

**CIVIL COURT
(FAMILY SECTION)**

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

Hearing of Wednesday 8th January 2020

App. No. : 255/2018 JPG

Case No. : 18

**IA (holder of Maltese identity
card number X and Passport
Number X) and by means of
a decree dated 17th January
2019, IA was appointed
Curator ad litem of BA**

Vs

LA

And

Director of the Public Registry.

The Court,

Having seen the sworn application filed by IA, dated 3rd October 2018, wherein it was held:

- 1. That the plaintiff was in a relationship with the defendant LA and from this relationship, one child was begotten, that is, BA who was born on the Y.*
- 2. That this relationship was brought to an end by the parties de quo and the*

aforementioned child is being raised exclusively by the plaintiff while the defendant is refusing to recognize the paternity of this same child.

- 3. That in fact, the birth certificate of the said child, which certificate bears the number Z and is here attached as Doc "A", lists the aforementioned child as the plaintiff's son, but the father is listed as unknown.*
- 4. That the defendant LA had agreed to submit himself to a genealogical exam and to recognise or otherwise the aforementioned child BA in accordance with its findings. However notwithstanding that the findings show beyond equivocation that he is the father of the aforementioned child BA, as appears in the certificate here attached as "Dok B", he remained reticent and has not recognized the aforementioned child BA.*
- 5. Because of this, this action had to be instituted.*
- 6. That the plaintiff was admitted to the benefit of legal aid by means of a decree of the First Hall of the Civil Court of the eleventh (11) of January two thousand and eighteen (2018) (Application Number 2/2018).*

Therefore, the plaintiff pleads before this Honourable Court so that it may:

- 1. Declare and decide that the defendant LA is the natural father of the minor BA even by means of scientific tests of paternity, if the case may be.*
- 2. Orders that a correction be made to the Act of Birth of the same minor number Z, which correction must be limited to and specifically for the words "father unknown" which shall be substituted by the name of the defendant, and*
- 3. Declares that as a consequence, the defendant has an obligation to maintain the same minor BA from his date of birth.*

With costs against the defendant who is from hereafter, being called for a reference to be made to his oath.

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

Having seen the sworn reply filed by Director of the Public Registry, dated 24th October 2018, page 12 et seqq., wherein it was held:

- 1. That preliminary, the exponent is of the humble opinion that in the name of justice's integrity, the minor BA should be part of this action, duly represented in terms of Article 781, 782 and 783 of Chapter 12 of the Laws of Malta;*
- 2. That without prejudice to the aforementioned, the exponent pleads that in respect to the third demand, he is not the legitimate defendant;*
- 3. That without prejudice to the above and regarding the merits of the case, the exponent states that he is not aware of the facts of the case as stated in the sworn application;*
- 4. That a copy of the result of the genetic test was attached to the original application, which establishes that the defendant LA is the natural father of the minor BA. Notwithstanding this, the exponent is of the humble opinion that at this stage the mentioned result shall be sworn under oath the technician who performed the said test;*
- 5. That without prejudice to the above, should the demands be exceeded to, the exponent invites the defendant LA to submit all of his personal details, by means of a note whereby he would specify namely: (1) Number of his identity card, (2) his name and surname, (3) his age when the child was born, (4) the place of his birth, (5) place of his residence when the child was born, (6) Name and surname of his father, and, (7) If his father was still alive when the child was born. Such information is required to eventually be inserted in the child's Act of Birth;*
- 6. That without prejudice to the above, the exponent points out that the contending*

parties shall decide definitively on what name shall BA assume, according to Article 92 (5) of Chapter 16 of the Laws of Malta;

7. That ultimately and always without prejudice to the above, the exponent submits that in any event the applicant's action is not attributable to any act or omission of the exponent and so the latter shall not be subjected to the costs of the case;

8. Saving further pleas.

With costs against the applicant who shall demanded for a reference to the oath.

Having seen the note filed by Respondent dated 17th December 2018, at page 31;

Having seen the Court's decree dated 16th April 2019, which is regards the defendant's access to his minor and maintenance toward the minor child. (See page 44B);

Having heard all the evidence on oath;

Having seen the exhibited documents and all the case acts;

Considers;

IA testified that the parties were in a relationship for a year and half. She explained that the parties had lived together for some time, and that after their separation she had found out that she was pregnant. She continued that when she informed defendant about this he had refused to accept this and had humiliated her. Consequently, she had decided to submit the child for DNA testing, which confirmed that defendant was the child's biological father. She added that defendant had nonetheless refused to accept this result. She said that defendant insists on paying maintenance in cash, with her picking up the money from his residence, which she has refused. She added that defendant also does not see the child, having asked to see the child only a couple of times. She denied that she refused to let defendant exercise access despite prior agreements, explaining that when they had agreed on a date and time for defendant to visit the child, defendant had failed to turn up.

LA testified that the parties had met in Paceville and subsequently started a relationship. He explained that about eight months after they met, they had started living together because plaintiff had lost her job and could not afford rent. He said that they had lived together for about four to six months before the relationship ended and she moved out of his apartment. He continued that a few months after their break-up, plaintiff, who at that time had already started a relationship with someone else, told him that she was pregnant and that he was the father. He said that he had told her he believed her but she did a paternity test anyway, from which it resulted that he was the child's biological father. He testified that he had wanted to be declared as the father on the child's birth certificate without the need for court proceedings and had immediately agreed to pay maintenance and had asked plaintiff for access to the child, but only ever managed to see the child twice before these proceedings due to plaintiff's behaviour.

Deliberates;

This is an action instituted by plaintiff in terms of Article 86A of the Civil Code in order to have defendant registered as the biological father of the minor child BA. According to this article:

“The mother of a child conceived or born out of wedlock who is not acknowledged by the father, and that same child, may at all times make a judicial demand to establish the paternity of the child and for the court to order the registration of such paternity in the relative acts of civil status..”

The Court has seen that BA was born on the Y and had been registered as the son of plaintiff and an unknown father. The Court observes that in his reply, defendant admitted and accepted that he is the biological father of the child. The Court has seen further that the report of the genetic testing carried out on the child and on defendant, duly confirmed on oath by Dr. Marisa Cassar, which is considered to be the *prova regina* in such cases, confirms that defendant is indeed the biological father of BA.

Therefore, the Court considers that there is irrefutable evidence that defendant is the biological father of BA and consequently plaintiff's first and second request are being up held.

The Court has seen that according to the minutes of the sitting held on the 17th of January 2019, the parties agreed that the child shall have the surname of the father, 'A' to which shall be added the surname of the mother. 'A'.

Plaintiff further requested that this Court declares that defendant has an obligation to maintain the child with effect from his date of birth. The Court considers that this demand may not be determined in these proceedings, which according to law are meant solely to determine the paternity of the child. The procedure relating to demands relative to the obligation of maintenance of children are regulated by means of Subsidiary Legislation 12.20 which establishes a requirement that parties are first to attempt to reach an amicable agreement through mediation proceedings and may only proceed with judicial demands upon court authorisation. This Court cannot therefore circumvent the procedure established by the law by determining the third plea of the plaintiff.

For these reasons, the Court disposes of plaintiff's sworn application and the sworn replies of LA and the Director of the Public Registry in the following manner:

- 1. Declares that BA born on the Y to IA is the biological son of LA;**
- 2. Orders the Director of the Public Registry to cancel the words "unknown father" from the birth certificate of BA and replace it with the name and surname of LA, holder of the Maltese identity card with the number W, born on the V in S, resident at M, son of AA (deceased);**
- 3. Orders that BA's surname shall be amended to BAA, and orders the Director of the Public Registry to take the action necessary so that this amendment shall be reflected in the child's act of birth;**
- 4. Abstains from taking further cognizance of plaintiff's third request.**

The costs of the proceedings shall be borne equally by the parties.

Read.

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

App. No.: 255/2018 JPG

Lorraine Dalli
Deputy Registrar