



**CIVIL COURT
(FAMILY COURT)**

MR. JUSTICE HON. ANTHONY G. VELLA

Sitting of Wednesday, 30th March 2022

Application number : 72/2013 AGV in the names of;

SB

v.

TLB

The Court ;

Having seen the sworn application of SB dated 11th April 2013 ;

1. The parties Got married on the 17th May 2003 and undergone a consensual separation in the acts of Notary Dr Patricia Hall on the 14th Febraury 2007 ;
2. Subsequently to the legal seperation of the parties, on the 2nd March 2008, a child was born by the names of TTB ;
3. Today the minor, of 5 years of age and has always lived with his mother, the applicant.
4. The de facto care and custody of the said minor, was vested to the applicant who took care of and raised the said minor ;
5. The parties have not reached an agreement as to several pending issues, between the, including the maintenance respendent had and has to pay to the minors' mother, for the minor TT.
6. Respondent minors father, exercises access towards his son every Wednesday from 5.30 Pm to 6.30 PM and Saturday from 1.00 PM to 9.00 PM , and on Friday from 5.30 PM to 8.30 PM alternating with Sunday from 4.00 PM to 6.00 PM.
7. The parties have two other children E who was born on the 22nd April 2004 and K who was born on the 7th December 2005 ;
8. Respondent has obliged himself as per clause Number 5.1 of the separation contract , to pay the sum of sixty Maltese Liri, for each of the children's maintenance and half of the child care expenses that is forty Maltese Liri per month, and ten Maltese Liri per month for health care. The parties agreed that the maintenance would increase every year accoriding to the standard of living index and therefore, the husband had bound himself to pay the total sum of one hunderd seventy five Maltese liri every month for the two children.
9. The husband had also bound himself, as per clause number 5.2 of the contract , to pay half of the edcuational expenses and half of the medical expenses of the extraordinary nature .

10. The husband has several arrears to pay to the applicant which up to date have not yet been paid, which arrears concern and include maintenance and other expenses of the minors.
11. Subsequent to the legal separation of the parties, the applicant had to pay other expenses to the minors, which the applicant humbly submits should be borne equally between the parties including but not limited to child care and extra curricular activities of the children.
12. Applicant humbly asks the Court to authorise the legal separation contract to be varied to include the words all expenses of the children Eva and Kieran to be borne equally between the parties, as per clause 5.2.
13. Applicant humbly asks the Court to order respondent to refund the applicant half the sums to be paid by the respondent applicant had to file these proceedings.
14. Since the parties have not managed to come to an agreement as to the arrears and sums to be paid by the respondent, applicant had to file these proceedings.
15. Applicant was authorised by the Civil Court Family Section on the 12th February 2013, to file these proceedings, copy of the decree is hereby attached.

Thus, Applicant humbly asks the Honorable Court to ;

1. Declare that the care and custody of the minor TTB is vested solely and exclusively to the applicant ;
2. Order respondent to pay the maintenance to the applicant, or the minor TTB including arrears due, and some from his date of birth, and pay half of all the expenses of the minor, including arrears from his date of birth, including but not limited, to medical, educational and of extracurricular activities.

3. Declare that respondent access towards his son T is on Wednesday, from 5.30 pm to 6.30 pm and Saturday from 1.00 pm to 9.00 pm, and Friday from 5.30 PM to 9.30 pm, alternating with Sunday from 4.00 pm to 6.00 pm.
4. Authorise the separation contract of the parties to be varied to include the words in clause 5.2 for respondent to pay 'half of all the expenses of the children E and K' ;
5. Respondent should be ordered to refund the sum paid by the applicant for the said children expenses including but not limited to child care, medical, maintenance arrears, and extra curricular activities.

Expenses should be borne by the respondent.

Il-Qorti;

Rat ir-risposta Guramentata tal-konvenut, datata 28 ta' Novembru 2013;

Eccezzjonijiet

Jecepixxi reverentement;

1. Illi l-eccipjent, almentu f' dana l-istadju, fic-cirkostanzi prezenti tal-kontendenti ma jopponiex ghall-ewwel talba tal-attrici illi tigi fdata bil-kura u l-kustodja tal-minuri TTB, u kif ukoll ma jopponiex ghat-tielet talba tal-attrici dwar granet u hinijiet ta' access ghall-istess tifel minuri, b' dan pero li dina l-Onorabli Qorti ghandha f' kull hin tizgura illi l-access tal-eccipjent ghal ibnu z-zghir ikun identiku ghal dak ezercitat minnhu fir-rigward ta' zewg

hutu akbar minnhu biex jigi zgurat illi f' kull hin it-tfal minuri jgawdu l-kumpanija ta' xulxin meta jkunu ma' missierhom.

2. Illi r-raba' talba hija opposta ghas-segwentu motivi, cioe:

- i. Illi skont il-Ligi, il-Qrati ma jistghu qatt jissostitwixxu dak patwit mill-partijiet b' dispozizzjonijiet ordnati minnha.
- ii. Illi dak patwit mill-partijiet fil-kuntratt ta' separazzjoni taghhom dwar il-htigijiet tal-minuri E u K, ulied il-kontendenti, ma jistghax jigi varjat b' applikazzjoni tal-principju *pacta sunt servanda* u wkoll ghaliex jikkostitwixxi kompromess tad-drittijiet reciproci tal-partijiet illi jassikura lil kull parti dawk id-drittijiet stipulati favur taghha izda thares lil parti l-oħra minn pretenzjonijiet ulterjuri li ma jkunux jikkonformaw ma dak stipulat.
- iii. Finalment il-bicca l-kbira tal-ispejjez, illi skont ma fehem l-eccipjent qeghda tirriklama l-attrici martu, huma regolati mill-kuntratt illi l-attrici qeghda tittenta tvarja.

3. Illi t-tieni talba hija opposta ghas-segwentu motivi, cioe:

- i. Illi fl-ewwel lok l-attrici ma hiex qeghda titlob illi l-manteniment jigi likwidat. Dan il-process gudizzjarju ta' likwidazzjoni huwa appuntu l-uniku process illi jista' jwassal għall-akkoljiment gudizzjarju tat-talba tal-attrici għal hlas.
- ii. Illi fit-tieni lok, ebda likwidazzjoni ta' manteniment ma hija mehtiega billi l-kontendenti, bonarjament bejniethom, kienu qablu illi minnghajr

htiega ta' formalitajiet ulterjuri huma jestendu ghal minuri T l-istipulazzjonijiet maghmula minnhom fil-kuntratt ta' separazzjoni taghhom fir-rigward ta' hutu t-tnejn l-ohra, b' mod illi l-eccipjent zied bin-nofs il-manteniment li kien ihallas lill-attrici martu u hallas lill-attrici nofs dawk l-ispejjez stipulati fil-kuntratt.

- iii. Illi fid-dawl ta' dak imressaq fl-eccezzjoni precedenti, it-talba tal-attrici ghal hlas tal-“arretrati” ta' manteniment ma hiex intelleggibli mhux biss ghaliex l-eccipjent dejjem hallas dak formalment patwiet, izda wkoll ghaliex mhuwiex apert lill-attrici illi, wara hames (5) snin ta' ftehim, tittenta tirrovexxa dan il-ftehim b' kawza u dan b' effett retroattiv.

Illi l-eccipjent mhuwiex fi grat, minhabba l-mezzi tieghu, illi jzid mal-manteniment illi qieghed ihallas, anzi ladarba l-attrici tarroga lilha nnifisha d-dritt illi tinjora f' din il-kawza dak illi ftehemet mall-eccipjent, l-eccipjent sejjer fil-kors ta' din il-kawza jressaq provi biex juri illi hemm lok illi l-manteniment sa issa mhallas minnu ghall-minuri TTB jigi ridott.

4. Illi dwar il-hames talba jigi eccipiet s-segwenti:

- i. Illi fir-rigward tal-minuri T, l-eccipjent mill-gdid jecepixxi dawk l-eccezzjonijiet gja mressqa minnu.
- ii. Illi fir-rigward tat-tfal minuri l-ohra, E u K, l-eccipjent jtenni illi l-partijiet gja ftehemu liema spejjez l-eccipjent ghandu jirrimborsa lill-attrici u dawn gew kollha mhallsa regolarment. Spejjez ohra mhux mahsuba fil-kuntratt ta' separazzjoni ma jistghux jigu riklamati.

5. **Salvi eccezzjonijiet ohra.**

The Court refers to the other proceedings in the same names, Application number 208/16, and declares that since both cases had been heard concurrently, and since the evidence produced in one case also referred to the other, the Court shall, so as not to reproduce all the considerations made in one case, make applicable such considerations made in one for the other. In this way, the Court shall immediately refer to the pleas raised by plaintiff as if already having gone through all the considerations made in the other case referred to hereabove.

DECIDE

Having considered all the above, the Court decides as follows:-

1. Upholds the Plaintiff's first claim.
2. Upholds Plaintiff's second claim and orders that Defendant pays maintenance for all the three children in the sum of €215 for each child and half education and health expenses, as well as extra-curricular expenses. The said maintenance is to increase annually according to the cost of living.
3. Upholds the third claim as above explained and decided.
4. Upholds the fourth claim and orders the amendment accordingly.
5. Upholds the fifth claim and orders the payment of arrears for maintenance and expenses in the sum of € €26,813.73.

Costs are to be borne by Defendant.

Mr. Justice Anthony J. Vella

Registrar