



Qorti tal-Appell Kriminali

Onor. Imhalled Giovanni M. Grixti LL.M.

Appell Nru: 451/2021

Il-Pulizja

Spettur Nicholas Vella

Vs

Jerome Fenech

Seduta tal-4 ta' April, 2022

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra Jerome Fenech detentur tal-karta tal-identita Maltija 153900L quddiem il-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali talli fit-8 t'Awwissu 2021 ghall-habta tal- 16:28hrs f'St.Joseph High Road, Hanrun u f'toroq ohra f'dawn il-gzejjer, waqt li kien qed issuq vettura nru.DOR 028;

1. Saq l-imsemmija vettura b'manjiera traskurata.
2. Saq l-imsemmija vettura b'manjiera bla kont.
3. Waqt li kien qed issuq l-imsemmija vettura mexxa jew haddem il-magna ta' l-imsemmija vettura b'mod li taghmel hsejjes zejda.

4. Volontarjament kiser il-bon ordni jew il-kwiet tal-pubbliku bi hsejjes jew b'mod iehor.

Il-Prosekuzzjoni talbet li l-imsemmija persuna tkun skwalifikata mill-licenzja kollha taghha tas-sewqan ghal perjodu taz-zmien li l-Qorti jidrilha xieraq.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali ta' nhar it-30 ta' Novembru 2021 li biha lliberat lill-imputat mit-tieni, tielet u r-raba' imputazzjoni izda sabitu hati tal-ewwel imputazzjoni u kkundannatu ghal hlas ta' multa ta' €350 pagabbli f'rati mensili ugwali (Kap.9 Art.14 (2)) u skwalifikatu milli jkollu jew milli jikseb licenzja tas-sewqan ghal perjodu ta' 8 ijiem (Kap.65 Art.15 (2) (3), Art.15 H (2) (Kap.104 Art 3 (2A))).

Rat ir-rikors tal-appell ta' Jerome Fenech pprezentat fir-registru ta' din il-Qorti fil-15 ta' Dicembru 2021 li bih talab lil din il-Qorti **tirrifirma** s-sentenza appellata billi filwaqt li **tikkonfermaha** in kwantu ddikjarat it-tielet u r-raba' imputazzjoni preskritti u lliberat lill-esponent mit-tieni imputazzjoni, **tirrevokaha** in kwantu sabitu hati tal-ewwel wahda u kkundannatu ghall-hlas ta' multa ta' tliet mija u hamsin ewro (€350) u tmint ijiem sospensjoni tal-licenzja tas-sewqan u tilliberah minn kull imputazzjoni u htija.

Rat l-atti u d-dokumenti kollha.

Rat il-fedina penali aggornata tal-appellant esebita mill-prosekuzzjoni fuq ordni tal-Qorti;

Ikkunsidrat:

1. Illi fl-udjenza tal-lum, l-Qorti *ex officio* ssollewat il-possibbli nullita' tas-sentenza appellata u dan peress illi hija priva minn formalita' essenzjali kif jitlob l-artikolu 382 tal-Kodici Kriminali;

2. Illi minn ezami tal-atti processwali u b'mod partikolari tas-sentenza appellata, jemergi illi din ma takkludix il-fatti tal-kawza kif jitlob l-artikolu 382. Huwa palezi li dan hu element indispensabbli ghal sentenza valida fil-ligi u fil-kaz odjern l-istess sentenza ma tindikax dawn l-istess fatti. Ghad illi hemm imnizzel il-kliem: "Rat l-imputazzjonijiet fuq il-pagna ta' wara li nhargu kontra l-imputat", il-pagna ta' wara hija vojta. Issa dan il-mertu hu identiku ghall dak diskuss fis-sentenza ta' din il-Qorti tal-lum stess fl-ismijiet *The Police vs Israel Beenhene* li l-parti rilevanti taghha qed tkun hawn riprodotta:

1. That prior to any further considerations, this Court is duty bound ex officio to raise the possible nullity of the judgement of the first Court for the following reason. The decision of the first Court signed by both the deciding Magistrate and the Deputy Registrar is that found on folio 28a of the records of the proceedings. Now according to article 328 of the Criminal Code:

The court, in delivering judgment against the accused, shall state the facts of which he has been found guilty, shall award punishment and shall quote the article of this Code or of any other law creating the offence.

2. *That from a reading of the judgement merits of appeal it is immediately evident that same does not contain statement of the facts of which the accused has been found guilty. The said judgement contains the following wording:*

THE COURT,

Having seen the charges issued overleaf against the person charged.

*The overleaf, however, is completely blank and judgements of this Court have invariably held that a reproduction of the charges is considered to be sufficient for the purposes of the requirement laid down in article 382 of the Criminal Code namely that of stating the facts of the case and this where pleas of nullity were not acceded to or upheld in that regard. Reference is made to the judgements *Il-Pulizija vs Albert Caruana – Crim App 120/2015 – 30.1.2017; Il-Pulizija vs Peter Abdilla –Crim App 28.7.2010; Il-Pulizija vs Mariella Caruana - Crim App 15.12.2010; Il-Pulizija vs John Tanti Crim App 24.1.2013; Il-Pulizija vs Carmel Polidano Crim App 11.12.2013 and Il-Pulizija vs Thomas Camilleri – Crim App 315/2018 – 29.3.2021;**

3. *The Court, therefore, is duty bound to raise such a defect being a matter of public interest given that the requirement of the law has the particular purpose of demonstrating the reasons for which an accused has been found guilty. In the case at hand, there is clearly a lack of observance, in part, of article 382 and this Court has no other option but to declare the appealed*

judgement null and void due to the non observance of an essential formality;

4. Illi l-istess kunsiderazzjonijiet huma applikabbli għall-kaz odjern u konsegwentement qed tiddikjara s-sentenza appellata nulla minhabba karenza ta' formalita' essenzjali u għalhekk ukoll għandu jsehh gudizzju gdid f'dik l-imputazzjoni li dwarha instabet htija filwaqt li tibqa' valida l-liberazzjoni fuq l-imputazzjonijiet l-oħra;

5. Issa, wahda mill-konsegwenzi li ggib magħha n-nullita' tas-sentenza hi din taffettwa biss dik il-parti tagħha fejn tkun instabet htija fejn allura tista' titqies bhala nullita' parzjali. Meta din il-Qorti tiddeciedi il-kaz hi mill-gdid ma tergax tisma' u tiddeciedi dwar dawk l-imputazzjonijiet li dwarhom ikun hemm liberatorja (ara sentenza **Il-Pulizija vs Karmenu Attard** App Krim 28.4.1995) liema principju hu applikabbli fil-kaz odjern stante li kien hemm liberatorja dwar tlieta mill-imputazzjonijiet;

6. Illi għalhekk filwaqt li tastjeni milli tiehu konjizzjoni ulterjuri tal-aggravji fir-rikors tal-appell, tordna li l-atti jkunu rimessi lill-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali sabiex il-kaz kontra l-appellant ikun mismugh u deciz mill-gdid biss kwantu l-ewwel imputazzjoni stante li l-liberazzjoni mit-tieni, t-tielet u r-raba' imputazzjonijiet hija konvalidata.