



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE ONOR. ANTHONY VELLA

Sitting of Wednesday 8th May 2019.

Application number : 287/2014 AGV

AB CD (506782 M) as
attorney of EF (UK Passport:
801748275)

Vs

GHF

The Court;

Having seen the sworn application of Mr. ABCD nomine on the 19th December 2014, declares on oath;

1. That his mandatory and respondent got married on the 20th February 1999;
2. That I and J, both still minors, were born from such marriage;

3. That due to reasons attributable to the respondent including serious injuries, the matrimonial life of the parties is no longer possible and their marriage has irretrievably broken down;
4. That his mandatory had been duly authorized to proceed with personal separation from his wife, by means of a decree given by the Civil Court (Family Section) on the 20th October 2014 (A copy of such decree is hereunder annexed and marked as Doc A.)

For these reasons the applicant therefore, humbly asks this Honorable Court to :

1. Pronounce and declare the personal separation between the parties for reasons attributable to the respondent, which rendered the matrimonial life between the parties impossible;
2. To order and entrust the care and custody of the two minor children jointly in the hands of both parties and orders that the minor children live with their father and with the respondent during the days and times, fixed by this Honorable Court;
3. In the case the Court does not accede to the second demand of the plaintiff, with regards to the children's' resident establish days and times when the plaintiff is to exercise his right of access towards his children, including sleepovers as well as access on Christmas Day, on the plaintiff's birthday, the birthday of the minor children as well on New Year's Day.
4. To establish and liquidate maintenance for the minor children, with such modalities and the Court deems to order, including the provision for the periodical increases so as make good for the rise of living; and this after considering the means and ability of the two parties; and this until the minors reach the age of 18 should they decide to work on full time basis or until the age of 23, should they decide to pursue their studies on a full time basis, and order the respondent to pay her share of the maintenance as established by this Court;

5. To condemn the respondent to pay her share and that is, half the expenses related to health and education of the minors, according to their needs, until the age of 18 years should they decide to work on full time basis or until the age of 23, should they decide to pursue their studies on a full time basis;
6. To declare that the respondent has lost her right to demand or receive maintenance from plaintiff;
7. To dissolve and extinguish the community of acquests between the parties and liquidate the same in such a way as to establish the portions in division and assign to the parties, and also to establish a date since when the respondent is considered to have forfeited any acquisition made by the work and ability of the applicant; and this with appointed experts to estimate the property involved if the need arises and with the appointment of a Notary public as to publish the appropriate act and curators to the present the respondent on the same act;
8. To apply entirely or in part, against the respondent, the sanctions established in articles 48 up to 53 of Chapter 16 of the Laws of Malta;
9. To divide any other goods held in common between the parties and which are not part of the community of acquests;
10. To order the respondent to return to the applicant his paraphernal assets and credits;
11. To liquidate the paraphernal assets of the applicant, and to assign them to the same;

With costs and interests, against the respondent, which is summoned so that a reference to her evidence be made.

Having seen the sworn reply of GHF (Passport number : 511444169), humbly submits and confirms on oath:

1. That respondent, as a preliminary plea, humbly submits to the Honorable Court does not have the jurisdiction to decide the case, since the marriage in question, was not registered in Malta prior to the commencement of these proceedings;
2. That without prejudice, to the foregoing pleas, and with reference to the first claim, respondent humbly submits the reasons giving rise to the personal separation between the parties are solely attributable to the mandatory EF ;
3. That without prejudice to the foregoing plea, and with reference to the second claim, respondent humbly submits that given the fact that EF has abandoned his family for the past five years, and given that he has practically left his wife and his children destitute, care, respondent object to this claim, and believes that the custody of the two minor children, should be vested solely in the hands of the respondent;
4. That without prejudice to the foregoing plea, and with reference to the third claim, respondent humbly declares that she has no objection, or EF, to have access to his own children, provided this is exercised as per the orders given by this Honorable Court and not arbitrarily;
5. That without prejudice to the foregoing plea, and with reference to the fourth and fifth claims, respondent humbly objects to these claims, and asks the Court to establish an adequate sum payable by EF, which covers maintenance for her and the minor children, if possible taking into account the costs of education and maintenance as part of the global awarded;
6. That without prejudice to the foregoing plea, and with reference to the sixth claim, the respondent humbly objects to this claim, since there are no reasons according to our Laws which justify it;
7. That without prejudice to the foregoing plea, and with regards to the seventh claim, respondent humbly agrees that this Honorable Court should dissolve and extinguish the community of acquests and divide same

accordingly, but objects to that part of the claim which for the forfeiture by respondent of acquisitions by the work and ability of the applicant, since there are no reasons according to our Laws, which justify this forfeiture;

8. That without prejudice to the foregoing plea, and with reference to the eighth claim, respondent humbly submits that this claim, should be rejected and instead the sanctions established in Articles 48 to 53 of Chapter 16 of the Law of Malta , should be applied against EF;
9. That without prejudice to the foregoing plea, and with reference to the ninth claim, respondent humbly agrees with this claim;
10. That without prejudice to the foregoing plea, and with reference to the tenth claim, and eleventh claim, the respondent humbly submits that these claims, should be rejected, since she holds no paraphernal assets and / or credits belongings to EF;
11. That respondent reserves the right to present further pleas at a later stage if permitted by Law;

With cost and interest against which is summoned so that a reference to her evidence be made.

Having seen the counter-claim of GHF (English Passport Number: 511444169), respectfully show and upon oath confirms;

Declaration of Facts :

1. That the parties married in England on the 20th February 1999, and from this marriage the parties had two daughters, I and J , both minors.

The Reason for the Claim :

2. That the marital life between the parties is no longer possible since the marriage has irretrievably broken down due to serious incompatibility of character, as well as for causes, imputable solely to the respondent's husband, EF consisting in desertion, excesses, threats, and serious injury towards respondent, as well as adultery;
3. That the parties, were authorized by this Honorable Court, to proceed with this case;
4. That these facts are known to respondent personally;

The Claims ;

1. Declare and pronounce the personal separation between the parties from causes attributable solely and exclusively to the applicant end, for purposes of Article 48C of the Civil Code, establish the date when the applicant is to be considered as having given sufficient cause to the separation;
2. Authorize respondent to live separate from her husband;
3. Order that the care and the custody of the minor children of the parties, is to be entrusted exclusively to respondent, save for any adequate provision for access to be exercised by applicant to the minor children on these days and times established the Court;
4. Liquidate and establish if necessary, a just and adequate contribution due and payable by applicant, by way of maintenance for the minor children, of the parties, and to order and condemn, as the case may be, the said applicant to pay respondent that amount so liquidated and established by way of maintenance for the minor child, even by way of a lump sum payment, with the relative orders, for the annual increase in the amount so established as the case may be;

5. Apply against the applicant in whole or in part, the provisions of Article 48 of the Civil Code;
6. Condemn the applicant to consign unto the respondent all the paraphernal property and separately order that respondent receives the full administration of all his paraphernal property;
7. Establish and determine these particular assets and liabilities that form part of the community of acquests existent between the parties and establish and liquidate, if necessary by the nomination of appointing the experts, the paraphernal credits and / or estate of the respondent, and qualify such credits as held by the said respondent against the paraphernal estate of applicant, and / or against the community of acquests and payable by said applicant, and consequently, order applicant to pay any amount so liquidated to respondent;
8. Dissolve and liquidate the community of acquests existing between the parties, if necessary by the nomination, of appointed experts and taking into account, the sixth and seventh demands above , divide the acquests forming part of the community of acquests, not necessarily in equal shares, having regard *inter alia* to the date of the acquisition of the various movable and immovable objects forming part of the said community and the date established by the Court on which applicant is to be considered as having been responsible for the separation, and assign a share for each of the parties;
9. Nominate a Notary Public in order to receive the relative deed and deputy curators, in order to represent the eventual default of either party on the said deed;
10. Authorizes respondent to register in the Public registry the judgement eventually delivered by this Court;

With costs again applicant whose oath is hereby made reference to.

Having seen the sworn reply of AB CD nominee, humbly submits and confirms on oath the following facts ;

1. That applicant does not object to the first claim of the respondent and this limitedly to the declaration of personal separation, between the parties. As already submitted under oath, in his sworn application, the marriage between the parties broke irretrievably down for serious reasons and faults attributable exclusively to the respondent;
2. That applicant does not object to the second demand of the respondent;
3. That applicant opposes and objects to the third demand of the respondent, Applicant feels that is the best interest of the two minors, care and custody shall be held jointly between the parties, with the ample access towards applicant;
4. That applicant does not object to the fourth demand brought forward by respondent;

Provided that maintenance for the minors shall be paid in accordance with their needs and applicants' means and provided further that respondent is to also contribute towards the children's needs;

5. That applicant also opposes to the fifth demand of respondent since there are no reasons at law for the provisions of article 48 of the Civil Code to be applied in his regard;
6. That with regard to the seventh claim, it is up to respondent to prove the existence of any paraphernal assets belonging to her and without prejudice to the above if the existence of such property, is proved, any fruits thereof would still form part of community of acquests as per Article 1320 of Chapter. 16 of the Laws of Malta;
7. That without prejudice to the foregoing plea, and with reference to the seventh claim, applicant humbly agrees that this Honorable Court should dissolve and extinguish the community for acquests and divide the same

accordingly, but objects to that part of the claim, which asks for the forfeiture by applicant of acquisitions made by the work and ability of respondent, since there are no reasons according to our Laws which justify such forfeiture;

8. That applicant does not object to the ninth demand;
9. That applicant does not object to the tenth demand;

Saving any further pleas permissible at Law.

With all the expenses against respondent who is as of now being summoned for the reference to her path.

FACTS

1. AB CD as procurator for plaintiff EF explains that he was a cousin of his. CD describes plaintiff as a warm, caring and loving person and a very loving father.
2. He knew that plaintiff came from a well off family and when his father passed away, he did not leave him penniless. Actually he inherited quite a substantial amount of money. He explains that this must have been the main attraction towards him by defendant. KL, a close friend of plaintiff, explains that plaintiff was always concerned that he needed well paid jobs because he had to keep up with the defendant's spending and to provide full-time child care as defendant was unwilling or unable to care for the children during working hours.

He also confirms that plaintiff became an heir of some hundred of thousands of pounds and a large commercial garage in Kensington, when his father passed away, but because defendant used to spend in an

alarming way, these cash resources began to be depleted very soon. On account of her lifestyle, he explains that plaintiff was spending around £150,000 a year. This all became unsustainable for plaintiff and Pennington admits that the former expressed his intention of wanting to proceed with separation proceedings from his wife, but he was concerned that she would harm herself and the children.

3. L states that despite their problems, to his surprise, defendant managed to convince the plaintiff to lease out a seven-bedroom house complete with a ballroom at around £2,500 per month, but as a commercial lease and the cost of the heating was around £1,000 and £2,000 per month. They also started a business of refurbishing London based property and initially it started well, but then to support defendant's lifestyle, plaintiff had to constantly re-mortgage the property, which left little capital within the business.
4. He adds that by 2009 the parties were in a precarious financial position and were obliged to move into a two-bedroomed house and since defendant didn't want to part with anything that she owed in the previous house, all the objects were stored away in a paid storage in L's name and at his expense, The agreement was that plaintiff had to repay him, but because of their financial situation this was not possible. They ended up having a debt with him in excess of £14,000 for storage.
5. L explains that there were periods when plaintiff was unemployed. When he was offered a job with Catalyst in Tokyo, the parties were reaching insolvency. Since plaintiff was now working, it was decided that his wife and his children move to Malta, so as to have a cost of living that is more manageable, school fees are cheaper and moreover,

the defendant would here find domestic support and support from his extended family. He managed for a while, but he explains that in 2015 plaintiff's job at Catalyst ended and defendant refused to adjust to a reduced budget. In 2016, plaintiff was once again nearing bankruptcy until he found employment with SETL Development. However, L explains that since plaintiff's wife has been in Malta, he misses them very much and since he has marital problems with his wife, it is more difficult for him to speak to them, and he is wary that defendant would manipulate children against him.

6. He explains that defendant had a Masters degree in agriculture and she loved her animals. In England she owned horses and dogs and she gave them more importance than her children. He explains that once they got married defendant expected to attend all the horse racing events that were held in England and they were expensive, especially since she used to buy the VIP tickets and dress very well, because the people who attended these events were all well-off people and she expected to be no less.

7. CD describes defendant as being an aggressive person, both with her husband and with the children. She didn't have a good relationship with her twin son J and had a better relationship with her twin daughter I. He describes how when the parties decided to move here it was the children that came first, as defendant had to clear out their rented place, however she took longer than expected to come to Malta. Meanwhile, it was CD and his wife who took care of the children, they chose a school for them and also they had engaged a woman to look after the children, so she would feed them, made sure they were washed and that

they did their homework. As soon as defendant returned to Malta, she decided she did not need this woman to help her out with the children and the same applied for the cleaner who was looking after the house. As a result, the children were totally neglected and the house was in a filthy state as it was back in England, with dogs defecating all over the house. This is also confirmed by MCD, who also adds that when the twins were born, plaintiff had asked him to go over to London to help them out. She did go and she admits that during such a period, it was mainly her and plaintiff who took care of the twins, with defendant spending most of her time in the bedroom. At the time, she explains that plaintiff was not working at the time and being the main carer for the twins, it was impossible for him to find a full-time job. They also had a cleaner so the domestic chores were taken care of. Later, defendant used to insist that the children spend the weekends with her parents and by the time they started nursery it was plaintiff who still took care of the children, explaining that defendant was more interested in her horses and dogs.

8. CD explains that the school initially was contacting them about their concern that the children were turning up at school unfed, at times they didn't even attend school, they were dirty and they were not coping with their schoolwork. The school also had to involve Appogg in view of these problems. Later, he states that the school preferred to contact the plaintiff directly, who during such a time worked in Japan.
9. CD points out that it was a mystery where the money plaintiff was passing on to defendant, was being spent. He gave her €2000 a month, he was paying the school fees that amounted to €800 a term and then he

gave defendant an allowance of another €400 a month. Today he admits this is not possible, because the plaintiff is unemployed and because of the whims of defendant, most of the money plaintiff had is today all gone, they don't own anything. Defendant helped out with the horses at Monte Cristo estate as far as he knew.

10. Plaintiff confirms that him and defendant did not own any property movable or immovable. He confirms that his wife liked the extravagant life and on account of this they had accumulated a substantial amount of debts that he was paying:-

- (i) 25,844GBP (approximately Eur.29,180) with the UK Bank/Credit Card
- (ii) 22,232 GBP (approximately Eur. 24,010) with various friends who have helped us out from time to time;
- (iii) A tax bill of around Eur. 50,000

11. N , a very close friend of plaintiff , testified during the period between January and April, 2016 when he lived in London. In January, 2013, plaintiff had asked him to help out his wife mentor the children and to organize the logistics so that he could move the family to Malta, since plaintiff worked in Tokyo. So, he moved in with them temporarily. He explains that he always knew the plaintiff to be an affluent, successful and confident person, but when he took the parties children to Vicarage Cottage, he admits that he was totally shocked. The cottage was more a kind to a hovel rather than a suitable living accommodation for a family. He found the house to be full of dogs, guinea pigs, that made the house smelly and it was the norm to find excrement from the dogs in some area of the house. He believed that these animals were not treated as

pets by defendant and the children and he tried to instill some responsibility in them towards their pets.

He also states that he was shocked to see the filth and soiled bed linen in which the children slept, but they blamed it on the dogs, who slept with them. He felt that he had to inquire with plaintiff to see whether he was aware of the conditions in which his family was living and unfortunately he was, sincerely hoping that Craig would convince his wife to make the move to Malta with the children.

N describes defendant as “*utterly heinous, duplicitous and manipulative*” with a dual personality, the public one as the devoted mother and loving wife who misses her husband, full of pretensions and the home personality, when faced with the reality of the situation, she becomes a totally different animal. All she cared about were her horses and animals. When he confronted plaintiff as to why he had previously lived in an oversized building for a family of four, he realized it was all because he was trying to please his wife who believed she was the Lady of the Manor, an upper class socialite with horses, children looked after by nannies and au pairs and instead spend money on herself.

N describes defendant as being very fond of horses and they were her main concern. There were four horses in all, but they represented some solace for the minor child J, because he would take him near them after school and they would play around like a ten year old should, but when the child tried to tell defendant about their adventures, she showed no interest and was more interested in the horses well being.

12. N also describes the obscene language that the defendant used to use in front of the children and towards their father. She constantly insulted plaintiff and when on one occasion he happened to be in London and N witnesses an episode of verbal abuse by defendant, he confronted plaintiff and reminded him that in the past he would have never tolerated this type of behavior towards him. Plaintiff replied that he was submissive, because he feared that he would not see his children again. He also states that she was very racist. He also admits that he was concerned with the way defendant treated her son J. He could do no right in her eyes, so to prevent any clashes he used to make sure he would prepare the children before they left for school and before defendant woke up. He also ensured that after school, he would spend most of the time with J. He also accuses defendant of not being a mother who took interest in cooking well for the children. She would at the limit just boil a plate of pasta and whereas there was always enough money to buy food for the horses and hay, she refused to buy so many apples for J and peppers for her daughter I, as they were a luxury. So, N took care of the shopping himself. He admits that defendant's diet consisted mainly of a large bar of Dairy Milk Cadbury, a litre bottle of Diet Coke and a pint of soluble solpadeine tablets to which she seemed to be dependent on.

13. N explains that he also tried to instill some form of routine and discipline with the children as they were not used to it. They would return home, throw their bags and jackets haphazardly and sit to watch television, without even doing their homework, but he adds that he changed the rules and insisted that they could not watch television unless they did their homework. Again, he explains that defendant was more interested watching her daughter play hockey, rather than watching her son play rugby, when he was actually quite good at it. He

mentions that when he was helping the family pack to move to Malta, he was impressed at what a hoarder defendant was, as she refused to throw anything away.

He also states that he had promised plaintiff to help him move his family to Malta and he explains that it turned out to be different to what he expected and he couldn't detach himself, especially when he realized that defendant was a mother who was totally insensitive and disregarded her children's needs. He considers her to be a selfish person.

14. Johanna Bartolo in representation of Bank of Valletta plc. exhibited two accounts, both savings accounts in the names of the parties respectively:-

- a) Account number 40021835625 in the name of plaintiff with a balance of Eur.578.39¹.
- b) Account number 40023809895 in the name of defendant with a balance of Eur. 1,011.56²

15. Joseph Antoncich in representation of Agenzija Appogg explains that Appogg had been following the case of the twins since 2014 once they were alerted by the school because of their behavioural and challenging characters and their depressive moods. There were issues of absenteeism, the bad smell they had on them, and the fact that they children tended to keep themselves isolated from their friends. Apart from this there was the issue of the marital problems between the parents. The plaintiff lives and works abroad and his presence within

¹ Vide Dok.MC1 a fol.192 of the acts of the case.

² Vide Dok.MC2 a fol.239 of the acts of the case.

the family is very limited, on the other hand, the defendant is finding it very hard to cope with the situation of the children, apart from the fact that they have financial difficulties and she wished she had some support from her husband's end.

16. Antoncich admits that there are a number of professionals, children psychiatrists and school counsellors trying to deal with the children to address their behavioural problems. He states that their main priority is J. However, they are also attempting to solve the absenteeism because there are still days when the children refuse to wake up and go to school. They also feel the conflict of being neglected by plaintiff and not supporting them, but on the other hand, they still wish to build a relationship with him.

17. Antoncich also points out that since there are financial difficulties, the defendant is not in a position to pay for the therapy, since they barely have enough to make ends meet. So, this creates a further problem towards the progress made. Nevertheless, he states that defendant has started working at Remax, so this would help alleviate her from her financial problems and perhaps give her more strength to solve the children's issues. He admits to also having suggested to defendant to move to another apartment, since she was not in a position to keep up with the rental commitments of the apartment they were presently residing at.

18. Dr. Anton Grech, a psychiatrist that was following defendant explains that she was suffering from anxiety due to financial and marital problems as well as the custody of the children. He explains that when he had seen the defendant for the first time she was already under medication called citalopram, for anxiety and depression. He had

increased her dose. He stated that he or his team together had seen her around three times. He was not in a position to testify regarding her maternal capacity, since he was only treating her mental capacity. Grech also stated that the medication was by no means a tranquillizer and it wasn't addictive. He reiterated that if she failed to take the medication, she could end up falling into a depression.

19. Dr. Joseph Cassar, in his capacity as psychiatrist was following the minors J and I. He explains that he had seen J for the first time on the 25th February, 2016, after being referred to by the school since they voiced their concern that he was regressing at school, he tended to isolate himself and because of absenteeism. He explained that the child had a depressive disorder and he was admitted to the youth residence, the inpatient hospital for child psychiatry at Mount Carmel. He started the child on psychotherapy and anti-depressants and mainly because he was outside the school environment he started to improve.

20. As to I, Dr. Cassar explained that she had more of a personality problem. She was more emotionally unstable and she had experienced episodes of self-harm and this is where they had a major concern, because this instability could lead to a borderline personality disorder. Dr. Cassar attributed one of their main problems to the marital problems between their parents and they felt torn between the parents and being teenagers they would keep everything inside and then externalize via symptoms. He believes that a stable environment, a stable home and a more united front between the parents would help the children immensely. He also confirmed that he was aware that the children and their mother were changing their residence on a weekly basis on

account of financial problems, as that is what defendant told him. He confirmed that he was still seeing the children regularly at the Child and Youth Psychiatric Services at St. Luke's Hospital. Oswald Balzan, in representation of Mount Carmel Hospital produced reports regarding both children's case summaries.³

21. All of the problems being faced by the children were also confirmed by Julian Xuereb, a social worker at St. Martin's College, who also added that there were some teachers who tried to foster the minor J for a while, there were OP.

CONSIDERATIONS

PRELIMINARY PLEA

In her Reply, Defendant pleaded that the Court lacks jurisdiction, since their marriage was not celebrated in Malta. It is to be pointed out that throughout the proceedings. Defendant did not bring forward any evidence nor did she raise any proof to support this plea.

The Court examined the submissions put forward by plaintiff wherein he cited Article 742(1) of Chapter 12 of the Laws of Malta that states as follows:-

“Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned:-

³ Vide Dok.OB 1 and OB 2 a fol. 145-153 in the acts of the case.

- (a) Citizens of Malta, provided they have not fixed their domicile elsewhere;*
(b) Any person as long as he is either domiciled or resident or present in Malta.....”

In this regards, in the judgement **Angelo Cutajar and Sons Limited vs Dr. Anthony Cremona noe**,⁴ the Court stated as follows:-

“minkejja l-mod kif l-Artikolu 742(1) huwa msawwar, il-kwistjoni ta’ jekk Qorti Maltija ghandhiex is-setgha li tisma’ u tqis kawza mressqa quddiemha u li l-mertu taghha jaqa’ fil-kompetenza taghha trid titqies b’referenza ghall-kwalitajiet tal-persuna mharrka, l-izjed fejn ir-raguni tal-gurisdizzjoni hija mibnija fuq il-presenza tal-parti mharrka f’Malta. Din it-tifsira m’hi xejn ghajr l-applikazzjoni tal-massima guridika ewlenija li actor sequitur forum rei u tal-ohra li tipprovdi ubi te invenio, ibi te convenio.”

In continuation with this reasoning, it can be concluded that plaintiff wanted his family to settle in Malta, because of the substantial debts that they had accumulated and he wanted his family to start afresh, whereas he meanwhile started working in Tokyo. The defendant and her children have nonetheless been living in Malta for over seven years, where the children have attended St. Martin’s College.

In conclusion, it is evident that defendant lives in Malta and has been residing here for over a period of seven years and hence, plaintiff was right when he instituted the separation qua divorce proceedings here in Malta and therefore the preliminary plea no longer stands.

⁴ Prim’ Awla tal-Qorti Civili deciza 16/10/2003

RESPONSIBILITY

Plaintiff is blaming defendant for the breakdown of their marriage, due to “*sevizzi u ingurji gravi*.” Defendant filed a counter-claim, wherein she believes that there has been an irretrievable breakdown of the marriage due to plaintiff’s fault because of desertion, adultery, excesses, threats and serious injury.

Defendant did not produce any evidence throughout the case towards which she could convince this Court to attribute responsibility to the plaintiff for the breakdown of the marriage. Thus, the Courts has to limit herself to analyzing the evidence produced by the plaintiff regards the defendant’s responsibility towards the breakdown of the marriage.

1. “Sevizzi u Ingurji gravi”

Plaintiff attributes responsibility towards defendant because of the grounds of “*sevizzi u ingurji gravi*.” Jurisprudence has gone as far as to define these grounds and elencate what needs to be satisfied before the Courts can attribute responsibility to one spouse or another.

In the judgement **Antoinette Cauchi vs Alexander Cauchi**, the “ingurji” or grave offences have been defined as follows:- “*jinkludu kliem jew agir illi joffendu l-pudur ta’ dak li jkun minkejja illi dawn jirreferu ghal affarijiet vera jew foloz.*”

It has also been reiterated that to establish responsibility on one of these grounds, they need to have been committed habitually and regularly. In the judgement **Jayne Margaret Chetcuti vs Lawrence Chetcuti** decided by

the Court of Appeal on the 15th December, 2015 it was stated that “...*mhux kull nuqqas da parti ta’ konjugi versu l-konjugi l-iehor jwassal ghas-sevizzi, minacci jew ingurja gravi fit-termini tal-Artikolu 40 tal-Kodici Civili u huma biss daww in-nuqqasijiet li, maghmula ripetutament u abitwalment, iwegghu u jferu lill-konjugi sal-grad li l-konvivenza matrimonjali ssir wahda diffiċli u insopportabbli. Kif jinsab ritenut fil-gurisprudenza patria: “Per sevizie del senso della legge s’intendono atti abituali di crudelta’ che offendono la persona o l’anima di colui e sono diretti al punto di ingenerare in lui perturbazione, un dolore ed un aversione verso chi commette tali atti [PA Camilleri utrinque, 16 Marzu, 1898].”*

Plaintiff also referred to the judgement **Catherina Agius vs Benedict Agius**, decided on the 13th of June, 1967 by the First Hall of the Civil Court wherein it was established that the factors contemplated in Article 40 of the Civil Code, must create an atmosphere where the spouse lives “*f*”*sistema costante di vessazione e di disprezzo, di oltraggio e di umiliazione che rendono almeno insopportabili l’abitazione e la vita comune.*”

It was also confirmed in the case **Elisa Thompson vs Edward Thompson**, that to successfully prove the case on the grounds required to attribute responsibility to one of the spouses for the breakdown of the marriage, it was not a pre-requisite to prove each and every ground simultaneously, but it would suffice to prove one ground for responsibility to be attributed to a spouse.

Plaintiff produced various witnesses who all portrayed defendant in the same light. Relatives of his, the CD family, were very close to plaintiff, so much so that when they had the twins, MCD very willingly went to London to help

them out. However, she made it very clear that when she stayed with them, it was the plaintiff who was the main carer of the household and the children when they were very young. It seems that defendant preferred to stay in her room for most of the day. It transpires that as they were getting older, defendant would send them to her parents for the weekend.

She does not come across as being a very warm and caring mother, where her main interests and concerns, are her horses. She did not even have a close relationship with her son J, it was a persistent struggle and N, who lived with them for a while to help them with the transition from London to Malta, describes in detail the indifference that defendant had towards her son, so much so, that he explains that on J's return from school, he used to take him out with him or they used to go and spend time next to the horses. He even woke up early to prepare the children for school because defendant would start an argument with J.

N also described defendant to be a very unempathic person and very selfish, a person who would not cook her children's favourite food not to spend money, but then she always ensured she had enough food and hay for the horses.

MCD and her husband A and also KL, a close friend of plaintiff, envisaged that defendant was a very materialistic person, who expected a very capricious lifestyle. She was constantly making up appearances, wanting to attend all the expensive horse races, very elegantly and expensively dressed to the extent that she would purchase the VIP tickets. This led to most of the money that plaintiff inherited from his father being spent, especially since defendant made him rent out a luxurious house with five bedrooms. This led

to several financial debts, that increased since plaintiff was unemployed and defendant refused to work and when she did, she spent more than she earned.

N realised that plaintiff was too submissive to his wife, in that he pleased her in everything, but the result was that she was completely disrespectful in his regard. She continuously insulted and belittled him. She attacked him with very offensive language and N, who resided with her and the children for a while, experienced these episodes on a daily basis. When he confronted plaintiff, that in no way should he tolerate this attitude towards him, he replied that he had to accept it as otherwise, he feared he would lose his children.

In view of all the above, there exist sufficient reasons for the defendant to be held responsible for the breakdown of the marriage, because of “sevizzi u ingurji gravi,” considering that not only do the factors exist, but they were exercised habitually and regularly by defendant towards plaintiff.

CARE AND CUSTODY

The parties have twins I and J, who are today 17 years old. Unfortunately, these children have not have the happiest of childhoods. Their father, the plaintiff was present during their early years, but as they grew older, due to the debts that accumulated over the years, he had to move to Japan for work.

The children did feel their father’s absence and having said that, they have a mother, the defendant, who is not very maternal. She was never very caring towards the children and burdened them with her marital problems. Dr. Joseph Cassar, as well as Julian Xuereb, and Appogg all confirmed the psychological problems that the children were experiencing. The marital

problems between their parents, made them feel guilty and torn apart between both plaintiff and defendant. They felt that their father had abandoned them, but yet again they wanted to have a relationship with him.

During the time living with their mother, there were problems with school absenteeism, hygiene and isolation. So, the matter was referred by the school to Appogg and also Dr. Joseph Cassar, who follows both children on a regular basis, due to their psychological disorders, the daughter even exercising self-harm. He believes that the children require stability as much as possible. Nevertheless, in the circumstances, this is difficult due to the fact that plaintiff found a permanent job in Tokyo, miles away from his family and not having any choice due to the existing debts, his returning permanently to Malta is very remote.

Considering the delicate issues regarding the minor children, who are a step away from reaching majority, and who have been living in Malta with their mother for the last seven years, it would be difficult to upset their stability and therefore not ideal for them to move with their father in Japan, as he requested initially, but who in the note of submissions, is willing to accept their residing in Malta. In addition, considering that the struggle the children always faced was the fear of having to choose between one parent and another, the stability they so much require for the well-being, necessitates that the care and custody be joint. Above all, the children are nearly 18 years of age and therefore this issue becomes totally superfluous very soon.

The plaintiff must be given free access rights to the children, whenever he comes to visit his family in Malta.

MAINTENANCE

With regards to maintenance for the children, plaintiff has ensured through his note of submissions, that he is willing to contribute fully for the children's maintenance in the sum of €300 a month for each child provided he is in a financial position to do so.

He also confirmed that he is willing to continue paying the education and health expenses. As to the education expenses he insists that he pays St. Martin's College directly himself, because there had been occasions when he had passed on the school fees to defendant and she failed to pay the said school.

Considering that the children today are nearly eighteen years of age, the maintenance shall be paid until the children reach majority or until 23 years of age, provided they are still studying full-time.

Regarding maintenance due to defendant, considering that the children are no longer young and considering that she has already tried to work and in fact from the evidence produced, it was beneficial for the defendant to go out to work and in fact she was working for Remax, In consideration of these factors, there exist no reasons or justifications for the plaintiff to have to be obliged to pay maintenance to his wife.

COMMUNITY OF ACQUESTS

The parties have several financial issues and therefore they don't own anything, they don't own immovable property as they always rented out their residences. Neither do they own any movable property. All they own in common are liabilities that plaintiff is presently paying alone and these can be summed as follows:-

- i) 22,000 GBP (cirka Eur.23.760) with an English Bank and it is a debt on a credit card;
- ii) 22, 232 GBP (cirka Eur. 24,010) debts due to friends of theirs who loaned them out this money;
- iii) Cirka Eur.50,000 due as taxes.

DIVORCE

By an application dated 16th October, 2018, plaintiff requested that the separation proceedings be converted to divorce proceedings.

By means of a decree dated 18th December, 2018 the Court accepted that the said separation proceedings be converted to divorce proceedings according to Article 66(F) of Chapter 16 of the Laws of Malta.

For the purposes of the abovementioned article to be satisfied, the parties must have been living separately for a period of four year or more, there must not exist any chance of reconciliation and moreover, no maintenance dues must subsist.

With respect to the case at point, the parties have been living apart for the last seven years and there does not seem to be any chance of reconciliation between them, especially since it is quite evident that the parties' relationship is quite

bitter. As to maintenance due, nowhere throughout the case was any evidence brought forward by defendant to convince the court that maintenance was not being effected. In view of the above, all grounds for the divorce have been satisfied.

DECIDE

1. The Court uphold the first plea and declares the divorce of the marriage between the parties for reasons of “sevizzi u ingurji gravi” attributed to defendant and in this respect rejects the first plea in respondent’s counter-claim;
2. The Court upholds the second and third pleas in the sense that the care and custody of the children shall be exercised jointly by the parties, but the children shall reside with defendant, with rights of free access whenever plaintiff comes to Malta to visit his family. Plaintiff is also to be granted visitation rights on Father’s Day, Plaintiff’s birthday, Christmas and New Year. For these reasons, defendant’s third plea in her counter-claim is being rejected;
3. The Court upholds the fourth plea and order maintenance to be paid to minors in the sum of Eur.300 monthly for each child respectively, which amount shall increase once a year according to the cost of living. This maintenance shall be paid until the children each attain their age of majority or until they are 23 years of age if they continue studying full-time. This decision also applies to the fourth plea in defendant’s counter-claim;
4. The Court rejects the fifth plea for the reasons given in the fourth request;

5. The Court upholds the sixth plea;
6. The court upholds the seventh request and determines that the plaintiff is assuming all debts that are due as identified in the sub-title “Community of Acquests.” This also applies to seventh and eight pleas of defendant in her counter-claim;
7. The court rejects the eight plea, due to the fact that the defendant did not render herself responsible for the breakdown of the marriage, because of adultery or desertion of the matrimonial home. This also applies to defendant’s counter-claim;
8. With regards to the ninth, tenth and eleventh plea, no evidence was brought forward to establish what other assets the parties own and what property is paraphernal to the respective parties. This also applies to defendant’s sixth plea in her counter-claim, but the requests are upheld;
9. The court rejects the preliminary plea in defendant’s reply.
10. The Court accepts the second and tenth pleas of respondent’s counter-claim.

Costs related to the case are to be divided between the parties, such as one-third for Plaintiff and two-thirds for defendant.

Hon. Anthony Vella
Judge

Cettina Gauci

Deputy Registrar