



MALTA

**Administrative Review Tribunal
Magistrate
Dr. Gabriella Vella B.A., LL.D.**

Application No. 328/13VG

**Barbara Cassar Torregiani as heir and testamentary executor of the
estate of the late Joseph John Edwards**

Vs

Commissioner for Revenue

Today, 28th July 2016

The Tribunal,

After having taken cognizance of the Application filed by Barbara Cassar Torregiani as heir and testamentary executor of the estate of the late Joseph John Edwards and by Brian Edwards and Andrew Edwards on the 27th December 2013, by means of which the Tribunal is being requested to revoke the Assessment issued by the Commissioner of Inland Revenue on the 13th August 2013 and subsequently confirmed by the said Commissioner, in relation to the transfer *causa mortis* of immovable property belonging to the late Joseph John Edwards and instead declare that the duty effectively due was in fact the duty as declared by the Applicant in the Declaration *causa mortis*; with costs against the Commissioner for Inland Revenue;

After having taken cognizance of the Reply by the Director General (Inland Revenue), formerly the Commissioner for Inland Revenue, by means of which he: (i) declares that he is being wrongly indicated as the Commissioner of Inland Revenue since the appeal should have been lodged against him as Director General (Inland Revenue); and he (ii) opposes the appeal lodged by the Applicant and requests that the same be rejected, with costs against her, since the Assessment bearing number CM040036 regarding the transfer *causa mortis* of immovable property belonging to the late Joseph John Edwards, which was subsequently confirmed following a site inspection by a second Architect appointed by the Director General, is just and has been assessed in terms of Law;

After having taken cognizance of the documents attached to the Reply by the Director General (Inland Revenue) marked as Dok. “DG1” to Dok. “DG6” at folios 12 to 47 of the records of the proceedings;

After having taken cognizance of the documents marked Dok. “A” to Dok. “D” submitted by the Applicant by means of a Note filed on the 25th March 2014 at folios 56 to 68 of the records of the proceedings;

After having heard testimony given by Mr. William Soler A.&C.E. on the 8th May 2014¹, testimony given by Mr. Nicholas Sammut Tagliaferro A.&C.E. on the 2nd June 2014², after having taken cognizance of the affidavit by Frank Salt as a representative of Frank Salt Investments Limited and the affidavit by Christopher Grech as a representative of Dhalia Real Estate Services marked Dok. “F” and Dok. “G” submitted by the Applicant by means of a Note filed on the 5th August 2014 at folios 91 to 95 of the records of the proceedings, after having heard testimony given by Bridgette Grixti on behalf of the Commissioner of Revenue on the 7th October 2014³, testimony given by Mr. Conrad Thake A.&C.E. on the 3rd November 2014⁴ and on the 22nd January 2015⁵, and testimony given by Mr. Walter Portelli A.&C.E. on the 22nd January 2015⁶;

After having taken cognizance of the Estimate of Works by Blokrete Limited marked Dok. “E” submitted by the Applicant by means of a Note filed on the 5th August 2014 at folios 82 to 90 of the records of the proceedings and after having taken cognizance of the judgment in the names “Joseph John Edwards pro et noe v. Kummissarju ta’ l-Artijiet et noe” Appeal No. 542/96 delivered by the Constitutional Court on the 7th October 2005 and the judgment in the names “Barbara Cassar Torregiani noe v. L-Awtorità ta’ l-Ippjanar” Appeal No. 5/01 delivered by the Court of Appeal on the 27th October 2003 submitted by the Applicant by means of a Note filed on the 7th October 2014 at folios 99 to 130 of the records of the proceedings, after having taken cognizance of the document submitted by the Applicant marked Doc. “IR1” at folio 145 of the records of the proceedings and after having taken cognizance of the documents submitted by the Applicant on the 11th February 2015;

After having taken cognizance of the Report by the Assistant to the Tribunal Mr. Anton Zammit A.&C.E. at folios 169 to 177 of the records of the proceedings;

¹ Folios 73 to 77 of the records of the proceedings.

² Folio 79 to 81 of the records of the proceedings.

³ Folios 131 and 132 of the records of the proceedings.

⁴ Folios 137 to 140 of the records of the proceedings.

⁵ Folios 155 to 161 of the records of the proceedings.

⁶ Folios 149 to 154 of the records of the proceedings.

After having taken cognizance of the questions put to Mr. Anton Zammit by the Applicant⁷ following his Report and after having taken cognizance of the replies by Mr. Anton Zammit to the said questions⁸;

After having taken cognizance of the Note of Submissions by the Applicants filed on the 29th October 2015⁹ and after having taken cognizance of the Note of Submissions by the Commissioner for Revenue filed on the 9th December 2015¹⁰;

After having heard final oral submissions by the parties to the proceedings;

After having taken cognizance of all the records of the proceedings;

Considers:

By virtue of a Declaration *causa mortis* in the records of Dr. Philip Lanfranco dated 21st August 2012¹¹, the Applicant Barbara Cassar Torregiani as testamentary executor of the estate of her late father Joseph John Edwards, who died on the 6th June 2010, declared that the immovable property in Malta owned by the late Joseph John Edwards is:

- 2/3 undivided share of the unnumbered house with its relative airspace and with its surrounding garden named “Villa Gzira” in Triq il-Gzira, Gzira, which house is in a dangerous and dilapidated state, completely vandalized, stripped of all fixtures, including doors, windows and marble floor tiles – valued said 2/3 undivided share at €53,334;
- The garage underlying third party property bearing number 96 in Tonna Street, Sliema, granted on lease to third parties – valued at €4,000;
- The two storey house consisting of four rooms and requiring total modernisation bearing number 98 in Tonna Street, Sliema – valued at €115,000;
- The two storey house bearing number 97 in Tonna Street, Sliema, granted on lease to third parties – valued at €15,000;
- The two storey house bearing number 99 in Tonna Street, Sliema, granted on lease of third parties – valued at €15,000; and
- The two storey house bearing number 100 in Tonna Street, Sliema, granted on lease to third parties – valued at €15,000.

All together for a total value of €217,334.

Following the registration of the said Declaration *causa mortis* with the Inland Revenue Department – Capital Transfer Duty Division, the Commissioner for

⁷ Folios 181 to 184 of the records of the proceedings.

⁸ Folios 185 to 197 of the records of the proceedings.

⁹ Folios 146 to 158 of the records of the proceedings.

¹⁰ Folios 162 to 166 of the records of the proceedings.

¹¹ Folios 20 to 25 of the records of the proceedings.

Revenue appointed Mr. Conrad Thake A.&C.E. to inspect: (a) the unnumbered house with its relative airspace and with its surrounding garden named “Villa Gzira” in Triq il-Gzira, Gzira; (b) the garage underlying third party property, bearing number 96 in Tonna Street, Sliema, granted on lease to third parties; and (c) the two storey house consisting of four rooms and requiring total modernisation bearing number 98 in Tonna Street, Sliema¹², for the purposes of valuing said properties in order to determine the duty effectively due on the transfer *causa mortis* of the said properties in terms of the Duty on Documents and Transfers Act, Chapter 364 of the Laws of Malta.

Mr. Conrad Thake valued the above-mentioned properties as follows: (a) “Villa Gzira” in Triq il-Gzira, Gzira, being a large historic villa in a dilapidated state bounded with high boundary walls and front and back garden, having a total area of 1533 m² and scheduled as Grade 2 property - €500,000¹³; (b) No. 98, Tonna Street, Sliema, being a two storey terraced house with restricted width and in a poor state with roofs needing to be replaced and with poor finishes - €82,000¹⁴; and (c) the garage No.96, Tonna Street, Sliema, which underlies third party property and is leased to third parties for the sum of €46 payable every quarter - €12,000¹⁵.

Following the valuation by Mr. Conrad Thake the Commissioner for Revenue issued an Assessment dated 13th August 2013 requesting from the Applicant Barabara Cassar Torregiani further payment relative to the Declaration *causa mortis* published on the 12th August 2012 of the sum of €14,400 by way of duty on the additional chargeable value of €287,999, together with the sum of €14,400 by way of additional duty and the sum of €2,304 by way of interest – for a total of €31,104¹⁶. The said Assessment is effectively pertinent to Villa Gzira in Triq il-Gzira, Gzira and to the garage No. 96 in Tonna Street, Sliema.

Following an objection by the Applicant Barbara Cassar Torregiani dated 4th September 2013¹⁷, by means of which she objected to the Assessment issued against her by the Commissioner for Revenue on the grounds that it is excessive given that: (a) Villa Gzira in Triq il-Gzira, Gzira, is in a state of total dilapidation, is a scheduled property and is located in an area where it is surrounded by work-shops, repair garages and low-grade housing, so much so that Architects appointed by her valued the said property at €80,000. Furthermore, the valuation by the Architect appointed by the Commissioner for Revenue was not based on an actual inspection of the property since access to the property was not possible at the time of the on-site inspection and up until the death of the late John James Edwards the property was occupied by a squatter; and (b) the garage at No. 96, Tonna Street, Sliema, which was valued by Architects appointed by her at €4,000, was not vacant at the time of death

¹² Dok. “DG3” at folio 33 of the records of the proceedings.

¹³ Folios 26 to 30 of the records of the proceedings.

¹⁴ Folio 31 of the records of the proceedings.

¹⁵ Folio 32 of the records of the proceedings.

¹⁶ Dok. “DG4” at folios 34 and 35 of the records of the proceedings.

¹⁷ Dok. “DG5” at folios 36 to 44 of the records of the proceedings.

of Joseph John Edwards but subject to a controlled lease with rent payable amounting to €93 per annum, the Commissioner for Revenue appointed another Architect, Mr. Walter Portelli, for the purposes of re-inspecting the mentioned properties in order to value the same.

Mr. Portelli valued: (a) the garage No.96 in Tonna Street, Sliema, at €50,000 on the grounds that even though the garage is leased to third parties in view of Section 1531(H)(1) of the Civil Code there is no right of renewal of the said garage after the 1st June 2010. Thus his valuation is of a vacant property with a deduction to reflect eventual litigation costs¹⁸; (b) the house No.98 in Tonna Street, Sliema, at €105,000 after considering that there is some water penetration at 1st floor level and that the roofs need replacing¹⁹; and (c) Villa Gzira, Triq il-Gzira, Gzira at €550,000 on the grounds that there are several possibilities for the re-use of the property in spite of it being scheduled, for example as a language school or a hotel, it is close to the sea front and yacht marina and there are other commercial premises in the vicinity²⁰.

Since the valuations by Mr. Portelli were higher than the valuations by Mr. Thake, as per Departmental policy the Commissioner for Revenue discarded the valuations by Mr. Portelli and confirmed his Assessment issued on the basis of the valuations by Mr. Thake.

The Applicant is appealing from the Assessment issued against her and requests that the same be cancelled and revoked since she deems it to be excessive on the grounds that: (i) the values declared in the Declaration *causa mortis* are the real and correct values for the properties in question and the Assessment issued by the Commissioner for Revenue does not reflect the real value of the said properties on the date of death of Joseph John Edwards; (ii) the Assessment issued by the Commissioner for Revenue does not take into account the fact that in so far as concerns “Villa Gzira” Triq il-Gzira, Gzira: (a) at the date of death of Joseph John Edwards it was and still is in a dilapidated state and furthermore that it is a scheduled property thus limiting the possibility of developing the same; (b) it was illegally occupied by a third party; and (c) the heirs of Joseph John Edwards only have a 2/3 undivided share in the said villa; and in so far as concerns the garage No.96 in Tonna Street, Sliema: (a) the said garage is leased to third parties. The Applicant also claims that once the Commissioner for Revenue determined that the market value for the house No.98 in Tonna Street, Sliema, is less than the declared value, he should have applied this valuation too and therefore reduced the duty due with regard to the transfer *causa mortis* of this particular property. Furthermore, the Applicant claims that she should not be subjected to any additional duty/penalty since the values declared in the Declaration *causa mortis* were all set following a valuation by an Architect duly appointed by her and the mere fact that another Architect gave a different value to the

¹⁸ Folio 45 of the records of the proceedings.

¹⁹ Folio 456 of the records of the proceedings.

²⁰ Folio 47 of the records of the proceedings.

properties in question is not in itself sufficient reason to impose additional duty/penalty.

The Director General (Inland Revenue) objects to the appeal lodged by the Applicant and requests that the same be rejected on the grounds that the Assessment issued by him with regard to the transfer *causa mortis* of immovable property owned by the late Joseph John Edwards is just and carried out in terms of law and should therefore be confirmed. The Commissioner for Revenue further points out that he should not have been sued as Commissioner for Inland Revenue but as Director General (Inland Revenue).

This last observation by the Director General (Inland Revenue) is based on the provisions of the Commissioner for Revenue Act, Chapter 517 of the Laws of Malta, namely Section 3 of the said Act. At the time of filing of these proceedings that functions originally vested in the Commissioner for Inland Revenue were, by virtue of the Commissioner for Revenue Act, vested in the Commissioner for Revenue who, by means of a Delegation of Functions Order published in Government Gazette dated 20th July 2012, delegated the same to the Director General (Inland Revenue). To date however, by virtue of a Resumption of Functions Order published in the Government Gazette dated 8th August 2014, these same functions have been once again resumed by the Commissioner for Revenue and are therefore vested in him. Therefore, in reality it is the Commissioner for Revenue who is the proper Respondent in these proceedings rather than the Commissioner for Inland Revenue or the Director General (Inland Revenue). In view of this fact, the Tribunal orders that the *occhio* of the proceedings and where necessary the records of these proceedings be corrected accordingly in the sense that the Respondent be indicated as Commissioner for Revenue and not Commissioner for Inland Revenue.

In support of her grounds for appeal the Applicant summoned a number of witnesses amongst whom Mr. William Soler A.&C.E., Mr. Nicholas Sammut Tagliaferro A.&C.E., Frank Salt as a representative of Frank Salt Investments Limited and Christopher Grech as a representative of Dhalia Real Estate Services. Each of these witnesses gave his valuation of the properties in question, in particular Villa Gzira in Triq il-Gzira, Gzira, which in reality seems to be the main bone of contention between the Applicant and the Commissioner for Revenue.

Mr. Soler valued the said Villa at €80,000 on the basis that it is *a scheduled property in a dangerous and dilapidated state, completely vandalised, stripped of all fittings and fixtures including doors, windows, marble floor tiles etc. Surrounded by a walled garden*²¹. In his testimony during the sitting

²¹ Folio 58 of the records of the proceedings.

held on the 8th May 2014²², Mr. Soler emphasised that one of the major constraints effecting this Villa is the fact that it is scheduled which effectively means that the building cannot be demolished but only alterations can be effected to it. He also stated that the Villa was occupied by a squatter thus stripping it of any vacant possession leading to a further reduction in price due to the fact that property illegally occupied by a third party cannot be sold as easily as a vacant property. Mr. Soler also put great emphasis on the costs required to re-instate the Villa into a habitable state in view of its dilapidated state and claimed that such costs would be in the region of €1,500,000 to €1,700,000, and this to do it up as a residence. In view of the above Mr. Soler claimed that the value of the Villa, over which the heirs of the late Joseph John Edwards hold in ownership a 2/3 undivided share, is a negative value and that the value of €80,000 is merely a nominal value.

Mr. Sammut Tagliaferro valued the Villa at €70,000 citing the dilapidated state of the property and the scheduling of the property as the main reasons for his valuation²³. In his testimony during the sitting held on the 2nd June 2014²⁴ he stated that *it was obvious that there was a very large expense to restore this building. Obviously, you cannot do very much with it because it is scheduled so you cannot convert it into something which would make any commercial viable and my conclusion was that it would be worth a nominal amount and I arrived around €70,000 because it would cost over €1.5 million to restore it so nobody in his right mind in 2010, which is the date of this valuation, would want to take on the responsibility of buying or using this property and try to make something commercial out of it. ... I might also add that at the time of the valuation there was a squatter, there was a person living there and that was the information I was given and also I was asked to value two thirds of the value because it was undivided. One third belonged to someone else so really it is quite a difficult valuation because of the nature of the property and what you could do with it and the state it was in.*

Frank Salt, as representative of Frank Salt Investments Limited, valued the Villa at €100,000 on the grounds that at the date of death of Joseph John Edwards there was a sitting tenant, the astronomical costs involved for the renovation of the Villa, no planning permits will be given for the demolition and reconstruction purposes in view of the fact that the Villa is scheduled and that the heirs of the late Joseph John Edwards only have a 2/3 undivided share over the said Villa²⁵. Christopher Grech, as representative of Dhalia Real Estate Services, valued the Villa at between €70,000 to €80,000 in view of its dilapidated state, it being a scheduled property and it being in a part of Gzira which attracts only low grade housing, storage facilities, workshops and low quality retail²⁶.

²² Folios 73 to 77 of the records of the proceedings.

²³ Folios 62 to 65 of the records of the proceedings.

²⁴ Folios 79 to 81 of the records of the proceedings.

²⁵ Folios 92 and 93 of the records of the proceedings.

²⁶ Folios 94 and 95 of the records of the proceedings.

As already pointed out above Mr. Conrad Thake, the Architect appointed by the Commissioner of Revenue and on the basis of whose valuation the Commissioner issued the Assessment against the Applicant, valued the Villa at €500,000 and this after considering that the Villa is in a dilapidated state, upon viewing the same from third party property since access was not possible, and that the Villa is scheduled as a Grade 2 property thus currently making demolition and total redevelopment impossible. From testimony given by Mr. Thake during the sitting held on the 22nd January 2015²⁷, it transpires that the value of €500,000 is for the full ownership of the property and not for the 2/3 undivided share actually owned by the heirs of Joseph John Edwards. In fact, in his Assessment the Commissioner for Revenue did not use the value of €500,000 but the value of €333,333.33 which represents 2/3 of €500,000. Upon being asked what in his opinion would be the costs for re-instating the Villa into a habitable state, Mr. Thake replied *millions no, but it would be substantial*. It also transpires that Mr. Thake did not take into account the fact that the Villa was, at the time of death of Joseph John Edwards, allegedly illegally occupied by a third party.

The Tribunal is of the opinion that from testimonies and evidence submitted, the two main issues over which there is substantial divergence between the Applicant and the Commissioner for Revenue with regard to Villa Gzira are, essentially, the fact that the Villa was at the time of death of Joseph John Edwards allegedly illegally occupied by a third party and the costs to be incurred for the Villa to be re-instated into a habitable state. In fact, all parties agree that the Villa was and still is in a dilapidated state and that the scheduling of the Villa renders its potential for development and re-use rather limited, thus impacting on the value of the said property.

In so far as concerns the allegation that at the date of death of Joseph John Edwards the Villa was illegally occupied by a third party, the Tribunal must admit that it is not at all convinced of the veracity of such an allegation.

In terms of Regulation 3 of the Duty on Documents and Transfers Rules, Subsidiary Legislation 364.06, *the value of any property subject to duty under the Act, transferred inter vivos or transmitted causa mortis, shall be the value of such property on the date of the said transfer inter vivos or on the date of death of the person from whom the transfer causa mortis originates, at the case may be, ...* This therefore effectively means that the value of Villa Gzira in Triq il-Gzira, Gzira, must be the value of the said property as at 6th June 2010, the date of death of Joseph John Edwards.

Even though during their testimony before the Tribunal both Mr. William Soler and Mr. Nicholas Sammut Tagliaferro declared that the Villa was illegally occupied by a third party, or so they were told by the Applicant,

²⁷ Folios 155 to 161 of the records of the proceedings.

neither one of them mentioned this fact – though claiming that it is very relevant to the over-all value of the said Villa – in their respective reports drawn up on the 26th September 2011 and 18th March 2014. Mr. William Soler who had inspected the Villa shortly after the 6th June 2010 does not mention anything about this alleged squatter in his report but only mentions it several years after the drawing up of his report and relative valuation, namely on the 8th May 2014 when giving testimony before the Tribunal. Incidentally, the Tribunal notes that Mr. Soler, who, it is reiterated, inspected the Villa shortly after the death of Joseph John Edwards, namely on the 7th October 2010, had no difficulty in gaining access to the said Villa allegedly illegally occupied by a third party, so much so that in his testimony before the Tribunal he declared *the third constraint [on the value of the property] is the condition of the property because for all these years when the squatter was there, and with the requisitioning situation, this resulted in the place being vandalised, it fell into ruin completely, it is very dilapidated and roofs have collapsed. I've been on site and I have seen the condition of the property, it is in a terrible state and I worked out an exercise to try to find out how much one would have to spend to try to get it back into a habitable situation*²⁸. *According to my calculations we would have spent at least 1.5 to 1.7 million to do it up as a residence*²⁹.

In view of these facts the Tribunal reiterates that it is not at all convinced of the veracity of the allegation that Villa Gzira, Triq il-Gzira, Gzira, was at the time of death of Joseph John Edwards illegally occupied by a third party.

The Tribunal here cannot but also point out that while Mr. Soler had no difficulty in gaining access to the Villa on the 7th October 2010 and Mr. Sammut Tagliaferro too had no difficulty in gaining access to the Villa some time prior to his report dated 18th March 2014, Mr. Conrad Thake who inspected the property on the 12th July 2013 could not gain access to the said Villa and was obliged to view the same from the roof of third party properties. These facts are, to say the least, somewhat strange and further put into doubt the veracity of the allegations by the Applicant, in particular the allegation that the property was/is illegally occupied by a third party.

In so far as concerns the costs for re-instating Villa Gzira into a habitable state, the Applicant substantiated the claim that these costs would run into millions, namely between €1,500,00 - €1,700,000, by filing an Estimate of Works issued by Blokrete Limited³⁰, which Estimate of Works however has not been confirmed by the person issuing it, that is by a representative of Blokrete Limited. In this regard and particularly in view of the fact that the estimate submitted by the Applicant has been contested by the Commissioner for Revenue, namely through the testimony of Mr. Conrad Thake who claimed that such works though substantial, would not run into millions, the Tribunal

²⁸ Underlining by the Tribunal.

²⁹ Testimony given on the 8th May 2014, folios 73 to 77 of the records of the proceedings.

³⁰ Folios 83 to 90 of the records of the proceedings.

deems that said Estimate of Works cannot be considered as valid proof of the costs to be incurred in order to re-instate Villa Gzira to a habitable state. In this regard the Tribunal refers to that observed by the Civil Court, First Hall in the judgment in the names **L-Avukat Dr. Josè Herrera noe v. Alfred Pace et noe, Writ No. 422/88**, delivered on the 14th November 2002: *kif qalet l-Onorabbli Qorti ta' l-Appell fil-kawza "Xuereb v. Callus" deciza fid-19 ta' Ottubru 1983, "jekk id-dokument esebit ma jigix ikkonfermat bil-gurament ma jiswiex bhala prova tal-kontenut tieghu"*.

Apart from this principle at law, the Tribunal also notes that in different proceedings, namely in the proceedings "Joseph John Edwards pro et noe v. Kummissarju ta' l-Artijiet et noe" Appeal No. 542/96 ultimately decided by the Constitutional Court on the 7th October 2005, whereby the Joseph John Edwards pro et noe essentially claimed a violation of his fundamental human rights following the expropriation of Villa Gzira, Triq il-Gzira, Gzira, and requested that he be given an adequate remedy for such violation, namely a sum representing the value of works necessary to re-instate the Villa into a habitable state following years of neglect and abuse of the same property, a completely different estimate of costs for so re-instating the Villa into a habitable was submitted before the Courts. In fact in the judgment pertinent to the above-mentioned proceedings submitted by the Applicant by means of a Note filed on the 7th October 2014, the Constitutional Court observed that: *it-tielet aggravju ta' l-appellant hu fis-sens li hu ma jaqbilx ma' l-ewwel Qorti meta din effettivament iddikjarat li l-kawza minnu istitwita b'dawn il-proceduri ma kienitx kawza ghad-danni kagunati b'effett tad-dikjarazzjoni tat-28 ta' Settembru 1989; u anqas ma jaqbel maghha li ma rrizultax li d-danni fil-proprjeta in kwistjoni kienu r-rizultat ta' din id-dikjarazzjoni. L-appellant, in effetti, ghadu qed jippretendi li huwa jithallas ghad-danni riskontrati fil-villa in kwistjoni skond ir-rapport (minnu kummissjonat) tal-A.I.C. David Pace, li stima l-ispejjez ghat-tiswija tal-fond fis-somma ta' aktar minn mija u erbatax-il elf lira³¹ (ara fol. 73).*

In the above-mentioned proceedings Joseph John Edwards claimed, amongst other things, that *ir-rikorrent ma setax jinnegozja l-proprjeta, gie permess lil diversi nies mill-awtoritajiet kompetenti li jidhlu fil-proprjeta [meta din] kienet fidejn l-istess awtoritajiet b'effett ta' l-esproprju, u l-proprjeta thalliet mill-awtoritajiet kompetenti taqa' fi stat ta' dilapidazzjoni, b'dannu evidenti ghall-proprjetarji*. This therefore means that the estimate of costs amounting to Lm114,000, equivalent to €265,548, submitted before the Courts by Joseph John Edwards was for the property to be reinstated into a habitable state, the same state which today the Applicant claims will cost between €1,500,000 to €1,700,000 to obtain. The Tribunal is very well aware that the estimate of Lm114,000 was given a number of years prior to the demise of Joseph John Edwards and is also aware that costs could have somewhat increased by the 6th June 2010 but it does not see any justification why the costs now estimated by

³¹ Underlining by the Tribunal.

the Applicant should more than €1,000,000 than the costs originally estimated by her father Joseph John Edwards.

In the light of all the above and upon considering the records of the proceedings and in particular the Report by the Technical Assistant of the Tribunal Mr. Anton Zammit A.&C.E., who clearly took into account the state of the property, the fact that the property is scheduled and the costs of works necessary to re-instate to a habitable state – a more reasonable figure of €450,000 – the Tribunal is inclined to give more credence to the considerations and ultimate value determined by Mr. Zammit, that is the value of €400,000 for the whole property – thus the value of €266,666.66 for 2/3 undivided share – than the allegations put forth by the Applicant and the value of €53,334 attributed by her to the said Villa. The Tribunal is furthermore of the opinion that the valuation by Mr. Anton Zammit is more representative of the market value of the property than the valuation of €500,000 given by Mr. Conrad Thake for the simple reason that Mr. Zammit was actually granted access to the Villa and held an on-site inspection and also on the basis of the fact that he went into more detail than Mr. Thake as to the costs necessary to re-instate the Villa into a habitable state.

Therefore, in the light of the above the Tribunal is of the opinion that the market value of 2/3 undivided share over Villa Gzira in Triq il-Gzira, Gzira, as at 6th June 2010 was €266,666.66.

Apart from the valuation for Villa Gzira in Triq il-Gzira, Gzira, the Applicant is also contesting Mr. Thake's valuation of the garage No.96 in Tonna Street, Sliema. The Applicant claims that since the said garage is leased to third parties the value of the same cannot be more than €4,000, whereas Mr. Thake claims that the said garage, leased to third parties, is valued at €12,000. Even though the Applicant claims that the valuation given by Mr. Thake for the said garage is in the circumstances excessive, she did not bring forth any form to evidence to substantiate her allegation. In his explanation as to how he reached a value of €12,000 for the garage in issue, Mr. Thake explained that he took into account the size of the garage, that is a garage of 40m², which definitely isn't a mere one car garage, and the fact that the garage is leased to third parties and that the lease is a pre-1995 lease. In fact, hadn't the lease been a pre-1995 lease, the value of the garage, according to him, would have been substantially more³². Mr. William Soler for the Applicant on the other hand claims that apart from being leased to third parties the garage in issue is a small room – thus conveying the impression of a small area – in a narrow street and therefore cannot be valued at more than €4,000³³. The fact that the garage in question is not as small as implied by Mr. Soler is confirmed by Mr. Walter Portelli, the Architect appointed by the Commissioner for Revenue to re-inspect the premises after the Applicant's objection from the Assessment,

³² Testimony given on the 22nd January 2015, folios 155 to 161 of the records of the proceedings.

³³ Testimony given on the 8th May 2014, folios 73 to 77 of the records of the proceedings.

who in his check-list clearly indicates that the garage has an area which can accommodate more than one car³⁴. In the light of the above the Tribunal deems that the Applicant did not sufficiently and satisfactorily prove that the valuation by Mr. Thake of the garage No.96, Tonna Street, Sliema, and consequent reflection in the Assessment issued by the Commissioner of Revenue against, her is excessive. Therefore, the Tribunal confirms that the market value of the garage No.96 in Tonna Street, Sliema, as at 6th June 2010 was €12,000.

The Applicant further claims that once the Commissioner for Revenue determined that the market value for the house No.98 in Tonna Street, Sliema, is less than the declared value, he should have applied this valuation too and therefore reduced the duty due with regard to the transfer *causa mortis* of this particular property. Such a claim however cannot be upheld since in terms of Section 32(1) of Chapter 364 of the Laws of Malta: *There shall be charged on every document and on every judgment, decree or order of any court or other lawful authority, whereby any immovable or any real right over an immovable is transferred to any person, and on every declaration made in accordance with article 33 in respect of persons from whom the transfer causa mortis originates who died on or after the 23rd November, 1999, a duty of five euro (5.00) for every one hundred euro (100) or part thereof of the amount or value of the consideration for the transfer of such thing or of the value of such thing, whichever is the higher.* Therefore, even though Mr. Conrad Thake valued the tenement No.98 in Tonna Street, Sliema, at a value which is lower than the value declared by the Applicant in the Declaration *causa mortis*, in terms of law the duty is payable on the higher of the two values, that is the value as declared in the Declaration *causa mortis*.

The Applicant also claims that she should not be subjected to the payment of additional duty since the values declared in the Declaration *causa mortis* were all set following a valuation by an Architect duly appointed by her and the mere fact that another Architect gave a different value to the properties in question is not in itself sufficient reason to impose additional duty/penalty. Here too the Applicant's claim cannot be upheld because the additional duty is imposed in terms of Section 52(4) of Chapter 364 of the Laws of Malta which, at the point in time pertinent to these proceedings, provided that: *Where the Commissioner has determined that the value of an immovable as declared in a deed of transfer or in a declaration of a transfer causa mortis is less than eighty five per centum of the real value or consideration as provided in subarticle (1) or where in the opinion of the Commissioner the deed of transfer or the deed of declaration made in accordance with article 33 does not reflect the true conditions of the transfer, the transferor in a transfer inter vivos and the transferee shall be liable to pay an additional duty equivalent to the amount of duty assessed by the Commissioner as aforesaid ...* Once it has been established that the value of the immovable properties

³⁴ Folio 45 of the records of the proceedings.

owned by the late Joseph John Edwards, namely 2/3 undivided share in Villa Gzira in Triq il-Gzira, Gzira and the garage No.96 in Tonna Street, Sliema, as declared in the Declaration *causa mortis* is less than 85% of the real value of the said properties, in terms of Law the Applicant is effectively subject to the payment of additional duty equivalent to the amount of duty due.

For the above-mentioned reasons the Tribunal:

1. Orders that the *occhio* of the proceedings and where necessary the records of these proceedings be corrected in the sense that the Respondent be indicated as Commissioner for Revenue and not Commissioner for Inland Revenue;
2. Rejects the Applicant's request for the revocation and cancellation *in toto* of the Assessment issued against her by the Commissioner for Revenue pertinent to the transfer *causa mortis* of properties formerly owned by the late Joseph John Edwards, namely 2/3 undivided share in Villa Gzira, Triq il-Gzira, Gzira and garage No.96 in Tonna Street, Sliema; but
3. Orders that the Assessment so issued by the Commissioner for Revenue be revised downwards in so far as concerns duty, additional duty and interest due by the Applicant since the value of 2/3 undivided share in Villa Gzira, Triq il-Gzira, Gzira, as at 6th June 2010 is being valued at €266,666.66 as opposed to €333,333.33 as valued by the Commissioner; and therefore
4. Declares that duty, additional duty and interest due with regard to the transfer *causa mortis* of properties formerly owned by the late Joseph John Edwards, namely the above-mentioned 2/3 undivided share in Villa Gzira, Triq il-Gzira, Gzira and garage No.96 in Tonna Street, Sliema, calculated on the additional chargeable value of €221,332.66 amount to €11,070 by way of duty, €11,070 by way of additional duty and €1,771.20 by way of interest.

Costs are to be borne by the Applicant.

MAGISTRATE

DEPUTY REGISTRAR