QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tlieta 31 ta` Ottubru 2017

Kawza Nru.
Rik. Gur. Nru. 666/11 JZM

Raymond Debono
(Karta tal-identita` numru 251866M)

kontra

Lisa Debono

Il-Qorti :

I. Preliminari

Rat ir-rikors guramentatipprezentat fil-11 ta` Lulju 2011 li jaqra :–

1. Illi l-esponent izzewweg lill-intimata Lisa Debono fl-4 ta` Ottubru 1997 gewwa "St Patricks Roman Catholic Church", Langley Moor,

*Brandon and Byshottles, Durham Central, County of Durham, l-Ingilterra. Certifikat taz-zwieg hawn anness u mmarkat (**Dok. RD1**).*

*2. L-esponent ottjena d-divorzju minn mal-konvenuta b`digriet mill-Qorti ta` Durham fit-18 ta` Dicembru 2007 - Certifikat tad-divorzju hawn anness u mmarkat (**DOK. RD2**).*

3. Illi dan id-divorzju gie debitament irregistrat hawn Malta fl-24 ta` Jannar 2009.

*4. Illi permezz ta` Consent Order mill-Qorti ta` Durham tat-3 ta` Dicembru 2007 (**Dok. RD3**) saret id-divizjoni tal-assi tal-komunjoni tal-konjugi Debono, u fejn gie indikat ukoll li fir-rigward tal-pensjoni kull parti hija intitolata li zzomm il-pensjoni taghha.*

5. Illi l-intimata istitwiet ancillary relief proceedings u l-esponent permezz ta` Ordni tal-Qorti ta` Durham County Court tal-10 ta` Marzu 2009 (**DOK. RD4**) gie zvestit ingustament mill-pensjoni kollha dovuta lilu mill-NHS gewwa l-Ingilterra kif ukoll mill-NHS gewwa l-Iskozja. Illi din il-pensjoni ittiehdet ingustament oltre d-divizjoni tal-assi kif ordnata mill-istess Qorti ta` Durham.

6. Illi l-esponent qatt ma gie notifikat bit-talba li saret quddiem il-Qorti Ingliza ghax huwa kien diga` telaq mir-Renju Unit meta huwa kien meqjus bhala notifikat. Irid jigi rilevat li l-esponent qatt ma ssottometta ruhu jew accetta din il-gurisdizzjoni, u ghalhekk ma kellux l-opportunita` li jiddefendi ruhu. Qieghed jigi rizervat ghalhekk kull dritt dwar smigh xieraq.

7. Illi in konsegwenza ta` dawn il-proceduri, l-esponent gie zvestit minn din il-pensjoni appartenenti lilu u moghtija ingustament lill-intimata.

8. Illi l-esponent gie prekluz mid-drittijiet procedurali li tikkoncedilu l-ligi, u ghalhekk din l-ordni tal-Qorti ta` Durham hija wahda nulla u bla effett stante li l-esponent qatt ma gie notifikat b`dawn il-proceduri u ghalhekk din l-ordni qieghda tilledi wiehed mid-drittijiet fundamentali tal-esponent, dak li jinghata smigh xieraq kif provdut fl-Artiklu 39 tal-Kostituzzjoni ta` Malta;

9. Illi finalment irid jigi rilevat li ma tezistix l-ebda azzjoni diretta kontrattwali.

Ghaldaqstant l-esponent umilment jitlob lil din l-Onorabbli Qorti joghgobha :-

1. Tiddeciedi u tiddikjara li l-procedura in kwantu leziva ta` smigh xieraq fejn l-esponent gie zvestit mill-pensjoni kif inghatat hija nulla u inattentibbli.

2. Tordna, prevja kull ordni u direttiva opportuna, li l-intimata tigi ordnata li tirristitwixxi lill-esponent id-drittijiet u l-intitolament ta` pensjoni, fin-nuqqas u alternattivament.

3. Tiddeciedi li l-intimata kkawzat danni lill-attur bit-tehid tad-drittijiet ta` pensjoni.

4. Tillikwida s-somma bhala kumpens ghad-danni sofferti mill-esponent rizultanti mit-tehid tad-drittijiet ta` pensjoni mill-intimata.

5. Tikkundanna lill-intimata thallas lill-esponent is-somma hekk likwidata.

Bir-rizerva ta` kull dritt sancit mill-Kostituzzjoni ta` Malta u l-Konvenzjoni Ewropea dwar id-drittijiet u l-liberta` fundamentali tal-bniedem.

Rat il-lista tax-xhieda u l-elenku ta` dokumenti.

Rat illi ghalkemm l-intimata kienet debitament notifikata skont il-ligi, baqghet ma pprezentatx risposta guramentata.

Semghet ix-xiehda tal-attur u rat il-provi l-ohra li tressqu fil-kors tal-kawza.

Rat id-digriet li tat fl-udjenza tat-8 ta` Gunju 2017 fejn halliet il-kawza ghas-sentenza ghal-lum *in difett ta` ostakolu.*

Rat l-atti l-ohra tal-kawza.

Rat illi ma rrizulta ebda ostakolu sabiex il-kawza tkun deciza llum.

II. Provi

Raymond Debono xehed illi l-proceduri tad-divorzju mal-konvenuta saru fit-3 ta` Dicembru 2007 quddiem il-Qorti ta` Durham fl-Ingilterra. Id-dar taz-zwieg kienet assenjata in kwantu ghal 71% lill-konvenuta u in kwantu ghal 29% lilu. Il-konvenuta hadet GBP 320,000 waqt li hu ha GBP 120,000. Il-pensjonijiet inqasmu billi hu zamm il-pensjoni tieghu waqt li l-konvenuta zammet taghha.

Stqarr illi fil-kors tal-proceduri tad- divorzju kien hemm hafna tensjoni tant li missier il-konvenuta kien hedded li joqtlu tant li kellu jipprocedi kontra tieghu ghall-harsien tieghu. Inoltre kien imcahhad milli jara lil uliedu. Kien anke marad bil-pressjoni gholja u bid-dipressjoni. Ghalhekk iddecieda li jsib l-ghajnuna tal-familja tieghu gewwa Malta.

Kompla jghid illi kif kien ser jitlaq lejn Malta, il-konvenuta pprezentat *ancillary relief proceedings* sabiex tipprova twaqqa` l-*consent order* li kienet saret. L-ghan wara dak il-procediment kien sabiex huwa jitlef is-sehem tieghu mid-dar bil-pretest li huwa kien ser jitlaq lejn Malta.

Stqarr illi huwa gie Malta ghax kien mhedded b`hajtu, kien marid, il-konvenuta kissret kull gieh li kellu, u ma hallietux jara lil uliedu.

Qal illi lura Malta, huwa qatt ma kien notifikat bl-*ancillary relief proceedings* li kienu saru sabiex ikun ipprivat mill-pensjoni tieghu.

Sahaq illi qabel gie Malta, il-proceduri li kienu nizjati kienu ntizi sabiex huwa jitlef id-29% tad-dar taz-zwieg.

Spjega li meta kien Malta, saru proceduri godda li nghaqdu mal-proceduri ta` qabel intizi sabiex ikun imcahhad mill-pensjoni. B`dawn il-proceduri huwa qatt ma kien notifikat.

Kompla jghid illi huwa safa` mcahhad mill-pensjoni bla ma kien notifikat bil-procediment tal-Ingilterra. Ghalhekk kien ipprivat mid-dritt li jiddefendi ruhu jew li jqabbad avukat.

Stqarr illi mbaghad ircieva *court order* fejn sar jaf li kienet ittiehdet il-pensjoni kollha tan-*National Health Service* li kien ilu jigbor fuq zmien ta` 12-il sena.

Ghalhekk il-konvenuta spiccat hadet 71% tad-dar taz-zwieg, GBP 320,000, haditlu l-pensjoni, oltre GBP 100,000 ohra. Hu baqa` b`xejn.

Kompla jghid illi l-konvenuta bdiet tahdem Marzu 2008 bhala infermiera specjalizzata. Ghandha *masters degree* li kisbet waqt kors li hallas ghalih hu. Qal li l-konvenuta tiehu hsieb *GP Practice* u l-pozizzjoni taghha hija wahda gholja. Waqfet tahdem biss ghal sena u nofs biex tiehu hsieb it-tfal. Anke l-konvenuta ghandha pensjoni.

Keith Swan – Delivery Manager - Durham Civil & Family Justice Centre - ipprezenta kopja tal-petizzjoni ghal divorzju bejn il-partijiet datata 5 ta` Gunju 2007 flimkien ma` kopja tar-risposta u tal-kontro-petizzjoni datata 25 ta` Gunju 2007.

Ipprezenta wkoll ordni tal-Qorti moghti fl-10 ta` Marzu 2009.

Fisser illi d-*district judge* jkun spjega l-bazi li fuqu tkun inharget l-ordni ta` l-10 ta` Marzu 2009.

Qal illi t-traskrizzjoni ta` dik id-decizjoni tkun accessibbli ghall-partijiet sa zmien tliet snin wara d-decizjoni. Fil-kaz tal-lum, hadd mill-partijiet ma talab ghal kopja ta` t-traskrizzjoni.

Spjega li l-avviz ta` smigh ghas-seduta ta` l-10 ta` Marzu 2009 hareg fl-1 ta` Dicembru 2008 u mar ghand Freeman Johnson Solicitors sabiex ikun notifikat lill-partjiet.

<u>Vivienne Purves</u> xehdet illi hija mpjegata bhala *pension manager* fis-sezzjoni ta` *pension sharing section.*

Stqarret illi l-attur ma ghandux drittijiet ghal pensjoni fl-NHS *Scheme* ta` Scotland.

Qalet illi mhux intitolat jiehu l-ebda pensjoni.

Fissret illi kienet ezegwita ordni tal-Qrati Inglizi dwar *pension sharing* fejn kien deciz li l-NHS *pension* tal-Iskozja tinghata kollha kemm hi lill-konvenuta. Ghalhekk l-attur tilef id-dritt tieghu ghal pensjoni minhabba dan il-*pension sharing agreement.*

Xehdet illi ma kienu saru l-ebda pagamenti tal-pensjoni.

Qalet illi meta l-konvenuta tilhaq l-eta` tal-pensjoni li hija 60 sena, id-drittijiet ghal pensjoni tehodhom hi. Sal-lum l-ammonti tal-pensjoni qed imorru go fond apposta.

III. <u>Gurisdizzjoni</u>

Qabel ma tqis il-mertu, din il-Qorti tghid illi jkun opportun jekk taghrbel il-kwistjoni tal-gurisdizzjoni taghha ladarba l-attur qed jikkontesta l-provvediment ta` qorti barranija u l-konvenuta hija assenti minn dawn il-Gzejjer.

Il-gurisdizzjoni hija kwistjoni li tista` anke titqanqal *ex officio* purche dan isir *in limine litis* (ara - **Portelli vs Portanier Mifsud et** - Kollez. Vol. XLI.iii.1228).

Din il-Qorti hija tal-fehma illi ghandha ssir analizi tal-UE Council Regulation 44/2001 maghruf bhala Brussels 1.

Peress illi huwa EU Regulation, Brussels 1 jaghmel parti mill-*corpus juris* ta` pajjizna b`effett dirett.

Il-Qorti tirrimarka illi ghall-kaz tal-lum ghandu japplika Brussels 1 mhux EU Regulation 1215/2012 maghruf ukoll bhala Brussels Recast li ha post Brussels 1 izda li beda jghodd ghal kwistjonijiet li kienu istitwiti f` Jannar 2015.

Skont Art 3 ta` Brussels 1 :

> *1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.*
>
> *2. In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.*

Annex I ta` Brussels 1 ighid illi ghal Malta, l-artikoli li mhumiex applikabbli ai termini ta` l-Artikolu 3(1) huma l-Artikoli 742, 743 u 744 tal-Kodici ta` Organizzazzjoni u Procedura Civili (Kap 12 tal-Ligijiet ta` Malta) u l-Artikolu 549 tal-Kodici tal-Kummerc (Kap 13 tal-Ligijiet ta` Malta).

In vista ta` dan, huma l-artikoli minn 2 sa 7 ta` Brussels 1 li huma applikabbli ghal dan il-kaz, ladarba l-konvenuta hija residenti u domiciljata fir-Renju Unit, fatt illi mhuwiex in kontestazzjoni.

Saret analizi ta` Brussels 1 saret fis-sentenza li tat din il-Qorti diversament presjeduta fid-9 ta` Jannar 2012 fil-kawza "**Av. Dr. Edward DeBono noe v. No Stop Technology Limited (C49765)**".

Inghad hekk :-

L-artikolu 2(1) ta` l-EC Regulations 44/2001 jghid

…

Ghalhekk, generalment il-gurisdizzjoni tissejjes fuq id-domicilju tal-parti mharrka. Madanakollu, imbaghad l-artikolu 5 jitkellem dwar Special jurisdiction u jghid hekk …

Wara jitkellem fuq maintenance, tort, delict or quasi-delict, civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, dispute arising out of the operations of a branch, agency or other establishment.

Interessanti huwa dak li jsemmi l-artikolu 23 ta` l-EC Regulation 44 ta` l-2001 li f`Malta kien applikabbli mill-1 ta` Mejju, 2004. Dan l-artikolu jghid hekk …

…

*Kif qalet din il-Qorti kif presjeduta, fid-decizjoni taghha tat- 23 ta` Jannar, 2007 fil-kawza fl-ismijiet **Mrbookmaker.com Ltd. (C27649) vs Stichting De Nationale Sporttotalisator, Entita` Estera**, wara ezami tal-Brussels Regulations, persuna b`domicilju fi Stat Membru ghandha tigi imfittxija f`dak l-Istat Membru u dan ghall-fini ta` l-artikolu 2 (1). Il-preambolu 11 ta` l-istess regolamenti jghid : "The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant`s domicile and jurisdiction must always be available on this ground …The domicile of a legal person must be defined autonomously so as to make the common*

rules more transparent and avoid conflicts of jurisdiction."

Fil-kawza deciza mill-Qrati Ewropej fl-ismijiet ***Kalfelis vs Shroder****, Case 189/1987 (Reports 1988 page 05565) inghad li "all exceptions to the rule that the defendant must be sued in the state of his domicile are to be construed narrowly".*

Dan kien bazat fuq il-principju tad-dritt generali tal-konvenut, ossija dak li jigi imharrek fid-domicilju tieghu (Ara f`dan is-sens ukoll is-sentenza tal- European Court of Justice fil-kawza "****Athanasios Kalfelis vs Bankhaus Schroder, Munchmeyer, Hengst and Co.****, deciza mill-Fifth Chamber fis-27 ta` Settembru 1988, Case no 189/87 European Court Reports 5565, u s-sentenza lokali fl-ismijiet ***Bell Med Limited C26412 Vs Pari Mutuel Urban*** *deciza mill-Qorti ta` L-Appell Civil Superjuri fit-18 ta` Settembru 2009.*

Il-Qorti tirreferi ghall-kawza deciza fit-30 ta` Gunju, 2011 minn din il-Qorti presjeduta mill-Imhallef Mark Chetcuti fl-ismijiet ***Avukat Dr. Edward DeBono nomine vs No Stop Technology Limited*** *(Citazz. Nru. 1049/10) fejn intqal :*

"L-abdikazzjoni ghal gurisdizzjoni ta` forum skond il-principji normali legali kif enunzati fil-Council Regulation 44/2001 hi eccezzjoni ghar-regola u bhala tali trid tirrizulta b`mod car u univoku. Din hi l-interpretazzjoni kostanti kif tirrizulta mill-gurisprudenza Maltija u hi l-istess anki fil-forum Ewropew fejn fis-sentenza deciza mill-First Chamber tal-European Court of Justice fit-12 ta` Ottubru 2008 fl-ismijiet ***Nicole Hassett vs South Eastern Health Board and Cheryl Doherty vs North Western Health Board*** *gie stipulat is-segwenti:*

18. Moreover, as is stated in the 11th recital in the preamble to Regulation No. 44/2001, jurisdiction based on the defendant`s domicile – in accordance

with the general rule – must always be available, save in a few well defined situations in which the subject matter of the litigation or the autonomy of the parties warrants a different linking factor. Such situations must accordingly be interpreted strictly."

Jidher ghalhekk li l-eccezzjonijiet ghal artikolu 2 fuq riferit ta` din l-EC Regualtion ghandhom jigu interpretati b` mod ristrett.

Sentenza ohra rilevanti hija dik illi tat din il-Qorti diversament presjeduta fl-4 ta` Dicembru 2014 fil-kawza "**Alpha Briggs Mediterranean Limited (C38859) v. Briggs Environmental Services Limited**" fejn inghad hekk :-

10.2 Ir-regolament tal-Unjoni Ewropea 44/2001 :

10.2.1. Illi dan ir-Regolament ghandu forza ta` Ligi f`Malta u hu applikabbli b`mod dirett ;

10.2.2. Illi dan ir-Regolament japplika ghal kaz odjern billi dan hu kwistjoni ta` natura civili u mhux eskluz mill-operat tal-istess Regolament ;

10.2.3. Illi dan ir-Regolament japplika wkoll a bazi tal-artiklu 742 (6) tal-Kap 12 tal-Ligi ta` Malta ;

10.2.4. Illi l-artiklu 2 tal-imsemmi Regolament jistabilixxi li : "persons domiciled in a Member State shall, whatever their nationality, be sued in the Courts of that Member State";

10.2.5. Illi dan gie ribadit mill-First Chamber tal-Qorti Ewropea tal-Gustizzja fil-kaz "Nicole Hassett vs South Eastern Health Board u Cheryl Doherty vs North Western Health Board tat-2 t`Ottubru, 2008, citati mill-istess socjeta` intimata, (ara foll 80) ;

10.2.6. Illi kif kompliet tirribadixxi l-istess qorti indikata fil-paragrafu precedenti fil-kawza

numru C - 281/02 minnha wkoll citata fl-istess nota: (ara fol. 80) ;

"It must be observed, first, that Article 2 of the Brussels Convention is mandatory in nature and that, according to its terms, there can be no derogation from the principle it lays down except in the cases provided for by the Convention" ;

10.2.7. Illi ghalhekk ghandu jkun pacifiku li kemm ir- Regolamenti in dizamina u l-kazistika Ewropea li tinforzha, jirrikjedu li wiehed ghandu jigi mharrek fl-istat Membru fejn l-istess intimat ikun domiciljat ;

10.2.8. Illi jirrizulta li s-socjeta` intimata :

10.2.8.i. Hi registrata l-Iskozja, (ara fol 52) ;

10.2.8.ii. Topera wkoll l-Iskozja, (ara fol 50) ;

10.2.9. Illi l-ftehim tal-1 t`April, 2008, pattwit bejn il-partijiet ma jistabilixxi l-ebda klawsola rigwardanti l-gurisdizzjoni bejn il-kontendenti f`kaz ta` dizgwid ;

10.2.10. Illi l-oggett tal-istess ftehim kellu jigi ezercitat fl- Oman ;

Ikkunsidrat :

11.0. Illi minn ezami tal-fatti kif fuq sintetikament esposti jirrizulta segwenti :

11.1. Illi l-ftehim pattwit fuq riferit gie konkluz f`Malta ;

11.2. Illi s-socjeta` rikorrenti hi registrata u topera f`Malta ;

11.3. Illi s-socjeta` intimata hi registrata fl-Iskozja

11.4. Illi l-oggett meritu tal-ftehim hekk pattwit kellu jigi ezegwit l-Oman, (ara fol 77) ;

Ikkunsidrat :

12. Illi tenut kont tas-suespost ghandu jkun pacifiku li l-anqas l-artiklu 5 tar-Regolament Ewropei Numru 44/2001, ma` japplikaw ghall-vertenza odjerna".

Fuq l-istess linja kienet id-decizjoni ta` din il-Qorti diversament presjeduta tal-15 ta` Ottubru 2012 fil-kawza : **Chemimart Limited Vs Reckitt Benckiser Healthcare International Limited** : fejn inghad hekk :-

Ir-regola generali hi li persuna ghandha titharrek fil-pajjiz fejn hi domiciljata (Artikolu 2 tar-Regolament 44/2001), forum domicilii. M`hemmx kontestazzjoni li l-kumpannija konvenuta hi domiciljata fl-Ingilterra. L-Artikolu 3(1) tas-Sezzjoni 1 Kapitolu II tar-Regolament 44/2001 jipprovdi li `persuni domiciljati fi Stat Membru jistghu jigu mfittxija fil-qrati ta` Stat Membru iehor biss bis-sahha tar-regoli mnizzla fis-Sezzjonijiet 2 sa` 7 ta` dan il-Kaptiolu.`.

Jidher ghalhekk li r-regola generali hi li persuna ghandha tigi mharrka fl-Istat Membru fejn hi domiciljata. Madankollu hemm eccezzjonijiet...... Fil-kaz Jakob Handte & Co GmbH v Traitements Mecano-chimiques des Surfaces SA (1992) (C-26/91) deciz mill-Qorti Ewropea fis-17 ta` Gunju 1992, inghad li r-regola generali li persuna ghandha titharrek fl-Istat Membru fejn hi domiciljata "...is a general principle because it makes it easier, in principle, for a defendant to defend himself. Consequently, the jurisdictional rules which derogate from that general principle must not lead to an interpretation going beyond the situations envisaged by the Convention.".

L-eccezzjoni ghal Reg 2(1) tal-Brussels 1 tinsab fl-Art 5 :-

"A person domiciled in a Member State may, in another Member State, be sued :

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question ;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be :

- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,

(c) if subparagraph (b) does not apply then subparagraph (a) applies ;

2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties ;

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur ;

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings ;

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which

the branch, agency or other establishment is situated ;

6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled ;

7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question :

(a) has been arrested to secure such payment, or

(b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage."

Qabel ma taghmel ezami tal-Art 5 ta` Brussels 1, il-Qorti sejra tirreferi ghall-Art 1 li jghid :-

Article 1

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal

persons, judicial arrangements, compositions and analogous proceedings;

(c) social security;

(d) arbitration.

3. In this Regulation, the term "Member State" shall mean Member States with the exception of Denmark.

Tinsorgi l-kwistjoni ta` jekk il-kaz tal-lum jaqax fl-ambitu ta` l-Art 1 ta` Brussels 1 jew jekk jaqax taht xi regolament iehor, b` mod partikolari l-Art 3 tar-Regolament tal-Kunsill (KE) Nru 2201/2003 tas-27 ta`Novembru 2003 dwar il-ġurisdizzjoni, rikonoxximent u nfurzar ta` sentenzi fi kwistjonijiet matrimonjali u kwistjonijiet ta` responsabbilità tal-ġenituri, li jirrevoka r-Regolament (KE) Nru 1347/2000.

Fl-Art 3 jinghad illi :-

"`1. Fi kwistjonijiet dwar id-divorzju, is-separazzjoni legali jew l-annullament taż-żwieġ, il-ġurisdizzjoni ħa taqa` taħt il-kompetenza ta` l-qrati ta` l-Istat Membru (a) f`liema territorju:
— "il-konjuġi huma abitwalment residenti, jew —
— "il-konjuġi kienu joqgħodu hemm l-aħħar, peress illi xi ħadd minnhom għadu/għadha residenti hemm, jew
— "il-konvenut huwa abitwalment residenti, jew
— "fil-każ ta` applikazzjoni konġunta, wieħed jew waħda mill-konjuġi huwa abitwalment residenti, jew
— "L-applikant huwa abitwalment residenti jekk hu jew hija kienu joqgħodu hemm mill-inqas sena mmedjatament qabel ma` saret l-applikazzjoni, jew
— "L-applikant huwa abitwalment residenti jekk hu jew hija kienu residenti hemm mill-inqas sitt xhur immedjatament qabel saret l-applikazzjoni u jekk wieħed jew waħda minnhom huwa ċittadin ta` l-Istat Membru in kwistjoni jew, fil-każ tar-Renju Unit u l-Irlanda, għandu jew għandha "id-domiċilju" hemmhekk;

"(b) dwar in-nazzjonalità taż-żewg konjuġi jew, fil-każ tar-Renju Unit
u l-Irlanda, dwar "id-domiċilju" taz-żewġ konjuġi`.

Dan premess u qabel il-Qorti taghmel indagini ta` liema regolamenti japplikaw ghall-kaz odjern u jekk dan il-kaz tal-lum jaqax taht xi wahda minn dawn l-eccezzjonijiet fuq ravvizati, huwa essenzjali li jigi nnotat li fil-kaz odjern, il-konvenuta minkejja li giet notifikata, baqghet kontumaci u ma rrispondietx ghal kawza odjerna.

Fid-dawl ta` dan kollu, il-Qorti taghmel riferenza ghad-decizjoni li tat din il-Qorti diversament presjeduta fil-5 ta` Dicembru 2012 fil-kawza : **<u>Boarding School (Malta) Ltd vs Maizie Williams</u>**

F`dak il-kaz, il-konvenuta tat l-eccezzjoni tal-gurisdizzjoni fi stadju ulterjuri wara li ressqet eccezzjonijiet fil-mertu.

Intqal hekk :

> *Hi l-fehma tas-socjeta attrici illi din l-eccezzjoni mressqa wara li tressqu eccezzjonijiet fil-mertu ghandha tigi skartata ghax messha tqajmet in limine litis u billi ma tressqitx f`dak l-istadju, il-konvenuta issokkombiet ghal gurisdizzjoni ta` dawn il-Qrati.*
>
> *Il-konvenuta sostniet li l-Qorti xorta ghandha gurisdizzjoni a bazi tas-segwenti sentenza.*
>
> *Il-Qorti tal-Appell fil-kawza Dr. Austin Sammut noe vs Silvio Mifsud noe deciza fit-22 ta` Gunju 1994 qalet hekk:*
>
> *il-konsegwenza ghall-fatt li konvenut ma jkunx eccepixxa in-nuqqas ta` gurisdizzjoni jew kompetenza meta ghandu jeccepiha, u fil-kaz li ghandha tigi eccepita in limine litis, ma jkunx eccepiha f`dak l-istadju, m`hijiex necessarjament illi allura jkun issottometta ruhu ghall-*

gurisdizzjoni tal-Qorti Ii tkun. Dana qed jinghad principalment ghal zewg ragunijiet; l-ewwel ghax wahda mhux necessarjament issegwi ghall-ohra, u t-tieni ghaliex fi kwalunkwe kaz, kif sewwa gie osservat fir-risposta ta` l-appell, kwistjonijiet ta` gurisdizzjoni u ta` nuqqas ta` kompetenza jistghu jitqajjmu anke mill-Qorti ex officcio;

Qalet ukoll hekk:

Kwantu jirrigwarda n-natura ta` din l-eccezzjoni ta` nuqqas ta` gurisdizzjoni tal-Qrati Maltin, u cjoe` jekk hijiex wahda dilatorja jew perentorja, evidentement l-appellant qed jikkonfondi l-kwistjoni ta` meritu u kwistjoni ta` azzjoni. Dak illi qalet l-ewwel Qorti huwa fis-sens illi l-eccezzjoni in kwistjoni hija ta` natura perentorja ta` l-azzjoni quddiem dawn il-Qrati u dana qalitu biex tispjega illi effettivament setghet tiehu konjizzjoni ta` l-eccezzjoni sollevata mill-konvenuti msemmija

Dan l-argument isegwi dak li qalet l-ewwel Qorti cioe illi:

L-eccezzjoni in kwistjoni hija kontra I-gurisdizzjoni cjoe` ta` inkompetenza assoluta in kuntrast ma` u ghall-inkompetenza relattiva bejn id-diversi Qrati taghna. Mhix pero` assoluta fis-sens gurisdizzjonali, in kwantu I-Qrati taghna f`kazijiet bhal dawn - kieku ma kienx ghal ftehim bejn il-partijiet; kien ikollhom gurisdizzjoni konkomitanti ma` Qrati esteri;

Fil-kawza citata l-eccezzjoni tal-gurisdizzjoni nghatat ferm wara eccezzjonijiet fil-mertu fi stadju avvanzat tal-proceduri quddiem il-Qorti Prim` Istanza.

Din il-Qorti pero tqis illi din is-sentenza inghatat qabel ma dahal in vigore r-Regolament 44/2001 u ghalhekk ir-relevanza taghha hi newtralizzata b`dak li jghid ir-Regolament u l-gurisprudenza Ewropea li tinterpretah.

L-artikolu 24 tal-Regolament 44/2011 ighid illi:

"Apart from jurisdiction derived from other provisions of this Regulation, a Court of a Member State before which a defendant enters an appearance shall have jurisdiction.

This rule shall not apply where appearance was entered to contest the jurisdiction, or where another Court has exclusive jurisdiction by virtue of article 22."

L-artikolu 22 isemmi sitwazzjonijiet ta` gurisdizzjoni esklussiva li ebda wahda minnhom ma hi applikabbli ghal kaz in kwistjoni u ghalhekk qed jigi injorat ghall-iskop ta` din il-vertenza.

Il-kwistjoni fil-fehma tal-Qorti tirrisolvi ruhha fl-interpretazzjoni ta` dan l-artikolu tar-Regolament. L-aktar relevanti ghal din il-vertenza hu l-kaz 150/80 Elefanten Schuh GmbH vs Pierre Jacqmain, ECR1671 fejn il-Qorti Ewropea qalet hekk:

The Hof van Cassatie asks in this regard whether jurisdiction must be contested in limine litis. For the purposes of interpreting the Convention that concept is difficult to apply in view of the appreciable differences existing between the legislation of the Contracting States with regard to bringing actions before courts of law, the appearance of defendants and the way in which the parties to an action must formulate their submissions.

However, it follows from the aim of Article 18 that if the challenge to jurisdiction is not preliminary to any defence as to the substance it may not in any event occur after the making of the submissions which under national procedural law are considered to be the first defence addressed to the court seised.

Article 18 of the Convention must be interpreted as meaning that the rule on jurisdiction which that provision lays down does not apply where the defendant not only contests the court`s jurisdiction but also makes submissions on the substance of the action, provided that, if the challenge to jurisdiction is not preliminary to any defence as to the substance, it does not occur after the making of the submissions which under national procedural law are considered to be the first defence addressed to the court seised

Il-kawza 27/81 Vienna Insurance Group vs Michal Bilas, 111/09 il-Qorti Ewropea ziedet hekk:

That question concerns whether, even for disputes to which the rules of special jurisdiction provided for by Regulation No 44/2001 apply, such as those contained in Section 3 of Chapter II of that regulation in matters relating to insurance, the entering of an appearance by the defendant, who does not contest the jurisdiction of the court seised, amounts to a tacit prorogation of jurisdiction.

In this connection, it must be observed that the first sentence of Article 24 of Regulation No 44/2001 provides for a rule of jurisdiction based on the entering of an appearance by the defendant in respect of all disputes where the jurisdiction of the court seised is not derived from other provisions of that regulation. That provision applies also in cases where the court has been seised in breach of the provisions of that regulation and implies that the entering of an appearance by the defendant may be considered to be a tacit acceptance of the jurisdiction of the court seised and thus a prorogation of that court`s jurisdiction.

The second sentence of Article 24 of Regulation No 44/2001 provides for exceptions to that general rule. It determines that there is no tacit prorogation of jurisdiction of the court seised where the defendant contests the jurisdiction, thereby expressing his intention not to accept that court`s jurisdiction, or

where the dispute is one in respect of which Article 22 of that regulation provides for rules on exclusive jurisdiction.

According to the case-law relating to Article 18 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), a provision essentially identical to Article 24 of Regulation No 44/2001, in the situations which are not expressly included in the exceptions provided for in the second sentence of Article 18, the general rule on the tacit prorogation of jurisdiction applies. Ruling in proceedings where the parties had concluded an agreement on jurisdiction, the Court stated that neither the general scheme nor the objectives of that convention provide grounds for the view that the parties are prevented from submitting their dispute to a court other than that stipulated in the agreement (see Case 150/80 Elefanten Schuh [1981] ECR 1671, paragraph 10, and Case 48/84 Spitzley [1985] ECR 787, paragraphs 24 and 25).

Accordingly, since the rules on jurisdiction set out in Section 3 of Chapter II of Regulation No 44/2001 are not rules on exclusive jurisdiction, the court seised, where those rules are not complied with, must declare itself to have jurisdiction where the defendant enters an appearance and does not contest that court`s jurisdiction

Din il-Qorti ghandha taghti l-importanza misthoqqha lil dawn il-pronunzjamenti tal-Qorti Ewropea fl-interpretazzjoni tal-artikolu relevanti ghal kaz in kwistjoni.

Jirrizulta b`mod car mill-atti illi meta l-konvenuta pprezentat l-eccezzjonijiet taghha ghal kawza quddiem il-Qorti Maltin, ma ghamlet ebda oppozizzjoni ghal gurisdizzjoni ta` dawn il-Qrati u fil-fatt l-eccezzjonijiet taghha kienu fil-mertu tal-azzjoni proposta. La darba l-konvenuta ma oggezzjonatx ghal gurisdizzjoni ifisser illi hi accettat li l-kawza tigi deciza mill-Qrati Maltin. La

darba din kienet is-sitwazzjoni kristallizata bis-sottomissjoni implicita tal-konvenuta ghal gurisdizzjoni tal-Qorti Maltija ma tistax fi stadju sussegwenti tbiddel il-hsieb u titlob li l-kawza tinstema` minn Qorti ohra. Dan imur kompletament kontra l-ispirtu tar-Regolament 44/2001 u kontra l-insenjament tal-Qorti Ewropea li din il-Qorti tabbraccja.

Fid-decizjoni li tat fid-19 ta` April 2017 fil-kawza : **Etienne Merlevede pro et noe vs Attorney General et** : il-Qorti Kostituzzjonali ttrattat kwistjoni ta` gurisdizzjoni, meta l-konvenuta ma qajjmet l-ebda kwistjoni ta` gurisdizzjoni fir-risposta taghha.

Inghad hekk :-

« The applicant complains that his wife filed the lawsuit (Application no: 250/2009AF) in violation of international rules regarding cross-border family law disputes. Article 3 of the Council Regulation 2201/2003 deals with jurisdiction in divorce, legal separation or annulment.

Here again the applicant had every opportunity to file a plea contesting the jurisdiction of the Maltese courts to hear and determine the separation lawsuit.

However, for reasons known to him, no such plea was raised (vide statement of defence filed on the 3rd December, 2009). Instead, the applicant`s pleas deal with the merits of the case (vide the fourth plea). Therefore at the preliminary stage of the proceedings, the applicant appears to have accepted the jurisdiction of the Maltese court. In any case such a matter should be dealt with in the separation lawsuit filed by Lara Merelevede, which proceedings are sub judice. »

Fl-isfond tal-premess, il-Qorti tqis li ladarba l-konvenuta - ghad illi kienet debitament notifikata - ma ressqet l-ebda eccezzjoni dwar

il-gurisdizzjoni ta` din il-Qorti, il-konvenuta qaghdet u accettat il-gurisdizzjoni ta` din il-Qorti.

IV. <u>Smigh xieraq</u>

L-attur jilmenta illi quddiem il-Qorti ta` Durham kien ivvjolat id-dritt tieghu ghal smigh xieraq hekk kif ittutelat bil-Kostituzzjoni u bil-Konvenzjoni.

Bhala punt ta' dritt, ma hemmx wisq x'jinghad dwar il-jedd ghal smigh xieraq.

Ma hemmx dubbju illi l-attur kellu d-dritt li jigi notifikat bid-data tas-smigh tal-procedura istitwita kontra tieghu mill-konvenuta dwar *ancillary relief.*

Fid-decizjoni li din il-Qorti diversament presjeduta tat fit-2 ta' Frar 2016 fil-kawza : <u>**Edward Cassar vs L-Avukat Generali et**</u> : inghad hekk :-

> *L-artikolu 6 tal-Kap. 319 u l-artikolu 39 tal-Kostituzzjoni ma jipprovdux ghal dritt ta' appell wisq anqas ghal dritt ta' notifika, izda jekk dan il-jedd qed jinghata bil-ligi inkluz l-obbligu li ssir in-notifika tal-avviz tas-smigh, f'dan il-kaz anki lil appellant innifsu, kull nuqqas li ghalih ma jistax jinstab htija jew nuqqas fl-appellant ghandu jittiehed bhala cahda ta' dritt u garanzija li jiddefendi ruhu kif imiss skond l-artikolu 39 tal-Kostituzzjoni u l-artikolu 6 tal-Konvenzjoni……Stabbilit l-obbligu tan-notifika da parti tal-awtoritajiet gudizjarji u l-konsegwenti l-jedd tar-rikorrenti li ghandu jigi notifikat biex ikun jista jidher quddiem il-Qorti biex jinstema' l-appell tieghu fil-prezenza tieghu u li fin-nuqqas ikun qed jigi michud lilu d-dritt li jinstema' fil-gurnata u hin appuntati, trid issa issir l-prova jekk dan il-jedd giex michud lilu. Din hi kwistjoni ta' fatt, ghalkemm wahda li fic-cirkostanzi tista' tkun spinuza u difficli meqjusa l-fatti pruvati.*

Ghall-fini tal-kawza tal-lum, il-parti rilevanti ta` l-Art 39 tal-Kostituzzjoni huwa it-tieni subinciz (2) li jaqra hekk –

> *Kull qorti jew awtorita` ohra gudikanti mwaqqfa b`ligi ghad-decizjoni dwar l-ezistenza jew l-estensjoni ta` drittijiet jew obbligi civili ghandha tkun indipendenti u imparzjali ; u meta l-proceduri ghal decizjoni bhal dik huma mibdija minn xi persuna quddiem qorti jew awtorita` ohra gudikanti bhal dik, il-kaz ghandu jigi moghti smigh xieraq gheluq zmien ragonevoli.*

Il-parti rilevanti ta` l-Art 6 tal-Konvenzjoni ghall-kaz tal-lum huwa l-ewwel subinciz (1) li jaqra hekk –

> *Fid-decizjoni tad-drittijiet civili u ta` l-obbligi tieghu jew ta` xi akkuza kriminali kontra tieghu, kulhadd huwa ntitolat ghal smigh imparzjali u pubbliku fi zmien ragonevoli minn tribunal indipendenti u imparzjali mwaqqaf b`ligi. Is-sentenza ghandha tinghata pubblikament izda l-istampa u l-pubbliku jista` jigi eskluz mill-proceduri kollha jew minn parti minnhom fl-interess tal-morali, ta` l-ordni pubbliku jew tas-sigurta` nazzjonali f`socjeta` demokratika, meta l-interessi tal-minuri jew il-protezzjoni tal-hajja privata tal-partijiet hekk tehtieg, jew safejn ikun rigororament mehtieg fil-fehma tal-qorti f`cirkostanzi specjali meta l-pubblicita` tista` tippregudika l-interessi tal-gustizzja.*

Fil-premessi, ir-rikorrent allega li kien hemm ksur tad-dritt tieghu ghal smigh ghaliex huwa ma giex notifikat bit-talba li saret quddiem il-qorti Ingliza. Sostna li huwa kien diga` telaq mir-Renju Unit meta kien meqjus bhala notifikat.

Allega wkoll li qatt ma ssottometta ruhu jew accetta l-gurisdizzjoni tal-qrati Inglizi.

Allega li ma nghatax l-opportunita` li jiddefendi ruhu.

Dan premess, jibda biex jinghad li l-kwistjoni ta` l-oneru tal-prova hi wahda ta' indoli civili. L-istanza tal-lum kienet promossa quddiem il-qrati ordinarji, ghalkemm jissemma allegat ksur ta' jedd naxxenti mill-Kostituzzjoni u mill-Konvenzjoni. Il-prova ta` din l-allegata vjolazzjoni trid issir mill-parti li tallega li sehh dak il-fatt. Fuq dik il-parti tinkombi l-prova fuq bilanc ta` probabilitajiet.

Fis-sentenza li tat fis-26 ta` Settembru 2013 fil-kawza "**<u>Chef Choice Limited vs Raymond Galea et</u>**" din il-Qorti diversament presjeduta qalet hekk :-

… Illi l-Qorti tqis li, għalkemm il-grad ta' prova fil-proċediment ċivili m'huwiex wieħed tassattiv daqs dak mistenni fil-proċediment kriminali, b'daqshekk ma jfissirx li l-provi mressqa jridu jkunu anqas b'saħħithom. Il-prova mistennija fil-qasam tal-proċediment ċivili ma tistax tkun sempliċi supposizzjoni, suspett jew konġettura, imma prova li tikkonvinċi lil min irid jagħmel ġudizzju. Iżda f'każijiet mibnija fuq id-delitt jew il-kważi-delitt, l-aktar meta jkun hemm imdaħħal xi egħmil tal-qerq tal-parti mħarrka huwa ammess li "f'kawża ċivili d-dolo jista' jiġi stabbilit anke permezz ta' presunzjonijiet u ndizji, purke' s'intendi jkunu serji, preċiżi u konkordanti, b'tali mod li ma jħallu l-ebda dubju f'min hu msejjaħ biex jiġġudika" (ara - P.A. PS - Emanuel Ċiantar vs David Curmi et - konfermata mill-Qorti tal-Appell fid-19.6.2006).

Illi minbarra dan, il-parti attriċi għandha l-obbligu li tipprova kif imiss il-premessi għat-talbiet tagħha b'mod li, jekk tonqos li tagħmel dan, iwassal għall-ħelsien tal-parti mħarrka (ara - App. Inf. - JSP - 12.1.2001 - Hans J. Link et vs Raymond Merċieca). Il-fatt li l-parti mħarrka tkun ressqet verżjoni li ma taqbilx ma' dik imressqa mill-parti attriċi ma jfissirx li l-parti attriċi tkun naqset minn dan l-obbligu, għaliex jekk kemm-il darba l-provi ċirkostanzjali, materjali jew fattwali jagħtu piż lil dik il-verżjoni tal-parti attriċi, l-Qorti tista' tagħżel li toqgħod fuqha u twarrab il-verżjoni tal-parti mħarrka. Min-naħa l-oħra, il-fatt li l-parti mħarrka ma tressaqx provi tajba jew ma tressaq provi xejn kontra l-pretensjonijiet tal-parti attriċi, ma jeħlisx lil din milli tipprova kif imiss l-allegazzjonijiet u l-pretensjonijiet tagħha (ara - App. Inf. PS - 7.5.2010 - Emanuel Ellul et vs Anthony Busuttil).

Illi huwa għalhekk li l-liġi torbot lill-parti f'kawża li tipprova dak li tallega (ara l-Art. 562 tal-Kap 12) u li tagħmel dan billi tressaq l-aħjar prova (Art. 559 tal-Kap 12).

… Iżda dak li jgħodd f'kawża m'huwiex l-għadd tax-xhieda mressqa għaliex "il-fatt li xhieda jkunu ġew prodotti minn parti partikolari f'kawża …

ċertament ma jfissirx li l-Qorti hija marbuta li temmen b'għajnejha magħluqa, jew li temmen aktar, dak kollu li dawn ix-xhieda jgħidu 'favur' il-parti. Fuq kollox, ix-xhud ma jiġix prodott biex jixhed 'favur' parti jew 'kontra' oħra, imma jiġi prodott biex jgħid il-verita`, il-verita` kollha, u xejn anqas minn dik il-verita` kollha" (ara - App. Ċiv. 19.6.2006 - Emanuel Ċiantar vs David Curmi et)

Illi l-Qorti tqis li, iżda, bħal ma jiġri f'każijiet bħal dawn, il-verżjonijiet tal-partijiet u ta' dawk li setgħu nvoluti magħhom ikunu tabilfors miżgħuda b'doża qawwija ta' apprezzament suġġettiv ta' dak li jkun ġara. Il-Qorti tifhem li kull parti jkollha t-tendenza li tpinġi lilha nnifisha bħala l-vittma u l-parti l-oħra bħala l-ħatja, u dan jgħodd ukoll għall-verżjonijiet li jagħtu dawk il-persuni l-oħrajn li jkunu b'xi mod involuti fl-episodju. Huwa d-dmir tal-Qorti li tgħarbel minn fost dawn il-verżjonijiet kollha u minn provi indipendenti li jistgħu jirriżultaw il-fatti essenzjali li jistgħu jgħinuha tasal biex issib x'kien li tassew ġara u kif imxew l-affarijiet ;

Illi l-Qorti tifhem li, fil-kamp ċivili, il-piż probatorju m'huwiex dak ta' provi lil hinn mid-dubju raġonevoli (ara App. Inf. PS - 7.5.2010 - Emanuel Ellul et vs Anthony Busuttil). Iżda fejn ikun hemm verżjonijiet li dijametrikament ma jaqblux, u li t-tnejn jistgħu jkunu plawsibbli, il-prinċipju għandu jkun li tkun favorita t-teżi tal-parti li kontra tagħha tkun saret l-allegazzjoni (ara - P.A. NC - 28.4.2004 - Frank Giordmaina Medici et vs William Rizzo et). Ladarba min kellu l-obbligu li jipprova dak li jallega ma jseħħlux iwettaq dan, il-parti l-oħra m'għandhiex tbati tali nuqqas u dan bi qbil mal-prinċipju li actore non probante reus absolvitur (ara P.A. LFS - 18.5.2009 - Col. Gustav Caruana noe et vs Air Supplies and Catering Co. Ltd.) Min-naħa l-oħra, mhux kull konflitt ta' prova jew kontradizzjoni għandha twassal lil Qorti biex ma tasalx għal deċiżjoni jew li jkollha ddur fuq il-prinċipju li għadu kemm issemma. Dan għaliex, fil-qasam tal-azzjoni ċivili, l-kriterju li jwassal għall-konvinċiment tal-ġudikant għandu jkun li l-verżjoni tinstab li tkun waħda li l-Qorti tista' toqgħod fuqha u li tkun tirriżulta bis-saħħa ta' xi waħda mill-għodda proċedurali li l-liġi tippermetti fil-proċess probatorju (ara - App. Ċiv. 19.6.2006 - Emanuel Ċiantar vs David Curmi noe). Fit-twettiq ta' eżerċizzju bħal dak, il-Qorti hija marbuta biss li tagħti motivazzjoni kongruwa li tixhed ir-raġunijiet u l-kriterju tal-ħsieb li hija tkun ħaddmet biex tasal għall-fehmiet tagħha ta' ġudizzju fuq il-kwestjoni mressqa quddiemha (ara - App. Inf. 9.1.2008 - Anthony Mifsud et vs Victor Calleja et)

Dan premess, il-valutazzjoni tal-provi hija fondata fuq il-principju tal-konvinciment morali u liberu tal-gudikant. Fil-kaz tal-lum, din il-Qorti tghid - minghajr l-icken esitazzjoni – illi l-attur ma gabx provi li jsostnu sal-grad rikjest mil-ligi dak li qieghed jallega.

Ghazel li jixhed hu biss - bla ma kkorrabora dak li kien qed ighid bi provi oggettivi bhal dokumenti li juru li tassew ma kienx notifikat bil-proceduri esteri li l-esitu taghhom qieghed jikkontesta.

Abbazi ta` li xehed l-attur, irrizulta li l-*ancillary relief proceedings* kienu promossi fiz-zmien meta huwa kien ghadu jabita fir-Renju Unit.

Infatti kien notifikat bil-procediment, izda skont l-attur, dik il-procedura kienet saret biss biex il-konvenuta tiehu wkoll sehmu mid-dar taz-zwieg, mhux biex tiehu l-pensjoni tieghu. Kien imbaghad wara illi mal-procediment inizjali – li kien notifikat bih – zdiedu talbiet li jolqtu l-pensjoni tieghu. Skont l-attur, huwa ma kienx notifikat bit-talbiet agguntivi.

Tajjeb jinghad illi abbazi ta` li xehed ir-rapprezentant ta` l-NHS Pension Scheme fl-Ingilterra, l-attur tassew ma kienx ghad ghandu dritt ghal pensjoni, u li meta l-konvenuta tilhaq l-eta` pensjonabbli, id-dritt ghal pensjoni tiehdu hi. Fl-istess waqt pero` l-attur ma ressaq ebda prova li turi li meta nghatat l-ordni mid-Durham County Court tal-10 ta` Marzu 2009, kien hemm lezjoni tad-dritt tieghu ghal smigh xieraq. Infatti mill-atti ma jirrizulta propju xejn illi minnu l-Qorti tista` tiddeduci illi l-attur ma kienx kienx notifikat bl-*ancillary relief proceedings*.

Kienet esebita kopja ta` l-ordni tal-County Court ta` Durham tal-10 ta` Marzu 2009 (ara fol 16 sa 24). Minn imkien fid-dokument ma tirrizulta xi informazzjoni dwar notifika o meno tal-attur.

Fid-dokument, kull ma jinghad huwa illi l-attur ma kienx prezenti <u>mhux</u> li l-attur ma kienx debitament notifikat.

Jinghad hekk :-

> *Upon hearing counsel for the applicant and there being no attendance by or on behalf of the Respondent ;*
>
> *And Upon the application for ancillary financial relief being listed for final hearing ;*

> *And Upon the Court being satisfied that it was necessary and appropriate to conclude the application notwithstanding the absence of the Respondent Husband …*

Skont id-deposizzjoni tad-Delivery Manager ta` Durham Civil & Family Justice Centre, jirrizulta illi : *the notice of hearing for 10th March 2009 issued by the Court on 1st December 2008 was sent to Freeman Johnson Solicitors for service upon the parties.* (fol 199)

Minn ezami tal-kopja ta` l-*petition for divorce* li tinsab esebita a fol 200 sa 204, jirrizulta li Freeman Johnson Solicitors kienu l-avukati tal-konvenuta.

Ma tressqet l-ebda prova ulterjuri li turi illi effettivament Freeman Johnson Solicitors ma pprocedewx bin-notifika tal-attur ghall-udjenza ta` l-10 ta` Marzu 2009.

Kien jinkombi fuq l-attur li jressaq provi konvincenti li juru li huwa qatt ma kien debitament notifikat bl-udjenza ta` l-10 ta` Marzu 2009 fejn inghatat l-ordni li qieghed jittenta illi jimpunja bil-kawza tal-lum quddiem dawn il-qrati (mhux quddiem il-qrati tal-Ingilterra) abbazi ta` allegat ksur ta` smigh xieraq li allegatament sehh mhux f`din il-gurisdizzjoni izda l-Ingilterra.

Hekk kif fl-Ingilterra nstemghu zewg persuni fuq talba tal-attur, hekk ukoll kien messu l-attur talab illi jixhed rapprezentant minn Freeman Johnson Solicitors li jidher li kienu l-ufficjali addetti min-notifika tal-atti. Lanqas ma talab - wara li ha vizjoni tal-atti li waslu mill-Ingilterra bhala prova ghall-fini ta` din il-kawza – illi jerga` jixhed ghall-fini ta` kjarifika ulterjuri tal-atti d-Delivery Manager ta` Durham Civil & Family Justice Centre, u dan peress illi mid-deposizzjoni rrizultat notifika skont il-*lex fori.*

Tajjeb illi jigi rimarkat ukoll illi, minn qari ta` l-ordni, jirrizulta li kien hemm dritt li l-attur odjern jitlob li l-ordni jigi varjat jew mibdul, kif ukoll dettalji dwar kif kien ser jigi notifikat dan l-ordni lill-attur.

Insibu miktub hekk :-

> *7. The Respondent Husband shall have permission to apply to the Court in writing to vary, amend, alter or dismiss this order so long as the application is made within 14 days to District Judge Goudie.*
>
> *8. Service of this order shall be effected by sending a scanned copy of the order by e-mail to the Respondent at raymonddebono@yahoo.com and also by post to the address of the Respondent`s family in Malta, namely being the last address at which it is known the Respondent was present.*
>
> *9. Any future proceedings or applications may be deemed to be properly served upon the Respondent in pursuance of the manner provided for in paragraph 7 of this order, unless and until the method is varied by the Court.*

L-attur ma ressaq l-ebda prova li huwa pprova jikkontesta l-ordni kif kellu kull jedd illi jaghmel u kif ighid l-ordni stess.

Ghal din il-Qorti din il-karenza ta` provi hekk sostanzjali tirrifletti negattivament fuq il-komportament tal-attur fl-assjem tieghu. Minflok kien pront ha l-mizuri kollha li kien jaghtih il-*forum* li hareg l-ordni sabiex jagixxi dwar l-ordni stess, ghazel li jittenta dan il-procediment quddiem qorti ta` gurisdizzjoni ohra, li ma kienet bl-ebda mod involuta fil-hrug tal-ordni, sabiex tkun hi li tordna azzjoni rimedjali kontra dak l-ordni, fuq il-pretest ta` ksur tal-jedd ta` smigh xieraq, liema vjolazzjoni bl-ebda mod ma kienet ippruvata.

Din mhijiex qorti ta` revizjoni.

Fis-sentenza li tat fit-28 ta` April 2017 fil-kawza : **<u>Av. Mario de Marco noe vs Lidia Randazzo et</u>** : il-Qorti tal-Appell qalet hekk :-

> *"L-għarfien ta` sentenzi ta` qrati ta` stati membri tal-Unjoni Ewropea mill-qrati ta` stat membru*

ieħor hu msejjes fuq il-fiduċja reċiproka, viz. illi l-qorti għandha temmen illi l-qorti fi stat membru ieħor imxiet b`korrettezza u b`ħarsien tal-kriterji ta` smigħ xieraq. "

Ghalkemm il-kawza tal-lum mhijiex sejha biex din il-Qorti taghti esekuzzjoni ghal sentenza moghtija minn qorti ta` pajjiz membru tal-UE, il-principju jibqa` jghodd illi l-oneru tal-prova li l-attur kien ipprivat mill-jedd ghal smigh xieraq kienet tispetta lill-attur, oneru li l-attur jirrizulta li ma ssodisfax kif trid il-ligi.

<u>Decide</u>

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi din il-kawza billi tichad it-talbiet kollha tal-attur, spejjez ghall-attur.

Onor. Joseph Zammit McKeon
Imhallef