



**CIVIL COURT  
(FAMILY SECTION)**

**MR. JUSTICE ANTHONY G. VELLA**

**Sitting of Tuesday 9<sup>th</sup> May 2023**

**Application number: 57/2023 AGV**

**AZ**

**Vs**

**BP**

**And The Director of Public Registry**

**The Court;**

**Having seen the sworn application dated 17th March 2023;**

That together with this application, another application is being filed here whereby this Honourable Court is being respectfully requested to authorise that this case is heard and decided in the english language,

1. That the parties are un married and for the last four years, they were in de facto in a relationship.
2. That on 26th December 2021, BP , gave birth to a child, whose name is A J Z, as per birth certificate hereby being attached and marked as Doc. A;
3. That initially the plaintiff was under the impression that he is the child natural father and in fact his name was placed in the child birth certificate;
4. That eventually the plaintiff became suspicious that he might not be the child' natural father, and so in the beginning of 2023, he and the minor child undertook a DNA scientific test from where it reslsts that indeed is not the child 's natural father ( Doc. B).
5. That the defendant acknowleged this unquestionable fact.
6. That the plaintiff wants to deny the child's paternity and requests that the child's birth cerificate is duy corrected for all intents and purposes at law to reflect this fact.

Therefore, this Honorable Court is respectfully asked to:

1. Declare that the plaintiff is not EJZ 's natural father;
2. Order that the plaintiff's name, surname and those of his parents are removed from the child's certificate 843/ 2022 and instead are replaced with the phrase ' unknown father'.
3. Order that the child assumes the defendant's surname and that this change also reflected in the child's birth certifcate number 843/ 2022.

4. Order that the defendant pays all the expenses related to this lawsuit including those of the DNA Test.

**The above is also subject to any order that this Honorable Court, deems fit to provide.**

**Having seen the SWORN REPLY OF THE DIRECTOR OF THE PUBLIC REGISTRY;**

*Lawyer Neil Harrison on behalf of and in representation of the same Director declares and confirms on oath:*

1. By way of a preliminary plea, the minor **EJZ** (from now on, the '*minor*') should be joined in the proceedings through the appointment of a curator since the plaintiffs' claims affect and relate to the same child;
2. By way of a preliminary plea, it also transpires that there is an error in the identity card number of **BP** as indicated in the sworn application since Maltese residence card of Ms. **P** is '0125683A' and not as erroneously indicated in the application as '128683A'. Therefore, a correction should be made in terms of Article 175 of Cap. 12 of the Laws of Malta;

3. From the Act of Birth of the minor child bearing progressive number 843/2022, it results that the minor was born in Malta on the 26th December 2021 to the plaintiff and to B P and this as declared in the same Act of Birth signed jointly by the same parties, and annexed to the application. Moreover, this fact was further confirmed in the declaration in terms of Article 292A of Cap. 16 of the Laws of Malta composed of the two contenders, an annexed copy and marked **Doc. DRP 1**;
4. That according to the same Act of Birth it results that a sworn declaration was made in terms of Article 280(2)(c) of Cap. 16 of the Laws of Malta before the Court of Revision of Notarial Acts on the 16th February 2022, a copy annexed and marked **Doc. DRP 2**, by means of which the presumption that the baby was born in marriage was overcome by a declaration made by the ex-husband of the mother, A DB and the applicant AZ, the latter stating that the minor is in fact his son;
5. Therefore it cannot be said that a mistake was made by the Director when the Act of Birth of the child was registered with progressive number 843/2022;
6. As regards facts as stated in the application, the Director remits himself to the judgment of this Honorable Court since he is not aware of the facts as declared in the sworn application, saving that provided in the following please:
7. That it appears that the plaintiff is claiming that he is not a natural father of the child and in view of the results of a DNA test attached to the application. It appears however that the same DNA test is not sworn and in addition the same certificate attached to the application as Doc. 2 says *ad verbatim* "... the identity of the sample donors and the chain of custody of the samples cannot

*be guaranteed; therefore these results are not court admissible".* That this test should not constitute on its own sufficient evidence by which the applicant negates the paternity of the child;

8. In respect of the **first demand**, the applicant remits himself provided that this Honourable Court is satisfied to the requisite legal standard that the plaintiff is not really the natural and biological father of the child;
9. That with regard to the **second demand**, the applicant remits himself subject that if this Honourable Court upholds the first request, the words which shall be substituted for the name and surname of the plaintiff on the Act of Birth are **'Unknown Parent' and not 'unknown father'** the Act of Birth of the minor uses neutral terminology on gender;
10. That in regards the **third demand**, provided that this Honourable Court upholds the first and second plaintiff's demands, the Director contends that the parties should agree between themselves on the surname which the child should assume or retain, which decision shall always be taken in the best interests of the child;
11. As regards the **fourth demand**, the Director notes that he **should not bear any costs of these proceedings** and any costs **related to DNA tests**, both those already carried out and any eventual ones that this Honourable Court may order, since the Director of Public Registry clearly **has no fault on the matter at hand**;
12. That finally, in the application initiating proceedings, the applicant states that an additional application was filed where a request was made that proceedings are conducted in the English Language. While the Director has not been served

with this application, he does not oppose such request if it turns out that any of the Parties does not understand the Maltese language;

13. Saving the rights of the Director to raise additional pleas in accordance to law;

**With costs against the applicant and reference to the oath of the adversary.**

**Having seen that defendant B P admitted to plaintiff's claims.**

**CONSIDERS:**

This case concerns a demand for a minor child to have his birth certificate corrected to reflect that plaintiff AZ's name be removed from the said certificate, given that plaintiff is claiming that he is not the child's biological father. Plaintiff exhibited his affidavit, wherein he declares that he had a relationship with defendant BP some time in 2021, and in December that year the child EJ was born. Plaintiff was not sure of the child's paternity, even though defendant kept reassuring him that he was the father. After DNA tests were carried out in February 2023, the results showed that plaintiff was not the father of the child. He therefore instituted these proceedings.

Defendant is admitting to plaintiff's claims and is accepting that the child is not plaintiff's. She is also accepting that her son's surname should be changed to hers rather than that of plaintiff. The Court saw that the DNA test was also confirmed

on oath by Dr Christopher Farrugia, and therefore there was no doubt as to plaintiff's claims in this case.

The Court shall uphold all plaintiff's claims in this case. Since neither he nor the Director of Public Registry are in any way responsible for the case, the Court is of the opinion that defendant should pay all the expenses in this case.

**DECIDE:**

Now therefore, for these reasons, the Court:

UPHOLDS Plaintiff's requests.

1. Declares that the plaintiff is not EJZ 's natural father;
2. Orders that the plaintiff's name, surname and those of his parents are removed from the child's certificate 843/ 2022 and instead are replaced with the phrase ' unknown father'.

3.Orders that the child assumes the defendant's surname and that this change also reflected in the child's birth certificate number 843/ 2022.

4.Orders that the defendant pays all the expenses related to this lawsuit including those of the DNA Test.

**All costs are to be borne by defendant BP.**

**Judge**

**Hon Anthony Vella**

**Cettina Gauci-Dep Reg**