



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

**ONOR. IMHALLEF  
NOEL CUSCHIERI**

Seduta tas-26 ta' Jannar, 2012

Citazzjoni Numru. 345/2004

Number on list: 36

**A B  
vs  
C D**

**The Court,**

Having seen the writ of sommons by virtue of which plaintiff premised and requested: that plaintiff has obtained a warrant of impediment of departure in respect of the child E F G born on the 27<sup>th</sup> May 2002 with a view to impeding defendant from removing the child from these Islands; that the child has a Maltese passport wherein he is registered as E F G B, whilst in defendant's Ukranian passport the child is indicated as E F G D; that defendant, a Ukranian citizen, has threatened to leave these Islands together with the minor child, without

plaintiff's consent; on the strength of the above, plaintiff is requesting this Court to:

[1] order that the child be not removed from these Islands without the Court's authorization; [2] order defendant to deposit in the registry of this Court, or with any other competent authority nominated by this Court, the child's Maltese passport; [3] order that the child's name be not included in defendant's passport; [4] order that no Maltese passport be issued in the name of the child; [5] order that the Director of Passports strikes off the name of the child from defendant's passport.

Having seen the statement of pleas by virtue of which defendant, in substance, submitted: that the acts are null, since the Director of Passports is not a party to the suit; that this Court has no jurisdiction to alter defendant's Ukrainian passport; that the Director of Passports is empowered by law to issue a Maltese passport in respect of the child who is a Maltese citizen;

Having seen the legal referee's report, and the social workers' reports;

Having seen all the acts of the case, including the affidavits and note of submissions presented, as well as the sworn delcarations of the parties, and the list of witnesses;

Having heard the evidence on oath;

Having heard the minor child in chambers on the 11<sup>th</sup> January 2012;

Having considered;

### **The Action**

That by virtue of these proceedings plaintiff [Father], a Maltese national, is requesting this Court to issue an order prohibiting defendant [Mother], a Ukrainian national, from taking the minor child E F G out of these Islands, and to issue the necessary and consequential orders to the

Director of Passports with a view to ascertaining the observance of the Court's decision.

### **The Facts**

That from a relationship between the parties, the child E F G was born on the 27<sup>th</sup> May 2002, and was initially registered as being of unknown father. Subsequently, after DNA tests have been carried out, the Father recognised the child as his son, and a contract was signed between the parties, granting care and custody of the child to the Mother with free and unlimited access to the Father. Agreement was also reached on the payment of a monthly maintenance allowance by the Father to the Mother for the needs of the child.

Unfortunately, the relationship between the parties turned sour when the Father refused to marry the Mother; and, as a result of this, on the 20<sup>th</sup> January 2003, the latter left for the Ukraine with her three sons, including the parties' common child, attributing abusive behaviour of the Father in her regard, and his refusal to marry her, as her main reasons for leaving these Islands.

On the 9<sup>th</sup> February 2003 the Mother returned to Malta with the child, after repeated promises by the Father that he would marry her. The Mother states, that, when she returned to Malta, and was initially staying with the Father in his parents' house, the latter went back on his promise, and also resumed his abusive behaviour towards her.

Eventually, following a letter sent by the Mother to a relative of the Father wherein she, *inter alia*, threatened to leave with the child for the Ukraine for good, if the Father persisted in his refusal to marry her, since in Malta she, as a single Mother, was being humiliated and treated as a foreigner, and life here was difficult for her, the Father obtained a warrant of impediment of departure on the 12<sup>th</sup> October 2004 impeding the Mother from leaving the Island with the child.

That during these proceedings this Court, on the 7<sup>th</sup> April 2005 granted provisional care and custody of the minor to

the Father with regulated visitation rights to the Mother.<sup>1</sup> This decree was later confirmed in a detailed decision<sup>2</sup> given by this Court on the 22<sup>nd</sup> August 2005. In this latter decision, the Court observed, *inter alia*, after having heard all the evidence relating to the care and custody issue, that “*it is in the best interests of the child, that care and custody be granted to the Father, whilst access be given to the Mother.*”<sup>3</sup> and observed further that “*this Court is convinced that the home environment provided by the Father in his parents’ home are more likely to give more stability – social, emotional and even moral – to the child than the environment provided at present by the Mother.*”<sup>4</sup>

### **The Court’s Considerations**

In her note of submissions the Mother raised the following issues, basically: [1] that the child has a Ukranian passport, and this Court has no jurisdiction over this passport; [2] that the rights of the Mother to the choice of place of access is being violated by not allowing her to take the child to the Ukraine to meet his relatives and stay there for a period of two or three weeks during the summer holidays; [3] that the rights of the minor to relate with his maternal grandparents and his relatives from his mother’s side are also being violated; [4] that the Mother is not requesting a relocation order, but a temporary order to enable her to take the child from these Islands for a short period.

The Court observes that unfortunately the parties involved have suffered a lot, and are still suffering, mainly due to their abusive behaviour towards each other resulting from the issue of custody and access. Also, in the midst of this tug-of-war between the parents, the most vulnerable is the child whose interests this Court is bound to safeguard and protect, and which must prevail over those of his parents. In short, in deciding this case this Court gave priority to the child’s interests, after having taken into account his wishes considering that today he is almost ten [10] years

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<sup>1</sup> As per Mr.Justice Joseph Azzopardi – fol. 122

<sup>2</sup> As per Chief Justice Vincent Degaetano – fol.163

<sup>3</sup> Free translation

<sup>4</sup> Ibid.

old, and therefore capable of expressing his wishes clearly.

Article 149 of the Civil Code states that *“Notwithstanding any other provision of this Code, the Court may, upon good being shown, give such directions as regards the person or the property of a minor as it may deem appropriate in the best interests of the child.”*

In the case at issue, the Court, after having examined the acts of the case, and after having spoken to the child, is of the opinion that, *rebus sic stantibus*, it would not be in the interest of the child to authorize that he be taken out of these Islands by the Mother. It appears that at present the child is in a stable environment, and given the psychological ordeal he had to endure due to the constant bickering between his parents on the custody and access issue, this Court considers that, at this stage, an order authorizing the Mother to leave these Islands with his Mother alone, would be a cause of further anxiety for the child, and harmful to him. This consideration must prevail over the rights of the Mother in this regard. Also, since prime consideration is being given to the interests of the child it cannot be validly argue that the child's rights freedom of movement is being trampled upon by acceding to the Father's request.

That, regarding defendant's preliminary plea that the writ of summons is null as the Director of Passport has not been sued as defendant, the Court observes that this manifestly is not a valid legal basis for her plea. On the contrary, defendant's plea that this Court has no jurisdiction to alter defendant's Ukrainian passport, is valid.

That given the nature and the circumstances of the case, and that the conduct of both parties, in certain respects, has been reciprocally abusive, the Court deems it just that the parties are to bear their own costs of the proceedings.

## **Decide**

Kopja Informali ta' Sentenza

On the strength of the above, the Court decides this case by rejecting defendant's plea of nullity, and:

[1] accedes to the first request, thereby prohibiting defendant from removing the minor child E F G from these Islands, without this Court's authorization;

[2] accedes to the second request, in the sense that if defendant is in possession of the child's Maltese passport, she is bound to deposit it in the registry of this Court within one week;

[3] rejects the third request;

[4] accedes to the fourth request;

[5] accedes to the fifth request;

[6] accedes to the sixth request, and orders that this judgment be served, by plaintiff at his expense, on the Principal Officer of Passports and the Principal Immigration officer.

The parties are to bear their own costs.

**< Sentenza Finali >**

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