

## **Court Of Appeal**

### **Judges**

**THE HON. CHIEF JUSTICE SILVIO CAMILLERI  
THE HON. MR. JUSTICE GIANNINO CARUANA DEMAJO  
THE HON. MR JUSTICE TONIO MALLIA**

**Sitting of Friday 26<sup>th</sup> of January 2018**

**Number: 1**

**Application Number: 740/11 JRM**

**Isabella Zananian Desira**

**v.**

**Kunsill Mediku**

**The Court:**

This is a preliminary decision on the plea of nullity of appeal raised by appellant Isabella Zananian Desira. This plea is based on the fact that the appeal is not accompanied by the necessary security of costs.

Appellant Kunsill Mediku observes that no security of costs appears to have been taxed and that the Council did not receive notice of any such security;

Furthermore it observes that having received notice of hearing, this was not accompanied by a notice indicating the amount of security. The Council made verifications in this regard in the Court registry and was informed that no security of costs had been taxed.

This Court notes, in the first place, that the plea of nullity of the appeal is pretty frivolous, because when filing an appeal, no security of costs is paid at that stage. The appeal application was filed according to law, and the relative fees were paid. The application was perfectly valid at that stage. It is only when a date is set for hearing of the appeal that security is determined and an order for a deposit made. Lack of deposit does not lead to the nullity of the appeal but, in appropriate circumstances, to its desertion.

Desertion takes place when appellant is served with a notice of the sum to be deposited as security for costs, but fails to so act within the time period established by law. In this case, however, the Register of the Courts was under the impression that no security of costs was required as it reasoned that the appellant is a government entity in terms of Article 249(4) of the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta). The Court registrar was mistaken in his interpretation of this article which exempts

from depositing security the Government of Malta and public corporations, and no other entity – not even a public authority (vide **Azzopardi v. Awtorità dwar it-Trasport ta' Malta**, decided by this Court on the 25<sup>th</sup> November, 2016). The Kunsill Mediku is not a Government entity or department.

However, the fact remains that appellant was not served with a notice to deposit security of costs, and in fact no such security had been taxed. As a result the appeal cannot be declared to have gone deserted because this consequence, as previously pointed out, requires notice of security to be served on appellant.

The Court has now ordered the Registrar to duly tax the amount of security of costs to be deposited. This has been done. The Court now orders the Registrar to duly notify the appellant Kunsill Mediku with the amount so taxed and the appellant has 20 days from service to deposit the said amount of security. Failure to effect deposit as indicated will lead to automatic desertion of the appeal. If the security of costs (kawtela) is deposited as ordered, judgment on the merits of the appeal application will be delivered.

For the above reasons, the Court suspends the delivery of judgment on the appeal, with the case being put off to the 2nd March 2018, for the delivery of the said judgment, if security of costs is deposited as mentioned above.

The costs of this decision are to be borne equally by the parties.

Silvio Camilleri  
Chief Justice

Giannino Caruana Demajo  
Judge

Tonio Mallia  
Judge

Deputy Registrar  
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