



**CIVIL COURT
FIRST HALL**

**THE HON. MR. JUSTICE
ROBERT G. MANGION**

SITTING OF THE 28TH OCTOBER 2021

Case No: 4

Sworn App No 213/2019 RGM

**Joseph Saydon (K.I. 259359 M),
Gerald Saydon (K.I. 266 M),
Joan Busuttil (K.I. 560955 M),
Catherine Saydon (K.I. 380062 M)**

vs.

**Avukat Dr Joseph Ellis u Prokuratur Legali
Jean Pierre Busuttil li b'digriet tal-4 ta' April
2018 gew nominati bhala kuraturi sabiex jidhru
u jiddefendu fl-interess tal-assenti intimata Mary
Anne Elsdon (Passaport Malti nru. 1069020)**

**U b'digriet tal-20 ta' Mejju, 2019, Christian Elsdon gie
nominat bhala mandatarju specjali ta' Maryanne Elsdon
u estromessi l-kuraturi deputati l-Avukat Dr. Joseph Ellis
u l-Prokuratur Legali Jean Pierre Busuttil**

The Court,

Having seen the **sworn application of Joseph Saydon, Gerard Saydon, Joan Busuttil u Catherine Saydon** filed on the 28th of February 2019 which reads as follows:

1. Illi r-rikorrenti u l-intimata huma ahwa u huma kollha t-tfal tal-mejtin Carmelo Saydon u Maria Dolores Saydon xebba Xuereb;
2. Illi Dolores Saydon xebba Xuereb mietet fl-4 ta` Novembru 1999 kif jirrizulta mic-certifikat tal mewt immarkat dok. X1;
3. Illi Carmelo Saydon miet fit-8 ta` Marzu 2014 kif jirrizulta mic-certifikat tal mewt immarkat dok. X2;
4. Illi Dolores Saydon xebba Xuereb irregolat il-wirt taghha permezz ta` testament tal-25 ta` Ottubru 1999 fl-atti tan-nutar Anthony Gatt LLD liema testament huwa l-ahhar testament taghha kif jirrizulta mir-ricerki testamentarji u testament hawn annessi bhala dok. X3, X4 u X5 fejn halliet l-uzufrutt tal-beni kollha taghha lil zewgha Carmelo Saydon mentri l-ulied wirtu l-proprjeta` f-sehem ugwali. Illi permezz ta` Kuntratt causa mortis datat 26 ta` April 2000 fl-atti tan-Nutar Anthony Gatt sar kawza mortis li jinsab anness bhala dok. X6;
5. Illi fis-2014 missier il-kontendenti miet (Carmelo Saydon) u halla l-wirt tieghu permezz ta` testament fl-atti tan-Nutar Maria Spiteri datat 24 ta` April 2012, liema testament huwa l-ahhar testament tieghu kif jirrizulta mir-ricerki testamentarji u testament hawn annessi bhala dok. X7, X8, X9 u X10. Illi jirrizulta wkoll il-causa mortis maghmul quddiem in-Nutar Rachel Busuttil datat it-12 ta` Frar 2016 liema document jinsab anness bhala dok. X11;

6. Illi Paolo Saydon jigi hu Carmelo Saydon li miet fid-9 ta` Mejju 2015 kif jirrizulta fic-certifikat tal-mewt dok.X12; Illi Paolo Saydon miet guvni u mir-ricerki testamentarji tieghu annessi hawnhekk bhala dok. X 13 sa` X15 inkluzi, u mill ahhar testament tieghu tas-27 ta` Jannar 2015 fl-atti tan-Nutar Rachel Busuttil, huwa halla l-wirt tieghu f`sehem ugwali bejniethom lil Joseph Saydon. Gerard Saydon, Joan Busuttil u Catherine Saydon. Illi fit-3 ta` Settembru 2015 fl-atti tan-Nutar Rachel Busuttil sar id-dikjarazzjoni causa mortis annessa u mmarkat dok. Dok. X 16`

7. Illi din il-kawza tikkoncerna bicca art kif ser tigi deskritta aktar l-isfel li nxtrat f`ishma ugwali bejn Carmelo Saydon u Paolo Saydon permezz ta` kuntratt fl-atti tan-Nutar Victor Bisazza tat-23 ta` Ottubru 1961 liema kopja tal-kuntratt jinsab hawn anness bhala dok. X17;

8. Illi ghalhekk il-partijiet f`din il-kawza huma koproprietarji flimkien f`ishma indivizi ta`-porzjoni art tal-kejl ta` circa elfejn sitt mija u tlieta u hamsin metri kwadri (2653mk) gewwa Birkirkara, fond/ terraced house numru sittax u sbatax (16/17) fi Triq Ghar il-Gobon, u dan bl-arja libera tieghu, bil-bitha ta` wara u bil-gnien, u bid-drittijiet u l-pertinenzi tieghu kollha kif ukoll il-porzjoni diviza ta` art fabbrikabbli accessibbli minn Triq Ghar il-Gobon u min Triq il-Venerabbli Nazju Falzon u minn Triq gdida gjo Triq Tuma Fenech gio Birkirkara u konfinanti mil-Lvant ma` Triq il-Gobon, mill-Punent in parti ma` Triq il-venerabbli Nazju Falzon u in parti ma` proprjeta` ta` terzi u mit-Tramuntana in parti mmal-fond de quo, liema proprjeta` hija ahjar delinejata fil-pjanta hawn annessa dok. X18A,u X 18B;

9.Illi r-rikorrenti u l-intimata wirtu s-sehem ta` hamsa u ghoxrin fil-mija (25%)mis-successjon ta` ommhom Dolores Saydon li mietet fl-4 ta` Novembru 1999 fejn ikkonstitwiet lil-hames uliedha eredi ugwali u fejn ghalhekk minn dakinhar akkwistaw kull wiehed 5% tas-sehem indiviz tal-proprjeta` mertu ta` din il-kawza;

10. Illi r-rikorrenti Joan, Gerard, Joseph u l-intimata Mariane wirtu s-sehem ta` din il-proprjeta` mertu ta` din il-kawza, permezz ta` prelegat fis-sitt

Artikolu tat-testament ta` missierhom Carmelo Saydon tal-24 ta` April 2012 fl-atti tan-Nutar Maria Spiteri, b`sehemijiet differenti fejn gew imhollija s-sehem ta` :

(i) 3/10 lil Joan Busuttil

(ii) 3/10 lil intimate Maria sive Marianne Elsdon

(iii) 1/5 lil Gerard Saydon

(iv) 1/5 lil Joseph Saydon

(v)Thalliet barra ghal kollox (dejjem a rigward din il-proprjeta`) Catherine Saydon

U fejn ghalhekk il-persentaggi Joseph u Gerard akkwistaw 5% kull wiehed tal-proprjeta` f` sehem indiviz mentri Joan u Marianne akkwistaw 7.5 % kull wiehed f` sehem indiviz tal-proprjeta`;

11. Fir-rigward tar-rimanenti 50% dawn kienu taz-ziju tal-partijiet fil-kawza u cioe` ta` Paolo Saydon, li miet nhar id-19 ta` Mejju 2015 li halla bhala eredi lil- ahwa Saydon cioe` lil Joseph, Gerard Catherine u Joan Busuttil;

U fejn ghalhekk f` persentaggi Joseph, Gerard, Catherine u Joan akkwistaw 12.5% tal-proprjeta` f` sehem indiviz minghand iz-ziju tagghom Paul Saydon li miet guvni;

12. Ghalhekk dan il-fond u l-ambjent madwarha mertu ta` din il-kawza jappartjenu kwantu ghal sehemijiet indivizi:

Joseph Saydon (K.I. nru. 259359(M) -22.5 %

Gerard Saydon (K.I. nru. 266(M) – 22.5%

Joan Busuttil (K.I. nru. 560955(M) – 25%

Catherine Saydon (K.I. nru 280062(M) – 12.5%

13. Flimkien ir-rikorrenti atturi huma koproprietarji ta` 87.5% u cioe` ferm aktar min-nofs mitlub mill-artikolu 495A tal-Kapitolu 16 tal-Ligijiet ta` Malta, l-intimata ghandha biss 12.5% tal-proprjeta` in komuni;

14. Il-Koproprijta` ilha fis-sehh mis-successjoni ta` ommhom li mietet fl` 1999 u mil-mewt ta` missierhom li miet fit-2014 u r-rikorrenti ilhom hafnaq snin jitolbu lill-intimata tersaq sabiex jew taqsam jew tillikwida , izda dan b`mod inutile;

15. Illi r-rikorrenti ma jridux jibqghu iktar koproprijetarji in komun mal-intimata Mary Anne Elsdon (Passaport Malti nru. 1069020);

16. Illi r-rikorrenti dahlu f`konvenju fid-19 ta` Dicembru 2017 mas-Socjeta` Toncam Properties Limited fejn is-Socjeta` Toncam Properties Limited wegħdet f`da nil-konvenju li tixtri u takkwista din il-proprjeta` mertu ta` din il-kawza għas-somma ta` zewg miljuni u sitt mitt elf Euro (€2.600,000) liema kopja tal-konvenju u r-registrazzjoni tal-konvenju jinsabu hawn annessi bhala dok. X19a u X19B. In-nutar li rrediga l-konvenju huwa in-Nutar Malcolm Mangion;

17. Illi fil-konvenju hemm kondizzjoni ndikata bhala 2(b) li jistipula li l-konvenju huwa soggett għall-estensjoni tat-triq pubblika, illi permezz ta` ittra tas-7 ta` Dicembru 2018, l-avukat tas-Socjeta` Toncam Properties Limited v tixtieq tkompli tipprocedi bil-bejgh tal-proprjeta` u għaldaqstant qiegħda ssir din il-kawza, sabiex issa kif tinqata din il-kawzajkun hemm ezitu favorevoli, ir-rikorrenti jkunu jistghu jersqu għall-kuntratt finali flimkien ma` l-intimata u f`nuqqas li ma tidhirx l-intimata l-Qorti tahtar u tappunta kuraturi sabiex tirraprezentaha;

18. Illi sabiex jigu aderiti l-elementi tal-artikolu 495A tal-kap 16 qiegħed jigi anness dikjarazzjoni da parti ta` l-atturi mahluf minnhomquddiem in-Nutar Rachel Busuttil hawn anness bhala dok. X20 datat 13 ta` Frar 2019, fejn l-atturi jaqblu mal-valur u jaqblu wkoll ma` l-ishma u jaqblu wkoll ma` l-ishma u jaqblu wkoll mal-kundizzjonijiet ta` obbligi taht liema ser isir il-kuntratt;

19. Illi r-rikorrenti gja intavolaw kawzi simili fil-kawzi li jisimhom Joseph Saydon vs Dr Joseph Ellis nomine quddiem il-Prim` Awla Tal-Qorti Civili bir-rikors numru 34/2018 ;

20. Illi fi-verbal tal-Qorti tad-29 ta` Novembru 2018 fl-ismijiet Joseph Saydon vs Dr Joseph Ellis nomine bir-rikors numru 272/2018 AF li kopja tieghu qieghed jigi anness bhala dok. X21 jirrizulta li l-indirizz ta` Marianne Elsdon skond dak iddikjarat mit-tifel taghha stess Christian huwa “Odessa Lodge”, Yarmouth Road, North Welsham Street, Norfolk, NR28 9AN UK;

21. Illi ghal kull buon fini u kif hareg ukoll mill-verbal tal-Qorti fil-kawza Joseph Saydon et vs Dr Joseph Ellis nomine rikors numru 31/2018 TA, Christian Elsdon iddikjara li l-indirizz tieghu f` Malta huwa 132, Flat 10, Villa Camilleri, Triq San Pawl, Naxxar kif jidher fil-verbal hawn anness dok. X22

22. Illi ghaldaqstant ser isiru n-notifiki fiz-zewg indirizzi appoziti u permezz ta` ta` rikors appozitu konkorrenti ma` dan ir-rikors promoter jintalab il-hatra ta` kuraturi deputati sabiex jirraprezentawha;

23. Illi ghalhekk kellha ssir din il-kawza;

Ghaldaqstant tghid l-intimata ghaliex din l-Onorabli Qorti ma ghandhiex prevju kwalsiasi dikjarazzjoni necessarja u opportuna:

1. Tordna (u prejau jekk hemm bzonn li jinhatar Perit / Arkitett sabiex issir valutazzjoni kif u meta sari l-konvenju fid-19 ta` Dicembru 2017, il-bejgh tal-proprjeta` ossia porzjon art ta` circa elfejn sitt mija u tlieta u hamsin metri kwadri (2653mk) gewwa Birkirkara, fond numru 16 u 17 fi Triq Ghar il-Gobon inkluz il-bitha fuq wara u gnien fuq wara u gnien tieghu, u dan bl-arja libera tieghu tieghu u bid-drittijiet u l-pertinenzi tieghu kollha kif ukoll tal-porzjoni diviza ta` art fabbrikabbli accessibbli minn Triq Ghar il-Gobon u min Triq il-Venerabli Nazju Falzon u minn Triq gdida gjo Triq Tuma Fenech gio Birkirkara u konfinanti mil-Lvant ma` Triq il-Gobon, mill-Punent in parti ma` Triq il-venerabli Nazju Falzon u in parti ma` proprjeta` ta` terzi u mit-

Tramuntana in parti mmal-fond de quo, liema proprjeta` hija ahjar delinejata fid-dok. X16;

2. Tordna lir-Registratur tal-Qorti jippubblika kopja tar-rikors fil-gazzetta tal-gvern u l-gazzetta lokali ta` kuljum;

3. Tinnomina lin-Nutar Malcolm Mangion u/ jew Nutar iehor f`kaz eccezzjonali izda dan biss jekk tigri eccezzjonaqlment sabiex tippubblika l-att finali tat-trasferiment opportun u kwalunkwe att iehor necessarju jew necessarju ghall-istess;

4. Tistabilixxi jum, hin u lok ghall-pubblikazzjojni tal-att notarili opportun;

5. Tahtar kuraturi sabiex jidher / jidhru fl-eventwali kontumaci;

6. Taghti dawk l-ordnijiet meqjusa necessarji u opportuni skond ic-cirkostanzi;

Bl-ispejjez kontra l-intimata li hija min issa ngunta in subizzjoni.

Having seen the reply of **Dr Joseph Ellis and Legal Procurator Jean Pierre Busutil in their quality as curators for Mary Anne Elsdon** filed on the 16th of April 2019 which reads as follows:

Illi fl-ewwel lok, l-atturi jridu jgibu prova dwar l-ishma spettanti lill-partijiet rispettivi.

Illi fil-tieni lok, u bla pregudizzju ghas-suespost, prevja l-hatra ta' perit tekniku, trid issir il-verifika illi l-prezz konvenut ghall-bejgh tal-fond de quo hu verament gust u illi bla ebda mod il-bejgh prospettat mhu ser jippregudika lill-assenti konvenuta.

Illi fit-tielet lok, u subordinatament ghal-premess, il-konvenuti fil-kwalita` tagghom ta' kuraturi deputati sabiex jirraprezentaw lill-assenti Mary Anne

Elsdon m'humieq prezentement edotti mill-fatti li taw lok ghal dina l-kawza u ghaldaqstant, jirriservaw illi jdahhlu eccezzjonijiet ulterjuri aktar '1 quddiem.

Salv eccezzjonijiet ulterjuri.

Having seen that on the 20th of May 2019 the Court ordered that these proceedings be conducted in the English language;

Having seen the acts of the case together with all documentation presented;

Having heard all witnesses under oath;

Having seen that on the 3rd of October 2019 the Court appointed Architect Mario Cassar to prepare a report regarding the valuation of the property in question relative to the date 19th December 2017;

Having seen the report of Architect Mario Cassar filed on the 13th of January 2020 and sworn on the 21st of October 2020¹;

Having seen that by decree of the 25th of March 2020 the Court authorised defendant nominee to file additional pleas;²

Having seen that the defendant failed to file the additional pleas as authorised;

Having seen the decree of the 8th of March 2021 by which the Court rejected the demand to stop from continuing hearing the case until case 308/2019 MCH in the names Maria sive Marianne Elsdon vs. Catherine Saydon et is decided;³

Having seen the note of submissions of the plaintiffs filed on the 28th of May 2021⁴ as well as the note of submissions of the defendant filed on the 2nd of July 2021⁵;

Having seen that the case was adjourned for today for final judgement.

¹ Page 166 et seq of the proceedings.

² Page 160 et seq of the proceedings.

³ Page 193 et seq of the proceedings.

⁴ Page 207 et seq of the proceedings.

⁵ Page 213 et seq of the proceedings.

Relevant Facts leading to the Court Case.

The parties to the case are siblings, daughters and sons of Carmelo Saydon who died testate on the 8th of March 2014 and Dolores nee Xuereb who died testate on the 4th of November 1999. Through a will of the 25th of October 1999 in the acts of Notary Anthony Gatt, Dolores Saydon nominated all her children as heirs in equal shares (ninth clause of the testament). The father of the parties through a will in the acts of Notary Maria Spiteri dated 24th April 2012 nominated Joan Busuttil, Maria sive Marianne Elsdon, Joseph Saydon and Gerard Saydon as his sole heirs in equal shares (seventh clause of the testament). Of particular interest is the sixth clause of the will by which Carmelo Saydon ordered that the land merits to this case is to devolve in the following way:

“b’titolu ta’ prelegat f’ assoluta proprjeta’ sehemu mill-fond numru sbatax (17) Ghar il-Gobon Street, Birkirkara, ma’ liema post hemm ghalqa ta’ cirka tomna u nofs u cioe elf sitt mija sitta u tmenin metri kwadri (1686mk) lil erba’ uliedu fl-ishma indikati u cioe lil Joan mart Edwin Busuttil is-sehem ta’ tlieta minn ghaxar partijiet (3/10) indiviz tas-sehem appartenenti lit-testatur, Maria sive Marianne mart Michael Elsdon is-sehem ta’ tlieta minn ghaxar partijiet (3/10) indiviz tas-sehem appartenenti lit-testatur, Joseph Saydon is-sehem ta’ kwinta parti (1/5) indiviza tas-sehem appartenenti lit-testatur u Gerard Saydon is-sehem ta’ kwinta parti (1/5) indiviza tas-sehem appartenenti lit-testatur.”⁶

This land was acquired by the parties’ father together with his brother Paolo Saydon back in October 1961 in equal shares. Paolo Saydon died on the 19th of May 2015. Through a will dated 27th January 2015 done in the acts of Notary Rachel Busuttil he instituted plaintiffs as his sole heirs in equal shares. Since the half undivided share of Paolo Saydon on the land in question was equally divided between plaintiffs, each plaintiff inherited from their uncle Paolo Saydon one eighth (1/8) undivided share from the property in question.

⁶ Page 33 of the proceedings.

It must be pointed out that this land was bought by the parties' father during marriage which was regulated by the community of acquest regime. Thus, the share which Carmelo Saydon had acquired must be divided into two quarters – one belonging to Carmelo Saydon himself and the other quarter belonged to his wife Dolores Saydon. The latter's share was equally divided between the five children and so each child inherited from their mother one twentieth (1/20) undivided share of the immovable.

The share held by their father, one fourth undivided share, was divided in the manner described above.

Consequently it has been sufficiently proven that plaintiffs together hold between them seven eights (7/8) undivided share of the immovable, each having a different quota as described above; while defendant Mary Anne sive Marianne Elsdon owns one eight (1/8)⁷ undivided share, equivalent to 12.5%.

Plaintiffs have filed this court case because they do not want to remain co-owners with defendant and between themselves. On the 19th of December 2017 plaintiffs signed a promise of sale to sell the land in question to Toncam Properties Ltd where the latter bound itself to buy and acquire the property in question for the sum of two million and six hundred thousand Euro (€2,600,000). The promise of sale also includes a condition that the plaintiffs had to initiate the current proceedings and obtain the Court's authorisation.

Article 495A of Chapter 16 of the Laws of Malta.

Plaintiffs have resorted to the procedure stipulated under Article **495A of the Civil Code** to request authorisation from the Court to sell property 16 and 17, Triq Għar il-Gobon, Birkirkara measuring approximately 2653mk together with a plot of land accessible from Triq Għar il-Gobon and Triq il-Venerabbli

⁷ 1/20 (inherited from Dolores Saydon) + 3/40 (inherited from Carmelo Saydon) (3/10*1/4).

Nazju Falzon, which property has been held in co-ownership between the parties for more than three years.

First sub-article of Article 495A of the Civil Code provides as follows:

“(1) Except in cases of condominium or necessary community of property, where co-ownership has lasted for more than three years and none of the owners has instituted an action before a court or other tribunal for the partition of the property held in common, and the co-owners fail to agree with regard to the sale of any particular property, the court shall if it is satisfied that none of the dissident co-owners are seriously prejudiced thereby, authorise the sale in accordance with the wish of the majority of co-owners regard being had to the value of the shares held by each co-owner.”

The same article goes on to outline the requirements to be met when the action is brought:

“(2) The request to the court **shall be made by application** which shall be accompanied by a declaration of the owners who agree to the sale as well as **a prospectus showing the number and value of the shares held by each of them** as well as **the terms and conditions under which the sale is to take place**. The application shall also indicate the date on which the co-ownership arose and the circumstances thereof.”

The purpose of this article was intended to facilitate the transfer of property in its entirety when there are owners of a minority share who for one reason or another do not want to sell their undivided share held in common or when the owner is not known or cannot be traced. In the case **Aloysius Farrugia et vs. Dr Josette Sultana et noe** decided on the 31st of May 2017 the Civil Court, First Hall explained that:

“L-iskop ta’ dan l-artikolu tal-ligi kien intiz biex jiffacilita t-trasferiment ta’ proprjeta’ fl-intier taghha, meta jkun hemm proprjetarji ta’ minoranza

ta' ishma li ghal raguni jew ohra ma jridux jew ma jistghux jersqu ghat-trasferiment fl-intier tal-propjeta' in komun.”⁸

In these proceedings the Court is to ensure that there is no abuse and exploitation of the persons holding a minority share by those holding a majority share. The Court is also duty bound to see that the co-owner holding minority shares does not suffer any prejudice. As stated by the Civil Court First Hall in its judgment of the 6th of February 2017 in the names **Josephine Grech pro et noe vs. George Joseph Parnis**⁹:

“l-artikolu 495A tal-Kap 16 huwa eżemplari eċċelenti ta' dan il-kompromess. Propjeta' li tithalla mhux maqsuma għal iktar minn għaxar snin [jew ghal tlett snin fil-każ ta' wirt li jigi fis-sehh wara l-1 ta' April, 2016], li huwa diġa perjodu twil ħafna, tista' tinbiegħ mill-kompropjetarji li jkollhom il-maġġoranza tal-ishma b'kundizzjoni waħda suprema: li l-kompropjetarji dissidenti ma jkunux gravement ppreġudikati. Għalhekk mhux bizzejjed li jigu ppreġudikati, imma jinħtieg li jkunu gravement ippreġudikati. Hawn il-legislatur qed jagħmilha ċara li anke jekk il-kundizzjonijiet tal-bejgħ ma jkunux ottimali, jew l-aħjar li jistgħu jingiebu fis-suq, xorta waħda l-bejgħ irid isir; il-linja trid tinqata' u tinqata' malajr. Altrimenti jigi mminat l-iskop kollu tal-precitat artikolu 495A tal-Kap 12.”

Of great relevance is what has been stated by the Court of Appeal (Superior Jurisdiction) in the case **Nutar Richard Vella Laurenti et vs. John Vella Laurenti et** decided on the 27th of January 2017: “*Meta l-ligi fl-artikolu msemmi ssemmi l-kelma pregudizzju tinftiehem li dan irid ikun gravi – b'tali mod li l-bejgħ eventwali tal-propjeta' in kwistjoni jkun biex wiehed juza terminu bl-ingliz “manifestly unfair” ghad-dissident.*”

⁸ See also **David Abela noe vs. Dr. Simon Micallef Stafrace noe** (Ċit Nru 1177/2010) decided by the Civil Court, First Hall on the 30th of June 2011.

⁹ Confirmed by the Court of Appeal (Superior Jurisdiction) on the 27th of October 2017. See aksi **Shirley Cardona et vs. Victor Bonanno** (Rik Nru 600/15LM) decided by the Civil Court, First Hall on the 4th of April 2016.

Defendant claims in her note of submissions that one of the elements required by law namely that “the co-owners fail to agree with regard to the sale of any particular property” is missing and thus the action “is fatally flawed.”¹⁰

The Court finds this submission as unfounded.

Evidence shows that on the 12th of December 2018 defendant herself sent an email to Dr Mark Attard Montaldo, the lawyer of the plaintiffs, informing him that she was against the sale of the property, insisting that her brothers and sisters (the plaintiffs) should “not proceed with the sale of 17 Triq Għar il-Gobon, Birkaraka until my claims are decided by the Court.”¹¹ In the said email she also explained that she does not agree with the valuation given to the property. The court concludes that the co-owners failed to agree regarding the sale of the property in question and thus, contrary to what has been submitted by the defendant, the requisite stipulated in Article 495A (1) has been satisfied.

Article 495A (2) lists the documents that must be filed together with the sworn application, namely:

- a) declaration of the owners who agree to the sale;
- b) prospectus showing the number and value of the shares held by each of them; and
- c) the terms and conditions under which the sale is to take place.

The plaintiffs filed together with the application a declaration stating that they as owners agree to sell the property 16 and 17, Triq Għar il-Gobon, Birkirkara and adjoining plot of land¹². This declaration includes a prospectus showing the number and value of the shares held by each of them as well as the share held by the defendant. Plaintiffs also filed a copy of the promise of sale agreement containing the terms and conditions under which the sale is to take

¹⁰ Page 217 of the proceedings.

¹¹ Page 337 of the proceedings.

¹² Page 66 et seq of the proceedings.

place.¹³ Although the law does not require *ad validitatem* evidence about the root of title, plaintiffs filed the *causa mortis* of their mother Dolores Sadyon¹⁴, of their father Carmelo Saydon¹⁵ and of their uncle Paolo Saydon¹⁶.

Having seen that all the documents required by law have been filed, the Court is now to proceed to decide the plea raised by the deputy curators at the time on behalf of defendant that the Court should ascertain that the sale of the property in question does not seriously prejudice the defendant in terms of Article 495A (1) of the Civil Code and that the price must be verified with the help of court appointed architect to ensure that the price asked for is just and not prejudicial to defendant.

It has to be pointed out that during the proceedings defendant Marianne Elsdon was authorised to file additional pleas, she failed to do so.

In her note of submissions defendant stated that she “was never served” with the claim. The court observes that the claim was notified to the deputy curators appointed on her behalf by decree of the 29th of March 2019. They filed a reply on her behalf on the 16th of April 2019.

On the 20th of May 2019 a general power of attorney was presented before the Court, which power of attorney held that Marianne Elsdon appointed her son Christian Elsdon “to stand in judgement, either as plaintiff or defendant in my name with all the powers enumerated in the Civil Code and in the Code of Organisation and Civil Procedure”¹⁷. Following this information, the Court appointed Christian Elsdon as deputy curator to represent defendant instead of Dr Ellis and Mr Busuttill.

On the 20th of January 2020 defendant filed an application requesting the Court’s authorisation to file additional pleas. By decree delivered on the 25th of

¹³ Page 60 et seq of the proceedings.

¹⁴ Page 11 et seq of the proceedings.

¹⁵ Page 21 et seq of the proceedings.

¹⁶ Page 53 et seq of the proceedings

¹⁷ Page 105 of the proceedings.

March 2020 the Court acceded to the defendant's request and authorised her to file additional pleas.¹⁸ Notwithstanding this authorisation defendant failed to file additional pleas.

Defendant's submission that she was not properly served with the sworn application is not correct. Due to the fact that the sworn application was originally notified to deputy curators appointed to represent her interests the Court authorised defendant to file additional pleas. She failed to do so and she cannot now complain that she was not properly served.

Defendant also submitted that plaintiffs failed to inform the Court that defendant had filed two court proceedings, namely Sworn Application 308/2019MCH and Sworn Application 332/2021AF. Defendant claims that if she is successful in both actions, she will own at least 80% of 17 Ghar il-Gobon, Birkirkara, the property subject to this present claim. She also submitted that due to the mentioned proceedings, "the shares held by each co-owner is currently unknown"¹⁹.

This Court already had an opportunity to voice its opinion in its decree of the 8th of March 2021 on the effects of Sworn Application 308/2019 if Marianne Elsdon's demand is upheld. The Court observed that

"[...] l-mertu tal-kawża nru 308/2019 MCH jista' potenzjalment ikollu effett dwar min hu s-sid ta' kwart indiviż tal-immobbli mertu tal-kawża odjerna. Ifisser dan illi anke fl-aħjar ipotezi għall-konvenuta odjerna fil-kawża imsemmija, l-atturi odjerni xorta se jibqgħu is-sidien ta' aktar minn ħamsin fil-mija (50%) tal-immobbli de quo u allura bid-dritt konsegwenzjali li jippromwovi l-kawża odjerna."²⁰

On this regard of particular interest is the judgement delivered on the 6th of October 2021 whereby the Civil Court, First Hall rejected the demands put

¹⁸ Page 161 of the proceedings.

¹⁹ Page 217 of the proceedings.

²⁰ Page 195 of the proceedings.

forward by Marianne Alsdon in the case Maria sive Marianne Elsdon vs. Catherine Saydon et (Appl 308/2019MCH). This judgement is now res judicata as no appeal has been filed. With this decision the shares which the parties to this case have inherited from their father are now definite and certain and no longer a point of contestation.

On the other hand, Sworn Application 332/2021AF was only filed on the 13th of April 2021 and which application was notified to Catherine Saydon (one of the defendants in that case) on the 16th of August 2021, thus after the current claim was adjourned for judgement. The submission by defendant in this regard is completely unfounded considering that the present court case was filed in 2019 and defendant decided to file a court case to attack the validity of Paolo Saydon's last will, after the present case was adjourned for judgment.

As with regards to submissions made by defendant regarding Article 495A (4), although no plea in line with this submission has been raised, the Court observes that at no point did the plaintiffs claim in their application or declaration that they did not know the co-owner or that she cannot be traced.

The final plea and submission which must be considered by this court is whether the price agreed on in the promise of sale agreement will seriously prejudice the defendant.

In terms of Article 495A what this Court needs to ensure is that the selling price is advantageous to all parties, both those who want to sell and those who do not want to sell.

The Court of Appeal (Superior Jurisdiction) in the case **Helen Zammit et vs. Madeleine Muscat** (Rik Ġur 327/16) decided on the 5th of October 2018 held that:

“26. Illi dan l-aggravju tal-appellanti jirrigwarda l-preġudizzju serju li jissemma fis-subartikoli (1) u (6) tal-artikolu 495A tal-Kodiċi Ċivili. Il-liġi titlob li, fil-qies ta' preġudizzju bħal dak, **il-Qorti għandha tiżen kull**

fattur rilevanti maghdud il-valur tal-proprjeta' u l-prezz tal-bejgh. Minn kliem il-liġi, allura, johroġ ċar li l-prezz li jkun miftiehem huwa biss wahda minn ghadd ta' ċirkostanzi li Qorti tista' tqis biex tara jekk il-parti intimata hijiex jew le se ġġarrab preġudizzju li kieku l-bejgh awtorizzat ikollu jsir. X'aktarx li, minhabba n-natura partikolari tal-proċedura taht l-artikolu 495A, il-prezz miftiehem ikun l-aktar kwestjoni li tnissel in-nuqqas ta' qbil bejn il-komproprjetarji: imma l-prezz mhuwiex il-kejl wahdieni li l-liġi tirreferi ghalih, ghaliex kieku l-kliem tal-liġi kien ikun mod iehor. Kemm hu hekk, jidher li l-Qrati qiesu bhala preġudizzju gravi kundizzjonijiet f'konvenju li kienu jwarrbu l-ghoti tal-garanzija tal-pacificu pussess jew l-ghoti ta' garanzija li l-ġid ghandu l-permessi kollha tal-bini meta dan ma kienx il-każ;

“27. Illi għar-rigward tal-preġudizzju serju jew gravi minhabba l-bejgh li jkun se jsir, dan irid ikun ta' sura tali li jkun manifestament inikwu għall-parti mġarrba. Madankollu, biex Qorti tiddeċiedi jekk tilqax jew le talba għall-bejgh ma huwiex biżżejjed li l-parti intimata tressaq stejjem li juru differenza fil-valur tal-proprjeta' fejn id-differenza fil-valur bejn il-prezz miftiehem u l-valur fl-istima tkun relattivament zghira. Kif inghad, **l-iskop tal-artikolu 495A mhuwiex biex jiġi assigurat bi preċiżjoni l-valur tal-proprjeta' fis-suq, imma li tara li l-bejgh isir bi prezz xieraq li ma jġib hsara lill-ebda proprjetarju**” (enfasi ta' din il-Qorti).

What defendant Marianne Elsdon filed before the Court at final submission stage were valuations of random plots and sites in Birkirkara selected from estate agents' websites.

Apart from the fact that these documents were filed without the Court's authorisation and were not admissible as evidence at that stage, the Court notes that such information should have been filed at the appropriate time during the proceedings and corroborated by witnesses. Furthermore, what is relevant are not the prices in the year 2020 but the prices in the year 2017, the date of the promise of sale agreement.

To verify the price of the property in question the Court appointed Architect Mario Cassar who certified that the value of the property in question in December 2017 was two million, four hundred and ninety five thousand euro (€2,495,000).²¹ Given that the Court appointed architect came to a price which is less than that agreed upon, and given that the defendant did not contest the valuation, neither did she put forward any questions to the architect and nor did she request the appointment of additional referees; the Court therefore concludes that the price of the property as shown on the promise of sale agreement is not prejudicial to the interests of defendant.

While the Court took note of all other submissions put forward by the defendant, the Court finds that they are not relevant to the merits of this case.

What is relevant is whether defendant will be seriously prejudiced if the Court authorises the sale of property 16 and 17, Triq Ghar il-Gobon, Birkirkara and adjoining plot of land for the price mentioned in the promise of sale agreement.

Since the Court finds that defendant will not suffer any serious prejudice if the sale of property 16 and 17, Triq Ghar il-Gobon, Birkirkara and the plot of land accessible from Triq Ghar il-Gobon and Triq il-Venerabbli Nazju Falzon, is authorised, the Court accedes to Plaintiffs' request.

Court Order.

For these reasons the pleas raised by Defendant are being rejected and the claims brought forward by Plaintiffs are being upheld. Consequently the Court:

1. Authorises the sale of the portion of land measuring approximately two thousand six hundred and fifty three metres squared (2653m²) in Birkirkara; property bearing number sixteen (16) and seventeen (17) and in Triq Ghar il-Gobon, Birkirkara including the yard at the back and a garden, including airspace, and a plot of land accessible from Triq Ghar il-Gobon ,Triq il-

²¹ Page 177 of the proceedings.

Venerabbli Nazju Falzon and from New Street in Triq Tumas Fenech in Birkirkara, as described in the promise of sale agreement of the 19th of December 2017; for the price of two million and six hundred thousand euros (€2,600,000) and under the terms and conditions agreed to in the promise of sale agreement of the 19th December 2017;

2. Appoints (i) Notary Malcolm Mangion to publish the final deed of sale at the Law Courts, Valletta, on Friday 26th November 2021 at noon and (ii) Dr. Jonathan Spiteri as curator for defendant in the event that she fails to appear for the publication of the public deed of sale;
3. Orders that the capital gains tax due by the sellers and the fees due to the curator be deducted from the selling price before the balance is divided between the sellers.
4. Orders that in the event that the defendant fails to appear for the publication of the contract of sale, the amount due to her, after the abovementioned deductions, be passed from the buyer to the curator who is to deposit the relative amount under the authority of the Court within one week of the publication of the contract of sale.

The costs of these proceedings, including those of the curator, shall be borne by all the parties according to their respective shares.

Read in open court.

The Hon. Robert G. Mangion
Judge
28th October 2021

Lydia Ellul
Deputy Registrar