza Finali >

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