



# ADMINISTRATIVE REVIEW TRIBUNAL

**MAGISTRATE DOCTOR SIMONE GRECH  
B.A. LL.D. MAG. JUR. (EUR LAW)**

**Application Number: 47/2019 SG**

**Carol Susan Estava**

**VS**

**Ministeru għall-Finanzi**

**Today 9<sup>th</sup> of February 2022**

The Tribunal,

Having seen the application presented on 31<sup>st</sup> of May 2019 whereby it was stated that:

- 1. Illi l-esponenti applikat mal-amministrazzjoni pubblika sabiex tinghata eżenzjoni mill-blas ta' taxxa ta' registrazzjoni fir-rigward tal-vettura tagħha tal-marka Vauxhall Zafira Exclusiv bin-numru tar-registrazzjoni MA64JAO.*
- 2. Illi l-esponenti waslet f'Malta bil-vettura tagħha fil-15 ta' Marzu 2019. Hija mmediatament ghamlet il-verifiki tagħha u talbet informazzjoni dwar x' dokumenti kienu mehtiega biex tissottometti l-applikazzjoni tagħha għar registrazzjoni tal-vettura in kwistjoni f'Malta, u hija giet infurmata li fost l obrajn riedet tissottometti kopja għal permess tar-residenza tagħha f'Malta. Għalhekk, fl-20 ta' Marzu 2019 hija marret biex tapplika għall-permess tar residenza, u hemmhekk hija giet infurmata li qabel jinbargilha l-permess tar residenza, kien mehtieg li tottjeni permess ta' sabha mill-Entitlement Unit - Malta. Hija applikat għall-health form relattiva u din giet rilaxxjata lilha fis-17 ta' April 2019. F'din id-data tas-17 ta' April 2019, l-esponenti applikat għall permess ta'*

*residenza. Dan il-permess inbargilha ftit jiem wara. Fl-24 ta' April 2019 giet spezzjonata l-vettura, u fil-25 ta' April 2019 hija finalment applikat ghar-registrazzjoni tal-vettura.*

3. *Illi ghal-kemm skond ir-regolament 4(3)e ta' l-Avviz Legali 440 ta' l-2013, wiehed ghandu jirregistra l-vettura tiegħu fi żmien tletin gurnata minn meta l-persuna titrasferixxi ruħha lejn Malta, kien impossibbli għall-esponenti li tagħmel tali registrazzjoni u dana għaliex kif ingħad, hija ma setgħetx tapplika għaliha qabel ma tottjeni permess għar-residenza tagħha f'Malta.*
4. *Illi sussegwentement, l-esponenti giet infurmata mill-Ministeru Għall-Finanzi, permezz ta' ittra datata 14 ta, Mejju 2019, illi t-talba tagħha għal eżenzjoni mit-taxxa ta' registrazzjoni ma setgħetx tigi accettata u dana abbażi ta' regolament 4(3) ta' l-Avviz Legali 440 ta' l-2013.*
5. *Illi l-esponenti hasset ruħha aggravata b'din id-decizjoni u għalhekk qegħda tinterponi umli appell minn tali decizjoni quddiem dan it-Tribunal entro t terminu stabbilit mil-Ligi.*
6. *Illi l-esponenti hija barranija u tixtieq li dawn il-proceduri jigu magħmula bl-Ingliż.*

#### *L-Aggravju*

7. *Illi l-aggravju huwa car u manifest u jikkonsisti fil-fatt li l-Ministeru Għall-Finanzi għamel konklużjoni hażina meta ddecieda li japplika b'għajnejh magħluqa l-provedimenti ta' l-Artikolu 4(3)e ta' l-Avviz Legali 440 ta' l-2013, senjament il-limitu ta' tletin gurnata li fibhom wiehed ghandu japplika l-vettura tiegħu, mingħajr ma jqis il-fatt li dan it-terminu kellu jigi sospiż sakemm kien legalment u fattwalment impossibbli għall-appellanti li tissottometti l applikazzjoni tagħha.*
8. *Huwa umilment sottomess li għal dan il-każ għandu japplika l principju legali antik, misjub sa mid-Digesto ta' Justiniano, li jipprovidi nemo obligatur ad impossibilia nemo tenetur, u cioe' li hadd m'hu legalment tenut jagħmel dak li huwa mpossibbli għalih li jagħmel. It-traduzzjoni ufficjali ta' dan il-principju għall-lingwa Ingliża hija magħmula fis-sens li "No one is obligated beyond what he is able to do."*
9. *Issa kif gie spjegat f'dan il-każ, kien impossibbli għall-esponenti li tosserva t-terminu ta' tletin gurnata provdut mill-ligi, għaliex f'dak it-terminu hija ma setgħax kellha a disposizzjoni tagħha d-dokumenti li jipprecedu l-applikazzjoni għar-registrazzjoni tal-vettura tagħha. Jekk kien hemm denmien biex kif ingħad, inbargulha l-permess tar-residenza u l-permess tas-sabha mill Entitlement Unit, dan certament ma sebhx tort u htija, u sehb biss għal ragunijiet li kienu totalment indipendenti minnha.*
10. *Kif gie spjegat u se jigi ppruvat, l-esponenti agiżżiet fil-pront u għamlet l-almu tagħha, biex tirregistra l-vettura tagħha f'Malta malajr kemm jista' jkun wara li trasferiet ir-residenza tagħha lejn Malta. Izda minkejja dan kien impossibbli għaliha li tapplika għal din ir-*

*registrazzjoni f'terminu ta' tletin jum minhabba ragunijiet li ma sebhewx tort taghha. Zgur ghalhekk li l-esponenti ma setghetx tigi penalizzata minhabba dewmien li ma gie x kawżat minnha.*

- 11. Ghaldaqstant huwa sottomess li abbażi tal-principju tal- nemo obligatur ad impossibilia nemo tenetur, it-terminu ta' tletin jum provdut mill-ligi gie sospiz ghal kollox sal-jum li fih gie fattwalment possibbli ghall-appellanti li tapplika biex tirregistra l-vettura taghha in kwistjoni. Dment li kien legalment u fattwalment impossibbli ghalha li tissottometti l-applikazzjoni taghha, allura dan it-terminu ma setghax jibda jiddekorri u gie sospiz.*
- 12. Konsegwentement dan it-Tribunal ghandu jiddeciedi li t-terminu ta' tletin jum provdut mill-Artikolu 4(3)e ta' l-Avviż Legali 440 ta' l-2013, senjament il limitu ta' tletin gurnata li fihom wiehed ghandu japplika l-vettura tieghu, kellu f'dan il-każ jibda jiddekorri fid-data li fiha nhareg il-permess ghar-residenza ta' l-appellanti f'Malta, u cioe' fil-jum li fih gie possibbli ghall-appellanti li tissottometti l-applikazzjoni taghha, u dana bil-konsegwenza li hija ssottomettiet l-istess applikazzjoni taghha entro t-terminu provdut mill-ligi.*

*Talba*

*Ghaldaqstant ghar-ragunijiet fuq esposti u ghal dawke ir-ragunijiet l-obra illi jirrizultaw waqt it-trattazzjoni ta' dan l-appell, l-esponenti - filwaqt li tirrizerva li tipprezenta provi ulterjuri in sostenn tas-suespost-titlob bir-rispett lil dan it Tribunal sabiex joghgbu jhassar u jirrevoka d-decizjoni moghtija mill-Ministeru tal-Finanzi fl-ittra datata 14 ta' Mejju 2019 fejn l-istess Ministeru cabad it-talba ghall-esenzjoni maghmula that l-artikolu 19 tal-Kap. 368 u minflok jaghti l-esenzjoni mitluba stante li r-rekwiżiti stabbiliti fir-regolamenti koncernati jinsabu pienament sodisfatti.*

*Bl-ispejjeż kontra l-Ministeru tal-Finanzi appellat.*

*L-intimata bija mharrka ghas-subizzjoni li ghalha minn issa qed tigi ngunta.*

Having seen the reply presented on 3<sup>rd</sup> July 2019 whereby it was stated that:

- 1. Illi l-pretensjonijiet tal-appellanta Carol Susan Estava hekk kif spjegati fir-rikors tal-appell taghha datat 31 ta' Mejju 2019 huma infondati fil-fatt u fid-dritt u dan hekk kif ser jigi muri waqt din il-każ;*
- 2. Illi m'huwiex minnu li l-appellanta kellha tistenna d-dokument ta' residenza biex hi tkun tista tapplika ghall-eżenzjoni mit-taxxa tar-registrazzjoni tal-vetturi bil-mutur. Applikant huwa fil-liberta' li meta japplika ghall-eżenzjoni jiddikjara d-dati ta' meta huwa jkun ittrasferixxa r-residenza tieghu lejn Malta. Dawn id-dati li jiddikjara applikant huma imperattivi ghaliex id-decizjoni tal-bord hija bbażata fuq id-dati li tiddikjara l-applikanta*

*u mbux fuq il-permess ta' residenza gewwa Malta. Fil-fatt fl applikazzjoni hemm miktub date of taking up residency" li turi li id-data li applikant ghandu jiddikjara fl-applikazzjoni ma ghandha x'taqsam xejn mad-data tad dokument tar-residenza;*

3. *Illi lanqas ma huwa minnu bekk li qalet l-appellanta fir-rikors tal-appell "li l-Ministeru għall-Finanzi għamel konkluzjoni hażina meta ddecieda li japplika b'għajnejh magħluqa l-provvedimenti tal-Artikolu 4(3)(e) tal-Arviż Legali 440 tal 2013". Għall-kuntrarju ta' dak li qalet l-appellanta, l-Ministeru intimat għamel konkluzjoni tajba u applika l-liġi b'mod korrett. Fil-fatt l-artikolu 4(3)(e) tal Legiżlazzjoni Sussidjarja 368.02 jgħid li "meta persuna tkun ittrasferiet ir residenza tagħha lejn Malta u l-vettura tkun ga waslet Malta, l-applikazzjoni għall-eżenzjoni għandha ssir fi tletin tletin **Qurnata mid-data li fiha il persuna tkun ittrasferiet ir-residenza tagħha f'Malta**". F'dan l-artikolu ma hemm l-ebda referenza għad-dokument ta' residenza imma dejjem tissemma id-data li fija persuna tkun ittrasferiet ir-residenza hawn Malta li mbux bil-fors hija id-data ta' meta persuna tkun applikat għad-dokument ta' residenza;*
4. *Illi wkoll, L-artikolu 4(4) tal-Legiżlazzjoni Sussidjarja 368,02 jgħid li "L-eżenzjoni ta' is-subregola (1) m'għandiex tingħata meta - (a) il-vettura u, jew l-applikant ma jkunux jissodisfaw ir-rekwiżiti stabbiliti ta' is-subregola (3). Dan ifisser li l-Bord ma jistax jaççetta ebda applikazzjoni li ma tkunx tissodisfa il kriterji tal-artikolu 4(3) tal-L.S. 368.01 u li wahda minn dawn il-kriterji hi li applikant għandu japplika fi tletin tletin jum li jibda jidekorri mid-data li fija persuna tkun ittrasferiet ir-residenza tagħha f'Malta. Għalhekk il-Bord ma għamel l-ebda konkluzjoni hażina bekk kif qed tallega l-appellanta;*
5. *Illi l-appellanta titlob fir-rikors t'appell tagħha biex dan l-Onorabbli tribunal "jħassar u jirrevoka d-deciżjoni mogħtija mill-Ministeru tal-Finanzi fl-ittra datata 14 ta' Mejju 2019 fejn l-istess Ministeru cabad it-talba għall-eżenzjoni magħmula taht l artikolu 19 tal-Kap 368 u minflok jagħti l-eżenzjoni mitluba stante li r-rekwiżiti stabbiliti fir-regolament koncernati jinsabu pienament sodisfatti". Illi l-esponent jgħid illi anki li kieku l-appellanta applikat fit-terminu ta' tletin jum jekk kif titlob il liġi, hija xorta wahda riedet tissodisfa r-rekwiżiti kollha l-ohra tal-artikolu 4 tal-L.S. 368.01 li sa llum dawn għadhom ma gewx sodisfatti peress li l-applikazzjoni waqgħet meta l-ewwel rekwiżit, dak li l-applikanta kella tapplika fit-terminu ta' tletin jum, ma gie x sodisfatt;*
6. *Illi l-principju "nemo obligatur ad impossibilia nemo tenetur" li semmiet l-appellanta ma japplikax għal każ in eżami għax ma kien hemm xejn xi jżomm l-appellant milli tapplika għall-eżenzjoni mit-taxxa tar-regiżtrazzjoni. It-terminu jibda u jispicça hekk kif jigi stipulat fil-liġi u ma jgħix estiż minhabba i-cirkostanzi u l-eżiġenzi ta' min hu obligat li jsewgni dan it-terminu. Jekk unghad wiehed jonqos milli josserva terminu, ma jistax jigi wara u jippretendi l-istess drittijiet daqs li kieku osserva t terminu. Dan gie spjegat fis-sentenza Joe Hales vs Direttur tas-Sigurta' Socjali, Qorti tal-Appell, 9 ta' April 2008 fejn l-Onorabbli Qorti tal-Appell qalet:*

*“F’termini rigidament legalistici meta ligi tippreskrivi l mod u terminu għall-proseguiment ta’ xi dritt, ma jstax, imbagħad, il-parti jippretendi illi għan-nuqqas tiegħu li josserva dik l-modalita jew li jottempera ruħu fit-terminu preskritt huwa għandu xorta waħda jikkonsegwi l-benefiċċju intier ta’ dak id-dritt pretiż minnu”.*

7. *Għaldaqstant, l-esponent umilment jitlob lil dan l-Onnorabbli Tribunal biex jiċċad l-appell ta Carol Susan Estava datat 31 ta’ Mejju 2019 u u jikkonferma id-deċiżjoni tal-Board datata 14 ta’ Mejju 2019;*

8. *L-ispejjeż ta’ dawn il-proċeduri għandhom ikunu a karigu tal-appellanta Carol Susan Estava;*

9. *Salvi eccezzjoni ulterjuri jekk ikun il-każ;*

Having seen the decree of the 9<sup>th</sup> March 2020 whereby this Court acceded to the request put forth by plaintiff, who being a foreign national lack understanding of the Maltese language, and ordered proceedings to be held in the English language.

Having heard the witnesses.

Having seen the documents submitted and the acts of the proceedings.

Having heard the final oral submissions made by both parties.

## **Considers**

### **Proof**

**Plaintiff** testified that she arrived in Malta on the 15<sup>th</sup> March 2019 and on the 20<sup>th</sup> of March 2019 she went to the office of Transport Malta in order to file for the exemption in question. She was informed that in order to apply for the said exemption she needed to be in possession of a number of documents namely: a Maltese identity card and a reciprocal health agreement certificate. She explained that she went straight away to apply for her identity card and then went to hospital to request the issuing of a health certificate. The hospital issued a ‘*Provisional Entitlement Certificate*’ on which it is specifically stated that a ‘*Health Care Entitlement Card*’ would be issued only upon presentation of the residence permit. She explained further that the certificate was sent to her by post and she received it on the 17<sup>th</sup> April 2019. On receiving the health certificate, she headed to the offices of Identity Malta to get her identity card and with the documents in hand she went to Transport Malta. On that very same day Transport Malta informed plaintiff that her vehicle had to be inspected and she was given an appointment to have this done. The vehicle was inspected on the 25<sup>th</sup> April 2019 and on the very same day

plaintiff headed back to Transport Malta Offices to file for the tax exemption. Plaintiff stated that the application was filed on the 25<sup>th</sup> April 2019.

In cross-examination plaintiff confirmed that she had acquired a copy of the tax exemption form, read it, including the conditions which need to be met by applicant and that she also understood the content. Plaintiff explained that she indicated the date of the 15<sup>th</sup> March 2019 as both the date of her arrival and that of her taking up residence because “*I thought that date of taking up residence meant when I arrived, not when I actually received the card.*” She added on saying that she had not asked for help or clarification in interpreting the requirements that she had to fill on the form.

**Josef Schembri**, in representation on Transport Malta testified that when plaintiff asked to register her vehicle she was immediately informed that in order for her request to be processed she would need to present a Maltese identity card, a residence permit or proof of acquisition of property. Plaintiff was issued with her identity card on the 17<sup>th</sup> April 2019 and on the same day Transport Malta booked her vehicle for inspection in Gozo on the 24<sup>th</sup> April 2019. On the very same day Josef Schembri vetted the documentation which had been submitted by plaintiff and he forwarded the documents by courier to Transport Malta office in Malta.

**Michelle Galea**, Director within the Ministry of Health, confirmed that plaintiff applied for the Health Entitlement Card on the 16<sup>th</sup> June 2020. She explained that the health entitlement card issued on the 20<sup>th</sup> March 2019 was only a provisional certificate issued in line with the reciprocal health agreement between Malta and the United Kingdom. She further explained that it is only upon the issuing of an Identity Card that a person can then apply for a certificate of Entitlement.

**Margaret Sciberras** in representation of the E-Residence Unit testified that plaintiff applied for her residence permit on the 17<sup>th</sup> April 2019 and the residence document was issued to her on the 4<sup>th</sup> June 2019.

**Michael Zammit Monroe**, Chairman of the Review Board for Transfer Residence Tax Exemption explained that the process of getting a tax exemption on a motor vehicle entails that the applicant fills in a form entitled VEH007. The form along with the documents attached to it is then filed with Transport Malta and the latter will then transmit the form including the documents to the Board. On receiving the application, the afore mentioned Board vets the application to see that it meets the requirements as set out in Subsidiary Legislation 368.01. He further explained that the form in question consists of four (4) pages. On the first page one can find the legal requirements simplified and explained in lay man terms. The second page of the application consists of details that need to be filled in by the applicant. On the third page the applicant will then find listed all the

documents that need to be submitted along with the application. The last page of the application gives out general information. Mr Zammit Monroe highlighted the fact that the application needs to be filed within thirty (30) days of arrival of the vehicle or within thirty (30) days from transfer of residence whichever date comes earliest. On the form plaintiff indicated the date of the 15<sup>th</sup> March as the date when she took up residence in Malta as well as the date when the vehicle arrived in Malta. Plaintiff applied for the exemption on the 24<sup>th</sup> April 2019 and this was beyond the 30 days from the arrival of the vehicle and from the date which plaintiff indicated as being the date when she took up residence in Malta.

## **The Grievance**

From the acts of the case, it results that by an application dated 24<sup>th</sup> April 2019, plaintiff applied for an exemption from motor vehicle registration tax over the vehicle Vauxhall Zafira Exclusive bearing Registration number MA64 JAO which application was made in terms of Article 19 of Chapter 368 of the Laws of Malta. However, by a letter of the 14<sup>th</sup> May 2019 she was informed that her application was being rejected on the basis that it was filed *fuori termine* given that it was not filed within the thirty (30) day period stipulated by law which period runs from the date when the person takes up residence in Malta or the date when the vehicle arrives in Malta, whichever date comes first.

Consequently, plaintiff filed these proceedings whereby she is claiming that she feels aggrieved by such decision given that she did all in her power to get all the documentation required and to file the application on time. She claims that however, it was not possible to acquire all documents within the thirty (30) day time frame as in fact it turned out that the Authorities took longer to issue the residence permit for plaintiff. Thereby, by virtue of this action, this Tribunal is being asked to review the decision notified to plaintiff by means of a letter dated 14<sup>th</sup> May 2019 .

In its defence, the Ministry argued that plaintiff failed to apply within the thirty (30) day period and hence she did not meet the requirements prescribed by law. During the final oral submissions, the defence counsel for the Ministry of Finance noted that the application form for the exemption in question clearly indicates on page one the criteria for the application as well as the thirty (30) day period within which the application needs to be submitted.

The Ministry also noted that in the application form itself the applicant is requested to provide two very important dates. The first refers to the 'Date of arrival' and the second refers to the 'Date of taking up residence'. These two dates are to be indicated in the specific boxes provided. It is important to note that these boxes are separately and distinctly marked. The defence counsel went on to

observe that in this specific case plaintiff indicated the date of the 15th of March 2019 both as the date of her arrival in Malta as well as the date when she took up residence in Malta. The defence counsel remarked that this indication was erroneously made as the date of taking up residence had to refer to the date when the residence permit was issued in favour of plaintiff and not to the date when she physically started residing in the island of Malta and Gozo.

## **The Law**

The tax exemption from motor vehicle registration is regulated by Chapter 368 and by Subsidiary Legislation 368.01.

Article 19(3)(f) of Chapter 368 provides that:

*(3) The following motor vehicles shall, upon registration with the Authority, be exempt from the payment of registration tax*

...

*(f) any M1 motor vehicle or a cycle which is the personal property of a private individual and is being brought permanently into Malta by the individual when he is transferring his normal residence from a place outside Malta to a place in Malta, provided that that vehicle qualifies for such exemption. The said exemption shall be given under those conditions, restrictions or limitations prescribed by the Minister responsible for finance.*

Moreover, in terms of Regulation 4(3) of Subsidiary Legislation 368.01 provides that:

*(3) For a vehicle to qualify for an exemption under sub-rule(2) –*

*(a) it shall have been registered in the name of the individual transferring his normal residence for a period of at least twenty-four months immediately before the date of his transfer of residence to Malta and is still so registered when the vehicle is imported or brought into Malta;*

*(b) it shall have been acquired under the general conditions of taxation in force in the domestic market of the State from which it is being imported or brought into Malta, and is not the subject, on the grounds of exportation, of any exemption from or any refund of excise duty, value added tax or any other consumption tax;*

*(c) the person applying for the exemption shall have been residing outside Malta for a continuous period of at least twenty-four months immediately before the date on which he ceases to have his normal residence outside Malta;*



*(d) the vehicle is declared for exemption not earlier than two months before the date on which applicant becomes normally resident in Malta and not later than twelve months following that date;*

*(e) where the person has transferred his residence to Malta and the vehicle has already arrived in Malta, the application for exemption is to be made within thirty days from the date on which that person had transferred his residence to Malta; and;*

*(f) where the person has transferred his residence to Malta and the vehicle has not yet arrived in Malta, the application for exemption is to be made within thirty days from the arrival of the vehicle in Malta.*

Regulation 4(4) of Subsidiary Legislation 368.01 stipulates that:

*The exemption under sub-rule (2) shall not be granted where –*

*(a) the vehicle and, or the applicant do not satisfy the requirements established under sub-rule (3);*

From the proof submitted it transpires that:

- i. Plaintiff arrived in Malta on the 15<sup>th</sup> March 2019;
- ii. Plaintiff's vehicle arrived in Malta on the 15<sup>th</sup> March 2019;
- iii. Plaintiff started residing in Malta on the 15<sup>th</sup> March 2019;
- iv. Plaintiff applied for her residence permit on the 17<sup>th</sup> April 2019;
- v. Identity Malta issued the residence permit on the 4<sup>th</sup> June 2019.

The Tribunal notes from MF1 that the front page of Form VEH 007 outlines briefly information about applicability. In it, there is also defined that where a vehicle has already arrived in Malta, the application for exemption has to be made by the person transferring the residence within 30 days from the date on which that person had transferred his residence to Malta. There is also outlined in the said form that 'transfer of residence' means the actual transfer of the normal residence of a person from a place outside Malta to a place in Malta. This was in line with the definition given in S.L. 368.01 at the time when this application was submitted.

Indeed, the Tribunal clarifies that with the introduction of the amendments brought about with Legal Notice 254 of 2019 (which were published on 4<sup>th</sup>

October 2019), this definition of ‘transfer of residence’ has changed and it now reads as follows:

*“transfer of residence” means the actual transfer of the ordinary residence of a person from a place outside Malta to a place in Malta with the date of transfer being the date of issue of the Residence Document or the date as declared with the Commissioner for Revenue in the case of Maltese applicants.*

Therefore, the position which applies to this case was that transfer of residence means the actual transfer of the normal residence of a person from a place outside Malta to a place in Malta.

Consequently, given that the vehicle arrived in Malta on the very same day as plaintiff transferred her residence to Malta, the thirty (30) day time period within which plaintiff had to file her application for the tax exemption in terms of Regulation 4 (3)(e) of Subsidiary Legislation 368.01 ran from the 15<sup>th</sup> March 2019. The thirty (30) daytime period for filing of the application is clearly and evidently marked on the application which plaintiff confirmed she had read and understood.

It is worth noting that it has emerged that in vetting the application the Board rests entirely on the information that is indicated by the applicant on the application form and it does not consult with other entities or bodies in charge of issuing other documents for the applicant.

Reading through a copy of the application submitted by plaintiff it transpires that plaintiff indicated the date of the 15<sup>th</sup> March 2019 as the date on which she took up residence in Malta and as the date of arrival in Malta of the vehicle in question.

The application states in very clear and simple terms all the criteria that need to be fulfilled for the filing of a successful application. Plaintiff was never at any disadvantage in not knowing clearly the terms and conditions for filing the application. She herself confirmed that she had the application, read it and understood the content and requisites. She also confirmed that she did not seek any clarification on the terms and conditions indicated in the form. This implies that plaintiff had every opportunity to understand what was being requested and to seek clarification or further information about her application.

The application submitted to the Board was clearly filled in. On receiving the application, the Board did not need to request further information over that which had already been provided by the applicant herself. The Board was therefore bound to look at the facts as they emerged from the application.

In **Susan Hibbert vs Ministru tal-Finanzi** decided on the 18<sup>th</sup> May 2018 by this Tribunal as otherwise composed, the Tribunal noted that:

*“Illi it-trasferiment tar-residenza ta’ persuna jsir f’dak il-mument li hija tiffirma dik l-intenzjoni li l-istess iżżomm lil Malta bhala l-post li fih se tistabilixxi r-residenza normali taghha. Il-fatt li hija applikat mad-Dipartiment ta-Cittadinanza u l-Espatrijati fil-11 ta’ Lulju 2017 juri li hija diga kienet hadet tali decizjoni, u kien fil-fatt ghalbekek li hija nizżlet l-imsemmija data fuq l-applikazzjoni odjerna. Il-fatt li d-dokument ta’ residenza hareg xhur wara, u cioe` f’Dicembru 2017, ma jhassarx il-fatt illi d-decizjoni hija kienet haditha xhur qabel.*

*Illi li kieku, ghall-grazzja tal-argument, dan it-Tribunal jikkoncedi illi d-data tar-residenza taghha hija meta hareg il-permess ta’ residenza, u cioe` fl-20 ta’ Dicembru 2017, allura l-applikazzjoni de quo ukoll tippeka ghax tkun issottomettiet l-istess applikazzjoni meta ma kinitx ghadha ttrasferiet ir-residenza taghha hawn Malta.”*

Reference is also made to the judgement given by this tribunal as otherwise composed on 11<sup>th</sup> October 2016 in the names of Claudia Carmicio Vs Ministeru tal-Finanzi et wherein it was stated:

*Illi mill-Kapitolu 368 Ligijiet ta’ Malta (Att dwar ir-Registrazzjoni u l-Licenzjar ta’ Vetturi bil-Mutur) u mil-Legislazzjoni Sussidjarja 368.01 (Regoli Dwar Eżenzjoni Mit-Taxxa Tar-Registrazzjoni Ta’ Vetturi BilMutur) jirrizulta illi jezistu zewg termini ta’ zmien differenti li jikkoncernaw vettura privata ta’ persuna residenti barra minn Malta.*

*Jezisti t-terminu ta’ seba’ xhur taht il-Kapitolu 368 entro liema persuna tista’ ticcirkola bil-vettura f’Malta bhala turist qabel ma jkun tassattiv li tirregistra l-istess vettura għac-cirkolazzjoni f’Malta, u jezisti mbagħad terminu ta’ tletin gurnata ai termini tar-Regolament 4 (3) (e) tal-Legislazzjoni Sussidjarja 368.01 entro liema persuna trid tipprezenta l-applikazzjoni taghha sabiex tigi eżentata milli thallas it-taxxa tar-registrazzjoni fuq vettura jekk hi tissodisfa l-kriterji kollha stabbiliti bil-ligi. Illi dawn iż-żewg termini huma distinti minn xulxin ghaliex filwaqt li it-terminu ta’ seba’ xhur huwa marbut mar-registrazzjoni tal-vettura, it-terminu tat-tletin gurnata uwa marbut mal-eżenzjoni tat-taxxa tar-registrazzjoni li jiskatta jekk persuna tibda ttrissjedi hawn Malta u l-vettura tkun waslet Malta.*

*Illi dan it-Tribunal japprezza illi persuna li tkun gejjja ttrissjedi Malta jista’ jkollha xi diffikulta ta’ terminologija. Dan kollu mbagħad huwa aggravat jista’ jkun bin-nuqqas ta’ informazzjoni korretta mogħtija minn xi ufficjali tal-Awtorita` intimata li forsi jkun qegħdin jikkellmu fuq ir-registrazzjoni tal-vettura u mbux fuq l-applikazzjoni għall-eżenzjoni mit-taxxa ta’ registrazzjoni. Illi għalbekek, dan it-Tribunal jifhem li seta’ kien hemm xi tip ta’ nuqqas ta’ ftehim bejn ir-rikorrenti u l-ufficjali tal-Awtorita` għat-Trasport f’Malta, pero`, dak li dan it-Tribunal huwa kompetenti li jissindika huwa biss jekk id-decizjoni li ttiehdet mill-Bord kinitx legalment u fattwalment gustifikata.*

*Illi ma jidbirx li hemm kontestazzjoni li l-applikazzjoni in ezami saret oltre t-tletin gurnata minn meta l-vettura waslet hawn Malta. Fil-fatt l-applikazzjoni hija datata 23 ta' Dicembru 2014 mentri r-rikorrenzi iddikjarat li hija badet ir-residenza taghha fit-13 ta' Novembru 2014, filwaqt li l-vettura in kwistjoni ingabet hawn Malta fis-26 ta' Lulju 2014. B'hekk l-applikazzjoni saret oltre t-tletin gurnata msemmija f'Regolament 4 (3) (e) tal-Avviz Legali 6 tal-2012. Illi l-Bord kien marbut li jara li l-applikazzjoni kienet tissodisfa l-kriterji kollha elenkati fil-ligi biex tinghata l-eżenzjoni. Kjarament it-terminu ta' tletin gurnata huwa wiehed mill-kriterji tassattivi biex tinghata leżenzjoni mit-taxxa tar-registrazzjoni. Ghaldaqstant, it-Tribunal huwa tal-fehma illi l-Bord ma seta' jaghmel l-ebda haga obra blief li jobrog ir-riffut tal-istess eżenzjoni.*

*Illi dan it-Tribunal jissimpatizza mar-rikorrenzi jekk fl-opinjoni taghha seta' kien hemm xi tip ta' konfuzjoni fl-informazzjoni moghtija da parti tal-Awtoritajiet, pero` l-istess ma jstghax jannulla d-decizjoni mehuda mill-Bord peress li din ma tippekka bl-ebda mod, la legalment u lanqas fattwalment.*

*Illi fl-abbar nett, pero`, dan it-Tribunal jaccenna ghall-fatt li filformula tal-applikazzjoni jirrizulta li kien hemm indikazzjoni dwar it-terminu fatali ta' tletin gurnata u ghalbekk ma jstghax jinghad, kif inghad f'decizjonijiet precedenti ta' dan it-Tribunal, illi kien hemm xi nuqqas amministrattiv da parti tal-Ministeru intimat f'dan ir-rigward.*

*Mill-istess formola jirrizulta wkoll illi l-permess ta' residenza ma huwiex dokument tassattiv li jigi prodott mal-applikazzjoni. Fil-fatt a fol. 19, li hija parti mill-formola tal-applikazzjoni tar-rikorrenzi, hemm indikat b'mod car illi d-dokumenti hemm imsemmija, fosthom "Residence document issued by Department of Citizenship and Expatriates Affairs", jista' jigi prodott u mbux li huwa tassattiv li jigi prodott, b'dana li ovvajment l-onus li wiehed jipprova li jissodisfa l-kriterji rikjesti mil-ligi jibqa' dejjem fuq l-applikant. Ghaldaqstant, dak sostnut mir-rikorrenzi, u cioe`, li ma setghetx tapplika qabel kellha listess dokument ma jregix.*

The Tribunal understands plaintiff's frustration at being denied the exemption but the law regulating this specific matter is clear. The time frame prescribed by law for filing the exemption application is that of thirty (30) days, a time frame that is peremptory and hence by its very own nature a term that cannot be extended, suspended or renewed. Indeed, the Tribunal notes that the stipulated time frame of thirty days is marked in bold on the form exhibited as Dok MF1, thereby laying bigger emphasis on the importance of the time period during which the request can be advanced. Plaintiff filed her application on the 24<sup>th</sup> April 2019 and on it she indicated that she had taken up residence in Malta as from the 15<sup>th</sup> March 2019, the same date on which the vehicle had arrived in Malta. This means that the thirty (30) day period started running from the 15<sup>th</sup> March 2019 and would run up to the 15<sup>th</sup> April 2019. Consequently, when plaintiff filed her application on the 24<sup>th</sup> April 2019 it was filed *fuori termine* hence the Board acted correctly when it rejected

plaintiff's application on the basis that the requisites listed under Regulation 4(3)(e) of Subsidiary Legislation 368.01 had not been fulfilled.

Moreover, the residence document at the time of submission of this application was only a document which may be required to be submitted. This is clearly outlined in the application.

It rests with the applicant to acquire the relative information and to make sure that the application being submitted meets the necessary requirements. In this case plaintiff took it upon herself to read through the terms and conditions of the application without requesting any further information or clarifications. Most certainly plaintiff cannot blame the Board for rejecting her application.

## **DECIDE**

For the above-mentioned reasons, this Court decides this case by rejecting plaintiff's appeal and consequently by acceding to the pleas raised by the Ministry of Finance.

Orders plaintiff to pay for all the costs incurred in the course of these proceedings.

(ft) Magistrate Dr. Simone Grech  
President of the Administrative  
Review Tribunal

(ft) Silvio Xerri  
D/Registrar

True Copy

f/Registrar

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