CONSTITUTIONAL COURT

JUDGES

CHIEF JUSTICE JOSEPH AZZOPARDI
JUSTICE GIANNINO CARUANA DEMAJO
JUSTICE NOEL CUSCHIERI

Sitting of Monday 14 October 2019

Case number 10

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 decree concerns the request made by defendants asking for the note filed by plaintiffs in terms of art. 143(5) of the Code

of Civil Procedure ["the Code"] and, consequently, for plaintiffs' appeal application to be struck out of the records because the said note was filed after the expiry of the peremptory time set out in the said art. 143(5). The relevant facts are as follows:

2. By virtue of a decree delivered on the 12 July 2019 the court, having considered that plaintiffs' appeal application fell drastically short of the requirements set out in art. 143(1) of the Code, directed plaintiffs "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", in terms of art. 143(5).

3. The 12 of July 2019 was a Friday. Since the peremptory time of two days expired on Sunday 14 July 2019, the time was deemed to expire on the next following day not being a public holiday[1], namely, Monday 15 July 2019. The note was however filed on Tuesday 16 July 2019, prompting defendants to request the striking out of the note, and, consequently, also of the appeal application, from the records.

4. Plaintiffs opposed the request on four grounds:

> »… these are constitional proceedings involving a single point of law which has not been decided by this court within a reasonable time, as six years have passed since the original application;
>
> »In second place this point of law relates to the illegality of a system of tariffs based on residency;
>
> »In third place the decision of the 12th July fell on a Friday and the note was filed within two working days, *i.e.* the following Tuesday;

1 Art. 108, Code of Organisation and Civil Procedure.

> »In the fourth place this court has the duty to safeguard these proceedings and to interpret any provision in a manner consistant with their nature.«

5. The first, second and fourth points are irrelevant to the issue. The fact that these are constitutional proceedings dealing with the validity of a system of tariffs does not imply that procedural rules should be disregarded to be replaced by procedural anarchy. If plaintiffs believe that these proceedings are taking a longer time than is reasonable (possibly also due to the fact that, as stated in the 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”) they may avail themselves of the apposite remedies available at law, but that is no reason why the rules of procedure should be set aside. The provisions of art. 143 are reasonable and pro-portionate, and are being applied in a predictable and transparent manner: they do not impose an immediate striking out of a procedurally deficient appeal application, but allow the appellant sufficient time to remedy the shortcoming. Two days might not perhaps seem to be a long enough time, but one must also keep in mind that the appellant had ample time to draft a procedurally compliant appeal application in the first place, and it ought to have been obvious to plaintiffs, for the reasons stated in the decree of 12 July 2019, that their appeal application was blatantly inadequate. Notwithstanding this, the law afforded

them another opportunity to remedy the situation; to avail themselves of this they must, however, comply within the time stated in the law.

6. In their third point plaintiffs in effect argue that the two days mentioned in art. 143(5) are not running days but working days. Art. 108 of the Code, however, clearly provides otherwise:

> »**108.** [Sundays and Public Holidays] shall not suspend the running of times; but if the last day of any legal or judicial time is any such day, the time shall be deemed to expire on the next following day, not being any such day.«

7. For these reasons defendants are right in stating that the note in terms of art. 143(5) was not filed within the time allowed by law and that the note and, consequently, also the appeal application, must be struck out of the records.

8. The court therefore orders that the note filed by plaintiffs on the 16 July 2019 be struck from the records. Since the continued failure by plaintiffs to comply with the requirements of art. 143 of the Code entails the invalidity of the appeal application, the appeal is also to be struck off. Costs are to be paid by plaintiffs.

Joseph Azzopardi President	Giannino Caruana Demajo Judge	Noel Cuschieri Judge

Deputy Registrar
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