



**CIVIL COURT – FIRST HALL**

**JUDGE**

**HON. GRAZIO MERCIECA LL.D.**

**TODAY, 27<sup>th</sup> January 2022**

**Case Number : 148/2021 GM**

**Andre` Pio Catania et**

**vs**

**Dr Alan Zerafa et noe**

**The Court,**

Having seen the application by plaintiff to produce three witnesses who were not included in the list of witnesses in the Sworn Application.

Having seen the reply.

Considers:

According to Art. 156(4) of our code of procedure, plaintiff must, in his sworn declaration, mention the witnesses he intends to produce in support of his claim as well as the facts he intends to establish by their evidence. The sanction for

breach of this rule is that the court may not allow the production of an undeclared witness (Art. 156(7) *ibid.*). Exceptionally, the testimony of such witnesses may be admitted (i) when their necessity arises after the filing of the sworn declaration (ii) when the opposite party gives her consent in the manner prescribed and (iii) when in the opinion of the Court it is in the interest of justice (Art. 157(7) *ibid.* second paragraph).

It can always be argued, as indeed the applicant does, that it is in the interests of justice to produce a witness who is expected to give relevant testimony; since justice is best served when the court decides on the basis of all relevant evidence, and not on a filtered or partial version of the facts. But the establishment of the historical truth is not the only component of justice as meted out before the Courts. There are other considerations, such as control of costs and the need – now enshrined as a fundamental human right – to resolve judicial disputes within a reasonable time. These and perhaps other considerations are not always concordant with each other and indeed may be in conflict with each other. Inevitably, judicial justice is the result of a compromise between the various elements. Justice is denied if for instance a case goes on indefinitely in a prolonged search for evidence; or if excessive costs discourage or make it unfeasible to seek the enforcement of one's rights.

In **Sultana v Vassallo**<sup>1</sup> mentioned by applicant, the Court of Appeal allowed an undeclared witness not in the interests of justice, but because the necessity for her (she was female) production arose after the filing of the writ of summons (this being one of the modes of instituting a lawsuit at that time) out of the plea of prescription raised by the defendant.

The rule that witnesses must be declared in the beginning of the proceedings was introduced by the legislator consistently with the overriding objective of

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<sup>1</sup> Francesco Sultana v Paolo Vassallo 24.03.1947 Court of Appeal (Sir George Borg, Prof. E Ganado, L.A. Camilleri) Vol XXXIII.i.44.

discouraging unnecessary delays. Applicant is requesting the production of three witnesses who he claims he was not aware of. However, he failed to show that his alleged lack of knowledge was due to any legitimate impediment. Any plaintiff who decides to set in motion the wheels of justice to assert his rights must do so with the utmost diligence and prepare his case carefully before lodging his action, and not afterwards. Allowing the production of the three witnesses might entail the necessity for defendant to produce undeclared witnesses on his part too. And this would predictably set the hearing of this case on a chaotic course and unduly prolong the proceedings.

For these reasons, the request of plaintiff is being denied, with costs.

Read out in open court.

HON. MR JUSTICE

GRAZIO MERCIECA