



FIRST HALL, CIVIL COURT

JUDGE

HON. JOSEPH R. MICALLEF LL.D.

THIS DAY, Thursday, March 9th, 2017

Case Number 18

Applic. No. 740/11JRM

Isabella ZANANIAN DESIRA

VS

KUNSILL MEDIKU

The Court:

This is a ruling in terms of article 231 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) following an application filed by the respondent Medical Council on February 16th,

2017,¹ requesting leave to appeal from a judgment *in parte* delivered by this Court on February 14th in the matter of the lawsuit above-captioned;

By virtue of a Reply filed on February 27th, 2017², and for the reasons therein stated, plaintiff objected to the Council's request and submitted that the Court ought to deny respondent leave to appeal;

Having Considered:

As to the law³, when a judgment has determined various points but has not finally disposed of the whole issue before it, the party aggrieved by that judgement is granted the right, exercisable within six (6) days from the handing down of the said judgement *in parte*, to request the Court pronouncing the judgement leave to appeal therefrom to the Court of Appeal before the final judgment is delivered;

The preventive request established by law aims at precluding a party to a lawsuit from attempting to unduly prolong the *iter* thereof by filing an appeal before the matter has been definitively resolved⁴. Hence the requirement of the Court's leave to appeal, in default of which any appeal so filed and strictly within the prescribed timeframe⁵, shall be considered null⁶

Applicant argues that respondent Council's request is an attempt at gaining time to her detriment, considering that her ordeal has been dragging along for a good ten years or so, and that she is entitled to have her civil rights and obligations determined within a reasonable time. She suggests that an appeal now would be tantamount to a denial of justice and the time taken to appoint and determine an appeal would prolong the case even further;

Respondent Council has put forward arguments to substantiate its request for an appeal at this juncture and suggested that its grievances

¹ Pp. 556 – 8 of the record

² Pp. 560 – 2 of the record

³ *Proviso* to art. 231(1) (Chap 12)

⁴ Civ. App. **9.2.2004** in the case *George Vella noe et vs Rev. Charles Ċini*

⁵ Civ. App. **23.2.2001** in the case *Joseph Pirota et vs Joseph Zammit et*

⁶ Civ. App. **6.12.2002** in the case *Ivan Cutajar vs J Lautier Co. Ltd.*

lie principally upon the interpretation made by this Court of the law applicable;

The Court believes that plaintiff's arguments are far from sufficient to persuade it to deny respondent's request. First and foremost, the *in parte* judgement handed down by the Court has addressed the principal claims made by plaintiff in her Sworn Application. The remaining requests which the Court has reserved to give judgment about relate to the consequential effects of the claims already upheld. This means that, if the appeal were to be upheld, there would be no further need to consider the pending requests, whereas if the appeal were to be rejected, the position of the applicant as to her status as a registerable medical practitioner in Malta would be determined immediately and become a binding judgement and she could then pursue the case on her other claims in the full knowledge that her request for registration with the respondent Council would have to be reconsidered in terms of the judgements;

Secondly, if the appeal were to be denied at this stage, and the case allowed to proceed on the claims which are still pending, an exercise relating to the liquidation of damages (provided the elements thereof are proven) would have to be entered into, which exercise would still be subject to an appeal, at the end of the day. The Court is of the firm belief that pursuing such a course of action would prolong the judicial process. Plaintiff's status would still be indeterminate, while the process of liquidation of damages would prove to have been futile and expensive to the said plaintiff⁷, given that an eventual appeal on the whole merits after delivery of the final judgment would have the effect of stultifying all these efforts, if that appeal were to be upheld;

Thirdly, it is in the interest of both parties that the *in parte* judgement pass through that scrutiny of the Court of Appeal at this juncture so that a definitive ruling be given of the proper construction of the applicable law and the correct parameters of the review of the respondent's line of action. Since there seems to exist no judicial precedents for plaintiff's case, the authoritative pronouncement by a superior Court would provide guidance also on the matters which are still pending in this case;

⁷ Art. 232 (Chap 12)

For these reasons, the Court:

Upholds the respondent Council's request to be granted leave to appeal from this Court's *in parte* judgement of February 14th 2017 in the names above-captioned, with the effective term for the filing of said appeal to run from to-day.

Read and delivered

**Joseph R. Micallef LL.D.,
Judge**

March 9th 2017

**Carmen Scicluna
Deputy Registrar**

March 9th 2017