



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis erbghatax (14) ta' Marzu 2019

Rikors Numru 191/17 FDP

Nexia BT Limited (C 46322), BT International Limited, BTU Management Limited, Nexia BT Advisory Services Limited, Nexia BT Consulting Limited, Brian Tonna, Karl Cini u Manuel Castagna personalment u kif eżercjenti l-kummerc bhala "Nexia BT"

vs

Alex Attard u Joseph Micallef sive Joe Mikallef

Il-Qorti:-

1. Premessi

1. Rat ir-rikors promotur ipprezentat fid-29 ta' Jannar 2016 fejn ir-rikorrent talab lill-Qorti,

Prevoja dikjarazzjoni illi intom, jew min minnkom, responsabbli ta' ingurja u malafama fil-konfront tar-rikorrenti b'dikjarazzjonijiet li intom ghamiltu fl-artikolu tal-10 ta' Lulju 2017 miktub u ippubblikat minnkom, jew min minnkom, fil-gurnal In-Nazzjon bit-titlu 'L-impjegati ta' Nexia BT jircievu l-paga b'cekkijiet mahruġa minn kumpannija ohra' stante li ghamiltu allegazzjonijiet u dikjarazzjonijiet fil-konfront tar-rikorrenti li tafu li huma jew bid-diligenza xierqa stajtu tkunu tafu li huma foloz u li x'aktarx jagħmlu hsara lil xi negozju jew propjetà ohra tar-rikorrenti, kif jirrizulta aħjar waqt it-trattazzjoni tal-kawza; thallsu lir-rikorrenti dik is-somma li tiġi likwidata minn din l-Onorabbli Qorti ai termini tal-Artikolu 29 tal-Att dwar l-Istampa (Kap 248)

2. Rat l-artikolu meritu tal-kawza odjerna esebit mir-rikorrent flimkien mar-rikors promotur li jibda fil-pagna ta' quddiem il-gurnal In-Nazzjon fejn, taht it-titolu '**L-impjegati ta' Nexia BT jircievu l-paga b'cekkijiet mahruġa minn kumpannija ohra.**' hemm ritratt tal-logo tal-kumpannija Nexia BT u storja illi sussegwentement tkompli fil-pagna numru 5 taht titolu

‘Numru sostanzjali ta’ haddiema telqu minn Nexia BT u sabu xoghol f’kumpaniji ohrajn’.

3. Rat ir-risposta ta’ l-intimati pprezentata fit 2 ta’ Novembru 2017 fejn laqghu ghal dak mitlub billi qajjmu s-segweni difiżi:

Illi t-talbiet rikorrenti huma infondati fil-fatt u fid-dritt u ghandhom jiġu miċhuda bl-ispejjeż kontrihom ghas-segweni raġunijiet:

1. *Li l-artikolu lamentat tal-10 ta’ Lulju 2017 fil-gurnal In-Nazzjoni bit-titlu ‘L-impjegati ta’ Nexia BT jirċievu l-paga b’cekkijiet mahruga minn kumpanija ohra mhux libelluż u/jew malafamanti fil-konfront tar-rikorrenti, iżda jikkonsisti biss f’fatti verifikabbli u/jew kummenti dwar kwistjonijiet fl-interess pubbliku li għalhekk, huma fair comment, kritika aċċettabbli f’socjeta demokratika u eżerċizzju tal-liberta’ tal-espressjoni sancita, inter alia, mill-Kostituzzjoni ta’ Malta u l-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem;*
2. *Li mingħajr preġudizzju ghas-suespost, ma jirriżultax li kien hemm kummenti u/jew kontenut ieħor ta’ natura libelluża u/jew malafamanti fil-konfront tar-rikorrenti.*

2. Provi

1. Semgħet ix-xhieda tar-rikorrent **Manuel Castagna** mogħtija fil-15 ta’ Jannar 2018 u rat id-dokumentazzjoni minnu esebita.
2. Rat illi fit 12 ta’ April 2018 ir-rikorrenti ddikjaraw illi ma kellhomx aktar provi x’jippresentaw.
3. Semgħet ix-xhieda ta’ **Joe Mikalief** mogħtija fit 12 ta’ Novembru 2018 in eżami u kontro eżami.
4. Semgħet ix-xhieda ta’ **Alex Attard** mogħtija fit 12 ta’ Novembru 2018 in eżami u kontro eżami.
5. Rat illi fis-17 ta’ Jannar 2019 l-intimati ddikjaraw illi ma kellhomx aktar provi.
6. Semgħet it-trattazzjoni finali ta’ l-abbli difensuri tal-partijiet illi saret fl-14 ta’ Frar 2019, wara liema data il-kawża giet differita ghas-sentenza għallum.

3. Konsiderazzjonijiet fattwali

1. Jirrizulta, mill-provi prodotti, illi s-socjetajiet rikorrenti, kif ukoll ir-rikorrenti, fil-kapaċità personali tagħhom eżerċjenti fil-kummerċ bħala Nexia BT, jimpjegaw diversi persuni sabiex jassistuhom f’xogholhom.
2. Jirrizulta illi, bħala prassi adoperata mill-varji kumpaniji, l-impjegati kollha jithallsu tramite ‘direct transfer’ minn kont bankarju tas-socjeta’ relattiva għall-kont bankarju ta’ l-impjegat partikolari.

3. Jirrizulta illi fix-xahar ta' Gunju 2017, a differenza ta' dina l-prassi kif fuq spjegata, żewġt impjegat tas-socjeta Nexia BT Limited kien thallsu permezz ta' ċekk flok permezz ta' *direct transfer*.
4. Jirrizulta illi dana kien dovut ghal fatt illi żewġt impjegati partikolari kienu terminaw l-impjieg tagħhom u għalhekk kellhom jithallsu l-paga lilhom dovuta sa dakinhar illi terminaw l-impjieg tagħhom, illi kien qabel it-tmien tax-xahar meta l-paga gernalment tinhareg tramite 'direct transfer'.
5. Jirrizulta illi kien għalhekk illi, f'dawn l-istanzi, soċjetà Nexia BT hareg żewġ cekkijiet lil dawna z-żewġt impjegati partikolari illi kienu terminaw l-impjieg tagħhom.
6. Jirrizulta illi fl-10 ta' Lulju 2017, l-intimat Joe Mikalleg kiteb artikolu fuq il-gurnal In-Nazzjon, li tiegħu l-intimat Alex Attard kien l-EDITOR, fejn, wara illi l-istess Mikalleg kien gie avvicinat minn impjegati tas-socjeta Nexia BT Limited u muri ċekk mahrug għas-salarji tagħhom, huwa kiteb l-artikolu meritu tal-kawza odjerna.
7. Jirrizulta, mix-xhieda kemm ta' Joe Mikalleg stess kif ukoll ta' Alex Attard, dak iz-zmien EDITOR tal-gazzetta, illi huma kkonfermaw illi tali cekkijiet inhargu lil tali persuni bhala l-paga tagħhom, u huma raw ic-ċekk illi kien inhareg.
8. Jirrizulta illi, kif kellhom kull dritt jagħmlu, l-intimati ma identifikawx is-sors ta' l-istorja tagħhom, filwaqt illi stqarrew ukoll illi s-sorsi ma xtaqux illi jagħtuhom kopja tac-ċekk stante illi bezghu illi jigu identifikati b'xi mod.
9. Jirrizulta, fix-xhieda mogħtija minn l-uniku xhud prodott mir-rikorrenti, ossija Manuel Castagna, illi kien minnu kkonfermat li fix-xahar ta' Gunju 2017 inhargu cekkijiet lil xi impjegati tas-socjeta' Nexia BT.

4. Konsiderazzjonijiet Legali

1. Jirrizulta illi d-difiza prinċipali ta' l-intimati huwa illi dak li inkiteb kien ibbażat fuq fatti verifikabbli u fair comment aċċettabbli f'socjeta demokratika bhalma hija dik Maltija.
2. Jirrizulta illi, għalhekk ikun opportun illi l-Qorti, qabel ma tagħmel il-konsiderazzjonijiet finali tagħha, għandha tagħmel is-segweni riflessjonijiet.
3. Fuq id-dritt tal-gurnalist illi jirrapporta dak li jidhiru xieraq u korrett, fil-kawza '***Axel Springer AG vs Germany***', deciza mill-Grand Chamber tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, il-Qorti għamlet referenza għall-principji generali li jirregolaw il-liberta' ta' l-espressjoni w il-gurnalist, kif ukoll introduciat 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-segweni:-

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.

4. Fuq ir-rwol li għandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tghid is-segwenti:

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”.

80. This duty extends to the reporting and commenting on court proceedings which, provided that they do not overstep the bounds set out above, contribute to their publicity and are thus consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. It is inconceivable that there can be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or amongst the public at large. 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.

5. Il-posizzjoni importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni għandha, madanakollu, tigi bilancjata bi drittijiet u obbligi fuq l-istess gurnalist fil-qadi ta' dmirijietu, u, di fatti, il-Qorti, 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.

6. In vista ta' dawna l-fatti, il-Qorti għandha tiehu illi jintlahaq bilanc necessarju bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, u sabiex jigi assikurat li hemm tali bilanc, il-Qorti Ewropeja għad-Drittijiet tal-Bniedem nidiet sitt kriterji importanti sabiex jigi assikurat illi, kif tghid il-Qorti, "*the right to freedom of expression is being balanced against the right to respect for private life*".

7. Dawna l-kriterji kif stabbiliti huma 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.

8. Finalment, in vista tal-fatt illi r-rikorrent huwa persuna politika, dwar il-livel ta' kritika li politiku tista ssirlu, kif gie stabbilit fid-decizjoni tal-European Court of Human Rights fis-sentenza **Ligens vs Austria**, u abbracjata mill-Qorti Maltin, intqal illi:-

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.

9. Il-Qorti thoss illi ghandha ukoll taghmel referenza ghal dak illi qalu l-qrati taghna, dwar gurnalizmu investigattiv, u għalhekk issir referenza ghal illi stqarret il-Qorti tal-Appell fil-kawza **Dr. Louis Galea vs Dr. Joe Mifsud** deciza fit-3 ta' Frar, 2012:

“gurnalizmu investigattiv għandu jinghata ampja protezzjoni f'socjeta' demokratika, anke jekk certi allegazzjonijiet jigu michuda minn dak milqut, il-gurnalist dejjem jibqaghlu d-dritt li jinvestiga u jistharreg fuq allegazzjoni anke jekk tibqa' allegazzjoni mhux pruvata kif trid il-Ligi. F'dak li jsir gurnalizmu investigattiv serju, anke meta jirrizulta zball genwin, jista' wkoll ikun tollerat.”

10. Dwar id-difiza ta' 'fair comment, il-Qorti taghmel referenza ghas-sentenza **Erla Hlynisdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil 21 ta' Ottubru 2014, fejn intqal is-segwent:

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.

11. 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-segwent:

"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."

12. Dwar 'fair comment', imbghad, **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.

13. Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, intqal is-segwent i :

... dwar l-aspett tad-difiza tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiza tal-kumment ġust tkun tgħodd, jeħtieġ li min jistrieħ fuqha jseħħlu 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; (ċ) il-kumment irid jintwera li jkun ġustifikabbli jew mistħoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tgħajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'ħażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun.

14. Tali tagħlim huwa anke rifliss f' guriprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl-1 ta' Dicembru 2010, Lord Phillips għamel is-segwent i 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.

5. Konsiderazzjonijiet Finali

1. Jirrizulta, mill-provi prodotti quddiem dina l-Qorti, illi s-socjeta Nexia BT Limited, f'Gunju 2017, hallset lill żewġt impjegati tagħha is-salarji tagħhom permezz ta' ċekk flok permezz ta' '*direct bank transfer*' kif dejjem kien isir.
2. Jirrizulta illi dana il-fatt huwa dak illi wassal sabiex l-artikolu meritu tal-kawza odjerna jinkiteb.
3. Jirrizulta illi għalkemm ir-rikorrenti jikkontendu illi hadd mill-impjegati ma qatt lehhen magħhom l-inkwiet tagħhom dwar l-impjegati tagħhom mas-socjeta rikorrenti, a differenza ta' dak illi kif jidher indikat mill-intimati fl-artikolu tagħhom, jirrizulta mill-banda l-oħra illi l-bazi ta' l-istorja ta' l-intimati, ossja illi impjegati thallsu tramite cekkijiet, kienet wahda sostanzjalment korretta, peress illi bbazata fuq fatti stabbiliti mill-intimati stess u, del resto, ammessi mir-rikorrenti stess.
4. Jirrizulta, għalhekk, illi dak illi wassal għall-istorja meritu tal-kawza odjerna kienu fatti korretti u għalhekk l-intimati kellhom kull dritt illi jiktbu l-artikolu meritu tal-kawza odjerna, u dak hemm miktub huwa sostanzjalment korrett u għalhekk ma jstax jitqies bhala libelluż u/jew malafamanti fil-konfront tar-rikorrenti.
5. Jirrizulta illi s-socjeta Nexia BT, fix-xhur u snin ta' qabel, kienet ilha tissemma in konnessjoni ma' investigazzjonijiet varji illi kienu qed isiru kemm lokalment kif ukoll barra minn Malta in konnessjoni mal-hekk imsemmija 'Panama Papers', u għalhekk kienet soċjetà illi dwarha l-intimati kellhom kull dritt illi jikkumentaw fl-interess pubbliku.

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotti quddiemha, u

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet, tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa' l-ecezzjonijiet kollha ta' l-intimati, u għalhekk

Tichad it-talbiet attrici.

Spejjez tal-proceduri odjerni għandhom ikunu kollha a kariku tar-rikorrenti.

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur