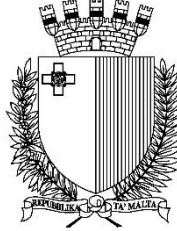


is-subartikolu 26(1) tal-Kap. 595 il-Prim Ministru għandu d-dritt li jistabbilixxi aġenzija tal-Gvern b'ordni li għandha tidher fil-Gazzetta tal-Gvern, u skont is-subartikolu 26(4) jista' wkoll jabboljha b'ordni oħra fl-istess Gazzetta - aġenzija hija effettivament mod kif il-Gvern jista' jiffunzjona aħjar billi jiddelega l-funzjonijiet tiegħu lil entitajiet speċjalizzati f'qasam partikolari, iżda li jibqgħu dejjem responsabbli lejha -



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tal-1 ta' Novembru, 2023

Appell Inferjuri Numru 132/2022 LM

Benard Kwabena Agboyle (Karta tal-Identità numru 0209026A)
(*'l-appellat'*)

VS.

Identity Malta Agency
(*'l-appellanta'*)

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul minn **Identity Malta Agency** [minn issa 'l quddiem 'l-appellanta'] mid-deċiżjoni tas-7 ta' Ottubru, 2022, [minn issa 'l

quddiem ‘id-deċiżjoni appellata’] mogħtija mill-Bord tal-Appelli dwar l-Immigrazzjoni [minn issa ‘l quddiem ‘il-Bord’] fil-konfront tal-appellat **Benard Kwabena Agboyle (K.I. nru. 0209026A)** [minn issa ‘l quddiem ‘l-appellat’], fejn filwaqt li għamel riferiment għad-dispożizzjonijiet tal-Kap. 217 u dawk tal-L.S.217.17, laqa’ l-appell tal-appellat bil-kundizzjoni li dan kellu jippreżenta applikazzjoni ġdida fi żmien ġimgħa min-notifika tad-deċiżjoni appellata, u ordna lill-appellanta sabiex tipproċessa u tiddeċieda din l-istess applikazzjoni.

Fatti

2. Il-fatti tal-appell odjern huma s-segwent. L-appellant kien qiegħed jaħdem hawn Malta ma’ M.P.T. Serv. Op. Ltd. bħala xufier tal-karozzi tal-linja skont permess uniku validu mill-4 ta’ Diċembru, 2020 sat-12 ta’ Diċembru, 2021¹, iżda minħabba raġunijiet ta’ saħħa huwa ma setax ikompli jibqa’ jagħmel dak ix-xogħol. Meta talab sabiex jingħata xogħol ieħor mal-istess kumpannija sakemm jerga’ jieħu saħħtu lura, din bdiet tnaqqaslu s-siġhat tax-xogħol u sussegwentement ukoll ikkunsidrat li huwa kellu jingħata *unpaid leave*, b’mod li huwa sab ruħu f’pożizzjoni finanzjarja diffiċli, u għalhekk sab xogħol ma’ Zarb Coaches li ppromettiet li tippreżenta lill-appellanta applikazzjoni għal bidla fil-prinċipal tiegħu. Iżda sadanittant fit-3 ta’ Settembru, 2021² l-appellat irċieva mingħand l-appellanta ittra fejn ġie nfurmat li l-permess tax-xogħol tiegħu kien tħassar għaliex l-ewwel impjeg tiegħu kien ġie terminat, u sussegwentement irċieva ittra oħra fl-20 ta’ Jannar, 2022 mingħandha, fejn ġie nfurmat li l-

¹ Ara kopja Permess ta’ Residenza atti tal-Bord *a fol.* 1.

² Ara kopja *a fol.* 7 fl-istess atti.

applikazzjoni pprezentata minn Zarb Coaches għan-nom tiegħu kienet giet irrifjutata għar-raġuni li huwa kien qiegħed jirrisjedi hawn Malta b'mod illegali.

Mertu

3. L-appellat appella minn din id-deċiżjoni quddiem il-Bord fit-13 ta' Mejju, 2022 sabiex id-deċiżjoni tal-appellanta tiġi mħassra.
4. L-appellanta għażlet li ma twegibx.

Id-deċiżjoni appellata

5. Il-Bord wasal għad-deċiżjoni appellata wara li għamel is-segventi konsiderazzjonijiet:

"2. Submissions filed, evidence produced and considerations of the Board

*The Board observed that when the appeal was filed, the receipt issued instructed the parties to submit any further documentation within fifteen days. At the outset, the Board declares that although it is not legally bound to hold sittings, Art. 3(2) of the Administrative Justice Act (Chapter 490 of the Laws of Malta) stipulates that amongst the principle which this Board, amongst other bodies, is bound to uphold, is the principle of equality of arms. The Board refers to the judgment of the Court of Appeal **Edwin Zarb et vs Gilbert Spiteri et** (decided on 6th February 2015) in which it was held that the principle audi alteram partem does not necessarily mean that the parties must be physically heard but that they must be given sufficient time to present the evidence they wish to present. It is up to the court (or in this case, the Board) to decide what should be done in the interest of justice. Dr. Tiziana Micallef, legal counsel to the appellant, lodged a letter of appeal on his behalf, whereby she stated that:*

- *Circumstantial facts and evidence have led the appellant to an irregular position in Malta, beyond his control and due to third parties' wrong doings;*

- *The appellant had been working for Malta Public Transport with a valid work permit, but was experiencing some health issues which no longer allowed him to spend long hours behind the driving seat;*
- *The appellant asked the company to provide him with some other work within the same company until he recovers, however the employer started to decrease his hours of work, which led the appellant to financial difficulties;*
- *Consequently, the appellant started looking for alternative work and ended up resigning from Malta Public Transport since he had been placed on unpaid leave due to his medical condition;*
- *Hence, this led the appellant to seek employment elsewhere;*
- *Meanwhile, the appellant's passport had also expired, and for this reason, the appellant applied for a new passport, which in itself was a point of concern, since it could very easily deter the appellant from being able to apply for a new job with another company;*
- *The processing of the new passport was also, unfortunately, delayed due to an error in the new passport, therefore his new passport was issued on 5th November 2021;*
- *On July 2021, the appellant also started to attend a part-time course at Mcast – Undergraduate Diploma of Auto Electronics and Electrical Technology – which course he attends twice a week and is a two year course – through this course, the appellant aims at improving his skills here in Malta, in order to have a better job position as well as better income;*
- *He continued to look for a new job which would allow him the possibility of work without detriment to his health, and was finally offered a job with Zarb Coaches, who promised to submit his change of employer application with Identity Malta, however this led to the appellant receiving his first letter from Identity Malta Agency, informing him that his work permit had been revoked as his employment had been terminated;*
- *Upon receipt of this revocation document, Zarb Coaches informed the appellant that they were submitting a new application for him, but unfortunately, they had never really taken action in order to regularise the appellant's position at the time he was still legally residing in Malta;*
- *Given this situation, despite the fact that the appellant tried desperately to seek new work, no one was ready to offer him a job with a regularized work permit; and*
- *Furthermore, on 20th January 2022, he also received another refusal, the second letter from ID Malta Agency, for his application submitted by Zarb*

Coaches Limited, on the grounds that he was staying in Malta without proper documentation.

The legal counsel requested the Immigration Appeals Board to understand the circumstantial factors which led to the appellant being in this situation and allow the appellant the necessary time frame to submit his new application for the Single Work Permit to be issued under the new employer who wishes to employ him.

The Board observed the following documents in the appellant's file:

- *Revocation of Residence permit letter;*
- *The application and letter of appeal;*
- *The Board's registered receipt of the appeal;*
- *Emailed correspondence pertaining to the appellant's case;*
- *A copy of the official letter, signed by the Consul of the Ghana High Commission in Malta, confirming that the appellant had applied for the renewal of his passport;*
- *A copy of the appellant's Maltese Residence Card;*
- *Hospital documents, verifying that the appellant did undergo health problems and needed medical attention as well as rest; and*
- *Mcast document, confirming that the appellant was attending the said course.*

The Board noted that ID Malta did not file any reply.

Although this appeal is 'fuori termine', the Board has gone deeply into the merits of this case and examined also all the medical evidence presented, which led the same Board to give the following Decision."

L-Appell

6. L-appellanta ppreżentat ir-rikors tal-appell tagħha quddiem din il-Qorti fl-14 ta' Ottubru, 2022 fejn qiegħda titlob sabiex jogħgobha tħassar u tirrevoka d-deċiżjoni appellata, filwaqt li tikkonferma d-deċiżjoni tagħha tat-3 ta' Settembru, 2021, bl-ispejjeż taż-żewġ istanzi kontra l-appellat. Tgħid li l-aggravju tagħha huwa li t-terminu tal-appell impost permezz tas-subartikolu 25A(7) tal-Kap. 217 ma kienx ġie rrispettat, u għaldaqstant kien tardiv.

7. L-appellat wieġeb fil-5 ta' Mejju, 2023, fejn issottometta li l-appell interpost għandu jigi miċhud, u stante li d-deċiżjoni appellata hija waħda ġusta u korretta din kienet timmerita konferma fl-intier tagħha għal dawk ir-raġunijiet li huwa jfisser fit-tweġiba tiegħu.

Konsiderazzjonijiet ta' din il-Qorti

8. Il-Qorti ser tgħaddi sabiex qabel xejn tikkunsidra ż-żewġ kwistjonijiet ta' natura preliminari li qiegħed jissolleva l-appellat, fejn l-ewwel waħda tirrigwarda l-allegata prova min-naħa tal-Avukat tal-Istat li huwa debitament awtorizzat mill-appellanta sabiex jintavola l-appell għaliha u li m'għandu l-ebda kunflitt ta' nteress fil-każ odjern. Jispjega li skont is-subartikolu 91A(3) tal-Kostituzzjoni ta' Malta, "*L-Avukat tal-Istat għandu jkun il-konsulent tal-Gvern fi kwistjonijiet ta' liġi u opinjoni legali. Huwa għandu jaġixxi fl-interess pubbliku u għandu jissalvagwardja l-legalità tal-azzjoni tal-Istat.*". Jirrileva wkoll li skont l-artikolu 27 tal-Kap. 595, l-appellanta hija korp ġuridiku b'personalità u rappreżentanza legali u ġuridika separata u distinta. Għalhekk isostni li l-Avukat tal-Istat għandu juri permezz ta' prova li huwa għandu l-awtorità mingħand l-appellanta sabiex jintavola l-appell odjern u li m'għandu l-ebda kunflitt ta' interess. Fin-nuqqas, huwa jikkontendi li din il-Qorti għandha tiddikjara l-appell odjern irritu u null.

9. Skont is-subartikolu 26(1) tal-Kap. 595 il-Prim Ministru għandu d-dritt li jistabbilixxi aġenzija tal-Gvern b'ordni li għandha tidher fil-Gazzetta tal-Gvern, u saħansitra skont is-subartikolu 26(4) jista' wkoll jabboljha b'ordni oħra fl-istess Gazzetta. Is-subartikolu 27(1) tal-istess liġi tippreskrivi li dik l-aġenzija kif

stabbilita “...jistgħu jingħatawlha kull funzjoni jew operat tal-Gvern taħt din il-liġi jew xi liġi oħra”, li għandhom jiġu ndikati fl-ordni appena riferita fejn għandu wkoll jiġi ndikat il-Ministru responsabbli għaliha. Minn dan kollu huwa ċar li aġenzija hija effettivament mod kif il-Gvern jista’ jiffunzjona aħjar billi jiddelega l-funzjonijiet tiegħu lil entitajiet speċjalizzati f’qasam partikolari, iżda li jibqgħu dejjem responsabbli lejha. Għaldaqstant il-Qorti tikkunsidra li jsegwi li l-Avukat tal-Istat għandu wkoll iservi bħala konsulent tal-aġenziji stabbiliti mill-Gvern u jaġixxi wkoll proċeduralment għan-nom tagħhom. Ma tagħraf l-ebda impediment fil-liġi li jwaqqfu milli jaġmhel dan, u sakemm dik l-aġenzija minn jeddha tiddeċiedi taħtar lil konsulent legali tal-għażlatagħha. F’tali każ tassew l-awtorizzazzjoni għandha tkun waħda ċara u mingħajr l-eżistenza ta’ kunflitt ta’ nteress.

10. It-tieni kwistjoni li qiegħed jissolleva l-appellat hija li għaladarba huwa ċittadin tal-Ghana, liema pajjiż mhux ‘Stat Membru’ skont il-L.S. 217.17, is-subartikolu 25A(8) tal-Kap. 217 ma jikkonċediex dritt ta’ appell, u għalhekk id-deċiżjoni appellata hija waħda finali.

11. Il-Qorti tikkunsidra li l-appellat għandu raġun għaliex ir-residenza tiegħu, kif saħansitra qiegħda tinsisti l-appellanta stess, dakinhar li ġew intavolati l-proċeduri quddiem il-Bord kienet waħda mhux konformi mal-liġi. Għaldaqstant mhuwiex ikkontestat li huwa kellu u għandu jitqies bħala immigrant ipprojbit ai fini tad-dispożizzjonijiet tal-imsemmi Att, li jfisser li m’hemm l-ebda appell mid-deċiżjoni tal-Bord.

Decide

Għar-raġunijiet premissi, il-Qorti tiċċad l-appell tal-appellanta, u tikkonferma d-deċiżjoni appellata fl-intier tagħha.

L-ispejjeż tal-appell odjern u dawk tal-proċeduri quddiem il-Bord għandhom ikunu a karigu tal-appellanta.

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.
Imħallef**

**Rosemarie Calleja
Deputat Registratur**