



COURT OF MAGISTRATES (MALTA)
MAGISTRATE DR. LEONARD CARUANA LL.D., M.A. (FIN. SERV)

Notice No: 159/2022 LC

ANTONIO'S BARBER SHOP LIMITED
(C-91195)

VS

ENEA CAMCJA
(I.D. 261697A)

Preliminary Judgement

Today, the 25th April 2023

The Court,

Having seen the notice submitted by the plaintiff company Antonio's Barber Shop Limited where it requested this Court to condemn the defendant, in terms of Art. 36(12) of Cap. 452 of the Laws of Malta, pay the plaintiff the sum of thirteen thousand and twenty Euro (€13,020), such sum being the equivalent of one half of the full wages you would have become entitled to if you had continued in the Service for the remainder of the time specifically agreed upon in terms of the contract of employment dated 5 September 2020 (Doc "A") , and this pursuant to your resignation tendered on the 15 July 2022.

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With full reservation of any further action pertinent to plaintiff and with costs, including such costs as related to the precautionary garnishee order filed today contemporaneously with this lawsuit and with interest running until the day of actual settlement, against the defendant who is hereby being summoned for reference to his oath.

Having seen the reply of Enea Camcja wherein he submitted the following:

1. That preliminarily, the defendant is pleading the lack of jurisdiction *ratione materie* of this Honourable Court in that the litigation of the present case is vested exclusively in the jurisdiction of the Industrial Tribunal as per Article 75(1)(b) of Chapter 452 of the Laws of Malta;

2. That on the merits, the claims of the claimant company are unfounded in fact and at law, given that the respondent had valid and sufficient reasons in law not to continue in his employment with the claimant company, as will be proven better during the course of the case;

3. That among other reasons, the respondent, together with other employees, was forced by the applicant company to sign Internal Memos and Schedules of Fines that provided new rules and penalties enforced against the employees, with the consequence that if the respondent does not sign the said Internal Memos and Schedules of Fines, the plaintiff company would not pay the salary due to him. The said Internal Memos and Schedules of Fines were not approved by the Department responsible for industrial and employment relations;

4. That furthermore, the respondent was not given good intervals of rest time and this in violation of the Subsidiary Law Regulations 452.63, and this despite the fact that the respondent was working over ten (10) hours a day with the claimant company;

5. That in addition, it will result from the evidence that the plaintiff company is a debtor of the respondent for overtime payments that the respondent carried out, without being paid for all the hours of overtime that he did, that is, working over forty (40) hours a week, which unpaid overtime hours amount to approximately one thousand, five hundred and seventy Euro and eighty cents (€1,570.80);

6. Furthermore, as will be proved in the proceedings, the respondent was not being paid the Government bonuses for the year two thousand and twenty one (2021) and was not paid for the vacation leave which was unutilised due to the pressure of work for the years two thousand twenty one (2021) and two thousand twenty two (2022), which unutilised vacation leave and Government bonuses have still to be paid to the respondent by the claimant company;

7. In addition, the claimant company has signed a four (4) year definite contract of employment with the respondent, when knowing that the residence permit of the respondent applies only for one year, which fact renders the said contract as an illegal and abusive one on the part of the claimant company, and hence it should be declared null;

8. That therefore, and this without prejudice to the above, the amount being claimed is not due and is being disputed;

9. Saving further pleas as allowed by law and with reference to the oath of the applicant company.

Having seen the documents submitted by the parties in relation to the first preliminary plea;

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Having heard the submissions in relation to the first preliminary plea;

Considered;

That this present preliminary decision is limited to the first preliminary plea raised by the defendant wherein essentially he is challenging this Court's competence, *ratione materiae*, to hear and determine the case. The defendant contends that this case should be tried by the Industrial Tribunal in terms of Article 75(1)(b) of Cap. 452 of the Laws of Malta.

Considered;

Article 75(1)(b) of Cap. 452 stipulates that:-

“75. (1) Notwithstanding any other law, the Industrial Tribunal shall have the exclusive jurisdiction to consider and decide:-

...omissis...

(b) all claims made in accordance with sub-articles (11) and(12) of article 36 of this Act, for sums which may become due to a worker or to an employer following the termination of a contract of service for a fixed term before the expiration of the term definitely specified inthe contract; and”

In relation to this present case, the Court refers to Article 36(12) of Cap. 452 of the Laws of Malta which stipulates that:

“(12) An employee who abandons the service of his employer before the time definitely specified by the contract of service shall pay to his employer a sum equal to one-half of the full wages to which he would have become entitled if he had continued in the service for the remainder of the time so specifically agreed upon:”

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From the wording of the Notice and from the contract attached to the same notice, it results that the present action is based on an allegation that the defendant, in his capacity as an employee of the plaintiff company on a definite term contract, abandoned the Service of his employer before the contract of employment was naturally terminated.

To substantiate this plea, the defendant referred to two judgements, namely, **Farrugia Textiles Limited vs Ian Attard**¹ and **AquaBio Tech Ltd vs Giorgji Antevski**.²

In reply to this plea, the plaintiff company referred to the pending proceedings in the names Antonio's Barber Shop vs Mauricio Boyaca Jimenez, which proceedings are still pending before this Court, as presided by a differenti Magistrate. The Plaintiff company argued that these present proceedings are identical to the ones against Mauricio Boyaca Jimenez and in that case, the Court confirmed its jurisdiction for the purposes of Article 741(b) of Cap. 12 of the Laws of Malta.

Considered;

That this Court does not agree with the plaintiff company's submission that these proceedings are identical to the ones taken against Mauricio Boyaca Jimenez. Although the claims are identical, the pleas are fundamentally differenti since, unlike these proceedings, no plea of competence was raised in those proceedings. That this Court, therefore, will examine the effects of this preliminary plea independently from any other decision that could have been taken in respect to the plaintiff company on this issue.

¹ **Farrugia Textiles Limited vs Ian Attard**, 25th November 2022, Small Claims Tribunal, (Avv. Nru. 109/2022).

² **AquaBio Tech Ltd vs Giorgji Antevski**, 6th October 2021, First Hall of the Civil Court, (Rik Ġur Nru 614/2020)

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Article 75(1)(b) of Cap. 452 of the Laws of Malta was introduced on the 11 December 2020 by Act LVIII of 2020. This Act also contained a transitory provision through which any proceedings initiated before the First Hall of the Civil Court and the Court of Magistrates (Gozo) in its Superior Jurisdiction before the coming into force of Act LVIII of 2020 were to remain under their competence. The present case was submitted on the 29 July 2022 and therefore after the coming into force of the mentioned act.

The wording of Article 75(1)(b) of Cap. 452 of the Laws of Malta together with the wording of Article 36(12) of the same Act leave very little doubt that the recovery of funds resulting from the premature termination of a definite contract of Service falls within the exclusive competence of the Industrial Tribunal as established by Article 73 of Cap. 452 of the Laws of Malta.

This, on the other hand, does not automatically imply the nullity of these proceedings as with the application of Article 741(b) of Cap. 12 of the Laws of Malta this Court may order the transfer of these proceedings to the Court, Board or other Tribunal which it considers as being cognizable.

Decide

Therefore, on the basis of the above, the Court, after having seen Article 75(1)(b) of Cap. 452 of the Laws of Malta upholds the first preliminary plea of the defendant and declares itself incompetent *ratione materiae* to hear this case.

The costs of the present are being reserved until final judgement.

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Ft. Dr. Leonard Caruana
Magistrate

Sharonne Borg
Deputy Registrar