

Qorti tal-Appell
(Kompetenza Inferjuri)
Imhalled Anthony Ellul
Appell numru: 21/2015

Natassja Gouder (Appellata)

Vs

Direttur Generali tas-Sigurta Socjali (Appellant)

Il-Gimgha, 24 ta' Gunju, 2016.

Din hi sentenza minn appell li ppropna d-Direttur Generali tas-Sigurta Socjali minn decizjoni tal-Arbitru tal-14 ta' April 2015 li biha hassar decizjoni tad-Direttur li l-appellata m'ghandhiex jedd ghall-ghajuna supplimentari ghaliex m'hijiex tiffirma familja ghal rasha.

Fl-ewwel lok l-appellata osservat li kellha tingieb prova li l-appell sar entro t-terminu kontemplat mil-ligi. Mid-dokumenti li pprezenta l-appellant, jirrizulta li l-appell mhuwiex tardiv. Fil-fatt:

- i. Id-decizjoni tal-Arbitru nghatat fl-14.4.2015;
- ii. L-ufficju tal-Arbitru baghat id-decizjoni lid-Dipartiment permezz ta' ittra datata 21.4.2015.
- iii. L-ittra u d-decizjoni gew notifikati lid-Dipartiment permezz ta' posta registrata, fl-24.4.2015;
- iv. Fit-22 ta' Mejju 2015 l-appellant ipprezenta l-appell.

Ghalhekk meta gie pprezentat l-appell, it-30 gurnata kontemplati fl-Artikolu 109 tal-Att dwar is-Sigurta Socjali (Kap. 318) kienu ghadhom m'ghaddewx. Ghaldaqstant l-eccezzjoni preliminari hi michuda.

Dwar il-meritu l-appellata ssostni li:

1. Hi semplicement tirsjedi ma' terza persuna li maghha taqsam l-ispejjez.
2. Ma tezisti l-ebda common fund mat-terza persuna li ma tikkontribwixxi xejn lejn il-bzonnijiet tal-appellata u bintha.
3. It-terza persuna ma tistax titqies li hi l-kap tal-familja.
4. Bl-istess ragunament kull beneficjarju li jghix mal-genituri taghha jew ma' qraba li ghandhom impieg, allura tali persuna ma tkunx intitolata tircievi l-beneficji.

L-appellant kien iddecieda li ladarba l-appellata qeghda tghix mal-partner taghha, ma kinitx qeghda tiffirma familja ghal rasha.

Skond l-Att dwar is-Sigurta Socjali (Kap. 318):

"familja tfisser persuna wahda li fl-opinjoni tad-Direttur tkun tabita wahedha jew zewg persuni jew izjed li fl-opinjoni tad-Direttur ikunu jabitaw flimkien bhala familja.

Kap ta' familja dwar familja li tkun ta' zewg persuni jew izjed tfisser dik il-persuna li, fl-opinjoni tad-Direttur, tkun kap tal-familja."

Fir-rikors tal-appell, intqal:

"Meta ffamilja kif definita fil-Kap. 318 ikun hemm persuna li tahdem, tkun dik il-persuna li tkun ikkunsidrata bhala kap tal-familja u kien ghalhekk li d-Direttur wasal ghad-decizjoni tieghu. Fil-fatt, fis-seduta tas-17 ta' Marzu 2015, Christopher Mamo kkonferma li huwa jhallas l-ispejjez kollha tad-dawl u ilma. Il-fatt li l-appellata tikkontribwixxi mill-ftit li tista', ma jfissirx li hija saret il-kap tal-familja."

Fid-decizjoni, l-Arbitru qal:

"Whereas Christopher Mamo set out from the outset that he was involved in an intimate relationship with the Appellant, and that the reason he leased out an apartment of the same size that he presently holds is due to the fact that he intends on sharing the said premises with the Appellant, otherwise he would not require such a large apartment.

Whereas more importantly, the witness Christopher Mamo clearly set out that the minor Megan Mamo is not his child and that he is in no manner responsible for the same minor, furthermore that the Appellant was expected to contribute financially towards the rent and utilities of the premises, otherwise the said Mamo would not be able to hold on to the premises where they presently reside;

Whereas it clearly emerges that the Appellant is in a convenient agreement with the said Christopher Mamo, whereby they are in a relationship, which relationship is based on emotional feelings, however the convenience of the relationship emerges from the fact that by amalgamating their financial resources they are able to live under one roof;

Whereas the Umpire is not of the opinion that this renders the appellant together with the said Christopher Mamo a family unit. In present day society one needs to look further than what appears prima facie. In the present case it is the appellant that looks after the needs of the minor child so much so that Christopher Mamo, clearly stated that the child is not his and has no responsibilities towards her upbringing;

Whereas one has to consider what would happen if the Appellant is unable to contribute financially towards the rent and utilities of the said apartment. Would this so-called family unit remain in existence? According to what Christopher Mamo stated he would not be able to keep the said premises and would have to find cheaper alternative accommodation that would be sufficient for him on his own.

Whereas in the opinion of the Umpire this is not the basis of a family as contemplated by the legislator, one has to see what was intended by the legislator and amend and adapt to the varying circumstances of society."

L-ezercizzju li jrid isir hu li jigi determinat jekk id-diskrezzjoni li ezercita l-appellanti, hijiex ragonevoli. Mill-ftit provi li hemm fl-atti, irrizulta li:

1. L-appellata kienet studenta tal-Universita. Fl-applikazzjoni li pprezentat lid-Dipartiment jinghad: *"Claimant does not have any income except her stipend."* Hi ukoll *single mother*.
2. L-appellata ghandha relazzjoni ma' Christopher Mamo. Fl-applikazzjoni ddikjarat li dahlet tghix ma' Mamo ghaliex ma kellhiex post fejn tghix.
3. Mamo ghandu mpjeg.

4. Mamo jhallas il-kontijiet tad-dawl u ilma.

Mamo xehed ukoll li mill-ftit li tista', l-appellata tikkontribwixxi ghall-ispejjez tal-kera billi thallas is-somma ta' €200 kull xahar minn kera ta' €500. Qal ukoll li ma jhallas xejn mill-ispejjez tat-tifla. Min-naha taghha l-appellata qalet li tiddependi mill-istipendju.

Fis-sentenza ta' din il-qorti Riccarda Cini vs Direttur tas-Sigurta Socjali tas-7 ta' Frar 2007, intqal:

"Huma evidentement distingwibbli minn dawn it-tifsiriet zewg elementi principali u, cjoe, li:

(1) dak li jifforma "familja" fis-sens ta' l-Att in diskussjoni mhux bilfors taghmlu l-konsangwinita` jew iz-zwieg, ukoll jekk dawn mhux eskluzi, imma bizzzejed li jkollok bhala pre-rekwizit sitwazzjoni fejn zewg persuni junixxu ruhhom f'relazzjoni ko-abitativa anke barra miz-zwieg;

(2) id-Direttur hu moghti diskrezzjoni biex jiddetermina fil-fehma tieghu l-ezistenza ta' tali familja u tal-kap taghha."

Il-qorti komplet tghid li d-diskrezzjoni m'hijiex assoluta u li:

"Fil-fehma konsiderata taghha l-Qorti tahseb li mhux kull sitwazzjoni fejn tnejn minn nies jew aktar, ghax jghixu taht l-istess saqaf, ghanda tikkreja l-prezunjoni illi dawn jifformaw familja. Dan ghar-raguni illi mhux eskluz, fic-cirkostanzi zvarjati tal-hajja, illi jista' jkollok qaghda fl-istess dar fejn ikunu separatament qed jabitaw aktar minn familja wahda, b' kap ghaliha, li jkunu indipendenti minn xulxin. Naturalment kollox jiddependi mill-fattispeci singolari u partikolari tal-kaz li jkun qed jigi mistharreg. L-importanti hu li meta tipprezenta ruhha tali sitwazzjoni wiehed m'ghandux jitlaq minn attitudni errata u koncett zbaljat illi ghax semplicement l-persuni jkunu qed jabitaw fl-istess dar, ergo tezisti dejjem il-kwalifika ta' "familja" "

Fehma li din il-qorti kif illum presjedut taqbel perfettament maghha.

Fil-kaz in ezami l-qorti hi tal-fehma li:

- i. Mill-provi ma jirrizultax li l-appellata qeghda tiffurma familja ghal rasha. L-appellata marret tghix mal-partner taghha. Hu evidenti li qeghdin ighixu bhala familja wahda, fejn jaghtu appogg lil xulxin. Biex tkun familja m'hemmx ghalfejn li l-koppja tkun mizzewwga. Dan m'huwiex kaz fejn tnejn min-nies qeghdin semplicement jaqsmu l-akkomodazzjoni u kulhadd jahseb ghal rasu.
- ii. Il-qorti lanqas ma tista' temmen li l-istipendju tal-Universita hu bizzzejed sabiex l-appellata tikkontribwixxi €200 fix-xahar u fl-istess hin tiehu hsieb il-bzonnijiet finanzjarji ta' bintha. Dan hu mpossibbli. Il-qorti ma tistax tasal biex taccetta li l-appellata hi ndipendenti mill-*partner* taghha.
- iii. Fix-xenarju deskritt hawn fuq, il-qorti lanqas ma tista' tikkonkludi li l-appellata hi l-kap tal-familja, li hi l-kundizzjoni sabiex tkun tista l-beneficcu. Minn qari tal-ligi hu evidenti li tikkontempla li persuna wahda biss tista' tkun il-kap tal-familja.

Fic-cirkostanzi l-qorti m'hijiex tal-fehma li l-appellant ezercita d-diskrezzjoni tieghu b'mod irragonevoli, u ghalhekk ma kienx hemm bazi sabiex l-Arbitru jhassar id-decizjoni tal-appellant.

Ghal dawn il-motivi tilqa' l-appell u thassar id-decizjoni tal-Arbitru tal-14 ta' April 2015 u tikkonferma d-decizjoni tad-Direttur. Spejjez a karigu tal-appellata.

Anthony Ellul.