



## **QORTI CIVILI - PRIM' AWLA**

**IMHALLEF**

**ONOR. DR JOANNE VELLA CUSCHIERI  
B.A., MAG. JUR. (EUR. LAW.), LL.D.**

**Illum il-Hamis, 28 ta' Ottubru 2021**

**Kawza Numru: 1**

**Rikors Ġuramentat Numru:- 1064/16 JVC**

**Olena Volodymyrivna Caruana  
Verbytska (ID 2006902P)**

**vs**

**Catherine Imperia Caruana (ID  
750035M)**

**Il-Qorti,**

Rat ir-rikors guramentat fejn ir-rikorrenti Olena Volodymyrivna Caruana Verbytska kkonfermat bil-gurament u talbet kif isegwi:

1. 'Illi l-esponenti zzewget ma' Paul Louis Caruana f'Malta fit-12 ta' Settembru 2000 u minn dan iz-zwieg ma kellhomx tfal.

2. Illi l-istess Paul Louis Caruana miet fl-24 ta' Awwissu 2015 u skond l-ahhar testment minnu maghmul li huwa dak fl-atti tan-Nutar Joseph Henry Saydon tas-6 ta' Novembru 2012 huwa nnomina lill-genituri tieghu bhala l-eredi universali tieghu izda missieru miet qablu u ghalhekk skond dan it-testment hija l-intimata li hija eredi universali.
3. Illi fit-testment precedenti li huwa testment fl-atti tan-Nutar Reuben Debono tal-10 ta' Novembru 2010 huwa fil-fatt halla lill-esponenti bhala eredi f'sehem ta' 80% u lill-genituri tieghu f'sehem ta' 20%.
4. Illi l-esponenti tikkontendi illi l-ahhar testment fl-atti tan-Nutar Saydon tas-6 ta' Novembru 2012 huwa rritu u null u dan stante illi fil-mument li sar, Paul Louis Caruana ma kellux il-kapacitajiet legali biex jaghti kunsens validu ghal tali kunsens u dan billi huwa kien ibati minn skizzofrenja u apparti dan, meta sar dan l-ahhar testment, minhabba l-agir ta' ommu u minn membri tal-familja tieghu huwa ma kellux volonta' li kienet libera li kienet sufficjenti biex jaghti kunsens validu ghal dak it-testment.
5. Ghaldaqstant l-esponenti titlob bir-rispett li din l-Onorabbli Qorti joghghobha:
  - i. Tiddikjara illi t-testment maghmul minn Paul Louis Caruana (ID 452665M) fl-atti tan-Nutar Joseph Henry Saydon fis-6 ta' Novembru 2012 huwa rritu u null u dan stante illi fil-mument li sar, Paul Louis Caruana ma tax kunsens validu u apparti dan fil-mument li sar it-testment, huwa ma kellux il-kapacitajiet legali li jaghti kunsens validu ghal tali testment u konsegwentement;

- ii. Tordna illi l-wirt ta' Paul Louis Caruana ghandu jigi regolat bit-testment fl-atti tan-Nutar Reuben Debono tal-10 ta' Novembru 2010;
- iii. Tahtar Nutar sabiex jippublika l-att opportun, tiffissa l-gurnata, hin u lok ghall-publikazzjoni tal-istess u tahtar kuratur sabiex jirraprezenta l-eventwali kontumaci.

Bl-ispejjez kontra l-intimata li minn issa hija ngunta ghas-subizzjoni.'

Rat ir-risposta guramentata ta' Catherine Imperia Caruana li taqra kif isegwi:

1. 'Illi l-allegazzjonijiet tal-attrici huma infondati kemm fil-fatt kif ukoll fid-dritt;
2. Illi l-partijiet u cioe' iben il-konvenuta u l-attrici kienu separati *de facto* ghal diversi snin u l-attrici naqset li toffri l-ghajnuna taghha lill-konvenut fl-ahhar zmien difficili ta' hajtu sal-ahhar granet tal-mewt tieghu hekk kif se jigi pprovat fil-mori tal-kawza;
3. Illi minghajr pregudizzju ghall-premess l-allegazzjonijiet tal-attrici rigward il-mard ta' Paul Louis Caruana jmur lura ghall-mard ta' qabel it-testment datat sitta (6) ta' Novembru tas-sena elfejn u tnax (2012) li gie ppublikat fl-atti tan-Nutar Joseph Henry Saydon;

4. Illi minghajr pregudizzju ghall-premess il-mard li kellu d-defunt Paul Louis Caruana ma kienx relatat mas-sahha mentali hekk kif ser jigi kkontestat fil-mori tal-kawza;
5. Illi minghajr pregudizzju ghall-premess jidher car anke fl-ahhar testment tad-defunt, precizament taht it-Tieni Artikolu tal-istess testment, it-testatur Paul Louis Caruana kien imgieghel minn dik li dak iz-zmien kienet martu sabiex jaghmel testment datat ghaxra (10) ta' Novembru, tas-sena elfejn u ghaxra (2010) li jinsab fl-atti tan-Nutar Reuben Debono. Illi ghaldaqstant kienet l-istess attrici li kienet gelghet lid-defunt jaghmel it-testment quddiem in-Nutar Dr. Reuben Debono u ai termini ta' Artikolu 605(c) tal-Kodici Civili, kull min ikun gieghel lit-testatur biex jaghmel testment, jew biex jghamel jew ibiddel xi disposizzjoni testamentarja jitqies bhala mhux den u, bhala tali, ma jkunx kapaci biex jircievi b'testment.
6. Illi fis-sentenza tas-separazzjoni tal-partijiet fl-ismijiet *Paul Caruana v. Olena Caruana Verbytska* datata hamsa (5) ta' Frar tas-sena elfejn u hmistax (2015) mill-Qorti Civili (Sezzjoni Familja) u kif ikkonfermata permezz tas-sentenza *Paul Caruana u b'digriet tal-15 ta' Marzu 2016 stante l-mewt tieghu fil-mori tal-kawza l-gudizzju f'ismu gie trasfuz f'isem Catherine Imperia Caruana v. Olena Caruana Verbytska* nhar l-erbgha u ghoxrin (24) ta' Gunju tas-sena elfejn u sittax (2016) mill-Qorti tal-Appell, Paul Louis Caruana u Olena Volodymyrivna Caruana Verbytska kienu ippronunzjati bhala separati minn xulxin ghal kull effett minn nhar is-sitta u ghoxrin (26) ta' Marzu tas-sena elfejn u sebgha (2007) kif ukoll applikat l-Artikolu 48 tal-Kodici Civili fil-konfront tal-partijiet. Akkont tal-isuespost, Olena

Caruana Verbytska ma ghandha l-ebda jedd jew dritt fuq il-wirt ta' Paul Louis Caruana.

7. Illi minghajr pregudizzju ghal premess ai termini ta' l-Artikolu 638 tal-Kodici Civili, l-Artikolu 631 tal-istess Kodici fejn il-mara ghandha l-jedd ghall-wirt ta' zewgħa, ma japplikax ghar-ragunijiet imsemmija taht is-sub-artikoli (a), (b), (c), liema ragunijiet jghoddu għall-kaz in dezamina u kif ser jigi ppruvat fil-mori ta' din il-kawza.

Għaldaqstant, ghar-ragunijiet premessi, l-esponenti titlob birrispett lil din l-Onorabbli Qorti joghghobha tichad it-talbiet tal-attrici fl-intier tagħhom bl-ispejjez kollha kontra l-istess attrici.

Salv eccezzjonijiet ulterjuri jekk ikun il-kaz.'.

Rat ix-xiehda, affidavits, certifikat tal-mewt, ricerki testamentarji, testmenti, certifikati medici, applikazzjoni, emails, file mediku, dokumenti u l-provi kollha esebiti fl-atti;

Rat illi fil-verbal tal-24 ta' April, 2017 fuq talba tal-avukat tarrikorrenti sabiex ix-xhieda f'din il-kawza tinstema' bil-lingwa Ingliza, peress illi l-attrici ma tifhimx bil-lingwa Maltija, il-Qorti wara li rat l-Artikolu 2 tal-Kapitolu 189 tal-Ligijiet ta' Malta, ordnat li s-smigh tax-xhieda jsiru bil-lingwa Ingliza sa fejn xhud ma jiddikjarax li ma jhossux komdu jaghti d-deposizzjoni tieghu bil-lingwa Ingliza;

Rat illi fil-verbal tat-22 ta' Novembru, 2017 Dr Josette Sultana għall-konvenuta rrilevat li bejn il-partijiet kien hemm proceduri ta' separazzjoni, appell, annullament u proceduri ohra li dejjem saru bil-lingwa Maltija. L-unika procedura li saret it-talba għaliha biex issir bil-lingwa Ingliza hija oppozizzjoni għal zgumbrament wara

ordni tal-Qorti tal-Appell. Irrilevat li fic-cirkostanzi l-attrici hija cittadina Maltija, intavolat il-proceduri bil-Malti, u t-talba qiegħda ssir f'dan l-istadju sabiex tfixkel u ttawwal il-procedura. Fic-cirkostanzi jekk hemm bzonn għandu jinhatar interpretu a spejjez tagħha, u rat id-digriet tal-Qorti fejn iddikjarat li peress li r-rikors mahluf prezentat mill-attrici huwa bil-Malti u t-talba biex dawn il-proceduri jinstemghu bl-Ingiliz kellha se mai ssir meta din il-kawza kienet qed tigi stradata fl-ewwel udjenza laqgħet it-talba limitatament għall-ghoti u għir tax-xieħda sakemm il-Qorti ma tipprovdix mod iehor u sa fejn xhud ma jiddikjarax li ma jafx jithaddet jew fejn ma jhossux komdu jesprimi ruħu bl-Ingiliz;

Rat illi fis-seduta tat-3 ta' Lulju, 2019 xehdet l-intimata Catherine Imperia Caruana u l-Avukat Tonio Azzopardi għar-rikorrenti oggezzjona għal certu mistoqsijiet u twegibiet relatati ma' *hearsay evidence* peress li l-persuna li ssemmiet illum tinsab mejta, rat ir-risposta ta' l-Avukat Josette Sultana u rat id-digriet tal-Qorti kif diversament preseduta fejn għamlet riferenza għall-Artikolu 599 tal-Kapitolu 12 tal-Ligijiet ta' Malta fejn jingħad li l-Qorti tista' skont ic-cirkostanzi tippermetti xhieda fuq kliem haddiehor u tiehu qies tagħha meta dan l-istess kliem haddiehor (*hearsay evidence*) ikollu fih innifsu importanza sostanzjali fuq il-mertu jew jagħmel parti mill-mertu inkella meta dan haddiehor ma jkunx jista' jingiebi biex jixhed u l-fatti jkunu tali li ma jkunux jistgħu jigu pruvati sewwa b'xorta oħra u l-Qorti ordnat lir-rikorrenti sabiex tkun prezenti għall-udjenza li jmiss sabiex isirilha l-kontro-ezami;

Rat illi permezz ta' ordni datat is-27 ta' Frar, 2020 (fol. 850) din il-kawza giet assenjata lil din il-Qorti kif preseduta;

Rat illi fil-verbal datat 3 ta' Gunju, 2021 il-kawza giet differita għal-lum għad-decizjoni bil-fakulta' tal-partijiet li jipprezentaw noti ta' sottomissjonijiet b'termini mposti fuqhom;

Rat is-sottomissjonijiet fl-atti;

Rat l-atti kollha tal-kawza.

### **Ikkunsidrat;**

### **Fatti fil-qosor:**

Illi l-kawza odjerna titratta talba sabiex testment fl-atti tan-Nutar Joseph Henry Saydon datat 6 ta' Novembru, 2012 redatt mill-mejjet Paul Louis Caruana jigi dikjarat irritu u null stante li r-rikorrenti tallega li fil-mument tal-mewt tieghu l-mejjet Paul Louis Caruana ma tax kunsens validu u li ma kellux il-kapacitajiet legali li jaghti l-kunsens validu ghal tali testment.

Illi l-fatti fil-qosor huma s-segwenti:

1. Illi l-mejjet Paul Louis Caruana zzewweg mar-rikorrenti Olena Volodymyrivna Caruana Verbytska nhar it-12 ta' Settembru, 2000 u minn dan iz-zwieg ma kienx hemm tfal.
2. Illi jirrizulta li bhala l-ewwel referenza tal-mejjet Paul Louis Caruana fl-isptar St Luke's Hospital hija dik ta' nhar l-4 ta' April, 2007 u bhala notament tal-gurnata tnizzel li l-imsemmi Paul Louis Caruana jbati minn schizophrenia (ara x-xiehda ta' Doris Vella Cassia a fol. 129A *et seq* u notament mill-file mediku a fol. 131 tal-process). Mill-atti rrizulta wkoll li Paul Louis Caruana kien ibati minn marda rari u aktar tard f'hajtu l-istess tfaccalu tumur fejn siefer l-Ingilterra ghat-trattament u wassal ghal mewt tieghu.
3. Illi tul il-hajja tieghu l-mejjet Paul Louis Caruana kien ghamel tlett (3) testmenti b'dawn ikunu (i) l-ewwel wiehed

magħmul minnu u minn martu r-rikorrenti datat 1 ta' Marzu, 2007 fl-atti tan-Nutar Reuben Debono, (ii) it-tieni wiehed magħmul wahdu datat 10 ta' Novembru, 2010 fl-atti tan-Nutar Reuben Debono, u, (iii) it-tielet wiehed magħmul ukoll wahdu datat 6 ta' Novembru, 2012 fl-atti tan-Nutar Joseph Henry Saydon (ara ricerki testamentarji a fol. 6 *et seq* tal-process).

4. Illi jirrizulta li r-rikorrenti u l-mejjet Paul Louis Caruana kienu sseparaw minn xulxin liema separazzjoni personali kienet giet ippronunzjata permezz ta' decizjoni tal-Qorti Civili (Sezzjoni Familja) nhar il-5 ta' Frar, 2015 u sussegwentement giet ikkonfermata mill-Qorti tal-Appell nhar l-24 ta' Gunju, 2016. Jigi rilevat li kopja tas-sentenzi ma gewx ipprezentati fl-atti u l-Qorti setghet tasal għall-informazzjoni unikament mix-xieħda li taw il-partijiet fil-kawza.

5. Illi Paul Louis Caruana gie nieqes nhar l-24 ta' Awwissu, 2015 (ara certifikat tal-mewt a fol. 5 tal-process) u wara li saru d-debiti ricerki rrizulta li l-wirt u successjoni tieghu għandha tigi regolata bl-ahhar testment dak tas-6 ta' Novembru, 2012 fl-atti tan-Nutar Joseph Henry Saydon. Permezz tal-imsemmi testment il-mejjet Paul Louis Caruana halla bhala werrieta universali lill-ġenituri tieghu Joseph u Catherine konjugi Caruana.

### **Kunsiderazzjonijiet legali u fattwali:**

Illi permezz tal-kawza odjerna, r-rikorrenti Olena Volodymyrivna Caruana Verbytska qed titlob li t-testment tas-6 ta' Novembru, 2012 fl-atti tan-Nutar Joseph Henry Saydon jigi dikjarat irritu u null stante li tallega li fil-mument li sar, il-mejjet Paul Louis



Caruana ma tax kunsens validu u ma kellux il-kapacitajiet legali li jaghti kunsens validu. Titlob ghalhekk li l-wirt u successjoni tieghu ghandha tigi regolata bit-testment tal-10 ta' Novembru, 2010 fl-atti tan-Nutar Reuben Debono fejn thalliet hi bhala eredi ta' 80% tal-eredita' tieghu, minflok bit-testment tas-6 ta' Novembru, 2012 fl-atti tan-Nutar Joseph Henry Saydon.

Il-Qorti rat li bejn id-disposizzjonijiet taz-zewg testmenti, dak tas-6 ta' Novembru, 2012 fl-atti tan-Nutar Joseph Henry Saydon u dak tal-10 ta' Novembru, 2010 fl-atti tal-Nutar Reuben Debono hemm differenza kbira ghal dak li hu l-interess tar-rikorrenti. Dan Fit-testment tal-10 ta' Novembru, 2010 a fol. 13 *et seq* tal-process fit-tieni artikolu tieghu, il-mejjet Paul Caruana nnomina bhala werrieta tieghu lil martu r-rikorrenti Olena Volodymyrivna Caruana Verbytska fi kwota ta' 80% u lill-genituri tieghu Joseph u Catherine konjugi Caruana fi kwota ta' 20% bi dritt ta' akkrexximent bejniethom:

**Article Two**

The testator nominates as his heirs his wife Olena as to eighty per cent and his parents Joseph Caruana and Catherine Caruana in equal shares as to the remaining twenty per cent, his parents with the right of accretion between them.'

Illi mbaghad fit-testment tas-6 ta' Novembru, 2012 fl-atti tan-Nutar Joseph Henry Saydon a fol. 11 *et seq* tal-process fl-ewwel artikolu t-testatur Paul Louis Caruana eskluda ghal kollox lir-rikorrenti Olena Volodymyrivna Caruana Verbytska u ddispona billi halla bhala werrieta universali tieghu lill-genituri tieghu Joseph u Catherine konjugi Caruana bid-dritt tal-akkrexximent bejniethom f'kaz ta' premorjenza ta' xi wiehed minnhom. F'kaz tal-premorjenza ta' Joseph u Catherine konjugi Caruana ghat-

testatur, huwa nnomina u istitwixxa bhala l-unici eredi universali lil hutu Mirabelle Lavelle, Godwin, Leslie, u Elaine Alexandre ilkoll ahwa Caruana fi kwoti ugwali bejniethom bis-sostituzzjoni volgari tar-rispettivi uliedhom:

### L'Ewwel Artikolu

It testator Paul Caruana qieghed jinnomina u jstitwixxi bhala l'unici eredi universali proprietari u parduni assoluti ta gidhu kollhu lill genituri tieghu Joseph u Catherine mizzewgin Caruana, bid dritt tal akkreximent bejniethom f'kaz tal premorjenza ta xi wiehed mil imsemmija eredi ghat testator. F'kaz tal premorjenza tal imsemmija Joseph u Catherine mizzewgin Caruana ghat testator, l'istess testatur qieghed jinnomina u jstitwixxi bhala l'unici eredi universali proprietari u padruni assoluti lill huthu Mirabelle Lavelle, mart Stephen ; Godwin ; Leslie ; u Elaine Alexandre, mart Franck, ilkoll ahwa Caruana, fi kwoti ugwali bejniethom, bis sostituzzjoni volgari tar rispettivi uliedhom f'kaz tal premorjenza ta xi wiehed mil imsemmija eredi ghat testatur, u in mankanza ta ulied bid dritt tal akkreximent bejniethom.'

Ir-rikorrenti fl-affidavit taghha a fol. 27 *et seq* tal-process tixhed dwar iz-zmien li ghamlet ma' Paul Louis Caruana. Il-Qorti rat li f'dan l-affidavit r-rikorrenti, ghalkemm tixhed dwar hafna avvenimenti u tirreferi ghal mard li kien milqut bih Paul Louis Caruana, ma ssemmi xejn dwar x'kien l-irwol taghha fiz-zwieg, la jekk kinitx tahdem, jekk kinitx tiehux hsieb id-dar u lanqas dwar x'tip ta' assistenza hija kienet taghti fiz-zwieg jew lir-ragel taghha jekk qatt kienet ittih xi tip ta' assistenza. Fl-affidavit taghha ssir enfazi fuq l-irwol ta' omm ir-ragel fiz-zwieg, dwar il-possibilitajiet o meno li l-koppja jkollha tarbija u dwar il-hajja sesswali. Tista'

tghid li ma jinghata l-ebda dettal iehor dwar iz-zwieg bhal ezempju x-xoghol tar-ragel u dan x'kien jinvolvi, l-hinijiet, ix-xoghol tal-mara jekk kellha, l-irwol taghha fid-dar, min kellu paga u min ma kellux, x'kien jigri mill-paga u affarijiet bhal dawn.

Da parti taghha l-intimata Catherine Imperia Caruana fit-tieni eccezzjoni taghha teccepixxi li r-rikorrenti u binha kien ilhom separati *de facto* ghal diversi snin u tinsisti li r-rikorrenti naqset li toffri l-ghajjnuna lil binha fl-aktar zmien difficili ta' hajtu. Din il-Qorti izda fl-ambitu ta' din il-kawza mhiex ser tidhol fi kwistjonijiet li jezorbitaw il-kompetenza taghha pero' ser tidhol biss fl-ezami tal-kapacita' o meno ta' Paul Louis Caruana li jiddisponi b'testment partikolarment bit-testment tas-6 ta' Novembru, 2012 fl-atti tan-Nutar Joseph Henry Saydon li huwa t-testment attakkat permezz tal-proceduri odjerni.

Illi r-rikorrenti dwar it-testmenti redatti minn Paul Louis Caruana u dwar l-istat mentali tieghu konsegwenza ta' l-allegati mard mentali li huwa kien ibati minnha fl-affidavit taghha tghid illi:

'122. In respect of Paul's other will, he did three wills in all.

123. In the first will (Notary Reuben Debono 1/3/2007) he appointed me as his sole heir. This was a joint will and Paul's parents knew about it.

124. In the second will (Notary reuben Debono 10/11/2010) which was done after the eptopic pregnancy and the failuter of the IVF which is when Paul's mother's attitude changed drastically against me. Paul had left me 80% of his estate and the other 20% of his estate to his parents. I was not with him when he made this will but Paul had told me about it afterwards.

125. I would like to emphasise that Paul's mother put a lot of pressure on Paul and the more time passed the more aggressive she became. She hated me and did her best to turn Paul against me. Paul was weak and afraid of her and I think that because of his psychological condition affected him. He was smoking 2 to 3 packets of cigarettes a day and he was like her puppet. I am sure that the last will was not done voluntarily by Paul. It was not the real him and I am sure that the last will was not done voluntarily by Paul. It was not the real him and I am sure that this is not what he would have wanted if he was in a right frame of mind. Paul loved me and those moments when we managed to meet up without his mother noticing, the relationship between us was positive. We did not fight and in his heart he always wanted to be with me.'

Ir-rikorrenti ressqet diversi xhieda fil-maggorparti tagghom tobbha li lkoll xehdu dwar il-kundizzjoni mentali ta' Paul Louis Caruana tul is-snin. Jigi nnutat li dawn ma xehdux dwar il-mument li Paul Louis Caruana kien qiegħed jagħmel it-testment u dan peress li mat-testment tas-6 ta' Novembru, 2012 ma gie anness l-ebda certifikat mediku.

Illi l-Qorti wara li ezaminat ix-xhieda kollha prodotti ser tghaddi biex tevalwa dawk tal-aktar rilevanza għall-kaz odjern. Fl-atti xehed Dr David Cassar fis-seduta tat-23 ta' Marzu, 2018 a fol. 689 *et seq* tal-process fejn spjega li Paul Louis Caruana kien ilu taht il-kura tiegħu għal numru ta' snin u li kien ibati minn 'chronic paranoid psychosis' u għal liema kien jinġhata l-medicina necessarja. Dwar l-effetti tagħha jispjega illi:

'Dr. Peter Borg Costanzi : What was the effect of this illness?

Witness : This illness manifests itself in potential abnormal believes when one could develop what we could call over values ideas with reference or overvalued ideas persecution of delusional taught of reference of persecution and one also may develop hallucinations.

Dr. Peter Borg Costanzi : So in such a situation how such a person's perception be in respect of reality and ability to give a valid consent to a given scenario?

Witness : Consent is not directly related to the presence of psychosis and abnormal believes and esperience. Let me give an example your honor. If I have a belief as I understand the context is that my grocer is trying to harm me, that does not mean that i don't have the capacity to make a will if that grocer is not directly related to me because my sense of reality is impaired specific to that situation.

Dr. Peter Borg Costanzi : If the grocer happens to be the person's son?

Witness : Then obviously there is a lack of capacity for making away.

Dr. Peter Borg Costanzi : But there is a subjective relationship.

Witness : There has to be a subjective relationship related to the abnormal believes and experiences.

Dr. Peter Borg Costanzi : You mentioned also that this person could be delusional.

Witness : Yes.

Dr. Peter Borg Costanzi : Will those delusions effect a person's capacity to assess a situation and make a proper value judgement?

Witness : This is exactly what I was referring to earlier in my comments. When I'm talking about delusion I'm talking about an abnormal believe. An abnormal believe can be held

in an absolute way, we call that a delusion or a non absolute way and that what we call an overvalued idea. If those abnormal believes, be they delusional or overvalued, are in relation specifically to a family member, then that would impair the capacity for making a will.

Dr. Peter Borg Costanzi : You said that during the period that he was under your care, you found he was taking pills regularly and his condition was well controlled.

Witness : In the majority of the situations yes

...

Dr. Peter Borg Costanzi : Can you have a relapse even in a quicker period?

Witness : I cannot exclude. If a person is stable on treatment and has been stable regularly, it is unlikely that that person would relapse in days.

Dr. Peter Borg Costanzi : Why?

Witness : Because if a person is stable for a good period of time, I would expect him to remain stable.

Dr. Peter Borg Costanzi : He remains stable because he is taking medication or because he does not need the medication anymore?

Witness : When patients relapse they don't relapse within a few days of stopping medication. Usually you are looking at months.'

Illi x-xhud Dr David Cassar gie mistoqsi wkoll dwar x'irrizulta mill-visti li saru fuq Paul Louis Cassar u esebixxa numru ta' notamenti tas-seduti a fol. 699 *et seq* tal-process. Fir-rigward il-visti fis-sena 2014 ix-xhud qal is-segwenti:

'Dr. Peter Borg Costanzi : The last visit in 2014, was it you who examined him?

Witness : No it was one of our juniors.

Dr. Peter Borg Costanzi : Can you state who please?

Witness : There is a signature which is unfortunately not legible.

Dr. Peter Borg Costanzi : Is there a reference number, doctor's medical certificate number?

Witness : I cannot recognize unfortunately that there is a number. What I can state categorically is that before that, the one before that, in July 2012, he was seen by one of senior juniors if I can put it that way who today is a consultant in her own right Dr Rachael Taylor East, were she found him stable, not psychotic, no auditory hallucinations, no visual hallucinations.

Dr. Peter Borg Costanzi : And did she recommend any medication or continuous ...

Witness : To continue the same medication because he was stable.

Dr. Peter Borg Costanzi : And what medications was he on?

Witness : He was on Trypoflorazine 5mg twice a day which is not a high dose, a relatively no dose.

...

Witness : I will also add however that the last entry before 2014 which was November 2012, where I cannot identify the signature, there he was also stable.

Dr. Peter Borg Costanzi : And same medication was prescribed?

Witness : He was on the same medication.

Dr. Peter Borg Costanzi : And in 2014 if I may ask again?

Witness : We have the statement that he is well on the same medication we don't have the dose.'

Illi fis-seduta tat-2 ta' Meju, 2018 xehdet ukoll Dr Rachel Taylor East a fol. 711 *et seq* tal-process li kienet il-psikjatra li rat lil Paul

Louis Caruana fis-16 ta' Lulju, 2012 u cioe' zewg visti qabel ghamel it-testment fejn xehdet illi:

'Witness : I saw Paul Caruana on the 16<sup>th</sup> of July 2012. At the time I was a trainee psychiatrist and I was working for Dr. David Cassar. I saw him with his mother and it was a routine outpatient visit. At that time he was doing very well, he had been stable for about a year or a year and a half at least ...

Dr Peter Borg Costanzi : And what was the date of this visit?

Witness : 16<sup>th</sup> July 2012.'

Il-Qorti sabet in-notament li sar dakinhar tal-vista tas-16 ta' Lulju, 2012 minn Dr Rachel Taylor East fil-file mediku a fol. 169 tal-process fejn iddeskriviet l-istat tal-pazjent bhala wiehed '*overall stable*'.

Illi fil-mori tal-kawza xehed ukoll Dr Anthony Dimech fejn jispjega li l-mejjet Paul Louis Caruana kien mar ghandu nhar it-18 ta' Marzu, 2008 sabiex jaghmillu *assessment* tal-istat mentali tieghu. Ix-xhud gie muri certifikat a fol. 641 tal-process u kkonferma li kien irrilaxxjat minnu. Meta gie mistoqsi li huwa kien ra lil Paul Louis Caruana darba wahda biss wiegeb is-segwent:

'Dr. David Harding : Meta tarah darba ma tistax ...

Xhud : Dik qed tghid inti hekk.

...



Xhud : Int qed titkellem fuq field li mhux il-field tieghek. Int qed titellem ma xi hadd li ghamel it-training kollhu l-Ingilterra u ghandi c-certificate of completion of training kemm f'general adult u kemm addiction okay u hdimt fl-aqwa centri ta' l-Ingilterra inkluz Psychiatric Intensive Care u skizofrenja naf x'inh i u ghall-informazzjoni tieghek hemm professuri li jghidu li skizofrenja tant tipprezenta b'modi diversi, tant persuna jista' jkollha jew episodju wiehed biss f'hajtu jew inkella jkollhu episodju li l-ebda trattament ma jfejqu, li nahsbu li huwa grupp ta kundizzjonijiet u l-isem skizofrenja hemm min jixtieq li jehles minnu ghax jaghti timbru u stiga kif qed naraw f'din il-kamra min professionist ghax jekk wiehed li qatt kellhu psikosi jigifieri li hajtu hija spiccat u mhux kapaci jaghmel testment jew mhux kapaci jmexxi professjoni. Jien nista' nikkonferma li rajt nies li huma validissimmi, li kellhom sintomi ta' skizofrenja f'hafna puntijiet f'hajthom imma komplew bir-responsabbiltajiet tal-hajja sakemm mietu.'

Illi minn analizi tan-notamenti kollha li gew esebiti minn Doris Vella Cassia a fol. 131 *et seq* tal-process, il-Qorti tinnota li t-testatur Paul Louis Caruana, gurnata qabel it-testment li tieghu r-rikorrenti qed titlob in-nullita`, kellu vista l-isptar. Min-notament jirrizulta li t-testatur Paul Louis Caruana nhar il-5 ta' Novembru, 2012 kien tajjeb di fatti tnizzel illi huwa '*...seen with mother, well, not depress, sleeping, appetite ...*' (ara notamenti a fol. 707 tal-process u l-file mediku a fol. 170 tal-process). Sfortunatament ma setax jigi rintracat il-persuna li ghamlitlu l-vista nhar il-5 ta' Novembru, 2012 u dan peress li mill-firma ma kienx possibli li jigi identifikat min kien il-persuna ghalkemm minn notamenti jirrizulta wkoll li kien f'kundizzjoni stabbli u tajba.

Illi r-rikorrenenti ressqet ukoll bhala xhud lin-Nutar Joseph Henry Saydon u cioe' n-Nutar li rrediega t-testment tas-6 ta' Novembru, 2012. Fix-xiehda tieghu kien kategoriku u ddikjara li x-xewqa tat-testatur kienet cara:

'Dr. Peter Borg Costanzi : First of all were the will was signed?

Witness : It was made in Birkirkara at my office, I recall that very clearly. I had spoken to the testator various times, I know his family, I knew his parents and I knew about the problems which existed and I was requested by him clearly to publish this will and he was clear about what he was saying and his wishes were absolutely clear and I asked him about his marital situation, the normal questions one asks, the notary asks when drafting the will and he was adamant about having the will published in this way.

Dr. Peter Borg Costanzi : Was the will written there and then or did you draft it ...

Witness : I don't remember. It could have probably been written there and then yes.

Dr. Peter Borg Costanzi : Was he alone when he came?

Witness : No his mother accompanied him at one stage but I do not remember whether they came together or he was there first because there were various circumstances which and it was obviously 2012 and I don't recall the exact who came in first but his mother was present at one stage yes.

Dr. Peter Borg Costanzi : Where you aware that he had previously made other wills?

Witness : Yes.

Dr. Peter Borg Costanzi : And did he mentioned or did you ...

Witness : No he mentioned it. Probably I might have had a copy of that will because I quoted the date and that date definitely I would have got from the copy he would have produced then. Other I would not know the exact date.

...

Dr. Peter Borg Costanzi : Were you aware that Mr. Caruana was under psychiatric medication?

Witness : No not really.

Dr. Peter Borg Costanzi : No one mentioned this?

Witness : I knew that he worked for Enemalta and I knew he was a qualified engineer and I might have knew, I know now that he was under the psychiatric definitely but I don't recall then, I could have yes probably, I have to remember.

Dr. Peter Borg Costanzi : You are not sure.

Witness : Probably I might have known yes.

Dr. Peter Borg Costanzi : But there are no medical certificates.

Witness : No absolutely. I don't think it was necessary. He was absolutely clear in his reasoning. I had no doubt whatsoever about his capacity to make a will or act in his civil capacities. He was absolutely clear.

Dr. Peter Borg Costanzi : Were you aware that his psycholological conditions were that he tended to be delusional?

Witness : No.

Dr. Peter Borg Costanzi : And that he would believe his delusions?

Witness : No I never went into such details.

Dr. Peter Borg Costanzi : And had you known what would you had done?

Witness : Well it depends because the notaries are faced with a situation where he has requested to make a will and one never knows whether the testator will die a minute later so even if had I knew that, if I concluded after questioning the testator that he was fit to make a will I would have proceed with the will anyway but it was not the case.'.

Illi dwar l-impunjazzjoni ta' testment ghal raguni ta' nkapacita' mentali tal-persuna nghad fid-decizjoni fl-ismijiet **Carmen Josephine Cassar -vs- Louis sive Lewis u Margaret Rose konjugi Naudi** deciza mill-Prim'Awla tal-Qorti Civili nhar is-6 ta' Ottubru, 2010 illi:

‘Distingwibilment, f’aktar dettal jinsab rikapitulat illi l-principji li ghandhom jircievu applikazzjoni f’kazijiet ta’ impunjazzjoni ta’ testment minhabba insanita mentali huma dawn li gejjin:-

1. “Li l-kapacita li wiehed jaghmel testment hija r-regola u l-inkapacita hija l-eccezzjoni;

2. Li regola oħra fundamentali hija wkoll dik stabbilita mill-paragrafu (d) ta’ l-Artikolu 634 (fil-prezent l-Artikolu 597 (d)) tal-Kodici Civili li huma inkapaci li jiddisponu b’testment dawk li fiz-zmien tat-testment ma jkunux f’sensihom (“of unsound mind”);

3. Li biex wiehed jaghmel testment ma hemmx bzonn “una mente perfettamente e rigorosament sana, ma basta quel limitato uso della ragione che permetta la coscienza di cio che si fa; e per valutare i diversi gradi di debolezza di mente dei testatori si deve aver riguardo alla ragionevolezza o meno delle disposizioni testamentarie” (ara sentenza tal-Qorti tal-Kassazzjoni ta’ Torino ta’ l-4 ta’ Frar, 1871);

4. Li biex tigi stabbilita l-insanita mentali tat-testatur hemm bzonn li jirrizultaw indizji gravi;

5. Li l-Qrati taghna dejjem kienu recitenti li jammettu d-domandi biex jigi annullat testment minhabba insanita mentali tat-testatur, jekk din l-inkapacita ma tkunx irrizultat b’mod cert minn fatti precizi u univoci, u ma jkunx gie pruvat li kienet tezisti fil-mument li t-testatur kien qieghed jaghmel it-testment”;

Ara d-decizjoni fl-ismijiet “Joseph Vassallo et -vs- Avv. Dr. Victor R. Sammut et nomine”, Appell Civili, 24 ta’ April, 1950 b’ripetizzjoni ta’ l-enuncjazzjonijiet fid- decizjoni ta’ l-istess Qorti tat-22 ta’ Gunju, 1938 in re: “Giuseppe Formosa et -vs- Giuseppe Axiak et”;

Illi l-intimata Catherine Imperia Caruana fit-tielet eccezzjoni taghha teccepixxi li l-allegazzjoni tar-rikorrenti dwar il-mard ta' Paul Louis Caruana jmur lura ghall-mard ta' qabel it-testment datat 6 ta' Novembru, 2012. Minn dak li rrizulta mill-atti u minn dak li gie riportat aktar il-quddiem jirrizulta li huwa minnu li l-mard ta' Paul Louis Caruana jmur lura ferm qabel it-testment citat. Di fatti n-notamenti tal-isptar jibdew mis-sena 2007 u ghalhekk hames (5) snin qabel ma sar it-testment tas-6 ta' Novembru, 2012.

Illi dwar il-kwezit jekk Paul Louis Caruana kellux il-kunsens tieghu validu fil-mument li sar it-testment u jekk kellux il-kapacitajiet legali li jaghti kunsens validu, il-Qorti telenka s-segwenti punti emanenti mill-provi migbura:

i. Il-fatt li l-partijiet kien ilhom snin *de facto* separati. Ir-rikorrenti fix-xieghda taghha tipprova taghti l-impressjoni li malgrad li l-partijiet kienu ghaddejjin minn separazzjoni personali, r-relazzjoni taghhom xorta kienet wahda tajba tant li f'certi okkazzjonijiet kien imur id-dar matrimonjali u anke kienu jkunu intimi filwaqt li l-intimata Catherine Caruana kienet tkun tistennihom fil-karozza.

Il-Qorti tqis inverosimili din il-verzjoni tal-fatti. Ix-xieghda tar-rikorrenti hija ferm kontraddittorja ghaliex filli tghid li l-intimata kienet kontra r-relazzjoni taghhom u fl-istess hin tghid li l-intimata kienet tkun ma' binha Paul Caruana u toqghod bil-pacenzja kollha tistennih fil-vettura waqt li huwa jkun fl-appartament mar-rikorrenti jwettaq atti sesswali ma' martu!

Dan premiss, mill-atti jirrizulta li s-separazzjoni personali bejn il-partijiet giet ippronuncata nhar il-5 ta' Frar, 2015 u sussegwentament giet ikkonfermata mill-Qorti tal-Appell nhar l-24 ta' Gunju, 2016. Paul Louis Caruana miet nhar l-24 ta'

Awwissu, 2015 u ghalhekk wara li giet ippronuncjata s-separazzjoni personali. L-intimata fis-sitt (6) eccezzjoni teccepixxi li bl-imsemmija sentenzi s-separazzjoni taghhom kienet giet ippronuncjata ghal kull effett minn nhar is-26 ta' Marzu, 2007, kif ukoll, applikat l-Artikolu 48 tal-Kodici Civili (Kapitolu 16 tal-Ligijiet ta' Malta). Jigi osservat li fl-atti ma gewx ipprezentati kopji tas-sentenzi u ghalhekk il-Qorti ma tistax tistabbilixxi jekk dak excepit fis-sitt eccezzjoni hux minnu jew le. L-istess argument japplika fir-rigward is-seba (7) eccezzjoni fejn l-intimata excepiet li ai termini tal-Artikolu 638 tal-Kodici Civili, l-Artikolu 631 tal-istess Kodici ma japplikax. Ghaldaqstant il-Qorti ser tghaddi sabiex tichad kemm is-sitt (6) u s-seba' (7) eccezzjoni.

ii. Illi minn dak li xehed Dr David Cassar jirrizulta li l-mejjet Paul Louis Caruana kien fi stat stabbli ghal numru ta' xhur nkluz xhur vicin id-data li sar it-testment attackkat. Insista wkoll li anke jekk ghal grazzja tal-argument Paul Louis Caruana kien waqqaf it-trattament, li mill-processi medici ma jirrizultax li kien il-kaz fiz-zmien li gie ppubblikat it-testment, xorta jirrizulta li sabiex persuna terga' tmur lura ghall-istat hazin mentali li kienet irid ikun hemm trapass ta' numru ta' xhur.

Jirrizulta li l-ahhar zewg visti li Paul Louis Caruana ghamel kienu fil-5 ta' Novembru, 2012 u precedentement fis-16 ta' Lulju, 2012. F'entrambi l-visti jirrizulta li l-kundizzjoni tieghu kienet annotata bhala wahda tajba. Il-Qorti tinnota li l-vista tal-5 ta' Novembru, 2012 kienet jum wiehed biss qabel ma sar it-testment.

Illi l-intimata fir-raba' eccezzjoni teccepixxi li l-mard tal-mejjet Paul Louis Caruana ma kienx relatat mas-sahha mentali. Il-Qorti ma taqbilx ma din l-eccezzjoni u dana peress li kif irrizulta pruvat b' mod ampju, Paul Louis Caruana kien ibati minn schizofrenia li tikklassifika bhala '*chronic brain disorder*'. Madanakollu kif xehed

tajjed Dr Anthony Dimech, tali kundizzjoni tista timmanifesta ruhha fuq persuna darba u anke aktar minn darba madanakollu dik il-persuna tista xorta tahdem normalment u teccelli f'xogholha. Ghalhekk il-fatt wahdu li l-mejjet Paul Louis Caruana kien ibati minn dik il-kundizzjoni ma jfissirx li huwa ma kellux il-kapacitajiet legali biex jaghti kunsens validu, kif qed timplika r-rikorrenti. Irrizulta wkoll izda li l-mejjet Paul Louis Caruana kellu mard iehor fiziku li ma kienx relatat mas-sahha mentali. Ghalhekk fid-dawl ta' dak suespost il-Qorti ser tghaddi sabiex tichad in parte din l-eccezzjoni.

iii. Illi mix-xiehda tan-Nutar Joseph Henry Saydon li ppubblika t-testment attakkat tas-6 ta' Novembru, 2012, jirrizulta li minn ezami li huwa ghamel kif kien obligat bhala Nutar qabel jippubblika kwalunkwe testment, Paul Louis Caruana kien f'kundizzjoni tajba u x-xewqa tieghu kienet wahda assolutament cara. In-Nutar jiddeskrivi l-attitudni tieghu bhala '*...he was adamant about having the will published in this way.*'.

Fuq it-testment kien hemm ukoll zewg xhieda li madanakollu r-rikorrenti ghazlet li ma ttellax. Il-Qorti ghalhekk hija tenuta li tistrieħ unikament fuq ix-xiehda cara u inekwivoka tan-Nutar Saydon li xehed li jiftakar sew meta u kif gie redatt it-testment in kwistjoni u jikkonferma li l-mejjet Paul Louis Caruana kien f'sensieh meta ghamel it-testment.

Illi in vista tas-suespost il-Qorti tqis li t-testatur illum mejjet Paul Louis Caruana kellu l-kapacitajiet kollha legali sabiex jaghti kunsens validu u ghalhekk konsegwentement tqis it-testment datat 6 ta' Novembru, 2012 bhala validu fil-ligi.

### **Il-hames eccezzjoni:**



Illi permezz tal-hames eccezzjoni l-intimata Catherine Imperia Caruana teccepixxi li hekk kif jidher mit-Tieni Artikolu tat-testment tas-6 ta' Novembru, 2012 fl-atti tan-Nutar Joseph Henry Saydon il-mejjet Paul Louis Caruana kien gie mgieghel jaghmel it-testment tal-10 ta' Novembru, 2010 fl-atti tan-Nutar Reuben Debono mir-rikorrenti Olena Volodymyrivna Caruana Verbytska. Ghaldaqstant ai termini tal-Artikolu 605(c) tal-Kodici Civili (Kapitolu 16 tal-Ligijiet ta' Malta) kull min ikun gieghel lit-testatur biex jaghmel testment, jew biex jaghmel jew jibdel xi disposizzjoni testamentarja jitqies bhala mhux dehen u bhala tali ma jkunx kapaci li jircievi b'testment. Illi l-Artikolu 605 sub-artikolu 1 (c) jaqra kif isegwi:

'605. (1) Kull min -

(c) ikun gieghel, jew bil-qerq gieghel lit-testatur biex jaghmel testment, jew biex jaghmel jew ibiddel xi dispozizzjoni testamentarja; jew'.

Illi huwa minnu li fl-imsemmi testment tas-6 ta' Novembru, 2012 fl-atti tan-Nutar Joseph Henry Saydon il-mejjet Paul Louis Caruana fit-tieni artikolu ddispona li r-rikorrenti Olena Volodymyrivna Caruana Verbytska kienet obligatu jaghmel it-testment:

' It Tieni Artikolu.

Ghal kull fini u effett tal ligi it testatur jiddikjara li illum hu qieghed fil process li jissepara min ma marthu Olena Caruana Verbytska, u li hu kien kostrett min l'imsemmija marthu jaghamel testment unica charta fl'atti tan Nutar Reuben Debono tal ewwel (1) ta Marzu tas sena elfejn u sebgha (2007).'

Illi n-Nutar Joseph Henry Saydon fix-xiehda tieghu moghtija fis-seduta tad-19 ta' Novembru, 2019 a fol. 734 *et seq* ghamel ukoll referenza ghal dan il-fatt u kkonferma li huwa ddiskuta mat-testatur il-problemi maritali li kien hemm bejn il-partijiet. Ikkonferma li r-referenza ghat-testment *unica charta* kienet saret minn Paul Louis Caruana.

Illi l-Qorti ma tistax ukoll ma taghmilx referenza ghad-diversi rapporti u kawzi kriminali li r-rikorrenti kellha ma diversi persuni liema kopja tagghom gew esebiti a fol. 817 *et seq* tal-process. Minn dawn il-Qorti setghet tinnota li r-rikorrenti ghandha karattru mponenti u ghalhekk ma tistax teskludi li kienet verament hi li obligat lill-mejjet Paul Louis Caruana sabiex jaghmel it-testment tal-10 ta' Novembru, 2012 u huwa f'dan is-sens li ser tigi milqugha l-hames eccezzjoni tal-intimata ghalkemm ai fini ta' din id-decizjoni, la darba t-testment attakkat gia gie dikjarat bhala validu, din il-parti tad-decizjoni hija biss wahda purament akkademika u sabiex tkun inghata decizjoni fuq l-eccezzjonijiet kollha.

### **Decizjoni:**

Ghaldaqstant ghar-ragunijiet kollha suesposti din il-Qorti tghaddi sabiex taqta' u tiddeciedi l-kawza odjerna kif isegwi:

1. Tilqa' l-ewwel, t-tieni, t-tielet, il-hames eccezzjonijiet tal-intimata u dan ghar-ragunijiet suespost;
2. Tilqa' in parte r-raba' eccezzjoni tal-intimata u tichad il-kumplament tal-eccezzjonijiet;
3. Tikkonferma l-validita' fil-ligi tat-testment maghmul minn Paul Louis Caruana (KI 452665M), fl-atti tan-Nutar Joseph

Henry Saydon, datat 6 ta' Novembru, 2012 u tghaddi sabiex  
tichad it-talbiet kollha tar-rikorrenti.

Bl-ispejjez kollha kontra r-rikorrenti.

**Moqrija.**

**Onor. Imhalled Dr. Joanne Vella Cuschieri**  
**B.A., Mag. Jur. (EUR.LAW), LL.D.**  
**28 ta' Ottubru, 2021**

**Karen Falzon**  
**Deputat Registratur**  
**28 ta' Ottubru, 2021**