



COURT OF MAGISTRATES (MALTA)

**MAGISTRATE
DR RACHEL MONTEBELLO B.A. LL.D.**

Application Number 140/2019 RM

Adrian Farrugia

-Vs-

- 1. Jude Amin Utulu**
- 2. Liam Carter**
- 3. Albert Gauci Cunningham; and by virtue of a decree dated 9th May 2022, Saviour Balzan was called into the suit**

Today, 31st May 2023

The Court,

Having seen the Application filed by Adrian Farrugia in the Registry of this Court on the 1st July 2019 where it was premised and declared:-

1. *“Prevja d-dikjarazzjoni illi bhala intervistat, awtur u edituri rispettivament tal-artikolu intitolat ‘L-MFA emmnet lil min ibaghbas il-loghob u mhux lili’ ippublikat fil-gurnal ILLUM kif ukoll il-webiste www.illum.com.mt rispettivament, nhar is-16 ta’ Gunju 2019 (kopja ta’ l-artikolu hawn aness u mmarkat Dok. A) huma mmalafamaw u illibellaw lill-esponent billi attakaw l-integrita`, l-unur u r-reputazzjoni personali tieghu, kif ukoll esponew lill-istess*

ghar-redikolu u ghad-disprezz pubbliku, permezz ta' allegazzjonijiet u/jew insinwazzjonijiet serji li huma ghal kollox inveritieri u foloz kif ser jigi ppruvat; u

- 2. Ihallsu lill-esponent, il-massimu kontemplat fl-Artikolu 9 tal-Kapitolu 579 tal-Ligijiet ta' Malta kif joghgobha tistabilixxi din il-Qorti bhala danni in riparazzjoni tal-malafama li huwa soffra b'konsegwenza tal-artikli fuq imsemmija, liema artikli kellhom l-ghan li jtellef u jnaqqas ir-reputazzjoni, l-integrita' u l-unur tieghu.*

Bl-ispejjez kontra l-konvenuti ingunti minn issa ghas-subizzjoni.”

Having seen the reply filed by Liam Carter and Albert Gauci Cunningham on the 11th October 2019, where they pleaded:-

- 1. “Preliminarjament, l-esponent Albert Gauci Cunningham ghandu jigi liberat mill-osservanza tal-gudizzju billi mhuwiex l-editur registrat tal-gazzetta Illum.*
- 1. Fil-mertu, u fl-ewwel lok, l-attur ghandu jindika b'mod preciz liema brani jqis malafamanti fil-konfront tieghu.*
- 2. F'kull kaz, il-fatti esposti fil-pubblikazzjoni ma jikkontjenux allegazzjonijiet foloz.*
- 3. Bla hsara ghall-premess, il-pubblikazzjoni tikkonsisti f'rapurtagg fidili tal-opinjonijiet u l-kummenti ta' persuna identifikata ossia l-intimat l-iehor Jude Amin Utulu. Konsegwentement l-esponenti ma ghandhomx iwiegbu ghalih anke jekk semmai jirrizulta li l-kummenti tieghu huma malafamanti fil-konfront tal-attur.*
- 4. In oltre`, il-pubblikazzjoni hija ta' interess pubbliku u l-esponenti kienu qed jaqdu korrettement id-dmirijiet taghhom li jirraportaw*

dwar ahbar ta' importanza pubblika f'socjeta` demokratika li thaddan bi shih il-liberta` tal-espressjoni.

5. Minghar pregudizzju, il-pubblikazzjoni tikkostitwixxi fair comment.

6. In oltre`, it-talbiet attrici huma nfondati fil-fatt u fil-ligi.

7. Salv eccezzjonijiet ulterjuri."

Having seen the reply filed by Jude Amin Utulu on the 15th October 2019 where he pleaded:-

- 1. "Illi preliminarjament l-attur kellu jipprova d-diskors illi l-esponenti Utulu Jude Amin ghamel huwa fil-fatt dak rapurtat fl-artikolu imsemmi mir-rikorrenti.*
- 2. Illi inoltre l-attur ghandu jindika b'mod preciz liema mill-artikolu jqis malafamanti fil-konfront tieghu.*
- 3. Illi fi kwalunkwe kaz it-talbiet attrici huma infondati fil-fatt u fil-ligi.*
- 4. Illi f'kull kaz u minghajr pregudizzju ghas-sueccepit, l-artiklu imsemmi mill-attur ma jista' qatt jikkostitwixxi malafama kontra l-attur b'mod li jnaqqsu l-gieh tal-attur man-nies jew li jwaqqghuh ghad-disprezz taghhom u ghalhekk mhux libelluz fit-termini tal-ligi kif ser ikun ippruvat waqt it-trattazzjoni tal-kawza;*
- 5. Illi subordinatament u minghajr pregudizzju ghas-sueccepit, id-diskors li ghamel l-eccepjent jikkonsisti f'espressjoni ta' opinjoni u apprezzament, jew value judgement, u huwa fair comment fuq materja ta' interess pubbliku, fuq fatti sostanzjalment veri, ammissibbli kemm taht il-Ligi ta' l-Istampa, kemm taht il-Kostituzzjoni ta' Malta u l-Konvenzjoni Ewropeja dwar id-Drittijiet u l-Libertajiet Fondamentali tal-Bniedem.*
- 6. Salvi eccezzjonijiet ulterjuri."*

Having seen that by virtue of a decree dated 27th November 2019, it was ordered that the proceedings are conducted in the English language;

Having seen that by virtue of a decree given on the 9th May 2022, Saviour Balzan was ordered to be called into the suit;

Having seen the reply filed by Saviour Balzan on the 5th July 2022 where he pleaded:-

1. *“Il-fatti esposti fil-pubblikazzjoni ma jikkontjenux allegazzjonijiet foloz.*
2. *Bla hsara għall-permess, il-pubblikazzjoni tikkonsisti f’rapurtagġ fidil tal-opinjoni u l-kummenti ta’ persuna identifikata ossia l-intimat l-ieħor Jude Amin Utulu. Konsegwentement l-esponenti ma għandhomx iwieġbu għalih anke jekk semmai jirriżulta li l-kummenti tiegħu huma malafamanti fil-konfront tal-attur.*
3. *In oltre’, il-pubblikazzjoni hija ta’ interess pubbliku u l-esponenti kienu qed jaqdu korrettament id-dmirijiet tagħhom li jirrapportaw dwar aħbar ta’ importanza pubblika f’soċjeta’ demokratika li tħaddan bi sħiħ il-liberta’ tal-espressjoni.*
4. *Mingħajr preġudizzju, il-pubblikazzjoni tikkostitwixxi fair comment.*
5. *In oltre’, it-talbiet attriċi huma infondati fil-fatt u fil-Liġi*
6. *Salv eċċezzjonijiet ulterjuri.”*

Having seen that all parties agreed during today’s hearing, 31st May 2023, that it was not necessary for the Court to order that those testimonies and other acts of the proceedings that were not duly given or filed in the English language, are formally translated from the Maltese to the English language;

Having heard the testimony of all witnesses;

Having seen all documents submitted in evidence;

Having seen all the acts of the proceedings;

Having seen the written submissions filed by the respective parties;

Having seen that the cause was adjourned for today for delivery of judgement;

Having considered;

That this libel suit has been brought in order to impugn the allegations made by the defendant Jude Amin Utulu during an interview with defendant Liam Carter who penned the article that was published on the 16th June 2019 in the printed edition of newspaper Illum. The same article was also published electronically on www.illum.com.mt on the same date (Dok. A¹) and it is clear that the action brought by plaintiff is intended to impugn both the on-line version of the article published on the website www.illum.com.mt on the 16th June 2019, and also the article that was published in the printed version of the newspaper Illum.

The Court deems that plaintiff also brought sufficient evidence of the role of defendant Albert Gauci Cunningham as editor of the printed newspaper 'Illum', as would result from page 19 of Dok. A, that is, the edition of the newspaper Illum printed on the 16th June 2019, where it is clearly stated: "*Editur: Albert Gauci Cunningham*". Thus, Albert Gauci Cunningham's first plea whereby he pleaded that he is non-suited with costs, must be rejected as unfounded.

Meanwhile, it is also established that the defendant joined into the suit, Saviour Balzan, is the registered editor of the printed newspaper 'Illum' and has been so registered with the Press Registrar since 2013². Consequently, defendants Albert

¹ Paġna 2 sa 5 tal-atti tal-kawża.

² Xhieda Graziana Cassar, 27 ta' Novembru 2019, Dok. GC1.

Gauci Cunningham and Saviour Balzan have been correctly sued as editors of the printed versions of the publication 'Illum' as at 16th June 2019.

As for Liam Carter, it is undisputed that he is the author of the article specifically impugned by plaintiff, entitled: "*L-MFA emmnet lil min bagħbas il-logħob u mhux lili*".

Defendants Saviour Balzan, Albert Gauci Cunningham and Liam Carter all pleaded that the article impugned by plaintiff consists in a faithful report of the facts and opinions expressed by defendant Jude Amin Utulu and therefore, they cannot be held to be responsible for the publication in the event that this is declared to be defamatory of plaintiff.

The Court rejects this argument. It is a general principle of defamation law that all persons who have procured or participated in a libel, that is, the journalist, the editor and the person responsible for the publication, are to be deemed as jointly and severally liable for all damages ensuing from the publication. This is endorsed by Gatley, who states that in the case of the publication of a newspaper, the author, the editor and the publisher are all jointly and severally liable for the publication of a libel³.

It must also be pointed out that as a general rule, an author, editor or publisher cannot evade responsibility for defamation by attributing the libellous statement to another person. Gatley explains this in simple terms as follows:-

"The 'repetition rule' reflects a fundamental canon of legal policy in the law of defamation ... that words must be interpreted, and the implications they contain justified, by reference to the underlying allegations of fact and not merely by reliance upon some second-hand report or assertion of them. ... 'repeating someone else's

³ Gatley: On Libel and Slander (2013 Ed.), page 200, para.6.11.

libellous statement is just as bad as making the statement directly’, and therefore, ‘for the purpose of the law of libel a hearsay statement is the same as a direct statement.’” (emfasi tal-Qorti)

This means that Liam Carter and Albert Gauci Cunningham’s fourth plea and Saviour Balzan’s second plea, are unfounded because they must be deemed to be answerable for any libel published by them in their respective capacities, even if this is a repetition of the words of a third person. Consequently, the relative plea in their respective Replies must be rejected.

Having considered;

The background of the article published in the newspaper Illum on the 16th June 2019 and its on-line version, concerns defendant Jude Amin Utulu’s suspension by the Malta Football Association after the Board of Discipline investigated a charge that while being a registered professional referee, he had acted as an agent on behalf of football players. These allegations were made following a match between Mosta and Balzan for which Utulu had acted as referee, where Mosta lost with a score of 3-1.

Defendant Utulu was interviewed by Liam Carter who published on the said newspaper, an article entitled ‘*L-MFA emmnet lili min ibagħbas il-logħob u mhux lili*’ where Utulu was reported as having stated that his version was not believed by the Malta Football Association (‘MFA’) Board that investigated the allegations made in his regard by plaintiff Adrian Farrugia, and that the Board instead decided to believe the plaintiff who, he claims, is a match-fixer (“*bagħbas il-logħob*”). Defendant Utulu is reported as having stated in the interview that plaintiff Adrian Farrugia, who was the coach of Mosta Football Club, had asked him to recommend five Nigerian football players who might be interested to play in Malta and that he had put plaintiff into contact with a Nigerian friend of his - a football agent based in England - in order to help Nigerian players come to play football in Malta. He denied having ever recieved any monies or payment of any sort for his role in this affair and insisted that his

communications with Farrugia were all above board, so much so that he had not deleted the chats and had handed his mobile to the Association to prove his innocence. He was also reported as having stated that the investigation into his case by the MFA was conducted and concluded in one day and that a statement was issued informing that he had been suspended from acting as a referee. This statement made no mention of the club involved or of Adrian Farrugia. He claimed to have been unjustly treated by the MFA and insisted that he never attempted to fix any matches but had only introduced plaintiff, who had been a friend of his, to another friend.

“Jien ma ppruvajtx inhammeġ jew inkiser il-logħob, sempliciment laqqajt ħabib tiegħi m’iehor. Jekk referi’ jitfa’ mħatra fuq logħob li qiegħed jirrefja għandu sospensjoni ta’ tliet snin minimu. Tiegħi kienet aktar serja apparentement.”

He then stated: *“Il-problema hi li l-MFA jafdaw iktar lin-nies li jimmanipolaw il-logħba milli xi hadd bħali. Adrian Farrugia jbagħbas il-logħba u tarah kull darba fil-VIP area, u spiċċajt nbati jien mhux min ikisser il-logħba tal-football.”*

Immediately following this *verbatim* statement of defendant Utulu, as reported in the article published on the 16th June 2019, is the following statement:-

Hawhekk Utulu jistqarr li jinsab imħasseb ferm għalfejn trattawh b’dan il-mod. “Trattawni b’mod ingust, kulhadd jaf x’tip ta’ persuna jiena. Il-problema hi li l-MFA jafdaw aktar lin-nies li jimmanipulaw il-logħob milli xi hadd bħali. Adrian Farrugia jbagħbas il-logħba u tarah kull darba fil-VIP area, u spiċċajt nbati jiena mhux min ikisser il-logħba tal-futbol.”

“Erba’ snin ilu, il-Pulizija Taljana kienet implikat lil Adrian Farrugia f’ċirku kriminali ta’ tixhim u tbagħbis ta’ logħob fl-Italja. Fl-istess operazzjoni, bl-isem ta’ ‘Dirty Soccer’ kien implikat ukoll huh Robert kif ukoll Felice Bellini, l-eks direttur

ġenerali ta' Vittoriosa Stars. Il-każ kompli jinstema' fil-Qorti Taljana f'April li għadda u minkejja dan, l-MFA għandha ma ressqet l-ebda sospensjoni lejn dawk involuti hekk kif iż-żewġ aħwa għadhom involuti fil-futbol lokali.”

Plaintiff, Adrian Farrugia, testified⁴ that he has been involved in the local football scene for several years and has always respected the sport and acted with full integrity. In fact, he has never been investigated by the MFA about any alleged involvement in match-fixing or other illegal activities. Contrary to the assertions made in the impugned publication, he claimed to have always been on the forefront of action taken by the authorities against any such abuse and therefore finds it insulting to have been the subject of such malicious allegations simply for having reported the person who blatantly abused his position. He also stated that he was not asked for his version of facts or his comments prior to the publication of the article and notwithstanding the allegations made against him, he was never investigated by the MFA or the Police. Plaintiff also confirmed that until today he is still actively involved in the administration of the Mosta Football Club and also runs the Mosta Youth Academy.

Defendants did not testify, save for Saviour Balzan who filed a sworn affidavit attaching thereto several articles published in local and Italian media. Defendant Jude Amin Utulu also exhibited a number of publications in the local media and also produced two witnesses, the current and former Integrity Officers of the Malta Football Association who both confirmed that the MFA never took any action against Adrian Farrugia in connection with his alleged involvement in the Dirty Soccer scandal. Specifically, Francis Tabone, who acted as Integrity Office between 2011 and 2019, testified that although he had sent for plaintiff more than once in connection with the allegations made in the Italian media and attempted, unsuccessfully, to obtain information from the Italian authorities, he had no concrete evidence in hand which would justify action being taken against plaintiff.

⁴ Affidavit of Adrian Farrugia, filed on the 17th July 2020.

Having considered;

The impugned statements in the publication clearly identify Adrian Farrugia as “*min bagħbas il-logħob*”, “*il-bniedem li jbagħbas il-logħob tal-futbol*”, “*... nies li jimmanipolaw il-logħba*”. The ordinary reader can readily understand that it was indeed plaintiff, Adrian Farrugia, who reported defendant Utulu to the MFA as having acted as an agent for foreign players and whose allegations, therefore, led to the decision that Utulu is suspended from acting as referee for the Association. Consequently, when defendant Utulu is reported in the title and the body of the publication as having felt aggrieved by the fact that “*l-MFA emmnet lil min bagħbas il-logħob u mhux lili*”, there can be little doubt that the reference to “*min bagħbas il-logħob*”, is indeed a reference to plaintiff. This identification is further validated when, towards the latter part of the publication, defendant Utulu declared specifically: “*Adrian Farrugia jbagħbas il-logħba u tarah kull darba fil-VIP area, u spiċċajt inbati jiena mhux min ikisser il-logħob tal-futbol*”. Indeed, plaintiff does not contest the fact that he was indeed the person who had reported defendant Utulu to the MFA as having acted as an agent for foreign football players.

It must be pointed out that plaintiff failed to indicate the particular statements forming part of the impugned publications, which according to him are defamatory, and he also failed to identify the particular imputations that are conveyed by those statement and which, in his view, are defamatory. However in the Court’s view, it is evident that the imputations borne of the entitre publication, in so far as plaintiff is concerned, are the following:-

- That plaintiff is known to manipulate the outcome of football matches (match-fixing) and is as such accountable for the exploitation and the consequent debasement of the sport;
- That plaintiff is implicated in a bribery and corruption ring operating in the Italian football industry and is the subject-matter of an investigation by the Italian Police and a pending prosecution before the Courts in Italy;

- That plaintiff deserves to be suspended by the MFA from participation in local football.

It is generally accepted that an imputation that the claimant was or was possibly involved to a certain degree, in an illegal activity or a criminal act, or, according to Collins⁵, an imputation that due to some particular conduct, the claimant is “*dishonest or a fraud, a hypocrite, dishonourable, immoral, or actuated by some improper motive, insolvent or unwilling to pay debts or incompetent or otherwise unfit for some role.*”, is considered to be defamatory.

Accordingly, the Court has little doubt that the imputation that the plaintiff is involved in match-fixing and is connected to a criminal organisation that is the subject-matter of an investigation by the Italian Police and a pending prosecution before the Courts in Italy, must be considered as defamatory as it is undeniably capable of causing serious harm to his reputation for the purposes of Article 3(4) of the Media and Defamation Act (Chapter 579)⁶. Therefore, the threshold established by the said Article 3(4) of the Act has been met in this case.

Having considered;

That defendant Jude Amin Utulu, in the fifth paragraph of his reply, pleads that the statements he made in the published interview are expressions of his opinion and must therefore be considered as value judgements which constitute fair comment. The defence of fair comment is also raised separately by the other defendants.

This Court has previously held, on various occasions, that with the introduction of the Media and Defamation Act by virtue of Act XXXI of 2018, the common-law defence of ‘fair comment’ has been statutorily codified and replaced with the defence of ‘honest opinion’ and consequently, any plea of fair comment must be treated as a

⁵ *Collins on Defamation* (2014 Ed.), 6.10 p. 117.

⁶ ‘The Act’.

defence of honest opinion in terms of Article 4(2) of the Act. This defence is defined by the same criteria that govern the defence of honest opinion in section 3 of the Defamation Act, 2013 (UK), which criteria are evidently wider in scope than those that were required to prove a defence of fair comment, naturally in order to continue to promote and safeguard freedom of expression. For this reason, the Court is of the view that the defence of honest opinion cannot be taken to be some innovative concept that constitutes a defence that is substantially different to the defence of fair comment because in substance, it builds upon and expands on the fair comment defence. In fact, both these defences are applicable only to a statement of opinion as opposed to a statement of fact.

Collins maintains:-

*“... the common law defence of fair comment has been abolished and **replaced with a statutory defence of honest opinion that is intended for the most part to reflect the common law.**”⁷* (Court’s emphasis)

Consequently, the Court shall treat the plea of fair comment as a plea of honest opinion under Article 4(2) of the Act.

In order that this defence is successfully raised, it must be shown that the person aggrieved is a public figure as defined in Article 4(5) of the Act. Now, in this case the plaintiff himself testified that he has been involved in the local football scene and pursued a career as a footballer for several years. In fact he confirmed that today he works at Mosta FC and runs the Mosta Youth Academy. It does not result from the evidence adduced that plaintiff carries on any other profession or trade other than in the football industry and consequently the Court is satisfied that plaintiff falls within the definition of a public figure in terms of paragraph (c) of Article 4(5) of the Act as a person who: *“... habitually exercises a profession, art or trade, and the facts*

⁷ On Defamation, *supra*, 9.03, p. 188.

attributed to him refer to the exercise of such profession, art or trade". Indeed it is undisputed that the impugned statements were made in connection with plaintiff's involvement in the football industry where he admittedly works.

The Court is also satisfied that the statements made by defendant Utulu, published by the other defendants, are declarations of opinion.

"... a careful distinction needs to be made between facts and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof (see De Haes and Gijssels, cited above, p. 235, § 42, and Harlanova v. Latvia (dec.), no. 57313/00, 3 April 2003).

99. Admittedly, where allegations are made about the conduct of a third party, it may sometimes be difficult, as in the instant case, to distinguish between assertions of fact and value judgments. Nevertheless, even a value judgment may be excessive if it has no factual basis to support it (see *Jerusalem v. Austria*, no. 26958/95, § 43, *ECHR 2001-II*)."⁸

Specifically: "*L-Assoċjazzjoni tal-Futbol Malti emmnet il-kelma ta' bniedem li jbabas il-logħba tal-futbol minflok il-kelma tiegħi*" and "*Il-problema hi li l-MFA jafdaw iktar lin-nies li jimmanipolaw il-logħba milli xi hadd bħali*" are undoubtedly expressions of defendant Utulu's opinion.

As for the statement: "*Adrian Farrugia jbagħbas il-logħba u tarah kull darba fil-VIP area, u spiċċajt nbati jiena mhux min ikisser il-logħba tal-futbol*" is a hybrid declaration containing an assertion of a fact which in the Court's view, defendant could have only expressed if he was reaching a conclusion on the basis of other facts.

In fact, it has been held that:-

⁸ *Cumpănă and Mazăre v. Romania*; App. 33348/96, deciz 17 ta' Dicembru 2004.

“A statement might be either a statement of fact or an expression of opinion depending on the context. The form in which the statement appeared and the style adopted by the publisher will often be decisive.

...

*Some assertions of fact may be defended as expressions of opinion, **if they are in the nature of deductions of conclusions arrived at by the publisher from other facts which are sufficiently stated or indicated**, where it will be obvious to the reasonable person that the publisher could not have had direct knowledge of the matter stated and must have been expressing a view or inference”⁹*

As such, the Court is satisfied that the latterly-quoted statement may be defended as an expression of an opinion and thus as a value judgement.

Consequently the Court must examine whether the remaining criteria listed in paragraphs (b) and (c) of Article 4(2) of the Act have been met in order that the statements of opinion made by defendant Utulu and published by the other defendants in their respective capacities, can be deemed to be an honest opinion.

There can be hardly any doubt that the basis of the opinion of defendant Utulu that claimant has not been suspended by the MFA notwithstanding his involvement in match-fixing and manipulation of football matches, is abundantly indicated in the article where it is stated that four years earlier, the Italian Police had implicated claimant in an investigation, known as ‘Dirty Soccer’, into bribery relating to Italian football, and in ongoing criminal proceedings involving also his brother Robert Farrugia and a certain Felice Bellini.

Furthermore, the Court, after having seen the body of evidence produced by the defendants, consisting of various publications in local and foreign media, is also satisfied that an honest person could have held the opinion on the basis of privileged statements published before the statement complained of, which asserted as a fact that

⁹ Collins, 9.12 p. 192. Emphasis made by this Court.

claimant was not only suspected, but indeed prosecuted before the courts of Lamezia Terme for committing the crime of ‘sports fraud’.

The Court reviewed the publications in local and Italian media, exhibited by defendants, and observes that allegations about Adrian Farrugia having been identified as being involved in a match-fixing scandal and in an illegal international betting syndicate, surfaced as far back as May 2015 when articles were published on timesofmalta.com, maltatoday.com.mt, independent.com.mt, manueldelia.com and repubblica.it reporting that Adrian Farrugia, the former Mosta FC team manager and his brother Robert Farrugia were wanted by the Italian Police, specifically the Prosecutor of Catanzaro after an investigation named Dirty Soccer, where telephone conversations were intercepted as part of the inquiry conducted by the Procura, revealed their direct participation, together with a large number of club officials, coaches, directors, football players and other persons from several clubs, in a multi-million illegal betting ring.

At the time, in an article published on the 20th May 2015¹⁰, Times of Malta reported that when contacted in connection with the involvement of the Farrugia brothers as “*financiers*” in the illegal match-fixing operations, Dr. Rodolfo Ruperti, the head of the Catanzaro Police who led the investigation into the Dirty Soccer scandal, stated that while a number of arrests were made in Italy, the Farrugia brothers were not arrested as they were not in Italy.

A few years later, in September 2018 and then again in April 2019, it was again extensively reported in both local and Italian media that the plaintiff, his brother and ten Italian persons were arraigned and charged by the Procuratore della Repubblica di Lamezia Terme with having committed the crime of sports fraud and that the ‘anti-mafia’ trial, which was scheduled to commence on the 29th January 2019, was on-going.

¹⁰ Dok. JAU3.

Although in 2015 the President of the MFA was reported as having told The Malta Independent¹¹ that *“if things turn out to be true, that the two Maltese men are under arrest and investigation, this will spark an investigation from our end, by both the Malta police and the MFA’s integrity officer”*, in an article published on the 8th April 2019 it was reported¹²: *“And yet, while both Bellini and Di Napoli (two Italian nationals allegedly also forming part of the illegal syndicate who had formerly served as sporting director and coach respectively as Vittoriosa Stars FC) are said to have been blacklisted by the MFA, no similar action has been taken against the Farrugia. An MFA source however, said that the Association had its hand tied since the matches in question did not concern the Maltese football league.”* It was also reported that the plaintiff still remains active today in the local football scene.

The Court considers that the above-mentioned publications exhibited by defendants, qualify as *"privileged statements"* for the purposes of paragraph (c)(ii) of Article 4(2) of the Act because evidently, the publications were made on established media consisting in local newspapers and on-line news portals and also a well-known and reputable Italian publication, La Repubblica, which are all published on established platforms and accessible to the public at large. Moreover, the Court is thoroughly satisfied that these publications, which asserted as a fact the claim that Adrian Farrugia was investigated and **ultimately prosecuted** before the Courts in Italy for criminal offences in connection with match-fixing, relate to a matter of public interest.

While the Act does not define ‘a matter of public interest’ and nor does it provide any guidelines or criteria that might help define this concept, the Court is of the view that matters concerning Government administration, political conduct and involvement in serious crimes are all to be considered as matters of public interest.

¹¹ Article published on independent.com.mt, page 138 et seq. of the record, dated 19th May 2015.

¹² Article on maltatoday.com of the 8th April 2019 (Dok. JAU1)

Gatley lists a number of matters that have been considered by the courts to fall within the notion of public interest for the purposes of defamation law:-

*“... the business of government and political conduct; ... the fair and proper administration of justice; ... the conduct of the police; cheating, corruption ... involvement in serious crimes; corporate malpractice; ...”*¹³

This inevitably means that the assertions made in the publications exhibited by defendants regarding not only claimant’s alleged involvement in serious crime but also his actual prosecution for the crime of sports fraud before the Italian courts, must be taken to fall within the scope of a matter of public interest, particularly when it is an undisputed fact that no action has been taken by the MFA against claimant who is still very actively involved in the football industry in Malta.

The Court is satisfied that the statements made in the publications exhibited by defendants are privileged in terms of Article 4(4) of the Act and thus, any assertions of fact made therein may serve as the basis of the opinions expressed by defendants in the impugned article for the purpose of paragraph (c) of Article 4(2) of the Act.

As already pointed out, on the basis of the matters asserted to be facts in the aforementioned privileged statements, the Court is of the view that an honest person could readily hold defendant Utulu’s opinion that Adrian Farrugia is a person known to be involved in corrupt practices within the football sphere to the detriment of the sport, that he lacks credibility in the industry and mdeserves to be suspended by the MFA.

The Court agrees that every individual has a sacrosanct right to form and express opinions and also a right to react and reply, from a subjective perspective, to events that take place, even if in the process he might reach conclusions that might not be

¹³ *Supra*, 15.6, p. 645, 646.

completely accurate: “*the right to make honest but derogatory expressions of opinions on such matters was and is an important safeguard for freedom of expression*”.¹⁴

Consequently, defendant Jude Amin Utulu’s defence of fair comment, when considered as a plea of honest opinion, satisfies all the criteria established by Article 4(2) and Article 4(4) of the Act and must therefore succeed.

Having considered;

That the the impugned article also imputes to plaintiff, as already established, that he is the subject-matter of an investigation by the Italian Police and a pending prosecution before the Courts in Italy. Also the imputation that notwithstanding this investigation and prosecution, he has not been suspended by the MFA. The Court considers that these are statements of fact.

These particular imputations do not appear to derive from defendant Utulu’s direct words quoted within speech marks, as is the case with the other imputations, but from a paragraph that appears to be attributable to the other defendants.

As for the first of these imputations, this is borne of the the following paragraph :-
“Erba’ snin ilu, il-Pulizija Taljana kienet implikat lil Adrian Farrugia f’ċirku kriminali ta’ tixhim u tbagħbis ta’ logħob fl-Italja. Fl-istess operazzjoni, bl-isem ta’ ‘Dirty Soccer’ kien implikat ukoll huh Robert kif ukoll Felice Bellini, l-eks direttur generali ta’ Vittoriosa Stars. Il-każ kompli jinstema’ fil-Qorti Taljana f’April li għadda u minkejja dan, l-MFA għandha ma ressqet l-ebda sospensjoni lejn dawk involuti hekk kif iż-żewġ aħwa għadhom involuti fil-futbol lokali.”

Defendants Liam Carter and Albert Gauci Cunningham plead, in their Reply¹⁵, that the statements made in the publication do not contain false allegations. This must

¹⁴ **Joseph v. Spiller**, Lord Phillips, 2010, UKSC, 53 (2011) A.C. 852.

¹⁵ Third paragraph.

therefore be taken to mean that the statements are true facts: this defence is therefore to be treated as a defence of truth in terms of Article 4(1) of the Act.

This states: *“It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statements complained of is substantially true.”*

The relevant principles that must be applied to define the phrase “substantially true” imputation in Article 4(1) of the Act were identified by Nicklin J in the recent decision in **Bokova v Associated Newspapers Ltd** [2018] EWHC 2032 (QB), [2019] QB 861, [28]:-

“(i) A defendant must show the relevant defamatory imputation is “substantially true”: section 2(1). The Explanatory Notes to the Act refer to the Court of Appeal’s decision in Chase v News Group Newspapers Ltd [2003] EMLR 11, para 34: ‘the defendant ... has to establish the ‘essential’ or ‘substantial’ truth of the sting of the libel. To prove the truth of some lesser defamatory meaning does not provide a complete defence.’

(ii) The court should not be too literal in its approach. Proof of every detail is not required where the relevant fact is not essential to the sting of the publication: Rothschild v Associated Newspapers Ltd [2013] EMLR 18, para 17, per Laws LJ...”

Of course, in view of the general presumption of falsity of the defamatory imputation¹⁶, the onus is on the defendant who pleads the truth, to prove that the imputation is substantially true. The defence of truth requires that the particular imputation, in this case that the plaintiff is implicated in a bribery and corruption ring operating within the Italian football industry and is the subject-matter of an investigation by the Italian Police and a pending prosecution before the Courts in Italy,

¹⁶ This presumption is also recognised in the case-law of the European Court of Human Rights which, in the decision in the names **EuropaPress Holding DOO v Croatia** (2011), held that: *“in principle it is not incompatible with art. 10 to place on a respondent in defamation proceedings the onus of proving to a reasonable civil standard of proof, (that is, on the balance of probabilities), that the defamatory statements were substantially true”*.

must be proven to be substantially true. This would require evidence of some form of conduct on the part of claimant that generated the impugned allegations.

This evidence, in the Court's view, is found in the array of articles published in the local and international media in 2018 and 2019 that reported not merely the implication of plaintiff and other persons in a bribery and corruption ring investigated by the Italian authorities, but the actual arraignment of plaintiff, his brother and a number of Italians in the football industry by the Procuratore della Repubblica before the courts of Lamezia Terme, where they are accused of having committed the crime of sports fraud and that the criminal trial, which was scheduled to commence on the 29th January 2019, was on-going. Plaintiff never denied that he is indeed being criminally prosecuted on such charges in connection with the football industry and brought no evidence to show that the articles exhibited are not authentic or that he was acquitted from the criminal charges. In fact, no evidence whatsoever that tends to show that the trial has been concluded was brought: this would have placed an obligation upon defendants to report the outcome of the trial, had this been favourable to plaintiff.

Consequently, it is the Court's view that the substantial truth of the first of the aforementioned imputations, has been sufficiently proven.

As for the statement that no action was taken by the MFA against plaintiff who, as was stated in the article, was not similarly suspended by the MFA despite him having been arraigned before the courts in Italy and charged with fraud in connection with his alleged involvement in matchfixing and in an illegal betting ring, the Court agrees that this statement also appears to be accurate in its essence. In fact, both the current and the former Integrity Officers of the MFA testified before the Court that no action whatsoever was taken against Adrian Farrugia although it was a publicly-known fact that he was facing criminal charges for sports fraud in Italy. In fact, plaintiff himself confirmed that he was never investigated by the Police in Malta or by the MFA and till today continues to be actively involved in the local football scene with Mosta FC.

The logical corollary of such a statement is that plaintiff was not suspended by the MFA and that therefore, the statement that “*minkejja dan, l-MFA għadha ma ressqet l-ebda sospensjoni lejn daww involuti hekk kif iż-żewġ aħwa għadhom involuti fil-futbol lokali*”, is substantially true.

The plea raised by defendants Carter and Gauci Cunningham in the second paragraph of their Reply, therefore deserves to be upheld and consequently, in view of the fact that all the imputations raised by the publication have been found to either represent defendant Utulu’s honest opinion or a substantially true statement of fact, the Court deems that it is unnecessary to investigate the remaining pleas raised by defendants in their respective replies.

For all these reasons, the Court while dismissing the first and fourth pleas raised by defendants Liam Carter and Albert Gauci Cunningham in their Reply and upholding their third and sixth plea, while dismissing defendant Saviour Balzan’s second plea and upholding the first and fourth pleas raised in his Reply, and while upholding defendant Jude Amin Utulu’s third, fourth and fifth pleas as raised in his Reply, finds that the article published on www.illum.com.mt and in the printed version of the newspaper ‘Illum’ on the 16th June 2019, entitled ‘*L-MFA emmnet lil min ibagħbas il-logħob mhux lili*’ are not libellous or defamatory of plaintiff and consequently dismisses Adrian Farrugia’s demands in his Application.

All costs are to be borne by plaintiff, Adrian Farrugia.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**