FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn sbatax (17) ta' Ottubru 2016

Rikors Numru 138/13 FDP

Natalino Fenech
(ID 2063M)

vs

Saviour Balzan (ID 127263M) u Matthew Vella

Il-Qorti:-

Rat ir-rikors promotur ippresentat fl-10 ta' Mejju 2013 fejn, filwaqt illi ghamel referenza ghall-artikolu intitolat '***PBS spent 10 days without a head of news***' ppubblikat fuq is-sit eletroniku www.maltatoday.com.mt tat 8 ta' Mejju 2013, talab lill dina l-Qorti tiddikjara tali artikolu bhala libelluz u malafamanti fil-konfront tieghu u ghalhekk talab lill-Qorti tikkundanna lill-intimat, bhala editur tal-pubblikazzjoni, ihallus danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat ir-risposta ta' l-intimati ippresentati fl-4 ta' Lulju 2013 li sahaq, preliminarment, li Saviour Balzan ghandu jigi liberat mill-osservanza tal-gudizzju ghax mhux il-legittimu kontradittur. Fuq il-meritu, l-intimat sahaq illi li l-artikolu ma huwa xejn aktar ghajr '*fair comment*'.

Rat l-artikolu meritu tal-kawza odjerna (fol 18), miktub minn 'staff reporter' li kien jghid is-segwenti:

> *The Public Broadcasting Station soent 10 days without a head of news after the former head, Natalino Fenecg, left the post and soight a new job at the University of Malta.*
>
> *A few days after the genersl election, MaltaToday had revealed that veteran journalist Reno Bugeja was touted to replace Fenech. MaltaToday is informed that Bugeja was meant to be appointed acting head days ago, but this onluy occurred this afternoon.*

This left the PBS's newsroom with (sic) a head for 10 days.

The PBS board is expected to meet next Monday to confirm Bugeja's appointment."

Rat l-affidavit tar-rikorrenti **Dr Natalino Fenech** ippresentat fit 13 ta' Jannar 2014 u rat id-dokumentazzjoni minnu esebita.

Rat illi fit 13 ta' Jannar 2014 ir-rikorrenti iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet ix-xhieda ta' **Silvio Scerri**, prodott mill-intimat u moghtija fit 13 ta' Gunju 2014.

Semghet ix-xhieda ta' **Anton Attard**, prodott mill-intimat u moghtija fit 3 ta' Ottubru 2014.

Semghet ix-xhieda ta' **Reno Bugeja**, prodott mill-intimat u moghtija fis 17 ta' Novembru 2014.

Semghet ix-xhieda ta' l-intimat **Saviour Balzan** moghtija fil 11 ta' Mejju 2015.

Rat illi wara erbgha seduti fejn l-intimat kellu jippresenta affidavit, fid 9 ta' Gunju 2016 il-Qorti ddikjarat l-istadju tal-gbir tal-provi maghluqa.

Rat is-sottomissjonijiet tar-rikorrent ippresentati fl-24 ta' Gunju 2016.

Rat is-sottomissjonijiet ta' l-intimat ippresentati fit 3 ta' Ottubru 2016.

Rat is-sottomissjonijiet ulterjuri tar-rikorrent ippresentati fil 11 ta' Ottubru 2016.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrent kien, ghal diversi snin, l-Editur u l-Kap tal-Kamra tal-Ahbarjiet ta' l-istazzjoni nazzjonali TVM.

Jirrizulta illi fit-8 ta' Mejju 2013, il-Bord tal-PBS Limited appunta lill Reno Bugeja bhala Acting Head of News tal-PBS, liema decizjoni ittiehdet, kif jghid is-CEO ta' dak iz-zmien Anton Attard f'email mibghuta lill-istess rikorrent u ikkuppjata lic-Chairman tal-PBS Dr Anthony Portughese, fuq struzzjonijiet ta' l-istess Chairman tal-PBS.

Jirrizulta, di fatti, illi fit 8 ta' Mejju 2013, intbghatet email lir-rikorrent mic-CEO tal-PBS illi tghid is-segwenti:

" Further to instructions received from the Chairman of the Board of Directors, it has been decided that in your absence, Mr Reno Bugeja is being appointed Acting Head of News.

The Board of Directors will be convening on Monday to discuss and decide on any future developments relating to the PBS Newsroom.

In the meantime, pending further directions from the Board of Directors, you are being asked to remain on paid leave until Tuesday 14th May 2013."

Jirrizulta illi bejn it-8 u l-10 ta' Mejju 2013, ir-rikorrent kien qieghed jattendi ghal konferenza gewwa Santiago de Compostella li kienet qed tinzamm mill-European Association of Regional Television fejn ir-rikorrent kellu wkoll jimmodera diskussjoni.

Jirrizulta illi skond ix-xhieda ta' Anton Attard, dak iz-zmien CEO tal-PBS Limited,

> *"wara l-elezzjoni tal-2013 kelli istruzzjonijiet mill-Bord tal-PBS sabiex lis-Sur Natalino Fenech ngharrfu illi kellu jibda jirrapporta gewwa l-Universita, filwaqt illi s-sur Reno Bugeja kien ser jibda jaghmilha ta' Agent Editur tal-Ahbarjiet."*

Jirrizulta illi skond l-istess Anton Attard, illi r-rikorrent kien impjegat mal-PBS b'kuntratt indefinit u li, ghalkemm ittiehdet dina d-decizjoni, huwa ma nieda ebda proceduri legali kontra l-PBS Limited.

Jirrizulta, skond ix-xhieda ta' Reno Bugeja, illi huwa sar Head of News tal-PBS f'nofs Mejju 2013 u qablu, ir-rikorrent kien Head of News filwaqt illi sahaq illi huwa qatt ma gie appuntat bhala 'Acting Head of News' izda kien jaghmilha ta' ko-ordinatur sakemm eventwalment giet appuntat Head of News.

Jirrizulta, finalment, skond ix-xhieda ta' Dr Anthony Portughese, Chairman tal-PBS Limited, illi kien qed isiru diskussjonijiet u negozjati bejn ic-CEO tal-PBS Limtied u ir-rikorrent sabiex tinstab xi arrangament u ftehim mar-rikorrent u di fatti kien intlahaq arrangament mar-rikorrent u lir-rikorrent kienet "*instabitlu xi posizzjoni l-Universita'.*"

Ikkunsidrat

Jirrizulta illi fix-xhieda tieghu, l-intimat Saviour Balzan, filwaqt illi kkonferma illi huwa sid is-sit elettroniku www.maltatoday.com.mt li taghha in-News Editor kien l-intimat Matthew Vella, jishaq illi, skond sorsi illi huwa kellu, ir-rikorrent ried li jigi terminat lilu l-kuntratt tal-impjieg tal-PBS, u dana peress illi l-kuntratt kien jipprovdi ghal penali f'kaz illi dana jsehh.

Jirrizulta illi l-istess intimat sahaq illi l-hsieb wara l-istorja kienet sabiex jirrapporta l-fatt illi lir-rikorrent ma kienx gie lilu tterminat l-impjieg izda, fi kliem l-intimat stess, "*illi r-rikorrent kellu l-buon ssens li jaqbad u jitlaq mix-xoghol*" filwaqt illi insista illi "*ma kienetx inyenzjoni tieghi biex nitfa dell izda biex nispjega l-fatti.*"

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrent kien Kap tal-Ahbarjiet ta' l-istazzjoni televiziv nazzjonali TVM, u dana ghal diversi snin, liema kariga huwa kien ghadu jokkupa fiz-zmien illi nkiteb l-artikolu meritu tal-kawza odjerna.

Jirrizulta, ghalhekk, illi kif intqal mill-Qorti Ewropea ghad-Drittijiet tal-Bniedem fil-kaz **Voronezhe**,

> *..... civil servants acting in an official capacity are, similarly to politicians albeit not to the same extent, subject to wider limits of acceptable criticism than a private individual (see, mutatis mutandis, Janowski v. Poland [GC], no. 25716/94, § 33, ECHR 1999-I).*

Jirrizulta, ghalhekk, illi r-rikorrent kellu livell ta' kritika ferm oghla minn dik ta' cittadin komuni, anke in vista tal-kariga importanti illi kellu r-rikorrenti, liema kariga fissret illi l-livell ta' kritika ta' l-azzjonijiet tar-rikorrent setghet tkun oghla minn dik ta' individwu privat, izda certament ma tistax tkun gholja daqs dik ta' persuna politika illi huwa suggett ghall-livell ta' kritika ferm oghla.

Ikkunsidrat

Jirrizulta illi d-difiza principali ta' l-intimati kienu tnejn:

- Li l-intimat Saviour Balzan kellu jigi liberat mill-osservanza tal-gudizzju; u
- Li l-kummenti illi saru kienu '*fair comment*' u ghalhekk ma setghux jitqiesu bhala malafamanti.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, u partikolarment l-artikolu kif deher fuq is-sit eletroniku www.maltatoday.com.mt u esebit mir-rikorrent a fol 18 tal-process, illi l-intimat Matthew Vella huwa indikat bhala 'News Editor' tal-'Maltatoday – Malta's News Portal'.

Jirrizulta, madanakollu, illi skond certikat mahrug mill-Ufficju tar-Registratur tal-Istampa datat 10 ta' Jannar 2014, l-istess Registratur tal-Ismapma ma setghax jindika min huwa l-editur tas-sit elettroniku ghax, fi kliemu stess "l-Ligi tal-Istampa ma' tipprovdix ghar-registrazzjoni ta' internet sites."

Jirrizulta illi l-artikolu meritu tal-kawza odjerna gie miktub minn 'staff reporter', bir-rizultat illi l-awtur ta' l-artikolu ma jistax jigi identifikat.

Jirrizulta, finalment, illi r-rikorrent, fix-xhieda tieghu, accetta illi huwa sid is-sit elettroniku www.maltatoday.com.mt (fol 50)

Jirrizulta illi l-Artikolu 23 tal-Kap 248, kemm kien jitkellem dwar 'Persuni li kontra tagħhom jistgħu jitmexxew azzjonijiet' jghid illi azzjoni tista ssir kontra s-segwenti persuni:

> *(a) l-awtur tal-kitba, jekk huwa jkun kitibha sabiex tiġi ppubblikata, jew jekk ikun ta l-kunsens tiegħu għalhekk;*
> *(b)l-editur;*
>
> *jew, jekk dawk il-persuni ma jkunux jistgħu jiġu identifikati,*
>
> *(ċ) ir-responsabbli għall-pubblikazzjoni.*

Jirrizulta, ghalhekk illi d-difiza mressqa mill-intimat Saviour Balzan ma tistax tigi accettata, stante illi huwa, bhala sid is-sit elettroniku fuq imsemmi, huwa l-persuna responsabbli tal-pubblikazzjoni bhala is-sid ta' l-istess.

Jirrizulta, mill-banda l-ohra, illi involviment u/jew reponsabbilta' ta' Matthew Vella fil-kaz odjern ma jidher imkien, salv dak illi jidher fuq is-sit elettroniku, w di fatti l-intimat Matthew Vella qatt ma ttella quddiem dina l-Qorti sabiex jixhed u ir-Registratur ta' l-Istampa ma setax jindikax

ufficjalment bhala l-editur tas-sit elettroniku – madanakollu l-istess Matthew Vella ma ressaq ebda eccezzjoni bhal dik ta' l-intimat Saviour Balzan.

Ikkunsidrat

Jirrizulta illi, ghajr ghad-difiza fuq imsemmija, id-difza principali ta' l-intimat Balzan hija dik tal-'*fair comment*' u ghalhekk ikun utiliilli wiehed ezamina fil-qasir l-principji tad-difiza tal-'*fair comment*' bil-ghan illi wiehed ikun jista jikkunsidra l-fatti kif fuq stabbiliti fl-ottika tal-principji generali tad-difiza tal-'*fair comment*'.

Dwar tali difiza **Gatley on Libel and Slander** jghid:

> *To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.*

Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, tali principji gew minnha mhaddna u spjegati kif gej :

> *... dwar l-aspett tad-difiża tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiża tal-kumment ġust tkun tgħodd, jeħtieġ li min jistrieħ fuqha jseħħlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (ċ) il-kumment irid jintwera li jkun ġustifikabbli jew mistħoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tgħajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'ħażen jew bil-ħsieb preċiż li jweġġa' lil dak li jkun.*

Tali taghlim huwa anke riflessa fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, fejn Lord Phillips ghamel is-segwenti konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

> *... defendant had to establish that: (i) the words complained of were comment; (ii) the comment was on facts; (iii) the facts commented on constituted a matter of public interest; (iv) the comment was objectively "fair"; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate; (v) the comment represented the defendant's honest opinion. If he discharged all these burdens, the defence could none the less be defeated by proof of malice on the part of the defendant, but the onus of proving malice lay on the plaintiff. Both the Court of Appeal and the House of Lords held that there was no burden on the defendant to establish the fifth element. The defendant's honesty was assumed unless the plaintiff could disprove it by establishing malice.*

Finalment, dwar il-kuncett ta' '*value judgment*', il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fil-kawza **Jerusalem vs Austria** (2003) EHRR 567,para 43, tghid is-segwenti:

... even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it ."

Jirrizulta car, ghalhekk, mill-gurisprudenza fuq imressqa, illi hemm sabiex id-difiza ta' '*fair comment*' u '*value judgment*' tirnexxi, irid jigi ppruvat illi dak allegat huwa bbazat fuq fatti sostanzjalment veri.
Il-Qorti thoss ukoll illi jkun opportun, f'dana l-istadju, illi ssir referenza qasira ghall-obbligi illi ghandhom il-gurnalisti.

Il-Qorti ma tistax ma tosservax illi huwa accettat li l-gurnalisti ghandhom obbligu illi jzommu lill-pubbliku infurmat b'dak kollu illi qieghed jigri u li jista jkun ta' interess pubbliku, u huwa fatt illi l-gurnalisti huma issa maghrufa bhala il 'public watchdog' tal-poltici u persuni pubblici biex jigi assikurat illi l-operat ta' dawn il-persuni jkun fl-ahjar interess tal-pajjiz u tal-pubbliku in generali.

Madanakollu, flimkien mad-drittijiet, il-gurnalisti ghandhom ukoll obbligi illi huma ghandhom jonoraw, illi huma necessarji sabiex jassikuraw bilanc ekwu fir-rappurtagg, u di fatti, kif qalet il-Qorti Ewropeja fil-kaz **Axel Springer**

….freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations

Ikkunsidrat

Jirrizulta, mix-xhieda ta' l-intimat Balzan, illi huwa jikkontendi li kull ma kienu qed jaghmlu huwa li jirrappurtaw fatti u ma kienetx l-intenzjoni tal-artikolu illi jitfa dell fuq ir-rikorrent.

Jirrizulta, madanakollu, illi l-artikolu jikkontendi u jaghmilha bhala fatt li r-rikorrent kien telaq mill-post tax-xoghol tieghu u mar ifittex xoghol iehor gewwa l-Universita'.

Jirrizulta, di fatti, illi l-artikolu jghid hekk:

"the former head, Natalino Fenech, left the post and sought a new job at the University of Malta."

Jirrizulta, madanakollu, illi mill-fatti kif prodotti quddiem dina l-Qorti, ma kienx minnu illi kien ir-rikorrent illi telaq mill-post tax-xoghol.

Jirrizulta, di fatti, illi hekk kif inbidel il-Gvern tal-gurnata f'Marzu 2013, inbidel il-Bord tad-Diretturi tal-PBS Limited u, wahda mill-ewwel jekk mhux l-ewwel haga illi huma ghamlu kien illi jaghtu struzzjonijiet lis-CEO tal-gurnata sabiex jgharrfu lir-rikorrent illi huwa kellu jibda jirrapporta gewwa l-Universita' u illi Reno Bugeja kien ser jibda jaghmilha ta' Agent Editur tal-Ahbarjiet tat-TVM.

Jirrizulta wkoll illi, meta saret il-pubblikazzjoni meritu tal-kawza odjerna, ir-rikorrent kien qieghed barra minn Malta jattendi ghal konferenza u, waqt illi kien hemm, kien mgharraf permezz ta' email mibghuta lilu saghtejn qabel ma dehret l-istorja fuq is-sit eletroniku www.maltatoday.com.mt, illi Reno Bugeja kien issa Acting Head of News u li ma kellux jirrapporta ghax-xoghol sakemm jinghata direzzjoni ulterjuri mill-Bord tad-Diretturi.

Jirrizulta car, mill-provi kollha prodotti quddiemha, illi s-sit elettroniku u min tella l-artikolu fuq l-istess sit, gie mgharraf bl-email illi kienet intbghatet lir-rikorrent ftit tal-hin qabel u, hekk kif ra il-kliem "it has been decided in your absence" ghadda ghal konkluzjoni illi r-rikorrent kien abbanduna l-post tax-xoghol tieghu u qabad u ppubblika tali storja minghajr ma pprova jikkonferma tali fatti mal-persuna direttament interessat, ossija ir-rikorrent.

Il-Qorti tifhem illi huwa kemm dritt kif ukoll obbligu tal-gurnalista illi jgharraf lill-pubbliku b'kull ahbar illi tista tkun ta' interess pubbliku, izda tifhem wkoll illi l-gurnalist ghandu obbligu illi jassikura ruhu li jkun ghamel l-investigazzjonjiet kollha mehtiega qabel ma jtella l-ahbar fuq il-mezzi tax-xandir, u dana peress illi c-cittadin jippretendi minghand il-gurnalist illi l-istess gurnalist jkun ghamel ix-xoghol tieghu sew u fir-reqqa rikjesta .

Il-Qorti ma tistax ma tosservax illi, llum il-gurnata, bil-proliferazzjoni tal-mezzi tax-xandir permezz ta' l-internet, kull tip ta' informazzjoni tista tixxandar, kemm dik vera kif ukoll din falza, w il-gurnalisti huma meqjusa bhala dawk il-persuni illi jistghu jiccertifikaw l-informazzjoni minnhom mahruga bil-ghan illi jinghata kredibilita' lill kull ahbar illi huma jxandru.

Il-Qorti ghalhekk tinnota illi huwa propjru ghalhekk illi l-obbligu tal-gurnalist illi jaghmel l-istharrig kollu tieghu qabel ma jippubblika l-istorja tieghu illum il-gurnata, aktar minn qatt qabel, hija ta' importanza krucjali, kemm ghall-kredibilita' tal-gurnalist illi jkun qed jippubblika istorja kif ukoll, in generali, ghall-kategorija kollha tal-gurnalisti illi huma meqjusa bhala il 'public watchdog' fuq l-awtoritajiet u li jaghmlu parti essenzjali minn socjeta' demokratika w libera fejn ic-cittadin jghix f'serenita'.

Kif qalet dina l-Qorti fil-kawza mhux appellata fl-ismijet "**Alan Camilleri vs Saviour Balzan**" deciza fl-20 ta' Gunju 2016

> *" ... ghalkemm huwa d-dover tal-gurnalist illi jgharraf u jzomm lill-pubbliku w il-qarrejja a korrent ta' kull informazzjoni relatata ma' agir ta' persuni pubblici, kemm politici kif ukoll persuni fis-servizz civil u f'posizzjonijiet importanti fis-socjeta civili, huwa ferm aktar importanti illi l-gurnalist jassikura ruhu illi l-fatti kif minnu indikat huma sostanzjalment veri u, f'kaz illi huwa ma jkollux konfort ta' provi sufficjenti, ghandu jzomm lura milli jippubblika tali stejjer, stante illi l-pubblikazzjoni ta' l-istess jwasslu sabiex il-kredibilita' tal-gurnal u l-gurnalist tigi pregudikata u, aktar importanti, il-pubbliku in generali jinghata informazzjoni illi ma jkunx minnu, fatt illi, minnu nniffsu, huwa ta' hsara kemm lill-persuna illi dwarha qed issir l-istorja u, aktar u aktar, lill-gurnalizmu il-generali, li jisthoqqlu rispett ghax-xoghol siewi u ta' utilita' kbira ghas-socjeta demokratika hajja illi Malta tgawdi illum il-gurnata.*

Finalment, kif gie osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Sylvana Debono vs Alexander Farrugia**', deciza fis-27 ta' Jannar, 2016.

> *Id-dritt tal-liberta tal-espressjoni m'huwiex licenzja biex thammeg ir-reputazzjoni ta' haddiehor u mbaghad tipprova tistahba wara dan id- dritt.*

Konkluzjoni

Wara illi rat il-provi kollha prodotti quddiemha,

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimati,

Tilqa it-talbiet attrici, u ghalhekk

Tiddikjara l-artikolu intitolat "***PBS spent 10 days without a head of news***" imtella fuq is-sit elettroniku www.maltatoday.com.mt bhala libelluz u malafamanti fil-konfront tar-rikorrenti u ghalhekk

Tikkundanna lill-intimati in solidum bejniethom sabiex ihallsu lir-rikorrent is-somma ta' elfejn Euro (€2,000) in linea ta' danni a tenur tal-Artikolu 28 tal-Kap 248.

Spejjez tal-proceduri odjerni u imghax mid-data tas-sentenza sad-data tal-pagament effettiv ikunu a karigu ta' l-intimati in solidum bejniethom.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur