

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of 10th November 2021

Application no. : 46/2021 JPG

Case no. : 20

AD

Vs

AID

The Court:

Having seen the sworn Application filed by AD, dated 2nd February 2021, at page 1 (translation at page 2), wherein it was held:

That the parties were married on the 29th February 1996, which marriage was registered in the Civil Registry LSG, as appears from the marriage certificate number E 3/1996 SG, herewith attached and marked as Dok A and from this marriage their minor son DA was born, who today is 16 years old.

That the parties had separated by virtue of a public contract dated the 6th March 2018 in the acts of Notary Doctor Mark Zaffarese, which is herewith attached and marked as Dok B.

That the parties have been living separately 'de facto' for four years and are therefore entitled to apply for divorce.

That there is no reasonable prospect for the reconciliation between the parties and the parties are happy to live their separate lives.

That in terms of the contract of separation of the March 2018, the plaintiff is to

pay maintenance for his wife in the sum of €50 monthly as well as maintenance for minor son in the sum of €450 monthly. There are no arrears of maintenance.

That these facts satisfy all the conditions required to obtain a divorce in terms of Article 66B of Chapter 16 of the laws of Malta.

That therefore, that applicant respectfully requests this Honourable Court, saving any declaration which it deems necessary and opportune, for the foregoing reasons to:

- 1. Pronounce the dissolution of the marriage.*
- 2. Order to the Registrar of the Court such that within a time established for this purpose by the Court, to notify the Director of Public Registry with the dissolution of this marriage.*

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

Having seen that Defendant, as assisted seduta stante, accepted service of the acts and informed the Court that she has no objection that the divorce be granted (Vide verbal of 17th June 2021);

Having seen the exhibited documents and all the case acts;

Having seen the Articles 66A, 66B u 66C of Chapter 16 of laws of Malta;

Considers:

AD testified (vide affidavit Dok C, at page 18) that the parties got married on the 29th of February of 1996 in G, and from this marriage a son was born. He stated that this marriage broke down and the parties separated by virtue of a contract dated 6th March 2018. However they have been living apart since 1st February 2017. He declared that they there is no prospect for reconciliation with his wife. Moreover, he declared that there are no maintenance arrears due.

AID gave evidence on oath (vide affidavit, Dok AID at page 32) and corroborated and confirmed

the testimony given by Plaintiff.

Clive Pisani gave evidence on oath (vide page 38) stating that he is an advocate and a legal advisor at the Public Registry within Identity Malta. He declared that a foreign marriage certificate may be registered in Malta in terms of Article 244 of the Civil Code which lays down three requisites, that at least one of the parties is a Maltese citizen; that the foreign marriage certificate is to be issued by the Foreign Competent Authority; that the foreign marriage certificate has to be duly authenticated. He continued that when a divorce is pronounced by this Court where the marriage has been contracted abroad and where none of the parties is a Maltese citizen, the annotation obviously cannot be made because the act of marriage in itself is not registered in Malta. However the Public Registry still takes note of that judgement in the sense that if one of the parties wants to re-marry here in Malta, that judgement obviously would constitute proof of status. Whenever a foreign country where the act of marriage is registered requests proof of divorce, it specifically asks for the judgement and not for the act of marriage annotation. Finally he confirmed that to his knowledge, a divorce can still be pronounced if one of the parties is at least habitually resident for one year preceding the divorce but the act of marriage cannot be registered unless and until one of the parties obtains Maltese citizenship.

Deliberates:

According to Law, it is confirmed in Articles 66A and 66B of Chapter 16 of laws of Malta:

66A. (1) Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement.

(omisis)

66B. Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:

(a) upon a demand made jointly by the two spouses, on the date of commencement of the divorce proceedings, the spouses shall have lived apart

for a period of, or periods that amount to, at least 6 months out of the preceding year: Provided that when the demand is made by one of the spouses against the other spouse, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least one year out of the preceding two years; or

- (b) on the date of commencement of the divorce proceedings, the spouses are separated by means of a contract or court judgment; and*
- (c) there is no reasonable prospect of reconciliation between the spouses; and*
- (d) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:*

Provided that the spouses may, at any time, renounce their right to maintenance: Provided further that for purposes of this paragraph, maintenance ordered by the court by a judgement of separation or agreed to between the spouses in a contract of separation, shall be deemed to be adequate maintenance:

Provided further that a divorce pronounced between spouses who were separated by a contract or by a judgement shall not bring about any change in what was ordered or agreed to between them, except for the effects of divorce resulting from the law.

Considers:

The Court has seen that the parties were married on the 29th of February 1996 in LSG, (vide Doc A, page 4) and a child was born from this marriage who is 16 years of age;

The record shows that the marriage broke down and the parties obtained a personal separation by means of a public deed in the acts of Notary Doctor Mark Zaffarese dated the 6th of March 2018 (vide Dok B, page 7 et seqq). Furthermore, as the acts show, the parties separated de facto as from the 1st of February 2017. Therefore, it is established that the parties have been separated in excess of the timeframe required by law.

The record shows that that there are no maintenance arrears.

Furthermore, the Court finds that there is no reasonable prospect of a reconciliation between the parties

For these reasons, the Court pronounces the dissolution of the marriage between the parties by divorce and orders the Court Registrar to advise the Director of the Public Registry of the dissolution of the marriage between the parties so that this may be noted in the Public Registry.

Senza Tassa.

Read.

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

**Lorraine Dalli
Deputy Registrar**