**CIVIL COURT**

**(FAMILY SECTION)**

**MADAM JUSTICE**

**JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

**Hearing of Wednesday 8th May, 2019**

**App. No. : 27/2019 JPG**

**Case No. : 24**

**AM**

**vs**

**EML**

**The Court,**

Having seen the application by EML, dated 28th January 2019, a fol 1;

> *That applicant makes reference to the Warrant of Prohibitory injunction number 204/2016 in the names **AM vs EML**;*
>
> *That in view of the fact that Warrant of Prohibitory injunction is no longer valid and this due to the fact that warrant was not renewed within the time frame as stipulated at law, referably Article 877(7) of Chapter 12 of the Laws of Malta, which Articles renders warrant null, applicant requests this Honourable Court to revoke contrario imperio Warrant of Prohibitory Injunction number 204/2016 and requests authorisation to issue relative counter warrant in terms of Article 836(1)(a) of Chapter 12 of the Laws of Malta;*
>
> *THUS, with respect, applicant requests that this Honourable Court to revoke*

*contrario imperio Warrant of Prohibitory Injunction number 204/2016 and authorises applicant to file relative counter warrant number 204/16 in the names AM vs EML in terms of Article 836(1) (a) of Chapter 12 of the Laws of Malta without the requirement of notifying plaintiff in terms of Article 836(3) of Chapter 12 of the Laws of Malta, saving all other provisions as this Honourable Court deems appropriate.*

Having seen that the application and documents, the decree and notice of hearing have been duly notified in accordance with law;

Having seen the reply by AM, dated 8th February 2019, a fol 4 et seqq.:

*"That applicant is requesting the revocation of the Warrant of Prohibitory Injunction number 204/2016 in the names:* ***AM vs EML*** *in terms of Article 836 (1) (a) of Chapter 12 of the Laws of Malta, without the need to notify applicant and this in terms of Article 836 (3) of Chapter 12 of the Laws of Malta.*

*That applicant claims that the Warrant of Prohibitory Injunction is no longer in force since, allegedly, it was not extended in terms of the established law, namely Article 877 (7) of Chapter 12 of the Laws of Malta thus rendering the Warrant of Prohibitory Injunction null.*

*That Article 836 (1) (a) stipulates that: "... the person against whom any precautionary act has been issued, may make an application to the court issuing the precautionary act, or, if a cause has been instituted, may make an application to the court hearing such cause, praying that the precautionary act be revoked, either totally or partially, on any of the following grounds: (a) that the precautionary act ceased to be in force;"*

*That Article 877 (7) stipulates that: "The warrant which has not ceased to be in force for other reasons, shall remain in force for one year to be reckoned from the day on which it was issued, unless within such time the person suing out the warrant shall have, upon an application to that effect, obtained an extension."*

*Also Article 877 (8) stipulates that: "Such extension may be granted more than once, but it may not be granted for more than one year each time."*

*It seems that defendant is trying to deceive this Honourable Court as she is fully aware that the effects of the Warrant of Prohibitory Injunction number 204/2016 are still in effect since they were extended before the lapse of the one year period from the issuance of the said warrant and from the issuance of the extension thereof.*

*That in fact the request for the issuance of the Warrant in the above mentioned names, was acceded to on the 27th September, 2016 [**Document A**], with its effects expiring on the **26th September, 2017**.*

*That on the 7th July, 2017, that is more than two and a half months before the lapse of one year from the issuance of the Warrant, this Honourable Court acceded to respondent's request for a one year extension of the Warrant of Prohibitory Injunction in the above mentioned names, which request was made by means of an application filed on the 26th June, 2017 [**Document B**]. Thus, the effects of the Warrant of Prohibitory Injunction number 204/2016 were extended until the **26th September, 2018.***

*That this Honourable Court, diversely presided over, once again extended the effects of the Warrant of Prohibitory Injunction by means of a decree dated 14th July, 2018 and this following an application filed by respondent on the 12th July, 2018 [**Document C**]. Thus, the effects of the Warrant were extended until the **26th September, 2019.***

*That on the 3rd September, 2018, respondent filed the court case in the above mentioned names, and this so, amongst other things, the Warrant of Prohibitory Injunction in the above mentioned names is definitely and permanently confirmed.*

*That applicant EML was duly notified with the sworn application and all the*

*acts filed together with same, and in fact she filed her reply on the 20th December, 2018.*

*That notwithstanding the fact that together with the sworn application, a legal copy of the Warrant and its relative extensions, was filed and notified, applicant is deceivingly alleging and claiming that the Warrant in the above mentioned names was not extended. She has also confirmed this under oath, in her seventh defensive plea, wherein she claimed that: "ir-rikorrenti qatt ma talab ghat-tigdid tal-Mandat ta' Inibizzjoni" [applicant has never requested an extension of the Warrant of Prohibitory Injunction] – this is tantamount to* ***perjury****, since she herself had replied to the first request for extension by means of a reply filed on the 6th July, 2017 [****Document D****].*

*That it clearly results, that applicant is attempting to deceive and mislead this Honourable Court, especially when she requested that the relative counter-warrant be issued without the need of notification of respondent in terms of Article 836 (3).*

*That this is of serious concern to respondent, who deems that applicant EML has ulterior motives once she badly wants to remove the Warrant of Prohibitory Injunction on the travel arrangements of the minor E, so much that she is also willing to lie under oath to this Honourable Court.*

*Thus, respondent requests this Honourable Court, not only to reject all pleas contained in the application dated 28th January, 2019 and this with costs against applicant; but also to deplore applicant's deeds and to also order that procedures be undertaken against applicant EML for perjury and for contempt to the authority of this Honourable Court.*

*Thus applicant has the honour to submit to the sage and superior judgement of this Honourable Court.*

Having seen the decree dated 13th February 2019, (vide verbal dated 13th February 2019);

Having seen the reply by AM, dated 19th February 2019, regarding the decree given on the 13th February 2019;

*That applicant is requesting the revocation of the Warrant of Prohibitory Injunction number 204/2016 in the names:* ***AM vs EML*** *in terms of Article 836 (1) (a) of Chapter 12 of the Laws of Malta.*

*That during the sitting held on the 13th February, 2019, this Honourable Court acceded to applicant, EML's request to include in the application filed on the 28th January, 2019, the following paragraph "Illi inoltre l-kawza illi biha l-intimat AM ressaq il-pretenzjoni li ried ihares b'dan il-mandat giet prezentata ferm wara l-gheluq taz-zmien ta' 20 jum imholli ghaldaqshekk mil-Ligi b'mod li hemm lok ghar-revoka tal-istess mandat".*

*That whilst reaffirming what was stated in his reply filed on the 8th February, 2019, respondent submits the following:*

1. *On a preliminary basis, it is being submitted that the application dated 28th January, 2019, is an application with a request for the revocation of the Warrant of Prohibitory Injunction number 204/2016 in terms of Article 836 (1) (a) of Chapter 12 of the Laws of Malta, that is, since allegedly "the precautionary act ceased to be in force". If current applicant, EML wants to attack the validity of the Sworn Application number 230/2018 JPG, she has to do so by means of a Sworn Reply to the same court case and not by means of an ad hoc application requesting the Court to summarily determine the validity of the proceedings filed by respondent.*

2. *Thus, the premise introduced by the applicant in the records of the sitting dated 13th February, 2019, is completely irrelevant and superfluous to the request in the application dated 28th January, 2019, which application is limited only to determine whether the precautionary warrant 204/2016 is still in force or otherwise.*

3. *That with regard to the merits of the case and without prejudice to the above, it is being pointed out that the procedure for the Warrant of Prohibitory Injunction to restrain a person from taking a minor outside Malta is specifically regulated by Article 877 of Chapter 12 of the Laws of Malta. This Article stipulates terms which are distinct from other precautionary warrants. In fact, all other precautionary warrants have a validity term of twenty days from date of issuance and as a consequence Article 843 itself imposes on an applicant of a precautionary warrant, the obligation to proceed with a court case for the alleged claims within 20 days. On the other hand, according to Article 877, the effects of a warrant prohibiting a person from removing a minor from Malta, are valid for a period of one year from the date of issuance of the warrant, and this, unless applicant is not granted an extension of the said period, upon applying for same. It is thus contradictory that applicant mentions the term of 20 days for the filing of the case, when the Law itself is clear and stipulates that the Warrant is valid for a one year term [contrarily to the other precautionary warrants, which are valid just for 20 days] and that this term may be extended for further periods which do not exceed one year each time. It seems that the current applicant is implying that despite the fact that the Law stipulates a validity period of one year, a court case relative to any Warrant must be filed within twenty days, otherwise it wouldn't be valid! This is certainly not what our legislator is stipulating and it definitely does not reflect the intention of the same legislator.*

4. *That, in fact, as respondent has already submitted in his reply filed on the 8th February, 2019, he has requested the extension of the effects of the Warrant of Prohibitory Injunction number 204/2016 and this by means of a decree dated 7th July, 2017 [that is, more than a month and a half before the lapse of a year from the date of issuance of the Warrant] issued by this Honourable Court whereby it acceded to respondent's request for an extension of the Warrant of Prohibitory Injunction in the above mentioned names, for a period of one year, which request was made by means of an application filed on the 26th June, 2017 [**Doc. B – legal copy**]. Thus, the effects of the Warrant of Prohibitory Injunction number 204/2016 were extended up to the **26th September, 2018**. Not only, but this Honourable Court diversely presided over, extended once again the effects*

*of the Warrant of Prohibitory Injunction by means of a decree dated 14th July, 2018 and this following an application filed by respondent on the 12th July, 2018 [**Document C – legal copy**]. Thus, the effects of the Warrant were extended up to the **26th September, 2019.** On the 3rd September, 2018, respondent filed the court case in the above mentioned names, so that, amongst others, the Warrant of Prohibitory Injunction in the above mentioned names is definitively and permanently confirmed – the case was filed within the validity term of the Warrant of Prohibitory Injunction.*

*Thus, respondent once again requests this Honourable Court to refute the pleas forwarded by means of the application dated 28th January, 2019 and this with costs against applicant.*
*So respondent has the honour to submit for better and superior judgment of this Honourable Court.*

Having heard all the evidence on oath;

Having seen the exhibited documents and all the case acts;

Having heard oral submissions from both parties;

**Deliberates;**

This is a decree following a request by respondent EML for the Court to revoke the warrant of prohibitory injunction (ref. no. 204/2016) that had been issued on the 27th of September 2016, at the request of plaintiff AM to prevent ETML, the minor son of the parties, from be taken out of the country. This request is being made by respondent on two grounds:

(1) that the warrant is no longer valid because it was not extended within the time period stipulated in Article 877 (7) of the COCP; and
(2) that the action which was brought forward by plaintiff to establish the existence of the legal right he sought to protect by means of the warrant, was not filed within the 20 day period established by law.

Respondent argued during final submissions that originally, it was a requirement for the

continued validity of every precautionary warrant, that its effects be periodically extended by order of the court, apart from the requirement that a case be filed within twenty days of the warrant. According to respondent, while the former requirement is nowadays only applicable in the case of warrant for prohibitory injunction related to children, this does not mean that the requirement that a lawsuit be filed within twenty days has been dispensed with. With reference to the judgement in the names of Romano vs Ross, cited by plaintiff, she argued that this Court is not bound to follow the same reasoning, and that rather, the Court is obliged to depart from it if it finds that the reasoning of the Court in that case, was incorrect. She argued furthermore that an individual may not file a warrant and keep extending it year after year without ever filing a lawsuit. Regarding the extension granted in 2018, Respondent argued that this extension is not valid since, contrary to what is required by law, the Court acceded to this request without ordering the notification of Respondent, thus not allowing her the opportunity to file a reply.

Plaintiff replied that contrary to Respondent's claim, he had indeed sought and obtained extensions for the warrant in question, which were granted on the 27th of September 2016, the 7th of July 2017 and the 14th of July 2018, so that the effects of the warrant have been extended till the 26th of September 2019. He claimed that therefore, Respondent's assertion that he never obtained an extension of the warrant in question amounts to a false oath and that consequently the Court should take action against Respondent for contempt of court and the taking of a false oath. He added that on the 3rd of September 2018, he also filed a lawsuit in the same names, in order to, *inter alia,* retain the said warrant permanently in effect.

In a further reply to the added request made by Respondent on the 13th of February 2019. Plaintiff's reply is based on the following claims:

1. That if Respondent would like to challenge the validity of Sworn Application 230/2018 JPG, she should make this challenge in her Sworn Reply to that lawsuit and not by means of an ad hoc application, and therefore the added request made during the sitting of the 13th of February 2019 is irrelevant and superfluous to these proceedings which are only aimed at determining whether the warrant in question is still in effect;
2. That the procedure relative to the warrant of prohibitory injunction relating to minors is regulated by Article 877 of the COCP, and this article establishes a procedure which is distinct from the procedure relating to other precautionary warrants. According to

> Plaintiff, in the case of a warrant of prohibitory injunction relating to minors, the law does not require that a lawsuit be filed within twenty days for the warrant to remain in effect, but rather, that an extension is sought from the Court on a yearly basis.

In his final submissions, Plaintiff disagreed with respondent's interpretation of Article 877 (7), and argued that this article constitutes a departure from the general requirement that a lawsuit needs to be filed within twenty days for a precautionary warrant. He argued that the legislator did away with this requirement, understanding that it is a cumbersome procedure for a parent trying to prevent their child from being removed from this country without their consent. He argued that he has obtained the extensions required by law, and that in fact, Respondent knows of this as she had filed a reply to one of his applications on the 6th of July 2017, while the following year the Court had acceded to his request while dispensing with the need to notify respondent of his request, adding that the law does not require the notification of Respondent with the application for extension of the warrant.

**Deliberates;**

Regarding Respondent's claim that the warrant in question should be revoked due to Plaintiff's failure to obtain the necessary extensions as required by Article 877 (7) of Chapter 12 of Laws of Malta, the Court notes that contrary to this claim, Plaintiff duly sought and obtained an extension of the warrant every year, that is, in 2016, 2017 and 2018. Therefore, this claim is factually unfounded.

With regards to Respondent's claim that the extensions of 2017 and 2018 are not valid because she was not notified with Plaintiff's application, the Court notes that this claim is neither part of Respondent's original application, nor part of the additional basis for Respondent's request, made during the sitting of the 13th of February 2019, and that no request was made at any point in order to add this argument as a further basis for Respondent's request. Therefore, the Court is of the opinion that this argument cannot be taken into consideration, as it was never formally made part of Respondent's application.

Regarding Plaintiff's claim that action should be taken against Respondent for contempt of court and for taking a false oath, the Court notes that Respondent did not confirm the contents

of the application on oath, and neither did she make any claim under oath during these proceedings. Therefore, this claim is evidently unfounded.

**Deliberates;**

Respondent's additional basis for the application is in the sense that the warrant in question is no longer valid because no lawsuit was filed within twenty days by Plaintiff as required by law. The Court considers that this argument is unfounded, both factually, and legally, for the following reasons:

While it is true that no lawsuit was filed within twenty days of the warrant, it results that Plaintiff had initiated mediation proceedings concurrently when filing the warrant in question, that is on the 30th of August 2016. As a result of these proceedings, the parties entered into a contract of separation on the twenty sixth (26) of January two thousand and seventeen (2017), which contract, *inter alia*, regulated the care and custody, residence, domicile and travel arrangements outside of the country of the parties' minor child.

It is useful here to make reference to Regulation 9 of S.L.12.20, which provides that:

> **"*Where under any law a person is required to proceed before a Court within a particular time, such proceedings shall for the purposes of these procedures be deemed to have been commenced upon filing in the registry of the Court of the letter referred to in regulation 4(1)*"**

The letter referred to in Regulation 4(1) is the letter by means of which a party initiates mediation proceeding. This letter was filed by Plaintiff on the 30th of August 2016,[1] and the contract of separation concluded amicable by the parties was duly authorised by the Court for publication on the 27th of December 2016.

It is clear therefore that Respondent's claim lacks factual foundation.

While this alone is enough for the Court to reject Respondent's request, the Court will examine

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the entirety of Respondent's legal arguments for the sake of thoroughness. Respondent claims that the requirement to file a lawsuit within twenty days of a precautionary warrant extends also to warrants of prohibitory injunction relating to minors, while Plaintiff contends that this is not so, since the only requirement for the continued validity of such warrants is that their effects are extended by the Court on a yearly basis, upon the application of Plaintiff.

Article 877 of the COCP provides that:

> ***(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. […]***

The Court notes in fact that according to the jurisprudence of these Courts, warrants of prohibitory junction relating to minors do not need to followed by a lawsuit within twenty days in order to remain valid. This was confirmed in, *inter alia* **A B gja C vs L-Avukat Renzo Porsella Flores et noe** decided on the 27th of October 2015, **Avukat Dr. Peter Fenech noe vs AB** decided on the 11th of February 2016, and **Roberto Romano vs Sharon Lorraine Ross** decided on the 29th November 2017. It was held in these judgements that Article 877 is an exception to the rule that a precautionary warrant must be followed by a lawsuit within twenty day.

The Court finds no reason to depart from this reasoning, which, in its opinion, is sound at law. The Legislator clearly required that these warrants be subjected to the continuous scrutiny of the Court, by requiring that the plaintiff submits an application annually to request the Court, to extend the effects of the warrant and not that they be followed by a lawsuit within twenty days. This does not mean that a warrant of prohibitory injunction relating to minors may remain in effect perpetually without a case being filed. It is up to the Court to decide whether to keep the warrant in effect or not, depending on the circumstances of the case, and the Legislator granted the Court a broad discretion to determine, on a case by case basis, when to accede to such requests and when to reject them, always guided by the paramount consideration, that is, best interests of the child.

The Court also considers it relevant to make reference to the aforementioned judgement in the names of **A B gja C vs L-Avukat Renzo Porsella Flores et noe** wherein the Court also took into consideration the fact that there was no case to be filed, since the parties had already agreed on issues relating to the care and custody by means of a public contract. The same consideration applies in this case since the child's care and custody and domicile have already been agreed on by the parties in their contract of separation. Plaintiff therefore has no lawsuit to file, and it would be neither logical nor just to expect Plaintiff to file a lawsuit when the issue of the child's domicile is already determined and regulated by a public contract duly authorized by the Court.

Therefore it is clear that Respondent's argument in this regard is unfounded.

**For these reasons, the Court rejects Respondent's application of the 28th January 2019, as amended on the 13th of February 2019.**

**The costs of these proceedings are to be borne by Respondent.**

**Read.**

**Mdm. Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Lorraine Dalli**
**Deputy Registrar**