



IN THE FIRST HALL OF THE CIVIL COURT

JUDGE

THE HON. GRAZIO MERCIECA LL.D.

TODAY, 25th OCTOBER 2022

Sworn Applic. No. 740/11 GM

Isabella Zananian Desira (holder of Identity Card Number 41663A)

vs

Medical Council

The Court:

Having taken cognizance of the Sworn Application filed by Isabella Zananian Desira on the 6th of August, 2011, by virtue of which and for the reasons therein mentioned, she requested that this Court (a) declare that decisions taken by the respondent Medical Council on February 3rd 2011 as confirmed by the Appeals' Committee of the same Council dated June 22nd 2011, in so far as her request to be registered in Malta as a medical practitioner was not accepted unless she submits herself to and successfully pass the Medical Council Examination for Medical Practitioners, are manifestly unjust, anti-constitutional, discriminatory, unlawful, ultra vires, and violate the basic principles of natural justice as well as because they are founded on a wrongful interpretation of the law; (b) declare that, as a consequence, said decisions are

null and without any effect at law whatsoever and to therefore quash the said decisions; (c) orders the respondent Council to register her particulars and qualifications in the Register for Medical Practitioners in Malta and to do this within the short and peremptory time which the Court prescribes; (d) to find that, because of its actions, the respondent Council is liable to make good for the damages sustained by her; (e) liquidate the damages suffered by plaintiff, if need be, by appointing an expert to assist the Court to this effect; and (f) condemn the respondent Council to pay her the damages thus liquidated. Plaintiff requested also payment of costs;

Having taken cognizance of the Sworn Reply filed by respondent Council on September 14th, 2011, whereby it categorically denied having rejected plaintiff's application for registration into the Medical Register. In particular, it pleaded that it acted entirely within its remit and in proper observance of the provisions of the law under which it is established, and that in regard to plaintiff it followed the practice which is followed with all applicants who are in an analogous situation as plaintiff's own. Furthermore, it pleaded that the policy which it applied in requesting plaintiff to sit for and pass an examination is prescribed in respect to every applicant hailing from a non-European Union State and constitutes a different consideration from the recognition of qualifications which may be granted by the Malta Qualifications Recognition Information Centre, as the Appeals Committee had the occasion to point out in its decision confirming that of respondent Council.

Having ruled by decree made during the hearing of October 10th, 2011, on a request to that effect by counsel to plaintiff, that all proceedings of this case would henceforth be conducted in English; as well as acceding to plaintiff's counsel request that, for the time being, it invests the plaintiff's first three (3) requests made in her sworn application and to deliver judgment thereon, leaving the issue of damages to a later stage if necessary.

Having seen its partial judgment of the 14th February 2017 whereby it:

(1) Upheld plaintiff's first request as being founded in law and in fact in that the decisions handed down by the respondent Council on February 3rd 2011 as confirmed by the Appeals Committee on the 22nd June 2011 were based on a wrong application of the applicable law and ultra vires the powers conferred by law on the Council.

(2) Upheld plaintiff's second request by declaring the afore-said decisions to be null and void and by quashing the said decisions for all effects and purposes of the law.

(3) Rejected plaintiff's third request since it falls beyond the remit of this Court as a reviewing Court but directing the respondent Council to reconsider plaintiff's request to be enrolled in the Register without delay and in conformity with the considerations made in this judgment.

(4) Rejected respondent Council's pleas on the merits insofar as they relate to the plaintiff's first two requests.

(5) Ordained that respondent Council bear the legal costs in connection with the preliminary judgment; and

(6) Adjourned the case for evidence and submissions regarding plaintiff's third, fourth and fifth requests (recte: the fourth, fifth and sixth requests) that is, on the declaration of responsibility, liquidation and payment of damages.

An appeal from the judgment lodged by respondent was dismissed and a subsequent request by respondent for a retrial was turned down.

Respondent included plaintiff's name in the Medical Register in terms of Art. 11(1) Chap. 464 as from the 4th January 2019.

When the records of the case were sent back to this court, plaintiff filed three consecutive applications demanding that the Medical Council adhere to the Court's direction to include plaintiff's name in the Specialist Register held by the Medical Council. The Court dismissed all three applications for the reasons

therein stated.

Plaintiff's claim is one for judicial review. In its preliminary judgment above cited, this Court has already upheld the claim to nullify the decision to refuse registration; and has already rejected plaintiff's demand to this Court to order her inclusion in the Medical Register because this goes beyond the competence of this Court as a tribunal of judicial review. This Court made a recommendation - not an order - to the Medical Council to include plaintiff as a medical doctor, which in fact it did.

Plaintiff is claiming that the Medical Council should have included her also in the Specialist Register. Again, this goes beyond the remit of this Court as a tribunal of judicial review. It can quash decisions, but not impose decisions of its own.

Moreover, the issue regarding specialist accreditation does not result from the content of the sworn application - which is restricted to the decision by the Medical Council not to register plaintiff as a medical practitioner - and therefore falls outside the parameters of the present proceedings as set by plaintiff herself. The decision which this Court has annulled was one effectively made by the Medical Council (established under Art.9 of Chap. 464). A decision to include a practitioner in the specialist register, although recorded in a register held by the Medical Council, is **not** made by the Medical Council itself but by the Specialist Accreditation Committee (SAC) established by a different rule (Art. 30 Chap. 464). The court can only decide strictly *iuxta alligata et probata*. It is also bound by its preliminary judgment.

Plaintiff's demand is restricted to the period starting from the 3rd February 2011, and not before. She was registered as a general practitioner on 4th January 2019. According to the agreement between the Government of Malta and the Medical Association of Malta¹, she was entitled to a Salary Scale No. 6²

¹ 27th February 2013 at Fol 655.

² Fol 662.

entitled to €28,612³. Over a period of approximately 8 years, plaintiff is entitled to €228,896.

Decide:

For these reasons the Court decides the case by:

- (1) **Upholding plaintiff's fourth request** by finding that, because of its actions, the respondent Council is liable to make good for the damages sustained by her.
- (2) **Upholding plaintiff's fifth request** by liquidating the damages suffered by plaintiff in the sum of €228,896.
- (3) **Upholding plaintiff's sixth request** by condemning the respondent Council to pay her the damages thus liquidated.
- (4) **Ordains** that respondent Council bear the legal costs in connection with this judgment.

Read and delivered.

MR. JUSTICE

GRAZIO MERCIECA

³ Ivan Falzon, CEO of Mater Dei Hospital, fol 636.