

**COURT OF MAGISTRATES (GOZO)  
SUPERIOR JURISDICTION  
GENERAL SECTION**

**MAGISTRATE DOCTOR PAUL COPPINI LL.D.**

**Today Wednesday, 3rd February 2016**

**Sworn Application Number 46/2015**

**David Anthony Pollina**

**vs**

**Faith Pollina**

**A preliminary judgement regarding the competence of this Court.**

The Court,

Having seen the sworn application of plaintiff David Anthony Pollina whereby, after stating:

1. That on the twenty-first (21st) May 2014, defendant Faith Pollina instituted mediation proceedings and also filed an urgent application before the Court of Magistrates (Gozo) Superior Jurisdiction Family Section in the names *Faith Pollina vs David Anthony Pollina (40/2014)*. In this application she requested the Court *inter alia* to: (i) be given care and custody of her disabled child Caleb Pollina who is over age; (ii) have the Court determine the amount of maintenance which needs to be paid by plaintiff to her and to Caleb Pollina who at that point in time was living with defendant. Defendant requested the payment of the total monthly sum of one thousand one hundred and fifty euros (€1,150), precisely the amount of six hundred and fifty euros (€ 650) for Caleb Pollina and the amount of five hundred euros (€ 500) for her personally; (iii) have defendant pay the maintenance arrears for the

months of March and April 2014 in the amount of two thousand and two hundred euros (€2,200);

2. That plaintiff replied to this application. First of all he raised the plea that the Court lacked jurisdiction since the parties were not Maltese Citizens (defendant is actually an American Citizen) and their marriage was not celebrated in Malta but had been celebrated in Washington State, United States of America. Their marriage was not even registered in Malta and consequently in terms of Maltese Law the parties could not be considered as a married couple. In the same reply and without prejudice to the jurisdiction plea, plaintiff vehemently contested defendant's request to be given care and custody of Caleb Pollina since Caleb Pollina is over age. As regards defendant's request for the payment of maintenance for Caleb Pollina, plaintiff argued that defendant had resisted the idea that Caleb should try to find a job and in fact she did not cooperate or in any way offer support so that Caleb would be gainfully employed. Consequently the fact that she had to maintain Caleb herself was up to a certain extent a self-inflicted hardship. As regards the request for maintenance for herself, plaintiff pleaded that he did not have any income and consequently he was not in a financial position to maintain Faith Pollina. Besides, Faith Pollina had an art gallery from which she was earning a living. Furthermore defendant had the left the matrimonial home and failed to return and was therefore precluded from claiming maintenance for herself. As regards the request for the payment of maintenance arrears, plaintiff submitted that this request could not be entertained in a *pendente lite* application;
3. That by virtue of a decree dated sixth (6th) June 2014 the Court of Magistrates (Gozo) Superior Jurisdiction Family Section rejected plaintiff's plea that the Court lacked jurisdiction and rejected Faith Pollina's request to be given care and custody of Caleb. However it ordered plaintiff to pay to Faith Pollina the total amount of nine hundred euros (€ 900) monthly, four hundred euros (€ 400) for Faith Pollina and five hundred euros (€ 500) fo Caleb Pollina who has special needs. Furthermore the Court also rejected Faith Pollina's request to have the maintenance arrears paid;
4. That by virtue of an application dated tenth (10th) July 2014, plaintiff filed a request to have the Court reconsider the decree of the sixth (6th) of June 2014. Once again applicant claimed that the Court did not have jurisdiction in terms of law to decide the matter referred to it by Faith Pollina, even the more so because Council Regulation number 2201/2003 referred to in the decree dated sixth (6th) June

2014 makes it clear that this regulation does not apply to maintenance issues. Secondly and without prejudice to the jurisdiction plea, circumstances in so far as Caleb Pollina was concerned had changed. Caleb started residing with both parents and both parents started sharing the responsibilities and maintaining Caleb. Subsequently, on the 23rd June 2014 Caleb Pollina decided to take up residence with plaintiff and has lived with him ever since. Plaintiff has been since the 23rd June 2014 providing for and maintaining Caleb on his own. Consequently it did not make sense for plaintiff to continue paying maintenance for Caleb to Faith Pollina when Caleb was in actual fact residing with him and Faith Pollina was not contributing in any way whatsoever towards maintaining Caleb. Thirdly and without prejudice to the jurisdiction plea, plaintiff also requested the Court to reconsider its decree of the 6th June 2014 on the basis of the fact that the amounts of maintenance which he was ordered to pay to Faith Pollina and Caleb Pollina was excessive since: (i) the Court did not take into consideration David Pollina's means; (ii) the maintenance amount set by the Court exceeded by far the actual needs of Faith and Caleb; this besides the fact that Faith Pollina was working and had an income. Consequently she was in a better off financial position than plaintiff and in a position to provide for herself. Therefore there was no need for her to receive maintenance;

5. That by virtue of a decree dated twenty-eighth (28th) July 2014, the Court of Magistrates (Gozo) Superior Jurisdiction Family Section stated that:

*'With reference to the jurisdictional issue Court notes that this was already decided in its previous decree dated the 6th of June, 2014. Also, applicant did not refer to this plea or in any manner sustain his request for this Court to reconsider its decision on hearing of the application. Therefore Court rejects applicants' first claim.*

*With reference to applicant's second and third claim contained in the application dated the 10th of July, 2014, Court orders applicant to file documentary evidence in the acts of this application evidencing that he has abided to its decree dated the 6th of June, 2014 up to this date within ten days from today. Such documentation is to be notified to the other party who will have a further ten days to file submissions limitedly to the veracity of such payments.*

*Court will consider applicant's second and third claim once this documentation is made available to it.'*

6. That for completeness' sake applicant declares that since he is not in a position to honour the conditions imposed by virtue of the decree dated 28th July 2014 he has initiated a constitutional case in the names *David Anthony Pollina vs L-Avukat Generali et* before the First Hall Civil Court (Constitutional Jurisdiction). Amongst other things, applicant is requesting a declaration that the above-mentioned decree violates his fundamental human rights, including the right to a fair hearing and consequently this decree should be revoked;
7. That the competence of the Civil Court (Family Jurisdiction) is laid down in Regulation 4 of Subsidiary Legislation 12.19 (Civil Courts – Establishment of Sections Order). The same regulation provides that matters referable to Title 1 of Book First of the Civil Code shall be the competence of this Court;
8. That Title 1 of Book First of the Civil Code deals with the mutual rights and obligations of spouses;
9. That Article 12(3) of the Marriage Act stipulates that: *“A marriage shall not have effect for any purpose of law unless and until the appropriate act of marriage is completed and delivered for registration in accordance with the provisions of articles 293 and 294 of the Civil Code.”*
10. That the parties' marriage was never registered in Malta according to law and if it cannot have any effect for the purposes of any particular law, a Maltese Court cannot be said to have jurisdiction on this marriage, not even to decide on maintenance issues;
11. Therefore in addressing the matters raised in the application of the 21st May 2014, the Court of Magistrates (Gozo) Superior Jurisdiction Family Section went beyond its jurisdictional remit as the Court did not have any jurisdiction to decide on the maintenance issues raised therein;
12. In so far as Council Regulation 2201/2003 is concerned, this Regulation does not apply to maintenance issues and consequently the Court could not base its jurisdiction on this regulation;
13. This means that defendant could not file the application of the 21st May 2014 before a Maltese Court and the Court of Magistrates (Gozo) Superior Jurisdiction Family Section could not entertain that request and anything ancillary or connected to it;
14. That plaintiff tried to remedy the situation by requesting that the decree of the 6th June 2014 be revoked. However, his application for

reconsideration of the 10th July 2014 to have the jurisdiction issue examined once again was rejected by virtue of a decree dated 28th July 2014;

15. That furthermore and without prejudice to the above, the decree of the 6th June 2014 was given without the Court having given due consideration to the financial position of the respective parties. This when such a matter was indeed crucial in establishing the amount of maintenance to be paid, if maintenance was due. However, there is no right of appeal from a decree *pendente lite*;
16. That for all the reasons cited above and as will be amply shown in the course of the hearing of this case, the decree given by the Court of Magistrates (Gozo) Superior Jurisdiction Family Section of the 6th June 2014 in the case number 40/2014 in the names Faith Pollina vs David Anthony Pollina and all relative and subsequent Acts, including the decree of the 28th July 2014 is null and void and consequently should be declared as such;
17. That plaintiff is therefore filing this case;

Humbly requested this Court:

- (a) To declare that defendant's application of the 21st May 2014 filed before the Court of Magistrates (Gozo) Superior Jurisdiction Family Section in the names Faith Pollina vs David Anthony Pollina, a copy of which is annexed as "Document DAP 1" as well as all other relative and subsequent acts could not be decided upon by that Court;
- (b) To declare that the decree given by the Court of Magistrates (Gozo) Superior Jurisdiction Family Section of the 6th June 2014 (Document DAP 2) and all other relative and subsequent act, including the decree of the 28th July 2014 (annexed and marked as Document DAP 4) are null and void for all intents and purposes of law and consequently to annul and revoke the above-mentioned decrees.

Saving any other action competent to plaintiff arising out of the facts mentioned above.

With costs including those of this present court case. Defendant is hereby being informed that applicant will be requesting the reference of oath procedure to be applied in her regards.

Having seen the sworn reply of defendant Faith Pollina whereby, she pleaded:

1. That the claims of the plaintiff are totally frivolous and vexatious and completely unfounded in law and in fact;
2. That first, this lawsuit was filed without any legal basis and therefore is totally null and void. It results that in fact that this lawsuit is the extreme attempt to challenge or rather that plaintiff contests, that is appeals a decree of the Family Court - something that is not allowed by means of a sworn declaration. Therefore it follows that the procedure adopted is an incorrect which renders it null and void;
3. That secondly, and without prejudice, the Court of Magistrates (Gozo) Superior Jurisdiction - General Section does not have jurisdiction to decide whether the Court of Magistrates (Gozo) Superior Jurisdiction Family Section is competent or not. Therefore, even in respect of the second claim, it transpires that this Honourable Court is not the competent Court;
4. That thirdly, and this always without prejudice, it also results, and this even from the recitals contained in the recitals of the sworn application that the same issues have already been decided by the competent court that is the Court of Magistrates (Gozo) Superior Jurisdiction - Family Section and therefore respondent is hereby raising the plea of res judicata;
5. That with regards to the merits of the case, and this without prejudice to the foregoing, the plaintiff is incorrect and trying to mislead this Honourable Court when in his recitals he attempts to give the impression that the Court of Magistrates (Gozo) Superior Jurisdiction Family Section misinterpreted European Community Regulations. That it clearly results from a reading of the same Council Regulations 2201/2003 and 22/2001 that the claims by the plaintiff are legally and factually incorrect and that the Court of Magistrates (Gozo) Superior Jurisdiction Family Section was perfectly correct in its decision;
6. That furthermore, and this always without prejudice, it results that this lawsuit is completely frivolous and vexatious and was presented with the sole aim that plaintiff continues losing time and being defiant so that he avoids paying the maintenance owed by him and therefore the applicant respectfully requests that this Honourable Court, takes those

necessary steps so as to stop the plaintiff from continuing to abuse the legal system to try to escape from his legal obligations.

Saving further pleas.

With costs against the plaintiff

Having seen the minute of the sitting of the 24<sup>th</sup> November 2015 whereby the case was adjourned for today for a judgment on defendant's third plea regarding the lack of competence of this Court to hear and decide plaintiffs' requests.

Having seen the parties' respective submissions on this plea.

Having seen the records of the case.

Considers as follows:

By means of the present sworn application plaintiff is seeking a declaration of nullity of all the proceedings before the Court of Magistrates (Gozo) Superior Jurisdiction, Family Section which led to plaintiff being condemned to pay maintenance to his wife for herself and her son with special needs,<sup>1</sup> and this for various reasons indicated in the application.

Defendant's third plea deals with the alleged lack of competence of the present Court to deal and decide on the matter. Defendant submits that the Family Court has exclusive competence to deal with all matters relating to questions of maintenance, as in fact happened when that Court in Gozo decided to award maintenance to her and her son. This plea is therefore based on an alleged lack of competence of this Court *ratione materiae*.

The present judgement is limited to a decision on the question whether this Court is competent to deal and decide on plaintiff's requests.

According to article 741 of Chapter 12 of the Laws of Malta,

"It shall be lawful to plead to the jurisdiction of the court -

(a) when the action is not one within the jurisdiction of the courts of Malta;

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<sup>1</sup> Vide documents DAP1 , DAP2 and DAP4 filed together with the present Application

- (b) when the action, although one within the jurisdiction of the courts of Malta, is brought before a court different from that by which such action is cognizable (as is being alleged by defendant);
- (c) when the privilege of being sued in a particular court is granted to the defendant.

According to 32(2): “The Civil Court shall take cognizance of all causes of a civil and commercial nature, and of all causes which are expressly assigned by law to the said Civil Court.” This means that this court as a court of first instance has a residual competence to hear and determine all cases which are not assigned to any other particular court or tribunal.

Article 50 then explains that:

“(1) Subject to the provisions of article 770 and 771, the Court of Magistrates (Gozo) shall, to the exclusion of the courts of Malta, be competent to take cognizance of all claims against persons residing or having their ordinary abode in the Island of Gozo or Comino, as well as of all other causes expressly assigned by law to such court.

(2) Such court shall consist of one magistrate, and shall have a twofold jurisdiction, namely:

- (a) an inferior jurisdiction, by virtue of which it shall take cognizance of all causes of the nature of those which, according to articles 47 and 48, are triable by a magistrate for the Island of Malta; and
- (b) a superior jurisdiction, by virtue of which, subject to the provisions of article 46 of the Constitution of Malta and article 4 of the European Convention Act, it shall take cognizance of all causes of the nature of those which, according to article 32, are triable by the Civil Court, First Hall.

Defendant is correct in stating that by means of Legal Notice 397 of 2003 all cases within the competence of the Civil Court relating to matters regulated by Titles I, II and IV of Book First of the Civil Code fall within the competence of the Family Court. However by means of the present suit plaintiff is not requesting a decision on such matters, but rather, as already stated above, a declaration of nullity of all the proceedings before the Court of Magistrates (Gozo) Superior Jurisdiction, Family Section which led to plaintiff being condemned to pay maintenance to his wife for herself and her son.



Article 35 of Chapter 13 states that: “No appeal shall lie from any decree of the Court of voluntary jurisdiction; but it shall be lawful for any party, who deems himself aggrieved, to bring an action before the Civil Court, First Hall, for the necessary order.”

Before the institution of the Family Court, matters such as those leading to the decrees which are being presently contested used to be determined by the Court of Voluntary Jurisdiction. It has to be noted that these decrees were delivered during mediation proceedings and before any suit for separation between the parties was ever filed. There could therefore be no appeal at that stage to a higher Court from such decrees. As plaintiff felt aggrieved by those decisions and was still insisting that that Court had no jurisdiction to deal with family matters pertaining to the parties as their marriage had never been registered in Malta, he had no alternative but to refer to this Court, thereby invoking said article 35, which this Court believes to be also applicable in such circumstances as those arising in the present situation.

In view of the above, the Court while declaring its competence to hear and determine this case, decides on defendant’s third plea by rejecting it.

Costs to be reserved for the final judgement.

(sgnd) Paul Coppini  
Magistrate

(sgnd) Silvio Xerri  
D/Registrar

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f/Registrar

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