

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of the 24th of January 2023

App. No. : 338/2021 JPG

Case no. : 23

KH

Vs

**Dr Daniel Attard and PL Jean
Pierre Busuttil as Deputy
Curators appointed to
represent the absent BH by
virtue of decree dated 16th of
March 2022.**

The Court:

Having seen the sworn application filed by KH dated 3rd of August 2021, at page 1 (translation at page 4), wherein it was held:

That the parties contracted marriage on the twenty second (22nd) day of May of the year two thousand and fifteen (2015), which marriage was registered in the public registry of Malta, as per attached marriage certificate which is hereby being exhibited and marked as Doc 'A',

That no children were born from this marriage.

That the parties have been legally separated since the thirteenth (13th) day of March of the year two thousand and eighteen (2018) in terms of the deed of separation in the acts of Notary Clinton Bellizzi, an authenticated copy of which is hereby being attached, exhibited and marked as Doc. 'B'.

That there is no reasonable prospect of reconciliation since, besides being legally separated, the parties have been separated de facto since September of the year two thousand and seventeen (2017) and are leading totally separate lives as confirmed in clause (iv) of the afore-mentioned deed of separation.

That additionally there is no issue between the parties regarding any payment of maintenance, since in terms of clause four (4) of the said deed they have renounced to their respective right to claim maintenance from each other.

That the applicant is hereby attaching her affidavit being exhibited and marked as Dok 'C'.

That the facts abovementioned satisfy all the conditions required for the attainment of a divorce in terms of Article 66B of the Civil Code, Chapter 16 of the Laws of Malta.

Consequently, the applicant humbly asks this Honourable Court to:-

- (1) Pronounce the dissolution of the marriage (divorce) between the parties;*
- (2) Order the Registrar of Courts to, within the timeframe stipulated for such purpose, advise the Director of the Public Registry of the dissolution of the marriage (divorce) of the parties so that this will be registered in the Public Registry.*

And this under such dispositions that this Honourable Court may deem fit and opportune.

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

Having seen the reply filed by the Curators, dated 23 of June 2022, vide fol 30;

Having seen that Plaintiff added another request with her previous demands, that is to revert to her maiden surname that is 'B', which request was not objected to by the Curator (vide fol 31);

Having seen the note dated 7th October 2022 filed by the Curator and the exhibited document which illustrate the attempts made at contacting Defendant vide fol 32;

Having seen the note filed by Plaintiff dated 21st of November 2022 (vide page 45);

Having heard the evidence on oath;

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:

KH testified by means of an affidavit (*vide affidavit at page 15*), that the parties married on the 22nd of May 2015, stating that no children were born from this marriage. She added that the parties separated by virtue of a separation contract in the acts on Notary Dr Clinton Bellizzi dated the 13th of March 2018, but lived separately as from the year 2017. Furthermore, he declared that there is no reasonable prospect of a reconciliation and there are no maintenance issues.

Defendant testified by means of video conference (*vide page 46*) and confirmed and corroborated his wife's testimony.

Considers:

According to Law, it is confirmed in Articles 66A and 66B of Chapter 16 of the 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.

Deliberates:

The Court has seen that the parties contracted their marriage on the 22nd of May 2015 which marriage bears certificate number 1110/2015 and that no children were born from this marriage.

From the acts of the case it transpires that the parties' marriage broke down and they regulated their personal separation by means of a public deed in the acts of Notary Dr Clinton Bellizzi dated 13th of March 2018 (*vide* contract of separation at page 8). The Court observes that as indicated by the parties' in their respective testimonies, the parties are now leading separate lives since 2017 and have renounced to their right to receive maintenance from each another.

Therefore, it is established that the parties have been separated in accordance with the time frame required by law.

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, with Marriage Certificate Number 1110/2015 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 registered in the Public Registry. Moreover, the Court authorises Plaintiff to revert to her maiden surname that is 'B' and orders the Director of the Public Registry to take the appropriate action.

Senza Tassa.

Read.

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

**Christabelle Cassar
Deputy Registrar**