

**CIVIL COURT  
(FAMILY SECTION)**

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

**Hearing of Wednesday 7th November 2018**

**Application no. : 245/2018/2 JPG**

**Case number : 12**

**M**

**Vs**

**F**

**The Court:**

Having seen the sworn application dated 15th October 2018, filed by M, wherein it was held:

*That the applicant has an interest that the minor, hereinafter indicated, be not taken outside Malta;*

*That the respondent is/are the person/s having, or who might have, the legal and actual custody of the said minor;*

*Wherefore, the applicant respectfully requests that this court orders the issue of a warrant of prohibitory injunction against the respondent/s enjoining him/them not to take, or allow anybody to take, the said minor out of Malta;*

*Particulars of the minor:*

*C, X years old, born to the parties M (the mother) and F (the father) on the Y, in P, holder of passport XI. A copy of the birth certificate of the minor is being annexed as Dok.A;*

*C has a light complexion, brown coloured hair and brown coloured eyes, and this as results from the photo of the minor C which is also being annexed to the present warrant as Dok.B;*

*That for all intents and purposes, it is being indicated that the passport of the minor C is in the possession of the respondent, who brought the minor to Malta from China for a holiday between the 10th July 2018 and the 3rd August 2018 and had to return her to her mother in China on the 3rd August 2018 as the minor always lived in China with her mother and China is the habitual residence of the minor, but the respondent failed to do this and instead kept the minor with him against the will of the mother. It is also being stated that in the meantime he even sent the minor to his country, Ukraine, however presently the girl is in Malta with her father, and therefore it is necessary that this honourable court issues this warrant in order that the minor is not taken out of Malta, with the risk that the respondent makes her disappear, and this always in the best interest of the minor C.*

Having seen the Court's decree dated 15th October 2018, provisionally upholding the warrant of prohibitory injunction, ordering notification and a right of reply to the defendant, and appointing the application for hearing for the 31st October 2018;

Having seen the urgent application by the Director (Civil Registration) as Officer in Charge, Passports, and the Commissioner of Police as Principal Officer, Immigration, dated 16th October 2018, a fol 8, wherein they requested the court to lodge the minor's passport under its authority;

Having seen the Court's decree dated 16<sup>th</sup> October 2018 (Vide fol 9);

Having seen the reply in oath by F, dated 25<sup>th</sup> October, 2018 (Vide fol 10 et seq.);

Having heard oral submissions of counsel to both parties;

**Deliberates:**

In the course of counsels' oral submissions before this Court, it became increasingly evident that both parties, for very divergent reasons, agree that the minor child C, X years of age, born on Y, in P, a holder of passport X1, should not be permitted to leave the Islands of Malta and Gozo, until such time as the Maltese Courts, in a final judgement on the merits of the case, have decided the various questions relating to the said minor child.

Indeed in the note of the proceedings dated 31st October 2018, the parties to the case had no objection to the issuing of both warrants by this Court.

Article 877 of Chapter 12 of the Laws of Malta provides:

*877. (1) A warrant of prohibitory injunction may also be issued to restrain any person from taking any minor outside Malta.*

*(2) The warrant shall be served on the person or persons having, or who might have, the legal or actual custody of the minor enjoining them not to take, or allow anyone to take, the minor, out of Malta.*

*(3) The warrant shall also be served on:*

*(a) the officer charged with the issue of passports enjoining him not to issue, and or deliver, any passport in respect of the minor and not to include the name of the minor in the passport of the minor's legal representatives or in the passport of any other person; and*

*(b) the Commissioner of Police enjoining him not to allow such minor to leave Malta.*

Therefore this Court, having seen Articles 873 to 877 of Chapter 12 of the Laws of Malta and the joint note in the records of proceedings dated the 31<sup>st</sup> October 2018, is of the opinion that all the essential elements of the prohibitory injunction concur. Furthermore, the Court took note of the fact that the defendant has duly deposited the passport X1 of the minor child under the authority of this Court according to this Court's decree dated 16<sup>th</sup> October 2018.

For these reasons the Court, orders that the defendant F, father of the minor child C, X years of age, born on Y, in P, a holder of passport X1, be prohibited from taking or allowing anybody to take the said child out of the Maltese Islands.

To this end the Court orders that a copy of this decree be notified to the Director (Civil Registration) as Officer in charge of the issuance of passports within the Passport Office and Commissioner of the Police as Principal Officer of Immigration.

In view of the fact that a similar procedure has been filed by F regarding the same minor child, the Court deems it fit and just that each party bears his own costs.

**Read.**

**Mhallef Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Lorraine Dalli**  
**Deputat Registratur**