



Court of Magistrates (Malta) as a Court of Criminal Judicature
Magistrate: Dr. Victor G. Axiak B.A., LL.D., Dip. Tax

LOCAL ENFORCEMENT SYSTEM AGENCY V. SANJIMAYA TAMANG
(ID. 201605A)

CONTRAVENTION NO. 911-73087-5

7 April 2022

THE COURT,

Having seen the charge brought against the appellant Samjimaya Tamang (ID. 201605A) who was accused before the Commissioner for Justice of having:

- On 02/08/2020 at 18:50 hrs in Triq William Reid, Gżira, breached one or more of the conditions relating to quarantine (Legal Notice 72 of 2020, Art. 2).

Having seen the decision of the Commissioner for Justice taken on 15 December 2020 whereby the appellant was found guilty and fined the amount of three thousand euro (€ 3,000).

Having seen the appeal application filed by the appellant on 5 January 2021 by means of which the Court was requested to reverse the decision of the Commissioner for Justice and acquit her from the charge on the following grounds or alternatively in case of guilt, to vary the penalty by reducing the fine to a more reasonable amount that reflects the facts of the case and the means of the appellant:

1. *“Illi r-rikorrenti hija ta’ nazzjonalita’ estera ossia minn Nepal u ilha biss ftit żmien tirisjedi ġewwa Malta fejn għal skopijiet ta’ xogħol. Illi r-rikorrenti assolutament ma tifhimx bil-lingwa Maltija. Illi kif jindikaw l-atti proċesswali, l-avviż tal-Kontravvenzjoni ġie notifikat lilha bil-lingwa Maltija u konsekwentement hi ma*

setgħatx tifhem il-kontenut ta' dik it-taħrika u l-importanza tagħha. Illi għalhekk hi lanqas ma setgħat tipprepara għad-difiża tagħha kif jixraq. Illi ma hemm ebda dubju u kien bil-wisq evidenti għar-Registratur tat-Tribunal Lokali, illi r-rikorrenti ma tifhimx bil-Malti u kellu jinnotifikha bi traduzzjoni għall-Ingliż tal-Avviż tal-Kontravvenzjoni. Illi għalhekk id-dettami tal-Att Dwar Proċeduri Ġudizzjarji (Użu Tal-Ilsien Ingliż), Kap. 189 tal-Liġijiet ta' Malta, li huma ukoll applikabbli għall-każ de quo agitur ma ġewx segwiti. Illi għalhekk l-proċedura quddiem it-Tribunal Lokali hija nulla u bla effett;

- 2. Illi mingħajr preġudizzju għall-aggravju preċedenti, l-'Avviż ta' Kontravvenzjoni' jirreferi għall-Artikolu 2 tal-Avviż Legali 72 tal-2020 bħala l-bażi legali għall-ksur tal-kundizzjoni li jirrigwarda il-kwaranti. Illi tali referenza għal dan l-Avviż Legali hija kompletament skorretta u żbaljata stante illi dan l-artikolu ma jipprovdi għall-ebda obbligu li l-kwarantina tiġi segwita. Illi l-Artikolu 2 ta' dan l-Avviż Legali jipprovdi biss għas-sostituzzjoni tal-Artikolu 4 tar-Regolamenti Prinċipali ossia r-“Regolamenti Dwar L-Infurzar ta' Ordnijiet li Jirrigwardaw il-Kwarantina” (LS 465.12). Illi għalhekk tali 'Avviż ta' Kontravvenzjoni' hu null u bla effett;*
- 3. Illi mingħajr preġudizzju għall-aggravji preċedenti, l-'Avviż ta' Kontravvenzjoni' hu null u bla effett stante li l-fond ta' residenza tar-rikorrenti ma huwiex korrettament indikat. Illi r-rikorrenti tabita ġewwa 40, Triq Sir William Reid, Gzira. Illi tali Avviż qed jirreferi għat-triq kollha u mhux għal fond partikolari tar-rikorrenti. Illi ordnijiet tal-kwarantina jippresupponu fond speċifiku fejn wieħed ikun ser iqatta l-kwarantina tiegħu. Illi għalhekk ksur ta' ordni ta' kwarantina jeħtieġ li tkun marbuta ma fond speċifiku, liema fond ma ġiex indikat fl-Avviż tal-każ de quo;*
- 4. Illi mingħajr preġudizzju għall-aggravji preċedenti, l-'Avviż ta' Kontravvenzjoni' hu null u bla effett stante l-indikazzjoni żbaljata fuq l-Avviż tan-natura ta' din l-akkuża. Illi skond l-Artikolu 4 tar-“Regolamenti Dwar L-Infurzar ta' Ordnijiet li Jirrigwardaw il-Kwarantina” (LS 465.12), in-natura tal-imputazzjoni imsemmija fl-Avviż hi dik ta' 'Reat' u mhux 'Kontravvenzjoni' kif hemm imnizzel;*
- 5. Illi mingħajr preġudizzju għall-aggravji preċedenti, ordni ta' kwarantina qatt ma setgħat tiġi mposta fuq ir-Rikorrenti mis-Suprintendent tas-Saħħa Pubblika, stante illi hi qatt ma kellha l-COVID-19. Dan qed jingħad għar-raġuni illi Artikolu 3 tar-“Regolamenti Dwar L-Infurzar ta' Ordnijiet li Jirrigwardaw il-Kwarantina” (LS 465.12) jipprovdi is-segwenti:*

Kull perjodu ta' kwarantina impost mis-Suprintendent għandu jiġi strettament osservat skont dawk l-ordnijiet li jistgħu jingħataw mill-imsemmi Suprintendent, taħt id-dispożizzjonijiet tal-artikolu 29(1) tal-Att.

Illi jekk wieħed jagħmel referenza għall-artikolu 29(1) tal-Att Dwar Is-Saħħa Pubblika Kap. 465 tal-Liġijiet ta' Malta, dan jipprovi illi:

Is-Suprintendent jista' jordna li persuna li jkollha marda li għandha tiġi avzata:

(a) tkun iżolata xi mkien fejn is-Suprintendent jiddeċidi; (enfasi tar-rikorrenti)

Illi għalhekk huwa bil-wisq ċar u evidenti illi ordni valida ta' kwarantina tista' biss tiġi validament imposta mis-Suprintendent tas-Saħħa Pubblika fuq persuna li jkollha marda. Illi minħabba li r-Rikorrenti qatt ma kellha marda li biha is-Suprintendent għandha tiġi avzata allura l-ebda ordni ta' kwarantina ma setgħat tiġi mposta fuqha u konsegwentement qatt ma seta' jkun hemm sejbien ta' xi ħtija kontriha;

- 6. Illi mingħajr preġudizzju għall-aggravji preċedenti, r-rikorrenti qatt ma kienet validament infurmata mis-Suprintendent tas-Saħħa Pubblika jew rappreżentant tagħha illi ġiet imposta ordni ta' kwarantina fuqha. Illi lanqas ittra jew dokument bil-miktub li jispjegalha u jinfurmah illi kienet ġiet imposta fuqha tali ordni, qatt ma ntbagħat jew ingħata lilha. Illi tant kemm hu hekk li ġiet imposta multa oħra ta' tlett t'elef fuqha b'allegat ta' ksur ieħor tal-ordni ta' kwarantina, liema akkuza qed tiġi ukoll appellata;*
- 7. Illi mingħajr preġudizzju għall-aggravji preċedenti, jidher illi ġiet imposta ordni ta' kwarantina fuq ir-Rikorrenti stante illi ċertu Anil Sinjali (ID 0198350A) li kien għadu kemm irritorna minn barra minn Malta, għoġbu li jagħti l-indirizz tiegħu fejn kien ser iqatta l-kwarantina tiegħu fl-istess fond fejn kienet qed tabita r-rikorrenti. ossia 40, Triq Sir William Reid, Gzira u dan mingħajr ma ħa ebda permess mingħandha. Illi r-rikorrenti ilha żmien twil Malta u ma vjaġġgatx barra minn Malta fi żmien tal-pandemija tal-COVID-19. Illi barra minn hekk Anil Sinjali qatt ma informaha illi hi kellha xi obbligu ta' kwarantina. Illi l-fond 40, Triq Sir William Reid, Gzira huwa dar kbira u Anil Sinjali dejjem kien f'izolament għalih waħdu u ma kellu u lanqas ma seta' jkollu ebda kuntatt mar-rikorrenti. Illi fi kwalsijasi każ, Anil Sinjali dejjem irrizulta negattiv għall-COVID19 (vide 'Dok. B' anness);*

8. *Illi mingħajr preġudizzju għall-aggravji preċedenti, l-piena mposta fuq ir-rikorrenti hija ferm eċċessiva u mhux ġusta u hi ma għandha ebda mezz minn fejn tħallas dan l-ammont. Illi r-rikorrenti taħdem bħala 'Cleaner' mal-kumpanija OZO Malta Ltd. u titħallas il-paga minima li bilkemm isserviha sabiex tkopri l-keru u ssostni lilha nnifisha"*

Having seen that during the sitting held on 28 October 2021 the appealed Agency raised the plea of nullity of the appeal application on the basis of Article 419(1)(a) of Chapter 9 of the Laws of Malta since the appellant did not include a brief statement of the facts of the judgement appealed.

Having heard the parties make their submissions on this preliminary plea in the sitting held on 28 October 2021 during which the Court also ordered that proceedings be conducted in the English language given that the appellant is English-speaking.

Considered:

That Article 419 of the Criminal Code states:

'419. (1) Besides the indications common to judicial acts, the application shall, contain -

(a) a brief statement of the facts;

(b) the grounds of the appeal;

(c) a demand that the judgment of the inferior court be reversed or varied.'

That primarily the Court must consider whether the said article applies to appeal applications filed under Article 11 of Chapter 291 of the Laws of Malta.

That Article 11(2) of Chapter 291 *inter alia* states:

'11 (2) For the purpose of exercising its functions under this article, the Court of Magistrates shall proceed in accordance with the provisions of the Criminal Code ...'

That the provisions of the Criminal Code regulating the Court of Magistrates as a Court of Criminal Judicature are found in Articles 370-388 under Subtitle I of Title II. Meanwhile Article 419 is found under Subtitle III of Title II entitled "Of Appeals from Judgements of the Court of Magistrates as a Court of Criminal Judicature". Therefore a literal interpretation of Article 11(2) of Chapter 291 would mean that Article 419(1) of the Criminal Code would not be applicable.

That the Court feels that a literal application of Article 11(2) would be against the spirit of the law. This Court is tasked with reviewing a decision given by another judicial authority and in so doing it is automatically exercising a kind of jurisdiction that is akin to the appellate jurisdiction of the Court of Criminal Appeal. Any other interpretation would also be illogical given that the Court of Magistrates ordinarily does not have the power to review decisions given by other judicial authorities. In these circumstances the Court shall interpret the words under Article 11(2) of Chapter 291 “**shall proceed in accordance with the provisions of the Criminal Code**” to include both provisions relating to the Court of Magistrates as a Court of Criminal Judicature as well as to those relating to the Court of Appeal hearing appeals from judgements of that court.

That prior to the enactment of Act I of 2018 on 19 January 2018, Article 419(1) of the Criminal Code included the words “**under pain of nullity**”. This was time and time again interpreted strictly by our Courts to mean that if any one or more of the requirements outlined in paragraphs (a), (b) or (c) of subarticle (1) of Art. 419 were not satisfied, the appeal application was deemed to be null and void. This nullity was also raised *ex-officio* by the Court as a matter of public order.

That for instance in the judgement **Il-Pulizija v. Joseph Said** (Court of Criminal Appeal, 25 July 1994) the Hon. Judge V. De Gaetano held that:

“Il-gurisprudenza, ormai kopjuza dwar in-nullita’ tar-rikors tal-appell minhabba karenza tar-rekwizit tal-fatti fil-qosor, ma hix gurisprudenza bbazata fuq formalizmu jew inflessibilita’ procedurali izda gurisprudenza bbazata fuq interpretazzjoni rajjonevoli tal-imsemmi dispost tal-ligi (Art. 419 (1)...”Il-principji stabiliti ... jinsabu rispekkjati f’sentenzi aktar recenti bhal , per ezempju , “Il-Pulizija vs. Lawrence Zammit u Paul Spiteri4” [25.7.1986] ; “Il-Pulizija vs. Alfred Debono”5 [23.4.1992] u l- “Il-Pulizija vs. Julian Bonello6” [14.5.1992], lkoll appelli kriminali, jistghu jigu riassunti fis-segwenti tlitt propozizzjonijiet : (1) ir-rikors ghandu jkun fih espozizzjoni tal-fatti saljenti u essenzjali tal-kawza, esposti b’ mod car u komplet , b’ mod li l-kontropoarti tkun tista’ tifhem fuqhiex ghandha tiddefendi ruha jew tittratta, u b’mod li din il-Qorti tkun tista’ ssegwi sewwa l-izvolgiment tal-kaz u tillimita d-dibattitu ghal dak li hu bzonnjuz u tirrikjedi l-iskjaramenti mehtiega; (2) il-ghalhekk ma jkunx sodisfatt il-vot tal-ligi jekk il-fatti jkunu sparpaljati b’mod li wiehed irid joqghod jistad ghalihom biex forsi jindividwhom ; u (3) li certament mhux il-kompitu tal-Qorti li toqghod tipprova tispigola l-fatti mill-aggravji jew vice versa. ...f’ dan il-kaz l-espozizzjoni tal-fatti hija karenti ghal kollox.”

That the same eminent Judge also held in the judgement **Il-Pulizija v. Vincent Fenech** (Court of Criminal Appeal, 17 October 1997) that the Court:

“ghalkemm tfahhar kull sforz li jsir biex fl-atti gudizzjarji tigi kkoltivata l-prassi ta’ l-ekonomija tal-kliem , hu evidenti li tali ekonomija ma tistax tkun a skapitu tas-sens u l-iskop guridiku ta’ l-att in kwistjoni , cioe’ ma tistax tkun ekonomija tali li ggib fix-xejn u tirrendi inoperattiv u bla sens dak l-att.”

That in this case it is clear that the statement of the facts is lacking. Although the appellant did go into plenty of detail when outlining the various grounds of appeal, this does not satisfy the requirement that the application has to include “a brief statement of the facts” that are separate from the grounds of the appeal.

That this notwithstanding after the amendments to Article 419(1) by virtue of Act I of 2018 an appeal application that is found to be defective due to non-observance of the formalities outlined thereunder is not deemed to be null and void.

That as held by the Hon. Judge Consuelo P. Scerri Herrera in the judgement **Il-Pulizija v. Robert Galea** (Court of Criminal Appeal, App. Nru. 322/2017, 4 December 2018):

“Ir-raison d’etre tal-paragrafi (a), (b) u (c) tas-subartikolu (1) tal-artikolu 419 huwa s-simplifikazzjoni u l-kjarezza. Il-legislatur evidentement irid li r-rikors ghandu jkun redatt b’tali mod li mill-ewwel ipoggi kemm lill-Qorti kif ukoll lill-appellant fil-posizzjoni li jkunu jafu ezatt x’inhuma l-fatti kollha essenzjali, minn xhiex qed jilmenta l-appellant, u x’inhu jitlob. Pero’ minkejja li l-legislatur jirrikjedi dan mhux qed jinsisiti li jekk uhud minn dawn ir rekwiziti huma nieqsa l-atti jigi kunsidrat null. Ghalhekk il-legislatur ried li jkun hanin ma min jippresenta att li mhux in regola mal-ligi.”

That therefore the Court invites counsel for the appellant to file an application requesting a correction to the appeal application by including a brief statement of the facts of the case.

Decision

For these reasons the Court rejects the plea of nullity raised by the appealed Agency and adjourns the case so that the appellant acts accordingly in terms of law in line with this decision.

V.G. Axiak
Magistrate

Y. M. Pace
Dep. Registrar