



**FIL-QORTI CIVILI  
(SEZZJONI TAL-FAMILJA)**

**L-ONOR. IMHALLEF ANTONIO G. VELLA**

**Seduta ta' nhar it-Tlieta 17 ta' Ottubru 2023**

**Rikors Guramentat nru : 59/2017 AGV**

**EVG**

**VS**

**Cg**

**Il-Qorti,**

**Rat ir-Rikors guramentat ta' EVG fejn ippremettiet is-segweni:-**

1. Illi r-rikorrenti u l-intimat izzewgu nhar l-4 ta' Gunju 2010 gewwa r-Registru Pubbliku, il-Belt Valletta kif jirrizulta mic-certifikat taz-zwieg anness u mmarkat bhala **Dok. A** u frott ta' dan z-zwieg fl-14 ta' Gunju 2010 twieldet il-minuri KG (ara certifikat tat-twelid taghha hawn anness u mmarkat bhala **Dok. B**).
2. Illi l-hajja konjugali bejn il-partijiet giet reza impossibbli minhabba ragunijiet li huma unikament imputabbli lill-intimat, fosthom minhabba adulterju, sevizzi, ingurji u agir abbuзив. Fil-fatt l-istess intimat diga' instab hati quddiem il-Qorti Kriminali b'dan li r-rikorrenti tpoggiet taht protection order kif jirrizulta minn **Dok. C** hawn anness.
3. Illi r-rikorrenti anke minhabba dak citat fil-paragrafu precedenti, fuq rikors taghha stess (ara **Dok. D** hawn anness) giet awtorizzata tallontana ruhha mid-dar matrimonjali permezz ta' digriet tal-21 ta' Frar, 2017 ( kif jirrizulta minn **Dok. E** hawn anness).
4. Illi l-intimat mhux idoneju sabiex ikun fdat bil-kura u l-kustodja tal-minuri u ghalhekk huwa fl-ahjar interess tal-minuri li r-rikorrenti tigi fdata bil-kura u l-kustodja esklussiva tal-istess minuri.
5. Illi l-intimat, fil-ftit hin li jaghmel mal-minuri, apparti li fil-verita' ma jqattax hin ta' kwalita' maghha anzi jhalliha minghajr ebda forma ta' supervizjoni ( kif ser ikun pruvat fil-mori tal-kawza) u dan bi pregudizzju reali u xukkanti ghall-istess minuri, jirrifjuta wkoll li jaghmel il-homework mal-istess minuri ghaliex jikkontendi li dan hu hela ta' hin.

6. Illi l-intimat, li ghandu introjtu tajjeb minn zewg impjeggi apparti introjtu iehor minn kera ta' hanut qieghed jirrifjuta li jhallas manteniment dicenti ghal bintu u qieghed jirrifjuta li jhallas il-mizata u l-ispejjez relattivi ghas-sahha u l-edukazzjoni tal-istess minuri ghaliex jaf li r-rikorrenti qatt m'hu ser thalli lil bintha nieqsa minn xejn u ghalhekk jiehu vantagg minn tali gharfien. B'mod totalment arbitrarju ddecieda li jhallas biss manteniment ta' Euro 200 fix-xahar meta jaf ben tajjeb li tali ammont lanqas biss jibda' ghall-ispejjez necessarji u ghall-istil ta' hajja u bzonnijiet li ghadha l-istess minuri. Fil-fatt kontestwalment ma' dan ir-rikors, ir-rikorrenti qiedgha tintavola wkoll rikors sabiex *pendente lite* l-intimat ikun obligat u ordnat ihallas manteniment gust u ekwu ghal bintu u mhux mizerja ta' Euro 200 fix-xahar. Dan sabiex ir-rikorrenti ma jibqax jitfa' r-responsabbilita' ta' kollox fuq ir-rikorrenti li prezentament qieghda thallas il-mizata ta' skola privata b'mod esklussiv ghaliex issa li l-partijiet ghaddejjin minn proceduri ta' separazzjoni qieghed jirrifjuta li jhallas apparti li jikkontendi li l-iskola hija a waste of time.

7. Illi r-rikorrenti li hi ta' nazzjonalita barranija tikkontendi li ghandu jkollha d-dritt li ssiefer mal-minuri minghajr ebda forma ta' registrazzjoni da parti tal-intimat li m'ghandux vera interess f'bintu b'dan li lanqas biss jistaqsi dwar l-iskola jew l-edukazzjoni taghha jew sahhitha u ghalhekk tikkontendi li ghandu jkollha l-poter u l-awtorizzazzjoni li tohrog barra minn Malta u tapplika ghal passaport f'isem il-minuri minghajr l-awtorizzazzjoni jew il-kunsens da parti tal-intimat. Ghal kull buon fini r-rikorrenti lesta li tiddikjara u tiehu kwalunkwe pass necessarju sabiex turi li m'ghandha ebda intenzjoni li titlaq b'mod permanenti mill-pajjiz (Malta) stante li l-minuri hi Maltija, dejjem trabbiet hawn tmur skola hawn Malta, ghandha shabha hawn Malta u fi ftit kliem tirrealizza li jekk iccaqlaq lill-minuri

minn Malta din tista' tkun ta' trawma għall-istess minuri. Madanakollu l-istess minuri għandha jkollha l-opportunita' li ssir taf pajjiz ommha li tiltaqa' mal-familjari tagħha li jghixu barra minn Malta u li ssir taf il-kultura ta' pajjiz ommha ghax wara kollox din hija parti mill-kultura tagħha wkoll.

8. Illi l-medjazzjoni bejn il-partijiet ma sehhitx u għaldaqstant ir-rikorrenti giet awtorizzata għas-separazzjoni personali permezz ta' digriet datati s-27 ta' Jannar 2017 ( ara **Dok. F** hawn anness).

Għaldaqstant , ighid l-intimat għaliex din l-Onorabbli Qorti m'għandiex:-

1. Tippronunzja s-separazzjoni personali bejn il-kontendenti konjugi Gatt għal-ragunijiet imputabbli lill-intimat.
2. Tafda l-kura u l-kustodja tal-minuri KG esklussivament f'idejn ir-rikorrenti.
3. Tillikwida manteniment favur il-minuri KG fl-ammont ta' hames mitt Ewro (€500) kull erba' gimghat jew somma verjuri ohra li din l-Onorabbli Qorti jidrilha li jkun xieraq u opportun fic-cirkostanzi.
4. Tordna lill-intimat ihallas tali manteniment hekk kif likwidat kull erba' gimghat f'kont bankarju indikat mir-rikorrenti.
5. Tordna lill-intimat ihallas nofs l-ispejjez tas-sahha u l-edukazzjoni tal-minuri.

6. Tordna li c-Children allowance u kwalunkwe beneficcju li jista' jigi percepit lill-genituri jinghata esklussivament lir-rikorrenti.
7. Tawtorizza lir-rikorrenti sabiex tibda tippercepixxi tali manteniment direttament mill-paga tal-intimat jew minn xi dipartiment jew awtorita' li minghandha jkun jista' jircievi xi forma ta' introjtu u/ jew beneficcju.
8. Tordna li d-decizjonijiet relatati mas-sahha, edukazzjoni , passaport u safar jittiehdu esklussivament mir-rikorrenti.
9. Tawtorizza lir-rikorrenti sabiex b'mod esklussiv u minghajr ebda forma ta' kunsens, awtorizzazzjoni jew firma da parti tal-intimat tiffirma u tapplika ghall-hrug ta' passaport ghall-minuri.
10. Tawtorizza lir-rikorrenti sabiex issiefer barra minn Malta flimkien mal-minuri jew tawtorizza lill-minuri ssiefer barra minn Malta minghajr ebda forma ta' kunsens , awtorizzazzjoni jew firma da parti tal-intimat.
11. Tiddikjara li l-istess minuri ghandha tghix esklussivament mar-rikorrenti ommha.
12. Tordna li kwalunkwe access favur l-intimat isir biss taht supervizjoni tal-Agenzija Appogg jew xi agenzija ohra jew social worker appuntat minn din l-Onorabbli Qorti ghal dan il-ghan u mhux tal-familjari tal-istess intimat.
13. Tiddikjara u tiddeciedi li l-intimat iddekada mid-dritt tieghu tal-manteniment.

14. Ixxolji l-komunjoni tal-akkwisti ta' bejn il-partijiet u tillikwida u taqsam l-istess komunjoni f'zewg porzjonijiet li jigu assenjati wahda lir-rikorrenti u l-oħra lill-intimat, mhux necessarjament ugwali bin-nomina ta' perit nominandi jekk ikun il-kaz.

15. Tapplika kontra l-intimat s-sanzjonijiet kontemplati fid-disposizzjonijiet tal-Artikolu 48 et seq tal-Kodici Civili.

16. Tillikwida l-assi parafernali tar-rikorrenti u tassenja l-istess assi lir-rikorrenti.

17. Tillikwida l-kreditu dovut tar-rikorrenti u tordna lill-intimat sabiex thallas tali kreditu hekk likwidat fiz-zmien perentorju li tistabilixxi din l-Onorabbli Qorti.

Bl-ispejjez inkluz dawk tal-mandat t'inibizzjoni, l-mandat ta' sekwestru u l-mandat ta' deskrizzjoni intavolati kontestwalment ma' dan ir-rikors promotur fl-ismijiet premissi kontra l-intimat ingunt minn issa ghas-subizzjoni.

Il-Qorti,

Rat ir-Risposta guramentata ta' CG li ecepixxa s-segwent:-

1. Illi l-eccipjent jecepixxi illi huwa minnu li l-hajja konjugali ta' bejn il-partijiet m'ghandhiex aktar possibli, dana pero' ghal ragunijiet unikament imputabbli lir-rikorrenti, l-eccipjent jichad bil-qawwa l-allegazzjonijiet diretti kontrih minn martu b'mod partikolari li hu rrenda ruhu hati lejha ta adulterju, vjolenza fizika, psikologika u mentali, sevizzi ingurji u agir abbusiv, liema addebiti invece huma imputabbli unikament lill-istess rikorrenti u ghaldaqstant għall-finijiet tal-artikolu 48© tal-Kap 16,

ghandha tigi stabbilita data li minnha r-rikorrenti ghandha titqies hatja tal-firda tal-partijiet.

- b. Illi ghalhekk fir-rigward tal-ewwel talba rikorrenti, l-esponent jeccepixxi illi ma jopponiex li tigi ppronunzjata s-separazzjoni personali bejn ir-rikorrenti dana pero' minhabba tortijiet unikament u esklussivament attribwibbli lir-rikorrenti.
2. Illi fir-rigward tat-tieni talba rikorrenti, l-esponent jopponi bil-qawwa illi l-kura u l-kustodja tal-minuri KG tigi fdata esklussivament lir-rikorrenti izda ghandha tigi fdata esklussivament f'idejn l-eccipjent. L-esponent izid illi l-allegazzjonijiet kollha tar-rikorrenti li huwa mhuwiex idoneju, jew li jara l-iskola bhala *waste of time* jew li m'ghandux interess f'bintu huma assolutament inveritiera u qed jigu kontestati bil-qawwa kollha. Hija propju r-rikorrenti li mhijiex il-genitur idoneju li lilha tista' tigi fdata l-kura u l-kustodja tal-minuri KG.
3. Illi fir-rigward tat-tielet u r-raba' talba , stante li huwa fl-ahjar interess li l-minuri KG tghix esklussivament mal-esponenti missierha hija propju r-rikorrenti li ghandha tigi ordnata thallas manteniment lill-esponent versu l-bzonnijiet tal-minuri bint il-partijiet.
4. Illi fl-eventwalita' li din il-Qorti tiddeciedi li l-minuri ghandha tirisjedi mar-rikorrenti, allura l-esponent ma jopponix illi huwa jikkontribwixxi ghall-manteniment taghha skont il-mezzi tieghu, il-mezzi tar-rikorrenti u l-bzonnijiet tal-istess minuri. Ir-Rikorrenti tghix hajja extravaganti ghandha dhul mix-xoghol illi hija taghmel bhala stripper/ escort u kif ukoll dhul

mill-impjeg, illi hija ghandha ma' gaming company f'Malta. L-esponent jichad b'mod kategoriku li huwa ghandu dak l-introjtu li tieghu saret referenza fir-rikors promotur.

5. Illi l-esponent jopponi ghall-hames talba rikorrenti u dana billi:-

- Ai termini tal-Artikolu 19 tal-Kapitolu 16 tal-Ligijiet ta' Malta, il-manteniment ikopri fih l-ispejjez ta' sahha u edukazzjoni tal-minuri;
- Minghajr pregudizzju ghas-suespost l-istil ta' hajja extravaganti tar-rikorrenti jrendi impossibbli li l-esponent jaghmel tajjeb ghal nofs l-ispejjez ta' sahha u edukazzjoni tal-minuri u dan kif ser jigi pruvat fit-trattazzjoni ta dina l-kawza;
- Ukoll minghajr pregudizzju ghas-suespost, kull decizjoni ta' sahha u edukazzjoni ghandha tittiehed b'mod kongunt bejn il-partijiet.

6. Illi s-sitt talba hija konsegwenzali ghad-decizjoni dwar ir-residenza tal-minuri u f'kaz li jkun fl-ahjar interess tal-minuri li l-minuri tirrisjedi mal-esponent allura ghandu jkun l-esponent stess li ghandu jippercepixxi c-childrens allowance u kull beneficcju li jista' jigi percept minn genitur.

7. Illi f'rigward tas-seba' talba , fl-eventwalita' li din il-Qorti tilqa' it-tielet talba rikorrenti, l-esponent jopponi li l-manteniment hekk likwidat mill-Qorti jinqata' direttament mill-paga tieghu jew minn dipartiment jew awtorita' li minghandu l-esponent ikun qed jircievi xi introjtu / beneficcju



dana billi l-esponent qatt ma naqas milli jonora xi ordni ta' dina l-Onorabbli Qorti u lanqas hu bi hsiebu li jonqos milli jonora xi ordni futura.

8. Illi l-esponent joggezzjona bil-qawwa kollha it-tmien talba rikorrenti u cioe' li kwalunkwe decizjoni ta' sahha u edukazzjoni tal-minuri tittiehed b'mod esklussiv mir-rikorrenti.
9. Illi l-esponent jopponi wkoll bil-qawwa d-disa' u l-ghaxar talba rikorrenti u dan b'mod partikolari ghaliex ir-rikorrenti hija ta' nazzjonalita Bulgara. Tenut kont ta' dan il-passaport tal-minuri ghandu jinzamm mill-esponent u kull safra tal-minuri ghandu jsir biss bil-kunsens tal-istess esponenti. F'dan ir-rigward tajjeb li jinghad illi diga' kien hemm tentattiv da parti tar-rikorrenti attrici li thalli l-gzejjer Maltin bil-minuri minghajr il-kunsens tal-esponent.
10. Illi l-esponent jopponi ghall-hdax il-talba rikorrenti stante li huwa fl-ahjar interess tal-minuri li r-residenza taghha tkun mal-esponent missierha.
11. Illi l-esponent jopponi ghat-tnax-il talba rikorrenti u semmai din il-Qorti ghandha tordna li jkun propju l-access akkordat favur ir-rikorrenti li jsir biss taht is-supervizjoni tal-Agenzija Appogg jew xi agenzija ohra jew social worker appuntat minn din il-Qorti.
12. Illi l-esponent jichad li huwa ddekada mid-dritt tieghu li jircievi manteniment, invece hija propju r-rikorrenti li ddekadiet mid-dritt taghha li titlob u tircievi manteniment minghand zewgha.
13. Illi l-esponent ma jopponiex ghat-talba rikorrenti numru erbatax u pero' li dina l-Onorabbli Qorti ghandha tillikwida kull kreditu li l-eccipjent ghandu

kemm fil-konfront tal-komunjoni tal-akkwisti u kif ukoll fil-konfront tar-rikorrenti, u dana jekk ikun il-kaz permezz ta' opera ta' periti nominandi. Ukoll ghal dan il-ghan ghandha tigi stabbilita data li minnha r-rikorrenti titqies li ddekadiet minn kull akkwist maghmul bix-xoghol u bil-hila tal-eccipjent.

14. Illi fir-rigward tal-hmistax-il talba rikorrenti ma tezisti l-ebda raguni ghala s-sanzjonijiet kontemplati taht l-Artikolu 48 et seq tal-Kap 16 tal-Ligijiet ta' Malta citati mir-rikorrenti ghandhom jigu applikati in toto jew in parte kontra l-esponent u favur ir-rikorrenti. Ghall-kuntrarju is-sanzjonijiet kif kontemplati f'dawn l-artikoli ghandhom illi r-rikorrenti u konsegwentament ghandu jigi ddikjarat illi r-rikorrenti tilfet il-jeddijiet kollha imsemmijin fl-Artikoli 631 u 633 tal-Kodici Civili kif ukoll dan kollu illi kisbet b'donazzjoni bi hsieb taz-zwieg jew wara z-zwieg jew b'titolu iehor gratwitu minghand l-esponent, illi ghalhekk ghandu jigi rritornat lilu kif ukoll kull jedd ghan-nofs tal-akkwisti illi saru l-aktar bil-hidma tal-esponent wara data stabbilita minn dina l-Onorabli Qorti bhala d-data meta r-rikorrenti rrendiet ruhha hatja tal-firda liema akkwisti ghandhom jibqghu kollha ghal-esponent, u kif ukoll ghandu jigi ddikjarat illi r-rikorrenti ddekadiet minn kull dritt illi titlob manteniment minghand l-esponent.

15. Illi riferibbilment ghas-sittax-il talba rikorrenti m'hemm l-ebda assi parafernali apparti lir-rikorrenti u ghalhekk din it-talba ghandha tigi michuda.

16. Illi fir-rigward tas-sbatax-il talba m'hemm l-ebda kreditu dovut favur ir-rikorrenti u b'hekk din it-talba wkoll ghandha tigi michuda.

17. Illi minghajr pregudizzju ghas-suppost , fir-rigward tas-sittax u sbatatx -il talba ir-rikorrenti ghandha tipprova l-assi parafernali u kull kreditu allegatament dovut lilha.

18. Illi l-ispejjez tal-kawza odjerna ghandhom jigu sopportati mir-rikorrenti esklussivament stante it-tortijiet taghha u minkejja diversi tentattivi da parti tal-eccipjent sabiex jintlahaq ftehim binarju dwar din s-separazzjoni r-rikorrenti fixklet u harbtet kull possibilita ta' ftehim bonarju fejn konsistentement uriet li qatt ma kienet disposta tasal ghal ftehim barra l-Qorti.

19. Illi l-eccipjent qed jipprevalixxi ruhhu mit-talba rikorrenti u qed jipproponi s-segweni talba rikonvenzjonali.

Salv eccezzjonijiet ulterjuri hekk kif permessi skont il-ligi u bl-ispejjez.

## **Il-Qorti,**

Rat it-talba rikonvenzjonali ta' CG fejn ippremettiet is-segweni:-

1. Illi l-eccipjent qiegħed jipprevalixxi ruhhu mill-istanza attrici u jipproponi din it-talba rikonvenzjonali tieghu.
2. Illi l-kontendenti zzewgu gewwa r-Registru Pubbliku l-Belt Valletta, fl-erbgha ta' Gunju tas-sena elfejn u ghaxra (2010) u kellhom tifla KG li twieldet fl-erbatax ta' Gunju tas-sena elfejn u ghaxra (2010).

3. Illi z-zwieg ta' bejn il-kontendenti konjugi G tkisser irrimedjabbilment ghal ragunijet unikament imputabbli lill-attrici rikonvenuta li rrendiet ruha hatja lejn l-eccipjent ta' adulterju, sevizzi, u eccessi, theddid, offizi u ingurji gravi kif ukoll minhabba inkompatibilita' ta' karattru u billi l-hajja matrimonjali, ma baqghetx aktar possibbli.
4. Illi minkejja li l-esponent ghamel minn kollox biex isalva iz-zwieg l-attrici rikonvenuta ghar-ragunijiet taghha ma ridetx issalva dan z-zwieg.
5. Illi l-attrici rikonvenuta fixklet ukoll kull possibilta' ta' ftehim konsenswali u harbtet kull possibilta' li l-partijiet jevitaw il-Qorti.

Tghid ghalhekk l-attrici rikonvenuta ghaliex ghar-ragunijiet premessi din l-Onorabbli Qorti m'ghandhiex:-

1. Tippronunzja s-separazzjoni personali bejn il-konjugi Gatt unikament minhabba r-ragunijiet imputabbli lil-attrici rikonvenuta.
2. Tafda l-kura u l-kustodja tal-minuri KG esklussivament f'idejn l-eccipjent.
3. Tillikwida manteniment favur il-minuri KG u tikkundanna lill-attrici rikonvenuta thallas dik r-retta alimentarja dovuta skont il-Ligi b'dawk il-modalitajiet kollha tal-pagament, inkluz provvediment ghaz-zieda perjodika biex taghmel tajjeb ghall-gholi tal-hajja li ghandhom jigu ffissati minn din il-Qorti tenut kont tal-fatti li l-mezzi tal-attrici jissuperaw dawk tal-konvenut.

4. Tordna lill-attrici rikonvenuta thallas tali manteniment hekk kif likwidat kull erba' gimghat f'kont bankarju indikat mill-eccipjent.
5. Tordna lill-attrici rikonvenuta thallas nofs l-ispejjez tas-sahha u l-educazzjoni tal-minuri.
6. Tordna li c-children allowance u kwalunkwe beneficcju li jista' jigi percepit minn genituri jinghata esklussivament lill-eccipjent.
7. Tawtorizza lill-eccipjent sabiex jibda jippercepixxi tali manteniment direttament mill-paga tal-attrici rikonvenuta jew minn xi dipartiment jew awtorita' li minghandha tkun qed tircievi xi forma t' introjtu / beneficcju.
8. Tordna li decizjonijiet relatati mas-sahha, edukazzjoni, passaport u safar tal-minuri jittiehdu esklussivament mill-eccipjent.
9. Tawtorizza lill-eccipjent sabiex b'mod esklussiv u minghajr ebda forma ta' kunsens awtorizzazzjoni jew firma da parti tal-attrici rikonvenuta jiffirma u japplika ghall-hrug tal-passaport ghall-minuri.
10. Tawtorizza lill-eccipjent sabiex isiefer barra minn Malta flimkien mal-minuri jew tawtorizza lill-minuri ssiefer barra minn Malta minghajr ebda forma ta' kunsens awtorizzazzjoni jew firma da parti tal-attrici rikonvenuta.
11. Tiddikjara li l-istess minuri ghandha tghix esklussivament mal-eccipjent missierha.

12. Tordna li kwalunkwe access favur l-attrici rikorrenti jsir biss taht is-supervizjoni tal-Agenzija Appogg jew xi agenzija ohra jew social worker appuntat minn dina l-Onorabbli Qorti ghal dan il-ghan u mhux familjari tal-istess attrici rikonvenuta.
13. Tiddikjara u tiddeciedi li l-attrici rikonvenuta ddekadiet mid-dritt taghha ghall-manteniment.
14. Tiddijara terminata u xjolta l-komunjoni tal-akkwisti ezistenti bejn il-partijiet u tillikwida kull kreditu li l-eccipjent ghandu kemm versu l-komunjoni tal-akkwisti u kif ukoll versu l-attrici rikonvenuta; tillikwida l-istess b'mod li jigu stabbiliti porzjonijiet in divizjoni li ghandhom jinkludu wkoll kull gid/dejn iehor komuni, u assenjati lill-partijiet u billi wkoll tigi stabbilita data li minn dakinhar l-attrici rikonvenuta titqies li ddekadiet minn kull akkwist maghmul bix-xoghol u bil-hila tal-eccipjent, u dana kollu okkorendo bl-opera ta' perit nominandi, u billi jigi nominat nutar sabiex jircievi l-att relativ u kuratur biex jirrapprezenta lill-attrici rikonvenuta fl-eventwali kontumacja fuq l-istess att.
15. Tapplika in toto jew in parte kontra l-attrici rikonvenuta l-effetti tad-dispozizzjonijiet tal-Artikoli 48 sa 53 tal-Kap 16 tal-Ligijiet ta' Malta.
16. Tordna lill-attrici rikonvenuta tirrestitwixxi lill-esponenti il-beni u krediti parafernali u dotali tieghu, inkluz flus u krediti ohra, u fin-nuqqas tikkundanna lill-istess attrici rikonvenuta thallas il-valur tal-istess bl-opera occorrendo ta' periti nominandi sabiex jeffettwaw il-kalkoli necessarji f'dan ir-rigward tordna konsegwentament li l-

eccipjent jigi moghti l-piena amministrazzjoni tal-beni dotali u parafernali tieghu.

17. Tillikwida kull kreditu dovut favur l-eccipjent o tordna lill-attrici rikonvenuta sabiex thallas tali krediti hekk likwidati fi zmien perentorju li tistabilixxi dina l-Onorabbli Qorti.

Bl-ispejjez kontra l-attrici rikonvenuta li qeghda tigi ngunta ghas-subizzjoni.

## **Il-Qorti,**

Rat ir-Risposta Guramentata ta' E V G ghall-Kontro -Talba ta' CG , fejn eccepiet is-segwenti:-

1. Illi fl-ewwel lok jigi rilevat li l-kontro-talba relativa hija nulla u invalida fil-ligi stante li minkejja li l-intimat rikonvenzjonant jaf ben tajjeb li r-rikorrenti rikonvenzjonanta hija ta' nazzjonalita barranija u ma tifhimx bil-lingwa Maltija xorta wahda jaghzel li jinnotifika lill-istess b'atti bil-lingwa Maltija.
2. Illi minghajr pregudizzju ghas-suespost , ir-rikorrenti rikonvenzjonata tiddikjara li taqbel li hi u l-intimat rikonvenzjonat izzewgu fir-Registru Pubbliku fil-Belt Valletta fl-4 ta' Gunju 2010 u frott ta' dan iz-zwieg nhar l-14 ta' Gunju 2010 twieldet il-minuri KG
3. Illi minghajr pregudizzju ghas-suespost ir-rikorrenti rikonvenzjonanta taqbel li din l-Onorabbli Qorti ghandha tippronunzja s-separazzjoni personali bejn il-partijiet peress li z-zwieg tagghom tkisser b'mod

irrimedjabbli izda dan ghal ragunijiet imputabbli unikament lill-intimat rikonvenzjonat fosthom izda mhux limitament minhabba adulterju u vjolenza fizika kif wara kollox ir-rikorrenti rikonvenzjonata spjegat fir-rikors promotur taghha u kif inhu kkorrorat ukoll b'sentenza tal-Qorti tal-Magistrati (ara Dok. C anness mar-rikors promotur) fejn l-intimat rikonvenzjonat diga' gie misjub hati fuq protection order sabiex tigi salvagwardjata minn zewgha u dan kif ser jigi amplifikat u ppruvat ulterjorament fil-mori tal-kawza. Ghalhekk is-sanzjonijiet kontemplati f'Artikolu 48 et seq tal-Kodici Civili, Kap 16 tal-Ligijiet ta' Malta ghandhom jigu applikati fil-konfront tal-intimat rikonvenzjonant biss u mhux fil-konfront tal-esponenti. Ghalhekk il-15 il-talba rikonvenzjoanli ghandha tigi michuda.

4. Illi minghajr prgudizzju ghas-suespost l-esponenti tiddikjara li fil-pussess taghha m'ghandha xejn li jista b' xi mod ikun jippartjeni lill-intima rikonvenzjonant b'mod parafernali . Anzi hija l-esponenti li ghandha propjeta' mobbli f'dik li hi d-dar matrimonjali tal-partijiet u li minnha l-esponenti giet awtorizzata tohrog mid-dar abbazi ta' vjolenza da parti tal-intimat rikonvenzjonant. Tant hu hekk li sabiex tissalvagwarda l-interessi taghha, l-istess esponenti intavolat mandat ta' deskrizzjoni kif ukoll mandat ta' inibizzjoni fuq l-istess mobbli fil-propjeta kif jirrizulta minn Dok G u Dok H rispettivament hawn annessi.
5. Illi minghajr pregudizzju ghas-suespost ir-rikorrenti rikonvenzjonata tichad bl-aktar mod kategoriku li hi responsabbli ghat-tifrik taz-zwieg bejn il-partijiet u jew li rrendiet ruhha hajta lejn l-intimat rikonvenzjonant minhabba xi forma ta adulterju, vjolenza fizika, psikologika u mentali sevizzi, ingurji u agir abusiv. Fil-verita' dawn



huma whud mir-ragunijiet imputabbli esklussivament lill-intimat rikonvenzjonant li wasslu ghat-tifrik taz-zwieg bejn il-partijiet.

6. Illi minghajr pregudizzju ghas-suespost ir-rikorrenti rikonvenzjonata tirrespingi l-allegazzjonijiet kollha migjuba kontra taghha bhala nfondati fil-fatt u fid-dritt. B'referenza specifika ghall-allegazzjoni li l-esponenti tahdem bhala stripper/ escort l-esponenti tichad bl-akbar mod assolut li hi qatt xi darba kienet escort. Ix-xoghol li kellha l-esponenti fil-passat u cioe' dak ta' dancer kien xoghol li l-intimat rikonvenzjonat kien jaf bih u mill-bidu nett ghaliex il-partijiet iltaqghu fuq il-post tax-xoghol( fejn kienu jahdmu t-tnejn) u l-istess intimat rikonvenzjonat qatt ma sab oggezzjoni ghall-impjieg taghha. Huwa issa li qed jipprova juza' tali xoghol biex jipprova jiskura lill-esponenti u jpoggiha f'dawl ikrah. B'referenza ghall-allegazzjoni li l-esponenti ppruvat titlaq barra minn Malta bil-minuri, l-esponenti tichad bl-akbar mod kategoriku dan b'dan li tiddikjara minn issa li m'ghandha ebda intenzjoni li jkun xi jkun l-ezitu ta' dawn il-proceduri li titlaq barra minn Malta u zgur li mhux se tiddisturba tali hajja, stabbilita' u rutina tal-istess minuri. Tali allegazzjoni qed issir biss ghaliex ir-rikorrenti rikonvenzjonanta hija ta' Nazzjonalita barranija u ghalhekk l-intimat rikonvenzjonant qieghed jipprova juza' tali fatt a vantagg qarrieqi tieghu u xejn aktar.

7. Illi minghajr pregudizzju ghas-suespost stante li kif r-rikorrenti rikonvenzjonata ppremettiet fir-rikors promotur taghha z-zwieg bejn il-partijiet tfarrak b'mod irrimedjabbli ghal ragunijiet li huma unikament imputabbli lill-intimat rikonvenzjonant, principarjament minhabba adulterju u vjolenza kemm fizika u kemm psikologika u

mentali fil-konfront ta' martu u mhux minhabba r-ragunijiet u l-allegazzjonijiet imsemmija mill-intimat rikonvenzjonat fil-kontroll talba tiegħu, huwa l-intimat rikonvenzjonat li tilef id-dritt ta' manteniment għalih u mhux li l-esponent tilef xi forma ta' dritt ta' manteniment. Għalhekk it-tlettax-il talba rikonvenzjonali għandha tigi michuda.

8. Illi minghajr pregudizzju għas-suespost m'huwiex fl-ahjar interess ta' binthom K G li l-intimat rikonvenzjonant jigi fdat esklussivament bil-kura u l-kustodja tal-istess wild u lanqas m'huwa fl-ahjar interess tal-minuri li din tal-ahhar tmur tghix mal-intimat rikonvenzjonant missierha u dan fl-ewwel lok għaliex mhux missier idoneju u fit-tieni lok għaliex l-istess minuri tghix trankwilla m'ommha 'l bogħod mill-vjolenza fizika ta' missierha fost ragunijiet li diga' semmew fir-rikors u li ser jigu ppruvati fil-mori tal-kawza. Il-kura u l-kustodja (tal-minuri għandha tkun esklussivament f'idejn l-esponenti kif qed titlob l-istess esponenti permezz ta' rikors promotur tagħha) li fil-prattika qieghdha diga' tiehu hsieb l-interessi kollha tal-minuri inkluz li thallas għall-bzonnijiet kollha tagħha u l-iskola tagħha peress li missierha jirrifjuta li jagħmel dan u jghid b' 'wicc minn quddiem li l-iskola m'hijix importanti għaliex *waste of time*.

9. Illi minghajr pregudizzju għas-suespost lanqas m'hu fl-ahjar interessi tal-wild minuri KG li d-decizjonijiet importanti dwar l-istess wild inkluz decizjonijiet dwar sahha, edukazzjoni, safar u hrug ta' passapost li jittiehdu esklussivament mill-intimat rikonvenzjonat. Tali decizjonijiet għandhom jibqghu jittiehdu b'mod esklussiv mir-rikorrenti rikonvenzjonata, speċjalment minhabba l-fatt li l-istess intimat rikonvenzjonat m'għandux għal qalbu l-ahjar interess tal-

minuri speċjalment fejn tidhol skola. Fuq kollox minkejja li l-intimat rikonvenzjonat qed jipprova juri kemm jinteressa ruhu f'hajjet il-minuri fil-verita' lanqas l-access li ghandu maghha ma jezercita b'mod ta' missier li ghandu ghal qalbu l-ahjar interess ta' bintu ghaliex tali access dejjem jigi ezercitat fil-prezenza tan-nanna paterna propju ghaliex l-istess intimat rikonvenzjonat m'ghandhux idea kif jagixxi ma bintu u m'ghandhux idea ta' kif jiehu hsiebha.

10. Il-manteniment favur il-minuri ghandu jithallas mill-intimat rikonvenzjonat peress li l-esponenti umilment tirrileva li hu fl-ahjar interess tal-minuri li l-esponenti omm ghandha tigi fdata bil-kura u l-kustodja esklussiva tal-istess minuri u li fuq kollox l-istess minuri tibqa' tghix m'ommha tali manteniment li ghandu jithallas mill-intimat rikonvenzjonat ghandu verament ikun jirrifletti l-introjtu tieghu – pero' l-introjtu kollu tieghu u mhux dak li jiddeciedi li juri u jaghti prova tieghu quddiem il-Onorabbli Qorti. L-esponenti tirrileva li apparti li mhux minnu li ghandha stil ta' hajja extravaganti, hi taghmel minn kollox biex tara li l-minuri K jkollha hajja tajba, Jekk il-fatt li l-minuri tmur fi skola privata ( ghaliex hekk kienu ftehm u l-partijiet qabel ma bdew il-proceduri tas-separazzjoni bejniethom) l-esponent tixtieq u thoss li hu ekwu li l-minuri tibqa' tmur f'tali skola u mhux tigi penalizzata ghaliex ommha u missierha qed jisseparaw. Din mhix extravaganti kif qed jipprova jallega l-intimat rikonvenzjonant imma decizjoni fl-ahjar interess tal-minuri li fuq kollox prezentament l-intimat rikonvenzjonant lanqas biss qieghed jikkontribwixxi ghaliha ghaliex prezentament ir-rikorrenti rikovenzjonanta qed thallas il-mizata tal-iskola b'mod esklussiv. Huwa propju ghalhekk li intavolat rikors appozitu sabiex l-intimat jigi ordnat ihallas manteniment ekwu

ghall-istess minuri liema rikors sal-gurnata tal-prezentata ta' din irrisposta ghadu pendenti.

11. Illi minghajr pregudizzju ghas-suespost, l-esponenti tirrileva li tali manteniment li l-intimat rikonvenzjonant ghandu jigi ordnat ihallas ghandu jinqata' direttament mill-paga tieghu jew minn kwalunkwe beneficcju relattiv li jista' jircievi ghaliex:-

- Prezentament hemm *protection order* favur l-esponenti li naturalment harget kontra l-intimat mill-Qorti Kriminali kif gie spjegat aktar 'l fuq fir-rikors promotur u kif jirrizulta mis-sentenza diga' esebita (ara Dok C anness mar-rikors promotur) li nghatat kontra l-istess intimat rikonvenzjonant u ghalhekk l-intimat rikonvenzjonant huwa projbit milli jaghmel kuntatt mal-esponenti.
- Tali ordni tevita xi incident bhal ma diga' gara fil-passat fejn l-intimat rikonvenzjonant huwa fl-ahjar interess ta' kullhadd li jigi evitat kuntatt zejzed u inutli bejn il-partijiet.
- L-istess intimat rikonvenzjonant diga' qed jipprova juri li ghandu introjtu anqas minn dak li verament ghandu.
- Tali ordni zgur li tiffacilita' kwalunkwe problema li jista' jkollha l-esponenti biex tithallas dak li hu dovut.
- Tali ordni tghin biex ma jkun hemm ebda pika zejda da parti tal-intimat rikonvenzjonant li jara kif jaghmel biex jivvessa u jdejjaq lill-esponenti.

12. Illi minghajr pregudizzju ghas-suespost stante li l-minuri qieghdha tghix mal-esponenti u huwa fl-ahjar interess tal-istess minuri li tibqa'

tghix hekk allura l-istess esponenti ghandha tipprecepixxi b'mod esklussiv kwalunkwe beneficcji li tista' tkun intitolata ghalihom rigward l-istess minuri.

13. Illi minghajr pregudizzju ghas-suespost u b'referenza ghall-access ezercitabbli rikonvenzjonant, jigi rilevat li minn dak li diga' gie esebit ma' rikors intavolat mill-esponenti (u li ghadu pendenti) u cioe 'video' li juri li l-minuri u l-kugin taghha A nezghu quddiem il-camera (tant li din l-Onorabbli Qorti sakemm tiddeciedi l-istess rikors li gie appuntat diga' ordnat li l-minuri ma tkunx fil-presenza ta' tali kugin li hu min-naha tal-missier) liema video ingibed waqt l-access tal-minuri ma' missierha huwa fil-ahjar interess tal-minuri li l-access li jigi ezercitat mill-istess intimat rikonvenzjonant fil-konfront ta' bintu jkun biss taht supervizjoni u xejn aktar ghaliex diga' graw episodji li huma ta' detriment ghall-minuri. Huwa ghalhekk li l-access tal-intimat rikonvenzjonant ghandu jkun taht supervizjoni da parti tal-Agenzija Appogg jew xi agenzija ohra jew social worker appuntat minn din l-Onorabbli Qorti ghal dan il-ghan u mhux tal-familjari tal-istess intimat kif wara kollox qed issir mill-intimat rikonvenzjonant hija biss talba fiergha u minghajr ebda bazi ta' xejn u intiza biss sabiex tivvessa lill-esponenti ghaliex m'hemm ebda raguni valida sabiex l-esponenti tinghata access (ghaliex hemm ragunijiet validissimi sabiex il-minuri tibqa' tghix mal-istess esponenti u tigi fdata bil-kura u l-kustodja esklussiva tal-istess minuri) u fuq kollox m'hemm ebda raguni ghala l-esponenti ghandha tara lil bintha taht xi forma ta' supervizjoni u ghalhekk tali talba qed tigi opposta bla aktar mod assolut.

14. Illi minghajr pregudizzju ghas-suespost, l-esponenti taqbel li din l-Onorabbli Qorti ghandha xxolji l-komunjoni tal-akkwisti bejn il-partijiet b'dan pero' li tigi assenjata kwalunkwe kreditu li hu dovut lilha kif wara kollox qieghda titlob permezz tar-rikors promotur u kif spjegat f'aktar dettal fin-nota guramentata taghha diga' esebita in atti.

15. Illi minghajr pregudizzju ghas-suespost mhux minnu li l-esponenti fixklet u harbtet kull possibilita' ta' ftehim bonarju bejn il-partijiet izda thoss li dak kollu li gie diskuss fil-kuntest ta' medjazzjoni kif ukoll bejn l-avukati rispettivi tal-partijiet ghandu jibqa' minghajr pregudizzju ghas-suespost u ghalhekk kwalunke kumment f'dan ir-rigward huwa superfluwu.

16. Illi minghajr pregudizzju ghas-suespost jirrizulta bl-aktar mod car, anke mit-talbiet tal-istess intimat rikovenzjonant li l-intenzjoni tieghu hija biss li tivversa lill-istess esponenti stante li t-talbiet tieghu huma precizament l-istess talbiet, kwazi kelma b'kelma ghal dawk li ghamlet l-esponenti fir-rikors promotur tieghu liema agir juri l-estrem ta' pika li qed jimxi biha u l-estrem li lest li jasal sabiex jipprova jfarrak lil martu ( u konsegwentament lil bintu) meta jaf li talbiet li qieghed jaghmel prezentament m'hemm ebda lok ghalihom u qatt ma kien hemm kwistjoni dwarhom. Qed isiru biss f'dan l-istadju mill-intimat rikovenzjonant ghaliex qed isiru mill-esponenti u xejn aktar u mhux ghax verament huma fl-ahjar interess tal-minuri.

17. Illi l-esponenti ghalhekk m'ghandux ibati bl-ispejjez ta' din il-kawza.

18. Salv eccezzjonijiet ulterjuri.

## 19.B1-ispejjez.

Rat l-atti u d-dokumenti esebiti.

Permezz tad-digriet mahrug minn dina l-Qorti datat 21 ta' Gunju, 2017, gie deciz li l-proceduri jinzammu bil-lingwa Ingliza u ghaldaqstant dina s-sentenza ser tinkiteb bil-lingwa Ingliza.<sup>1</sup>

### **CONSIDERS:**

#### **Facts**

The parties met at a gentleman's club in Paceville, where they both worked. Plaintiff was a stripper/pole dancer, whereas Defendant worked as a security. Plaintiff explains that at the time Defendant had no problems with the work she did, as he used to tell her he could distinguish her work as being that of satisfying the fantasies of other men, whereas their relationship was based on real love. However, by time she admits that she realised Defendant was only interested in sex and nothing else.

Plaintiff explains that shortly after their relationship started she got pregnant with their daughter, but Defendant was not too happy about it and he no longer desired her as she had put on weight on account of the pregnancy.

A month before they got married, Defendant purchased an apartment in Xghajra, but he never helped out and expected her to do everything herself and he never

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<sup>1</sup> Fol. 61 tal-process.

appreciated anything, but on the other hand he was very critical. He was also no longer interested in her physically.

Defendant adds that at the time of the courtship he already owned a shop in Triq Sir Temi Zammit, Rahal Gdid which he had purchased on the 3rd February, 1997.<sup>2</sup>

He also purchased the property in Xghajra, Kernice, Flat 4, Triq Leonard Mahoney, by a contract of sale dated 7th May, 2010.<sup>3</sup>

When their daughter K was born, Defendant was very disappointed because he had always wanted a son, infact Plaintiff insists that he did not make an effort to bond with her and this remains the position till today. Instead he preferred being around his nephew who is the same age as K .

The pregnancy also led her to stop working and this also had a great impact on their marriage as Defendant used to depend on her for money because her income was better than his and she used to pamper him.

Plaintiff explains that Defendant was not prepared to contribute towards their daughter's health expenses nor did he want to help her purchase new clothes once she lost weight after giving birth. She needed money, but at the same time she wanted to offer her daughter a better life and she was not so interested in going back to working as a stripper and was more interested in studying, but Defendant was not supportive, leaving her no option but to return to her old job so as to have the finances to send her daughter to a good school and ensure her a good education.

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<sup>2</sup> Dok. CG 1

<sup>3</sup> Dok. CG 2



Plaintiff admits that Defendant did not oppose her returning to work as a stripper, to the extent, that he was also prepared to purchase sexy clothes for her, all because her finances would be good and he would be able to live off her, when he had a good income from two jobs. Whereas Defendant was never ashamed of her job, suddenly since the separation proceedings commenced he found all the problems and considers it to be disgraceful.

At one point she accepted a job as a dancer abroad, because she felt that she would have the finances to pay the private school she wanted to send K too and to pay for her basic needs. She took this decision because at the time she felt that she could rely on her mother-in-law's help, although she later realised that she was as irresponsible as her son, since she discovered that K was spending time with her cousin A, who was one year older than her and she found a disturbing video with sexual contexts, as well A being naked in her presence.<sup>4</sup>

Defendant states that Plaintiff used to try to provoke him by shouting in his face. She used to travel a lot and when she was in Malta she was most of the time on the phone speaking in her language which he did not understand. He started to feel like a *persona non grata* and she appreciated nothing he did.

Defendant too showed his irresponsibility when he did not take care of K when she was unwell and also preferred living the life of a single, still working at the gentleman's club and hanging around with the strippers.

When Plaintiff realised that her marriage was on the rocks, she suggested that they go for marriage counselling, but Defendant felt that it was nothing more than a waste of time. She showed him that she wanted to leave, but instead he started to threaten her and she chose to remain in the marriage.

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<sup>4</sup> Video in folder 1

Plaintiff explains that the change came around when she applied to follow a school academy for land-based and online casino and from November, 2016 she started working full-time in one of the online gaming companies in Malta. Until she studied she had asked her mother to come to Malta to help her with K . Defendant had tried to dissuade her seeing only his financial interests.

Prior to starting her employment, on the 24th September, 2016, there was an incident when Defendant was aggressive towards her and her mother in the presence of the minor child and this was after she asked him to contribute €50 towards the school expenses.

She had filed a report and criminal proceedings were instituted against, wherein he was found guilty and the court issued a protection order. However, on appeal he was acquitted on a legal technicality.<sup>5</sup> Defendant explains that these accusations were all based on Plaintiff's lies, wherein she tried to depict him as an aggressive and incapable father.

The result of this incident has instilled an amount of fear in their minor daughter so much so that she makes it difficult to meet her father, she does not enjoy it because he does nothing with her, but leaves her to watch Youtube, nor does he do homework with her.

She explains that Defendant's irresponsibility as a father emerges from the incidents when K hurt her back when she was with him and he never took her to a doctor, to avoid the expense. Again, more than once he took her to the cinema to watch films that were not suitable for her age group and more often than not they were inappropriate for her.

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<sup>5</sup> Dok. E attached with affidavit

This incident led her to take the decision to leave Defendant and after her friend M offered to let her, K and her mother live with her for a while. She had filed an application in court asking to be granted authorisation to leave the matrimonial home and this was upheld by a decree of the court issued on the 21st February, 2017.<sup>6</sup> Since the court had granted her the right to enter the house to take her personal belongings, on informing him on the 1st of December, 2017 that she was going to the house to check on its state, since half the furniture belonged to her, she discovered that Defendant had changed the lock of the house. To this effect she had filed a police report.<sup>7</sup> This incident was confirmed by MN Z who accompanied her on the day and also videoed the attempt to open the door.<sup>8</sup>

Plaintiff further testified on Defendant's irresponsibility as a father and a husband by mentioning the various chats she discovered he had with various female escorts and prostitutes and seemed prepared to pay for their services and then he found a problem to contribute towards his daughter's summer school expenses.<sup>9</sup>

Plaintiff testified about various instances where Defendant failed to show that he was a responsible father and this is evident when he barely showed empathy when his daughter was unwell and moreover, when she was with him he did not even bother to ensure that she remains clean. She adds that he also decides when he feels like exercising his access or not. He finds all kinds of excuses when he does not feel like, but when he decides he wants to attend for the access, he goes irrespective that at times he won't be well.

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<sup>6</sup> Dok. F attached with affidavit

<sup>7</sup> Dok. FB attached to affidavit.

<sup>8</sup> Dok. MNZ

<sup>9</sup> Doks. G-L attached to affidavit

Defendant does not corroborate this version and states that there was a time where he was granted access to their minor child and also rights of sleepover, but unfortunately Plaintiff was constantly finding excuses to deprive him of this access, until finally the Court saw the true light and overturned the care and custody of K in his favour with a decree given on the 25th March, 2020 and this was a great victory for him because he had not seen his daughter for 8 months.

At present, Defendant confirms that Plaintiff has left Malta and she contacts K through Skype, although lately he has had to insist with her to contact her mother, since she gets annoyed that Plaintiff asks her questions that are not school related or of any interest to her. Defendant also adds that at present he is not informed of Plaintiff's whereabouts outside Malta.

Under cross-examination Defendant confirms that presently the minor child has some problems at school, which are being addressed and he has been sending her to private lessons twice a week.

As to maintenance Plaintiff explains that Defendant himself had decided to give her €200 a month, which for her is too small, infact she had filed an application before this Court asking for €500 a month, plus half education and health expenses. She adds that Defendant can afford to pay this amount as he has two jobs and apart from this he does not pay for his food since he lives with his parents. Meanwhile, Plaintiff is paying for most of K 's expenses and Defendant barely provides for anything.

Plaintiff also claims that despite the fact that Defendant has issued a warrant of prohibitory injunction so she will not be able to travel with K , she insists that this be removed and she be granted the right to travel with their daughter without Defendant's consent, since he opposes to their daughter even travelling with the school, leaving her very disappointed.

Defendant explains that since Plaintiff left Malta he has continued paying the school fees of Chiswick House School, which the child attends, although it is very hard for him.

Moreover, the Court has ordered Plaintiff to pay €350 maintenance towards K and although his lawyer has asked Plaintiff to deposit this amount in Defendant's sister account, due to the fact that she had issued a garnishee order on his accounts, she repeatedly and vindictively deposits them in his account, so the money ends up deposited in court. In addition, he remarks that Plaintiff is not paying maintenance regularly, with the result that he has problems to proceed against her, since he has no information of her whereabouts.

Defendant insists that he be granted full care and custody of the minor child.

Under cross-examination, Plaintiff confirms that she works in trading as a freelance and her income varies. She admits to paying maintenance for her daughter in the sum of €350 monthly and that she deposits them in Defendant's account knowing that there is a garnishee order.

Regarding the community of acquests, Plaintiff is requesting €40,000 which represents her share of half of the rents that were collected and taken by Defendant during their marriage and this with regard to "Bugsbunny" shop in Tarxien, until it closed down.<sup>10</sup> He explained that he had rented it out for a time

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<sup>10</sup> Fol. 82

for €350 monthly, then he had reduced it. This was in 2017. He confirms that today this shop is closed.

She is also claiming to be paid €21,600 for the loan repayments on the matrimonial home and also half the furniture found in the matrimonial home.<sup>11</sup> The matrimonial home was purchased by Defendant and he appears on the contract and also on the bank loan that he took out in the sum of €98,596. She admits also appearing on a contract whereby the loan repayment amounts were reduced.<sup>12</sup>

She also claims her share of the tax deductions by the Tax Department over a period of three years, in relation to the school K attends.

Defendant explains that during his courtship he owned substantial bank deposits with Bank of Valletta plc., namely £8,506.01, as well as investments with Valletta Fund Management in the amount of €15,127.33 together with other investments with Bank of Valletta involving thousands of dollars. However, Defendant admits that throughout their marriage, Plaintiff spent all his money.

Defendant explains that Plaintiff was a spendthrift and she used to want to spend excessively, such as when she insisted on throwing a big party for K's birthday where the expenses added up to around €5,000. He had told her that it was too exaggerated, but she ignored his opinion. He adds that Plaintiff was very interested in showing off in front of the parents of K's school friends and wanted to give the impression that she was someone important who could afford to live a luxurious life.

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<sup>11</sup> Fol. 82 Dok. U

<sup>12</sup> Fol. 82

She had made him purchase for her a watch that cost around €4,000. She was also very vain and was in to increasing her breasts and Botox. She complained that they went to eat in cheap restaurants. She had also made him purchase her a car Toyota Auris, for which he paid €3,000 deposit and monthly installments. Plaintiff had paid €5,000 and the full cost was €13,000. He adds that he had to continue paying the installments even after Plaintiff left and moreover she had refused this car because she wanted a BMW, but he refused since he could not afford it. Later, he discovered that she had sold the care to Premier Car Centre as he had seen it on display.

Under cross-examination, Plaintiff confirms that she had sold the Toyota Auris to her friend MR for €1000 because she needed the money and anyway she states that the car was damaged.

**Joanna Bartolo**, in representation of Bank of Valletta plc., confirmed that from the research carried out there resulted six accounts in Defendant's name,<sup>13</sup> five of which are still active.<sup>14</sup>

She also explained that with regards to insurances there was an insurance policy bought through Bank of Valletta plc. With Policy number FP 503403 and there were also shares bought through Bank of Valletta also under the reference 90465.

There are also two joint accounts in the parties' names that are still active, one of which is a loan.<sup>15</sup> Later in May 2019, the loan account was closed.<sup>16</sup> Doc.JB 7 is known as A/C K as it is a Young Savers Account. The savings account requires

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<sup>13</sup> Docs. JB1- JB 6

<sup>14</sup> Docs. JB 1 – JB 5, Docs. JBV 4-JBV 7

<sup>15</sup> Docs. JB 7 and JB 8

<sup>16</sup> Dok. JBV 4

both signatures. With regards to the savings account, she exhibited an update from June 2018.<sup>17</sup>

She also exhibited two accounts in Plaintiff's name.<sup>18</sup> Document JBV 1 is a savings account, which is closed today. Document JBV 2 is also a savings account which is closed too.

With regards to account pre -2010 in Defendant's name she confirms to have found eleven accounts which are as follows:-

- i) savings account 11101797010 still open;<sup>19</sup>
- ii) savings account 40010429518 closed;
- iii) term deposit 40011825454 closed;
- iv) loan account 40014017104 closed;
- v) savings account 40014539598 closed;
- vi) savings account in US in US dollars 40014725593 still open.
- vii) Savings account in sterling 40014725603 closed;
- viii) Savings account 40014725807 closed;
- ix) Loan account 40014949272 closed;
- x) House loan 40018911578 still open;
- xi) House loan 40018911594 still open;

The loan repayments are made by Defendant in cash.

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<sup>17</sup> Dok. JBV 3

<sup>18</sup> Doks. JBV 1 and JBV 2

<sup>19</sup> Dok.JBX \_JBX 11



**Alison Mifsud Brimmer**, in representation of HSBC Bank Malta plc. Confirmed that from the searches carried out Defendant held savings account that were closed.<sup>20</sup>

**Joseph Debono**, in representation of the Commissioner of Inland Revenue presented the income tax returns for the basis years 2015 and 2016. For the basis years 2011 and 2012, Defendant did not file returns, but for the basis year 2011 there was a non-filer statement filed as well as an adjustment form. In the non-filer system the single rates were used, but then Defendant filed a correction form using the married rates which was more beneficial to the tax payer to use the married rate as he was entitled to do because they were both married.

He explains that instead of the return he is exhibiting the sources of income declared in both the non-filer and adjustment form in lieu of the tax return.

He exhibited the income tax statement instead of the income tax return basis year 2010<sup>21</sup>, the tax correction form,<sup>22</sup> the non-filer statement of basis year 2011<sup>23</sup> and the correction form of the same year<sup>24</sup>. He also exhibited the non-filer statement of basis year 2012, the tax statements in lieu of tax return basis year 2013 ad 2014 and copies of the returns for basis year 2015 and 2016.<sup>25</sup>

The 2015/2016 returns were signed by Defendant. In the 2016 return there is reference to the Chiswick school. In this respect there was a tax deduction of

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<sup>20</sup> Doc. AMB 1

<sup>21</sup> Doc JD 1

<sup>22</sup> Doc. JD 2

<sup>23</sup> Doc. JD 3

<sup>24</sup> Doc. JD 4

<sup>25</sup> Doc. JD 5 – DOC JD 9

€1600 and it was Defendant who benefitted from this deduction because of the law.

He confirms that there was a joint application based only on Defendant's income and the deduction was made in his favour, but the married rates were applied.

The declared income for 2016 was €21, 557. Only Defendant's income was declared, however in the sources of income document, there was a declared income in relation to Plaintiff of €1619 which was not included in the tax return 2016.

**Karen Cremona**, in representation of Transport Malta confirms that from the searches carried out, Defendant had one vehicle registered in his name Opel Astra TAN 070.<sup>26</sup> Previously there were three vehicles registered in his name.<sup>27</sup> She also exhibited a list of vehicles presently registered in Defendant's names and the ones that used to be.<sup>28</sup> He has an Opel Astra TAN 070 which is garaged.

She also confirmed that Plaintiff did not have any vehicles registered in her name and in the past she had two.<sup>29</sup> With regards vehicle EMI 118 there was a transfer.<sup>30</sup> There was also a transfer with respect to the vehicle LCP 748.<sup>31</sup>

**Daniel Sammut**, in representation of BOV Asset Management confirmed that Defendant still had holdings in the amount of €925.98.<sup>32</sup> Also in 2011, there was

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<sup>26</sup> Dok. KC 1

<sup>27</sup> Dok. KC 2

<sup>28</sup> Docs. CC3

<sup>29</sup> Docs. CC1 – CC2

<sup>30</sup> Doc. CC5

<sup>31</sup> Doc. CC6

<sup>32</sup> Dok. DS 1

a transfer out (Defendant took funds at cash value) in the amount of €40,014.99.<sup>33</sup> There was another transfer out in 2011 in the amount of €5382.32.<sup>34</sup>

**Dr. Daphne Anne Mallia**, in representation of Mapfre MSV Life confirmed that from her searches it results that Defendant has two policies in his name. The first one is an issued policy, a loan protection plan. It started on the 15<sup>th</sup> December, 2015 for a term of 29 years, maturing on the 15<sup>th</sup> December, 2044. The premia he pays on a monthly basis amount to €15.31. The total premia paid since 2015 amount to €750.19. Therefore, he explains that the current sum for the reducing loan protection plan is that of €85,256.13 and it is currently pledged with the Bank of Valletta plc.<sup>35</sup>

The other policy is a rendered policy with policy number FP454720. She confirms that the assured and the life assured are both the Defendant. The commencement date is 9<sup>th</sup> March, 2010 for a term of 34 years. Defendant was paying premia in the sum of €63.32 on a monthly basis. The total premia paid was of €4,405.72 and the maturity date is the 8<sup>th</sup> March, 2044.

She adds that Defendant had surrendered the said policy on the 7<sup>th</sup> January, 2016 and the value was €3697.29.<sup>36</sup>

**Police Inspector Clayton Camilleri** exhibited eight reports all related to civil matters.<sup>37</sup> He explains that there were other Police involved in the reports and investigations.

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<sup>33</sup> Dok. DS 2

<sup>34</sup> Dok. SC 3

<sup>35</sup> Dok. DAM 1

<sup>36</sup> Dok. DAM 2

<sup>37</sup> Doks. CC1- CC 8

**Vanessa Camilleri**, in representation of Transport Malta confirmed that from their researches there resulted one vehicle in Plaintiff's name.<sup>38</sup> On Defendant's name there resulted one current vehicle.<sup>39</sup> From the history of car possession, it results that Defendant had three cars registered in his name.<sup>40</sup>

**Miriam Sultana**, in representation of Malta Stock Exchange confirms that from the searches carried out there resulted a MSC account number 9134050 registered in his name and she also presented the transaction history as of the 4<sup>th</sup> June, 2010.<sup>41</sup> Currently she confirms that there is no balance in the account, which was redeemed on the 1<sup>st</sup> February, 2011.

**Joseph Saliba**, in representation of Jobs Plus exhibited the employment history of Defendant,<sup>42</sup> as well as that of Plaintiff.<sup>43</sup>

**AG**, Defendant's sister explains that Plaintiff was not always very present in K's life. She used to travel a great deal, but Defendant and his family, including her were always present for the minor child. She also adds that on one occasion, when K was at nursery she got injured and they had to rush her to hospital, but when they informed Plaintiff she chose not to come to Malta, whereas Defendant slept by her side all week.

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<sup>38</sup> Dok. VC 1

<sup>39</sup> Dok. VC 2

<sup>40</sup> Doks. VC 3 – VC 4

<sup>41</sup> Dok. MSS 1

<sup>42</sup> Dok. JS 1

<sup>43</sup> Doc. JS 2

She also states that Defendant was the one who took care of the child, with the help of their parents, even when Plaintiff was in Malta. He organised birthday parties for K , but since Plaintiff was abroad, she would try to dictate the organisation through Skype.

The fact that Plaintiff used to travel very often became an issue of instability for the family. When she was present in Malta, it was not all normal for Defendant, who used to have to lock himself in his room whilst Plaintiff was in the house. When she witnessed this, she asked her brother to move in with his parents because it was no life.

One fine day, she explains that Plaintiff left the matrimonial home with K and then they found out that she had moved in with a friend M in Rabat, with whom K stated that they sleep in the same room and in the same bed.

At the time she used to accompany Defendant to pick up K from Rabat, but during such period he was facing problems to exercise access, the reason being that Plaintiff was always finding excuses to prevent this access. Since then Plaintiff had changed their residence another three times creating more instability for the minor child.

She attempted to instil parental alienation between K and Defendant and whenever she used to be present with her brother during the access hours, K used to act very differently when she had spent more time with her father. She explains that during the access, the minor child contacts her mother and spends a lot of time on the phone with her. It is clear that Plaintiff has instilled fear in K , and

she continuously files false rapports against Defendant. She even had the audacity to accuse her father of having smacked K , when he has always been there to help her.

She adds that Plaintiff is vindictive in that she waits for Defendant to be on his way for access to the minor child and she calls at the last minute to cancel stating that the minor child is unwell. She did her utmost to bring about this alienation and she succeeded for a time, when she interrupted all contact between the minor child and her father, until a Court decree ordered that K be placed in the care and custody of Defendant and since then she has seen K returning to being a happy child, happy to be around her father and his family.

Under cross-examination she confirms that she was close to Plaintiff and so she visited their house every evening. She also confirmed that her son was Arsenio and that they too like Defendant and K lived with her parents and they all give a helping hand with the minor child.

**Gaetano Fenech** in representation of Premiere Cars confirms that the car with registration number LCP 478 was never registered with them, nor did he have cars under Plaintiff's names. However, when he went to verify with Transport Malta it resulted that the car was registered with Ventur Motors.

**Frederick Grixti** explains that they had purchased a Toyota Auris LCP 748 from J. Zammit Ltd and they had sold it to the parties for the price of €11,500.

It ended up at them again through a part-exchange in June 2018 through M NZ with a Mercedes. The exchange was for €4000.<sup>44</sup>

**Alexia Aquilina**, in representation of the Registrar, Civil Courts confirms that from her searches there did not result that there were any deposits made in court for whom Defendant was beneficiary. However, she could confirm that there were deposits made under a garnishee order, which deposits have not been withdrawn.

## **CONSIDERATIONS**

## **RESPONSIBILITY**

Since Defendant has filed a counter-claim, both parties are holding each other responsible for the breakdown of the marriage. For Plaintiff, Defendant was responsible for the breakdown because of “*adulterju, sevizzi , ingurji u agir abuziv,*” whereas Defendant considers Plaintiff responsible because of “*adulterju,vjolenza fizika, psikologika u mentali, sevizzi ingurji u agir abusiv.*”

Plaintiff laments that although they fell in love at the gentleman’s club, where they both worked, she as a pole stripper and Defendant as a security, when she got pregnant, Defendant’s attitude towards her changed. She testified that he did not desire her any longer and he considered her to have put on weight, losing all interest in her both physically and sexually. This

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<sup>44</sup> Doc. FG1

also led him to flirt with other women in her presence. No evidence was produced by Plaintiff to strengthen her allegations in this regard.

Plaintiff explains that this lack of interest in her led Defendant to act disrespectful towards her and this attitude took a turn for the worse, when Plaintiff decided that for a while she wanted to stop working to take care of their daughter. Plaintiff attributes this to the fact that her income was much better than Defendant, though he had two well-paid jobs, but she used to pamper him with top brand clothes and goods, so he was not willing to give up that kind of life-style.

She continues to blame Defendant for having had to return to working as a pole dancer, since she had no alternative as her financial means were limited as Defendant did not contribute much. Defendant was overjoyed and did not attempt to encourage her to opt for another job as she would have wished. He just considered the financial improvement it would lead to. On the other hand, he purchased sexy underwear for her and what was not a dishonourable job for him at the time, was now during the separation proceedings. Plaintiff insists that she had chosen to carry out working as a pole dancer so as to finance her child's education in a private school, precisely Chiswick House School, because Defendant refused to contribute towards these expenses.

Defendant obviously fails to corroborate Plaintiff's version and attributes one of the problems in their marriage, to the fact that she used to spend excessively, and she wanted to give the impression that she was rich and of a high social status. He alleges that all the money he had saved prior to their marriage, was consumed by Plaintiff, who was constantly asking for more to satisfy her whims, which also included breasts implants and botox.



In this regard, Defendant produced Joanna Bartolo in representation of Bank of Valletta plc who confirmed that prior to their courtship there were various amount of money in different accounts, including foreign currency accounts belonging to Defendant.

The financial problems led to Defendant changing into an aggressive husband and Plaintiff refers to various incidents and reports that she filed, the main one being the one that occurred on the 24<sup>th</sup> September, 2016 after Plaintiff alleges that she asked Defendant to give her €50 after having purchased all the school necessities for K. This led to an argument and Defendant acted aggressively with Plaintiff and her mother, with the result that this led to a report and criminal proceedings. Plaintiff exhibited a number of photos to show the bruising she had as a result of the aggression.

Defendant was found guilty before the Court of Magistrates and a subsequent protection order was issued, but nonetheless he was acquitted on appeal due to a legal technicality and this is confirmed by the judgement delivered by Madame Justice Dr. Edwina Grima.

Plaintiff did not produce further evidence that could confirm Defendant as being an aggressive person and thus it is one isolated incident that happened and although not contested, it was decisive for Plaintiff to leave home and move in with a friend of hers, together with her mother and K.

Defendant considers having been provoked on several occasions by Plaintiff so as to create trouble and depict him as an aggressive husband. Her attitude got worse when she would return after spending a long period abroad.

The fact that Plaintiff would spend a great deal of time abroad on work or even capriciously, such as when she went to have her breasts enlarged, all created further problems and stress in their marriage because when she would return she totally ignored Defendant and he felt totally irrelevant and a *persona non grata*, with Plaintiff also having telephone conversations in her own language, thereby making it difficult for him to understand.

### **ADULTERY**

The Courts have held the following in previous judgments:

“Illi fil-kawza fl-ismijiet “**Rose Gauci vs Salvatore Gauci**” (P.A. (RCP) 1 ta’ Ottubru 2002 - Cit Nru:1365/1997/RCP) fejn din il-Qorti kif presjeduta rriteniet li:-

“... *l-artikolu 38 tal-Kapitolu 16 tal-Ligijiet ta’ Malta* jghid illi “*Kull parti mizzewga tista’ titlob il-firda minhabba l-adulterju tal-parti l-ohra*”. Illi kif tajjeb osservat din il-Qorti fis-sentenza tagħha tas-16 ta’ April 1953 fil-kawza fl-ismijiet “**Rita Spiteri vs Avukat Dr. Albert V. Grech et noe**”. (P.A. (C.C.) Kollez. XXXVII.II.693) *l-adulterju "hija bla dubju l-kawza l-izjed gravi li għaliha l-ligi tawtorizza sseparazzjoni personali; izda, stante d-diffikulta' tal-prova, kif turi l-assenza ta' dispozizzjoni legislattiva li tillimita dina l-prova, huwa ormai pacifiku fid-dottrina u fil-gurisprudenza li l-adulterju jista' jkun pruvat permezz ta' indizji u prezunzjonijiet, purché' dawn ikunu gravi, precizi u konkordanti, b'mod li ma jhallu ebda dubju f'min għandu jiggudika*”. (“**Rosina Micallef vs Angelo Micallef**” *Prim’Awla Deciza -27 ta’ Gunju 1964*)”.

This is the gravest of reasons for grounds for a separation. Both parties accuse each other of having been guilty of adulterous relations. Plaintiff produced various chats that Defendant had with different women, wherein he was planning to meet up with them.

To strengthen her accusations, she also produced a chat between Defendant and another woman, where he was asking for her services of “hot massages.”

The conversation depicts an interest undoubtedly on the part of Defendant, however the said chat in itself does not lead to any probabilities of making use of the prostitute services, where in actual fact Defendant never confirms the use of her services. Likewise, the other exhibited chats by Plaintiff confirm an element of familiarity between Defendant and the women he chats with, but in themselves these chats do not lead anywhere and cannot represent the “*indizi u prezunjonijiet gravi*” as essential elements to confirm that adultery was committed.

As to Plaintiff, Defendant claims that she is in a lesbian relationship with her friend M. It is confirmed through the evidence produced that Plaintiff and her daughter lived with her and they also slept together in the same bed. Other than that there is no further evidence whether there was a relationship or not, making it difficult for this Court to conclude that the elements for adultery have been satisfied.

All in all, the Court can conclude that both parties have rendered this marriage impossible because of excesses and cruelty with respect to each other, Plaintiff with repetitive acts of materialism and not valuing Defendant as her husband, who on the other hand was financially stringent

with Plaintiff and not totally aware of his role as a husband and a father at times, leading him at times to be aggressive in his ways.

### **CARE AND CUSTODY**

Both parties are requesting to be granted full care and custody of the minor K

At present, K has been granted the full care and custody of Defendant, subsequent to a decree issued by this Court on the 1<sup>st</sup> October, 2020. Until such decree, Plaintiff was prohibiting K from seeing her father and this notwithstanding that the access was ordered by the Court. She constantly was finding excuses and it was also established that at the time Plaintiff was also living with a friend, a certain M .

The issue regarding the care and custody of the child was always a bone of contention between the parties. When the case was filed in 2017, the child was around 7 years old and the circumstances were different. The parties had their arguments, differences and financial problems, with the result that Plaintiff had decided to go and work abroad. She felt comfortable leaving their minor daughter with her in-laws because she considered them to be trustworthy and responsible. However, she later reconsidered her decision when she found out that Defendant's nephew A was a bad influence and he used to be present with her daughter for most of the time, until this was overturned with a court decree that prohibited his presence when K is around.

Of divergent views are the reports of Agenzija Appogg who claim that K was very close to her paternal grandfather, and it was obvious that they had a strong bond because he used to play with her and go down to her level.

It was after the incident that occurred on the 26<sup>th</sup> September, 2016 that Plaintiff left the matrimonial home with K who spent time fearing her father. There was a time when the access was being monitored, however, later Appogg recommended that there was no need for any monitored access because the child was very happy to be around her father.

Admittedly, from the evidence brought forward before this Court, Defendant did lack parental skills to a certain extent, in the sense that when he had K with him during access, he was not prepared to stay with her doing homework and he expected her to get it done with her mother. Plaintiff also accuses Defendant of being irresponsible and not taking care of the minor's health, when she was unwell.

Nonetheless, Plaintiff lost the care and custody of the child during the time, when she moved out of the matrimonial home and was making it very difficult for Defendant to exercise his access rights, so much so that at the end she denied all forms of access to K . She was also moving from one residence to another. Once this care and custody was lost, Plaintiff decided to pack her bags and she moved abroad.

Today, K is 13 years old and at an age which is crucial for her education. In deciding matters of care and custody, the Court must always prioritise the best interests of the minor child.

She has now been living with Defendant and her grandparents as well as her aunt and cousin A for quite a while. Plaintiff is not contesting that K continues residing with her father, however she insists that they be given joint care and custody. Defendant's sister also confirms that they all help out with K, since Defendant has to work.

Despite all the accusations made by Plaintiff towards Defendant and depicting him as an irresponsible father, she chose to leave Malta on losing *pendente lite* the care and custody of the child. Up to date, Defendant is not aware of her residence abroad and although she does not reside here, she tries to dictate decisions regarding the minor child.

Considering that K has been in Malta for all these years, has attended school here in Malta and has all her friends here, it would be senseless and a huge shock for her to move to another country at such an important stage of her life, that under the Maltese educative system represent formative years in decision making for the future. Defendant admits that at the moment K is facing some problems in keeping up with her schooling, but it is being seen to by both himself and the school. Additionally, it results that she is stable living with her paternal family and she has all the help she needs and is well taken care of. Thus, any drastic changes in her life at this point, could prove to be detrimental.

Therefore, this Court has reason to believe that in K's best interests she must retain her residence here in Malta with her father.

As to Plaintiff's request to have joint care and custody, considering that she lives abroad and has never had the decency to inform Defendant of her whereabouts, all decisions related to the child's education, health and all decisions related to day-to-day matters, are to be solely those of Defendant.

In this context, the Court in the case **AA vs GA**<sup>45</sup> reiterated as follows:-

*“Fid-dawl tal-osservazzjonijiet u l-konsiderazzjonijiet fuq gia’ maghmula, il-Qorti hi tal-fehma illi fic-cirkostanzi partikolari ta’ dan il-kaz, tenut kont tal-kuntrasti spissi u irrikonciljabbli ta’ bejn il-partijiet, ma hux fl-interess tal-minuri li l-kura u kustodja tal-minuri, ossia s-setgha tal-genitur, tigi affidata u ezercitata miz-zewg genituri flimkien. Bi storja ta’ glied kontinwu fuq medda ta’ snin bejn iz-zewg genituri, il-Qorti m’ghandha l-ebda dubju illi mhux fl-interess tal-minuri li l-kura u kustodja tigi affidata liz-zewg genituri b’mod kongunt. Fic-cirkostanzi huwa indikat illi l-kura u kustodja ghandha tigi affidata f’idejn l-omm il-minuri.”*

Nevertheless, there should be no reason for Defendant not to keep Plaintiff updated with their daughter's progress and matters that could be of an extraordinary nature, when the necessity so arises.

In view of the above, the Court decides that Defendant be granted sole and exclusive custody of the minor child K as well as he solely takes decisions related to the said child. He will also be authorised to issue a passport for

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<sup>45</sup> Deciza 26 ta' Frar, 2015, 22/2009 RGM

the minor child, without Plaintiff's authorisation and for this reason the Director of Passports is to be made aware with such judgement.

### **Access**

Since access cannot be exercised regularly because Plaintiff resides abroad, there shall be online calls, twice a week for half an hour each time.

When Plaintiff is in the Maltese Islands, then access will be exercised twice weekly and once on the weekend, for three hours each time, to be agreed between the parties.

### **MAINTENANCE**

The concept of maintenance is explained under Chapter 16 of the Laws of Malta as follows:-

#### **Article 3B:-**

- (i) *Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage, taking into account the abilities, natural inclinations and aspirations of the children.*

Furthermore, Article 7 states as follows:-

- (1) *Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in Article 3B of this Code. »*



**Article 19 further states that :-**

*(1) Maintenance shall include food, clothing, health and habitation.*

*(2) In regard to children and other descendants, it shall also include the expenses necessary for health and education. »*

**Article 54 adds on as follows :-**

... omissis ...

*(2) The amount of maintenance referred to in sub-article (1) and the maintenance due to children in the event of separation, shall be determined having regard to the means of the spouses, their ability to work and their needs, and regard shall also be had to all the other circumstances of the spouses and of the children..*

*...omissis ...”*

Once the Court granted full care and custody in its decree dated 1<sup>ST</sup> October, 2020 it had also ordered Plaintiff to pay the sum of €350 monthly as maintenance towards the minor K.

Defendant explains that Plaintiff has not always been regular in her payment towards maintenance and despite him filing reports, there are legal problems that he encounters and cannot overcome, namely that Plaintiff lives abroad and moreover, her place of residence is unknown.

However, whenever she effects payment she does so by depositing the amount directly into Defendant's bank account, fully aware that she had issued a garnishee order over the said accounts, thereby impeding Defendant from being able to withdraw the said amounts. Plaintiff confirms Defendant's version confirming that she has been depositing the maintenance in his account, and this is so since she has been following the Court orders.

This has also been confirmed by Joanna Bartolo, in representation of Bank of Valletta plc.

As a consequence, Defendant admits to having to work hard so as to continue paying the high school fees, since K attends a private school and he has no intention of pulling her out at this stage.

In quantifying maintenance that should be due towards the minor child, the Court always has to assess the means of the person obliged to pay maintenance, in this case the Plaintiff's and the needs of the minor child.

When it comes to financial matters, Plaintiff has not always been consistent in her testimony, particularly when related to her present employment. She was very evasive on being cross-examined, stating that at present she works freelance in trading and she invoices independently. She was hesitant to reply to the Court as to her income, promising to produce information and the invoices. The invoices were never exhibited in Court, and she only exhibited a document declaring her income to be that of a miserable €5,000 per annum. As Defendant pointed out this is “*an insult to this Honourable Court's intelligence and faithfulness.*”

Plaintiff's version cannot be considered to be a credible one primarily because such a minor income makes it impossible to survive, even though she insists that the income in Bulgaria is lower than that in Malta and moreover, if she wanted to convince this Court further that her financial means do not permit her to continue paying €350, by not producing the necessary invoices she convinces this Court even more that her version is not a reliable one.

For the abovementioned reasons, this Court confirms that Plaintiff has to pay maintenance in the sum of €350 per month, as well as half the education and health expenses, and half the expenses payable for one extra curricular activity of the minor.

All children's allowance and any other related benefits are to be received by Defendant.

### **COMMUNITY OF ACQUESTS**

With respect to the community of acquests there are some points on which both parties are in agreement.

By a decree dated 26<sup>th</sup> April, 2018 the Court ordered the cessation of the community of acquests, so essentially this Court shall consider any claims that refer to periods prior the date aforementioned.

### **Matrimonial home**

From the evidence produced the parties also agree that the matrimonial home Flat 4, "Kernice," Leonard Mahoney Str, Xghajra, is paraphernal to

Defendant. In contention is the issue of the loan repayments that took place during the marriage. Defendant acknowledges that he kept on paying the loan but does not oppose to paying Plaintiff her share of these repayments, where applicable.

The parties however are in disagreement, as to the amount due. Defendant claims that Plaintiff's pretension of €21,600 is inflated, whereas the sum of €18,000 is more reasonable and realistic to what is actually due. Due to this discrepancy, **the Court orders that the amount due by Defendant to Plaintiff for the payment of the said loan shall be €19,300.**

As to the furniture found in the matrimonial home, it was all purchased during the marriage and therefore forms part of the community of acquests. Defendant is not contesting the movables being claimed by Plaintiff. Once the parties are in agreement, the Court orders that Defendant passes on this furniture being claimed by Plaintiff within two months from the date of judgement, which furniture if being transported, all transportation and delivery costs are to be borne by Plaintiff.

### **Rent for Shop "Bugsbunny," Sir Temi Zammit Street, Tarxien**

Plaintiff claims that during their marriage, Defendant used to rent out the abovementioned shop, but he used to retain the said rent for himself. Plaintiff is now claiming the sum of €40,000 as her share of the said rent received.

Defendant contests these claims and considers them to be exorbitant. He explained that he had rented it out for a time for €350 monthly, then he had reduced it. This was in 2017. He confirms that today this shop is closed and

Plaintiff did not produce any evidence to rebut the said claim. Nor did she produce evidence to show that all the rent she claims was received.

He adds that the said rent was used as an income to maintain the family and therefore Plaintiff cannot make any claims in this respect.

This Court agrees with Defendant's version, in that he admits to having reduced the rent in 2017 and this is definitely not a coincidence considering that this case was opened in 2017. Nonetheless, it is understandable that if there was an incoming rent throughout their marriage it was utilised for their needs as part of their income.

However, Plaintiff left the matrimonial home on the 26<sup>th</sup> September, 2016 and therefore, **it is just for her to be entitled to have the rent that was due for one year ( $\text{€}350 \times 12 = \text{€}4,200 / 2 = \underline{\text{€}2,100}$ )** once Defendant admits that he kept on receiving it till 2017.

### **Vehicles**

Once again, Plaintiff fails to be credible in testifying with regards the vehicle Toyota Auris registration number LCP 748. Defendant had purchased the said car for Plaintiff and when she left the matrimonial home she took the said car.

Defendant was not initially aware of what happened to the said car, only to find that Plaintiff had sold the vehicle without informing him.

Plaintiff claims that she needed money and sold it to her friend M for €1,000, whereas Frederick Grixti in representation of Premier Leasing and

Investments Co.Ltd. explains that they had purchased a Toyota Auris LCP 748 from J.Zammit Ltd and they had sold it to the parties for the price of €11,500.

It ended up at them again through a part-exchange in June 2018 through MN Z with a Mercedes. The exchange was for €4,000.<sup>46</sup>

Therefore, Plaintiff's version is definitely not corroborated. Moreover, Defendant claims that for a for a period of a whole year he kept on paying the loan repayments on the vehicle of €99 a month, adding in total to €1,188. Plaintiff did not oppose Defendant's version and in any case she would not have been credible.

In this respect, the court upholds Defendant's claim of having a credit of **€3,188** in his favour on the said vehicle.

### **Investments prior to Marriage**

Defendant claims that he had various investments prior to marriage and during their marriage, Plaintiff managed to spend all these savings to satisfy her whims and now he has decided to claim them back considering that they were paraphernal.

However, this Court does not feel it has to uphold Defendant's claims and this due to the fact that during such time they were married, and Defendant agreed to making the said investments available to his wife. As to how they

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<sup>46</sup> Doc. FG1

were utilised or not, no evidence has been brought forward and therefore the presumption is that they were used both for the family and in part for some whims that Plaintiff had and Defendant was willing to satisfy.

## **DECIDE**

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

1. Upholds the Plaintiff's first request *in parte* and declares Defendant jointly responsible for the separation of the marriage because of cruelty and excesses.
2. Rejects Plaintiff's second request.
3. Rejects the third and fourth request.
4. Upholds the fifth request.
5. Rejects the sixth request.
6. Rejects the seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth request.
7. Upholds the fourteenth request and liquidates and assigns the community of acquests as explained further above.
8. Rejects the fifteenth request.
9. Rejects the sixteenth request as they do not result.
10. Upholds the seventeenth request as far as is applicable.

## **Counter-claim**

1. Upholds the first counter-claim in parte and declares Plaintiff jointly responsible for the separation because of cruelty and excesses.

2. Upholds the second counter-claim and grants Defendant the exclusive care and custody of the minor child K

3. Upholds the third counter-claim and orders Plaintiff to pay maintenance towards the minor child K in the sum of €350 monthly, as well as half the education and health expenses, and half one extra curricular activity. The said maintenance has to be increased annually according to the cost of living index.

All children's allowance and benefits are to be received by Defendant.

4. Upholds the fourth counter-claim.

5. Upholds the fifth counter-claim.

6. Upholds the sixth counter-claim.

7. Upholds the seventh counter-claim.

8. Upholds the eight counter-claim.

9. Upholds the ninth counter-claim.

10. Upholds the tenth counter-claim.

11. Upholds the eleventh counter-claim.

12. Rejects the twelfth counterclaim and grants access as explained and decided above.



13. Abstains from deciding the thirteenth counter-claim since Plaintiff works and she never requested maintenance for herself.

14. Upholds the fourteenth counter-claim and dissolves, liquidates and assigns the community of acquests as explained and decided further above.

15. Rejects the fifteenth counter-claim.

16. Rejects the sixteenth counter-claim as explained further above.

17. Upholds the seventeenth counter-claim as explained further above.

The costs of these proceedings are to be borne as to two-thirds by plaintiff and one-third by defendant.

**Hon. Mr. Justice Dr. Anthony Vella**

**Registrar**