

Qorti tal-Appell
(Kompetenza Inferjuri)
Imhalled Anthony Ellul
Appell numru: 122/2013

Dawn Wiltshire (appellata)

Vs

Ministru tal-Finanzi (bhala responsabbli mit-Trasferimenti ta' Residenza u Ezenzjonijiet mit-Taxxa tar-Registrazzjoni ta' Vetturi bil-Mutur) (appellant).

20 ta' Jannar, 2017.

1. L-appellant appella minn sentenza tat-Tribunal ta' Revizjoni Amministrattiva tas-6 ta' Gunju, 2014 li biha hassar decizjoni tat-Transfer of Residence Exemption Board tat-22 ta' Mejju, 2013 li biha giet michuda l-applikazzjoni tal-appellata ghall-ezenzjoni taht l-artikolu 19 tal-*Motor Vehicle Registration and Licensing Act (Cap. 368)(Transfer of Residence)* u regolament 4 tal-*Exemption from Motor Vehicle Registration Tax Rule* (SL 368.01). Ir-raguni li nghatat ghalfejn giet michuda l-applikazzjoni kienet:

"Following assessment of your application, it is regretted that this Ministry cannot accede to your request in terms of Legal Notice 6 of 2012 under rule 4(3)(e) "if the vehicle has already arrived in Malta, the application for exemption is made by the person transferring his residence within thirty days from the arrival of the vehicle in Malta".

2. L-aggravji tal-appellant huma:
 - i. Applikazzjoni zbaljata tar-regolament 4(3)(e) li jipprovdu ghal terminu perentorju.
 - ii. It-Tribunal kien zbaljat meta ddecieda li l-appellant kellu xi obbligu li fl-applikazzjoni amministrattiva jindika dak li hu stipulat fil-ligi.
 - iii. It-Tribunal qies taghrif li ma kienx fl-atti.
 - iv. It-Tribunal attribwixxa nuqqasijiet li seta' kien hemm min-naha tal-Awtorita' ghat-Trasport f'Malta lill-Ministru ghall-Finanzi.
 - v. It-Tribunal ezorbita l-funzjoni li ghandu skont il-ligi fl-ghoti ta' rimedju. It-Tribunal ma kellu qatt jassumi l-posizzjoni tat-Tribunal in kwantu l-ezenzjoni tista' tinghata biss mill-Ministeru.
3. L-appellata wiegbet fejn tenniet li l-applikazzjoni li ghamlet kienet bazata fuq taghrif li nghata lilha mill-Awtorita'.
4. Wara li l-qorti qrat l-atti, tosserva:

i. L-appellata waslet Malta fit-28 ta' Awissu 2012 u minn dakinhar bdiet tirisjedi f'Malta. Maghha gabet il-vettura Audi A4 bin-numru X6 DTN¹. Fl-4 ta' Frar 2013 ipprezentat applikazzjoni '*Transfer of Residence Application for Exemption from Motor Vehicle Registration Tax*'² Applikazzjoni li saret biex tigi ezentata mill-hlas ta' Motor Vehicle Registration Tax fuq vettura tat-tip M1, li hi uzata ghall-garr ta' mhux iktar minn tmien passigieri u x-xufier.

ii. Skont l-Avviz Legali 6 tal-2012 sabiex vettura tikkwalifika ghal tali ezenzjoni, wahda mill-kundizzjonijiet hi li:

*"(e) if the vehicle has already arrived in Malta, the application for exemption is made by the person transferring his residence within **thirty days from the arrival of the vehicle in Malta**".*

iii. Mill-provi rrizulta li fl-4 ta' Ottubru, 2012 l-appellata kienet baghatet email lill-Awtorita ghat-Trasport f'Malta fejn kitbet:

"Dear Sirs,

I arrive in Malta about 5 weeks ago with my car from the UK. I have signed a contract on an apartment here and plan to stay for at least 2 years. I have been given conflicting advice about using my car here so could you possibly answer a few questions for me:

- 1. How long can I drive it here until I have maltese plates on it.*
- 2. How much is the licences for it etc*
- 3. How much does it cost to register it here ?*

The car is an Audi convertible 1.9. Automatic and registered in 2003. I have owned the car for for approx. 5 years".

It-twegiba nghatat fid-9 ta' Ottubru, 2012 (fol. 24), fejn fost'affarijiet ohra nghad:

"While if a vehicle has been registered in your name for at least twenty four months or over, you are entitled to apply for an exemption from registration tax by filling in the attached VEH07, all information and requirements are listed on the guidelines and VEH07 form".

Il-qorti tosserva li meta l-appellata baghatet l-email, kien diga' skada t-terminu ta' tletin (30) jum.

iv. Ghal dak li jirrigwarda zmien, fl-applikazzjoni hemm biss riprodott dak li jinghad f'paragrafu (d) tar-regolament: *"A vehicle is to be declared for*

¹ Ara taghrif li hi stess tat fid-dokument a fol. 29, kif ukoll d-dokument a fol. 31.

² Ara *acknowledgement* ta' l-Awtorita ghat-Trasport f'Malta (fol. 30).

exemption not earlier than two months before the date which applicant becomes normally resident in Malta and not later than twelve months following that date". Pero ma jissemmix li jekk il-vettura tkun tinsab Malta, l-applikazzjoni trid issir fi zmien tletin (30) jum mill-wasla tal-vettura f'Malta. Dan minkejja li fl-email tad-9 ta' Ottubru, 2012 jinghad li l-informazzjoni kollha tinsab fil-guidelines u l-formola VEH07. Madankollu, a bazi tat-taghrif li l-appellata stess tat fl-applikazzjoni, il-Bord ma kellux triq ohra ghajr li jichad l-applikazzjoni gialadarba l-applikazzjoni giet ipprezentata wara t-terminu ta' tletin (30) jum mid-data li l-vettura waslet f'Malta. Din hi wahda mill-kundizzjonijiet biex tinghata ezenzjoni taht artikolu 19(3)(f) tal-Motor Vehicles Registration and Licensing Act (Kap. 368). Mir-regolament 4 tal-Avviz Legali 6 tal-2012 hu evidenti li l-Bord m'ghandux l-ebda diskrezzjoni dwarha.

- v. Ladarba mill-provi rrizulta lit-Tribunal li t-tletin gurnata kienu diga' skadew meta l-appellata ipprezentat l-applikazzjoni, kellu jieqaf hemm. It-terminu ta' tletin (30) jum hu fatali. It-Tribunal kellu japplika l-ligi u mhux ifittex kienx hemm nuqqasijiet mill-amministrazzjoni li wassal sabiex l-applikazzjoni ma tigix prezentata fit-terminu kontemplata mil-ligi. Nuqqasijiet min-naha tal-amministrazzjoni ma jistghux iservu biex jinbidlu termini perentorji stabbiliti mil-ligi. Dan apparti li f'dan il-kaz irrizulta li kien fil-5 ta' Ottubru, 2012 li l-appellata baghatet email lill-Awtorita ghat-Trasport f'Malta u talbet ghat-taghrif, meta skont it-taghrif li tat fl-applikazzjoni l-vettura waslet fit-28 ta' Awissu 2012. Ghalhekk irrISPETTIVAMENT tat-taghrif li nghata lill-appellata mill-awtorita pubblika, meta talbet ghat-taghrif kien diga' skada t-terminu ta' 30 jum.

Ghal dawn il-motivi tilqa' l-ewwel aggravju u thassar id-decizjoni tat-Tribunal ta' Revizjoni Amministrattiva tas-6 ta' Gunju 2014 u filwaqt li tilqa' l-ewwel eccezzjoni tal-appellant tichad it-talba tal-appellata maghmula bir-rikors tat-13 ta' Gunju 2013. Spejjez kollha a karigu tal-appellata.

Anthony Ellul.