

**CIVIL COURTS
(FAMILY SECTION)**

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

Today 9th October 2023

Application no.: 3/2023 JPG

Case Number: 24

MM

Vs

**MH as Curator representing the
Absent EH (Man Passport ZR3130838)**

The Court:

Having seen the application filed by MM dated the 9th of January 2023, at page 1 et seqq., wherein it holds:

- 1. That the parties got married on the second (2) of October of the year two thousand and eighteen (2018) in the Ministry of Justice and Liberties, C, M, which marriage was registered in Malta through an Act with the number 666 of 2019, as can be verified through the certificate being attached and marked as 'Doc B';*
- 2. That a few days after the wedding, the applicant returned back to Malta and started making the necessary arrangements so that the defendant could join her in Malta;*

3. *That due to bureaucratic problems concerning the Husband's Visa, he could not travel to Malta and thus the parties never met again and, or lived together for long and as a result, no children were born from the said marriage;*
4. *That due to the fact that defendant was never able to come to Malta, marital life between the parties was never possible;*
5. *That the parties have been de facto separated from each other since the year 2018 and today live completely separate lives from each other;*
6. *That the applicant requested for mediation proceedings to be opened on the eleventh (11) of October of the year two thousand and twenty-two (2022), however, the mediation sittings could not be held as the defendant could not travel to attend for the said mediation sittings in Malta;*
7. *That by virtue of a decree dated the eleventh (11) of November of the year two thousand and twenty-two (2022), this Honourable Court declared the mediation proceedings between the parties as closed, and authorised the applicant to proceed with a cause for personal separation within the term as established by Law, as can be verified through the authentic copy of the decree hereby being attached and marked as 'Doc C';*
8. *That any attempt for reconciliation or amicable separation between the parties was not fruitful due to the defendant's lack of presence in Malta and because applicant does not wish to leave Malta;*
9. *That due to the reasons mentioned above, the applicant had no other option but to proceed with this cause in order to obtain personal separation from her Husband;*

10. That a member of defendant's family resides in Malta and holds regular contact with defendant. He is willing to represent the defendant in the present proceedings and therefore AH should be served with the banns;

That the reason for this cause is that the marriage between the parties is ineffective and therefore personal separation should be pronounced with the dissolution of the community of acquests and that all that is necessary is done as a consequence to the separation.

Therefore, in view of the above, the applicant respectfully requests that it may please this Honorable Court:

- 1) To pronounce the dissolution of the marriage between the parties by way of divorce which marriage was celebrated on the 2nd October 2018 in the Ministry of Justice and Liberties, C M which marriage was registered in Malta to act number 666 of 2019 and for the Registration of such divorce by the Director of Public Registry;*
- 2) For all intents and purposes, although the parties never resided together and, or shared money, to declare any community of acquests, that may have existed between the parties in view of the marriage that took place in M, dissolved and a division of the community of assets as the Court may deem fit."so that with effect from the date of judgment any acquisition should be the exclusive property of the party that would have acquired it and any obligation assumed remains the responsibility of the party who had contracted it, and this in terms of article 55(1) of Cap. 16 of the Laws of Malta;*

Save any other provisions that this Honorable Court deems more appropriate.

With the costs against the defendant with reference to his oath.

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

Having seen the note of admission of the Defendant dated 12th of April 2023;

Having seen the decree dated 22nd of June 2023 at page 138.

Having seen the exhibited documents and all the case acts;

Having seen written submissions made by the parties' counsel;

Having seen that Defendant's brother AH accepted the banns;

Having seen that during the sitting of the 27th of April 2023, the Court acceded to Plaintiff's request that proceedings be held in the English Language (vide minute at page 48)

Having seen the application filed by Plaintiff dated 13th June 2023, wherein Plaintiff requested that the request for the pronouncement of separation, be converted and considered as a request for the pronouncement of divorce in accordance with article 66F of Chapter 16 of the Laws of Malta.

Having seen this Court's decree dated 19th June 2023;

Having seen that during the sitting of the 22nd of June 2023, (vide minute at page 138 et seq) Dr Lennox Vella on behalf of Defendant confirmed that Defendant has no objection for the request for the conversion for the demand of separation into a demand for divorce;

Having seen that during the above-mentioned sitting, the parties as assisted declared that there is prima facie evidence for the demand to be entertained by this Court;

Having seen that during the said sitting, this Court as presided upheld the demand for the conversion of the request for personal separation to a demand for divorce;

Having seen that Plaintiff requested the Court as presided to correct the second demand by adding the following words after the word dissolved: "and a division of the community of assets as the Court may deem fit."

Having seen that Dr Lennox Vella on behalf of Defendant accepted notification of the correct and extended Defendant's note of admission at page 45 to include the correction effected during the above mentioned sitting;

Having seen that the parties as assisted declared that in view of the admission of Defendant the parties have no further proof to adduce or final submissions to make and invited the Court to adjourn the case for judgment;

Having seen the note filed by Plaintiff on the 3rd October 2023 in terms of Article 66G 1(a) of Chapter 16 of the Laws of Malta;

Having seen the note filed by Defendant on the 3rd October 2023 in terms of Article 66H of Chapter 16 of the Laws of Malta;

Considers:

Plaintiff testified by means of an affidavit (vide 50 et seq) and explained that she met Defendant through his brother AH, who was at the time married. In February 2018, Defendant's brother informed her that he was going to M to visit his family and she decided to join him on this trip. They had left on the 3rd February 2018 and stayed in M till the 13th February. During this trip, she met Defendant for the first time and they immediately got along. After the trip she and Defendant had discussed ways of how they could spend more time together so as to get to know each other better. On the 18th of June of that same year (2018) she went back to M and met Defendant again. This trip lasted seven (7) days long and it was during this trip that Defendant proposed marriage. They decided that once married, they would live and have a family in Malta since Plaintiff had a stable job in Malta as an Occupational Therapist.

During the summer of 2018, Plaintiff had gathered all the necessary documents required for the marriage and on the 1st of October 2018, she went back to M for the wedding, where they held a marriage celebration with Defendant's family. On the 11th of October of 2018, she returned to Malta alone as they were still awaiting some papers from M. Once Plaintiff had the documentation in hand, she started contacting the relevant agencies in Malta to register the marriage in Malta. Plaintiff explains that in the mean time she had also started enquiring about the necessary Visa arrangements in order for Defendant to be able to travel

to Malta.

Things were taking longer than expected however in April 2019, Plaintiff had finally managed to register the marriage in Malta. The Consulate had informed the parties that Defendant required a document from Malta but they were not given any documentation as to what said document was. After contacting different departments here in Malta, on the 15th May 2019, Defendant was granted authorization for a visa entry to Malta and they were told to lodge said application at the VFS Global in Tunisia. They eventually found out that the VISA application was rejected as the Consulate believed that the parties marriage was a marriage of convenience, since Defendant during his interview with the Tunisian authorities failed to answer a number of questions about Plaintiff correctly. Although there was the possibility to appeal from this decision, the Consulate had advised against doing so. Thus during 2019, the parties did not have the opportunity to meet again although they spoke on a regular basis. The Covid outbreak made it even more so impossible for the parties to meet. In September 2019, the parties agreed that they should not keep holding each other in this marriage and agreed to go their separate ways. Plaintiff confirms that no children were born from this marriage and since October 2018, the parties never lived together again and today they live separate lives in two different countries.

With regards to the matrimonial home, Plaintiff explained that in April 2018, they had agreed on renting a two-bedroom masionette as they were hoping that by October Defendant would be living with Plaintiff here in Malta, and that this rented property would be their matrimonial home. In view of the way matters unfolded, the parties never actually set up and shared a matrimonial home. In so far as the matrimonial regime regulating the parties' marriage, Plaintiff declared that their marriage is regulated by the separation of estates regime which is the usual asset settlement when concluding a marriage in M as indicated in the marriage certificate issued by the M authorities. Although the marriage was registered in Malta, **the parties never actually established themselves in Malta** since Defendant never managed to join her here in Malta. Plaintiff adds that they never shared any finances and that at the time of the marriage she did not own any property and neither did Defendant.

Plaintiff testified viva voce on the 27th April 2023 (vide fol 136 et seq) and confirmed that Defendant never came to Malta and they never lived together here in Malta. Although the marriage was registered here in Malta, Defendant was not able to get a visa.

Defendant testified by means of an affidavit (vide fol 141 et seq) and explained that he met Plaintiff on the 3rd of February 2018, when his brother, AH visited the family in M and brought Plaintiff along with him. From that point onwards, they started to get to know each other and their relationship developed from then onwards. Following Plaintiff's return to Malta, they kept in contact by phone and soon realized that they wanted a life together in Malta. On the 18th of June 2018, Plaintiff returned to M and Defendant proposed marriage and they both decided that they would settle in Malta, on the 1st of October 2018, Plaintiff returned to M and the parties celebrated their marriage with family. After a few weeks, Plaintiff returned to Malta, and initiated procedures for Defendant's visa application. In April 2019, Plaintiff managed to register the marriage in Malta and subsequently on the 13th of May 2019, his VISA application was approved by the Maltese Authorities. In July 2019, Defendant had gone to Tunisia to complete visa application procedure at VFS Global where he met Consul of Malta, however after fifteen days, he was informed that his visa application was rejected. Following enquires on the parties' part as to why the application was rejected, the parties were informed that their marriage was not considered to be a genuine one but the decision could be contested. He was informed however, this was not advisable since Defendant had failed to correctly answer questions about his wife. Following COVID, and long conversations, the parties realized that they could not proceed with the relationship.

Defendant confirms that the parties did not have any common property.

Considers:

Article 66(A) and article 66 (B) of Chapter 16 of the Laws of Malta stipulate the following:

- 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 contractor of a judgement.***
- (2) The divorce or dissolution of the marriage shall be granted by virtue of a judgement of the competent civil court, upon the demand of one or the other of the spouses, or by a decree of the same court where the spouses shall have agreed that their marriage should be dissolved.***

- (3) *All demands for divorce shall be brought before the appropriate section of the civil court as established by regulations made by the Minister, and the provisions of article 37 shall apply mutatis mutandis. The decrees and judgements of divorce shall be pronounced in open court.*
- (4) *The court shall, in the decree or judgement of divorce, clearly indicate the progressive number of registration of the Act of Marriage and identification number of the parties, and order the Registrar of Courts to notify the divorce of the parties to the Director of Public Registry within the period allowed for this purpose by the same court, so that the same shall be registered in the Public Registry.*

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 30 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 contracted their marriage on the 2nd October two thousand and eighteen (2018) in C, M. This marriage was subsequently registered here in Malta and bears the number 666 of 2019 as evidence by the Maltese Marriage certificate at page 13 of the acts. (*Vide* marriage certificates annexed to sworn application). No children were born of this marriage.

The Court notes that these proceedings were originally intended as contentious proceedings for personal separation and in fact, following an application filed by Plaintiff requesting the dispensation of the mediation stage, the Family Court diversely presided, by virtue of a decree dated 11th November 2022, authorised Plaintiff to proceed immediately with contentious judicial proceedings for personal separation. (*vide decree at page 16 of the acts.*)

Subsequently, by means of an application dated 13th June 2023, Plaintiff requested that the demand for the personal separation, be converted to one of divorce in accordance with article 66F of Chapter 16 of the Laws of Malta, which request was acceded to since Defendant did have no objection for the conversion of the proceedings for personal separation into proceedings for the pronouncement of divorce in accordance with the dispositions on article 66F of Chapter 16 of the Laws of Malta.

Deliberates:

From the evidence adduced by the parties, it is clear that the parties have been *de facto* separated since September of the year two thousand and nineteen (2019), when the parties following a long series of bureaucratic hurdles relating to the application and approval of Defendant's visa, decided to go their separate ways. From the parties' testimony, this Court has heard that in spite of the parties' good will and determination to commence their married life together here in Malta, this never materialised for reasons already stated above. This Court has heard that the parties' attempts to make to compile the necessary documentation required for the processing of Defendant's visa application did not bear fruit

and the said application was ultimately rejected. Consequently, and despite the very fact that the parties' marriage was voluntarily contracted on the 2nd of October 2018 in M and subsequently registered here in Malta, **the parties never cohabited as husband and wife in Malta, and ultimately never established their matrimonial home in Malta** and today lead totally separate lives.

The Court observes that the parties have renounced to their right to receive maintenance from one another.

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

Therefore, the Court holds that the parties have satisfied all the requisites envisaged in the law for the pronouncement of divorce.

Matrimonial Regimes Applicable to Parties' Marriage

The Court found that there are no common assets movable or immovable held jointly between the parties and this was confirmed by the parties in their respective affidavits.

The Court has also seen that the applicable matrimonial regime in M is the separation of estates, and despite the fact that the marriage was subsequently registered in Malta, since the parties never settled together here in Malta, the *ipso jure* application of the matrimonial regime of the Community of Acquests, never took place since article 1316(2) of the Civil Code requires that marriages celebrated outside of Malta by persons who subsequently establish themselves in Malta, shall also produce between such persons the community of acquests with regards to any property acquired after their arrival. It is this Court's considered opinion that the community of acquests did not in fact subsist between the parties since they never lived together in Malta for any period of time subsequent to their marriage in M;

However, and for all intents and purposes at Law, this Court declares that any assets, bank accounts, vehicles, which belong to either one of the respective parties, shall remain the sole property of the party in whose name the property or asset is registered. In the event that either of the parties have contracted any debt or entered into any other obligations, the

responsibility ensuing from any said debt and/or obligations, shall be attributed solely to the party who so contracted the debt and/or obligation.

The Court has noted the Defendant's admission to all Plaintiff's requests including the variations and addition to those requests.

Therefore and for these reasons, the Court, accedes to ALL Plaintiff's and;

(1) Pronounces the dissolution of the marriage between the parties by way of divorce, which marriage bears the certificate number 666/2019 and was contracted on the 2nd of October in C, M, 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.

(2). Declares that the community of acquests did not in fact subsist between the parties since they never lived together in Malta for any period of time subsequent to their marriage in M; ad abundantia cautela, this Court declares that any assets, bank accounts, vehicles, which belong to either one of the respective parties, shall remain the sole property of the party in whose name the property or asset is registered. In the event that either of the parties have contracted any debt or entered into any other obligations, the responsibility ensuing from any said debt and/or obligations, shall be attributed solely to the party who so contracted the debt and/or obligation.

Costs shall be divided equally between the parties.

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

**Lorraine Dalli
Deputy Registrar**