



QORTI ĊIVILI PRIM'AWLA

ONOR. IMĦALLEF TONI ABELA LL.D.

Seduta ta' nhar il-Hamis, 12 ta' Jannar, 2023

Number:

Sworn Application Number: 421/2018 TA

Direttur tar-Registru Pubbliku

vs

Ahmad Aziz (K.I. Nru. 0392507L)

The Court:

Having seen the sworn application filed by the plaintiff on the 4th of May 2018 whereby the following was premised and demanded:-

"Illi fis-sena 2007, l-intimat talab verbalment lid-direttur tar-Registru Pubbliku kopja tal-Att tat-twelid tiegħu għal liema talba d-Direttur informa bil-miktub lil intimat ili t-twelid

tiegħu ma jidhirx li ġie rreġistrat mad-Dipartiment ikkonċernat u dan jidher mid-dokumenti hawn anness u mmarkati bħala 'Dok. DRP '1;

Illi sussegwentament l-intimat talab illi t-twelid tiegħu jiġi rreġistrat ġewwa Malta stante li huwa kien twieled Malta nhar il-1 ta' Novembru 1983. Fil-fatt għal dan il-għan l-intimat forna lid-dipartiment tar-reġistru pubbliku numru ta' dokumenti li jinsabu hawn annessi u cioè (i) Prokura annessa u mmarkata bħala Dok.DRP 2'; (ii) kopja tal-Att taż-Żwieġ tal-ġenituri tal-intimat, anness u mmarkat bħala 'Dok. DRP 3'; (iii) Dikjarazzjoni tat-Twelid tal-intimat, annessa u mmarkata bħala Dok. DRP 4'; u (iv) kopja tal-passaport Amerikan tal-intimat, annessa u mmarkata bħala Dok. DRP 5';

Illi wara d-dokumenti ġew sottomessi lid-direttur, huwa rreġistra t-twelid tal-intimat u nħareġ l-Att tat-twelid bin-numru Progressiv 3925/2007, kopja hawn annessa bħala Dok. DRP 6';

Illi sussegwentament għal tali reġistrazzjoni, id-direttur ġie a konjizzjoni tal-fatt illi d-dokumenti forniti lilu mill-intimat huma dokumenti foloz u dan kif se jiġi spjegat u ppruvat fil-mori ta' din l-azzjoni;

Illi għalhekk ai termini tal-Artikolu 263 tal-Kodiċi Ċivili, l-intimat tramite l-mandatarju tiegħu, pprova lid-direttur dikjarazzjoni falza dwar partikolaritajiet meħtieġa sabiex jiġi rreġistrat l-Att tat-Twelid tal-istess intimat, abbażi ta' liema reġistrazzjoni l-intimat kien sussegwentament elegibbli għaċ-Ċittadinanza Maltija u l-Passaport Malti relattiv;

Illi indubjament l-esponenti għandu kull interess illi jirreġistra biss twelid ta' nies li verament jkunu twieldu ġewwa Malta u kif ukoll li joħroġ biss dawk l-atti tal-istat ċivili bbażati fuq informazzjoni korretta u mhux informazzjoni invertiera li tkun mogħtija lill-istess Direttur Dolożament u għal skopijiet ulterjuri;

Għaldaqstant għar-raġunijiet fuq imsemmija, ir-rikorrenti jitlob lil din l-Onorabbli Qorti joghġobha:

1. Tiddikjara li l-intimat minn rajh jew wara li ġie mistoqsi mill-uffiċjal kompetenti xjentement għamel dikjarazzjoni falza dwar il-partikolaritajiet meħtieġa sabiex jkun jista jsir l-Att tat-twelid Malti u dan okkorendo anke' bin-nomina ta' Perit;
2. Illi konsegwentament tiddikjara illi l-Att tat-Twelid bin-Numru Progressiv 3925 tas-sena 2007 jinkludi informazzjoni skorretta u invertiera, stante li Ahmad Aziz iddikjara fil-falz l-istess informazzjoni indikata fl-Att tat-Twelid imsemmi; u
3. Illi tordna li l-Att tat-Twelid bin-numru Progressiv 3925 tas-sena 2007 jiġi mħassar mir-reġistri tal-Att tat-Twelid fi ħdan id-dipartiment tar-reġistru Pubbliku.

Bl-ispejjeż kontra l-intimat li minn issa huwa ngunt in subizzjoni".

Having seen the sworn reply of the defendant filed of the 13th of August 2018

wherein he pleaded the following:-

1. "Illi primarjament l-allegazzjonijiet illi l-konvenut xjetament għamel dikjarazzjoni falza dwar il-partikolaritajiet meħtieġa sabiex ikun jista' jsir l-Att tat-Tewlid Malti u li għaldaqstant l-istess Att tat-Twelid jinkludi nformazzjoni skoretta u nveritiera huma assolutament infondati fil-fatt u fid-dritt u dan kif ser jiġi ppruvat fil-mori ta' din il-kawża. Għalhekk għal din ir-raġuni l-ewwel, u t-tieni talbiet mressqa mir-rikorrenti għandhom jiġu miċhuda;
2. Illi għaldaqstant isegwi illi t-tielet talba tar-rikorrenti għandha wkoll tiġi miċhuda;
3. Illi l-konvenut ġewwa l-Pakistan huwa wkoll rikonoxxut bħala persuna ta' nazzjonalita Maltija u dan kif rifless fil-*Pakistan Origin Card* kopja ta' liema qed tiġi annessa u mmarkata bħala Dok. AA1;
4. Illi bla preġudizzju għas-suespost u fi kwalunkwe każ huwa r-rikorrent illi għandu l-piż tal-prova u li ċioe għandu japprova illi l-konvenut għamel dikjarazzjoni falza u li għaldaqstant l-Att tat-Twelid jinkludi nformazzjoni skoretta u nveritiera u l-konvenut qiegħed jirriserva li jressaq eċċezzjonijiet ulterjuri fir-rigward meta u jekk issir il-prova dwar l-istess;
5. Illi in oltre u kif ukoll mingħajr preġudizzju għas-suespost, it-talbiet tar-rikorrenti huma nfondati kemm fil-fatt u kif ukoll fid-dritt u għandhom jiġu respinti u dan kif ser jiġi ppruvat fil-mori tal-kawża;
6. Salv eċċezzjonijiet oħra permessi mill-liġi;

Bl-ispejjeż kontra r-rikorrent li jinsab minn issa ngunt għas-subizzjoni".

Having seen all acts and decrees.

Having seen the documents produced during the course of the proceedings;

Having seen the evidence presented by the parties during the course of these proceedings;

Having seen all the records of the case;

Having seen that the case has been adjourned for today for the delivery of judgment;

Now therefore:

Points of facts:

This action concerns the defendant's act of Birth drawn up and registered by the Plaintiff with the Progressive Number 3925 of the year 2007 (a' fol 10). This registration was made after a request submitted by the defendant, as represented by means of a power of attorney (a' fol 6), for the registration of his birth, declaring that this took place in Malta.

This request was submitted along with three documents, namely a certificate of marriage of the Defendant's parents (Imdad Ullah from Lahore, Pakistan as being the father and Sherri Maiorana from London, Canada as being the mother) an authentication made by a certain '*John R. Ewing Notary Public*' (fol 7), statement of birth recorded by a certain "*Louise McDonald Midwife*" (fol 8) and an American passport issued in the defendant's name (fol 9).

The Plaintiff proceeded unquestionably to draw up and register the defendant's mentioned act of birth after taking these documents as '*being faithful and true*' (see evidence of Amanda Grech a' fol 527 part 2). On the strength to this act of birth, the defendant also obtained Maltese Citizenship and consequently became eligible for Maltese passport (vide evidence by Jessica Rita Galea a' fol 61 et seq and 5th premise a' fol 2).

The Plaintiff is now, and by means of this action, requesting this Court to order the cancellation of the said act of birth from the Registers of Acts of Birth kept in

its Office. The plaintiff's request is being made following an independent investigation by the Executive Police, which concluded that the documents submitted by the defendant are false (vide evidence of Inspector Omar Zammit a' fol 93 et seq, fol 203 et seq and fol 536 et seq; evidence by Superintendent George Cremona a' fol 98 et seq and fol 539 et seq, evidence by Electoral Management Officer Savior Borg a' fol 68 et seq, electoral register a' fol 84 et seq, report by calligraphy expert Joseph Mallia fol 102 together with his evidence a' fol 194 and 545, evidence by Yvonne Elizabeth Borg a' fol 189, letters rogatory fol 205, 209, 232 et seq and statement of Sherri Maiorana a' fol 257, evidence of Dr. Andy Ellul and Elisabeth Bonett, President and Registrar of the National Council for Nurses and Midwives, a' fol 151 and 547).

On the strength of the above mentioned facts, on the 5th of May 2018 the Executive Police arraigned the defendant under arrest before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, charging him with inter alia, "*having committed forgery of any authentic and public instrument*", "*knowingly made use of any of the false acts, writings, instruments or documents*", and "*in any document intended for any public authority, knowingly made a false declaration or statement or gave false information*" (vide arraignment under arrest fol 146-148).

It transpires from the evidence of Inspector Omar Zammit, that the criminal proceedings against the defendant are still ongoing as a result of the fact that

“Ahmed Aziz requested that his case goes to trial by jury.” (fol 536 part 2; vide to this end Bill of Indictment number 6/2021 a’ fol 361).

Points of Law

By virtue of this section the plaintiff is demanding that this Court to orders the cancellation of the mentioned Act of Birth from its registers. This following a declaration that the Defendant, either of his own accord or when questioned by the competent officer, knowingly made a false declaration concerning any particulars required for the drawing up of the mentioned Maltese Act of Birth, and that consequently the said Act of Birth includes incorrect and untruthful information.

As premised by the Plaintiff himself, the request for such a declaration is founded on article 263 of the Civil Code. Such article however, does not vest this Court with the authority to order the cancellation from its registers of any such person’s Act of Birth. This particular section of the law merely gives a right of criminal action against any such person who “*shall, on conviction by the competent court, be liable to the punishment established in the last preceeding article*”, that is “*to imprisonment for a term not exceeding three months.*” The intrinsic legal nature of this article imports penal and not civil proceedings.

The Civil Code vests this Court with the authority to order any such correction or cancellation only by virtue of article 253, following an action brought before it, not

by the Plaintiff, but by any interested person against the said Plaintiff. Dan l-artikolu fl-ewwel subartikolu jiddisponi hekk:

“Kull persuna tista’ tagħmel talba ġudizzjarja għall-korrezzjonijiet jew tħassir ta’ reġistrazzjoni, jew għar-reġistrazzjoni ta’ att illi d-Direttur, bil-kunsens tal-Imħallef irtirat jew Maġistrat irtirat jew avukat irtirat tal-Qorti ta’ Revizjoni tal-Atti Nutarili, ikun irrifjuta li jirċievi”.

Therefore, ‘b’ dak id-dispost tal-ligi [Artikolu 253 (1)] mhux mogħti lid-Direttur ebda fakolta “di agire” imma, se mai, “di contraddire” fil-procediment istitwit kontrih minn “kull persuna” bil-forma tac-citazzjoni.” (Ara **Sentenzi fl-ismijiet Direttur tar-Reġistru Pubbliku -vs- Sharon Briffa, Qorti tal-Appell (inferjuri) tal-5th April 2006;** u kif ukoll **Direttur tar-Reġistru Pubbliku -vs- Ermelina Silos Mendoza et, Civil Court (Prim awla), tas-16th November 2010**). Di fatti subartikolu 4 tal-artikolu fuq imsemmi jagħmilha ċara li “Kull talba għandha ssir fil-qorti kompetenti b’rikors ġuramentat kontra d-Direttur.” This means that such an action can only be instituted by the person concerned but not by the Director.

It is the Court’s understanding, based on the teachings derived from the legal maxim *ubi lex voluit lex dixit*, that had the legislator intended to vest the Court with such authority or provide for an action to be exercised by the plaintiff in such circumstances, it would have clearly stated so, as it did in respect of an inter

country adoption under article 130(3)(b) of Chapter 16 or in the very limited cases under 257(6) and (7) of the Civil Code.

There is, however, nothing in the law which empowers the plaintiff with an action for the correction or cancellation of an act of Birth drawn up by itself from the Registers of Acts of Birth kept in its office. Indeed the legislator has repealed such requirement article 19 of Chapter 56 (Public Registry Act) by means of article 4 of Act XVII of 1984, and this may have entitled to seek any correction by virtue of articles 248 and 258 of the Civil Code.

The court is aware that the mentioned articles do not specifically mention the term 'cancellation' but only the term "correction". However, in such a situation on the basis of the principle of "non liquet" (absence of an appropriate provision in the law), the Court nonetheless deems that, by way of application of the principle of *per equipollens*, the term correction is to be extensively interpreted as also including cancellation.

Considerations

In the light of the above legal considerations, the Court considers that there is nothing in the law that vests the Court to order the cancellation from its registers of the Act of Birth bearing Progressive Number 3925 of the year 2007 in the manner that plaintiff is requesting. Such power is only granted to the Plaintiff in the circumstances and meaning of articles 248 and 258 of the Civil Code. The

present action does not overcome near to falling within the purview of any one of the said articles.

On a final note, the Court considers it appropriate to emphasize the plaintiff's duty under article 242 of the Civil Code to not readily accept as 'faithful and true' acts which may appear at first sight as "irregular". As rightly stated by the Court of Appeal (Inferior Jurisdiction) in the case of **Direttur tar-Registru Pubbliku - vs- Sharon Briffa** above quoted, "*d-Direttur, ex-Artikolu 242 (1), m' ghandu jircievi ebda att intiz ghar-registrazzjoni li ma jkunx miktub car u li jinqara jew li jkun fih kliem imqassar, jew li jidhirlu li jkun nieqes minn xi haga jew mhux regolari. Wiehed ragonevolment jifhem li I-uzu tal-kelma "regolari" fit-test tal-ligi ghandu jkollu s-sinifikat wiesgha li jikkompreni wkoll il-verifika dwar il-veracita` tad-dikjarazzjonijiet fl-att kontenuti, u mhux biss is-semplici irregolaritajiet fit-traskrizzjoni tieghu,*" (highlight and underlining of this Court).

If the defendant fails to carry out his duty diligently at the moment of registration of the act, especially when there are circumstances that give good cause to doubt the facts and documents received, he has no one to blame but himself.

Lastly, the Court cannot ignore the conduct of the defendant throughout the case, to prolong it unnecessarily with vexatious demands and requests, During the whole proceedings the defendant was continuously presenting requests written by him and not a lawyer, requests only served one purpose: to lengthen

proceedings. This conduct of the defendant is going to be taken into consideration as regards costs.

Decide

Now therefore, in view of the above reasons and considerations, the Court hereby:

Denies all the demands of the Plaintiff.

Each party to bear its own costs.

Judge Toni Abela

Deputy Registrar