



QORTI TAL-APPELL

IMĦALLFIN

**S.T.O. PRIM IMĦALLEF MARK CHETCUTI
ONOR. IMĦALLEF JOSEPH R. MICALLEF
ONOR. IMĦALLEF TONIO MALLIA**

Seduta ta' nhar l-Erbgħa, 15 ta' Novembru, 2023.

Numru 40

Rikors numru 41/23/1

Il-Perit u Arkitett Ċivili David Paul Grima

v.

**Il-Perit Andre` Pizzuto fil-kwalità tiegħu ta' President għan-nom u in
rappreżentanza tal-kamra tal-periti**

Il-Qorti:

1. Dan huwa appell tal-Perit David Paul Grima minn deċiżjoni (minn issa 'l hemm imsejħha "d-deċiżjoni appellata") komunikata lilu mill-Kunsill tal-Kamra tal-Periti f'ittra li ġġib id-data tat-23 ta' Jannar, 2023¹, li biha għarrfitu li fl-20 ta' Jannar, 2023, kienet bidlet is-sanzjoni li mponiet fuqu

¹ Dok "DPG01", f'paġ. 16 tal-proċess

f'deċiżjoni tagħha tat-13 ta' Settembru, 2022, li biha u għar-raġunijiet hemm imfissra, instab ħati ta' prattika li hija inkonsistenti mad-dinjità tal-professjoni ta' perit, u imponiet fuqu l-piena tas-sospensjoni tal-*'warrant'* għal tlett (3) xhur mid-data li fiha dik id-deċiżjoni kellha tiġi ppublikata fil-Gazzetta tal-Gvern. F'dik l-istess deċiżjoni tniżżel ukoll li jekk l-appellant kien ser tkun qed jirregola ruħu b'tali mod li jerga' jiġi konformi mad-Direttiva bin-numru 08/22, il-Kunsill kien ser jerga' jiltaqa' fi żmien ħmistax-il jum u dan biex inaqqas dik il-piena għal waħda ta' *'ammonizzjoni'*. Dan kollu kien seħħ wara li, f'Settembru tal-2022, l-appellant tefa' l-offerta tiegħu f'sejħa għall-offerti bin-numru ta' referenza SPD7/2022/081, minkejja li b'*'direttiva'* maħruġa mill-istess Kamra tal-Periti fit-8 ta' Awwissu, 2022, (Dir 08/22), il-periti ġew ordnati sabiex ma jiħdux sehem f'dik is-sejħa għall-offerti;

2. Id-deċiżjoni li ħadet il-Kamra tal-Periti fit-13 ta' Settembru, 2022² kienet tgħid kif ġej:

"Investigation

The Council of the Kamra tal-Periti became aware that Perit David Grima (DG) had submitted a bid for tender SPD7/2022/081 on 05/09/2022, and proceeded to open an investigation on a potential breach of Directive DIR 08/22.

After verifying that DG indeed appeared on the list of tender bidders, and submitted a request via email on 06/09/2022 requesting his position on the matter by 12/09/2022.

DG responded on 06/09/2022 as follows:

² Imressqa bħala Dok "DPG05" mar-rikors promotur, f'paġ.24 – 6 *tergo* tal-proċess

“Yes, I submitted my name for the tender. I could not afford to lose the income generated by this job which I have been doing for a while and in fact generates a decent income contrary to the KTP’s misinformed conclusions. Had I not applied I would have lost this job and I could not afford to.”

On 12/09/2022, the Council received correspondence co-signed by DG which stated the following:

“While the undersigned appreciate that the Kamra tal-Periti is investigating the matter relating to the Commissioner for Revenue tender for professional services of property valuations it would have been more appropriate if such an inquiry was initiated several years ago. This state of affairs has been in existence for well over twenty-five years and the Kamra tal-Periti never expressed any objections to the system in place.

Furthermore, it is to be noted that prior to the issuing of the directive the KTP did not deem it fit to consult with the undersigned, a number of whom have been rendering this service to the Commissioner for Revenue for well over twenty years. The directive as issued by the Kamra expected the undersigned to relinquish their position and forfeit the income derived pending any settlement of the dispute which the Kamra has registered with the CFR. In our opinion, the forfeiture of our engagement with the CFR, without any tangible guarantees by the KTP constitutes a gross injustice and financial burden which would have to be borne exclusively by the undersigned.

It would also be pertinent to point out that the regulation of professional fees has been liberalised. In fact, KTP had issued directive 1/10 and informed its members via a circular that this liberalisation is effective as from 29 December 2009. (Vide: <https://kamratalperiti.org/dir-0110-amendments-to-the-tariff-of-fees-tariffk/>). This was further reiterated in a more recent KTP directive 01/18.

In view of the above, the investigation will undoubtedly examine the matter in depth. In particular it should consider the conflict between the directive under consideration and the current state of the law relating to professional fees. We regret that prior to the Kamra issuing of the directive we were not consulted and that our vested interests were completely ignored.”

During Council Meeting 22.36 held on 12/09/2022, the Council determined that there was sufficient prima-facie evidence to open a formal conduct case and proceed with deliberations.

Decision

The Council of the Kamra tal-Periti proceeded immediately with its final deliberations. The following Members were present:

Perit Andre Pizzuto (President);

*Perit Dr Jeanette M. Munoz Abela (Vice President);
Perit Ivynne Grixti (Treasurer);
Perit Matias Camilleri De Marco (Honorary Secretary);
Perit Simone Vella Lenicker (Past President);
Perit Toni Bezzina MP;
Perit Lara Brincat;
Perit Damian Vella Lenicker*

The Council reviewed all the evidence gathered during the investigation, and in particular DG's written statements. The Council made the following considerations:

1. The objective of the Directive is to ensure that the dignity of the profession is safeguarded from deleterious public procurement processes that would consolidate a drop in standards in the valuation audits. It is inconceivable to the Council how a valuation audit, which would be used to potentially challenge professional valuation reports drawn up by Periti in line with the Kamra's valuation standards, can be undertaken at a fee of €25 excluding VAT inclusive of disbursements for the planning research necessary to establish compliance.

2. It is further inconceivable to the Council how the same fee applies to different typologies of properties irrespective of value, size, and complexity, ranging from a garage to a hotel resort complex.

3. The ultimate aim, which was further expounded upon in Circular CIR 09/22 dated 29/08/2022, was to ensure that periti providing this service receive remuneration commensurate with the value of the work, the liabilities, and the professional obligation to safeguard the public good.

4. It is the Council's responsibility at law to uphold standards within the profession and take the necessary action to achieve such an aim.

5. The argument raised by DG relative to the service having been rendered to the CFR at these fees for over twenty-five years is not material given that the Directive was only published on 08/08/2022

6. The other argument raised by DG relative to the liberalisation of professional fees is also not material, given that the Council is not mandating fees through this Directive.

7. Furthermore, the Council was not in a position to consult with members of the profession who had been already delivering this service, given that there was no public record of the list. Nevertheless, extensive consultations were held with some members of the profession after the Directive was published to

explain the context and the discussions that had been had with the CFR.

After making these considerations, it proceeded to make the following determinations:

a. Breach of the Professional Code of Conduct

No breach was detected .

b. Breach of a directive of the Kamra tal-Periti

DG breached Directive DIR 08/22, which instructed members of the profession not to submit bids for tender SPD7 /2021/08.

c. Professional negligence, misconduct or malpractice

No breach was detected.

d. Behaviour which is not consistent with the dignity of the profession

By placing personal financial gain, over the interest of the profession and the public good, defying a clear Directive, and agreeing to carry out a service for a fee that can never be commensurate with the expected standards of execution, DG acted in a manner which is inconsistent with the dignity of the profession.

Having taken into account the above considerations and the fact that the respondent has a clean professional conduct record, the Council has determined that Perit David Grima's warrant is to be suspended for a period of three (3) months from the date of publication of this penalty in the Government Gazette.

The Council has further decided that should Perit David Grima bring himself in line with Directive DIR 08/22 within two weeks from the date of this decision, the Council will reconvene to commute this penalty to an admonition.”;

3. B’ittra li ġġib id-data tat-22 ta’ Settembru, 2022³, l-appellant baġhat jgħarraf lill-Kamra tal-Periti li kien qiegħed jirtira l-offerta tiegħu fis-sejħa

³ Dok “DPG06”, f’paġ. 27 tal-proċess

u li għalhekk ma kellu jkun hemm ebda sospensjoni tal-*warrant* tiegħu, bla ħsara għal kull jedd li seta' kellu u b'ħarsien tal-jeddijiet tiegħu fil-liġi;

4. Id-deċiżjoni appellata meħuda mill-Kamra tal-Periti fl-20 ta' Jannar, 2023⁴ hija intestata "*Commutation*" u tgħid kif ġej:

"The Council of the Kamra tal-Periti refers to Professional Conduct Decision dated 13/09/2022 in regards to Perit David Grima.

The Council was reconvened 16/01/2023 on this case following the publication on 06/01/2023 of the Award Notice of tender with reference SPD7/2022/081 on the Department of Contracts' website. The following Members were present:

- omissis -

The Council reviewed the Award Notice and acknowledged that Perit David Grima did not appear on the list of Recommended Tenderers.

Although it is unclear whether this is a result of the letter he had written addressed to the Kamra dated 22/09/2022 which he forwarded in scanned form to the Commissioner for Revenue via email on even date, or whether it was due to a non-compliant bid, the Council resolved to commute its decision of 13/09/2022 by withdrawing the penalty of a three-month suspension and issuing an admonition to Perit David Grima.

This admonition shall be registered in the records of Perit David Grima held by the Kamra, and may constitute an aggravating factor should any further instances of a similar nature be brought to the Kamra's attention in the future.

This commutation is to be read in conjunction with the Professional Conduct Decision of 13/09/2022 which outlines the Council's justification thereto";

5. Billi l-appellant ħassu aggravat b'din id-deċiżjoni, appella minnha b'rikors imressaq fit-3 ta' Frar, 2023, li bih u għar-raġunijiet hemmhekk

⁴ Dok "DPG01", f'paġ. 17 – 8 tal-proċess

imfissra, talab lil din il-Qorti sabiex *“tħassar, tirrevoka u tannulla d-deċiżjoni meħuda mill-Kamra tal-Periti li permezz tagħha [...] ġie misjub ħati ta’ aġir inkonsistenti mad-dinjità tal-professjoni u kwindi tilliberah minn kull ħtija u b’hekk tirrevoka d-deċiżjoni appellat u tordna t-tħassir ta’ kwalunkwe ammonizzjoni reġistrat fir-records ta’ Perit David Grima. B’riżerva għal kull azzjoni ta’ natura kostituzzjonali spettanti lill-mittenti. Bl-ispejjeż kontra l-istess Kamra appellata”*;

6. Min-naħa tagħha l-Kamra tal-Periti (minn issa ’l hemm imsejħha “l-Kamra appellata”), bi twegiba mressqa minnha fis-27 ta’ Marzu, 2023, laqgħet għal dan l-appell billi warrbet l-aggravji u, b’mod preliminari, qalet li l-appell tressaq wara ż-żmien u b’hekk ma jiswiex u li, f’kull każ, id-deċiżjoni appellata kienet tajba u kien imissha tkun konfermata;

7. Il-Qorti, wara li ħadet qies ta’ dan kollu, semgħet it-trattazzjoni tal-avukati tal-partijiet waqt is-smiġħ tal-10 ta’ Ottubru, 2023, kif ukoll rat l-atti, hija issa f’qagħda biex tgħaddi għas-sentenza;

Ikkunsidrat:

8. Il-Qorti jidhrilha li, qabel kull ħaġ’oħra, trid tistħarreg **il-preġudizzjali proċedurali** mqajma mill-Kamra appellata li l-appell tressaq wara ż-żmien. F’dan ir-rigward, hija tgħid li appell imressaq minn

deċiżjoni tagħha jrid jitressaq fi żmien ħmistax-il (15) jum minn dakinhar li jkun irċieva avviż tad-deċiżjoni dwaru⁵;

9. L-appellant jgħid li l-appell tiegħu huwa mid-deċiżjoni meħuda mill-Kamra appellata fl-20 ta' Jannar, 2023, u l-appell tiegħu tressaq fit-3 ta' Frar, 2023, u b'hekk f'anqas mill-ħmistax-il jum preskritt mir-Regolamenti. Madankollu, jidher li l-biċċa l-kbira mill-aggravji tiegħu jirrigwardaw il-proċeduri u d-deċiżjoni meħuda kontrih fit-13 ta' Settembru, 2022. Minn dik id-deċiżjoni l-appellant ma kienx appella (għalkemm kollegi oħrajn tiegħu kienu appellaw quddiem din il-Qorti minn deċiżjonijiet bħal dawn fiż-żmien li trid il-liġi u din il-Qorti tat id-deċiżjoni tagħha⁶). Mela, din il-Qorti ma tista' tagħti l-ebda fehma u wisq anqas xi sentenza dwar dik id-deċiżjoni;

10. Min-naħa l-oħra, ladarba l-appellant innifsu ddikjara li huwa qiegħed jappella mid-deċiżjoni meħuda fl-20 ta' Jannar, 2023, huwa dwar dan biss li din il-Qorti tista' tikkummenta u xejn aktar. Ma huwiex xieraq li l-appellant jinqeda bid-deċiżjoni tal-Kamra appellata tal-20 ta' Jannar, biex "jerga' jgħajjex" id-deċiżjoni tat-13 ta' Settembru, 2022, bħallikieku dik kienet xi provvediment preliminari tad-deċiżjoni mogħtija f'Jannar ta' din is-sena;

⁵ Reg 8 tar-Regolamenti dwar il-Kamra tal-Arkitetti (L.S. 390.01)

⁶ Ara, b'eżempju, is-sentenza tagħha fit-12 ta' Lulju, 2023, fl-ismijiet **Perit Anthony Galea v. Perit Andrè Pizzuto noe**

11. Minn qari xieraq tad-deċiżjoni appellata, joħroġ ċar ukoll li din ma kienet deċiżjoni “ġdida” xejn, kif l-appellant isejñilha u jippretendi li hi. Id-deċiżjoni appellata hija kommutazzjoni tas-sanzjoni li ngħatat lill-appellant f’Settembru tal-2022 u mhijiex proċediment ġdid. Dak it-tnaqqis tal-piena oriġinarjament inflitta fuq l-appellant, kien saħansitra maħsub fid-deċiżjoni nnifisha, meta tat lill-appellant żmien ħmistax minn dakinhar biex jirregolarizza l-qagħda tiegħu. Fil-fatt, hu hekk għamel u, f’ittra li bagħat lill-Kamra appellata f’it tal-jiem wara, għarrafha li kien qiegħed jirregola l-qagħda tiegħu billi rtira l-offerta li huwa għamel fis-sejħa pubblika mertu tal-kwistjoni. Tabilhaqq, l-appellant jgħid li dan kien għamlu “bla preġudizzju” u b’riżerva tal-jeddijiet tiegħu, imma għall-għanijiet ta’ dan l-appell, dik ir-riżerva ma tibdilx il-fatti. Kemm hu hekk, meta f’Jannar ta’ din is-sena ħarġet il-lista tal-periti li ntgħażlu fis-sejħa u wara li ħareġ li l-appellant ma kienx fost dawk magħżula, ingħatat id-deċiżjoni appellata li żammet il-kelma li kienet ingħatat fid-deċiżjoni ta’ Settembru tal-2022. Ta’ min jgħid li fil-parti tal-aħħar tagħha – wara li imponiet it-twiddiba fuq l-appellant u neħñiet minn fuqu s-sanzjoni tas-sospensjoni tal-*warrant* – id-deċiżjoni appellata tgħid ċar u tond li “*this commutation is to be read in conjunction with the Professional Conduct Decision of 13/09/2022 which outlines the Council’s justification thereto*”. Mela, qajla jista’ wieħed jgħid li d-deċiżjoni appellata hija l-eżitu ta’ xi

proċediment ġdid jew differenti minn dak li ntemm bid-deċiżjoni ta' Settembru 2022 u li minnha ma tressaq l-ebda appell mill-appellant;

12. Minn dan kollu joħroġ li biex il-Qorti tista' tistħarreg l-aggravji kollha tal-appellant fl-appell tiegħu, trid tabilfors tqis iċ-ċirkostanzi li kienu jgħoddu fil-proċediment u d-deċiżjoni li ngħatat fit-13 ta' Settembru, 2022, u li minnha l-appellant ma ressaqx appell;

13. Minħabba f'hekk, joħroġ li l-preġudizzjali proċedurali mqajma mill-Kamra appellata hija ta' xkiel biex din il-Qorti tistħarreg l-aggravji tal-appellant. Dan ix-xkiel jidher aktar ċar meta wieħed jara t-talba tal-appellant fir-rikors li bih ressaq dan l-appell tiegħu u fejn, fost l-oħrajn, jitlob li din il-Qorti tħassar id-deċiżjoni meħuda mill-Kamra li permezz tagħha l-appellant instab ħati ta' aġir inkonsistenti mad-dinjità tal-professjoni. Dik id-deċiżjoni m'għandha x'taqsam xejn mad-deċiżjoni appellata, imma kienat il-parti dispożittiva tad-deċiżjoni li ngħatat f'Settembru tal-2022 u li minnha l-appellanti ma appellax. It-talba magħmula fir-rikors tal-appell tal-appellant tmur kważi għal kollox kontra l-ewwel premessa li biha jiftaħ dak l-att promotur;

14. Għalhekk, il-Qorti tasal għall-fehma li l-preġudizzjali preliminari mqajma mill-Kamra appellata hija mistħoqqa u b'hekk l-aggravji tal-

appellant ma jistgħux ikunu kunsidrati billi jirreferu għal proċediment u għal deċiżjoni li dwarha ma tressaqx appell fiż-żmien mogħti mil-liġi;

Decide:

15. Għal dawn ir-raġunijiet, din il-Qorti taqta' u tiddeċiedi billi:

Tiċhad l-appell tal-Perit u Arkitett Ċivili David Paul Grima mid-deċiżjoni mogħtija mill-Kunsill tal-Kamra tal-Periti fl-20 ta' Jannar, 2023, **bl-ispejjeż** kontra l-istess appellant.

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Deputat Reġistratur
da