



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn hamsa u ghoxrin (25) ta' Gunju 2018

Rikors Numru 231/15 FDP

Dr Simon Busuttil
(ID 242669M)

vs

Josef Caruana
(ID 150573M)

Il-Qorti:-

Rat ir-rikors promotur ipprezentat fl-4 ta' Awissu 2015 fejn ir-rikorrent talab lill-Qorti tikkundanna lir-rikorrent, bhala editur tal-gurnal It-Torca

(1) Previa li din l-Onorabbli Qorti tiddeciedi u tiddikjara li l-artikolu ppubblikat fuq il-gurnal 'L-Orizzont' fl-erbgha (4) ta' Awissu tas-sena elfejn u hmistax (2015) fl-ewwel (1), fir-raba (4) u fil-hames (5) pagna, intitolat fl-ewwel (1) pagna ' AFFIDAVITS IGIDDBU LIL SIMON BUSUTTIL ' li jkompli fuq ir-raba pagna bit-titolu 'IL-KAP TAL-PN IMGIDDEB MINN TA' GAFFARENA' kif ukoll fil-hames (5) pagna bit-titolu 'Simon Busuttil jiftah erba kawzi ta' libell waqt li jikkonferma li l-laqgħa saret' kien jikkontjeni allegazzjonijiet u insinwazzjonijiet inveritjieri, foloz u malafamanti fil-konfront tal-attur u li għandhom bhala skop li joffendu l-unur, ir-reputazzjoni u l-fama tiegħu u li jesponuh għar-redikolu u disprezz tal-pubbliku u/jew ihamngu r-reputazzjoni tiegħu, senjatament fejn gie allegat li " ... l-laqgħa ntalbet mill-PN stess u li fiha gie indikat li jekk Gaffarena jghaddilhom karti relatati ma' John Dalli u l-kaz tad-Daewoo li kien fl-ahbarjiet 20 sena qabel, kienu lesti jagħtuh il-permess li kien qed jinzamm mill-MEPA ...t-tmexxija tal-PN hadet id-decizjoni li ma tikkummentax dwar l-istorja li haregt dakinhar ...", kif ukoll numru ta' siltiet ohra li gew ippubblikati fl-imsemmi artikolu;

(2) *Tikkundanna lill-intimat sabiex ihallas lill-attur dik is-somma li tiffissa l-istess Onorabbli Qorti, liema somma ma teccedix l-ammont ta' hdax-il elf, sitt mija u sitta u erbgħin ewro (11,646.00) bhala danni b'applikazzjoni tal-Att dwar l-Istampa, Kap. 248 tal-Ligijiet ta' Malta.*

Rat l-artikoli meritu tal-kawza odjerna fejn, fil-faccata, hemm titolu ta' "**Affidavits igidbu lil Simon Busuttil**" u taht hemm ritratt ta' Dr Joseph Cassar u tal-harga tal-gazzetta it-Torca tat 2 ta' Awissu 2015 kif ukoll il-kliem:

'Wara stqarrija u erba' libelli mill-PN, Joe Gaffarena u ibnu Mark jieħdu gurament li kien Joe Cassar li talabhom imorru "bil-karti" jiltaqghu mal-Vici Kap fid-Dar Centrali ... jikkonfermw li dak li ntabu mill-PN kien jittratta l-kaz tad-Daewoo.'

L-artikolu ikompli fir-raba (4) pagna fejn, taht titolu "**Il-Kap tal-PN Imgiddeb minn ta' Gaffarena**", jingħad is-segħenti:

B'reazzjoni immedjata għal dak li -Kap Nazzjonalista Simon Busuttil iddikjara kontribom fi stqarrija pubblika f'it sigħat biss qabel, Joe Gaffarena u ibnu Mark ikkonfermaw l-istorja ta' "rikatt abbużiv" mill-PN fl-aħħar tal-2012 u lejliet l-Elezzjoni Generali meta l-poter kien għadu f'idejħ. Fl-istqarrija tiegħu filgħodu, Busuttil insista li l-istorja tat-TORCA, li kienet ukoll tinkludi r-reazzjoni uffiċjali tal-kelliem tiegħu, ma kienet xejn għajr invenzjoni mill-bidu sal-aħħar. Fl-istess hin habbar li kien fetħ b'kollox erba' libelli f'daqqa, ilkoll marbutin mal-istess storja, kontra t-TORČA, L-ORIZZONT u l-midja tal-Partit Laburista, ONE TV u ONE Radio li rrapportaw dak li gie ppubblikat il-Hadd.

Minbarra hekk, il-Kap tal-PN ha l-okkażjoni biex bl-istess azzjoni tiegħu jesponi lilu nnifsu bhala "certifikat li mhux biss jemmen f'politika nadifa, iżda jwettaqha".

Is-Sibt mistoqsi jikkonferma jew le kinitx saret lagħha fid-Dar Centrali lejliet l-aħħar elezzjoni ma' Joe u Mark Gaffarena u jekk iva x'kien diskuss, il-PN wiegeħ li iva kienet saret lagħha fuq talba tal-istess Gaffarena "fejn talab biex jingħata l-permess jiftaħ il-pompa tal-petrol". Talba li giet miħuda, skont il-kelliem.

Minkejja dan, sorsi qrib l-istess PN kienu informawna li l-lagħha ntabet mill-PN stess u li fiħa gie indikat li jekk Gaffarena jgħaddilhom karti relatati ma' John Dalli u l-kaz tad-Daewoo li kien fl-aħbarijiet 20 sena qabel, kienu lesti jagħtuh il-permess li kien qed jinżamm mill-MEPA, li dak iż-żmien kienet taqa' taht ir-responsabbiltà ta' Mario de Marco illum ukoll Viči Kap tal-PN.

Sorsi mhux uffiċjali li tkellmu ma' L-ORIZZONT il-Hadd żvelaw li t-tmexxija tal-PN hadet id-deċizjoni li ma tikkummentax dwar l-istorja li harget dakinħar. Fil-fatt f'intervent pjuttost twil fuq it-telefown fuq l-istazzjon radjufoniku tal- Partit tiegħu, Busuttil ma rrefera mkien għall-istorja, għalkemm semma diversi drabi lil membri tal-familja Gaffarena. L-istess gara tul il-jum kollu tal-Hadd. Kien biss ilbierah it-Tnejn li Bu-suttil hareg jattakka b'erba' libelli.

Ikkuntattjat mill-Kamra tal-Ahbarijiet taghna ghal darb'ohra Ibierah, Joe Gaffarena mhux biss ikkonferma li dak li qal lit-TORCA s-Sibt kien kollu minnu, izda "wara li Busuttil dawwar l-istorja ta' taht fuq" u tefaghha fuqu li kien hu (Gaffarena) li ried jiltaqa mieghu (ma' Busuttil) biex jirrangalu fil-kwistjoni tal- pompa, kien bihsiebu jiehu ġurament aktar tard, kif fil- fatt ghamel. Kopja taghhom intbaghtet lil L-ORIZZONT ilbierah filghaxija.

Fl-affidavit, Gaffarena jizvela anke dak li ma kkonfermax u lanqas cahad jumejn ilu u li jikkorrabora ma' dak li harget it-TORCA skont is-sorsi qrib il-PN. Jammetti li meta kien fid-Dar Centrali kien imcanfar mill-Ministru Cassar u l-Vici Kap Busuttil ghax ma hax "il-karti" relatati mal-eks-Ministru Nazzjonalista John Dalli u d-Daewoo. L-istess ikkonfermata l-indikazzjoni li ladarba ma kienx ipprovda dak li xtaqu, seta' jinsa li jkollu l-permess tal-MEPA revokat fuq il- pompa.

L-incident kollu fl-ufficcju ta' Busuttil fid-Dar Centrali hu mahluf f'affidavit iehor, izda iqsar, ta' ibnu Mark, li kien prezenti ghal-laggha lejn l-ahhar tal-2012.

Tali abbuż kien deskritt mit-TORCA l-Hadd li ghadda bhala rikatt.

Il-guramenti li hadu lbie-rah waranofsinhar il-missier u l-iben Gaffarena jikkonfermaw perfettament dak li gie rrapportat fit-TORCA. Ghalkemm is-Sibt li ghadda evita li jidhol specifikament fil-każ meta mistoqsi dwaru, Joe Gaffarena, negozjant maghruf, ikkonferma dak li gie żvelat b'mod esklussiv mill-gazzetta-oht u l-fatt li ntablab kummenti mill-Agent Editur innifsu, Josef Caruana, dwar l-istorja.

Ghall-ewwel darba, Gaffarena l-missier jghid li fil-perjodu li jigi "xi hames xhur qabel l-ahhar elezzjoni Dr Joe Cassar kien cempilli u talabni biex immur sal- kwartieri ġenerali tal-PN dakinhar stess u ftehmna ghal xis-1.00 p.m. u dan sabiex ilaqqagħni ma' Dr Simon Busuttil u kien talabni biex niehu mieghi l-karti kollha li kelli". Eżatt kif żvelat fit-TORCA, Joe Gaffarena jindika fl-affidavit li kellu l-impresjoni li f'dik il-laqgha l-PN kien li se jiddiskuti mieghu kif jista' jirrangalu għall-pompa tal-petrol, li l-Awtorità tal Ambjent u l-Ippjanar kienet inforzat l-gheluq tagħha minhabba irregolaritajiet, li għadhom pendenti u partijiet mill-istruttura għadhom ma jistgħux jintużaw, minkejja li wara l-elezzjoni li għaddiet ingħata permess li tista' topera l-użu tal-pompi tal-petrol u servizzi oħrajn.

"Jiena dakinhar tal-laqgha kont hadt mieghi ibni Mark u meta konna wasalna (id-Dar Centrali), Dr Joe Cassar kien laqagħna hdejn il-lift u dahhalna fl-ufficcju ta' Dr Simon Busuttil."

"Meta dhalna gewwa, Dr Joe Cassar innota li ma kelli xejn fidi u staqsieni ghala gejt ghal-laqgha mingħajr il-karti li kien talabni. Jien kont ghedtlu x'karti ried? Mhux kollox kien jaf dwar il-pompa? Dr Cassar qalli mhux dawk il-karti ridtek iggib imma dawk li għandek fuq John Dalli u tad-Daewoo," jghid Gaffarena fl-affidavit.

"Dr Simon Busuttil hares lejn Joe Cassar u bir-rabja qabad u qam minn fuq il-mejda u qalilna 'Is-Sur Gaffarena jaf x'ghandu jagħmel, biex jiftah!' Il-laggha spiccat hesrem dak il-hin stess u jien u ibni hrigna mill-ufficcju ta' Busuttil," kompli n-negozjant, filwaqt li cahad kategorikament li kien hu li talab li ssir il-laggha u/jew li kien hu li talab li Busuttil jirrangalu biex tinfetah il-pompa tal- petrol f'Hal Qormi.

Fi tmiem l-affidavit Gaffarena wkoll jichad li qatt talab lill-Partit Laburista biex jiffavorih f'xi haga.

Fir-raba pagna tal-gurnal, biswit l-artikolu fuq riprodott, kien miktub artikolu iehor illi tieghu r-rikorrent qieghed jilmenta, intitolat “**Simon Busuttil jifjah erba kawzi ta' libell waqt li jikkonferma li l-laqgha saret.**”

L-artikolu kien jghid li gej:

Il-Kap tal-Oppożizzjoni Simon Busuttil ilbierah ipprezenta erba' kawzi ta' libell fil-Qorti kontra l-gazzetti tal-GWU, L-ORIZZONT u t-TORČA u l-istazzjonijiet tal-Partit Laburista, ONE TV u ONE Radio. B'referenza ghall-istorja tat TORCA, Busuttil sostna li din hija gidba mill-bidu sal ahhar bhalma huma l-features li nhargu fuq ONE TV u ONE Radio, u artiklu iehor f' L-ORIZZONT dwar l-istess storja.

Il-Kap tal-PN qal li jhossu "kburi li lil Gaffarena kelli l kuragg nghidlu le, meta Itqajt mieghu qabel l-ahhar elezzjoni fuq talba tieghu stess u talabni li jinhariglu permess ghall-pompa tal petrol mibnija illegalment"

Filwaqt li b'hekk ikkonferma li l-laqgha saret, kif żvelat it-TORCA l-Hadd li ghadha, fuq talba tal-istess Gaffarena, Busuttil qal li ghemilu "huwa certifikat li mhux biss nemmen f'politika nadifa, izda nwettagha".

Busuttil kompla jghid li "kien proprju ghax ahna (PN) ghidnilu le, li Gaffarena dar mal-Partit Laburista, partit bla sinsla, li tah kull ma talbu.

Taht Gvern Laburista, Gaffarena jiehu li jrid: minn permess ta' pompa tal-petrol mibnija illegalment sa miljuni ta' ewro ghal nofs dar fi Strada Zekka l-Belt.

U li kieku ma kienx ghall midja indipendenti li kixfithom, kienu se jaghmlu istess bl-Ghassa tal-Pulizija tal-Belt. Din hija korruzzjoni istituzzjonalizzata." Il-Kap tal-PN rega' sostna li din hija gidba u qal li fetah dawn il-kawzi ta' libell ghax ma jibżax mill-verità.

B'reazzjoni ghall-kawzi miftuha minn Busuttil b'rabta mal-istorja ewlenija ppubblikata fil-gazzetta t- TORCA nhar il-Hadd li ghadha, bit-titlu "Rikatt abbużiv Nazzjonalista" l-Editur tal-gurnal L-ORIZZONT u l-Agent Editur tat-TORČA, Josef Caruana, qal li l-istorja kkoncernata dwar laqgha li saret fid-Dar Centrali f'Tal-Pietà,"kif ikkonfermata mill-PN stess f'reazzjoni li ntalbet mill-Kamra tal-Ahbarijiet tal-Union Print lill-ufficjali tieghu s- Sibt u li l-istess twegiba xotta giet ippubblikata fl-inter taghha bhala parti mill-ist-ess artiklu originali."

Caruana sostna li l-gurnali se jzommu ma' dak kollu li gie mxandar fl-istess storja bbazata fuq taghrif minn sorsi affidabbli qrib il- PN.

"Kull taghrif iehor li nkiseb minn mistoqsijiet li saru lis-Sur Joe Gaffarena, li kien prezenti ghal-laggha ma' Busuttil, flimkien ma ibnu Mark, u Joe Cassar, li dak iż-żmien kien il-Minis- tru tas-Sahha, gie ppubblikat," qal l-Editur ta'. L ORIZZONT.

Ghall-gid tad-demokrazija lokali, kompla jghid Caruana, u ghax ahna nemmnu fid-dritt tal-poplu li jkun mgharraf b'dak kollu ta' interess pubbliku, ahna wkoll irridu li tohrog

il-verità, li jidher li hafna minnha ghad ha mistura sew fil-każ u anke f'kull reazzjoni li hemm jew seta' kien hemm bejn il-familja Gaffarena u l-PN.

"Dan ukoll nemmnu li jista' jitfa aktar dawl fuq il- mod u t-tip ta' reazzjonijiet tal-PN illum, immexxi minn Busuttil innifsu."

MINFLOK SPJEGA X'GARA, BUSUTTIL JATTAKKA L-MESSAGĠIER

Il-Partit Laburista fi stqarrija qal lil-istorja gurnalistika ta' it-TORCA kixfet kif il-Kap tal-Oppożizzjoni Itaqa ma membru tal-familja Gaffarena lejlet l-elezzjoni generali, xi haga li l-istess Simon Busuttil qatt ma qal.

Il-Partit Laburista qal li l-Hadd filghodu Simon Busuttil ghamel nofsiegħa jghajjar lil kulhadd, izda ma hax żewg minuti biex jispjega x'gara f' dik il-lagħha jew biex jichadha.

"Ilbierah fetah numru ta' libelli, mingħajr ma spjega jew qal dak li gara f'dik il-lagħha, minkejja li jidher li hemm verżjonijiet kunfliggenti bejn dak li qed jghid hu u dak li qed jghid had diehor li kien f'dik il-laqħha.

Dan il-każ ifakkarna fuq kif Simon Busuttil l-ewwel cahad li Itaqa' mal-whistle-blower dwar il-każ ta' Giovanna Debono Biex imbagħad il-whistle-blower kixfu li mhux talli Itagħhu gewwa d-Dar Ċentrali izda talli l-Kap tal Oppożizzjoni minflok bagħtu għand il-Pulizija qallu li ma jmissux kompli x xogħol ladarba kien jaf li l-PN se jitlef l-elezzjoni generali".

Il-Partit Laburista temm jghid li "Min jitfa' l-hmieg, se jsibu wara biebu"

Rat ir-risposta ta' l-intimat ippresentata fl-24 ta' Awissu 2015 fejn laqa' għal dak mitlub billi qal is-segwenti:

- 1. Il-kitba in kwistjoni tikkontjeni fatti u ahbarijiet u xi osservazzjonijiet dwar dawn li jaqghu taht "value judgement" li mieghu il-qarrej hu hieles li jaqbel jew ma jaqbilx.*
- 2. Il-kwistjoni "Gaffarena", kif saret illum magħrufa, hi oggett ta' nteress liku li gibed l-attenzjoni ta' diversi nhawi u jista' jingħad tal-pajjiz kollu. Din hi kwistjoni li tqajjmet mir-Rikorrent stess u mill-kollegi politici tieghu (kif kellhom dritt) u l-esponent fdan ir-rigward qeda dmiru lejn il- qarrejja tieghu billi għarrafhom b'fatti li sar jaf bihom liema dmir jikkorrispondi mad-dritt tal-qarrejja li jkunu mgharrfa bl-istess.*
- 3. Illi llum dejjem qed izjed jigi konoxxut is-siwi, f'demokrazija, tal-gurnalizmu investigativ u gwaj jekk dan jigi mfixkel jew jinstadd il-halq. Fl-istess waqt hi llum gurisprudenza kostanti li min jiddeciedi li jidhol fil- tista titqies insolenti (dejjem f'certu qies) ecc.*

Rat illi fil 15 ta' Ottubru 2015 il-partijiet qabblu illi l-provi migbura fil-kawza 227/15 fl-ismijiet 'Simon Busuttil vs Josef Caruana' għandhom japplikaw għal kaz odjern ukoll.

Rat l-affidavit ta' **Dr Simon Busuttil**, ippresentat fit-19 ta' Novembru 2015.

Semghet ix-xhieda ta' **Dr Joseph Cassar**, moghtija fis-7 ta' April 2016, u prodott mir-rikorrenti, in ezami u kontro ezami.

Rat illi fis 7 ta' April 2016 ir-rikorrenti ddikjara illi ma kellux aktar provi x'jippresenta.

Semghet ix-xhieda ta' **Josef Caruana** moghtija fis-6 ta' Ottubru 2016.

Ra l-affidavit ta' **Joseph Gaffarena** u ta' **Marco Gaffarena** ppresentat mill-intimat fix-xhieda tieghu u li tinstab inserita fil-process 231/15 fl-ismijiet 'Dr Simon Busuttil vs Josef Caruana' (fol 33 u 35) illi qieghda tigi deciza flimkien mal-kawza odjerna.

Semghet ix-xhieda ta' Joseph Gaffarena, moghtija fis-16 ta' Frar 2017 u prodott mill-intimat, in ezami u kontro ezami.

Semghet ix-xhieda ta' Marco Gaffarena, moghtija fl-24 ta' April 2017 u prodott mill-intimat, in ezami u kontro ezami.

Semghet ix-xhieda ulterjuri ta' **Dr Joseph Cassar**, moghtija fl-20 ta' Novembru 2017, u prodott mir-rikorrenti, in ezami u kontro ezami.

Rat illi fl-20 ta' Novembru 2017 il-partijiet ddikjaraw illi ma kienx hemm provi ohra x'jippresentaw.

Semghet is-sottomissjonijiet orali tal-abbli difensuri taz-zewgt partijiet moghtija fl-10 ta' Mejju 2018, wara liema data il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrenti, Dr Simon Busuttil, meta gew ppubblikati l-artikoli meritu tal-kawza odjerna, kien Kap tal-Partit Nazzjonalista u Kap tal-Opposizzjoni tal-gurnata.

Jirrizulta wkoll illi qabel l-Elezzjoni Generali tas-sena 2013, huwa kien Vici Kap tal-Partit Nazzjonalista.

Jirrizulta illi fil-periodu meta gew ippubblikati l-artikoli meritu tal-kawza odjerna, kienu qieghdin jigu rappurtata stejjer fuq il-mezzi tax-xandir illi kienet tinvolvi lill-familja Gaffarena, wahda illi kienet tirrigwarda l-ghoti ta' permess ghall-pompa tal-petrol gewwa Hal-Qormi lill Joseph Gaffarena u ohra illi kienet tirriwguarda l-akkwist da' parte ta' Marco Gaffarena ta' sehem ta' binja gewwa Strada Zekka, il-Belt, liema storja spiccat kemm fuq il-mezzi tax-xandir kif ukoll fil-Qrati.

Jirrizulta illi fit-tnejn (2) ta' Awissu 2015, il-gazzetta ta' nhar ta' Hadd, it-Torca, tellghet storja fil-faccata taghha u kompliet fid-disgha pagna, fejn allegat illi r-rikorrent Simon Busuttil, qabel l-elezzjoni tas-sena 2013, talab illi jiltaqa' mal-familja Gaffarena, precizament Joe Gaffarena u Marco Gaffarena, sabiex jinghata informazzjoni da' parte ta' l-istess Gaffarena dwar il-kaz tad-Daewoo illi kien sehh ghoxrin sena qabel, biex ikun jista jattakka politikament lill John Dalli -dana il-kaz huwa l-meritu tal-kawza 227/15 fl-ismijiet '*Simon Busuttil vs Josef Caruana*' Rik Nru 227/15 illi qed jigi deciz kontestwalment mal-kawza odjerna.

Jirrizulta illi, tali storja eventwalment giet irrappurtata fuq il-One News, li hija l-meritu tal-kawza Rik Nru 230/15 – ‘*Simon Busuttil vs Aleander Balzan*’ u fuq il-‘One Radio’, li hija l-meritu tal-kawza Rik Nru 229/15 – ‘*Simon Busuttil vs Aleander Balzan*’, liema kawzi qed jigu decizi kontestwalment mal-kawza odjerna.

Jirrizulta wkoll illi tali storja giet ukoll irrappurtata fil-gurnal l-Orizzont tat-3 ta’ Awissu 2015, liema artikolu huma l-meritu ta’ Rik Nru 228/18 fl-isem ‘*Simon Busuttil vs Josef Caruana*’, liema kawza qed tigi deciza kontestwalment mal-kawza odjerna.

Ikkunsidrat

Jirrizulta illi, fil-proceduri odjerni, xehdu, apparti z-zewgt partijiet, Dr Joseph Cassar prodott mir-rikorrent, Joseph Gaffarena, li tieghu gie ppresentat wkoll affidavit datat 3 ta’ Awissu 2015, ossija dakinhar illi gie ppubblikat l-artikolu meritu tal-kawza odjerna, u Marco Gaffarena, dawn it-tnejn ta’ l-ahhar prodotti mill-intimat.

Jirrizulta illi, skond ma jintqal fl-artikoli meritu tal-kawza odjerna, ir-rikorrent, meta kien ghadu Vici Kap tal-Partit Nazzjonalista u qabel l-Elezzjoni Generali ta’ Marzu 2013, kien talab specifikament sabiex jiltaqa’ ma’ Joseph u Marco Gaffarena, missier u iben, u kien inkariga lill Dr Joseph Cassar, dak iz-zmien Ministru tas-sahha fil-Gvern tal-gurnata immexxi mill-Partit Nazzjonalista, sabiex jirringa tali laqgħa.

Jirrizulta, skond kif allegat, illi l-laqgħa kienet intiza da’ parte tar-rikorrent sabiex l-familja Gaffarena tipproducilu dokumentazzjoni izda illi l-familja Gaffarena ma gabitlu ebda dokumentazzjoni filwaqt insistiet illi r-rikorrenti, bhala Vici Kap tal-Partit Nazzjonalista u bhala pjacir fil-periodu ta’ qabel l-Elezzjoni Generali, kellu jghinhom sabiex jigibu l-permess għall-pompa tal-petrol gewwa Hal Qormi, liema permess il-MEPA kienu qed jirrifjutaw illi jagħtuh.

Jirrizulta, skond dak miktub fl-artikoli, illi r-rikorrent “*Wara stqarrija u erba’ libelli mill-PN, Joe Gaffarena u Ibnu Mark jieħdu gurament li kien Joe Cassar li talabhom imorru “bil-karti” jiltaqgħu mal-Vici Kap fid-Dar Centrali ... jikkonfermw li dak li ntabu mill-PN kien jittratta l-kaz tad-Daewoo.*”

Ikkunsidrat

Dr Joseph Cassar, prodott mir-rikorrent, jikkontendi illi f’laqgħa illi huwa kellu ma’ Joseph Gaffarena, dana kien talbu li jirringalu laqgħa mar-rikorrent Dr Simon Busuttil, liema laqgħa huwa kien ha hsieb illi jirringa, u li saret gewwa d-Dar Centrali tal-Partit Nazzjonalista, għal liema laqgħa Joseph Gaffarena attenda għaliha wahdu flimkien ma’ Dr Joseph Cassar u r-rikorrent.

Jirrizulta, skond Dr Cassar, illi Joseph Gaffarena ried jiltaqa’ mar-rikorrent sabiex jiddiskuti l-problema tieghu relatata mar-rifjut tal-hrug ta’ permess għall-pompa tal-petrol ta’ Hal Qormi illi huwa kellu, u Gaffarena intalab minn Dr Cassar igib mieghu d-dokumentazzjoni kollha in konnessjoni ma’ tali pompa u l-permessi illi huwa kien qieghed jitlob.

Jirrizulta illi, skond Dr Cassar, waqt il-laqgħa, Joseph Gaffarena lmentha mieghu dwar il-posizzjoni mehuda mill-MEPA kontra l-pompa tal-petrol tieghu u, skond Dr Cassar, ir-risposta ta’ Dr Busuttil kienet lill Joseph Gaffarena: “*kien jaf x’inhuma l-affarjiet li kellu jagħmel biex he puts himself in order with MEPA.*”

Jirrizulta, dejjem skond Dr Cassar, illi iben Joseph Gaffarena, Marco Gaffarena, ma kienx presenti, u fl-ebda mument waqt il-laqgħa ma saret referenza għall-kwistjoni tad-Daewoo u John Dalli u Joseph Gaffarena qatt ma ntaġlab jipproduci dokument in konnessjoni mad-Daewoo.

Ikkunsidrat

Jirrizulta illi Joseph Gaffarena, fix-xhieda tiegħu, kif ukoll ikkonfermat fl-affidavit tiegħu miktub min-nutar peress illi huwa stqarr li ma jafx jikteb, huwa jagħti s-segħwenti verżjoni tal-fatti:

Għedtlu (lill Marco Gaffarena) “imxi miegħi għedtlu għax iriedna Simon Busuttil. Għedtlu nahseb li ser jagħtuna l-permess tal-pompa,” jien. U jiena morna, kif dħalt, mejda kbira hekk. Cassar hawn fit-tarf tagħha, jien hawn, it-tifel tiegħi hdejjja, u Simon bilqiegħda hekk quddiemna. Qalli “mela ma gibthomx il-karti?” Għedtlu “x’ karti huma?” Qalli “mhux tad-Daewoo!” Għedtlu “jien hsibt li l-karti tal-pompa. Id-Dawoow x’ għandha x’ taqsam?”, jien. “Ta’ John Dalli ta’ John Dalli”. Għedtlu “jiena x’ għandi x’ naqsam f’ dawn l-affarijiet? Għedtlu jien fuq il-pompa għandi x’ naqsam, dak li jinteressani, mhux minn John Dalli!” Qam Simon minn bilqiegħda u qal “għax is-Sur Gaffarena jaf x’ għandu jagħmel.” Għedtlu “min qallek li ma nafx x’ għandi nagħmel?” Għedtlu “bye”. U talqt ‘il barra. Dik l-istorja.

Jirrizulta illi, fix-xhieda ta’ Joseph Gaffarena, huwa jikkontendi illi lill-Partit Nazzjonalista huwa kien ta hafna flus “biex ngħinhom għal partit dak iz-zmien” u “tlett xhur qabel (il-laqgħa mar-rikorrenti) tajthom għoxrin elf. Tliet xhur qabel, hadhomli ta’ xejn il-familja tiegħi!”

Jirrizulta illi, mitlub jgħid jekk kienx qed jippretendi illi l-Partit Nazzjonalista johroglu l-permess tal-pompa tal-petrol ta’ Hal Qormi, huwa jgħid is-segħwenti:

Ma’ hadd iehor mhux hekk għamlu? Tahulhom il-permess. Mhux ser noqgħod insemmi lil min. Ma jinteressani minn hadd jien. Imma kulhadd jaf min huma. Daqs kemm taw.

Jirrizulta, finalment, illi dejjem skond Joseph Gaffarena, illi wara l-Elezzjoni Generali, il-permezz tal-pompa tal-petrol inhariglu, għalkemm kellu jagħmel garanzija ta’ nofs miljun Euro.

Dwar ir-rikorrent, Joseph Gaffarena kellu dan x’jgħid:

“Dejjem jattakkani familjari, personali, familja. Mill-pedament sa fuq. Il-familja x’ tahti? Għalfejn dejjem jattakka l-familja tiegħi? Ma għandux hu familja x’ jara? Ma għamilx zbalji mal-familja tiegħu? Jien ma għamiltx wiehed. Wiehed. Imma hu għamel kemm għamel ..!

...

Tiegħi jara? Tagħna jara? Lilna jattakka l-hin kollu!? Dahhal lilna u għadu jattakkana s’ issa u l-pompa qiegħda magħluqa. Għaliex? Għandi daqshekk tfa! X’ jagħmlu t-tfa! Imorru jitgħallqu kollha?! U jien magħhom l-ewwel wiehed?!

...

...il-pompa jien. Barra li hadu huma l-eluf ta' liri kbar."

Jirrizulta illi Marco Gaffarena, fix-xhieda tieghu, dwar il-laqgħa jghid illi huwa kien presenti dakinhar tal-laqgħa flimkien ma' missieru, Joseph Gaffarena, u Dr Joseph Cassar, u dwar il-laqgħa qal li jmiss:

Kien hawn sufan hawn Sur Magistrat, sufan hawn u sufan hawn, u kien hawn mejda baxxa hawnhekk. Simon Busuttil qam minn fuq is-sufan; imma mhux minn fuq il-mejda! Hadd ma qam minn fuq il-mejda.

Jirrizulta illi, konfrontat bil-fatt illi missieru, Joseph Gaffarena, stqarr illi ltaqgħu madwar mejda, Marco Gaffarena jghid is-segwent:

Jekk il-mejda kienet madwar is-sufan tagħmel allura innehhi l-mejda min-nofs?! Mela l-ufficju tiegħi! (jidhaq) la kienet hemm! Jien x' naghmlilha?

Da zgur li tad-dahq. Taf fejn mhix tad-dahq x' hin kont intihom l-ghaxart elef...

Ma tghidhiex meta kienu icempluli ghaxar elef - ghaxart elef biex jagħtuni permess; ghida dik; ghiduha. Il-hin kollu jemplu.

Ikkunsidrat

Qabel ma l-Qorti tghaddi biex tagħmel l-apprezzament tal-provi tagħha w l-konkluzjonjiet minnha milhuqa, ikun opportun illi jigu kkunsidrat l-elementi legali tad-difiza ta' l-intimat.

Jirrizulta, mill-eccezzjonijiet mqajjma mill-intimat bhala editur tal-gurnal, li d-difiza mqajjma mill-intimat kienet principalment dik ta' "fair comment" dwar persuna involuta fil-politika, bhalm huwa r-rikorrent, li huwa Kap tal-Opposizzjoni, liema kritika setgħet tkun oghla, u anke iebsa kif ukoll dwar id-dover illi huwa kellu, bhala gurnalist, illi jwassal ahbar lill-qarrejja sabiex jigi interpretat minnhom.

L-intimat jistqarr illi bhala editur ezercita d-diligenza rikjesta mill-ligi filwaqt illi sahaq li l-artikolista kellu d-dritt tikkummenta dwar l-operat tar-rikorrent.

Dwar tali id-dritt, fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, saret referenza għall-principji generali li jirregolaw il-liberta' ta' l-espressjoni w il-gurnalist, kif ukoll introduciet serje ta' kriterji li kellhom jigu kkunsidrati sabiex jigi meqjus il-bilanc li għandu jittlaħaq bejn il-liberta' ta' l-espressjoni u d-dritt tal-individwu privat li jkollu r-reputazzjoni tiegħu protetta, fejn qalet is-segwent:-

78. *Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.*

Dwar ir-rwol li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tkompli biex tghid is-segwent:

79. *The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".*

.....

Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. (sottolinear ta' dina l-Qorti)

81. *Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case.*

Tali rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, madanakollu, ghandu jigi bilancjat bi drittijiet u obbligi illi l-istess gurnalist, fil-qadi ta' dmirijietu, ghandu josserva u, di fatti, il-Qorti Ewropea, dwar tali doveri da' parte tal-gurnalist, tghid hekk:

82. *However, Article 10 § 2 of the Convention states that 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.*

Biex jigi accertat jekk intlahaqx bilanc bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fl-istess decizjoni fuq

imsemmija, tghaddi biex issemmi sitt kriterji importanti illi ghandhom jitqiesu sabiex jigi assikurat li, kif tghid il-Qorti, "*the right to freedom of expression is being balanced against the right to respect for private life*".

Dawna l-kriterji kif stabbiliti huwa s-segwenti:

(a) Contribution to a debate of general interest

90. An initial essential criterion is the contribution made by photos or articles in the press to a debate of general interest. The definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court nevertheless considers it useful to point out that it has recognised the existence of such an interest not only where the publication concerned political issues or crimes, but also where it concerned sporting issues or performing artists. However, the rumoured marital difficulties of a president of the Republic or the financial difficulties of a famous singer were not deemed to be matters of general interest

(b) How well known is the person concerned and what is the subject of the report?

91. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one. In that connection a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures. A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions.

Whilst in the former case the press exercises its role of “public watchdog” in a democracy by imparting information and ideas on matters of public interest, that role appears less important in the latter case. Similarly, although in certain special circumstances the public’s right to be informed can even extend to aspects of the private life of public figures, particularly where politicians are concerned, this will not be the case – even where the persons concerned are quite well known to the public – where the published photos and accompanying commentaries relate exclusively to details of the person’s private life and have the sole aim of satisfying the curiosity of a particular readership in that respect. In the latter case, freedom of expression calls for a narrower interpretation.

(c) Prior conduct of the person concerned

92. The conduct of the person concerned prior to publication of the report or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration. However, the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the report or photo at issue.

(d) Method of obtaining the information and its veracity

93. *The way in which the information was obtained and its veracity are also important factors. Indeed, the Court has held that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism.*

(e) Content, form and consequences of the publication

94. *The way in which the photo or report are published and the manner in which the person concerned is represented in the photo or report may also be factors to be taken into consideration. The extent to which the report and photo have been disseminated may also be an important factor, depending on whether the newspaper is a national or local one, and has a large or a limited circulation.*

(f) Severity of the sanction imposed

95. *Lastly, the nature and severity of the sanctions imposed are also factors to be taken into account when assessing the proportionality of an interference with the exercise of the freedom of expression.*

Ghandu jigi osservat ukoll illi, kif intqal fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll, il-politiku huwa soggett ghall-livell ta' kritika ferm oghla minn-normal, u di fatti, s-sentenza tghid:-

Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

Kif gie osservat fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, id-dritt tal-liberta' ta' l-espressjoni, li giet invokata mill-intimat, giet ikkunsidrata kif gej:

78. *The fundamental principles concerning the question whether an interference with freedom of expression is “necessary in a democratic society” are well established in the Court’s case-law and have been summarised as follows:*

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

.....

79. Furthermore, the Court reiterates the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments.

80. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life.

81. When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8.

82. The Court has found that, as a matter of principle, the rights guaranteed under Articles 8 and 10 deserve equal respect, and the outcome of an application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher of an offending article or under Article 8 of the Convention by the person who has been the subject of that article. Accordingly, the margin of appreciation should in principle be the same in both cases.

83. The Court has considered that where the right to freedom of expression is being balanced against the right to respect for private life, the relevant criteria in the balancing exercise include the following elements: contribution to a debate of general interest, how well known the person concerned is, the subject of the report, the prior conduct of the person concerned, the method of obtaining the information and its veracity, the content, form and consequences of the publication, and the severity of the sanction imposed.

Tali principju kif fuq enuncjat reggha gie ripetut fil-kawza **Erla Hlynisdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricentement, ossija fil 21 ta' Ottubru 2014, fejn intqal is-segweni:

62. The protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism . Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it “duties and responsibilities” that also apply to the media, even with respect to matters of serious public concern. Those “duties and responsibilities” are significant 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.

Fl-istess decizjoni, il-Qorti ghamlet is-segweni osservazzjonijiet dwar id-difiza ta' 'fair comment' imqajma mill-intimat, maghrufa bhala 'value judgment' quddiem il-ECHR:

A fundamental distinction should be made between statements that are to be categorized as factual assertions and value judgments. In its contextual examination of the disputed statement as a whole, the Court must carry out its own evaluation of the impugned statement. Furthermore, the Court has acknowledged that the distinction between value-judgments and statements of fact may be blurred, and that the issue may need to be resolved by examining the degree of factual proof.

Dana l-argument huwa rifless anke fid-decizjoni illi l-istess Qorti kienet tat fil-kawza **Sizma vs Hungary** deciza f'Ottubru 2012 fejn intqal is-segweni:

"The Court would add that in order to assess the justification of the statements in question, a distinction needs to be made between statements of fact and value judgments, in that, while the existence of facts can be demonstrated, the truth of value judgements is not susceptible of proof. The requirement to prove the truth of a value judgment is generally impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. The classification of a statement as a fact or a value judgment is a matter which, in the first place, falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it may be."

Dwar 'fair comment', imbgħad, **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, intqal is-segwententi :

... dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehntieg li min jistrieħ fuqha jsehħlu 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; (c) il-kumment irid jintwera li jkun gustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bhala kritika u mhux zebliħ, tghajjir jew insolenza; u (e) irid jaghti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegga' lil dak li jkun.

Tali taghlim huwa anke rifless f'gurisprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl-1 ta' Dicembru 2010, Lord Phillips ghamel is-segwententi konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

A subsidiary but important issue was what it was that a defendant had to prove in order to establish the defence of fair comment. Counsel for the plaintiff submitted that the 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.

Ikkunsidrat

Jirrizulta illi, fl-artikoli meritu tal-kawza odjerna, illi l-allegazzjoni illi saret fil-konfront tar-rikorrent kienet illi huwa ma kienx qieghed jaghti spjegazzjoni ghaliex qal lill-familja Gaffarena illi biex jottjenu il-hrug tal-permess tal-pompa tal-petrol tagghom gewwa Hal Qormi kelhom jaghtuh materjal biex jaghmel hsara lill ex-Ministru John Dalli.

Jirrizulta, illi l-intimat ibbaza l-istorja tieghu fuq sors anonimu illi taht tali informazzjoni, liema informazzjoni sussegwentement giet ikkonfermata minn Joseph Gaffarena meta sar kuntatt mieghu.

Jirrizulta ukoll illi wara il-pubblikazzjoni originali tat 2 ta' Awissu 2016 w ir-reazzjoni tar-rikorrent, Joseph Gaffarena u Marco Gaffarena ghamlu affidavit redatt mill-Avukat taghhom Dr Keith Bonnici u mahluf quddiem in-Nutar taghhom n-Nutar Mario Bugeja.

Din il-Qorti tosserva illi kellha l-opportunita illi tisma viva voce l-verzjoni tal-fatti moghtija minn Dr Joseph Cassar, li kien il-persuna li ha hsieb li organizza tali laqgħa, u lill Joseph Gaffarena u Marco Gaffarena, u setghet tiehu qies tal-komportament tax-xhieda fuq il-pedana tax-xhieda u l-attitudni taghhom lejn, kemm il-Qorti kif ukoll id-difensur tar-rikorrent, u abbazi ta' dan tista, minghajr ebda esitazzjoni tghid illi l-verzjoni tal-fatti kif moghtija minn Dr Joseph Cassar huma ferm aktar kredibbli u veritjeri minn dawk moghtija minn Joseph u Marco Gaffarena.

Il-Qorti tasal għal tali konkluzjoni in vista tal-fatt illi, filwaqt illi Dr Cassar kien konsistenti fix-xhieda tieghu u fil-verzjoni tal-fatti minnu moghtija, s-sinjuri Gaffarena, għalkemm missier u iben, jidher illi ma' kienux ppreparaw rwiehom sew meta taw ix-xhieda taghhom viva voce, problema illi huma ma kellhomx jiffaccjaw meta ghamlu l-affidavit taghhom li gie għalihom redatt u ffirmat mill-konsulenti legali taghhom.

Dana qieghed jinghad għax, filwaqt illi Joseph Gaffarena jikkontendi fix-xhieda tieghu viva voce illi huma dahhlu gewwa kamra fejn kien hemm mejda kbira u ltaqgħu madwar mejda, Marco Gaffarena, illi allegatament kien presenti għall l-istess laqgħa, jghid fix-xhieda tieghu viva voce illi huma dahhlu u qagħdu bilqieghda fuq sufanijiet u l-aqgħa saret madwar sufanijiet u, meta Marco Gaffarena kien konfrontat mill-fatt illi missieri qal li ltaqgħu madwar mejda, huwa pprova jsalva l-posizzjoni tieghu billi jghid illi kien hemm mejda bejn is-sufanijiet.

Għalkemm tali dettall jista jagħti kaz illi huwa wiehed minimu u insignifikanti, il-Qorti ma tistax ma tosservax illi huwa f'tali dettall u fin-nuqqas ta' korroborazzjoni ta' tali dettall illi johrog car jekk ix-xhieda humiex qed jghidu l-verita' jew inkella qieghdin jivvintaw storja sabiex jagħmlu hsara lill persuna.

Il-Qorti bla ebda esitazzjoni ma għandha ebda dubju illi l-verzjoni tal-fatti moghtija minn Joseph u Marco Gaffarena ma hijiex veritjera u hija verzjoni tal fatti dettata mill-mibgheda illi l-istess Gaffarena għandhom fil-konfront tar-rikorrent Dr Simon Busuttil u l-Partit Nazzjonalista li tieghu huwa kien Vici Kap dak iz-zmien, u dana peress illi kienu qed jirrifjutaw illi jagevolawh u johorgulu l-permess tal-MEPA għall-pompa tal-petrol illi attwalment il-MEPA kienu għalqulu għax kien bena sular aktar minn dak lilu permess.

Il-Qorti tosserva illi, kif johrog car mix-xhieda, l-familja Gaffarena ppretendiet illi la darba hallset hafna flus lill Partit Nazzjonalista, saħansitra ammont ta' ghoxrin elf Euro ffit gimghat qabel il-laqgħa, huma kienu qed jistennew illi jinhargilhom il-permess illi kellhom bzonn, u talli tali permess ma harigx, huma kienu disposti illi jagħmlu allegazzjonijiet inveritjeri, anke bil-gurament.

Għaldaqstant, johrog car illi l-bazi tal-artikoli meritu tal-kawza odjerna, ossija l-verzjoni tal-fatti ta' Joseph Gaffarena, ma hijiex sostanzjalment vera u, anzi, hija totalment kontradetta kemm mir-rikorrent u, aktar u aktar, minn Dr Joseph Cassar, illi kien il-persuna illi laqqa lill Joseph Gaffarena mar-rikorrent u li kien presenti dakinhar.

Il-Qorti thoss, f'dana l-istadju, illi għandha tagħmel referenza għal dak 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.

Kif gie ukoll osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Engineer Anthony Bezzina vs Josef Caruana**' deciza fl-10 ta' Marzu 2017,

Filwaqt li gurnalist ghandu kull jedd u anzi dmir li jirrapporta grajjiet ta' interess pubbliku, pero' ghandu jaqdi dmirijietu in bona fede u m'ghandux jedd jakkuza persuna b'fatti li ma jkunux veri. Id-dritt tal-liberta ta' espressjoni mhuwiex dak li tivvinta .

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi seghet it-trattazzjoni orali ta' l-abbli difensuri tal-partijiet,

Wara illi ghamlet il-konsiderazzjonijiet kollha taghha kif fuq spjegat,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimat,

Tilqa t-talba tar-rikorrent kif dedotti u

Tiddikjara il-kontenut ta' l-artikolu ppubblikat fuq il-gurnal 'L-Orizzont' fl-erbgha (4) ta' Awissu tas-sena elfejn u hmistax (2015) fl-ewwel (1), fir-raba (4) u fil-hames (5) pagna, intitolat fl-ewwel (1) pagna '**AFFIDAVITS IGIDDBU LIL SIMON BUSUTTIL**' li jkompli fuq ir-raba pagna bit-titolu '**IL-KAP TAL-PN IMGIDDEB MINN TA' GAFFARENA**' kif ukoll fil-hames (5) pagna bit-titolu '**Simon Busuttil jiftah erba kawzi ta' libell waqt li jikkonferma li l-laqgha saret**' li tieghu l-intimat kien l-editur u ghalhekk responsabbli, bhala libelluz u malafamanti fil-konfront tar-rikorrenti u ghalhekk

Tikkundanna, a tenur ta' l-artikolu 28 tal-Kap 248, lill-intimat ihallas lir-rikorrent is-somma komplessiva ta' elfejn Euro (€2,000) in linea ta' danni sofferti minnu rizultat tal-pubblikazzjoni ta' l-istorja fuq imsemmija.

Spejjez tal-proceduri odjerni ghandhom ikunu a kariku ta' l-intimat

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur