



**CIVIL COURT  
(FAMILY SECTION)**

**MR. JUSTICE ANTHONY G. VELLA**

**Sitting of Tuesday 3rd May 2022**

**Application number 195/2014 AGV**

The Court;

**E A S E L S A S**

**Vs**

**A M A A – A I A**

**The Court,**

**Having seen the sworn Application of EA S EL SAS dated 3<sup>rd</sup> September  
2014**

Respectfully submits and confirms on oath:-

1. That the parties wed in Egypt on the 16<sup>th</sup> of August 2006, and from the said wedding they had a child, Z M A Ab –Al A, who was born in the United Kingdom on the 10<sup>th</sup> of March 2007 as per the annexed copy of his birth certificate marked as Dok A. Following their wedding the parties established their residence in London.
2. That the applicant is entrusted with the sole care and custody of the minor ZM A Ab – AL A
3. That this marriage was not a happy one and this because the applicant was often subject to acts of domestic violence, insults and other abuse, with such violence, insults and abuse even occurring while the Plaintiff was pregnant with the above-mentioned minor. The applicant and her son also had to spend a period of time residing with her in-laws who had accepted her simply because they were afraid for her wellbeing. This marriage was not contracted out of love but was an arranged marriage.
4. That subsequently, on the 21<sup>st</sup> of July 2007, the applicant, who is an Egyptian national, went to Egypt to attend her brother in law's wedding, and while in Egypt, her in-laws took her passport and the minor's passport away from her, and went back to London with the said passports, hence impeding my client from returning to the United Kingdom. This happened when the minor was only 4 months old.
5. That the applicant lived in Egypt until 2011, that is until she transferred her residence and her child's residence to Malta, and despite the lapse of 4

years the Defendant never approached, called or in any way made contact with his son.

6. That subsequently the Defendant had divorced his wife on the 10<sup>th</sup> of February 2008. The divorce procedure was done in the applicant's absence as can be attested from Documents B and C hereby attached. In the said divorce procedures, no maintenance or alimony due by the father was established.
7. That the applicant subsequently transferred her residence and that of her son to Malta, and Malta is the country where her son attends school, extra-curricular activities, where his friends and family reside. The child has also learned to speak Maltese fluently and this because Malta is the country where he has practically spent half his life.
8. That the Defendant has never voluntarily contributed to the upbringing of his son and has never paid in any form whatsoever any alimony. The mother has throughout the years brought up her son by herself without any support or financial help by the father.
9. That unfortunately the minor suffers from a chronic acute pneumonia, which is effectively a serious form of asthma which has in certain circumstances led to the hospitalisation of the minor.
10. That despite being notified by means of a judicial letter of the 25<sup>th</sup> of March 2014, a copy of which is hereby being attached and marked as Dok D, whereby the Defendant was asked to appear for the liquidation of a just rate of alimony to be paid for the minor, such request has been ignored and the applicant had no other option but to proceed judicially.

11. That by means of a decree given by this Honourable Court number 1450/2014, a copy of which is hereby being annexed and marked as Dok E, the applicant was authorised by the Court to proceed with the sworn application.

12. That the applicant knows the above facts personally and is confirming them on oath.

Therefore the applicant is requesting this Honourable Court to, saving any declaration which it deems fit and necessary:-

1. Establish a monthly rate of alimony which the defendant A MAA- Al A must start paying to the applicant with regards to her minor son Z M A A –Al A and to order the Defendant A MAA- AL A to pay that established rate of alimony to the applicant.
2. Liquidate a sum due to the applicant being the arrears of alimony due to the applicant and to order the Defendant AMAA- AL A to pay the sum liquidated.
3. Order the Defendant AMAA- AL A to pay his share of expenses pertaining to the child's health, education and extra-curricular activities.

With costs against the Defendant who is hereby being summoned with reference to oath.

**The Court,**

**Having seen the sworn Reply dated 4<sup>th</sup> March 2015 respectfully submits and confirms on oath:-**

1. By virtue of this present act he is giving himself notified with the application of the Plaintiff.
2. The parties contracted marriage in Egypt Alexandria on the 16<sup>TH</sup> August 2006, and the said marriage was never registered in the United Kingdom.
3. The parties separated and the divorce of the parties, also was pronounced in the Court of Alexandria, Egypt.
4. That from the marriage, the minor A A Al Ali, was born.
5. That the divorce and the separation are not the merits of this case and one can define from the pleas put forward by the plaintiff.
6. That the parties regulated the care and custody of the minor as well as the maintenance by virtue of contract authorised by the Court of Alexandria Egypt, as seen in the documents here attached and marked Doc A and Doc B.
7. That the terms of the same contract regulated that the care and custody of the minor shall be vested in the mother and the habitual residence of the minor, shall be that indicated in the agreement that is in Egypt.
8. That in terms of the judgement by the court of Alexandria, in the names, **‘AMAA vs EAA et** ( Doc C) it is clearly shown that the care and custody

was removed from the mother since she had married another man and now the care and custody of the child, is vested in that of her mother ZIM.

9. That therefore in view of the documents above mentioned and submitted with the reply, this Court does not have jurisdiction , to hear this case since the court, that has jurisdiction to hear the case is that of Alexandria, Egypt.

10. That these facts that the Plaintiff brought the minor over to Malta when she did not have the care and the custody of the minor, is against the order given by the Egyptian Court, and the Plaintiff is well aware that she can face proceedings against her since she did not abide by the Court order.

11. That the allegations put forward by the Plaintiff, are all unfounded and without legal basis.

12. That, furthermore, from the documents submitted and marked as Doc. A and Doc B are dated after the divorce, she was given sums of money and maintenance for the minor.

13. That the Defendant always gave maintenance to the Plaintiff once she had the care and custody of the minor child.

Further pleas reserved.

With expenses against the Plaintiff that is already summoned to testify.

Having seen all acts and documents exhibited.

Having seen the partial judgement that granted jurisdiction to the Maltese Courts decided on the 5<sup>th</sup> July, 2018.<sup>1</sup>

## **CONSIDERS:**

## **FACTS**

1. Plaintiff was married to Defendant on the 16<sup>th</sup> August, 2006. During their marriage they had a son Z and they later divorced on the 10<sup>th</sup> February, 2007.

At the time she met Defendant, Plaintiff explains that they were a very well-off family and they lived extremely comfortable. Subsequent to the divorce she explains that Defendant's identity card read that he was unemployed, showing a totally different address in Cairo and not Alexandria where they were from. The whole scope of all this was because he did not want to pay for his child's well-being.

She insists that with the help of Defendant's uncle who is a lawyer, he had falsified documents so it was going to be difficult to prove his income.

On the 31<sup>st</sup> July, five months after their divorce, Defendant remarried and on his marriage certificate he defined his employment as Chairman Manager at Green Fields Company.<sup>2</sup>

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<sup>1</sup> Fol. 195

<sup>2</sup> Dok. K attached to Plaintiff's affidavit

In October, 2011 she came to Malta and she was remarried and she decided to open proceedings to claim maintenance for her son. Although she is not aware of the Defendant's actual income, she is aware that he travels to many countries for his business.<sup>3</sup>

Ever since she has been in Malta she explains that she has been financing her son with the help of her family. She identified all the expenses she incurs for her son.<sup>4</sup>

She confirms that on the 22<sup>nd</sup> January, 2019 the Maltese Courts ordered Defendant to pay her maintenance in the sum of €350 and to date he has failed to pay any sum. Neither has he been in contact with his son.

2. Z I M K, Plaintiff's mother confirms that Defendant abandoned his wife and son on the 21<sup>st</sup> July, 2007 by returning them to Egypt when the son was just four months old. Defendant never inquired about his wife and son and despite the child's illness he never paid alimony or child support towards him.

The times he visited Egypt he never contacted Plaintiff to see his son. She did inform him several times that the child had to be hospitalised, but he did not care.

Presently, Plaintiff remarried and her son is happy to be in Malta where he has settled down.

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<sup>3</sup> Dok. I attached to Plaintiff's affidavit

<sup>4</sup> Dok. M attached to Plaintiff's affidavit.



This was also confirmed by AAEA, Plaintiff's brother as well as by May A El. s A Plaintiff's sister.

4. Defendant explains all the circumstances that led to their divorce on the 10<sup>th</sup> October, 2008 and at that point they reached a mutual gentleman's agreement that Plaintiff would continue living in his father's flat and he would be sending a fixed amount as maintenance for his son which was agreed in the sum of 500EGP monthly that was to be paid in cash.

He admits that despite the fact that he was paying the maintenance fees, she filed a court case against him before the Egyptian court stating that he was not paying her maintenance fees. In such a case she tried to convince the court that payment was not being effected, even more so since he was paying cash and he had nothing to prove that payment had infact been made.

He adds that on the 28<sup>th</sup> May, 2008 an amicable settlement was reached whereby Plaintiff confirmed that she had received all her entitlements in lump sum, also her dowry in lump sum. She also agreed to 500EGP to be paid every month as maintenance towards her son.

He insists that his father helped out with some of the son's medical expenses and he would also deposit an extra 500 EGP apart from the maintenance fee he himself was paying.

In September 2010 he had also enrolled his son at the Modern American School in Alexandria in order for him to achieve an English education whilst living in Egypt, only to discover that after completing the scholastic year 2010/2011, the minor was missing a lot of school.

**It later transpired that Plaintiff had remarried and their son ended up in the care and custody of his maternal grandmother and this according to Egyptian law.**

On the 6<sup>th</sup> February, 2013 he had received a legal letter from Fenech and Fenech advocates whereby Plaintiff was claiming maintenance fees for the last seven years and she proceeded under Maltese law. He sought legal advice making it very clear that her claims were unfounded as payments were effected throughout the seven years. Infact, he states that in their reply, Plaintiff's lawyers implied that payments indeed were effected, but they believed them not to be sufficient.

He insists that he has not seen his son due to all the hindrances made by Plaintiff. He remarks that he has all intentions to see his son.

In cross-examination, Defendant explained that he works as a store manager at Greenfields, which shop belongs to his father, who takes care of the operation of the business. He explains that his father also takes care of the accounting books. He admits that the business operates under the name of Greenfields London Limited in which he states that he has no shareholding, but he has held a directorship for the last ten years. His income is around forty to fifty thousand Sterling a year. He declared this to be his sole income. He does not receive further bonuses or benefits. The dividends he received were twenty eight thousand sterling, but they formed part of his forty/fifty thousand income.

He admits that until the 26<sup>th</sup> November, 2020 he was in arrears of five months of maintenance but promised to pay them. He pays the maintenance

presently through court because when he used to pay Plaintiff directly he believes that she lied that payment was not effected.

### **Having Considered.**

Plaintiff is requesting this Court to establish alimony for their minor child Z, as well as his share of his expenses related to the child's health, education and extra-curricular activities.

Plaintiff is also requesting that this Court orders Defendant to pay arrears of maintenance which he failed to pay further to their separation agreement.

Defendant on the other hand pleads that primarily, since Plaintiff lost the care and custody of her child Z since she remarried and this according to a judgment delivered by the Egyptian Court on 23<sup>rd</sup> September, 2012, her claims were unfounded at law, once today the care and custody of the child was legally in the hands of her maternal grandmother.

Secondly, the Defendant pleads that his income does not enable him to pay more maintenance than that he is presently paying. Moreover, he claims that there are no arrears of maintenance due.

The facts brought before this Court confirm that the parties obtained a divorce on the 10<sup>th</sup> February, 2008, which according to Plaintiff was obtained in her absence and no maintenance was awarded for the needs of the minor child. As a result she states that their child was not maintained from 2008 until the decree ordered by this Court in 2018.

Defendant rebuts these claims as he claims that although the divorce did not contemplate maintenance payments, the parties had a gentleman's agreement where they had agreed that he would pay 500 EGP (Egyptian pounds) in cash. Plaintiff took advantage of this situation Defendant claims and once there was a lack of documentation confirming the transfers she sued him for lack of payment of maintenance.

To regulate this issue between them Defendant confirms that they agreed to regulate the matter and on the 28<sup>th</sup> May, 2008 they signed an agreement by which they established the care and custody of the minor as well as the related maintenance fees, which agreement was also enforced and authorised by the Egyptian Court,

### **CARE AND CUSTODY**

The first consideration of this Court revolves around whether Plaintiff's claims are legally founded further to the judgement delivered by the Egyptian Court on the 23<sup>rd</sup> September, 2012 in the names **A M A A A vs E A E A L S E I S** where the care and custody of the child Z was entrusted to the maternal grandmother and this once Plaintiff remarried an Egyptian man.

This Court already had the opportunity to pronounce herself on this issue in deciding Defendant's request to enforce the separation and the agreement reached by the parties on the 10<sup>th</sup> February, 2008 in the names **A M A A E A vs E A E S E I Rik. Nru. 855/2015** decided on the 1<sup>st</sup> March, 2017. Referring to the divorce agreement, it was decided that the Plaintiff retains the care and custody of the child, provided that if Plaintiff remarried, the said care and custody of the child has to be passed on to the

maternal grandmother. Essentially this is what happened in the judgment given by the Egyptian Courts on the 23<sup>rd</sup> September, 2012. However, the Maltese Courts remarked that *“Illi l-vertenza rigwardanti l-kura u kustodja tal-istess minuri giet hemm deciza skond il-ligijiet ta’ dak il-pajjiz u kif jirrizulta mill-istess sentenza estera, il-qorti de quo tat ukoll importanza anke lill-kultura tal-istess pajjiz.”*

Defendant is insisting that the judgement dated 23<sup>rd</sup> September, 2012 delivered by the Egyptian Court was enforced here in Malta, from which Plaintiff did not appeal. Nonetheless, this Court does not agree with Defendant as the case he was asking the Court to enforce was the divorce, precisely on the 10<sup>th</sup> February, 2008 and the subsequent agreement he had with Plaintiff. Therefore, enforcement of the decision that the care and custody of Z was to pass in the hands of the maternal grandmother, did not effectively take place and was never subject to a court decision here in Malta as Defendant insists.

Hence, essentially, the Maltese Courts is by no means bound by the decision delivered by the Egyptian Courts on the 23<sup>rd</sup> September, 2012 and therefore for all intents and purposes it is the judgement delivered on the 1<sup>st</sup> March, 2017 that has enforced the divorce, wherein the care and custody of Z was granted to Plaintiff.

Today, Plaintiff remarried and eventually moved to Malta, bringing her son Zi with her. They have been living here for over three years and the child has settled here in Malta, both at school and his extra-curricular activities. Very clearly Z’s habitual residence is Malta. Thus, the Courts will go on to consider Plaintiff’s request for payment of maintenance.

## **MAINTENANCE**

In 2018, the Maltese Courts ordered that Defendant pays Plaintiff the sum of €350 monthly for Z as well half the education and health expenses.

Prior to this the divorce decision had imposed upon Defendant to pay 500 EGP monthly for the minor Z, subsequent to which they agreed that he would pay 500 EGP apart from a lump sum payment, which amount he was paying through the Egyptian court.

Plaintiff is requesting a higher amount of maintenance. She explains that she was never made aware of Defendant's true income, but she knew that his family, with whom he worked, had a flourishing business and they lived a very comfortable life.

On being cross-examined, Defendant admitted to working with his family at Greenfield grocery, as a store manager, which business was run by his father through a company Greenfield London Limited. His salary results to be around £47, 000 and this results from the payslips he exhibited.<sup>5</sup> It also transpires that Defendant is also a director with the same company and he receives dividends. He denies being involved in any other business. Proof to this effect was not brought forward.

Plaintiff argues that since she is bringing up her child here in Malta alone, this should be taken into consideration for the purposes of maintenance. Citing various judgements she tries to strengthen this argument, to which Defendant rebuts, claiming that it was Plaintiff's choice to come to Malta with her child and these were the results of her decisions.

Maltese jurisprudence, in this regard, has upheld that unilateral upbringing by one parent of a child has to have a bearing on the liquidation of maintenance. This was confirmed recently by this Court in the case **AB**

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<sup>5</sup> Doks. AM 01-AM04

**f'isimha proprio u bhala kuratrici ad litem ta' binha minuri LF nominat b'digriet tat-18 ta' Jannar, 2011 vs SF:-\_**

***“Il-Qorti tqis ghalhekk illi mhux talli l-fatt li l-attrici rabbiet lil iben il-partijiet wahedha illimita l-kapacita' taghha li tiggera introjtu, izda ukol taghraf illi hija ghamlet kontribut non-finanzjarju sostanzjali fil-manteniment tal-wild. Dan ghalhekk huwa fattur li fil-fehma tal-Qorti ghandu relevanza kbira fil-kuntest ta' likwidazzjoni tal-manteniment li ghandu jkun dovut mill-intimat.”***

In consideration of all the evidence brought before it, this Court believes that Defendant's income is quite substantial considering that not only is he a sales manager, but he is also a Director of a company that is very viable. Considering also that Plaintiff herself has been bringing up her child, thereby taking care of his upbringing and limiting her working capacity, it is justifiable to increase the maintenance to the sum of €500 monthly, which sum is to also include the educational and health expenses related to the minor.

### **ARREARS OF MAINTENANCE**

There are conflicting views regarding the payment of arrears. Defendant maintains that he always paid maintenance to Plaintiff for their minor son, but since it was based initially upon a gentleman's agreement, he used to pay her 500 EGP in cash and consequently, there exists no documentation of the said transfers he made.

Plaintiff denies all this and she admits that Defendant never paid any maintenance for her son since 2008 until the Court issued a decree ordering the maintenance payment to be €350 monthly and half education and health expenses. There is no contention on this and after this date payment was effected.

Defendant admitted to having fallen back on five months payment recently, but promised to pay them, although no proof was brought to that effect, but neither was this period raised as arrears by Plaintiff. Nevertheless, Defendant states that he effects this payment through Court.

Defendant also explained that apart from the 500 EGP, his father also used to pay Plaintiff another 500EGP to help out with the child.

The Court also raises the fact that although there was an initial gentleman's agreement, subsequent to the divorce, the parties also agreed to the payment of maintenance, where infact, Defendant not only paid Plaintiff dowry money, but also the waiting alimony and he bound himself to pay 500 EGP (the equivalent of €50) for the minor child. The said agreement that was signed before an attorney was then enforced by an Egyptian court on the 28<sup>th</sup> May, 2008.<sup>6</sup>

The Court finds it hard to believe that no alimony was paid since 2008 and this because Plaintiff also admits that her ex-father-in-law also used to pay her an extra 500EGP. Moreover, this agreement was signed after Plaintiff had filed a case before the Egyptian Court claiming that Defendant had failed to pay maintenance for their child. At the time, Defendant insists that he was paying cash and since there was no existing documentation to proof such payment, Plaintiff turned this to her advantage and sued him. This led to the agreement mentioned that was enforced through Court.

In his affidavit, Defendant offered to present the payments of maintenance he effected, but these were never requested by Plaintiff. Moreover, in the correspondence that took place between the parties' respective lawyers, Plaintiff seems to imply that the payment was effected, but in any case it was far too minimal, which is completely different to a claim of non-

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<sup>6</sup> Fol. 260.



payment. In her affidavit she too claims that the amount of alimony for her child was minimal and she was expecting much more considering Defendant's income.

In 2010-2011 Defendant brought evidence to show that had enrolled the minor at the Modern American School, only to find out that he was withdrawn by Plaintiff before the first term 2011/2012.

This convinces the court more and more that Plaintiff is not very credible in her claims that Defendant failed to pay maintenance from 2008 until the Maltese court issued its decree, even more so when he was involved in the child's education too and also providing for other needs, such as milk and clothing and also accommodation.

This notwithstanding, the Court must comment that it found defendant very reticent in revealing his true income, and in showing that he wanted to support his child. Therefore, even though plaintiff's second plea, that of claiming arrears in maintenance, cannot be upheld, the Court will nonetheless award monthly maintenance for the minor child as explained earlier.

### **DECIDE**

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

1. Upholds Plaintiff's first and third request and orders Defendant to pay Plaintiff the sum of €500 euros per month, which said sum is to include also the educational and health expenses of the child. These have to be paid until the child comes of age, or until he reaches the age of 23, if he continues to further his studies on a full-time basis, and does not have a fixed full-time employment.
2. Rejects the second claim for the aforementioned reasons.

All costs are to be borne by Defendant.

**Hon. Mr. Justice Anthony J. Vella.**

**Registratur**