



MALTA

**CIVIL COURT  
(FAMILY SECTION)  
THE HON. MR. JUSTICE  
ROBERT G MANGION**

Sitting of the 18 th November, 2014

Citation Number. 163/2013

**A B C in her own name**

**and by decree of the 1st March 2005 also as curatrix ad litem**

**of her minor child E D C**

**vs**

**Doctor Vincent Galea and Legal Procurator Luisa Tufigno**

**appointed deputy curators in virtue of court decree dated 1st March 2005**

**to represent F G H (also L)**

**who is absent from the islands**

**The Court,**

**Preamble.**

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Having seen the application filed on the 13<sup>th</sup> August 2013 by Dr Henry Antoncich in his capacity as mandator for the absent F G Bernstein requesting the Court to revoke, annul and set aside a judgment delivered by the Civil Court, Family Section, on the 27<sup>th</sup> June 2006 in the names “A B Muckhortova pro et noe vs. Dr Vincent Galea et nomine”; and to order the re-trial of the said lawsuit.

Having seen the reply filed by A B C pro et noe on the 17<sup>th</sup> September 2013 submitting *inter alia* a preliminary plea which reads as follows:-

***“Secondly it does not appear that the sworn application is accompanied by a security for costs as contemplated in article 249 of the Code of Organisation and Civil Procedure”.***

During the sitting of the 19<sup>th</sup> November 2013, applicant produced as witness Mr Emanuel Sciriha, at the time the Assistant Court Registrar.

During his testimony Mr Sciriha explained that when a sworn application for a re-trial is filed before a court of first instance no security for costs is required. Only when an application for a re-trial is filed before a court of second instance that security for costs is required.

The Court also examined respondents’ note of submissions filed on the 31<sup>st</sup> January 2014 and applicant’s note of submissions filed on the 26<sup>th</sup> June 2014.

The case was adjourned for today for judgment of respondents’ second preliminary plea reproduced above.

The following are the Court’s deliberations.

### **Security for Costs and a Request for a Re-Trial.**

Prior to the amendments of 2005, article 815 of Chapter 12 of the Laws of Malta stipulated that a demand for a new trial before a court of first instance had to be filed by means of a writ of summons

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whilst before a court of second instance had to be filed by means of an application. Only in the latter case was security for costs required.

Following the amendments of 2005 by means of which the writ of summons was substituted by the sworn application, the relative amendment was made to article 815 by substituting the words 'writ of summons' by the words 'sworn application'.

This article clearly stipulates that security for costs is required in the case of an application and not in the case of a sworn application. Had the intention of the Legisltor was to require security for costs even when a sworn application was filed, the Legislator would have worded this article differently.

The Court therefore declares that when an application is filed for a re-trial before a court of first instance no security for costs is required.

**Decide.**

For these reasons respondents' second plea is rejected with costs to be borned by respondents A Nikoloayevna and E Alexandrovina C in solidum between them.

**< Partial Sentence >**

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