FIRST HALL OF CIVIL COURT (CONSTITUTIONAL JURISDICTION)

HON. JUDGE TONI ABELA LL.D.

Sitting of Wednesday, 5th August, 2020

Case number 1

Application number 86/20/1TA

In the records of the case 86/20TA decided on the 30th of July 2020 in the names of:

Elton Gregory Dsane

vs

State Advocate

The Court:-

Having seen the application of Elton Gregory Dsane of the 3rd August 2020;

Having seen it's decree of the 4th of August 2020;

Having heard the oral submissions of legal counsels to parties to these proceedings.

Considerations

Applicant Elton Gregory Dsane is requesting that in view of the Court's decision of 30th July 2020 this Court 1. issues an ad interim measure, in the sense that the applicant should be released at this stage and 2. that the time for entering appeal should be abbreviated.

Ad interim order

This Court, as a Court of first instance in it's constitutional capacity, has decided the merits of the matter by the deliverance of the judgment on the 30th of July 2020. In so far as measures that can be issued after judgment has been delivered, this Court makes the following observations.

In the post-decision stage of a Court of first instance, this Court can only issue such orders as are expressly stated by the law. A case in point is the request to abbreviate the time for entering an appeal (Article 243 of Chapter 12). In the case of a request to issue an *ad interim* order, there is no provision in the law or judicial pronouncement, as to whether such an order can be issued when judgement has been delivered.

In fact according to rule 39 of the ECHR such measures are only conceivable when proceedings are still pending before the Court which is to decide the matter and before deliverance of such judgment. As regards the matter, this has been decided by this Court. What is more, parties have

today registered that an appeal has been formally lodged before the Constitutional Court which is an appellate Court in the circumstances. This Court has even taken judicial notice that this appeal has indeed been lodged. If ever, it is before that Court that this request is to be made and not to this Court.

During the verbal submissions, applicant is also sustaining, that the matter is one of those instances that falls within the purview of article 267 of Chapter 12 of the Laws of Malta. Without entering into the merit of whether the matter decided by this Court in it's decision, this submission does not elicit any comments by this Court in the light of saving aspect of article 266(1) as regards this article.

Without making any comments as to the applicability or otherwise of article 266 of Chapter 12 of the Laws of Malta, if the request is to be interpreted as a request to obtain a provisional enforcement under this article, although the Court of first instance is competent to issue such an order, sub-article 3 of this article lays down that:

> *"(3) The court of first instance shall, after summarily hearing the parties, dispose of the application as soon as may be after the filing thereof:*
>
> *Provided that –*

(a) ***if the application is filed before the delivery of the judgment****, the court of first instance shall dispose of the application as soon as may be after such judgment is delivered; and*

(b) *if, on appeal from the judgment of the court of first instance, the lodging of the record of the proceedings before the appellate court takes place* ***prior to the disposal of the application by the court of the first instance****, such application shall be dealt with and disposed of by the appellate court, and, in any such case, if the answer to the application has not been filed prior to such lodging, it shall be filed in the appellate court."* (Emphasis by this Court)

From a rational reading of this article, it is clear to the Court, that any such application should be made prior to the delivery of judgment by the Court of first instance and not after. In this case the present application was introduced after judgement was delivered.

This makes sense considering that sub-article (6) of the same article states that: *" Where a demand for a declaration under sub-article (1) is not made to the court of first instance, such demand may be made to the appellate court at any time prior to the delivery of the judgment on appeal".* This meaning, that even in case of an appeal, if indeed this article is applicable, this request can always be made as this stage. In the circumstances it will

be the Constitutional Court that is to take cognisance of the appeal in question (vide article 95(2) of the Consitution).

Abbreviation of time to appeal

In the light that the relevant Appeal has been lodged as explained above this Court will be refraining from taking further cognizance of this request.

Now therefore in view of the above the Court is deciding the application and demands of applicant in the following manner:

It rejects request to issue an ad interim order as demanded.

Refrains from taking cognizance of the request to abbreviate the times for the lodging of an appeal in view that that this has been so lodged.

Expenses of this application to be borne by applicant.

Hon. Mr. Justice Toni Abela

Deputy Registrar