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, 31st May, 2023.

Number: 19

Application Number: 63/2022/1/ BS

Elaine Doelitzscher u Werner Doelitzscher, u Anna Mifsud u l-Perit Amadeo Mifsud,

v.

L-Awtorità tal-Ippjanar u s-Suprintendent tas-Saħħa Pubblika u b'digriet tal-14 ta' Lulju 2022 Renata u Alex konjuġi Vella Muskat u Sylvmarie Gatt u għal kull interess li jista' jkollu żewġha Franco Gatt intervjenew fil-kawża *in status et terminis*

The Court:

1. This decision concerns an appeal of the plaintiffs, from a decree delivered by the 'Court of Magistrates (Gozo) Superior Jurisdiction,

General Section', (the first Court), on the 29th of July 2022. By means of such a decree the first Court re-confirmed an earlier decree whereby Renata Vella Muskat, Alex Vella Muskat, Sylvmarie Gatt, and Franco Gatt were all admitted to this suit as intervenors *in statu et terminis*, and were also authorised to file a sworn reply in connection with the demands of the plaintiffs;

2. The salient facts which have led to this appeal are mainly the following;

3. By means of a sworn application filed on the 25th May 2022, the plaintiffs explained that they are the owners of two adjacent tenements which are situated at Dun Lażżru Camilleri Street, in the Gozitan village of Ta' Sannat. Whilst referring to the fact that the Planning Authority had approved two development permits bearing application numbers PA/7693/21 and PA/7468/21 respectively, the plaintiffs complained that in issuing such permits, the defendant Authority had completely ignored the dispositions of public order as found in articles 97(n) and (i) of Chapter 10 of the Laws of Malta, and this to the detriment of their own rights at law. The plaintiffs further lamented that the defendant Superintendent of Public Health also failed to ensure that the relative public health dispositions as found in the Code of Police Laws were being adhered to and argued that such provisions remained in force and unaltered notwithstanding the introduction of the 'Development and Planning

(Health and Sanitary) Regulations' (S.L. 552.22 of the Laws of Malta). The plaintiffs also claimed that the development applications in contention breached their fundamental right to enjoy their own property and were also in breach of article 402 of Chapter 16 of the Laws of Malta, amongst other dispositions. The plaintiffs further explained that they had successfully obtained a warrant of prohibitory injunction against the Planning Authority by means of a decree issued on the 6th of May, 2022, and after making reference to several judicial letters which they have sent against the defendants, the plaintiffs proceeded to the demand the Court to:

> *"1. Declare and decide that the developments as proposed in accordance to the permits bearing number PA/7693/21 and PA/7468/21 are in contravention to the property rights of the applicants since these are not in conformity with the legal dispositions as found in article 97(n) (i) of Chapter 10 of the Laws of Malta"*
>
> *2. Declare and decide that the developments as proposed in the permits bearing number PA/7693/21 and PA/7468/21 are in contravention to the property rights of the applicants since these are not in conformity with the servitude created in terms of Article 402 of Chapter 16 of the Laws of Malta;*
>
> *3. Declare and decide that the developments as proposed in the permits bearing number PA/7693/21 and PA/7468/21 are in contravention of the property rights of the applicants since these hinder the right of enjoyment to their own property;*
>
> *4. Consequently nullifies and revokes the permits bearing number PA7693/21 and PA/7468/21 given that these are abusive and illegal as they do not conform with the Law or gives the necessary orders which might be deemed necessary and relevant to the case;*
>
> *5. Consequently also orders that the defendants or any one of them are permanently barred from in any way or manner giving authorisation by virtue of which the works merit of the permit numbers PA/7693/21 and PA/7468/21 are started or can be started as proposed or implemented;"*

4. Prior to the first sitting, and before any of the defendants to the suit had yet filed their own sworn replies, on the 8th June, 2022, Renata and Alex spouses Vella Muskat filed a joint application together with Sylvmarie Gatt and her spouse Franco Gatt, wherein they requested the first Court to be admitted *in statu et terminis* as intervenors to this suit, and to file a sworn reply.[1] Whilst their request to be admitted to the case as intervenors was based on the argument that they are the permit holders of the development applications PA 7693/21 and PA 7468/21 respectively, on the other hand, the request to file a sworn reply was based on the submission that at that stage of the case the written pleadings had not yet been closed;

5. By means of a decree issued on the same date,[2] the first Court granted the parties to this case a right of reply within two days from the date of service of such application;[3]

6. On the 22nd of June, 2022, the Superintendent of Public Health replied that she was leaving it up to the Court's discretion on whether to accede or to reject the joint application of spouses Vella Muskat and Gatt;[4]

[1] Fol. 31.
[2] 8th of June, 2022.
[3] Fol. 33.
[4] Fol. 54.

7. On the other hand, by means of a reply filed on the 30th June, 2022, the Planning Authority took a stand and declared that it had no objection to the demands as put forward in the joint application of spouses Vella Muskat and Gatt;[5]

8. By means of its decree, the first Court acceded to the demands of spouses Vella Muskat and Gatt, and this in the following manner:

> *"Il-Qorti,;*
> *Reġgħet rat ir-rikors ippreżentat fit-8 ta' Ġunju, 2022;*
> *Rat ir-risposta;*
> *Tilqa' t-talbiet kif dedotti;*
> *Tordna n-notifika lir-rikorrenti;"*[6]

9. By means of a reply which was filed on the 21st July, 2022, the plaintiffs whilst making reference to the joint application of spouses Vella Muskat and Gatt, submitted that the right to be admitted to a case as an intervenor *in statu et terminis* was not automatic and depended on whether the applicant had an interest in the pending suit. The plaintiffs also argued that in any case, an intervenor cannot file a sworn reply because unlike a joinder to the suit, an intervenor is not considered to be a party to the case and only holds the position of an observer. The plaintiffs then concluded by stating that whilst they were leaving it up to the discretion of the Court on whether to accept the application of Vella Muscat and Gatt in so far as they were requesting to be admitted to the suit as intervenors *in statu et terminis,* on the other hand, they requested

[5] Fol. 55.
[6] Fol 58.

the Court to reject the applicants' second demand whereby they requested permission to submit a sworn reply;[7]

10. After taking cognisance of the plaintiffs' reply as referred to in the preceding paragraph, on the 29th July, 2022, the first Court issued another decree which reads as follows:

> *"Illum, 29 ta' Lulju, 2022*
>
> *Il-Qorti;*
>
> *Rat ir-risposta tal-atturi tal-12 ta' Lulju, 2022;*
>
> *Rat ir-rikors tal-konjuġi Muscat tat-8 ta' Ġunju, 2022 u d-digriet tagħha tat-30 ta' Ġunju, 2022;*
>
> *Wara li fliet ir-risposta ġia msemmija, din il-Qorti qiegħdha tikkonferma d-digriet tagħha tat-30 ta' Ġunju, 2022 u dan għar-raġunijiet li ġejjin:*
>
> *i. Il-kawża għadha fi stadju bikri*
> *ii. Jidher biċ-ċar li l-interess għall-intervent tar-rikorrenti huma wieħed ad escludendum;*
> *iii. Għal din il-Qorti huma ċar li l-interess tar-rikorrent huma interess dirett li ġej mill-permessi ta' żvilupp identifikati mill-atturi u li huma maħruġin fuq isem ir-rikorrenti."*;[8]

11. By means of an application filed on the 26th of September, 2022, the plaintiffs whilst making reference to the decree of the 29th of July, 2022, explained that they felt aggrieved by the decrees in virtue of which Vella Muskat and Gatt were authorised to intervene in the suit, and consequently requested the first Court to grant them leave to appeal from the said decrees and this in terms of article 229(3) of Chapter 12 of the

[7] Fol. 65-66.
[8] Fol. 67.

Laws of Malta.[9] The first Court acceded to this request by means of a decree issued *in camera* on the 6th of October, 2022;[10]

12. During the sitting held on the 3rd of November 2022, the lawyer representing the plaintiffs took cognisance of the decree dated 6th of October 2022,[11] and on the 8th of November 2022, the plaintiffs filed the appeal application in question;

13. For the reasons put forward in their appeal application, the appellants are now requesting this Court to: *"revoke the decree of the 29th July, 2022 accepting the intervention of spouses Vella Muskat and spouses Gatt, and consequently orders the removal of the sworn reply presented by the same, with costs against them and / or against the defendants as this Honourable Court deems fit and necessary"*;

14. By means of a reply dated 7th December, 2022, the intervenors put forward various reasons on the basis of which they are demanding this Court to dismiss the plaintiffs' appeal and to confirm the decree of the first Court, dated 29th of July 2022, in its entirety. The intervenors further submit that the plaintiffs' appeal is completely frivolous and vexatious and on this basis, they have also requested this Court to condemn the appellants to pay them a penalty in the sum not exceeding €2,329.37, and this in terms of Article 229(9) of Chapter 12 of the Laws of Malta;

[9] Fol. 89-90.
[10] Fol. 95.
[11] Fol. 99.

15. Similarly to the intervenors, the Planning Authority has also submitted a reply to the plaintiffs' appeal, and for the reasons put forward therein, is also arguing that the plaintiffs' appeal should be rejected, and this with costs against the appellants;

16. The Superintendent of Public Health did not file any reply to the appeal of the plaintiffs, and this notwithstanding that she was duly served on the 16th of November, 2022;

17. Having considered that the written pleadings in relation to this appeal have been closed, and after taking cognisance of all the acts of the case, this Court finds no reason at law to set a sitting for hearing this appeal, and on this basis this Court is consequently proceeding to deliver its decision;

Considerations

18. The Court would like to point out from the outset that technically speaking this appeal cannot be heard as there is no appeal from the original decree through which the first court had authorised the intervention in the suit. The appeal is from the Court's reconsideration of its earlier decree, but not from the original decree which effectively provided for the intervention in the suit. So however, and to avoid further loss of time, having noted of all the arguments which have been put forward by the appellants, the Court notes that the appellants' complaints against the decree in contention are all directly linked to the argument

that spouses Vella Muskat and Galea do not enjoy the necessary juridical interest to act as intervenors to the suit in terms of article 960 of Chapter 12 of the Laws of Malta;

19. The plaintiffs submit that the purpose of their action is so that the Court would analyse and determine whether in the act of issuing the permits in contention, the Planning Authority has duly observed or otherwise the legal provisions as referred to by them in their sworn application. The plaintiffs futher claim that this case revolves around the interpretation of the said laws which the defendants are duty bound to implement and safeguard. On this basis, the appellants argue that this case is not about an issue which revolves around the rights of the intervenors and consequently, the interest of spouses Vella Muskat and Galea *"is just an ancillary one but not a direct one"*;

20. As regards to the part of the decree whereby the first Court authorised the intervenors to file a sworn reply, the appellants lament that the intervenors were granted this right *"as if they form part of the parties to the lawsuit".* Whilst making reference to various judgements, the appellants argue that the intervenor to the case should never assume the position of being a party to the proceedings;

21. Whilst reiterating that the intervenors do not have the required interest to intervene in the acts of these proceedings, the appellants conclude that the decision of the first Court to admit spouses Vella Muscat

and Gatt as intervenors "*was based on wrong considerations and should be revoked*";

22. On the other hand, the intervenors accuse the appellants of deliberately attempting to misguide this Court on the scope of their own action and argue that from a reading of the sworn application, it is amply evident that the appellants are in reality attacking two planning permits which have been issued in their favour. Whilst referring to the demands which have been put forward in the sworn application, the intervenors argue that should the appellants be successful in their claims, the outcome of the case would have the effect of annulling the permits which have been issued in their favour. On this basis, the intervenors argue that there cannot be a more clearer juridical interest on their part, and submit that they had made the request to intervene in this case in order to protect their personal interests and defend the permits which have been issued in their favour. The intervenors submit that the first Court has acknowledged all of this, and as a result all of the appellants arguments are unreasonable and baseless;

23. As regards to the Court's authorisation to file a sworn reply, the intervenors argue that their request to intervene in the case was made at a stage when the written pleadings had not yet been closed, and consequently there was no legal obstacle which precluded them from filing a sworn reply with relevant pleas. They further submit that the case

was still in its initial phase and consequently there is no plausible reason why their sworn reply should be expunged from the acts of the case;

24. The intervenors then conclude by arguing that *"it is more than obvious that this appeal is completely frivolous and vexatious and appellants' main aim is to prolong matters unnecessarily, knowing that the longer this court takes the longer the warrant of prohibitory injunction will remain in force and consequently the longer the intervenors will take to commence the works on their property notwithstanding that they have been issued with the relevant permits by the Planning Authority".* On the strength of this reasoning the intervenors are then requesting this Court to apply the provisions of article 229(9) of Chapter 12 of the Laws of Malta, and this so as the appellants would be ordered to pay them a penalty in an amount not exceeding €2,329.27;

25. Similarly to the intervenors, the Planning Authority is also arguing that in view of the fact that Vella Muskat and Gatt were the applicants who applied for and obtained the development permits in contention, both Vella Muscat and Gatt have the necessary 'interest' in terms of article 960 of Chapter 12 of the Laws of Malta to be admitted to the suit *in statu et terminis.* Amongst other arguments, the Planning Authority submits that in this case, the intervenors had also a right to file a sworn reply because their request was made at a very early stage of the proceedings, and therefore it could not prejudice the position of the parties to the case. On this basis, the Planning Authority argues that the first Court was correct

to authorise the intervenors to be admitted in the suit and to file a sworn reply;

26. Before delving into the merits and demerits of the arguments of the parties in relation to this appeal, this Court considers it as expedient to commence by pointing out that in principle, article 960 of Chapter 12 of the Laws of Malta, vests the Court with discretion on whether to accede or otherwise a person's request to be admitted *in statu et terminis* to a suit which is pending between other parties. As highlighted in various other decisions of this sort, this Court has consistently taken the position not to disturb leniently this discretion unless it would transpire that the first Court has exercised its discretion in contravention of the law. (see on this point the decisions of this Court in the names of: ***Markus Wurglitsch v. Interwetten Gaming Limited,***[12] and ***Id-Direttur, Qrati Ċivili u Tribunali bħala Registratur, Qrati Ċivili u Tribunali v. Paul Joseph Gauci et.***,[13] decided on the 26th of October 2022, and the 22nd of January, 2019, respectively);

[12] App. Civ. 557/2021/1. In that decision, this Court held that: *"Il-Qorti tibda billi tirrileva li l-Artikolu 960 tal-Kapitolu 12 jagħti diskrezzjoni lill-Qorti jekk tagħżilx li tilqa' jew le talba għall-intervent f'kawża, u dan l-eżerċizzju ta' diskrezzjoni mill-Ewwel Qorti m'għandux jiġi ddisturbat faċilment mill-Qorti tal-Appell sakemm ma jkunx jirriżulta li jkun sar kontra l-liġi.(Ara f'dan ir-rigward : David Chetcuti v. Richard Kandler (Appell, 15/11/2006)."*

[13] App. Civ. 701/2018/1. In that decision, this Court held that: *"Il-Qorti tibda billi tosserva illi l-liġi takkorda lill-Qorti diskrezzjoni jekk tawtorizzax jew le talba għall-intervent fil-kawża u dik id-diskrezzjoni ma tiġix disturbata minn din il-Qorti ħlief jekk ikun jidher li l-eżerċizzju ta' din id-diskrezzjoni jkun sar kontra l-liġi. (Michelina mart Alessandro Mallia et v. Gorg Cutajar et (Appell, 18/11/1963); David Chetcuti v. Richard Kandler (Appell, 15/11/2006); Mark Said v. Vincenzo Grixti (Appell, 08/01/2008); Michele Martone v. Gatt Galea & Co (Appell, 28/06/2009).)"*

27. This Court's role in proceedings such as these of today is therefore to scrutinise the decision of the first Court, and to assess whether in the circumstances, the first Court had exercised its discretion in line with the law;

28. Having analysed the contents of the decree in contention, it is amply clear for this Court that the main reason why the first Court was satisfied that spouses Vella Muskat and Gatt enjoyed the necessary interest to be admitted to this suit was because of the fact that the development permits in contention were issued in their own names. In fact, the first Court held that: *"Għal din il-Qorti huma ċar li l-interes[s] tar-rikor[r]ent huma interess dirett li ġej mill-p[er]messi ta' żvilupp identifikati mill-atturi u li huma maħruġin fuq isem ir-rikor[r]enti.";*[14]

29. From a cursory look at 'Dok. A',[15] and 'Dok. B',[16] it is amply clear that the development permits in contention, and thus those bearing application numbers PA/07693/21 and PA/07468/21, are indeed issued in the names of Vella Muscat and Gatt respectively. From a factual standpoint, the first Court was therefore correct to consider that the development permits which are being referred to by the plaintiffs, are the same development permits which have been issued in the name of the intervenors;

[14] Fol. 67.
[15] Fol. 7.
[16] Fol. 14.

30. From a legal perspective, our Courts have held numerous times that the interest required for a person to be admitted to a case *in statu et terminis* in terms of article 960 of Chapter 12 of the Laws of Malta, must be juridical, and thus substantial and direct in the cause. For instance, in the case of ***Mario Galea Testaferrata et v. Il-Prim Ministru***, decided by the Constitutional Court on the 10th of January, 2005, it was pointed out that:

> "Issa, fil-ligi taghna l-istitut ta' l-intervent fil-kawza hu regolat bl-Artikolu 960 tal-Kodici ta' Organizzazzjoni u Procedura Civili. L-interess mehtieg sabiex wiehed jintervjeni skond l-imsemmija disposizzjoni irid ikun interess guridiku, u cioe` interess sostanzjali u dirett fil-kawza u mhux semplicement interess fl-ezitu ta' dik il-kawza bil-hsieb li dak l-ezitu jista' talvolta jkollu implikazzjonijiet, pozittivi jew negattivi, f'kawza jew kawzi ohra futuri (ara, passim, Fogg Insurance Agencies Limited noe v. Simon Tabone Qorti ta' l-Appell (Sede Inferjuri) 28/4/2004; Angelo Abela v. Joseph Zahra u Napuljun Carabott Qorti ta' l-Appell (Sede Superjuri) 29/10/02). **Fi kliem iehor, l-intervenut fil-kawza jitlob li jintervjeni, u ghandu jigi ammess li hekk jintervjeni, biex jipprotegi l-interessi tieghu f'dik il-kawza partikolari** u mhux f'kawza jew kawzi ohra li talvolta jistghu jigu intavolati.";[17]

31. Of relevance is also the decision of the Court of Appeal (Inferior Jurisdiction) in the case in the names of: ***Avv. Michele Martone et v. Gatt, Galea & Co bħala kontrollur tas-soċjetà Malta and Europe Hotels Limited,***[18] wherein it was held that:

> "għall-ammissibilita` ta' l-intervenut ta' terz fil-ġudizzju pendenti bejn partijiet oħra hu suffiċjenti li t-talba tiegħu tippreżenta konnessjoni jew kollegament ma' dik tal-partijiet l-oħra fuq l-istess oġġett sostanzjali tal-kawża li jiġġustifika dak li mill-prattiċi huwa denotat bħala "*simultaneus processus*";

[17] Emphasis added.
[18] App. Civ. 5/2009PS, decided on the 26th of June, 2009.

32. Naturally, these principles cannot be applied in a vacuum, and in order for this Court to determine whether the appellants are correct in arguing that Vella Muskat and Gatt do not enjoy sufficient juridical interest to stand as intervenors to the case, this Court has to refer to their sworn application and in particular the final demands;

33. From an analysis of the final demands as put forward in the sworn application, it sufficiently clear that all of the plaintiffs' demands are intrinsically connected with the development permits which have been issued in favour of the intervenors. In particular, the plaintiffs have a specific demand for the nullification and revocation of such permits, and in the last demand they are even demanding the Court to permanently bar the defendants from authorising "in any way or manner" the commencement of the works as proposed in the development permits in question;

34. Given that the development permits in question have been issued on demand of and ultimately for the benefit of the intervenors, this Court is of the view that the appellants can never reasonably argue that Vella Muskat and Gatt do not enjoy sufficient juridical interest to act as intervenors to the case, or that their interest in these proceedings is only ancillary but not direct. Without a shadow of doubt, it is the intervenors who have the most to lose should the Court accede to all of the demands of the plaintiffs, and in this respect, the intervenors are correct to argue that their admission to this action is necessary for them to be able to

protect their own personal interests and defend the permits which have been issued in their favour. On this basis this Court cannot therefore find any reason on why or how the first Court was legally incorrect to admit spouses Vella Muscat and Gatt as intervenors *in statu et terminis* to this suit;

35. Similarly, this Court cannot see how the first Court was legally incorrect when it allowed the intervenors to file a sworn reply. As correctly pointed out by the intervenors, the application of the intervenors was submitted at a time when none of the defendants had yet even submitted their own sworn replies, and therefore at a time when the stage of written pleadings was not yet closed. Although the appellants are correct to state that an intervenor does not enjoy the status of a party to the suit, this fact alone doesn't mean that the intervenor cannot submit a sworn reply if s/he would be admitted to a suit at the opportune stage. As stated in the case in the names of ***Joseph Galea v. Alfred Cardona*** which has been decided by the Commercial Court on the 5th March, 1984, an intervenor can file acts and take an active part in the case.[19] Similarly in the case of ***Markiz Joseph Philip Testaferrata Bonnici et. v. Evelyn Micallef et.*** the Court of Appeal, (Inferior Jurisdiction)[20] held that:

> "Bhala terz interessat ammess fil-proceduri hu jista' anke "sostenendo la ragione sia dell' attore, sia del convenuto, ed altre volte pure i propri diritti in confronto sia dell' uno che dell' altro, provocare una decisione entro i limiti dell' azione intentata" (**Kollez. Vol. XVI P I p 117**). Huwa

[19] Vol LXXI PI,II, p.392. – *"Ġie deċiż diversi drabi mill-Qrati tagħna fuq materja simili li l-intervenut volontarju fil-kawża bl-intervent stess tiegħu ma jsirx parti fil-kawża. Min jintervjeni fil-kawża "in statu et terminus" mhux parti fil-kawża u ma jistax jiġi kkundannat jew illiberat' imma jista' jippreżenta skritturi, fil-kawża u jieħu parti attiva fid-diskussjoni"*.
[20] App. Ċiv. 18/1999/1PS, decided on the 10th of January 2007.

> veru illi skond il-vot tal-ligi (Artikolu 960) l-intervenut fil-kawza ma jissospendix il-procediment. B' danakollu, kif issokta jigi enuncjat, "dan ma jfisserx illi fl-attijiet ulterjuri li jkunu ghadhom iridu jsiru ghall-istruzzjoni tal-kawza, l-intervenut ma jistax japprofitta ruhu mill-mezzi kollha li taghtih il-ligi biex igib 'il quddiem ir-ragunijiet tieghu" (**Kollez. Vol. XXXII P I p 477**). **Minn dan jitnissel illi la darba akkolta t-talba tiegħu biex jiddaħħal fil-kawża, huwa kellu d-dritt li jipparteċipa fl-inċidenti kollha tagħha u li, sa dak il-mument, kienu għadhom mhux deċiżi. Dan hu seta' jagħmlu anke billi jressaq l-eċċezzjonijiet proprji u jqajjem diskussjoni dwarhom**."[21]

36. Taking all of this into consideration, this Court does not agree with the appellants that the first Court could not authorise the intervenors to submit a sworn reply and consequently the appellants' appeal is being rejected in its entirety;

37. Given that the appeal of the plaintiffs is being rejected, this Court has now to decide on whether the intervenors' request in terms of article 229(9) of Chapter 12 of the Laws of Malta is justified or otherwise;

38. As stated earlier, the appellants are basing this request on the reason that, in their view, this appeal has being used as a delaying tactic, and this so as to keep the warrant of prohibitory injunction in force for as long as possible. The appellants submit that it is *"glaringly evident that this appeal application is none other than an abuse of procedural law, something which this Court should not condone"* and on this basis the appellants argue that this Court should apply the provisions of article 229(9) of Chapter 12 of the Laws of Malta, and order the appellants to pay them a penalty of not exceeding €2,329.27;

[21] Emphasis added.

39. In the opinion of this Court, this appeal has been indeed frivolous and vexatious;

40. This Court is considering this appeal as frivolous because the appeal application lacked any solid argumentation as to why the first Court had exercised its discretion in a manner which is contrary to the law. Moreover, the appellants' complaints that Vella Muskat and Galea did not enjoy the necessary juridical interest to act as intervenors to the suit were also completely baseless and manifestly unreasonable: especially when considering the contents of the fourth and fifth demands which have been put forward in their sworn reply;

41. This appeal is also vexatious because when originally replying to the application of the intervenors, the plaintiffs submitted in writing that they were going to leave it up to the discretion of the first Court in so far as it concerned the decision as to whether to admit Vella Muscat and Gatt as intervenors to this suit. The appellants did not file any note in terms of article 695 of Chapter 12 of the Laws of Malta to withdraw their written declaration, and in this respect they remained bound by the same declaration. The appellants could not therefore have a change of heart and argue that the demand of Vella Muscat and Gatt for the intervention to this suit could not have been accepted by the first Court and *"should have been dismissed in the very first place".* Had the appellants honestly expected the first Court to dismiss the intervenors' application *'in the very first place',* they should have *'in the very first place'* objected to that

application, and not imply that they were going to stand by the decision of the Court!

42. In light of these circumstances, this Court therefore agrees with the intervenors that this appeal was used intentionally as a delaying tactic and is consequently acceding to the request of the intervenors to apply the provisions of Article 229(9) of Chapter 12 of the Laws of Malta;

Decision

For these reasons, the Court rejects the appeal of the plaintiffs from the interlocutory decree handed down by the first court on the 29th July, 2022, and is remitting the acts of this case to the Court of Magistrates (Gozo) Superior Jurisdiction, General Section, and this for the continuation of the case.

Since this Court is of the view that this appeal is frivolous and vexatious, the plaintiffs are in terms of article 229(9) of Chapter 12 of the Laws of Malta being condemned *in solidum* to pay the intervenors a penalty of five hundred Euro (€500) and to pay *in solidum* all of the costs in relation to this appeal in double, and this to both to the intervenors and the Planning Authority;

Mark Chetcuti Chief Justice	Joseph R Micallef Judge	Tonio Mallia Judge

Deputy Registrar
gr