

Court Of Appeal

Judges

**THE HON. CHIEF JUSTICE JOSEPH AZZOPARDI
THE HON. MR. JUSTICE TONIO MALLIA
THE HON. MR. JUSTICE MARK CHETCUTI**

Sitting of Friday 14th December 2018

Number: 1

Application Number: 134/18 JRM

Isabella Zananian Desira

v.

Kunsill Mediku

The Court:

This is an application by the Kunsill Mediku dated 20th April, 2018, through which it requests that the execution of the judgement delivered by this Court on the 2nd March, 2018, be stayed pending re-trial proceedings instituted by the said Kunsill Mediku. In terms of this judgement, it was declared that the decision taken by the said council not to register Isabella Zananian Desira as a practitioner in the medical register unless she first sits for a local examination, was null and

void. It is claimed in this application that in the interests of Public Health, the judgement of this Court should not be put into effect until there is a final decision on the matter in the re-trial proceedings.

This Court notes, in the first place, that the judgement of the 2nd March, 2018, is a partial judgement as the case (no. 740/11) continues to be heard on other issues before these courts. It also notes that the Court did not order the registration of Isabella Zananian Desira in the medical register, but that the council reconsiders her application in the light of other provisions of the relevant law but excluding the proviso to Article 11(1) (c) of the Health Care Profession Act (Chapter 464 of the Laws of Malta), which article was the basis of the first decision of the Kunsill Mediku to refuse her registration.

This Court further considers that there is no justifiable reason to accede to the request. Apart from the fact that this Court in a judgement delivered on the 16th December, 2003, in the case in the names “**Avukat Dottor Henry sive` Eric Mammo noe et v. Michael Axisa et**”, held that there is no re-trial from a partial judgement, the said Isabella Zananian Desira had her qualifications recognized by the Malta Centre for Recognition of Qualifications and Information as equivalent to a Master of Arts and Ph.D. Her diploma was obtained by one of the best scientific institutions in Georgia, and is considered of Ph.D. standard. Given also that now Ms Zananian Desira is a Maltese Citizen, there can be no reason to stay the execution of the judgement.

It appears to this Court that a stay of execution would cause more harm to Ms Zananian Desira than a refusal of the request would cause to the Kunsill Mediku. A consideration of her application and eventual registration in the medical register are not irremediable actions, and no possible danger of harm to the Public Health was shown to prevent her practicing in these Islands. Her qualifications, recognised by Maltese Authorities, confirm her capacity in her field of expertise.

For these reasons, this Court rejects the application of the Kunsill Mediku for a stay of execution of the judgement delivered by this Court on the 2nd March, 2018.

Joseph Azzopardi
Chief Justice

Tonio Mallia
Judge

Mark Chetcuti
Judge

Deputy Registrar
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