



MALTA

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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tas-27 ta' Gunju, 2006

Citazzjoni Numru. 52/2005

List Number: 47

**A B C in her own name and as curator ad litem of her
minor child D E C**

Vs

**Doctor Vincent Galea, and Legal Prokurator Louisa
Tufigno appointed deputy curators in virtue of court
decree dated 1st. March 2005 to represent F G H [also
H] who is absent from these Islands.**

The Court,

Having seen the writ of summons filed by plaintiff who
premised and made the following requests:

Premised that plaintiff A C, who has been residing in
Malta together with her daughter, D E C since 1996, on
the 31st may 1985 married defendant F I J (Dok A) and

from which marriage they had one daughter, the same D E C who was born on the 13th September 1990 (Dok. B) and who is presently still a minor; and

Premised that on the 21st November 2001 the marriage between the parents of the said D E C was terminated by means of a divorce (Dok C) and defendant abandoned his daughter and her mother here in Malta; and

Premised that since the beginning of 2001, defendant did not pay any maintenance for his minor daughter; and

Premised that on the 19th June 2003 the Court of the Judicial Division No. 154 of the District Khoroshevo-Mnevniki, Russia, ordered that a quarter of the salary or of any other income that defendant has is to pass to his daughter by way of maintenance, and this as can be evidenced by the copy of the decree here annexed as Dok. D; and

Premised that defendant is not paying any maintenance as he is dutibound to do at law, for the upbringing and the education of his daughter, as he is in fact in a position to do; and

Premised that plaintiff has information that the defendant has already sold some immovable property which he had in Russia, and nonetheless he still failed to pass on any monies to his daughter by way of maintenance; and

Premised that the costs for the upbringing of the daughter are all being borne by her mother, who has no fixed employment; and

Premised that the plaintiff and her daughter are suffering as serious prejudice due to the fact that the defendant is not paying maintenance; and

Premised that on the 10th December 2004, by means of Decree No. 1263/04 in the names A B C vs F G H, as subsequently renewed (Decree No. 185/05), Civil Court Malta, Family Section, presided by Honorary Justice Geoffrey Valencia, authorised the plaintiff to proceed with

Kopja Informali ta' Sentenza

the writ of summons, after appointing curators to represent absentees; and

Premised that plaintiff nominee A C is the de facto representative of her minor daughter D Alexandra C; and

May thus defendant state why this Court should not for the reasons premised:

1. Decide that the defendant is responsible for the payment of maintenance for his minor daughter D E C;
2. Liquidate the maintenance which defendant should pay subject to any directions and conditions which the Court may deem fit;
3. Condemn defendant to pay to plaintiff qua representative of their minor daughter D E C, that liquidated maintenance, in the modality of time, place and day that the Court may establish.

With costs, including those of the warrant of prohibitory injunction No. 2244/04 against defendant, who is subpoenaed to witness.

Having seen the statement of defence presented by the deputy curators in virtue of which they raised the following pleas: [1] that they are not as yet informed of the facts of the case, and therefore reserve to present further pleas at a later stage of the proceedings; [2] that the Maltese courts lack jurisdiction to take cognisance of this case since the marriage between the parties had been contracted outside Malta; [3] that, in any case, given the circumstances of the case, the proceedings in question are not according to law;

Having seen the declarations of the plaintiff and the deputy curators, as well as the list of witnesses;

Having seen the declaration made in the sitting held on the 6th. June 2006 whereby the parties requested the Court to allow that the proceedings be continued in the

Kopja Informali ta' Sentenza

English language and that the judgement be drawn up in this same language;

Having seen the declaration made the deputy curator Doctor Vincent Galea whereby he renounced to pleas numbers two [2] and three [3] in view of the fact the minor has been residing in Malta since 1996, as well as the fact that the immovable property owned by the absentee, is situate in Malta;

Having seen all the records of the proceedings;

Having heard the evidence on oath;

Having considered;

That though defendant has renounced to the pleas relating to the jurisdiction of this Court, it is not amiss to state, also since the matter of jurisdiction is one which the Court may raise ex officio, that in this case the jurisdiction of the Maltese Courts is grounded in the fact that Malta is the habitual residence of the minor child, as well as the fact that the plaintiff has been living in Malta together with her child since 1995 ie. for a period extending for more than 10 years, and it seems that the mother and the child have intended to establish their domicile in Malta. Besides, the property in regard to which the plaintiff is making her claim, is situate in Malta, and therefore execution of the judgement can be obtained over property belonging to defendant, in Malta.

That the relevant facts of this case are as follows. In virtue of deed published on the 14th December 1995 in the records of Notary Doctor John Gambin, defendant F H, who at that time was married to plaintiff, bought an apartment internally numbered four [4] forming part of a block of flats named 'Veronica Flats' without external number, situate in Perelles Street [formerly n/s off Main Street], in Saint Paul's Bay, for the price of Lm20,000.

Since then the couple, who are of Russian nationality, started residing in Malta together, with their daughter D E born on the 13th September 1990.

Since 1999 the defendant abandoned plaintiff and their daughter; and on the 21st. November 2001 the couple obtained a divorce in Russia, and In her affidavit plaintiff states that her husband is now living with his second wife. She also confirms that since then defendant has failed to pay maintenance or contribute in any manner for the maintenance of their daughter; and from that time till this very day the minor D Alexandrova has been brought up entirely by plaintiff who had to bear all the costs and expenses for the maintenance of their daughter who is now in her sixteenth year.

From the evidence produced, and particularly from the deed of purchase of the above deed, it results that defendant is a businessman, and though the flat was bought by the couple after ten years of marriage, the purchase was made solely in the name of defendant, who consequently under Maltese Law is considered to be the sole owner of the premises.

From a note filed in the records of the proceedings, by plaintiff on the 13th June 2006 and confirmed by her on oath before this court, it results that at present the expenses involving the minor child and which are being borne solely by plaintiff amount ta' Lm4,621 per annum. Also of relevance is the assertion made by the plaintiff on oath that she receives a monthly sum of about Lm1,000 from her family business in Russia.

The Court having taken in consideration the fact that the defendant is a businessman, and whose only property in Malta is the flat aforementioned, as well as the fact that he has ceased contributing for the expenses of his daughter since 1999; as well as the amount of these expenses which at present are being incurred by plaintiff, considers it just, in accordance with the provisions of Article 54 of the Civil Code, and sub section [6] in particular that, payment of maintenance due to plaintiff in respect of the

Kopja Informali ta' Sentenza

minor child be paid by defendant in kind through the assignment in ownership of one third [1/3] undivided share of the above premises.

In this respect, the Court gave due consideration to the rapid and steep increase in property prices since 1995.

On the strength of the above considerations, the Court considers plaintiff's demands as justified in fact and in law; and decides as follows:

Decides;

To accede to plaintiff's demands and declares defendant F H to be responsible for the payment of maintenance of his daughter D E; declares maintenance due to be paid in terms of sub section [6] of the above section, and orders that one third [1/3] of the afore mentioned property be assigned to plaintiff A B in full and final satisfaction and payment of all maintenance due, past, present and future for the minor child.

For the purpose of the publication of the relative deed of transfer, the Court nominates Notary Doctor Sylvana Borg Caruana to publish this deed in the building of the Law Courts, on a date and time to be fixed by the said Notary not later than two months from the date of this judgment, and appoints Doctor of Laws Vincent Galea to appear on behalf of defendant in case the latter fails to appear for the publication of the deed.

The expenses of these proceedings, as well as of the relative deed of transfer, are be borne totally by defendant; however provisionally the plaintiff is to pay these expenses relating to the deputy curators, including the curators appearing on the relative deed.

< Sentenza Finali >

-----TMIEM-----