



## **Court Of Appeal**

### **Judges**

**THE HON. MR. JUSTICE GIANNINO CARUANA DEMAJO  
(PRESIDENT)**

**THE HON. MR JUSTICE TONIO MALLIA  
THE HON. MR JUSTICE ANTHONY ELLUL**

**Sitting of Thursday, 10<sup>th</sup> December 2020.**

**Number: 11**

**Application Number: 44/18/2 AGV**

**Mark Fenech Laudi**

**v.**

**Irina Fenech Laudi in her own name and as curator ad litem to  
represent the minor Isabelle Fenech Laudi and the Director of  
Public Registry**

### **The Court:**

1. This judgment concerns the respondent's preliminary plea that the appeal application filed on the 18th June 2019 is null on the basis of Articles 789(c) and 789(2) of the Code of Organisation and Civil Procedure and Article 2(d) of Chapter 189 of the Laws of Malta since it

was filed in Maltese language notwithstanding that by Court order of the 18th April 2018 proceedings were to be held in the English language.

2. During the sitting held on the 3rd December 2020 the Court heard submission by defence counsel to the parties.

3. The articles of the law referred to by the respondent read as follows:

Code of Organisation and Civil Procedure - Chapter 12

*'789. (1) The plea of nullity of judicial acts is admissible - ...*

*“(c) if the act contains a violation of the form prescribed by law, even though not on pain of nullity, provided such violation has caused to the party pleading the nullity a prejudice which cannot be remedied otherwise than by annulling the act;*

*“Provided that such plea of nullity as is contemplated in paragraphs (a), (c) and (d) shall not be admissible if such defect or violation is capable of remedy under any other provision of law.*

*“(2) The plea of nullity of an act, under sub-article (1)(c), shall not be admissible if the party pleading such nullity has proceeded, or has knowingly suffered others to proceed, to subsequent acts, without pleading such nullity.’*

Judicial Proceedings (Use of English Language) Act - Chapter 189

*'2. In a court of civil jurisdiction –*

*“(d) where a court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings, unless the order is revoked by that court or any other court before which the proceedings are pending;’*

4. In the judgment referred to by the respondent in her reply, this Court said:

*‘Għalkemm il-paragrafu (d) tal-Artikolu 2 tal-Kap. 189 jipprovdi kif ingħad fuq, l-istess Kap. 189 ma jipprovdi espressament għas-sanzjoni tan-nullità tal-att relattiv fin-nuqqas ta’ osservanza tal-istess paragrafu (d) ... wara l-preżentata tar-rikors tal-appell l-appellati baqgħu jagħmlu atti oħra mingħajr ma eċċepew in-nullità tar-rikors tal-appell. Inotre l-appellati ma sofrew ebda preġudizzju bil-fatt li r-rikors sar bil-Malti tant li l-proċeduri kienu bdew isiru bl-Ingiliz fuq talba ta’ u a benefiċċju tal-appellant u l-appellati qatt ma sabu ebda diffikulta` li l-proċeduri jsiru bil-Malti. Għalhekk ma hemmx l-estremi necessarja skont il-liġi sabiex tiġi dikjarata n-nullità tar-rikors tal-appell.’<sup>1</sup>*

5. With regards to proceedings conducted in English according to Art. 2(d) of Chapter 189, the law does not provide that a judicial act is null if written in Maltese.

6. Furthermore, when respondent Irina Fenech Laudi filed her reply on the 5th December 2019 and pleaded nullity of the appeal, she claimed that she ‘*came to know*’ about the present appeal even though she wasn’t yet formally notified. In her reply the respondent declared that she reserved the right to file an additional reply at a later stage once she is notified. Subsequently, on the 28th May 2020 the appellant filed an English translation of his appeal application. In the *proces verbal* of the sitting held on the 12th November 2020 it was recorded:

*“Dr Spiteri without prejudice to the plea of nullity of the appeal accepts service on behalf of her client of the appeal application in the English language. The Court orders that the time for filing a reply does not start*

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<sup>1</sup> Simon Fiorini Lowell et v. Andrew sive Andy Botha, Court of Appeal, judgment delivered on the 30th September 2011.

*running today, but only from when a decision is delivered on the plea of nullity, if applicable*".

7. Therefore, the respondent has been notified with an English translation of the appeal application and she will have the opportunity to file a reply on the merits of the appeal.

8. The procedural error committed by the appellant when he filed an appeal in Maltese cannot warrant a declaration of nullity of the appeal, since the error can be easily remedied by the filing of an English translation of the appeal. This has been done.

9. The sequence of events shows that contrary to what respondent claims, she did not suffer and will not suffer any prejudice by appellant's procedural error. Respondent has made no valid argument which can convince this Court otherwise. There can be no prejudice because the respondent filed a reply on the 5th December 2019 and will now also have the right to file a reply on the merits of the appeal.

10. Counsel to respondent also argued that Art. 175 of the Code of Organization and Civil Procedure was not applicable. This Court does not agree, because Art. 175(1) also provides:

*"The court may, at any stage of the proceedings, at the request of any of the parties, until judgment is delivered after hearing where necessary the parties, order the substitution of any act .....*".

Appeal. Number: 44/18/2

11. Therefore, in terms of Art. 175 a court can order the amendment of a judicial act and also the substitution of the same.

For these reasons the Court rejects respondent's preliminary plea, with judicial costs at her charge.

Giannino Caruana Demajo  
President

Tonio Mallia  
Judge

Anthony Ellul  
Judge

Deputy Registrar  
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