



CIVIL COURT (FIRST HALL)
MADAM JUSTICE
HON. AUDREY DEMICOLI LL.D.

Application Nr **726/2021**

BETTY MATHEW ANTONY MUKKATTU
(INDIAN PASSPORT NR N 2605217)

VS

COMMISSIONER FOR INLAND REVENUE

Sitting held on Friday, 11th November 2022

The Court:

1. This is a preliminary judgement solely regarding the first preliminary plea raised by the defendant, namely that the action instituted by the plaintiff in terms of Article 469A of Chapter 12 of the Laws of Malta is time-barred in terms of sub-article 3 of the same Article;

Preliminaries

2. By virtue of a sworn application filed on the twenty-third (23rd) of July 2021, the plaintiff **Betty Mathew Antony Mukattu** submitted and confirmed on oath:
- a. That the plaintiff is an Indian national who has been residing in Malta since 2016 with her husband, Jijo Kunjachan John, and their two children;
 - b. That the plaintiff applied for special tax status under the *Global Residence Programme Rules, 2013*, which application was received by the defendant on 13 June 2019;
 - c. That while her application was being processed, the plaintiff had been solely asked by the defendant to provide explanations as to her income, business and whether she owned or rented property in Malta;
 - d. That by means of a letter dated 6 February 2020, the plaintiff was informed that *“the due diligence process carried out in relation to the said application has raised a number of concerns”*, and that consequently the application was not accepted (**Doc A**). The reason given by the respondent did not fall under any of the reasons listed in Regulation 4 of SL 123.148;
 - e. That subsequently, the plaintiff availed herself of the possibility to provide further explanations and documentation and make those necessary corrections so that the application could ultimately be accepted, notwithstanding the rejection letter she had received;
 - f. That over the following months throughout 2020, rather than receiving any formal or at the very least written communication regarding the applicant’s application, all information pertaining to said application was communicated by phone to the applicant’s then legal counsel. During this process, the applicant was informed that she had to prove that she had or has access to bank accounts with over thirty-five thousand Euro (€35,000). This was the first time – at any stage of the

process – that proof of this very specific sum of money was requested. The plaintiff did provide evidence of this, explained how these moneys came to her account and gave all the information she could to dispel any doubts as to its provenance. Until this stage, no questions were raised as to the plaintiff's income, means and ability to provide for herself and her family;

- g. That even after the plaintiff provided further documentation, communication from the respondent continued to be made only over the phone and only with the plaintiff's then legal counsel;
- h. That by means of a letter dated 9 March 2021, the applicant was informed that she *"is not considered to be in receipt of stable and regular resources for the purposes of paragraph of rule 4 of the Global Residence Programme Rules, 2013"*. (**Doc B**);
- i. That while this reason technically falls under one of the possible reasons for rejection, the manner in which the plaintiff's case was handled leaves much to be desired and gives rise to very serious doubts as to whether the decision ultimately taken on 9 March 2021 was based on the plaintiff's actual circumstances;
- j. That by means of a judicial letter 2107/2021 (**Doc C**), the plaintiff called upon the respondent to immediately review the plaintiff's application for special tax status; however, no reply of any sort was made. Consequently, the plaintiff had no option but to file this Court case;

3. The plaintiff therefore requested this Court to:

- i. Declare that the decision of the defendant dated 9 March 2021 wherein the plaintiff's application for special tax status was refused was an abuse of the defendant's power and that it was done for improper purposes or on the basis of irrelevant considerations in terms of Article 469A(1)(b)(ii) of Chapter 12 of the Laws of Malta;

- ii. Consequently annul the decision of the defendant dated 9 March 2021 wherein the plaintiff's application for special tax status was refused;
- iii. Order the defendant to restart the applicant's application for special tax status;
- iv. Saving any order which this Court deems it appropriate to give;

With all costs to be borne by the defendant;

4. Having seen the sworn application filed by the plaintiff on the twenty-third (23rd) July 2021, by virtue of a decree dated twelfth (12th) August 2021, the Court ordered that the defendant be served with the relative documentation, and granted the defendant a term of twenty (20) days during which he had to file a sworn reply. The first sitting was scheduled for Thursday, seventh (7th) October 2021;
5. By virtue of a sworn reply dated fifteenth (15th) September 2021, the defendant raised a number of preliminary pleas and pleas regarding the merits of the case instituted by the plaintiff, including the first preliminary plea as follows:

Illi fl-ewwel lok u in linea preliminari, l-azzjoni odjerna, li hija ntiza sabiex twaqqaq' ghemil amministrattiv taht is-sub-artikolu 469A(1)(b)(iii) tal-Kapitolu 12 tal-Ligijiet ta' Malta, hija perenta skont l-artikolu 469A(3) tal-istess Att ghaliex tressqet wara z-zmien moghti mil-ligi biex tista' titressaq tali azzjoni, u cioe ta' sitt xhur, bit-trapass ta' tali zmien;

6. During the sitting held on the seventh (7th) October 2021, case was adjourned for evidence and submissions of the parties regarding the first preliminary plea raised by the defendant reproduced above;

7. During the sitting held on the second (2nd) December 2021, the plaintiff declared that she does not understand the Maltese language, and requested that proceedings be conducted in the English language. This Court upheld the request and ordered that proceedings henceforth be conducted in the English language.

The Court

8. Having seen the sworn application filed by **Betty Mathew Antony Mukkattu** on the 23rd July 2021, as well as the documents attached thereto, namely: (a) the letter sent by the Commissioner for Revenue dated sixth (6th) February 2020 (marked as **Doc A** a fol 9 of the case file); (b) the letter sent by the Commissioner for Revenue dated ninth (9th) March 2021 (marked as **Doc B** a fol 10 of the case file); and (c) judicial letter number 2107/2021 filed by the plaintiff against the Commissioner for Inland Revenue (marked as **Doc C** a fol 11 *et seq* of the case file);
9. Having seen the sworn reply filed by the **Commissioner for Revenue** dated fifteenth (15th) September 2021;
10. Having seen the affidavit sworn by **Gineve Schembri** marked as **Doc GS** a fol 31 of the case file, to which is attached a copy of the letter dated sixth (6th) February 2020 marked as **Doc GS1** a fol 32 of the case file;
11. Having seen that, during the sitting held on the second (2nd) December 2021, the defendant declared that he had no further evidence to produce regarding the preliminary plea being discussed;
12. Having heard **Gineve Schembri** being cross-examined by the plaintiff¹, and exhibiting a set of documents marked as **Doc GS1** (a fol 40 *et seq* of the case file) and a set of correspondence marked as **Doc GS2** (a fol 110 *et seq* of the case file);

¹ Transcript of the testimony given by Gineve Schembri can be found a fol 33 *et seq* of the case file.

13. Having seen the affidavit sworn by the plaintiff **Betty Mathew Antony Mukkattu** a fol 204 *et seq* of the case file, as well as the documents attached thereto, namely: (a) text messages exchanged with Dr Victor Bugeja (a fol 213 of the case file) and a copy of the Residence Programme Guidelines (2014) (a fol 214 *et seq* of the case file), collectively marked as **Doc A**; (b) text messages exchanged via WhatsApp with Dr Lydia Abela, marked as **Doc B** a fol 217 *et seq* of the case file); (c) e-mail sent by Nicholas Caligari to Jijo John entitled “06.02.2020 – Letter of Rejection of *Special Tax Status.pdf*” and dated thirteenth (13th) February 2020 (marked as **Doc C** a fol 224 of the case file); (d) text messages and e-mail exchanged with Dr Victor Bugeja, collectively marked as **Doc D** a fol 225 *et seq* of the case file, **Doc E** a fol 227 of the case file, **Doc F** a fol 228 *et seq* of the case file, and **Doc G(1)** a fol 232 *et seq* of the case file; (e) copy of bank transfer deposit information and account statements collectively marked as **Doc G(2)** a fol 237 *et seq* of the case file; (f) e-mail sent by Jijo John to Dr Victor Bugeja dated fifteenth (15th October 2020) marked as **Doc H** a fol 243 of the case file; (g) messages exchanged with Dr Victor Bugeja marked as **Doc I** a fol 244 of the case file; (h) messages exchanged with Dr Victor Bugeja, and a copy of the letter dated ninth (9th) March 2021 sent by the Commissioner for Revenue, collectively marked as **Doc K(1)** a fol 245 *et seq* of the case file; (i) a copy of a lease agreement dated fifteenth (15th) September 2017 entered into by the plaintiff’s husband with Caroline Caligari, marked as **Doc K(2)** a fol 249 *et seq* of the case file; (j) messages exchanged with Dr Magdalena, marked as **Doc M** a fol 253 *et seq* of the case file; (k) text messages exchanged with Dr Lydia Abela, marked as **Doc N** a fol 255 *et seq* of the case file; (l) a copy of the first page of the questionnaire in connection with the Global Residence Programme, marked as **Doc O** a fol 261 of the case file; (m) e-mail exchanged between Dr Lydia Abela and Jijo John on the twentieth (20th) November 2019, marked as **Doc P(1)** a fol 262 of the case file; (n) a copy of the brochure regarding the Malta Golden Visa Residency Programme published by Chetcuti Cauchi Advocates, marked as **Doc P(2)** a fol 264 *et seq* of the case file; (o) a number of documents and photos relative to

businesses run by the plaintiff (**Doc Q and R** a fol 270 *et seq* of the case file); (p) e-mail sent by Dr Julian Farrugia to Jijo John marked as **Doc S** a fol 276 of the case file; (q) informal copy of a judicial letter filed by the plaintiff against the Commissioner for Inland Revenue, marked as **Doc T** a fol 277 of the case file; (r) pendrive in which a recording from a conversation is stored, a fol 278(b) of the case file;

14. Having seen that, during the sitting held on the tenth (10th) June 2022, the plaintiff declared that she had no further evidence to produce;

15. Having heard final submissions by both parties in relation to the preliminary plea raised by the defendant, during the sitting held on the fourteenth (14th) July 2022;

16. Having seen that the case was adjourned for today for judgement regarding the preliminary plea raised by the defendant;

17. Considers as follows:

Legal Considerations made by the Court

18. The sworn application leaves no doubt regarding the fact that this case is one of judicial review of an administrative act, filed in terms of Article 469A of the Laws of Malta. In fact, the first request indicated by the plaintiff in her sworn application is precisely for a declaration that the defendant's decision dated ninth (9th) March 2021 constituted abuse of the defendant's power and was done for improper purposes or on the basis of irrelevant considerations "*in terms of Article 469A(1)(b)(iii) of Chap 12 of the Laws of Malta*". In addition, the Court notes, for all intents and purposes, that the defendant does not dispute the fact that this is a case for judicial review of an administrative act filed in terms of Article 469A of Chapter 12, and in fact bases the first preliminary plea on sub-article (3) of the same provision at law;

19. Neither is it contested by the defendant that the decision which the plaintiff is requesting to be reviewed by this Court, that is, the decision by virtue of which the plaintiff's application for special tax status was refused, is an administrative act in terms of Article 469A of Chapter 12 of the Laws of Malta;

20. Having established these two points, the Court is thus in a position to turn to Article 469A(3) of Ch 12 of the Laws of Malta, upon which the first preliminary plea raised by the defendant is based, which article at law establishes the following:

An action to impugn an administrative act under sub-article (1)(b) shall be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is earlier.

21. The case in question revolves around an application filed in June 2019 for special tax status under the Global Residence Programme. By virtue of a letter dated sixth (6th) February 2020, the Commissioner for Revenue informed the first Authorised Registered Mandatory (henceforth "**ARM**") acting on the plaintiff's behalf that, "*the said application to benefit from the special tax status has not been accepted*"². Following a series of correspondence between the second ARM acting on the plaintiff's behalf, another letter dated ninth (9th) March 2021³ was sent by the Commissioner for Revenue to the latter ARM, stating that the plaintiff, "*cannot be accepted under the Global Residence Programme*". A judicial letter (nr 2107/2021) was filed by the plaintiff against the Commissioner for Inland Revenue on the twenty-first (21st) May 2021⁴, and this case was instituted on the twenty-third (23rd) of July 2021;

² Vide **Doc A** attached to the sworn application, a fol 9 of the case file

³ Vide **Doc B** attached to the sworn application, a fol 10 of the case file

⁴ Vide **Doc C** attached to the sworn application, a fol 11 of the case file

22. The main point at issue is whether the administrative act, or rather, the decision taken by the defendant by virtue of which the plaintiff's application for special tax status was refused, is to be considered as being the one in the letter dated sixth (6th) February 2020, or the one in the letter dated ninth (9th) March 2021;
23. By virtue of a judgement given in the names **C. Fenech Clarke Tyres Limited vs Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar**⁵, this Court as otherwise presided declared:

*Illi llum il-ġurnata huwa stabbilit li ż-żmien ta' sitt xhur imsemmi fl-artikolu 469A(3) tal-Kap 12 huwa wieħed ta' dekadenza [**Gerard Zammit vs Awtorita' tal-Ippjanar et** (unpublished); PA. RCP, 5/4/2001 (in parte) **David Crisp vs Korporazzjoni Telemalta** (unpublished); and Civil Appeal 31/05/2002 **Zamboni et noe vs Direttur tal-Kuntratti et** (Coll Vol LXXXVI.ii.313)]. Dan ifisser li tali terminu ma jigix interrott jew sospiż bħalma jigri fil-każ ta' terminu ta' preskrizzjoni. Fi kliem ieħor, l-atti ġudizzjarji li normalment jitqiesu bħala tajbin biex jinterrompu ż-żmien preskrittiv, jew il-fatt li jkunu għaddejjin diskussjonijiet bejn il-partijiet wara li jkun sar l-għemil amministrattiv ma jservu xejn biex iżommu l-mogħdija tas-sitt xhur li ssemmi l-liġi;*

*Illi l-liġi ma ssemmi xejn dwar il-mod li bih parti mġarrba minn għemil amministrattiv issir taf b'dak l-għemil li jkun. Il-liġi ma tgħidx li ż-żmien jibda għaddej minn meta l-parti interessata tirċievi tagħrif formali jew uffiċjali miktub dwar id-deċiżjoni [PA, GV, 27/06/2003 **Denis Tanti vs Ministru għall-Iżvilupp Soċjali et**]; tgħid biss li ż-żmien ta' sitt xhur jibda jgħaddi minn dak inhar li l-parti ssir taf*

⁵ Appl Nr 609/2011, Civil Court (First Hall), Hon Mr Justice J. R. Micallef, 18th May 2017 (not appealed)

jew messha ssir taf b'dak l-għemil, liema data tiġi l-ewwel;

[...]

Illi l-Qorti tqis li wieħed imissu jagħraf bejn każ fejn persuna tkun mgħarrfa b'deċiżjoni finali meħuda mit-tmexxija pubblika dwar xi talba tagħha u każ fejn dik il-persuna, għalkemm mgħarrfa b'deċiżjoni bħal dik, titlob lill-awtorita' li tkun li terġa' taħsibha u tikkunsidraha. F'każ bħal dan, il-Qorti tqis li d-deċiżjoni meħuda tkun waħda tabilhaqq aħħarija u dak li jkun għandu jieħu r-rimedju tal-istħarriġ minnufih u mhux joqgħod kull tant żmien jitleb ir-reviżjoni bil-għan li jibqa' jgħid li l-proċess għadu miftuħ. Wieħed għandu jzomm quddiem għajnejh li l-artikolu 469A innifsu (fis-sub-inciz (2) tiegħu), jagħmilha ċara li, f'każ ta' nuqqas ta' twegiba min-naħa tal-amministrazzjoni pubblika għal xi talba, ż-żmien jitqies li jibda għaddej b'señħ minn xahrejn (jew żmien ieħor espressament mitlub minn xi liġi) minn meta ssir it-talba min-naħa taċ-ċittadin. Dan biex juri kemm il-liġi nnifsiha, f'azzjoni bħal din, tfittex li ż-żminijiet għat-teħid tar-rimedju għad-deċiżjoni ma jibqgħux jiggēbbdu b'mod artifiċjali;

24. The same legal considerations were also applied by the Court of Appeal (Superior Jurisdiction) in the judgement given in the names **Ragonesi & Company Limited pro et noe vs Korporazzjoni Enemalta et**⁶. In addition, the Court observed that:

Il-liġi hija ċara meta tgħid li t-terminu ta' sitt xhur jiskatta mill-mument meta l-individwu li għandu interess isir jaf

⁶ Appl Nr 9410/2006, Court of Appeal (Superior Jurisdiction), 24th November 2017

jew seta' isir jaf b'dak l-għemil amministrattiv. Il-leġislatur ma jgħidx li t-terminu jiskatta minn meta l-individwu jsir jaf ir-raġuni wara tali għemil amministrattiv. Huwa ċar li l-leġislatur irid jorbot dan it-terminu ta' dekadenza ma' kriterju oġġettiv u mhux ma' wieħed soġġettiv, alterminti individwu jista' jibqa' jistħarreġ għemil amministrattiv fuq perjodu ta' snin qabel jiddeciedi li jipproċedi bil-kawża ta' stħarriġ ġudizzjarju. Ċertament dan ma kienx il-ħsieb tal-leġislatur wara l-kliem adottat minnu f'dan il-provvediment tal-liġi.

25. Similarly, in **Dragonara Gaming Limited vs Il-Ministru tal-Finanzi et**, the Court of Appeal (Superior Jurisdiction) also noted:

Bħala terminu ta' dekadenza, tali terminu ma jiġix interrott b'xi diskussjonijiet li setgħu saru bejn il-partijiet u darba skada ż-żmien, l-azzjoni tas-soċjeta' attriċi hija perenta.

26. Returning back to the case at hand, this Court notes how, in her affidavit⁷, **Gineve Schembri**, who represents the Commissioner for Revenue, explains:

Ngħid illi permezz ta' ittra datata 6 ta' Frar 2020 Dr Lydia Abela, bħala mandatarja ta' Betty Matthew Anthony Mukattu, ġiet informata li l-applikazzjoni, sabiex tibbenefika mill-istatus speċjali ta' taxxa taħt il-Programm ta' Residenza Globali, ma ġietx aċċettata [kif jidher fl-ittra annessa hawn u immarkata bħala 'Dok GS1']; Tali deċiżjoni kienet waħda finali;

⁷ Vide **Dok GS** a fol 31 of the case file

Ngħid illi sussegwentement Dr Victor Bugeja bagħat korrispondenza oħra f'isem Betty Matthew Anthony Mukattu b'referenza għall-applikazzjoni tat-13 ta' Ġunju 2019, li kienet ilha li ġiet rejected sa mis-6 ta' Frar 2020 u huwa ġie infurmat b'dan.

27. The letter dated sixth (6th) February 2020⁸ stated:

We would like to inform you that the due diligence process carried out in relation to the said application has raised a number of concerns.

In view of this state of affairs, we regret to inform you that the said application to benefit from the special tax status has not been accepted.

28. On the other hand, the second letter, dated ninth (9th) March 2021⁹, stated:

Reference is made to the letter received on the 9th January 2021 in relation to the rejection of the application for special tax status under the Global Residence Programme Rules, 2013 in respect of Mrs Betty Mathew Antony Mukkattu.

We regret to inform you that Ms Betty Mathew Antony Mukkattu cannot be accepted under the Global Residence Programme as she is not considered to be in receipt of stable and regular resources for the purposes of the provisions of paragraph d of rule 4 of the Global Residence Programme Rules, 2013.

⁸ **Doc A** attached to the sworn application, a fol 9 of the case file

⁹ **Doc B** attached to the sworn application, a fol 10 of the case file

29. What happened between the first and second letter is unclear. Upon cross-examination¹⁰, **Gineve Schembri** explains:

GS: There were some correspondence because with the official application there were some missing documents and we asked for them. [...] Now, when we evaluated all the documents, we realised that they are not able to – they don't have sufficient funds to be under this program, and we issued the letter of rejection in February 2020. Now afterwards, we received various calls and correspondence from another ARM.

Dr K Busietta: Being Dr Victor Bugeja?

GS: Exactly, yes, being Dr Victor Bugeja, asking about this application. But because he wasn't their ARM, we couldn't give him information. So he was appointed as an ARM. Then he sent various letters to our offices asking about the application and various reasons why it was rejected etc. And then, we decided that on March 9th 2021 we issue a letter to tell him that the application was rejected back in February of 2020 and the reasons why the application was rejected.

30. On the other hand, however, in her affidavit¹¹, the plaintiff states:

- a. *"When Dr Victor contacted Ms Gineve in connection with the filing of appeal [from the decision in the letter dated 6th February 2020] as it was the discretion of the Commissioner to proceed with the application, he was asked to correct the Questionnaire and also to be the ARM."¹²*

¹⁰ Transcript of the testimony given by Gineve Schembri in open Court during the sitting held on 2nd December 2021 can be found a fol 36 of the case file

¹¹ A fol 204 *et seq* of the case file

¹² Vide para 5 a fol 205 of the case file

b. *“On 15/09/2020 Dr Victor Bugeja informed Jijo John that Ms Gineve had answered via SMS. On meeting him it was informed that the corrected questionnaire submitted was not considered and that objection to the non-acceptance letter dated 6th February 2020 had to be filed and also provided bank documents for deposit of 35,000 Euros in the account.”*¹³

31. Thus, while on the one hand, Gineve Schembri testifies that the application was one, and that the second letter was merely an elaboration on the decision given in the first letter, the plaintiff seems to have been under the impression that the second letter was a decision given independently from the first, and this is why the plaintiff addresses the letter dated ninth (9th) March 2021 as the one being the letter which relayed the decision of the Commissioner for Revenue. The Court is thus faced with conflicting views of that which took place between the first letter and the second letter;

32. First and foremost, however, the Court notes that the plaintiff does not mention anywhere in her affidavit that she was ever present at the meetings with Dr Bugeja. What she states, therefore, seems to not only be a second-hand account (that is, what her husband told her about the meetings), but a third-hand account, as it is what Dr Bugeja told her husband that Ms Schembri had told him. Not only does this amount to hearsay evidence in terms of Article 598 of Ch 12 of the Laws of Malta, but the plaintiff brought forward no proof to support her claims. The plaintiff's husband did not testify, and neither did Dr Bugeja, while Gineve Schembri gave a different version of events. Thus, there stand before the Court two versions of the same events – one of which is a first-hand account by the defendant, and the other being an unsubstantiated second or third-hand account by the plaintiff;

¹³ Vide para 8 a fol 206-207 of the case file

33. In addition, the Court also notes how, in a letter dated fifteenth (15th) October 2020¹⁴ addressed to the Commissioner for Revenue, it is stated:

Nikteb għan-nom u fl-interess ta' Ms Betty Mathew Antony Mukkattu li tagħmel referenza għall-ittra tiegħek datata 6 ta' Frar 2020 fejn inforza tagħha inti ċħadt l-applikazzjoni tal-klijenta tiegħi għal status taħt ir-Residence Programme Rules 2014.

Il-klijenta tiegħi qiegħda għall-finijiet u effetti kollha fil-liġi tinterponi l-oġġezzjoni tagħha għal tali deċiżjoni [...]

This, in the Court's opinion, is a clear acknowledgement of the fact that the decision in the letter dated sixth (6th) February 2020 was the actual decision regarding the plaintiff's application. Even the very fact that, in the fifth (5th) paragraph of the sworn application, the plaintiff refers to the letter dated sixth (6th) February 2020, as "*the rejection letter*", in itself proves that the plaintiff actually considered the decision communicated to her by virtue of the said letter as the administrative act which she is presently contesting;

34. The Court is more inclined to favour the account of events given by the defendant, that is, that the letter dated ninth (9th) March 2021 was not, in itself, a decision, but merely an elaboration on the decision relayed in the letter dated sixth (6th) February 2020. The Residence Programme Guidelines (2014)¹⁵ exhibited by the plaintiff herself state:

If the due diligence outcome is negative the ARM is notified of the main issues of concern, further to which the ARM together with the applicant may provide an explanation. It is in the Commissioner's discretion

¹⁴ Vide document a fol 154, emphasis added by this Court

¹⁵ Vide pg 7 of the Guidelines attached to the affidavit of the plaintiff, a fol 216 of the case file. The same clause can be found in page 9 today, in the updated Global Residence Programme Guidelines, version 2.0 – 2020

whether to refuse or proceed with the application process.

The letter dated sixth (6th) February 2020 clearly states that the due diligence outcome was negative, rendering, in the Court's opinion, this letter as the one bearing the Commissioner for Revenue's decision. Whilst it is true that the plaintiff was well within her rights to file additional documentation and/or provide an explanation, the actual administrative action taken by the Commissioner for Revenue was the letter dated sixth (6th) February 2020, and not the letter dated ninth (9th) March 2021. This bearing in mind the legal principles established by the Maltese Courts in the jurisprudence outlined and reproduced above;

35. In her final submissions, the plaintiff argues that the letter dated sixth (6th) February 2020 states that the application "*cannot be accepted*", and does not state that it is being rejected; however, the Court notes that the same words, that is, "*cannot be accepted*", are also used in the letter dated ninth (9th) March 2021, and that therefore the plaintiff's argument does not hold water;

36. In consideration of the above, the Court notes that, in being filed on the twenty-third (23rd) July 2021, the case being examined was filed over a year after the decision of the Commissioner for Revenue of the sixth (6th) February 2020 was taken, rendering this case time-barred in terms of Article 469A(3) of Chapter 12 of the Laws of Malta.

Decide

37. For these reasons, the Court **upholds** the first plea filed by the defendant, and declares that the action filed by the plaintiff is time-barred in terms of Article 469A(3) of Chapter 12 of the Laws of Malta.

Costs are to be borne by the plaintiff.

Read in open Court.

Hon Madam Justice Dr Audrey Demicoli LL.D.

**LP Carina Abdilla
Deputy Registrar**