

**QORTI TAL-APPELL
(Sede Inferjuri)**

**Onorevoli Imhalled Dr. Joanne Vella Cuschieri
B.A. Mag. Jur. (EUR. LAW.), LL.D.**

Seduta tal-Gimgha 11 ta' Ottubru 2019

Appell numru: 96/16FDP

**Wara sentenza tal-Onorabbli Qorti tal-Magistrati
datata 25 ta' Ottubru, 2018**

Keith Schembri (KI 331875(M)) u Malcolm Scerri (KI 425165 (M))

vs.

**Pierre Portelli, David Lindsay u Stephen Calleja bhala edituri
tal-gazzetta 'The Malta Independent on Sunday' u 'The Malta
Independent Online'**

Il-Qorti

1. Illi dan huwa appell minn decizjoni tal-Onorabbli Qorti tal-Magistrati datata 25 ta' Ottubru, 2018 fejn gie deciz kif isegwi:

'Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha, u wara illi semghet it-trattazzjoni ta' l-abbli difensuri taz-zewg partijiet

Tghaddi biex taqta' u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimati,

Tilqa' t-talbiet attrici, u ghalhekk, filwaqt illi

Tiddikjara illi l-artikli ntitolati (a) "Panama Papers: HSBC investigation expected into alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri" ippublikat fil-gurnal The Malta Independent on Sunday u (b) "Probe expected into alleged fraudulent documents vouching for Keith Schembri, Malcolm Scerri" (aktar tard emendat bhala "Updated: Keith Schembri, Malcolm Scerri deny fraudulent documents allegations"), it-tnejn li huma ppubblikati nhar it-8 ta' Mejju 2016 fuq is-sit The Malta Independent Online, u maghduda wkoll il-kummenti illi dehru taht l-artikoli online, kienu libelluzi u malafamanti fil-konfront tar-rikorrenti Keith Schembri u Malcom Scerri.

Tikkundanna lill-intimati in solidum bejniethom ihallsu lir-rikorrenti Keith Schembri u Malcolm Scerri bhala danniis-somma ta' hamest elef Euro (€5,000).'

2. Illi d-decizjoni appellata nghatat wara li l-appellati Keith Schembri u Malcolm Scerri ressqu rikors quddiem l-Ewwel Onorabbli Qorti kif isegwi:

'1. Prevoja d-dikjarazzjoni illi bhala edituri tal-artikli ntitolati (i) "Panama Papers: HSBC investigation expected into alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri" ippublikat fil-gurnal Malta Independent on Sunday u (ii) "Probe expected into alleged fraudulent documents vouching for Keith Schembri, Malcolm Scerri" (aktar tard imsemmi Updated: Keith Schembri, Malcolm Scerri deny fraudulent document allegations'), it-tnejn li huma ppubblikati nhar il-Hadd, 08 ta' Meju 2016, u maghdud ukoll il-kummenti li inthom fil-vesti taghkom premissi ppermettejt li jigu ppubblikati, intom immalafamajtu u llibellajtu lill-esponenti billi attakkajtu l-integrita', l-unur u r-reputazzjoni personali taghhom, kif ukoll esponejt lill-istess ghar-redikolu u ghad-disprezz pubbliku, permezz ta' allegazzjonijiet u/jew insinwazzjonijiet serji li huma ghal kollox inveritieri u foloz kif ser jigi ppruvat; u

2. Thallsu lill-esponenti, individwalment u separatament, il-massimu kontemplat fl-Artkolu 28 tal-Kapitolu 248 tal-Ligijiet ta' Malta bhala danni in riparazzjoni tal-malafama li huma sofrew b'konsegwenza tal-artikli fuq imsemmija, liema artikli kellhom l-ghan li jtellef u jnaqqas ir-reputazzjoni, l-integrita' u l-unur taghhom.'

L-artikoli u kummenti msemmija fir-rikors jinsabu esebiti, fost ohrajn, fil-process tal-Ewwel Qorti a fol. 2 sa 12.

3. Ghal din it-talba l-intimati appellanti Pierre Portelli, David Lindsay u Stephen Calleja prezentaw ir-risposta taghhom kif isegwi:

'Illi t-talbiet tal-atturi huma nfondati fil-fatt u fid-dritt u ghandhom jigu

michuda bl-ispejjez kontrihom ghas-segwentu ragunijiet:

1. *Li fuq bazi preliminari, jigi umilment eccepit li l-intimat Pierre Portelli ghandu jigi liberat mill-osservanza tal-gudizzju minn din l-Onorabli Qorti stante li huwa ma kienx editur tal-artikoli in kwistjoni;*

2. *Li minghajr pregudizzju ghas-suespost, subordinatament, ir-rikorrent ghandu jgib il-prova li l-intimati kienu lkoll edituri tal-artikoli in kwistjoni, fin-nuqqas ta' liema l-intimati jew min minnhom ghandhom jigu liberati mill-osservanza tal-gudizzju minn din l-Onorabli Qorti;*

3. *Li wkoll minghajr pregudizzju ghas-suespost, l-artikoli in kwistjoni mhumiex libelluzi u/jew malafamanti fil-konfront tar-rikorrenti, izda jikkonsistu biss f'fatti verifikabbli u/jew kummenti dwar kwistjonijiet fl-interess pubbliku li ghalhekk, huma fair comment, kritika accettabbli f'socjetà demokratika u ezercizzju tal-libertà tal-espressjoni sancita, inter alia, mill-Kostituzzjoni ta' Malta u l-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem;*

4. *Li wkoll minghajr pregudizzju ghas-suespost, ma jirrizultax li kien hemm kummenti li huma libelluzi u/jew malafamanti fil-konfront tar-rikorrenti.*

5. *Li wkoll minghajr pregudizzju ghas-suespost u subordinatament ghall-istess il-kontenut ta' dawn il-kummenti li minnhom ilmentaw ir-rikorrenti, jekk jirrizulta li huma malafamanti, ghandhom iwiegbu ghalihom il-persuni li ghaddewhom.'*

4. Illi d-decizjoni tal-Ewwel Onorabbli Qorti li tilqa' t-talbiet tar-rikorrent appellati hadet in konsiderazzjoni l-provi u l-konkluzjonijiet segwenti qabel waslet ghad-decizjoni kif isegwi:

'2. Provi

1. Rat l-artiklu meritu tal-kawza odjerna ppubblikat fis-seba' pagna ta' *The Malta Independent on Sunday* datat 8 ta' Mejju 2016 u ntitolat '*Panama Papers: HSBC investigation expected into alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri*', liema artikolu kien jghid li gej:

HSBC Bank Malta is expected to launch an investigation into the possible fraudulent presentation of documents concerning OPM Chief of Staff Keith Schembri and Malcolm Scerri, the general manager of the company Mr Schembri owns, Kasco Ltd, sources have told this newsroom.

Journalist Daphne Caruana Galizia published an article on Friday highlighting the levels of secrecy both Mr Schembri and Mr Scerri applied in order to hide their companies in the British Virgin Islands, some two months after the March 2013 general election and Mr Schembri's appointment as the prime Minister's chief of staff.

Mrs Caruana Galizia also published two HSBC Malta "information report" documents with respect to Keith Schembri and Malcolm Scerri, which were apparently requested by BTI Management Ltd, a company owned by Nexia BT Holdings Ltd.

She alleged that the 'information reports' for Keith Schembri and Malcolm Scerri, who took Mr Schembri's place as managing director of Kasco Ltd

when Mr Schembri was appointed as the Prime Minister's chief of staff, were "purportedly" issued by HSBC Bank Malta plc's Attard branch. Both bank documents she published were dated 27 May 2013.

"I am informed by people who work at the bank that the Attard branch had closed more than a year earlier – in February 2012 – and was then already no more than an unmanned automated office," Mrs Caruana Galizia reported.

If this turns out to be the case, action would very well be taken by the Malta Financial Services Authority which could, in turn, result in punitive action against the directors of BTI Management Ltd, who include Brian Tonna and Karl Cini. Both men are linked to Mr Schembri and are also heavily implicated in the Maltese spectrum of the Panama Papers scandal.

Some two months after the 2013 general election and being appointed as Chief of Staff, Keith Schembri and Kasco's Malcolm Scerri created several new layers of secrecy for their companies in the British Virgin Islands.

This included ATC Administrators Inc taking 50,000 shares in both companies, as well as both Mr Schembri and Mr Scerri removing themselves as the sole shareholders and the sole directors of the companies, while appointing persons associated with Mossack Fonseca as directors. Nexia BT's Brian Tonna and Karl Cini were also granted power of attorney over the companies by both of the new directors.

In addition, Mr Schembri and Mr Scerri had signed documents indemnifying Mossack Fonseca of all costs and expenses in relation to the company. Brian Tonna also wrote and sent letters of reference for both Schembri and Scerri to Mossack Fonseca.

The information reports cited were required to serve as further reference for Mossack Fonseca on Mr Schembri and Mr Scerri's behalf.

Under the HSBC document's 'general comments,' it is stated that Mr Schembri: "is known to us for a number of years as honest and trustworthy and unlikely to enter into commitments he would be unable to fulfil. Highly esteemed in his business circles. Considered to be a good business relationship." The same was said of Mr Scerri in a separate document.

2. Rat l-artikolu illi deher fuq il-Malta Independent Online dakinhar stess, intitolat originalment "Probe expected into alleged fraudulent documents vouching for Keith Schembri, Malcolm Scerri", sussegwentement mibdul biex jaqra "Updated: Keith Schembri, Malcolm Scerri deny fraudulent documents allegations", liema artikolu kien jirriproduci verbatim l-artikolu fuq ikkwotat wara ntroduzzjoni illi kienet tghid:

Keith Schembri and Malcolm Scerri are denying allegations of fraudulent presentation of documents, a statement by their lawyer said this evening. This morning, The Malta Independent on Sunday reported that ...

Tali artikolu mbaghad jispicca bis-segwentli kliem:

... But, in a statement through their lawyer Andre Sciberras, Schembri and Scerri denied the allegation claiming that the article in question is "both factually incorrect and libellous in nature".

The lawyer gave the newspaper time until tomorrow at 12pm to retract the story pending legal procedures.

This newsroom intends to await an official declaration by HSBC before

taking any further action.

3. *Rat l-affidavit ta' Malcolm Scerri (fol 27), ipprezentat fit-28 ta' Settembru 2017, flimkien mad-dokumentazzjoni hemm annessa, inkluza korrispondenza bejn il-legali tar-rikorrenti u l-intimat Pierre Portelli dwar il-kontenut tal-artikolu.*

4. *Semghet ix-xhieda ta' Lawrence Pace, Commercial Relationship Manager tal-HSBC illum irtirat, prodott mir-rikorrenti u moghtija fid 9 ta' Novembru 2017.*

5. *Semghet ix-xhieda ta' Michel Cordina, Head of Commercial Banking tal-HSBC, prodott mir-rikorrenti u moghtija fid 9 ta' Novembru 2017.*

6. *Rat illi fl-14 ta' Dicembru 2017, il-partijiet qablu illi x-xhieda migbura fil-kaz Rikors Nru 100/16 'Brian Tonna et vs Pierre Portelli et' illi kienet qed tinstema' kontestwalment mal-kawza odjerna, ghandhom japplikaw ghall-kaz odjern ukoll.*

7. *Rat ix-xhieda migbura fil-kaz Rikors Nru 100/16 'Brian Tonna et vs Pierre Portelli et', ossija s-segwenti:*

l-affidavit ta' Brian Tonna pprezentat fit 12 ta' Jannar 2017; (fol 35)

l-affidavit ta' Karl Cini pprezentat fit 12 ta' Jannar 2017 flimkien ma' dokumentazzjoni; (fol 39)

Id-dikjarazzjoni illi saret mill-intimati fis-6 ta' Marzu 2017 fejn gie ammess illi l-intimat David Lindsay huwa l-editur tal-gurnal The Malta Independent on Sunday filwaqt illi Stephen Calleja huwa l-editur tal-

online portal Malta Independent Online. (fol 57)

- *Il-kontro ezami ta' Brian Tonna illi saret fit 8 ta' Mejju 2017.*
- *Il-kontro ezami ta' Karl Cini illi saret fit 8 ta' Mejju 2017.*
- *Ix-xhieda ta' Franco Aloisio, Head of Communications tal-HSBC Malta plc illi nghatat fid 19 ta' Ottubru 2017, u rat id-dokumentazzjoni minnu esebita, ossija korrispondenza in konessjoni ma' verifiki illi saru wara l-pubblikazzjoni tal- artikolu meritu tal-kawza odjerna (fol 102)*
- *Ix-xhieda ta' Victor Muscat, dak iz-zmien Commercial Manager tal-HSBC Malta plc, illi nghatat fis 27 ta' Novembru 2017. (fol 129)*

8.Rat l-affidavit ta' Keith Schembri ipprezentat fil-15 ta' Frar 2018 flimkien mad-dokumentazzjoni hemm annessa.

9.Rat illi fil-15 ta' Frar 2018 ir-rikorrenti ddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

10. Rat illi fl-10 ta' Mejju 2018 l-intimati ddikjaraw illi la l-provi migbura fil-kaz 100/16 fl-ismijiet 'Brian Tonna et vs Pierre Portelli et' japplikaw ghall-kaz odjern, huma ma kellhomx aktar provi x'jippresentaw u l-kawza giet differita ghat-trattazzjoni finali.

10. Semghet it-trattazzjoni tal-abbli difensuri tal-partijiet illi saret fit-18 ta' Gunju 2018, wara liema trattazzjoni l-kawza giet differita ghas-sentenza.

3. Konstatazzjonijiet fattwali.

1. Jirrizulta, mill-provi prezentati, illi l-intimat David Lindsay huwa l-

editur ta' The Malta Independent on Sunday filwaqt illi Stephen Calleja huwa l-editur tal-Malta Independent Online'.

2. Jirrizulta illi fit-8 ta' Mejju 2016, fuq il-gurnal ta' nhar ta' Hadd, The Malta Independent on Sunday, u sussegwentement riprodotta verbatim fuq is-sit elettroniku ta' l-istess gazzetta, Malta Independent Online, ittellghet storja illi kienet taghmel referenza ghal storja ohra illi kienet ittellghet fuq is-sit elettroniku www.daphnecaruanagalizia.com il-Gimgha ta' qabel, ossija 6 ta' Mejju 2016.

3. Jirrizulta illi l-bazi ta' dina l-istorja mtella l-ewwel darba l-Gimgha 6 ta' Mejju 2016 fuq is-sit elettroniku www.daphnecaruanagalizia.com u eventwalment riprodotta fil-harga tal-Hadd tal-gurnal kienet il-pubblikazzjoni ta' hekk imsejjha "Information Reports' mahruga mill-HSBC fis-27 ta' Mejju 2013 a favur ta' Keith Allen Schembri u Malcom Scerri rispettivament, liema 'Information Reports' kienu mehtiega sabiex jikkonfermaw 'il hekk imsejjah 'Character references' ta' l-istess Keith Allen Schembri u Malcolm Scerri.

4. Jirrizulta, di fatti, illi ghalkemm inhargu dawna l-ittri fis-27 ta' Mejju 2013, jidher illi fil qiegh ta' tali 'Information Reports' kien hemm indikat illi dawna nhargu mill HSBC Bank Malta plc "Attard Branch, 14, Mosta Road, Attard", u dana minkejja l-fatt illi tali fergħa kienet attwalment magħluqa u kienet ilha hekk għal diversi xhur.

5. Jirrizulta illi tali zball wassal lill-gurnalista Daphne Caruana Galizia sabiex ittella' artikolu fuq is-sit elettroniku tagħha hekk kif kienet qed tikteb dwar kumpanniji illi allegatament kienu qed jinfethu fil-British Virgin Islands, liema artikolu eventwalment wassal lill-artikolist tal-artikolu

meritu tal-kawza odjerna illi deher fis-seba' pagna tal-gazzetta sabiex jiddikjara fil-bidu tal-artikolu li :

HSBC Bank Malta is expected to launch an investigation into the possible fraudulent presentation of documents concerning OPM Chief of Staff Keith Schembri and Malcolm Scerri, the general manager of the company Mr Schembri owns, Kasco Ltd, sources have told this newsroom.

6. Jirrizulta, mix-xhieda tal-Head of Communications tal-HSBC Malta plc, Franco Aloisio, illi dakinhar illi giet ppubblikata l-istorja fuq il-blog ta' Daphne Caruana Galizia, ossija l-Gimgha 6 ta' Mejju 2016, Pierre Portelli kien ghamel kuntatt minnufih ma' Franco Aloisio li, mill-parti tieghu, gharrfu illi, ghalkemm ma setax jizvela u jitkellem dwar kwistjonijiet relatati ma' klienti u klientela tal-Bank, dwar l-awtenticità tad-dokument illi kien qed jigu allegati bhala fraudolenti, 'prima facie' kien jidher illi kien zball amministrattiv izda l-Bank kien ser jaghmel l-istharrig necessarju malli jerga' jiftah ghax-xoghol, ossija t-Tnejn.

7. Jirrizulta, mix-xhieda tal-Head of Commercial Banking tal-HSBC Malta plc, Michel Cordina, illi l-Bank HSBC Malta plc, f'dak iz-zmien, kellha sistema illi kienet tipprovidi ghall-hrug tal-hekk imsemmija 'Information Reports', illi jkunu mehtiega meta jkun hemm bzonn 'character references' ma' terzi, liema sistema kienet tohrog tali rapport fuq template, liema template setghet tinhareg minn kwalsiasi fergħa tal-bank innifsu u dana billi tintghazel u tiddahhal minn 'drop down list' illi kienet tipprovidi s-sistema komputerizzata tal-bank.

8. Jirrizulta illi l-ewwel fergħa tal-bank illi kienet tidher f'tali template kienet dik ta' Attard, u s-sistema kienet disinjata b'mod illi

awtomatikament, jekk wiehed ma jdahhalx fergħa partikolari illi jrid jindika, tigi ndikata illi tali rapport ikun inhareg mill-fergħa tal-bank gewwa Attard, stante illi dina kienet l-ewwel fuq il-lista.

9. Jirrizulta, mix-xhieda ta' Lawrence Pace, illi kien il-Commercial Relations Manager responsabbli għall-hrug ta' dawna z-zewg 'Information Reports' meritu tal-kawza odjerna u illi kien ir-Relationship Manager tal-kontijiet bankarji għas-socjetajiet ta' Keith Schembri, illi kkonferma illi kien sar zball da parte tiegħu, hekk imsejjah 'administrative error', fejn bi zwišta kien naqas milli jindika l-fergħa l-korretta, ossija tal-Head Office, minn fejn kienet qed jinhargu dawg l-'Information Reports', bir-rizultat illi awtomatikament telgħet l-fergħa tal-bank gewwa Attard bhala l-fergħa minn fejn inhargu tali ittri.

10. Jirrizulta illi, fuq wara korrisondenza għal spjegazzjoni tal-konsulent legali ta' Keith Schembri u Malcolm Scerri, rikorrent f'proceduri ohra, Michel Cordina, t-Tnejn 9 ta' Mejju 2016 kiteb lill-istess Scerri u kkonfermalu (fol 45) s-segwent i dwar l-'Information Reports', imsejjha "Report":

The Bank confirms that the Report was legitimately issued on your request in terms of standing procedures.

11. Jirrizulta wkoll illi l-Bank għamel l-istharrig intern tiegħu, kemm, skont Lawrence Pace, dakinhar illi harget l-istorja fuq is-sit elettroniku www.daphnecaruanagalizia.com, ossija l-Gimgha 6 ta' Mejju 2016, kif ukoll it-Tnejn 9 ta' Mejju 2016 fejn, f'korrisondenza interna ndirizzata lis-superjur tiegħu Victor Muscat u mibghuta fit 08.03am tad 9 ta' Mejju 2016, stqarr is-segwent i: (Rik 100/96 fol 123)

Regarding the bank address of the relative reports, at the time, the address of CMB here at Qormi was not automatic, but the first 'automatic' address was that of Attard. Hence the address. This was an oversight from my part that I did not check the bank address at the bottom of the report.

12. *Jirrizulta illi, fil-kaz ta' Keith Schembri u Malcolm Scerri, il-konsulent legali taghhom kiteb lill-intimati minnufih fid-19.15pm tat-8 ta' Mejju 2016 (fol 41) fejn talab "retraction of libellous article" u ppropona pubblikazzjoni ta' apologija.*

13. *Jirrizulta illi ftit hin wara, fit 20.14pm ta' dakinhar stess, l-intimat Pierre Portelli, illi kien jindika lilu nnifsu bhala 'Director Business & Content' sahaq illi l-artikolu "never insinuated that a probe has been launched and that the documents in question are fraudulent" filwaqt illi sahaq illi kien ser jaghmel 'update' tal-istorja biex tinkludi c-cahda tal-klijenti tieghu, Schembri u Scerri, u kien dispost jaghmel 'updates' ulterjuri biex jikkjarifika l-ahbar f'kaz illi jinghata lilu tali dokumentazzjoni, jew mill-Bank jew mill-klijenti tieghu. (fol 42)*

14. *Jirrizulta illi Brian Tonna u Karl Cini, tramite l-konsulent legali taghhom, kitbu lill-intimati fl-10 ta' Mejju fejn gharrfuhom illi jekk dak mitlub ma kienx ser jigi rritrat b'apologija sa dakinhar stess fl-14.00pm, huma kienu ser jipprocedu, ghal-liema ittra l-intimat Pierre Portelli irrisponda billi qal li "TMI never referred to the documents as fraudulent but reported the allegation of such considering the details provided on the stationery" filwaqt illi sahaq illi c-cahda ta' Tonna u Cini kienet ser tigi rappurtata. Portelli sahaq ukoll illi "In the meantime the paper cannot apologise as yet, not until the bank or your clients show us the original documents. A retraction of the article cannot be made due to the fact that*

this is now an exhibit in the libel cases filed against us by your clients."

15. *Jirrizulta illi Keith Schembri u Malcolm Scerri intavolaw l-azzjoni tagghom fit-9 ta' Mejju 2010 filwaqt illi Brian Tonna u Karl Cini intavolaw l-azzjoni tagghom fl-10 ta' Mejju 2016.*

16. *Jirrizulta illi nelfrattemp, fuq is-sit elettroniku tal-gazzetta, ossija Malta Independent Online, persuni, kemm facilment identifikabbli kif ukoll anonimi, bdew jghaddu varji kummenti dwar tali storja fil-blog illi hija pprovduta mill-amministraturi ta' l-istess Malta Independent Online taht l-istess storja, fejn varji ndividwi bdew jghaddu kummenti u asserzjonijiet fil-konfront tar-rikorrenti Keith Schembri u Malcolm Scerri, liema kummenti gew kollha ppubblikati fuq is-sit mill-amministratur ta' tali pagna.*

17. *Jirrizulta illi fost il-hafna kummenti u asserzjonijiet illi gew miktuba minn varji persuni u permessi mill-amministratur tas-sit Malta Independent Online, ir-rikorrent Keith Schembri identifikaw is-segwenti kummenti bhala lesivi fil-konfront tieghu: (fol 7)*

Jan Farrugia

And then there's Keith Schembri's cousin who had disappeared, and remains AWOL, leaving behind him €40 million worth of 'debt'. One cannot accumulate that muCH debt in just a few years by mismanaging a glorified grocery shop. Those 40 million must have gone somewhere. Dots are emerging and forming recognisable shapes in the form of M-A-S-S-I-V-E-F-R-A-U-D.

Joseph Lawrence

Maybe it is something that runs in the family?

18. *Jirrizulta illi, eventwalment, fil-11 ta' Mejju 2016, fuq is-sit Malta Independent Online (fol 46) u l-ghada, 12 ta' Mejju 2016, fuq il-gazzetta The Malta Malta Independent daily *Rik Nru 96/16 – fol 48) ttellghet storja ntitolata "HSBC 2013 documents on Keith Schembri and Malcolm Scerri authentic, not fraudulent", liema storja kienet tghid is-segwenti: (fol 46)*

Following several attempts by The Malta Independent and other media outlets to establish whether HSBC 2013 documents found in the Panama Papers, pertaining to the Prime Minister's Chief of Staff Keith Schembri and his business associate Malcolm Scerri, are authentic or fraudulent, the bank has finally come out stating that these are authentic.

Citing an 'administrative error', HSBC took full responsibility of the matter, confirming that what Mr Schembri and Mr Scerri said on Sunday via their lawyer is true.

The Malta Independent on Sunday followed up a story originally published by journalist Daphne Caruana Galizia on her personal blog in which she noted that HSBC documents in her possession, that featured in the Panama Papers, showed that such documents were issued in 2013 under the bank's Attard Branch stationer when the branch had been closed in 2012.

This newsroom followed up the claims with sources within the bank that suggested that the bank couldn't ignore such an allegation and that it is normal that an internal inquiry would be under way.

Following a story in The Malta Independent on Sunday under the heading

'HSBC investigation expected into alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri' the bank would not reply to questions sent by this newsroom citing 'customer privacy' as its main reason.

However, HSBC today issued the following statement vouching for Mr Schembri and Mr Scerri: "HSBC Bank Malta notes the continued interest in whether correspondence from the bank's Attard branch was issued after the branch closed. The bank confirms that certain letters were issued containing the address of Attard branch after its closure due to an administrative error within the bank's correspondence system and templates. HSBC reiterates that it does not comment publicly on individual customer accounts and relationships."

In the meantime, Mr Schembri and Mr Scerri sued The Malta Independent for libel over its story that an investigation by HSBC was expected. By its statement HSBC confirmed The Malta Independent's story that an internal investigation was conducted, which ultimately led to the above statement.

HSBC issued a letter to Mr Schembri, which he circulated earlier today, confirming that the 2013 'Attard Branch' documents were authentic and not fraudulent.

This newsroom is now satisfied that in this matter no wrongdoing can be attributed to Mr Keith Schembri and Mr Malcolm Scerri, or their financial consultants Nexia BT. The newsroom acted in good faith and probed the issue until it was finally cleared by HSBC in its statement today.

In a statement issued after the HSBC declaration, Mr Schembri said this

confirmed that there is "nothing untoward or suspicious in the bank reference the bank had issued to me in May 2013.

"It is now all too clear that the whole saga is nothing but one of a very long list of fabrications and lies, in my regard intended solely to harm my reputation and by extension that of the Government. I do not expect better from certain bloggers, but the complicity by certain respected media institutions is unacceptable and a bane to democratic standards and well being of this country."

19. Jirrizulta illi l-artikoli kollha fuq ikkwotati ghadhom accessibbli fuq is-sit elettroniku w uhud mill-kummenti illi saru minn varji persuni, inkluz dawk indikati bhala lesivi fil-konfront tar-rikorrenti, ghadhom jidhru filwaqt illi ohrajn gew imhassra mill-amministraturi waqt il-mori tal-kawza.

4. Konsiderazzjoni legali

1. Jirrizulta illi l-azzjoni odjerna mibdija mir-rikorrenti, filwaqt illi tirrigwarda l-artikolu ppubblikat, tibbaza ruhha aktar fuq il-kummenti illi certi persuni ghazlu illi jaghmlu fil-blog post illi kien hemm taht l-artikolu innifsu.

2. Jirrizulta illi d-difiza ta' l-intimati huma principalment tlieta, ossija:

- illi Pierre Portelli ghandu jigi liberat mill-osservanza tal-gudizzju ghax mhux l-editur

- illi l-artikoli kienu wiehed li kellu jitqies bhala fair comment

- illi l-kummenti li saru ma kienux libelluzi u kellhom jirrispondu

ghalihom min kitibhom

3. *Jirrizulta illi jkun ghalhekk opportun illi l-Qorti, qabel ma taghmel il-konsiderazzjonijiet u konkluzjonijet taghha, taghmel referenza ghal xi kazistika lokali u estera kif ukoll taghlim fil-kamp tal-libelli illi jistghu jkunu ta' assistenza u konfort ghal dina l-Qorti.*

4. *Jirrizulta illi, dwar id-difiza ta' fair comment, Gatley on Libel and Slander jghid is-segwenti,:*

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.

5. *Jirrizulta illi huwa fatt maghruf li d-"difiza" tal-"fair comment" dejjem kienet intiza sabiex tohloq bilanc bejn id-dritt tal-liberta' ta' l-espressjoni u dritt li hu daqstant importanti, ossija dak li ndividwu jipprotegi r-reputazzjoni tajba tieghu.*

6. *Di fatti, kif inghad minn Lord Justice Scott fil-kawza Lyon v. Daily Telegraph:*

The right of fair comment is one of the fundamental rights of free speech and writing which are so dear to the British nation, and it is of vital importance to the rule of law on which we depend for our personal freedom.

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

dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehtieg li min jistrieħ fuqha jsehllu 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 zeblih, tghajir jew insolenza u e) irid jaghti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hazen jew bil-hsieb preciz 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-segwenti 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.

8. Finalment, dwar il-kuncett ta' 'value judgment', il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fil-kawza *Jerusalem vs Austria* (2003) EHRR 567, para 43, tghid is-segwenti:

... even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it ."

9. Jirrizulta car, ghalhekk, mill-provi fuq imressqa, illi hemm sabiex id-difiza ta' 'fair comment' u 'value judgment' tirnexxi, irid jigi ppruvat illi dak allegat huwa bbazat fuq fatti sostanzjalment veri.

10. Jirrizulta illi l-intimati jikkontendu ukoll illi huma ma humiex responsabbli ghall-kitba ta' terzi.

11. Jirrizulta illi f'decizjoni moghtija mill-Grand Chamber tal-Qorti Europeja ghad-Drittijiet tal-Bniedem fl-ismijiet *Delfi AS vs Estonia* fis 16 ta' Gunju 2015 dik il-Qorti ikkunsidrat difiza simili imressqa mis-socjeta Delfi, li tiggstixxi sit ta' internet fejn jidhru stejjer u jsiru l-kummenti dwarhom, u fejn din il-Qorti qalet is-segwenti:

*The Court notes at the outset that user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression. That is undisputed and has been recognised by the Court on previous occasions see *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 48,*

ECHR 2012, and Times Newspapers Ltd (nos. 1 and 2) v. the United Kingdom, nos. 3002/03 and 23676/03, § 27, ECHR 2009). However, alongside these benefits, certain dangers may also arise. Defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated like never before, worldwide, in a matter of seconds, and sometimes remain persistently available online.

12. Tkompli tghid l-istess Qorti:

... because of the nature of Internet media, it cannot reasonably be required of a portal operator to edit comments before publishing them in the same manner as applies for a printed media publication. While the publisher [of a printed media publication] is, through editing, the initiator of the publication of a comment, on the Internet portal the initiator of publication is the writer of the comment, who makes it accessible to the general public through the portal.

13. Ghalhekk, il-Qorti tikkontendi illi

.... because of the particular nature of the Internet, the “duties and responsibilities” that are to be conferred on an Internet news portal for the purposes of Article 10 may differ to some degree from those of a traditional publisher, as regards third-party content.

14. Madanakollu, il-Qorti tasal ghall-konkluzjoni illi

The Court accordingly finds that, as a professional publisher, the applicant company should have been familiar with the legislation and case-law, and could also have sought legal advice the Court considers that the applicant company was in a position to assess the risks related to its

activities and that it must have been able to foresee, to a reasonable degree, the consequences which these could entail.

15. *L-istess Qorti tghaddi biex taghmel is-segwenti osservazzjoni*

*“... the Court has emphasised 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 (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298; *De Haes and Gijssels v. Belgium*, 24 February 1997, § 37, Reports 1997I; and *Bladet Tromsø and Stensaas v. Norway [GC]*, no. 21980/93, § 58, ECHR 1999III). Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313, and *Bladet Tromsø and Stensaas*, cited above, § 59). The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments (see, for example, *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236; *Incal v. Turkey*, 9 June 1998, § 54, Reports 1998IV; and *Tammer v. Estonia*, no. 41205/98, § 62, ECHR 2001I).*

133. *Moreover, the Court has previously held that in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public’s access to news and facilitating the dissemination of information in general see *Ahmet Yıldırım*, cited above, § 48, and *Times Newspapers Ltd*, cited above, § 27). At the same time, the risk of harm posed by content and*

communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (see Editorial Board of Pravoye Delo and Shtekel, cited above, § 63).

134. In considering the “duties and responsibilities” of a journalist, the potential impact of the medium concerned is an important factor and it is commonly acknowledged that the audiovisual media often have a much more immediate and powerful effect than the print media (see Purcell and Others v. Ireland, no. 15404/89, Commission decision of 16 April 1991, Decisions and Reports 70, p. 262). The methods of objective and balanced reporting may vary considerably, depending among other things on the media in question (see Jersild, cited above, § 31).

16. Eventwalmart, dwar id-difiza mressqa minn Delphi illi hija ma hijex responsabbli għall-kummenti ta' terzi, bhalma del resto tghid l-intimata, il-Grand Chamber tagħmel is-segwentni konkluzjoni: Based on the concrete assessment of the above aspects, taking into account the reasoning of the Supreme Court in the present case, in particular the extreme nature of the comments in question, the fact that the comments were posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction imposed on the applicant company, the Court finds that the domestic courts' imposition of liability on the applicant company was based on relevant and

sufficient grounds, having regard to the margin of appreciation afforded to the respondent State. Therefore, the measure did not constitute a disproportionate restriction on the applicant company's right to freedom of expression.

17. *Jirrizulta car illi s-sentenza fuq citata hija cara bizzejjed biex jigi dikjarat illi, ghalkemm amministratur ta' sit elettroniku ghandu responsabbiltajiet ffit differenti minn dik ta' editur ta' gazzetta stampata, stante illi editur ta' gazzetta stampata jista' jara l-kummenti qabel ma jigu ppublikati filwaqt illi amministratur ta' sit elettroniku jista' jara il-kummenti biss la darba jidhru fuq is-sit tieghu, l-obbligi w responsabbiltajiet ta' l-amministratur isiru bhal dawn ta' editur ta' gazzetta stampata la darba l-kumment ikun stampat u jkun accessibbli ghall-kummenti ta' terzi. Di fatti, f'tali stadju, f'kaz illi jitqieghed xi kumment illi, b'xi mod, jista' jitqies bhala offensiv jew malafamanti fil-konfront ta' terzi, l-amministratur ghandu jiehu l-passi kollha mehtiega sabiex inehhi tali kummenti minn fuq tali sit, sabiex il-hsara tigi minimizzata. F'kaz illi tali azzjoni ma ssehx, ir-responsabbilta' ta' l-amministratur tiehu xejra differenti u l-amministratur ikun qieghed iqis il-kummenti ta' terzi bhala kummenti tieghu u ghalhekk ghandu jitqies responsabli ghal tali kummenti daqslikieku ghamilhom hu.*

18. *Jirrizulta illi lokalment, f'kwistjoni simili hafna ghal dik meritu tal-kawza odjerna, ossijail-kawza Nutar Mark Sammut vs Daphne Caruana Galizia, deciza mill-Qorti tal-Appell (Sede Inferjuri) fid-9 ta' Jannar 2008, dik il-Qorti, wara illi qieset il-gurisprudenza Ewropeja, fosthom dik fuq imsemmija, taghmel is-segweni osservazzjonijiet dwar il-liberta' ta' l-espressjoni u l-limitazzjonijiet taghha:*

Sa fejn hu maghruf ma jezisti ebda provvediment f'ebda ligi, kompriza l-Konvenzjoni Ewropeja, u l-ebda kazistika ta' dehen li tikkondona, taht l-iskuzanti ta' certu stil jew kitba, l-uzu, imqar b'cajta, minn xi artikolist, anke ta' kalibru, ta' kliem jew espressjonijiet offensivi sempliciment in omagg ghal manifestazzjoni libera tal-hsieb. Dan aktar u aktar fejn, bhal f'dan il-kaz, l-informazzjoni divulgata tal-fatt ut sic tinsab akkompanjata minn informazzjonijiet ohra kkummentati, bla ebda utilita' ghall-ahjar komprensjoni ta' l-informazzjoni jekk mhux biex tinferixxi b'mod ripunjanti fuq il-karattru ta' l-appellat, u l-ghazliet tal-prestazzjonijiet professjonali tieghu lil certu partit politiku.

19. *Dik il-Qorti tkompli biex tikkwota l-Gatley "On Libel and Slander" fejn jghid:*

"It is immaterial whether the imputation is conveyed by words of assertion or suggestion, or by words used in a declarative or interrogative form. A defendant is liable for insinuation as well as for explicit statement, for insinuation may be as defamatory as direct assertion and even more mischievous. The tendency and effect of the language, not its form, is the criterion. A defendant cannot defame and escape the consequences by any dexterity of style".

5. Konsiderazzjonijiet konklussivi fuq il-fatti

1. *Jirrizulta, mill-provi prodotti, illi l-artikolist fil-gurnal The Malta Independent, li ghazel illi ma jidentifikax ruhu fl-artikolu illi gie ppubblikat fil-harga tal-Hadd 8 ta' Mejju 2016, ghazel illi jaghmel tieghu storja illi kienet dehret fuq il-blog tal-gurnalista Daphne Caruana Galizia f'it jiem qabel, li kopja taghha qatt ma giet pprezentata fl-atti ta' dina l-kawza, u filwaqt illi ghamel tieghu asserzjonijiet gia maghmula fuq tali*

blog, u dan meta ntqal illi intuzaw “alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri”, sahaq illi l-bank HSBC “is expected to launch an investigation into the possible fraudulent presentation of documents concerning OPM Chief of Staff Keith Schembri and Malcom Scerri, the general manager of the company Mr Schembri owns, Kasco Ltd, sources have told this newsroom.”

2. Jirrizulta, mill-provi prodotti, illi ghalkemm l-artikolist ma identifikax ruhu fl-artikolu per se, Pierre Portelli kien il-persuna illi attwalment ghamel kuntatt mal-Head of Communication tal-HSBC, ossija Franco Aloisio, dakinhar stess illi harget l-istorja fuq is-sit www.daphnecaruanagalizia.com, sabiex jinvestiga l-allegazzjonijiet ulterjorment u kien hu attwalment il-persuna illi kienet giet mghoddija l-informazzjoni illi kien ser isir stharrig intern fl-HSBC dwar l-allegazzjonijiet illi saru – dana huwa dak illi eventwalment gie rrappurtat fl-ewwel paragrafu tal-artikolu meritu tal-kawza odjerna – ghalhekk Pierre Portelli ghandu jerfa' responsabbilta' wkoll.

3. Jirrizulta wkoll, mix-xhieda ta' Franco Aloisio, illi l-istess Pierre Portelli gie mgharraf ukoll illi 'prima facie' kien jidher illi dana kien zball amministrattiv u allura ma kien hemm xejn fraudolenti f'dawk ir-rapporti – dana konvenjentement ma ssemmiex mill-artikolist fl-artiklu meritu tal-kawza odjerna.

4. Jirrizulta wkoll illi ghalkemm l-intimati kienu a korrent tal-fatt illi 'prima facie' l-hrug tal-ittra bl-indirizz ta' Attard kien zball amministrattiv tal-Bank, Pierre Portelli, meta kkuntattjat mill-konsulent legali ta' Brian Tonna u Karl Cini, fl-10 ta' Mejju 2018 (fol 44) kif ukoll meta kkuntattjat precedentement mill-konsulent legali ta' Keith

Schembri u Malcolm Scerri fit 8 ta' Mejju 2016 fil-ghaxija, irrisponda illi ma saru ebda allegazzjonijiet fil-konfront tar-rikorrenti u sahaq illi la darba r-rikorrenti ma kienux caħdu l-istorja illi dehret fuq is-sit elettroniku www.daphnecaruanagalizia.com, l-istejjer ma setghux jitnehħew izda għarraf li malli l-Bank jghaddilhom informazzjoni, huma jiehdu hsieb jirrapporawha.

5. Jirrizulta illi fir-risposta lill-konsulent legali ta' Tonna u Cini, Portelli jghid "Your (sic) version of the facts that such could be the result of wrong stationery on behalf of the bank is indeed revealing. This will surely feature in our story highlighting your clients' denial" (fol 44)

6. Jirrizulta illi tali ndikazzjoni illi huwa ma kienx jaf dżwar zball fil-hrug tal-'letter head' tal-Bank ma tidhirx ili hija korrobrata minn dak illi xehed r-rapprezentant tal-Bank, fejn dana qal illi l-Gimgha 6 ta' Mejju 2016, kkuntattjat minn Pierre Portelli, huwa kien għarrafu illi 'prima facie' kien hemm zball amministrattiv.

7. Jirrizulta illi Pierre Portelli għazel illi qatt ma jixhed fil-proceduri odjerni, u għalhekk il-Qorti jkollha tistrieħ fuq il-verzjonijiet tal-fatti kif stabbiliti fix-xhieda ta' Franco Aloisio fejn sahaq illi huwa kien għarraf lil Pierre Portelli minnufih illi dana probabbilment kien 'zball amministrattiv'.

8. Jirrizulta illi dana l-fatt, illi certament kien ta' interess pubbliku u kien ta' interess kbir lill-qarrejja tal-gurnal u tas-sit elettroniku, konvenjentement gie skartat u mhux imdahħal fl-artikolu meritu tal-kawza odjerna, u ssemma' biss l-ewwel darba fl-artikolu illi deher fil-11 ta' Mejju 2016, u dana wara illi r-rikorrenti kienu talbu apologija w Pierre Portelli

kien irrifjuta illi johrogha.

6. Konsiderazzjonijiet konklussivi fuq id-danni u responsabbilta'

1. *Jirrizulta illi tul il-proceduri odjerni, ir-rikorrenti, pemezz tal-affidavits taghhom, saħqu l-istess haga, ossija illi l-intimati ghawgu l-fatti biex jimminaw l-integrita' taghhom (fol 30) u li hadd mill-intimati ma ghamel komunikazzjoni maghhom qabel ma nharget l-istorja.*

2. *Jirrizulta wkoll illi, a differenza ta' dak illi jikkontendu l-intimati, partikolarment fil-korrispondenza illi skambjaw mar-rikorrenti qabel ma nbdew il-proceduri odjerni, il-fatt illi l-intimati ghazlu illi jippubblikaw, kwazi 'in toto', il-kontenut tal-artikolu li kien ittella fuq is-sit tal-gurnalista Daphne Caruana Galizia ffit jiem qabel fisser illi kienu qed jaghmlu bhala taghhom dak minnha allegat.*

3. *L-intimati setghu facilment jirristringu l-artikolu taghhom għall-ewwel paragrafu ta' l-istorja nnifisha, li attwalment kienet l-unika "investigazzjoni" illi ghamel l-artikolist qabel ma rriproduca l-istorja illi kienet gia pubblikata ffit jiem qabel – dana ma ghamluhx.*

4. *Jirrizulta illi minflok, l-artikolist ghazel illi jenfasizza, kemm fit-titolu tal-artikolu kif ukoll fl-ewwel paragrafu tal-artikolu nnifsu, illi kienet ser issir "investigation" da parte tal-bank HSBC fuq dak illi l-artikolist ddeskriva bhala "alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri".*

5. *Jirrizulta car illi l-intenzjoni tal-artikolist meta ppubblika tali storja ma kienetx sabiex jgharraf lill-qarrejja bi storja li jista' jkollha nteress pubbliku, izda attwalment kienet sabiex tirriafferma l-allegazzjonijiet gia*

maghmula illi Keith Schembri u Malcom Scerri uzaw dokumentazzjoni falsifikati sabiex jifthu kumpanniji barra minn Malta – dana johrog car mill-fatt illi, kif jistqarr Franco Aloisio, Pierre Portelli kien mgharraf illi kien jidher li dan kollu kien kaz ta' 'zball amministrattiv', izda tali dettal gie totalment ommess mill-artikolist fl-artikolu meritu tal-kawza odjerna u ssemma' biss tlett ijiem wara, meta l-hsara li r-rikorrenti jilmentaw dwaru kienet gia saret.

6. Jirrizulta wkoll illi tali ntenzjoni hija ben ippruvata mill-kummenti illi thallew jaghmlu terzi persuni taht l-artikolu illi deher online, liema kummenti juru bic-car illi l-messagg illi nghata lill-pubbliku kien li r-rikorrenti kienu nvoluti f'attivitá illegali u kriminali ta' falsifikazzjoni ta' dokumentazzjoni tal-bank, u dana sabiex jottjenu vantagg huma, ossija jifthu kumpanniji barra minn Malta – l-intimati kienu f'kull posizzjoni illi jipprojbixxu jew jillimitaw il-kummenti illi saru minn terzi dwar dak allegat minnhom fl-artikolu, imma huma ghazlu illi jhallu lil kullhadd jghaddi l-kummenti taghhom, inkluz kummenti illi ma jistghux ma jitqiesux bhala minnhom innifishom libelluzi jew malafamanti fil-konfront tar-rikorrenti peress illi jattribwixxu azzjoni kriminali da parte tar-rikorrenti, liema kummenti minnhom infushom jippruvaw il-hsara illi kkawzaw l-intimati bil-pubblikazzjoni tal-artikolu meritu tal-kawza odjerna minghajr ma ghaddew l-informazzjoni kollha illi huma kellhom fil-pussess taghhom.

7. Jirrizulta, minn giurisprudenza tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, illi ghalkemm l-intimati jishqu illi min ghamel il-kummenti ghandu jinzamm responsabbli ta' dak illi ntqal, huwa car li l-fatt li l-amministratur tas-sit the Malta Independent Online ippermetta illi jsiru

kummenti u allegazzjonijiet fil-konfront tar-rikorrenti hija sufficjenti sabiex jinzammu responsabbli taghhom ukoll.

8. Il-Qorti thoss illi r-responsabbilta' ta' l-intimati, fil-kaz odjern, li ghandha tirrifletti fid-danni moghtija, tizdied esponentement, mhux minhabba il-kontenut tal-artikolu per se', izda minhabba l-fatt illi hallew u ppermettew lill-persuni mhux facilment identifikabbli jaghmlu kummenti libelluzi u malafamanti fil-konfront tar-rikorrenti minghajr ma dawna gew b'xi mod kkontrollati jew censurati qabel il-pubblikazzjoni, liema kummenti, mill-qari taghhom, kienu ntizi unikament biex jaghmlu hsara lir-rikorrenti.

9. Il-Qorti tosserva illi kien ikun ferm ahjar kieku l-intimati, flok ma qajjmu difiza illi ma kienux responsabbli ghall-kummenti ta' terzi, hadu hsieb illi jidentifikaw lill min kiteb il-kummenti li tqiesu bhala libelluzi u malafamanti mir-rikorrenti u talbu illi tali persuni jigu kjamati in kawza biex jirrispondu ghal eghmilhom, u dana peress illi kien ikun hekk biss illi, b'mod limitat, jillimitaw r-responsabbiltajiet taghhom u jghadduhom fuq min attwalment ghazel illi jaghmel il-kummenti tieghu, mill-kumditat tad-dar tieghu, wara l-paraventu tas-sistema' informatika illi biddlet ir-realta' tad-dinja kollha kif konna nafuha.

10. Il-Qorti tosserva illi wasal iz-zmien illi kull min jghaddi kwalsiasi tip ta' kumment dispreggattiv fuq il-mezzi socjali jkun facilment rintraccjabbli u, kif jghidu l-Ingliزي, "put to task" ghal dak illi jkun ghazel illi jikteb u jxandar ma' kullhadd u jinzammew responsabbli ghall-hsara kbira illi tkun qeghdha ssir lil min ikun qed isofri mill-effetti tal-allegazzjonijiet fil-konfront ta' tali persuni f'kaz illi jigi ppruvat illi huma inveritjeri.

11. Il-Qorti ma tistaxx ma tesprimix it-thassib serju taghha dwar l-uzu hazin u malizzjuz tal-kummenti illi bdew jigu riprodotti wara l-artikoli illi jigu ppubblikati fuq il-gazzetti online, bhalma gara fil-kaz odjern, u dana peress illi tali uzu hazin u malizzjuz qiegħed jimmina l-kuncett baziku tal-liberta' tal-espressjoni, stante illi, filwaqt li kulhadd għandu jkollu l-liberta' illi jesprimi l-hsibijiet tiegħu, hadd ma għandu d-dritt illi jiggudika persuni u jallega fatti li jigu eventwalment ippruvati bhala nveritjeri mingħajr ma eventwalment jigi punit f'kaz illi tali allegazzjonijet huma foloz.

12. Il-Qorti tosserva ukoll illi għalkemm l-intimati jikkontendu illi huma ma għandhomx jinzammew responsabbli tal-kummenti illi saru minn terzi, tali responsabbilta' tibqa' tinkombi fuqhom sakemm jibqgħu jippermettu illi jsiru kummenti libellużi u malafamanti fil-konfront ta' terzi minn fuq is-sit tagħhom, li l-intimati għazlu illi jagħmlu accessibbli għal kulhadd bhala mezz ta' xandir tal-hsibijiet ta' kull min għandu interess, b'impunita' u sakemm l-intimati jibqgħu joffru tali pjattaforma lil dawna l-persuni illi persistement jagħmlu akkuzi mingħajr ma jerfghu responsabbilta' għalihom u jibqgħu jippermettulhom jikkummentaw b'impunita', l-intimati ser jibqgħu responsabbli għal dak illi jsir fuq is-sit tagħhom. Del resto, kif qalet il-Qorti tal-Appell (Sede Inferjuri) fis-sentenza 'Sylvana Debono vs Alexander Farrugia', deciza fis-27 ta' Jannar, 2016 u li dina l-Qorti ssib konfort fiha u tagħmilha bhala tagħha.

Id-dritt tal-liberta' tal-espressjoni m'huwiex licenzja biex thammeg ir-reputazzjoni ta' haddiehor u mbagħad tipprova tistahba wara dan id-dritt'.

5. Rat l-atti kollha tar-rikors numru 100/2016 fl-ismijiet Brian Tonna u Karl Cini vs. Pierre Portelli, David Lindsay u Stephen Calleja bhala edituri tal-gazzetta 'The Malta Independent on Sunday' u 'The Malta Independent Online' deciz mill-appell nhar il-Gimgha, 4 ta' Ottubru 2019 stante l-ftehim bejn il-partijiet fl-atti odjerni li l-provi migbura f' dak ir-rikors kellhom iservu wkoll bhala provi fil-kaz odjern.

6. Rat illi l-intimati kollha appellaw mis-sentenza suesposta u ressqu hames aggravji li ser jigu trattati minn din il-Qorti separatament;

7. Illi l-ewwel aggravju jaqra kif isegwi:

'1. Li l-Ewwel Onorabbli Qorti ma setghet qatt skont il-Ligi ssib lill-intimat Pierre Portelli responsabbli ghall-pubblikazzjoni tal-artikolu kemm dak stampat kif ukoll dak ippubblikat online.

Sabiex jiggustifikaw l-ewwel aggravju taghhom l-appellanti jaghmlu referenza ghall-Att 248 tal-Ligijiet ta' Malta Att dwar l-Istampa kif vigenti dakinhar tal-artikolu in kwistjoni partikolarment id-definizzjoni tal-kelma 'Editor' u referenza partikolari ghall-artikolu 23.

Illi l-artikolu 23 jaqra li l-azzjoni civili tista' tittiehed kontra l-persuni li gejjin:

'a) l-awtur tal-kitba, jekk huwa jkun kitibha sabiex tigi ppubblikata, jew jekk ikun ta l-kunsens tieghu ghal hekk;

b) l-EDITOR;

jew, jekk dawk il-persuni ma jkunux jistghu jigu jidentifikati,

c) ir-responsabbli għall-pubblikazzjoni.'

L-appellanti jilmentaw minn dik il-parti tad-decizjoni appellata fejn l-Ewwel Onorabbli Qorti sahqet li Pierre Portelli kellu jigi misjub responsabbli stante li kien hu li attwalment għamel kuntatt mal-Head of Communications tal-HSBC u li lilu kienet giet mghoddija l-informazzjoni li kien ser isir stharrig intern, liema informazzjoni sabet ruhha fl-ewwel paragrafu tal-artikolu mertu tal-kawza. L-appellanti jsostnu li din il-konkluzjoni kienet fattwalment gratwita u bla bazi legali. Skont l-appellanti la darba l-artikolista ma kienx maghruf kellu jkun l-EDITOR li wahdu jerfa' r-responsabbilta għal dak ippublikat.

Għal dan l-aggravju l-appellati wiegħbu li mill-atti jirrizulta li fir-realta' Pierre Portelli wettaq kemm il-funzjoni ta' gurnalist kif ukoll dik ta' EDITOR fl-artikolu in kwistjoni rrileventament minn x'kienet tissejjah il-kariga nterna tiegħu u dan għar-ragunijiet li jsegwu:

i) li fl-atti tal-kawza 100/2016 imsemmija aktar 'il fuq huwa saħansitra dentifika ruħu bħala 'content editor' u per konsegwenza responsabbli mill-kontenut tal-artikolu;

ii) li kif osservat l-Ewwel Onorabbli Qorti kien hu li wiegħeb għall-ewwel komunikazzjoni li nbaġtet minnhom konsegwenti għall-pubblikazzjoni tal-artikolu in kwistjoni tant li ta r-ragunijiet tiegħu għalfejn skont hu l-artikolu ma kienx malfamanti;

iii) Kien hu li nfurmahom li ser jaghti struzzjonijiet lin-*newsroom* biex tigi aggornata l-istorja;

iv) Kien hu li kkuntattja lill-Head of Communciation tal-HSBC sabiex jinvestiga l-istorja.

Illi minn analizi tad-decizjoni appellata jirrizulta lil din il-Qorti li l-konkluzjoni li waslet ghalha l-Ewwel Onorabbli Qorti li l-appellant Pierre Portelli kellu jigi meqjus responsabbli ghall-artikolu kienet ibbazata fuq il-punti li jsegwu:

a) li Pierre Portelli kien il-persuna li attwalment ghamel kuntatt mal-Head of Communications tal-HSBC dak in-nhar li harget l-istorja fuq is-sit ta' Daphne Caruana Galizia u dan sabiex jinvestiga ulterjoment l-allegazzjonijiet u li kien lilu li nghatat l-informazzjoni li ser isir stharrig intern fl-HSBC dwar l-allegazzjonijiet li saru. L-Ewwel Qorti rrilevat u tat importanza l-fatt li din l-informazzjoni moghtija lil Pierre Portelli sabet ruhha fl-ewwel paragrafu tal-artikolu nvolut.

b) Illi kien Pierre Portelli li gie nfurmat li 'prima facie' dak allegat kien biss zball amministrattiv u l-Ewwel Onorabbli Qorti nnotat li dan 'konvenjentement' thalla barra fl-artikolu in kwistjoni;

c) Illi kien Pierre Portelli li ghalkemm kien infurmat li 'prima facie' l-hrug tar-rakkommandazzjonijiet bl-indirizz ta' Attard kien biss zball amministrattiv, li meta kkuntattjat mil-legali tar-rikorrenti nfurmahom li l-istejjer ma setghux jitnehhew la ma kienx hemm ic-cahda ghal dak li deher fuq is-sit ta' Daphne Caruana Galizia.

d) Illi l-istess Pierre Portelli, ghalkemm rrizulta mill-provi li kien jaf li probabbilment kien sar zball amministrattiv fil-hrug tal-ittri bl-indirizz in kwistjoni, kien irrisponda lil-legali tar-rikorrenti appellati li ghalih kienet 'ahbar gdida' li dan seta' kien zball amministrattiv (meta rrizulta mill-provi li ma kienet ahbar gdida xejn ghalih) u li din kienet ser tohrog mac-cahda.

Illi din il-Qorti wara li rat id-decizjoni appellata partikolarment il-punti li gew emfasizzati aktar 'il fuq kif ukoll l-ammissjoni cara ta l-istess Pierre Portelli fl-atti tal-kawza 100/2016, li bi qbil bejn il-partijiet il-provi fl-istess kellhom iservu wkoll bhala prova fl-atti odjerni, li l-istess appellant Portelli kien qed jagixxi bhala wkoll Direttur tal-kontenut 'Director . . . content', tqis li l-konkluzjoni tal-Ewwel Qorti li l-istess Portelli kellu jitqies responsabbli flimkien maz-zewg intimati l-ohra ghall-artikolu in kwistjoni kienet konkluzjoni legalment u fattwalment gjustifikata w'ghaldaqstant ser tghaddi sabiex tichad l-ewwel aggravju tal-appellanti.

8. Illi t-tieni aggravju jaqra kif isegwi:

'2. Li l-Qorti kienet manifestament zbaljata fil-kunsiderazzjoni tal-fatti dwar l-artikolu *per se* li jirrispekkja dak li attwalment kien ser isehh u fuq kunsiderazzjonijiet li fl-ahhar mill-ahhar mhumieq libelluzi.'

Fis-sustanza l-aggravju tal-appellanti huwa li l-artikolu kien fil-fatt korrett fejn inghad li l-Bank HSBC kien qed iwettaq investigazzjoni

dwar l-ittri in kwistjoni ghalkemm l-appellanti jsostnu li x-xhieda da parti tal-Bank:

‘Evidentement . . . ma kienux komdi jixhdu kontra r-rikorrenti Keith Schembri, persuna nfluwenti hafna f’pajjizha llum bil-kariga ta’ Chief of Staff li jokkupa.’

Dan nonostante li x-xhieda skont l-appellanti zammew lura milli jsejhulha nvestigazzjoni izda pruvaw juzaw kliem iehor sabiex jimminimizzaw dak li kien qed isir. Jishqu wkoll li skont huma Pierre Portelli inghata l-informazzjoni li possibilment seta’ kien hemm zball amminsitrattiv wara li gie ppubblikat l-artikolu. L-appellanti jsostnu allura li l-Qorti kienet kompletament zbaljata fil-konkluzjonijiet taghha meta ma rrikonoxxiex il-korrettezza tal-artikolu u ddikjaratu libelluz.

L-appellati jilqghu ghal dan l-aggravju billi jsostnu li dan huwa aggravju li jallega li l-Ewwel Onorabbli Qorti ghamlet apprezzament tal-fatti hazin u li skont l-appellanti waslet ghad-decizjoni taghha fuq numru ta’ assunjonijiet u konkluzjonijiet u mhux fatti. L-appellati jirribattu billi jsostnu li l-konkluzjoni tal-Ewwel Qorti kienet ibbazata fuq il-fatti u provi li rrizultawha mill-atti u mhux kif qed isostnu l-appellanti. Jinsistu li l-mod kif kien miktub l-artikolu in kwistjoni l-intimati appellanti taw x’jifhem lill-qarrej ordinarju li l-appellati prezentaw dokumenti frawdolenti (jew possibilment frawdolenti) u dan b’ mohbi kbir f’kumpaniji li ghandhom fil-Virgin Island. Jinsistu li l-artikolu mar *ben oltre* l-

indirizz zbaljat fl-ittra izda allega li l-bank kien qed jaghmel investigazzjoni dwar dokumenti frawdolenti u li sahsitra s-socjeta' BTI Management Ltd. setghet tigi rinfaccjata b'pieni amministrattivi mill-Malta Financial Services Authority. Isostnu ghalhekk l-appellati li l-artikolu mputa jew attribwixxa lilhom agir doluz jew kriminuz u li meta tenut kont tal-kummenti li segwew l-istess artikoli dawn l-imputazzjonijiet jew atribuzzjonijiet hadu xejra aktar gravi u malafamanti fil-konfront taghhom. Kummenti li l-appellanti gratwitament hallew fuq l-online portal taghhom. L-appellati jsostnu li sa minn qabel il-pubblikazzjoni tal-artikolu l-appellanti kienu gew infurmati mir-rapprezentant tal-Bank HSBC Franco Aloiso li 'prima facie' seta' kien hemm biss zball amministrattiv izda xorta wahda gie ppubblikat l-artikolu in kwistjoni. Isostnu wkoll li hadd mix-xhieda tal-Bank ma kkonferma li kienet saret investigazzjoni.

Illi din il-Qorti rat ix-xhieda kollha fl-atti, rat ukoll il-konsiderazzjonijiet tal-Qorti u tqis li l-aggravju tal-appellanti jippekk legalment u fattwalment ghar-raguni li jassumi li l-Ewwel Onorabbli Qorti ddecidiet li l-artikoli in kwistjoni kellhom jigu kunsidrati bhala libelluzi abbazi biss li semmew li kienet qed issir investigazzjoni mill-Bank HSBC dwar l-ittri in kwistjoni u xejn aktar. Jirrizulta fil-fatt mid-decizjoni appellata li d-decizjoni kienet ibbazata fuq ferm oltre l-allegata nvestigazzjoni msemmija fl-artikolu izda fuq analizi tal-assjem kollu u l-fatti kollha li sehew konsegwenza tal-artikoli in kwistjoni. Fil-fatt jirrizulta li l-Ewwel Onorabbli Qorti ddecidiet li l-artikoli kienu libelluzi mhux

neccessarjament meta moqrija wahedhom izda meta wiehed jiehu kont tal-kuntest tal-istess artikoli mal-kummenti li thallew 'on-line' fuq il-'portal' amministrat mill-istess intimati appellanti. Fil-fatt huwa f'dan il-kuntest li l-Ewwel Onorabbli Qorti sabet li l-artikolu kien libelluz stante li l-artikoli flimkien mal-kummenti taw x'jifhem li l-appellati kienu qed jigu nvestigati dwar agir kriminali li sahsitra jmur oltre dak allegat fl-istess artikli (ara partikolarment kummenti fejn anki ssemwew familjari ohra tal-intimati li indipendentement minnhom setghu kienu qed jigu akkuzati b'eghmil doluz u li dan l-eghmil doluz gie attribwit lir-rikorrenti appellati).

Illi l-Ewwel Onorabbli Qorti wkoll waslet ghall-konkluzjonijiet taghha wara li vverifikat mill-atti li 'konvenjentement' (il-kelma uzata mill-Ewwel Qorti) l-appellanti zammew lura milli fl-artikolu jnizzlu li l-Bank kien gia nfurmahom (partikolarment lil Pierre Portelli - l-persuna responsabbli mill-kontenut) li probabbilment l-indirizz fuq l-ittri kien biss zball amministrattiv. Din il-Qorti taqbel mal-konkluzjoni tal-Ewwel Qorti u dan stante li huwa ovvju li din l-informazzjoni dwar l-'izball amministrattiv' thalliet barra b'intenzjoni malizjuza da parti tal-appellanti altrimenti l-artikolu kien jitlef kwalunkwe sahha ta' akkuza fil-konfront tar-rikorrenti appellanti u kien jitlef is-sensazzjonalizmu tieghu bhala ahbar.

Illi jirrizulta ghalhekk lil din il-Qorti li mhux minnu li d-decizjoni tal-Ewwel Onorabbli Qorti ttiehdet fuq assunzjonijiet u konkluzjonijiet zbaljati anzi l-Ewwel Qorti tat ragunijiet validi fil-

ligi u bbazati fuq il-fatti esposti quddiemha ghalhex waslet ghall-konkluzjoni taghha li l-artikoli in kwistjoni kellhom jigu dikjarati malafamanti, ragunijiet li jmorru ben oltre d-disgwit dwar jekk dak li kien qed jaghmel il-Bank HSBC kellux jissejjah bil-kelma 'investigazzjoni' jew kelma ohra. Fil-fatt l-Ewwel Qorti wzat il-kliem 'stharrig intern'. In oltre rrizulta car mill-atti li ghalkemm l-appellanti fl-artikolu semmew investigazzjoni u taw x'jifhem ghax hekk kien jaqbillhom (ara partikolarment ir-referenza ghall-*Malta Financial and Services Authority*) li l-investigazzjoni kienet dwar xi agir frawdolenti da parti tal-appellati, mix-xhieda ta' Michele Cordina a fol. 74 et seq johrog li l-uniku nvestigazzjoni li saret kienet dwar il-kwistjoni amministrattiva tal-indirizz u xejn aktar b' dana li ebda agir da parti tar-rikorrenti appellati qatt ma kien in diskussjoni fil-Bank. Dan ix-xhud jikkonferma ghal aktar minn darba li nvestigazzjoni fuq frodi qatt ma saret mill-Bank (ara fol. 78) u jsostni li l-verifiki li ghamlu u li gew imqanqla mill-artikolu fuq il-Blog ta' Daphne Caruana Galiza datat 6 ta' Meju 2016 (cioe' jumejn qabel il-pubblikazzjoni tal-artikoli in kwistjoni) twaqqfu mill-ewwel ghax irrizulta li d-dokumenti kienu 'authentic' (fol. 87). Ix-xhud Lawrence Pace a fol. 52 et seq ikkonferma li l-verifika saret nhar is-6 ta' Meju 2016 stess. Il-Qorti tqis li l-qarrej fl-artikoli in kontestazzjoni nghata x'jifhem li l-imsemmija 'investigazzjoni' kienet tmur ben oltre l-verifika ghalfejn hareg indirizz u mhux iehor fuq l-ittri ta' rakkommandazzjoni, tant li anki l-kummenti li tellghu jevidenzjaw li l-qarrej 'konvenjentement' inghata x'jifhem ferm aktar minn hekk - u ghal dan jahtu biss l-appellanti li ghamlu taghhom l-artikolu ta' Daphne Caruana Galizia b' dana li tawh xehta

ta' konferma tal-allegazzjonijiet kontenuti fl-istess minghajr ma taw il-fatti kollha noti lilhom partikolarment l-informazzjoni li probabbilment kien biss zball amministrattiv.

Illi dwar dan l-aggravju din il-Qorti ma tistax ma tirrilevax li l-kumment da parti tal-appellanti li l-impjegati tal-HSBC allegatament ma kienux komdi jixhdu fil-konfront ta' Keith Schembri minhabba min hu u l-kariga li jokkupa ma hu bbazat fuq l-ebda prova fl-atti u huwa kumment ghal kollox frivolu u vessatorju u ntiz biss sabiex jiffa f' dell ikrah l-impjegati tal-istess Bank.

Illi ghar-ragunijiet kollha suesposti din il-Qorti tqis li t-tieni aggravju tal-appellanti wkoll mhux legalment u fattwalment gjustifikat u ser tghaddi sabiex tichad l-istess.

9. Illi t-tielet aggravju jaqra kif isegwi:

'3. Li l-kummenti kienu accessorji ghall-artikolu u permissibbli skont il-ligi.'

F'dan l-aggravju l-appellanti jaghmlu referenza ghad-decizjoni tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem fl-ismijiet **Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary** datata 2 ta' Frar, 2016 u jsostnu li din id-decizjoni tmur oltre dawk kwotati mill-Ewwel Onorabbli Qorti stante li skont l-appellanti sabiex il-kummenti jigu dikjarati libelluzi dik il-Qorti ddikjarat li l-kummenti tant iridu jkunu vulgari li jammonaw ghal *hate speech* u

mhux biss offensivi fatt li skont l-appellanti ma rrizultax fil-kaz odjern. Abbazi wkoll ta' decizjonijiet ohra kwotati mill-appellanti fl-aggravju taghhom l-appellanti jsostnu li eskluzi l-kummenti l-artikoli in kwistjoni ma setghux jigu kkunsidrati libelluzi fihom infushom u jsostnu wkoll li lanqas mehuda mal-kummenti ma setghu jigu kkunsidrati bhala libelluzi.

Illi bhala risposta l-appellati jsostnu li d-decizjoni tal-Ewwel Qorti f'dan ir-rigward kienet wahda gusta ghar-raguni li rrizulta li huwa nkontestat li l-'online portal' kienu responsabbli ghalih l-appellanti, li s-sentenza kkwotata bhala bazi tal-aggravju taghhom kienet titratta mertu kompletament divers u cioe' dwar jekk kummenti kienux iwasslu ghall-vjolenza jew mibgheda fuq bazi ta' razza, sess, generu eccetera filwaqt li l-kaz odjern ma jirrivolviex ruhu fuq dawn il-kwistjonijiet, illi l-kaz odjern jikkoncerna hsara lir-reputazzjoni u d-drittijiet tal-appellati u li l-appellanti fl-artikoli u l-kummenti li ppermettew marru ben oltre dak permissibbli fil-kamp gurnalistiku tant li hallew kummenti tant gravi li sahsitra jiddeskrivu lill-appellat partikolari u cioe' Keith Schembri li gie ttimbrat bhala 'M-A-S-S-I-V-E F-R-A-U-D' semplicement ghaliex jigi minn persuna partikolari, liema kummenti lanqas tnehhew wara li hareg car li l-ittri in kwistjoni kienu biss rizzultat ta' 'zball amministrattiv'. L-appellati jinsistu li l-Ewwel Onorabbli Qorti kienet korretta fejn iddecidiet li mill-assjem ta' kollox l-artikoli kellhom jitqiesu bhala libelluzi.

Illi dwar dan l-aggravju l-Qorti taghmel referenza ghad-decizjoni tal-Ewwel Onorabbli Qorti partikolarment dik il-parti fejn tghid kif isegwi:

'Jirrizulta wkoll illi tali ntenzjoni hija ben ippruvata mill-kummenti illi thallew jaghmlu terzi persuni taht l-artikolu illi deher online, liema kummenti juru bic-car illi l-messagg illi nghata lill-pubbliku kien li r-rikorrenti kienu nvoluti f'attivitá' illegali u kriminali ta' falsifikazzjoni ta' dokumentazzjoni tal-bank, u dana sabiex jottjenu vantagg huma, ossija jifthu kumpanniji barra minn Malta – l-intimati kienu f'kull posizzjoni illi jipprojbixxu jew jillimitaw il-kummenti illi saru minn terzi dwar dak allegat minnhom fl-artikolu, imma huma ghazlu illi jhallu lil kullhadd jghaddi l-kummenti taghhom, inkluz kummenti illi ma jistghux ma jitqiesux bhala minnhom innifishom libelluzi jew malafamanti fil-konfront tar-rikorrenti peress illi jattribwixxu azzjoni kriminali da parte tar-rikorrenti, liema kummenti minnhom infushom jippruvaw il-hsara illi kkawzaw l-intimati bil-pubblikazzjoni tal-artikolu meritu tal-kawza odjerna minghand ma ghaddew l-informazzjoni kollha illi huma kellhom fil-pussess taghhom.'

Mill-atti rrizulta wkoll li tali kummenti baqghu accessibbli fuq il-*'portal on-line'* immexxi mill-intimati appellanti anki wara li ppubblikaw il-fatt tal-izball fl-ittri u ghal dan jistghu jahtu biss l-appellanti u hadd aktar li ma hadu l-ebda pass sabiex almenu jimminimizzaw il-hsara li l-kummenti setghu ghamlu lir-reputazzjoni tar-rikorrenti appellati. Jirrizulta lill-Qorti li l-appellanti, li kienu ben konsapevoli li l-ittri in kwistjoni bl-indirizz

kif hareg kienu genwini ghajr ghall-izball tal-indirizz, xorta wahda ma hadux passi sabiex fi zmien ragjonevoli (konsegwenti ghall-informazzjoni lilhom li kien hemm biss zball) jitnehhew kummenti fuq il-‘portal’ li kienu qed jinferixxu hazin b’mod qawwi fuq il-karattru tal-appellati. Il-Qorti terga’ taghmel referenza ghall-kummenti fejn l-appellat Keith Schembri gie deskritt bhala xi kriminal unikament rizultat tal-kontenut tal-artikolu ppubblikat mill-appellanti li wassal ghal nies li kkumentaw iqabbluh ma qarib tieghu li huwa mfittex fuq frodi.

Illi din il-Qorti taqbel mal-konkluzjonjiet tal-Ewwel Qorti li l-mod kif gew miktuba l-artikoli in kwistjoni u l-fatt li thallew kummenti ‘on-line’ mal-istess artikoli li jimplikaw lill-appellati f’attivitajiet kriminali finalment jiggustifika d-decizjoni tal-Ewwel Qorti li l-artikoli kellhom jigu dikajrati bhala libelluzi u malafamanti fil-konfront tar-rikorrenti Keith Schembri u Malcolm Scerri w’ghaldaqstant ser tghaddi sabiex tichad ukoll it-tielet aggravju tal-appellanti.

10. Ir-raba’ aggravju jaqra kif isegwi:

‘4. Li l-Qorti naqset li tikkunsidra li mizuri li hadu l-intimati minnufih hekk kif li l-intimati oggezzjonaw ghal dak ippublikat.’

L-appellati jirrispondu ghal dan l-aggravju billi jsostnu li mhux gustifikat stante li mihijiex skuza taht il-Kap 248 (Att dwar l-Istampa) li l-artikolu kien replika ta’ dak li kitbet l-artikolista

Daphne Caruana Galiza fil-blogg tagħha anzi dan kien espressament eskluż fil-ligi, li l-intimati ma mxewx bi trasparenza stante li ma rrapurtawx il-fatt li l-Bank kien infurmahom li ‘prima facie’ seta’ kien hemm zball amministrattiv, li l-pubblikazzjoni tal-fatt li d-dokumenti ma kienux frawdolenti saret hamest ijiem wara l-pubblikazzjoni tal-artikolu (ara fol. 46).

Illi dwar dan ir-raba’ aggravju din il-Qorti ma tqisx li għandha għalfejn tinoltra ruhha ben oltre dak li ġia nġhad aktar ‘il fuq f’ din id-decizzjoni. Għalkemm jirrizulta li l-appellanti f’ mument hargu c-cahda tal-intimati fil-fatt jirrizulta wkoll li hadu hamest ijiem sabiex ippublikaw retifika li l-kwistjoni kollha kienet biss zball amministrattiv’ da parti tal-Bank HSBC. Jirrizulta wkoll lil din il-Qorti, kif ġia suespost, li l-appellanti hallew a disposizzjoni tal-qarrejja fuq l-‘online portal’ l-allegazzjonijiet kif riportati originarjament u wkoll ma hadu l-ebda passi dwar il-kummenti li kienu ttellghu fir-rigward liema kummenti kif ġia nġhad kienu jallegaw agir kriminali fil-konfront tar-rikorrenti appellati u cioe’ dak li l-gurisprudenza suesposta tiddekrivi bhala ‘*insufficiency of measures taken to remove without delay the comments.*

Għaldaqstant din il-Qorti tqis li għalkemm verament l-appellanti hadu xi mizuri wara li l-intimati oggezzjonaw għal dak ippubblikat, l-fatt biss li l-kummenti li jallegaw agir kriminali thallew ‘on-line’ iwassal lil din il-Qorti għall-konkluzjoni (li waslet għaliha wkoll l-Ewwel Qorti) li l-appellanti ma hadux bizzejjed mizuri sabiex il-

hsara fuq ir-reputazzjoni u karattru tar-rikorrenti appellati tigi minimizzata.

Il-Qorti ghalhekk tqis li dan ir-raba' aggravju wkoll mhux gjustifikat u ser tghaddi sabiex tichad l-istess.

11. Illi finalment il-hames aggravju jaqra kif isegwi:

'5. Li fi kwalunkwe kaz l-ammont likwidat bhala danni kien sproporzjonat.'

Illi dwar dan l-aggravju din il-Qorti taghmel taghha dak suespost taht ir-raba' aggravju. Tqis ukoll li huwa nutli li l-appellanti jaghmlu referenza ghal-ligi kif applikabbli llum meta ghall-kaz partikolari odjern japplikaw ir-regoli ai termini tal-Kap. 248 tal-Ligijiet ta' Malta u l-ebda regola jew ligi ntrodotta wara.

Illi l-Qorti rat ukoll li l-Ewwel Onorabbli Qorti ddedikat fid-decizjoni taghha mill-anqas tnax-il paragrafu dwar id-danni u r-responsabbilta' qabel ma waslet ghall-konkluzjoni taghha li l-intimati in solidum bejniethom ihallsu lir-rikorrenti Keith Schembri u Malcolm Scerri bhala danni s-somma ta' hamest elef Euro (€5,000). Din il-Qorti taqbel mal-konkluzjoni tal-Ewwel Qorti li stante li tirrizulta l-intenzjoni cara da parti tal-appellanti li jhallu certu nformazzjoni barra mill-artikolu nkluz il-fatt li l-Bank kien infurmahom li seta' kien hemm zball amministrattiv u l-fatt li konxjement b'mod malizzjuz thallew kummenti libelluzi u

malafamanti fil-konfront tal-appellati, minghajr ebda kontroll jew censura, ntizi biex jaghmlu hsara lir-reputazzjoni tal-appellanti partikolarment fuq l-‘internet’ li huwa mezz li l-impatt tieghu huwa ferm akbar minn semplici gazzetta ppubblikata, jiggustifikaw id-decizjoni tal-Ewwel Qorti li timponi danni fl-ammont ta’ hamest elef Euro (€5,000).

Din il-Qorti taqbel mal-Ewwel Onorabbli Qorti li tali mposizzjoni tad-danni f’dan l-ammont ghandha sservi bhala ‘eye opener’, lil dawk kollha li qeghdin fil-posizzjoni tal-appellanti, li xejn ma jiggustifika l-uzu hazin u malizzjuz tas-servizzi li huma joffru nkluz il-kummenti li jithallew ‘on-line’ (anki jekk mtellghin minn terzi), stante li filwaqt li fuq naha huwa minnu li kulhadd ghandu jkollu l-liberta’ li jesprimi l-hsibijiet tieghu abbazi tal-principju tal-liberta’ tal-espressjoni fuq in-naha l-ohra hadd ma ghandu jinterpreta dan id-dritt bhala dritt illimitat li tithammeg ir-reputazzjoni tan-nies minghajr ebda bazi fattwali u jippretendi li ma jkun hemm l-ebda sanzjoni kontra tali agir meta jirrizulta li dak li jkun inghad mhux minnu. L-attitudni ta’ bosta li l-ewwel hammeg mbaghad naraw hija attitudni deplorevoli u mhux sancita’ mil-ligi.

Ghaldaqstant ghar-ragunijiet suesposti din il-Qorti ser tghaddi sabiex tichad ukoll il-hames aggravju mqajjem mill-appellanti.

Decizjoni

Ghaldaqstant ghar-ragunijiet kollha suesposti, din il-Qorti tghaddi sabiex taqta' w'tiddeciedi dan l-appell billi filwaqt li tichad l-aggravji kollha tal-appellanti, tichad l-appell interpost u tikkonferma d-decizjoni appellata fl-ismijiet premessi datata 25 ta' Ottubru, 2018.

Bl-ispejjez taz-zewg istanzi ghandhom jigu sopportati kollha mill-appellanti.

(ft.) Dr. Joanne Vella Cuschieri
Imhallef

(ft.) Maureen Xuereb
Deputat Registratur

Vera kopja

D/Registratur