

CONSTITUTIONAL COURT

JUDGES

THE HON. CHIEF JUSTICE JOSEPH AZZOPARDI
THE HON. MR JUSTICE GIANNINO CARUANA DEMAJO
THE HON. MR JUSTICE NOEL CUSCHIERI

Sitting of Friday 12 July 2019

Case number 20

Application number 19/2013 JZM

Patricia Graham, James Parsons, Richard Cooper,
Johanna van't Verlatt, Nigel Hall, Margaret Alder,
Julia Partridge, David Pike, Bryan Douglas, John
Wilks, Brian Bush, John Besford, Peter Sellers,
Elana Bianchi, Nuot Raschar, Kevin Bryant, Marie
Poule Wagner, Michael Murray, John Murgatroyd,
Howard Hodgson, Robin Smith-Saville, Maria
Wiborg, Anders Wiborg, Reginald Joseph
Fitzpatrick, George Thomas Goodall

v.

The Attorney General; The Minister of Finance, the
Economy and Investment (responsible for Enemalta
Corporation and the Water Services Corporation);
The Minister for Resources and Rural Affairs; and
by a note of the 18th November 2014 the Minister for
Energy and Health took over the acts of this case
instead of the Minister of Finance, the Economy and
Investment, and the Minister for Resources and
Rural Affairs; and by a note of the 26th September
2017 the Minister for Energy and Water
Management took over the acts of this case instead
of the Minister for Energy and Health; The Malta
Resources Authority; Enemalta Corporation (now
Enemalta p.l.c.); Water Services Corporation

1. This judgment concerns the plea of nullity of the plaintiffs' appeal. The plea was raised by respondent *Enemalta p.l.c.* [*Enemalta*] in its reply to the appeal as follows:

»That in the first place, and on a preliminary basis, respondent humbly submits that the appeal of the claimants does not observe the requirements laid down by the law of procedure as it does not provide the reasons on which it is entered. Respondents are unable to decipher exactly what the claimants' appeal is all about, and the lack of reasons in the appeal application is seriously prejudicing their right to defend themselves in these proceedings. Indeed, it is also unclear what this court is being called upon to decide. All that one finds in the application for appeal is a statement that the court of first instance should have acceded to the claimants' requests because according to them "a lower tariff [for electricity and water] cannot be applied on the basis of residence (primary or otherwise). This is clearly spelled out in the legal instruments cited by the applicants". Although the claimants state that their submission is clearly spelt out in the legislation, they even fail to indicate where it is so stated: Are the claimants relying on the Constitution? the European Convention? the European Union Treaties? Directive 2009/72? Directive 2006/123? All these instruments were garbled together in a very confused and distorted way in the original application of 26th February 2013 (which was supposed to be a constitutional application filed in terms of article 46(1) of the Constitution). The claimants were never able to explain clearly the legal basis of their claim, and now we find ourselves in the same confused situation, if not worse, even at appeal stage. With all due respect, respondent submits that this court should not permit, and should strike out, such an appeal as lodged by the claimants since it adversely affects the rights of respondents to respond effectively to the appeal and the proper conduct of the appeal process.

»That, also on a preliminary basis, and in view of the unclear formulation of the appellants' grievance with respect to the judgment of the first court, it is to be noted that any point raised on appeal needs to be limited to the original parameters of the dispute before the first court. It is a well-established principle that it is not permitted to raise new issues at appeal stage. ...
... ..«

2. Plaintiffs' ground of appeal, or, as they put it, the "basis of appellants' grievance", is stated as follows in their appeal application:

»That indeed if:

»“The aim pursued in these regulations is that of establishing a lower tariff to persons residing in the property as their primary residence, irrespective of their nationality”

»then it follows:

»that the court of 1st instance should have acceded to the applicants’ request(s) because such a lower tariff cannot be applied on the basis of residence (primary or otherwise). This is clearly spelled out in the legal instruments cited by the applicants.«

3. The rest of the appeal application consists merely of a *verbatim* reproduction of the original application and of an extract from the first court’s decision.

4. The requirements for the validity of the appeal application are governed by art. 143 of the Code of Organisation and Civil Procedure:

»**143.** (1) The application for the reversal of a judgment shall contain a reference to the claim and to the judgment appealed from together with detailed reasons on which the appeal is entered and a request that the said claim be allowed or dismissed.

»... ..

»(5) The default of compliance with any of the requirements of sub-articles (1), ... shall not make void the application; but the court shall, in any such case, make an order directing the appellant to file, within two days, a note containing such particulars as are required by law and which have not been duly stated in the application.

»(6) The cost of the order and of the filing of the note shall be borne by the appellant.

»... ..«

5. It is immediately evident that plaintiffs’ appeal application falls woefully short of the requirement for “detailed reasons on which the appeal is entered”; their sole ground of appeal is merely a

dogmatic assertion rather than a detailed statement of reasons for the reversal of the judgment.

6. Accordingly, in terms of art. 143(5) the court is hereby directing plaintiffs to file, within two days from today, a note containing such particulars as are required by law.
7. The court observes that, as stated in its decree of 25 April 2018, “plaintiffs shifted their ground on various occasions during the hearing before the first instance court” and that “plaintiffs seem to have adopted a change-your-position-as-you-go-along sort of strategy”. The court therefore reminds plaintiffs that, as correctly stated in *Enemalta’s* reply, “any point raised on appeal needs to be limited to the original parameters of the dispute before the first court. It is a well-established principle that it is not permitted to raise new issues at appeal stage”. The court therefore warns plaintiffs that they are to abide strictly by all requirements of law, failing which the note filed in terms of art. 143(5) and also the appeal application will be struck off.
8. Costs of this episode are to be borne by plaintiffs in terms of art. 143(6).

Joseph Azzopardi
Chief Justice

Giannino Caruana Demajo
Judge

Noel Cuschieri
Judge

Deputy Registrar
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