



## **Court Of Appeal**

### **Judges**

**THE HON. CHIEF JUSTICE MARK CHETCUTI  
THE HON. MR. JUSTICE JOSEPH R. MICALLEF  
THE HON. MR JUSTICE TONIO MALLIA**

**Sitting of Wednesday, 31<sup>st</sup> May, 2023.**

**Number: 18**

**Application Number: 421/18/3**

**Director of the Public Registry**

**v.**

**Ahmed Aziz**

### **The Court:**

1. This judgement concerns an appeal which has been filed by the Director of Public Registry (hereinafter referred also as “the appellant”) from a judgement of the First Hall of the Civil Court (hereinafter referred to as “the first Court”) which was delivered on the 12<sup>th</sup> January, 2023;

2. By means of a sworn application filed on the 4<sup>th</sup> May, 2018, the Director of Public Registry explained that, in the year 2007, Mr. Ahmad Aziz approached the Department of Public Registry to request a copy of his act of birth. The Director recounts that after the defendant was informed that his act of birth could not be traced in the records of the Public Registry, the defendant requested for the registration of his act of birth, and this on the basis of the claim that he was born in Malta on the 1<sup>st</sup> of November, 1983. The Director went on to explain that, following the submission of various documents, the act of birth of the defendant was duly registered, and this with progressive number 3925/2007. The Director further claimed that, following such registration, he became aware that the documentation which was submitted to him as part of the registration process of the act of birth of the defendant was false. In this respect, the Director argued that the defendant had provided him with a false declaration concerning the particulars required for the registration of his act of birth, and this in terms of Article 263 of the Civil Code. The plaintiff further submitted that in his capacity as Director of Public Registry, he has every interest to register only the birth of those persons who were actually born in Malta, and to only issue those acts of civil status which are based on correct and truthful information. In this respect, the Director demanded the Court to:

“i. Declare that the defendant on his own accord or when questioned by the competent officer, knowingly made a false declaration concerning the particulars required for the drawing up of a Maltese act of birth, and this even by means of the appointment of a judicial referee;

ii. That consequently, declares that the act of birth bearing progressive number 3925/2007 includes incorrect and untruthful information, because Ahmad Aziz falsely declared the information indicated in the same act of birth;

iii. Orders the cancellation of the act of birth bearing progressive number 3925 of the year 2007 and this from the register of acts of birth held at the Department of Public Registry;”

3. By means of a sworn reply filed on the 13<sup>th</sup> of August, 2018, Ahmad Aziz (hereinafter referred also as to “the defendant”), contested the Director of Public Registry’s action, and rejected the assertion that he had knowingly made a false declaration or submitted incorrect and untruthful information concerning the particulars required for the drawing up of his act of birth. According to the defendant, such claim is unfounded both in fact and at law and consequently all of the demands of the plaintiff had to be dismissed. The defendant further submitted that in Pakistan he is also recognised as a person of Maltese nationality, and this as reflected in his ‘*Pakistan Origin Card*’. Without prejudice to these pleas, the defendant also pleaded that in any case, the burden of proof lies on the shoulders of the Director of Public Registry who has to prove that he had made a false declaration and that his act of birth contained incorrect and untruthful information;

4. By means of a judgement delivered on the 12<sup>th</sup> of January, 2023, the First Court dismissed all of the demands of the plaintiff, and this on the basis of the considerations put forward in that judgement;

5. By means of an appeal application filed on the 1<sup>st</sup> of February, 2023, the Director of Public Registry submitted that he felt aggrieved by the judgement of the First Court, and this on two main grounds, being that: (i) the First Court was incorrect when deciding that his action was based on Article 263 of Chapter 16 of the Laws of Malta, and (ii) the First Court was also incorrect when deciding that the Director may not institute an action to cancel a registration made by himself since the law does not contemplate such an action. On this basis, and for the reasons set forth in his appeal application, the Director of Public Registry then requested this Court to *“revoke the appealed judgement of 12th January 2023 in its entirety, and whilst upholding the requests in the appellant’s sworn application, rejects all the pleas of the appellee Ahmad Aziz. With all costs of both instances against the appellee Ahmad Aziz”*;

6. By means of a reply filed on the 16<sup>th</sup> of February, 2023, the defendant argued that the plaintiff’s appeal ought to be dismissed, and this for the multiple reasons set forth therein. Apart from demanding the dismissal of the appeal of the Director of the Public Registry, the defendant went on to further request this Court to: *“suspend appeal proceedings of Director of the Public Registry until the outcome of parallel criminal case Republic of Malta vs Ahmad Aziz”*; and *“order the Director to bring original alleged forged documents in case file”*;

7. After having seen all the acts of the case, and also after taking into consideration that the written pleadings have been closed, the Court finds no reason at law to set a sitting for a hearing and consequently is proceeding to deliver its judgement and this in terms of Article 152(2) of Chapter 12 of the Laws of Malta;

### ***Considerations***

8. Given that in his reply the defendant has amongst others requested this Court to order the **suspension of these proceedings** until the outcome of the criminal case in the names of *'Republic of Malta v. Ahmad Aziz'*, this Court considers it expedient to start by determining this matter;

9. From what this Court can comprehend from the convoluted reply of the defendant, the defendant is amongst others basing his request for the suspension of these proceedings on the 'danger' of the possibility of having two 'contradictory judgements' with 'inconsistent decisions' on 'the same facts'. According to the defendant, if these proceedings and the criminal proceedings yield two different results, then he would find himself at a disadvantageous and vulnerable position, which could prejudice his right to a fair hearing as guaranteed by Articles 47, 48 and 49 of the EU Charter. The defendant also laments that in this case, the Director of

Public Registry is “*proving a criminal offense in Civil Court under balance of probabilities in parallel criminal case with same alleged facts*” and consequently argues that the outcome of this case can prejudice his position in the criminal case. The defendant further submits that the fact alone that the Director of Public Registry has filed this civil case and this prior to the outcome of the criminal case, is also in breach of his right to be presumed innocent and is also contrary to what is stipulated in Articles 366A, 366B, and 366C of the Criminal Code;

10. In this Court’s view, none of the above reasons, nor any of the other reasons which have been put forward in the defendant’s reply, warrant an order for the suspension of these proceedings and this pending the outcome of the criminal cause in the names of *‘Republic of Malta v. Ahmad Aziz’*;

11. It is an established principle that the demand for the suspension of judicial proceedings may only be acceded to in exceptional circumstances,<sup>1</sup> and this because it goes against the rule that every cause “*shall be brought to a conclusion as expeditiously as possible*”.<sup>2</sup> On this basis, our Courts have made it amply clear on numerous occasions that, a cause may only be suspended pending the outcome of

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<sup>1</sup> See the judgement of this Court in the case in the names of: ***Margaret Galea pro. et. noe. v. Victoria Galea***, decided on the 23<sup>rd</sup> of November, 2020 (Appl. No. 900/18LM).

<sup>2</sup> Article 195 of Chapter 12 of the Laws of Malta.

other judicial proceedings, if the two cases cannot be heard simultaneously, either because the proceedings the suspension of which is being demanded, necessarily depend on the outcome of the other judicial proceedings, or when the other proceedings would lead to the solution of a question which is necessary for those proceedings the suspension of which is demanded;<sup>3</sup>

12. In this respect, the Court finds no reason why this case and the criminal case in the names of *'Republic of Malta v. Ahmad Aziz'* cannot be heard simultaneously. The criminal action and the civil action are actionable *"independently of one another"*,<sup>4</sup> so much so that, as stated in the case in the names of ***Adrian Vella et. v. Jasmine Azzopardi***:

“qorti ta’ ġurisdizzjoni ċivili għandha s-setgħa li tisma’ u taqta’ dwar dak kollu li huwa meħtieġ sabiex tasal għal konkluzjoni dwar responsabbiltà ċivili **bla ma torbot lill-qorti ta’ ġurisdizzjoni kriminali u langas tintrabat bil-konkluzjoni ta’ dik il-qorti**<sup>5</sup> (ara Francis Busuttil & Sons Ltd v. John Arthur Bamber, Prim’ Awla tal-Qorti Ċivili, 14 ta’ Ġunju, 2002);”<sup>6</sup>

13. The defendant cannot therefore successfully argue that the outcome of this case can prejudice his position in the criminal trial. Neither can it be argued that the outcome of this case depends on the

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<sup>3</sup> See amongst others the judgement of this Court in the case in the names of: ***Peter Paul Micallef v. Joseph Debattista et.*** decided on the 5<sup>th</sup> October, 2001 (Cit. Nru. 1662/94AJM); and the judgement of the Court of Appeal (Inferior Jurisdiction) in the case in the names of ***Gasam Enterprises Ltd v. Georgina Meli et.***, decided on the 9<sup>th</sup> January, 2008, (Appl. No. 211/2005/1PS).

<sup>4</sup> See Article 6 of Chapter 9 of the Laws of Malta;

<sup>5</sup> Emphasis added by this Court;

<sup>6</sup> ***Adrian Vella et. v. Jasmine Azzopardi***, decided by the First Hall of the Civil Court on the 10<sup>th</sup> of October, 2022, (Sworn Appl. No. 102/2020CFS) (not appealed).

outcome of the criminal proceedings. Indeed, even if the defendant were to be acquitted from all the criminal charges against him, such acquittal would still not determine the case in issue, and this because the level of proof in this case is less rigorous than that applicable in criminal proceedings;<sup>7</sup>

14. Also, the defendant cannot in some way or another, find refuge in the argument that there exists a 'danger' in the possibility of having two different outcomes in the criminal case and in this case. Such possibility exists irrespective of whether these proceedings would be suspended or otherwise, and in any case it does not lead to the prejudice which the defendant is claiming;<sup>8</sup>

15. The argument of the defendant that the Director of Public Registry had to wait for the outcome of the criminal case prior to the filing of these civil proceedings, does not hold water. A particular case wherein a similar argument was discarded was that in the names of **Mario Calleja v. Kummissarju tal-Pulizija et.** decided by this Court on the 24<sup>th</sup> of September, 2004.<sup>9</sup> In that case, this Court held that Article 6 of Chapter 9 of the laws of Malta implies that the institution of a civil action does not depend on the pre-ascertainment by a court of criminal judicature that the

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<sup>7</sup> See paragraph 8 of the judgement in the case of **Mary Ann Borg noe. v. Korporazzjoni Enemalta**, decided by this Court on the 31<sup>st</sup> January, 2014, (App. No. 426/2005/1);

<sup>8</sup> See: **Emmanuele Luigi Galizia noe. V. Negte. Emmanuela Sicluna**, decided by the First Hall of the Civil Court, on the 4<sup>th</sup> of November, 1884 (Kollez. Vol X. p607).

<sup>9</sup> App. No. 300/1995/1.



defendant/s had committed a criminal act. On this basis this Court then proceeded to revoke the judgement of the Court of First Instance wherein it was stated that the civil proceedings could not be instituted prior to the ascertainment by a competent court that a criminal act had been committed;<sup>10</sup>

16. Above all, and irrespective of the above reasons, the request of the defendant for the suspension of these proceedings is also procedurally inadmissible. A request for the suspension of judicial proceedings must necessarily be put forward through the appropriate judicial act, and thus by means of an application (*rikors*). In this case, the defendant has demanded the suspension of proceedings in the same judicial act through which he has replied to the appeal of the Director of Public Registry. From its own nature, the judicial act by means of which the defendant has requested the suspension of these proceedings qualifies only as a 'reply', and consequently even on this basis alone the defendant's request for the suspension of these proceedings cannot be accepted;

17. The defendant's demand for the suspension of these proceedings pending the outcome of the criminal proceedings in the names of '*Republic of Malta v. Ahmad Aziz*' is therefore being **rejected**;

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<sup>10</sup> See also paragraph 20 of the judgement in the case in the names of ***Paul Micallef v. Korporazzjoni Enemalta illum Enemalta p.l.c.***, decided by this Court on the 13<sup>th</sup> of July, 2020, (App. No. 206/2010/1).

18. Incidentally, in his reply to the appeal, the defendant also raised the defence that the plaintiff's action is time-barred by prescription. Although the defence of prescription is considered to be of a peremptory nature and is normally decided prior to any other issue, in this case, the Court considers it as premature to start by determining this issue before determining the appeal of the Director of Public Registry. The Court is of this view because, as things stand, according to the judgement of the First Court, the Director of Public Registry has no action at law by means of which he could propose the final demands as put forward in the sworn application which gave rise to these proceedings. Logically, if there is no right to an action, then one cannot speak of the prescription of such an 'action', and consequently, prior to determining such an issue, this Court must first determine the grounds of appeal of the Director of Public Registry, by means of which the Director is contesting the finding of the First Court that he has no action at law to demand the cancellation of the act of birth of the defendant, and this on the basis that it allegedly contains false information;

19. From an analysis of the appeal application of the Director of Public Registry, it emerges that the Director is basing his appeal on two grounds which are closely linked to each other, and which will therefore be considered simultaneously;

20. In the **first ground of appeal**, the Director of Public Registry laments that the First Court has wrongly concluded that these proceedings have been founded on Article 263 of Chapter 16 of the Laws of Malta. The appellant explains that although such an article was indeed 'briefly mentioned' in his sworn application, such a reference was only made in order to show that the defendant had a duty to provide true and correct information to the Director in accordance with the same article. Whilst submitting that he is not disputing that Article 263 is of a penal nature, the Director goes on to state that by means of this action he is not seeking the conviction of the defendant but rather the cancellation of the birth certificate which was registered upon the false and forged information provided by the defendant. The Director adds that in asking for such remedy, he has resorted to "*the ratio legis that a criminal offence may give way to two distinct and separate legal actions to be undertaken separately, one in front of a court of criminal competence and one in front of a court of civil law competence*";

21. In the **second ground of appeal**, the appellant then goes on to state that the First Court was incorrect in deciding that the appellant could not institute an action for the cancellation of an act of birth, simply because Chapter 16 of the Laws of Malta does not contemplate such a specific action. The appellant argues that if the state of affairs was as the

First Court had portrayed it, then the Director would not be in a position to fulfill his duty to ensure that all acts of civil status reflect nothing but the truth. The Director also laments that such a situation would lead to a scenario where persons who ‘knowingly’ provide false information to the Director, would suffer no consequences for their actions and would instead continue to benefit from their wrongful acts to the detriment of the Director of Public Registry and to the Republic of Malta. On this basis, the Director argues that the legislator certainly did not want such a counterintuitive situation and for this reason vested the First Hall of the Civil Court with the ‘residual powers’ to “*take cognisance of all causes*” of a civil nature by means of Article 32(2) of Chapter 16 of the Laws of Malta. In this respect, the Director claims that this article grants the First Hall of the Civil Court the competence and the authority to take cognisance and accede to the remedy being sought by him;

22. This Court is of the view that the appeal of the Director of Public Registry is well founded and merits to be accepted;

23. As a point of departure, the Court finds that the appellant is justified in complaining that the First Court had erroneously concluded that this action has been ‘founded’ on Article 263 of Chapter 16 of the Laws of Malta.<sup>11</sup> As stated in the case in the names of ***Gaetano Farrugia et v.***

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<sup>11</sup> See page 6 of the judgement of the First Court;

***Philip Magri et.***, decided by the Court of Appeal (Inferior Jurisdiction) on the 11<sup>th</sup> February, 2004:<sup>12</sup> “[b]jex tiġi iffissata l-indoli tal-azzjoni li tiġi azzjoni eżerċitata wieħed irid iħares mhux tant lejn il-kliem imma lejn dak li sostanzjalment ikun ġie mitlub fiċ-ċitazzjoni, jiġifieri fundament u l-oġġett tal-pretensjoni fiha dedotta. Fi kliem ieħor ir-raġuni ġuridika u l-‘fondamenti aġendi’ tal-azzjoni hu dak li hu ‘attwalment domandato’ bħala oġġett taċ-ċitazzjoni”;

24. From an analysis of the contents of the sworn application, this Court notes that although the appellant referred to Article 263 of Chapter 16 of the Laws of Malta in one of the recitals and has even based his first demand on the wording of such an article, these facts by themselves do not render the appellant’s action as ‘founded’ on such an article. From a comprehensive reading of the sworn application, it is very clear for this Court that the action of the appellant is founded on the basis that the Director has a duty to ensure that the acts of civil status which are registered in the Public Registry contain only accurate and true information and that the act of birth of the defendant needs to be cancelled because it allegedly contains false information which was knowingly provided by the defendant.<sup>13</sup> Indeed, and as rightly pointed out by the Director, the ultimate scope of this action is not to find the

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<sup>12</sup> App. No. 579/2002.

<sup>13</sup> See the second and third final demands of the plaintiff, and also the last recital of the sworn application of the plaintiff;

defendant guilty of the offence stipulated in Article 263 of Chapter 16, but is rather for the cancellation of the act of birth of the defendant, which according to the appellant does not attest the truth. In this respect, the first ground of appeal is therefore deemed to be justified;

25. As regards to the second ground of appeal, this Court is of the view that the First Court could not reasonably conclude that the appellant does not have a right of action at law by means of which he could demand the correction or cancellation of an act of birth kept in his records;

26. Primarily, this Court respectfully finds the considerations of the First Court to be incompatible with the fundamental nature and the rationale behind the registration of an act of birth. As stated in the case in the names of **George Vella Muskat v. Direttur tar-Reġistru Pubbliku għal Għawdex**, decided by the Court of Magistrates in Gozo (Superior Jurisdiction), an act of birth is a historical document which signals the passage of man on earth and which the law must, with utmost care and accuracy, ascertain.<sup>14</sup> Similarly, in the case in the names of **Direttur tar-Reġistru Pubbliku v. Joseph Cremona**, the First Hall of the Civil Court, held that such an act *“huwa element essenzjali għall-persuna li għalih jgħodd u jiftaħ bieb għall-għarfien formali ta’ dik il-persuna fis-soċjeta’ ċivili, magħduda t-tgawdija ta’ jeddijiet u wkoll ir-responsabbiltajiet tal-*

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<sup>14</sup> Cit. Nru. 6/2010AE, decided on the 16<sup>th</sup> of March, 2010. (not appealed).

*istess persuna.*”<sup>15</sup> Indeed, the act of birth in question has ‘opened the door’ for the defendant to be legally considered to be a Maltese citizen,<sup>16</sup> and thus a beneficiary of all the rights and entitlements of a citizen of the European Union;<sup>17</sup>

27. Given that the appellant is claiming that the act of birth of the defendant contains false information on the basis that the defendant had purposefully provided him with falsified documentation, the Director of Public Registry was duty-bound to act so as to safeguard the correctness and integrity of the registers which fall under his direct responsibility. Truth be told the Director should have been more careful when he received the documents from defendant, and this Court is in no way sanctioning negligence in the performance of one’s duties. The Director cannot close his eyes to what is submitted and later, even after a number of years, act to correct mistakes in acts of civil status. The remedy given by this judgement should not be taken as a solution to carelessness when such is noted;

28. In light of these considerations, this Court is of the view that Article 242 of Chapter 16 of the Laws of Malta, (by means of which the Director of Public Registry is bound not to readily accept as *‘faithful and true’* acts

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<sup>15</sup> Cit. Nru. 317/2006JRM, decided on the 2<sup>nd</sup> of March, 2007. (not appealed).

<sup>16</sup> See Article 5(1) of Chapter 188 of the Laws of Malta.

<sup>17</sup> See Article 20 of the Treaty on the Functioning of the European Union (TFEU).

which may appear to him at first sight as *“irregular”*) cannot be interpreted in a manner that, if the Director of the Public Registry would receive an act which is subsequently found to be as *‘irregular’*, then he would have no remedy available because, as the First Court has put it: *“he has no one to blame but himself”*. As this Court sees it, just as the Director is not only empowered but even duty-bound not to receive any acts *“which may appear to him”* as *“irregular”*, the Director is all the more duty-bound to act as soon as he realises that an act which has been registered by himself and kept in the records of the Public Registry contains false or inaccurate information, as is being done in this case;

29. In this context, the fact alone that there is no specific article in the law, on the basis of which the Director is empowered to opt for the cancellation of an act of birth registered in the Public Registry, should not be interpreted so as to mean that the Director has no right at law to institute an action, such as today’s case. As this Court sees it, the Director can institute this action and demand a competent court to order the cancellation of the act of birth of the defendant;

30. This brings us to another main reason as to why this Court does not agree with the decision of the First Court. In its judgement the First Court considered that the First Hall of the Civil Court is only vested with the authority to order any correction or cancellation of an act of birth by



virtue of Article 253 of the Chapter 16 of the Laws of Malta. The First Court also considered that there is nothing at law which vests it with the power to order the cancellation of the act of birth of the defendant bearing progressive number 3925 of 2007;

31. In this Court's view, the above reasoning is respectfully erroneous. As rightly pointed out by the appellant himself, the First Hall of the Civil Court is, in any case, empowered to determine cases of this sort and this by means of its 'residual powers' which are conferred to it by Article 32(2) of Chapter 12 of the Laws of Malta. Indeed, the latter article has been interpreted by this Court in a wide manner so as to vest the First Hall of the Civil Court with 'residual powers' to determine those causes wherein the law does not provide for a specific action or an effective remedy;<sup>18</sup>

32. The fact alone that our law does not provide the Director of Public Registry with a specific action to request the Court to order the correction or cancellation of an act of birth, does not therefore mean that the First Hall of the Civil Court is not empowered to order the cancellation of the act of birth in question;

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<sup>18</sup> See: *Liquigas Malta Limited v. Ir-Regolatur għas-Servizzi tal-Energija u l-Ilma et.* decided by this Court on the 30<sup>th</sup> of March, 2022, (App. No. 1158/16/1), and *Prim Ministru v. Victor Vella Muskat*, decided by this Court on the 25<sup>th</sup> of September, 2006, (App. No. 81/2003/1).

33. For these reasons this Court finds the appeal of the appellant is well founded and will therefore be revoking the judgement of the First Court of the 12<sup>th</sup> of January, 2023. Having said this, since the First Court has not pronounced itself on the merits or otherwise of the demands of the plaintiff, this Court does not consider it appropriate to proceed by determining the merits of this case and this as requested by the appellant. Instead, this Court will be sending back the acts of this case to the First Court so as to leave unprejudiced the parties' right to a consideration of their cause through two instances. For the same reason, this Court finds it opportune to abstain at this stage from deciding the defendant's plea of prescription which has been raised in the defendant's reply to the appeal of the Director. The same applies to the defendant's demand by means of which this Court was requested to order the Director to file the original alleged forged documents;

### ***Decision***

For these reasons, the Court rejects the defendant's request for the suspension of these proceedings and upholds the appeal of the Director of Public Registry in so far as compatible with this judgement.

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The Court therefore cancels and revokes the judgement of the First Hall of the Civil Court of the 12<sup>th</sup> January, 2023, with costs against the defendant.

The Court orders that the acts of this case be remitted to the First Hall of the Civil Court so that the case would be decided on its merits.

Mark Chetcuti  
Chief Justice

Joseph R. Micallef  
Judge

Tonio Mallia  
Judge

Deputy Registrar  
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