



Court Of Appeal

Judges

**THE HON. CHIEF JUSTICE MARK CHETCUTI
THE HON. MR. JUSTICE JOSEPH R MICALLEF
THE HON. MR JUSTICE TONIO MALLIA**

Sitting of Wednesday, 26th January, 2022.

Number 19

Application Number: 421/18/2 TA

Application for a Constitutional reference :
in the acts of the appeal from a decree in the acts of sworn application no.
421/18/TA

Director of Public Registry

v.

Ahmad Aziz

1. On the 31st of August 2021 defendant Ahmad Aziz filed an application in the acts of the appeal from a decree in the acts of sworn application no. 421/18/TA wherein he asked this Court to refer a constitutional question to the Civil Court - First Hall. The application begins in this manner:

“Application of appellant Ahmad AZIZ in term of article 46(3) constitution of Malta and in term of article 4(3) chapter 319 laws of Malta.

Respectfully submits:

That this honourable court of appeal refer constitutional question to the first hall civil court."

2. Applicant then put forward fifty-eight points - mainly regarding alleged violations and breaches of his fundamental human rights - and finally asked of this Court the following:

"That this honorable court declare there is breach of applicant's constitutional, fundamental and human rights, That this honorable court declare there is breach of right of silence of applicant, matter is double jeopardy and time barred, Case republic of malta vs ahmad aziz and Case director public registry vs Ahmad Aziz should be dismissed and wife of applicant should be issued freedom of movement of Malta and children's of applicant should be issued Maltese citizenship. Applicant's marriage should be registered in Malta. That this honorable court declare there is breach of article 1, 2, 3, 4, 5 and 6 of ECHR to start criminal and civil action against applicant when maltese court has no jurisdiction."

3. This Court is perplexed by the drafting of this application. What seems to have started out as a request for the referral of a constitutional question ended up as a hotchpotched demand for this Court to actually declare various fundamental human rights violations.

4. This Court observes that from the fifty-eight points put forward by applicant, only two actually solicit a constitutional reference:

"54) First court errored in assessing article 234 chapter 12 laws of malta not to suspend the proceedings until the decision of this honorable court of appeal which is breach of fair trial article 6 of ECHR and article 39 constitution of Malta. This honourable court should refer the constitutional question to the civil court first hall.

55) Article 229 chapter 12 laws of Malta is discriminatory, this article is contrary with article 35 chapter 12 laws of malta article 35 laws of malta gives right to any person to bring an action before the civil court first hall, for the necessary order. but article 229 chapter 12 laws of malta is not giving any

right of appeal or right of action before final judgment in several court decrees, this article is discriminatory, this is breach of principle of equal treatment, breach of principle that everyone is equal before the law, this article should be declared unconstitutional. This honorable court should refer the constitutional question to the civil court first hall.”

5. With regards to point number 54) there is in fact no constitutional issue to warrant a constitutional referral. Applicant is simply complaining about the fact that the First Hall Civil Court which is hearing his case did not suspend proceedings pending this Court's decision. The way to challenge this is certainly not by requesting a constitutional referral.

6. With regards to point number 55), this seems to have been raised as a reaction to the fact that in his reply to applicant's appeal from the expungement decree, the Director of Public Registry raised the inadmissibility of the appeal in terms of Article 229(1)(j) of Chapter 12 of the Laws of Malta, which states that:

“229.(1) An appeal from the decrees mentioned hereundershall only lie after the definitive judgment and together with an appeal from such judgment, and such decrees may not be challenged before the definitive judgment is delivered:

.....

(j) a decree allowing or disallowing the expunging of a document from the records of the case;”

7. In the first place it must be emphasised that the referral or otherwise of a constitutional question in terms of Article 46(3)¹ of the Constitution of Malta and

¹ **Art. 46(3) of the Constitution:**

If in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said articles 33 to 45 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this sub-article and, subject to the provisions of sub-article (4) of this article, the court in which the question arose shall dispose of the question in accordance with that decision.

in terms of Article 4(3)² of Chapter 319 of the Laws of Malta is entirely at the Court's discretion; the Court is obliged to refer the question raised only if it deems it to be pertinent and relevant to the matter at issue.

8. Now the matter at issue is applicant's appeal from the decree of the First Hall of the Civil Court of the 14th of July 2021 which ordered the expungement of documents (consisting in additional pleas) presented by applicant. The First Hall of the Civil Court ordered the expungement of said documents because in attempting to put forward his additional pleas he did not observe the correct procedure under Article 728 of Chapter 12 of the Laws of Malta.

9. The constitutional question subsequently raised by applicant, however, is not related to Article 728 of Chapter 12 but to an entirely different provision of law, i.e. Article 229 of Chapter 12 which issue is not pertinent or relevant considering the reasons given by the First Court of for the refusal of the application of the applicant.

10. For the above mentioned reasons this court hence considers the constitutional questions raised under point 54) and point 55) to be frivolous and

² **Art. 4(3) of Chapter 319:**

If any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the Human Rights and Fundamental Freedoms, that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subarticle and, subject to the provisions of subarticle (4), the court in which the question arose shall dispose of the question in accordance with that decision

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vexatious and is consequently rejecting them.

Mark Chetcuti
Chief Justice

Joseph R Micallef
Judge

Tonio Mallia
Judge

Deputy Registrar
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