



Court Of Appeal

Judges

**THE HON. CHIEF JUSTICE MARK CHETCUTI
THE HON. MR. JUSTICE GIANNINO CARUANA DEMAJO
THE HON. MR JUSTICE ANTHONY ELLUL**

Sitting of Monday 8th January, 2024.

Number: 4

Application Number:726/21/1 AD

Betty Mathew Antony Mukkattu

v.

Kummissarju tat-Taxxi Interni

1. This judgement refers to an appeal application filed by plaintiff from a judgement delivered by the Civil Court, First Hall on the 11th November 2022 by means of which it decided that the present proceedings, instituted by the plaintiff in terms of Article 469(A) of Chapter 12 of the Laws of Malta, are time-barred in terms of Sub-Article 3.

Preliminary Considerations

Facts of the Case

2. The facts which led to the present case, as substantiated with documentary evidence filed in the acts of these proceedings, are the following:

2.1. Plaintiff is an Indian national who has been residing in Malta since 2016 with her husband, Jijo Kunjachan John, and their two children;

2.2. By means of an application received by defendant on the 13th June 2019,¹ plaintiff applied for special tax status under the *Global Residence Programme Rules, 2013*. She did so through Dr Lydia Abela, who at the time was her authorised registered mandatary ["ARM"];

2.3. By means of a letter dated 8th July 2019 defendant informed plaintiff's ARM that documents submitted were not sufficient for him to be able to proceed with the due diligence process and further documentation was requested²;

¹ Fol. 40 *et seq.*

² Fol. 110

2.4. On the same day (8th July 2019), defendant sent an email to plaintiff's ARM which read as follows:

“With reference to our telephone conversation, kindly find attached a scanned copy of the Acknowledgement letter. The original of which may be collected from our receptionist at your convenience.

Furthermore, kindly note that the questionnaire and photos are being returned yourselves since they need to be typed and certified accordingly.

As discussed, please note that the main GRP special tax status contains the following conditions:

- *€15,000 minimum tax (paid every year)*
- *15% on any remitted income*
- *35% on any local sourced income (which is separate from the above €15k minimum tax).”*

2.5. That by means of a letter dated 6th August 2019³, and acknowledged by defendant on the 8th August 2019, plaintiff's ARM submitted further documentation to the defendant;

2.6. By means of an email dated 13th August 2019, defendant informed plaintiff's ARM that the due diligence process had commenced and she would be informed of the outcome thereof in due course;⁴

³ Fol. 112 *overleaf et seq*

⁴ Fol. 131

2.7. By means of an email dated 8th October 2019,⁵ defendant informed plaintiff's ARM that he was in receipt of the due diligence report and required the following clarifications:

- “● *Please identify all sources of income for Mrs Mukkattu and her husband. Provide evidence for each income stream. What is their combined annual income?*
- *Please provide evidence that Mrs Mukkattu owns or rents a qualifying property.*
- *Please describe the activities of MJ Support.”*

2.8. On the 5th November 2019, plaintiff's ARM replied to the defendant's request by submitting further documentation⁶;

2.9. By means of another email dated 20th November 2019⁷, defendant informed plaintiff's ARM as follows:

“... from the provided information, we noticed that their joint income is very low when considering that they have the below costs.

- *€15,000 minimum tax payment yearly;*
- *Rental of property min €9,600;*
- *Husband's wage will be taxed at 35% since it is earned in Malta;*
- *Health Insurance Policy; and*
- *Living expenses.*

Can you kindly provide us with a budgeted income statement.”

⁵ Fol. 132

⁶ Fol. 133

⁷ Fol. 139

2.10. By means of a letter dated 4th December 2019⁸ plaintiff's ARM submitted to the defendant a budgeted income statement showing, for the year 2020, a projected household net income of €32,750 and net savings of €15,350;⁹

2.11. By means of a letter dated 6th February 2020, plaintiff was informed that *"the due diligence process carried out in relation to the said application has raised a number of concerns"*, and that consequently her application was not accepted;¹⁰

2.12. On the 30th April 2020 defendant received an updated *'Questionnaire in Connection with the Global Residence Programme'* regarding the plaintiff.¹¹ This was followed by an email from Dr. Victor Bugeja on behalf of plaintiff requesting defendant an acknowledgment of receipt of her application;¹²

2.13. By means of a declaration filed with defendant on the 28th May 2020, plaintiff authorised Dr. Victor Bugeja to assume the role of her ARM;¹³

⁸ Fol. 141

⁹ Fol. 141

¹⁰ Fol. 9, 142

¹¹ Fol. 146 *et seq.*

¹² Fol. 152

¹³ Fol. 153

2.14. By means of a letter dated 15th October 2020 (received by defendant on the 27th October 2020), plaintiff's new ARM objected to defendant's decision of the 6th February 2020:

“stante illi hija w żewġha għandhom preżenzjalment depożiti bankarji fl-ammont kumplessiv ta' €39,893.85 li huma suffiċjenti sabiex titthallas il-kera għal sena, jmantnu lilhom nfushom u jħallsu ukol it-tariffa taħt dan il-Program ta' residenza, u dana kif jirriżulta ampjament mill-annessi dokumenti. Fil-fatt l-klijenti tiegħi għandhom depożiti bankarji kemm fl-HSBC Bank Malta plc u kemm ukoll f' żewġ banek oħra fl-India.”¹⁴

2.15. By means of another letter received by the defendant on the 13th January 2021, plaintiff's ARM made further arguments to substantiate her request;¹⁵

2.16. By means of a letter dated 9th March 2021, plaintiff's ARM was informed as follows:

“Reference is made to the letter received on the 8th January 2021 in relation to the rejection of the application for special tax status under the Global Residence Program Rules, 2013 in respect of Mr. Betty Mathew Antony Mukkattu.

We regret to inform you that Ms. Betty Mathew Antony Mukkattu cannot be accepted under the Global Residence Program as she is not considered to be in receipt of stable and regular resources for the purposes of paragraph of rule 4 of the Global Residence Programme Rules, 2013”¹⁶

2.17. By judicial letter filed on the 21st May 2021, plaintiff called upon the defendant to review her application for special tax status¹⁷.

¹⁴ Fol. 154

¹⁵ Fol. 158 *et seq.*

¹⁶ Fol. 10, 196

¹⁷ Fol. 11 *et seq.*

The Filing of Proceedings for Judicial Review

3. Plaintiff filed the present proceedings on the 23rd July 2021, whereby she complained that the manner in which her case was handled:

“leaves much to be desired and gives rise to very serious doubts as to whether the decision ultimately taken on 9 March 2021 was based on the plaintiff’s actual circumstances”.

4. She requested the Court to:

“1. Declare that the decision of the respondent dated 9 March 2021 wherein the applicant’s application for special tax status was refused was an abuse of the respondent’s power and that it was done for improper purposes or on the basis of irrelevant considerations in terms of Article 469A(1)(b)(ii) of Chapter 12 of the Laws of Malta;

2. Consequently annul the decision of the respondent dated 9 March 2021 wherein the applicant’s application for special tax status was refused;

3. Order the respondent to restart the applicant’s application for special tax status;

And this saving any order which this Honourable Court deems it appropriate to give.

With costs.”

5. By means of a sworn reply filed on the 15th September 2021, defendant *inter alia* replied that the present proceedings are time-barred in terms of Article 469(3) of Kap. 12 which provides a six month time limit for the filing of actions of judicial review of administrative acts.

6. During the first sitting of the 7th October 2021 the case was adjourned for proof and submissions regarding the aforementioned plea¹⁸.

7. On the sitting of the 2nd December 2021 the First Court ordered that proceedings continue in English.¹⁹

8. During the sitting of the 14th July 2022 the parties made their final submissions with regard to the first preliminary plea raised by the defendant and the case was adjourned for judgement.²⁰

The Appealed Judgement

9. By means of a judgement delivered on the 11th November 2022 [“the appealed judgement”], the First Court upheld defendant’s first plea and declared the present action time-barred in terms of Article 469A(3) of Cap. 12 of the Laws of Malta, with costs against the plaintiff.

10. The considerations made by the Court of First Instance in the appealed judgement were the following:

“18. The sworn application leaves no doubt regarding the fact that this case is one of judicial review of an administrative act, filed in terms of Article 469A of the Laws of Malta. In fact, the first request indicated

¹⁸ Fol. 26

¹⁹ Fol. 28

²⁰ Fol. 280

by the plaintiff in her sworn application is precisely for a declaration that the defendant's decision dated ninth (9th) March 2021 constituted abuse of the defendant's power and was done for improper purposes or on the basis of irrelevant considerations "in terms of Article 469A(1)(b)(iii) of Chap 12 of the Laws of Malta". In addition, the Court notes, for all intents and purposes, that the defendant does not dispute the fact that this is a case for judicial review of an administrative act filed in terms of Article 469A of Chapter 12, and in fact bases the first preliminary plea on sub-article (3) of the same provision at law;

19. *Neither is it contested by the defendant that the decision which the plaintiff is requesting to be reviewed by this Court, that is, the decision by virtue of which the plaintiff's application for special tax status was refused, is an administrative act in terms of Article 469A of Chapter 12 of the Laws of Malta;*

20. *Having established these two points, the Court is thus in a position to turn to Article 469A(3) of Ch 12 of the Laws of Malta, upon which the first preliminary plea raised by the defendant is based, which article at law establishes the following:*

21. *An action to impugn an administrative act under sub-article (1)(b) shall be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is earlier.*

22. *The case in question revolves around an application filed in June 2019 for special tax status under the Global Residence Programme. By virtue of a letter dated sixth (6th) February 2020, the Commissioner for Revenue informed the first Authorised Registered Mandatory (henceforth "**ARM**") acting on the plaintiff's behalf that, "the said application to benefit from the special tax status has not been accepted"²¹. Following a series of correspondence between the second ARM acting on the plaintiff's behalf, another letter dated ninth (9th) March 2021²² was sent by the Commissioner for Revenue to the latter ARM, stating that the plaintiff, "cannot be accepted under the Global Residence Programme". A judicial letter (nr 2107/2021) was filed by the plaintiff against the Commissioner for Inland Revenue on the twenty-first (21st) May 2021²³, and this case was instituted on the twenty-third (23rd) of July 2021;*

23. *The main point at issue is whether the administrative act, or rather, the decision taken by the defendant by virtue of which the plaintiff's application for special tax status was refused, is to be considered as being the one in the letter dated sixth (6th) February 2020, or the one in the letter dated ninth (9th) March 2021;*

²¹ Vide **Doc A** attached to the sworn application, a fol 9 of the case file

²² Vide **Doc B** attached to the sworn application, a fol 10 of the case file

²³ Vide **Doc C** attached to the sworn application, a fol 11 of the case file

*“By virtue of a judgement given in the names **C. Fenech Clarke Tyres Limited vs Awtorita’ ta’ Malta dwar l-Ambjent u l-Ippjanar**²⁴, this Court as otherwise presided declared:*

*Illi illum il-gurnata huwa stabbilit li ż-żmien ta’ sitt xhur imsemmi fl-artikolu 469A(3) tal-Kap 12 huwa wieħed ta’ dekadenza [**Gerard Zammit vs Awtorita’ tal-Ippjanar et** (unpublished); PA. RCP, 5/4/2001 (in parte) **David Crisp vs Korporazzjoni Telemalta** (unpublished); and Civil Appeal 31/05/2002 **Zamboni et noe vs Direttur tal-Kuntratti et** (Coll Vol LXXXVI.ii.313)]. Dan ifisser li tali terminu ma jġix interrott jew sospiż bħalma jġri fil-każ ta’ terminu ta’ preskrizzjoni. Fi kliem ieħor, l-atti ġudizzjarji li normalment jitqiesu bħala tajbin biex jinterrompu ż-żmien preskrittiv, jew il-fatt li jkun għaddejnin diskussjonijiet bejn il-partijiet wara li jkun sar l-għemil amministrattiv ma jservu xejn biex iżommu l-mogħdija tas-sitt xhur li ssemmi l-liġi;*

*Illi l-liġi ma ssemmi xejn dwar il-mod li bih parti mgarrba minn għemil amministrattiv issir taf b’dak l-għemil li jkun. Il-liġi ma tgħid li ż-żmien jibda għaddej minn meta l-parti interessata tircievi tagħrif formali jew uffiċjali miktub dwar id-deċiżjoni [PA, GV, 27/06/2003 **Denis Tanti vs Ministru għall-Iżvilupp Soċjali et**]: tgħid biss li ż-żmien ta’ sitt xhur jibda jgħaddi minn dak inhar li l-parti ssir taf jew messha ssir taf b’dak l-għemil, liema data tiġi l-ewwel;*

[...]

Illi l-Qorti tqis li wieħed imissu jagħraf bejn każ fejn persuna tkun mgħarrfa b’deċiżjoni finali meħuda mit-tmexxija pubblika dwar xi talba tagħha u każ fejn dik il-persuna, għalkemm mgħarrfa b’deċiżjoni bħal dik, titlob lill-awtorita’ li tkun li terġa’ taħsibha u tikkunsidraha. F’każ bħal dan, il-Qorti tqis li d-deċiżjoni meħuda tkun waħda tabilhaqq aħħarija u dak li jkun għandu jieħu r-rimedju tal-istħarriġ minnufih u mhux joqgħod kull tant żmien jitlob ir-reviżjoni bil-għan li jibqa’ jgħid li l-proċess għadu miftuħ. Wieħed għandu jzomm quddiem għajnejh li l-artikolu 469A innifsu (fis-sub-inciz (2) tiegħu), jagħmilha ċara li, f’każ ta’ nuqqas ta’ tweġiba min-naħa tal-amministrazzjoni pubblika għal xi talba, ż-żmien jitqies li jibda għaddej b’sieħħ minn xahrejn (jew żmien ieħor espressament mitlub minn xi liġi) minn meta ssir it-talba min-naħa tač-čittadin. Dan biex juri kemm il-liġi nnifsiha, f’azzjoni bħal din, tfittex li ż-żminijiet għat-teħid tar-rimedju għad-deċiżjoni ma jibqgħux jiġġebbd u b’mod artifiċjali;”

24. The same legal considerations were also applied by the Court of Appeal (Superior Jurisdiction) in the judgement given in the names **Ragonesi & Company Limited pro et noe vs Korporazzjoni Enemalta et**²⁵. In addition, the Court observed that:

“Il-liġi hija ċara meta tgħid li t-terminu ta’ sitt xhur jiskatta mill-mument meta l-individwu li għandu interess isir jaf jew seta’ isir jaf b’dak l-

²⁴ Appl Nr 609/2011, Civil Court (First Hall), Hon Mr Justice J. R. Micallef, 18th May 2017 (not appealed)

²⁵ Appl Nr 9410/2006, Court of Appeal (Superior Jurisdiction), 24th November 2017

għemil amministrattiv. Il-leġislatur ma jgħidx li t-terminu jiskatta minn meta l-individwu jsir jaf ir-raġuni wara tali għemil amministrattiv. Huwa ċar li l-leġislatur irid jorbot dan it-terminu ta' dekadenza ma' kriterju oġġettiv u mhux ma' wieħed soġġettiv, alterminti individwu jista' jibqa' jistħarreg għemil amministrattiv fuq perjodu ta' snin qabel jiddeċiedi li jipproċedi bil-kawża ta' sħarriġ gudizzjarju. Ċertament dan ma kienx il-ħsieb tal-leġislatur wara l-kliem adottat minnu f'dan il-provvediment tal-liġi."

25. Similarly, in **Dragonara Gaming Limited vs Il-Ministru tal-Finanzi et**, the Court of Appeal (Superior Jurisdiction) also noted:

"Bħala terminu ta' dekadenza, tali terminu ma jġix interrott b'xi diskussjonijiet li setgħu saru bejn il-partijiet u darba skada ż-żmien, l-azzjoni tas-soċjeta' attriċi hija perenta."

26. Returning back to the case at hand, this Court notes how, in her affidavit²⁶, **Gineve Schembri**, who represents the Commissioner for Revenue, explains:

"Ngħid illi permezz ta' ittra datata 6 ta' Frar 2020 Dr Lydia Abela, bħala mandatarja ta' Betty Matthew Anthony Mukattu, ġiet informata li l-applikazzjoni, sabiex tibbenefika mill-istatus speċjali ta' taxxa taħt il-Programm ta' Residenza Globali, ma ġietx aċċettata [kif jidher fl-ittra annessa hawn u immarkata bħala 'Dok GS1']; Tali deċiżjoni kienet waħda finali;

Ngħid illi sussegwentement Dr Victor Bugeja bagħat korrispondenza oħra fisem Betty Matthew Anthony Mukattu b'referenza għall-applikazzjoni tat-13 ta' Ġunju 2019, li kienet ilha li ġiet rejected sa mis-6 ta' Frar 2020 u huwa ġie infurmat b'dan."

27. The letter dated sixth (6th) February 2020²⁷ stated:

"We would like to inform you that the due diligence process carried out in relation to the said application has raised a number of concerns.

In view of this state of affairs, we regret to inform you that the said application to benefit from the special tax status has not been accepted."

28. On the other hand, the second letter, dated ninth (9th) March 2021²⁸, stated:

"Reference is made to the letter received on the 9th January 2021 in relation to the rejection of the application for special tax status under the Global Residence Programme Rules, 2013 in respect of Mrs Betty Mathew Antony Mukattu.

²⁶ Vide **Dok GS** a fol 31 of the case file

²⁷ **Doc A** attached to the sworn application, a fol 9 of the case file

²⁸ **Doc B** attached to the sworn application, a fol 10 of the case file

We regret to inform you that Ms Betty Mathew Antony Mukkattu cannot be accepted under the Global Residence Programme as she is not considered to be in receipt of stable and regular resources for the purposes of the provisions of paragraph d of rule 4 of the Global Residence Programme Rules, 2013.”

29. *What happened between the first and second letter is unclear. Upon cross-examination²⁹, **Gineve Schembri** explains:*

“GS: There were some correspondence because with the official application there were some missing documents and we asked for them. [...] Now, when we evaluated all the documents, we realised that they are not able to – they don’t have sufficient funds to be under this program, and we issued the letter of rejection in February 2020. Now afterwards, we received various calls and correspondence from another ARM.

Dr K Busietta: Being Dr Victor Bugeja?

GS: Exactly, yes, being Dr Victor Bugeja, asking about this application. But because he wasn’t their ARM, we couldn’t give him information. So he was appointed as an ARM. Then he sent various letters to our offices asking about the application and various reasons why it was rejected etc. And then, we decided that on March 9th 2021 we issue a letter to tell him that the application was rejected back in February of 2020 and the reasons why the application was rejected.”

30. *On the other hand, however, in her affidavit³⁰, the plaintiff states:*

“a. When Dr Victor contacted Ms Gineve in connection with the filing of appeal [from the decision in the letter dated 6th February 2020] as it was the discretion of the Commissioner to proceed with the application, he was asked to correct the Questionnaire and also to be the ARM.”³¹

b. On 15/09/2020 Dr Victor Bugeja informed Jijo John that Ms Gineve had answered via SMS. On meeting him it was informed that the corrected questionnaire submitted was not considered and that objection to the non-acceptance letter dated 6th February 2020 had to be filed and also provided bank documents for deposit of 35,000 Euros in the account.”³²

31. *Thus, while on the one hand, Gineve Schembri testifies that the application was one, and that the second letter was merely an elaboration on the decision given in the first letter, the plaintiff seems to have been under the impression that the second letter was a decision given independently from the first, and this is why the plaintiff*

²⁹ Transcript of the testimony given by Gineve Schembri in open Court during the sitting held on 2nd December 2021 can be found a fol 36 of the case file

³⁰ A fol 204 et seq of the case file

³¹ Vide para 5 a fol 205 of the case file

³² Vide para 8 a fol 206-207 of the case file

addresses the letter dated ninth (9th) March 2021 as the one being the letter which relayed the decision of the Commissioner for Revenue. The Court is thus faced with conflicting views of that which took place between the first letter and the second letter;

32. *First and foremost, however, the Court notes that the plaintiff does not mention anywhere in her affidavit that she was ever present at the meetings with Dr Bugeja. What she states, therefore, seems to not only be a second-hand account (that is, what her husband told her about the meetings), but a third-hand account, as it is what Dr Bugeja told her husband that Ms Schembri had told him. Not only does this amount to hearsay evidence in terms of Article 598 of Ch 12 of the Laws of Malta, but the plaintiff brought forward no proof to support her claims. The plaintiff's husband did not testify, and neither did Dr Bugeja, while Gineve Schembri gave a different version of events. Thus, there stand before the Court two versions of the same events – one of which is a first-hand account by the defendant, and the other being an unsubstantiated second or third-hand account by the plaintiff;*

33. *In addition, the Court also notes how, in a letter dated fifteenth (15th) October 2020³³ addressed to the Commissioner for Revenue, it is stated:*

“Nikteb għan-nom u fl-interess ta’ Ms Betty Mathew Antony Mukkattu li tagħmel referenza għall-ittra tiegħek datata 6 ta’ Frar 2020 fejn inforza tagħha inti ċħadt l-applikazzjoni tal-klijenta tiegħi għal status taħt ir-Residence Programme Rules 2014.

Il-klijenta tiegħi qiegħda għall-finijiet u effetti kollha fil-liġi tinterponi l-oġġezzjoni tagħha għal tali deċiżjoni [...]”

This, in the Court's opinion, is a clear acknowledgement of the fact that the decision in the letter dated sixth (6th) February 2020 was the actual decision regarding the plaintiff's application. Even the very fact that, in the fifth (5th) paragraph of the sworn application, the plaintiff refers to the letter dated sixth (6th) February 2020, as “the rejection letter”, in itself proves that the plaintiff actually considered the decision communicated to her by virtue of the said letter as the administrative act which she is presently contesting;

34. *The Court is more inclined to favour the account of events given by the defendant, that is, that the letter dated ninth (9th) March 2021 was not, in itself, a decision, but merely an elaboration on the decision relayed in the letter dated sixth (6th) February 2020. The Residence Programme Guidelines (2014)³⁴ exhibited by the plaintiff herself state:*

³³ Vide document a fol 154, emphasis added by this Court

³⁴ Vide pg 7 of the Guidelines attached to the affidavit of the plaintiff, a fol 216 of the case file. The same clause can be found in page 9 today, in the updated Global Residence Programme Guidelines, version 2.0 – 2020

“If the due diligence outcome is negative the ARM is notified of the main issues of concern, further to which the ARM together with the applicant may provide an explanation. It is in the Commissioner’s discretion whether to refuse or proceed with the application process.”

The letter dated sixth (6th) February 2020 clearly states that the due diligence outcome was negative, rendering, in the Court’s opinion, this letter as the one bearing the Commissioner for Revenue’s decision. Whilst it is true that the plaintiff was well within her rights to file additional documentation and/or provide an explanation, the actual administrative action taken by the Commissioner for Revenue was the letter dated sixth (6th) February 2020, and not the letter dated ninth (9th) March 2021. This bearing in mind the legal principles established by the Maltese Courts in the jurisprudence outlined and reproduced above;

35. In her final submissions, the plaintiff argues that the letter dated sixth (6th) February 2020 states that the application “cannot be accepted”, and does not state that it is being rejected; however, the Court notes that the same words, that is, “cannot be accepted”, are also used in the letter dated ninth (9th) March 2021, and that therefore the plaintiff’s argument does not hold water;

36. In consideration of the above, the Court notes that, in being filed on the twenty-third (23rd) July 2021, the case being examined was filed over a year after the decision of the Commissioner for Revenue of the sixth (6th) February 2020 was taken, rendering this case time-barred in terms of Article 469A(3) of Chapter 12 of the Laws of Malta.”

Appeal Proceedings

11. By means of the present appeal plaintiff complains that:

“i. The appellant had a right of review. When accepting the new ARM in the name of the appellant, and when he accepted the documentation and other clarifications following the first letter of February 2020 the Tax Commissioner entered into next phase of the application process, particularly a process of re-evaluation of the appellant’s application. The first was a concern of due diligence and lacked the necessary elements of a refusal, hence the date of rejection of the application was the letter of 9 March 2021;

ii. That the degree and burden of proof in preliminary exceptions rests on the respondent appealed, and in case of doubt this should go in favour of the appellant.”

12. Basing herself on these grounds, plaintiff requested this Court to cancel and revoke the appealed judgement, and refer the case back to the First Court to hear and decide the case on its merits, with costs against defendant.

13. By means of a reply filed on the 5th January 2023 defendant replied that plaintiff's appeal should be rejected and the judgement of the Court of First Instance confirmed.

Considerations

First complaint.

14. In her first ground for appeal, plaintiff referred to Section C of the Residence Programme Guidelines (2014), issued by the Minister responsible for Finance. She rests her case, in particular, on the following part:

“If the due diligence outcome is negative the ARM is notified of the main issues of concern, further to which the ARM together with the applicant may provide an explanation. It is in the Commissioner’s discretion whether to refuse or proceed with the application process.”

15. Plaintiff contends that in terms of Article 96 of Chapter 123 the guidelines must be read and construed as one with the Global Residence

Programme Rules (S.L. 123.148) and therefore, she has a legitimate basis and also an acquired right to expect that the letter of the 2nd February 2020, wherein defendant expressed concerns stemming out from the due diligence process, was not a final rejection letter but one subject to reconsideration. In this context, she refers to a judgement delivered by the Civil Court, First Hall on the 16th May 2019, *Godfrey Ciangura vs Ministeru tal-Intern u Affarijiet Parlamentari u I-Kumitat tas-Sigurtà tal-Avjazzjoni* as well as another judgement delivered by this Court on the 31st January 2019, *Mizzi Antiques Limited vs Chairman tal-Malta Enterprise* and argues that in those cases this court confirmed that once an administrative decision was subject to reconsideration, the time-limit for filing an action for judicial review starts running only from the final decision after said reconsideration. In conclusion she also adds that she was not responsible for the lapse of time between the first and the second letter as during that time the country and public administration were absorbed by the pandemic making physical accessibility to and communication with the public administration not only difficult but also prohibited.

16. In his reply defendant does not contest the applicability of the guidelines which he himself issued. He argues however that plaintiff is interpreting them wrongly since same do not give her the right to have her application reconsidered. The application was finally decided on the

6th February 2020. Defendant explains that the guidelines merely state that, should the outcome of the due diligence exercise be negative, an applicant will be notified of the main issues of concern, hence giving the applicant the opportunity to clarify same before a final decision is made. In this regard, defendant argues that plaintiff was indeed given the opportunity to rectify certain issues raised further to the due diligence process. In this regard he refers to an email which his representative sent plaintiff's ARM on the 8th October 2019 at fol. 132 whereby she was informed that the due diligence report had been finalised and further clarifications were required. Defendant goes on to argue that, further to a reply from plaintiff's ARM, his representative had reiterated that the issue was that plaintiff's income was very low. A reply which plaintiff's ARM countered by sending defendant a statement of plaintiff's prospective income. However, according to the defendant, said statement further proved that the plaintiff did not meet the requirements of the scheme, and therefore he had no option but to issue the decision of the 6th February 2020, thereby informing the plaintiff that her application for special tax status could not be accepted. Defendant further contends that S.L. 123.148, which regulates the scheme in question, does not stipulate any form of objection from decisions taken further to applications made thereunder, and that any correspondence sent by his representative to plaintiff's new ARM after the 6th February

2020 was simply: (i) in response to correspondence received; and (ii) confirming the decision taken on the 6th February 2020.

17. The Global Residence Programme Rules (S.L. 123.148) provide for a special tax status for qualifying individuals. Rule 3 thereof reads as follows:

“(1) An individual, as duly represented by an authorised registered mandatary, may apply to the Commissioner for special tax status under these rules, in such form as the Commissioner may require and by paying a non-refundable administrative fee of six thousand euro (€6,000) upon application:

Provided that applications in respect of which the qualifying property is a qualifying owned property situated in the south of Malta, the non-refundable administrative fee shall be that of five thousand and five hundred euro (€5,500) to be paid upon application.

(2) Where it is established that the individual mentioned in sub-rule (1) qualifies as a beneficiary, the Commissioner shall determine in writing that such individual is granted special tax status under these rules.

...”

18. Further to this enactment, the Commissioner for Revenue issued guidance notes setting out the application and interpretation of said Rules by the Department³⁵ wherein it is *inter alia* stated that:

“II. Procedure for application

An application for special tax status under the Global Residence Programme may only be submitted to the Commissioner through the services of an authorised registered mandatary (ARM). The applicant needs to authorise such services by completing and signing in original Part 1 of the application form.

...

C. Step-by-step procedure of the application process

³⁵ [The GLOBAL RESIDENCE PROGRAMME for upload \(gov.mt\)](#)

Once an application together with all the required documentation, including the Questionnaire (and its requisite documents) as well as the bank draft in relation to the administrative fee is submitted to the Commissioner, it is checked for completeness and vetted accordingly. An acknowledgement letter is sent to the ARM indicating the progress of the application. In the case of missing information or documents, these are indicated as this would prevent the application from being processed any further until such omission is rectified.

An applicant need not be the owner or lessee of a qualifying property at time of application and may submit the certified final deed or lease agreement, as the case may be, at a later stage. However:

- in order for an applicant to benefit from the reduced administrative fee, in the case of an owned immovable property situated in the south of Malta, the certified final deed of purchase needs to be submitted at application stage;*
- special tax status will not be confirmed unless and until the certified final deed or lease agreement, as the case may be, is submitted.*

A valid application will then be forwarded for the due diligence process. Once this process has been completed, the ARM will be notified of the outcome. If the outcome is positive, a face-to-face meeting with the applicant and the ARM will be scheduled, following which, a letter of intent is issued and sent to the ARM once the application may continue to be processed. This will be accompanied by a notice of primary residence which would need to be completed, signed by the applicant and submitted in original.

The letter of intent is valid for twelve months from the date of issue of the said letter, within which time the certified lease agreement or final deed, as the case may be, will need to be submitted in order for the confirmation letter to be issued.

If the due diligence outcome is negative the ARM is notified of the main issues of concern, further to which the ARM together with the applicant may provide an explanation. It is in the Commissioner's discretion whether to refuse or proceed with the application process.

It is important that full and accurate information is provided in the application form and accompanying documents. In cases of doubt as to how much detail is to be provided, more is preferable. Any omissions or incorrect details may cause a delay in the processing of the application. Giving misleading information, omitting or concealing information is viewed very seriously and would be seen as evidence of untrustworthiness.”

19. Defendant does not contest that he is bound by the procedure set out in the guidelines, as provided in Article 96(2) of the Income Tax Act (Cap. 123). What he does not agree with is plaintiff's understanding and interpretation thereof.

20. Gineve Schembri, the tax department application who was liaising with plaintiff's ARM, explained that the scheme is intended for '*high net worth individuals*'. She confirmed that a person benefitting from this programme has "*..... to pay fifteen thousand (€15,000) on remitted income only. They need to have one hundred thousand (€100,000) at least*". She also confirmed that on examining the information supplied by plaintiff's ARM the defendant would not have sufficient income to qualify for the programme in issue.

21. The application process, as explained in the guidelines, is basically the following:

- i. Submission of Application: an application should be submitted through an authorised registered mandatary (ARM) together with a non-refundable administrative fee of €6,000 and all required documentation;

ii. Acknowledgment and Vetting of Application: an acknowledgement is sent to the applicant's ARM, also indicating if there are any missing documents preventing the application from being processed further;

iii. Due Diligence Process: once any such omission is rectified and all relevant information is in hand, CfR proceeds with the due diligence process;

iv. Upon Completion of the Due Diligence Process:

- should the outcome of the due diligence process be **positive**, the ARM and the applicant will be requested to attend a face-to-face meeting;

- should the outcome of the due diligence exercise be in the **negative**, the ARM is notified of the main issues of concern, further to which the ARM together with the applicant may provide an explanation. It is then in the Commissioner's discretion whether to **refuse** or **proceed** with the application process;

v. Letter of refusal or Letter of Intent is issued;

vi. Confirmation Letter: where a letter of intent is issued, if within the period of its validity (12 months), applicant provides CfR with a certified lease agreement or final deed of purchase of property in Malta, a confirmation letter will be issued.

22. In the applicant's case it transpires that:

i. Submission of Application: plaintiff submitted her application through Dr Lydia Abela, her then ARM, on the 13th June 2019³⁶;

ii. Acknowledgment and Vetting of Application: by means of a letter dated 8th July 2019 and a separate email sent out on the same day defendant:

(a) acknowledged plaintiff's application;

(b) informed her ARM that documents submitted were not sufficient for him to be able to proceed with the due diligence process;

(c) listed the required additional documents;

³⁶ Fol. 40 *et seq.*

(d) informed her she had 30 days to rectify this, following which the application would be deemed withdrawn³⁷; and

(e) reminded her of the conditions which needed to be met to enjoy the tax status applied for, that is €15,000 minimum tax (paid every year); 15% on any remitted income; and 35% tax on any local sourced income (separate from the above €15,000 minimum tax);³⁸

iii. Due Diligence Process: plaintiff submitted the requested documentation by means of a letter dated 6th August 2019³⁹ (received by defendant on the 8th August 2019). A few days later, namely on the 13th August 2019, defendant informed plaintiff's ARM via email that the due diligence process had commenced and she would be informed of the outcome thereof in due course;⁴⁰

iv. Upon Completion of the Due Diligence Process: plaintiff's ARM was informed, by means of an email dated 8th October 2019⁴¹, that:

(a) **defendant was in receipt of the due diligence report; and**

³⁷ Fol. 110, 111

³⁸ Fol. 111

³⁹ Fol. 112 *overleaf et seq*

⁴⁰ Fol. 131

⁴¹ Fol. 132

(b) **required the clarifications** and further evidence regarding all sources of income of plaintiff and her husband, including their combined annual income, proof of ownership or rent of a qualifying property, and a description of the activities of her business in Malta (MJ Support).

This was followed by:

- a letter dated 5th November 2019, whereby plaintiff's ARM submitted further documentation. In the letter she refers to a document signed by an accountant with regards to two local companies (MJ Support Limited that offers employee recruitment services to local Maltese clients and Marina Express Limited). Information which the court understands was in reply to the defendant's request to plaintiff to identify her sources of income. In the letter it is also stated that plaintiff's husband is a registered nurse and works at St James Hospital;⁴²

- an email sent by defendant's representative to plaintiff's ARM on 20th November 2019,⁴³ informing her that plaintiff and her husband's joint income is very low when considering costs consisting of €15,000 minimum tax payment per year; rental of

⁴² Fol. 133

⁴³ Fol. 139

property minimum €9,600; husband's wage will be taxed at 35% since earned in Malta; health insurance policy; and living expenses. The defendant requested a budgeted statement;

- a letter dated 4th December 2019⁴⁴ whereby plaintiff's ARM submitted to defendant a budgeted income statement showing, for the year 2020, a projected household net income of €32,750 and net savings of €15,350. Her gross income for the year 2020 is declared at €36,000;⁴⁵

v. Refusal of Application: By means of a letter dated 6th February 2020, plaintiff was informed that "*the due diligence process carried out in relation to the said application has raised a number of concerns*", and that consequently her application was not accepted.⁴⁶

23. The due diligence 'concerns' mentioned in the letter dated 6th February 2020, were known to the plaintiff since they had been flagged to her chosen ARM four (4) months prior, after the completion of the due diligence process, and again on the 20th November 2019. Shortcomings which plaintiff attempted to rectify in November and December 2019.

⁴⁴ Fol. 141

⁴⁵ Fol. 141

⁴⁶ Fol. 9, 142

24. Hence, it should have been, and indeed was, amply clear to the plaintiff that the letter issued on the 6th February 2020 was a final refusal of her application. So much so that the ‘objection letter’ filed by her newly appointed ARM on the 27th October 2020⁴⁷ states as follows:

*“Nikteb a nom u fl-interess ta’ Ms. Betty Matthew Antony Mukkattu li tagħmel referenza għall-ittra tiegħek datata 6 ta’ Frar 2020 fejn inforza tagħha **inti chadt l-applikazzjoni** tal-klijenta tiegħi għal status taħt ir-Residence Programme Rule 2014 ...”* (emphasis by the Court)

25. Said ‘objection letter’, which plaintiff sent to the defendant through her newly appointed ARM **eight (8) months after the decision of the 6th February 2020**, is not a review process contemplated in the law. Neither is it mentioned or provided for in the guidelines issued by the defendant. Therefore, plaintiff can have no legitimate claim, let alone an acquired right, to argue that said objection letter, and other letters she submitted to the defendant after the 6th of February 2020, re-opened her application for special tax status for re-consideration.

26. Defendant’s reply thereto, dated 9th March 2021⁴⁸, merely stated as follows:

“Reference is made to the letter received on the 8th January 2021 in relation to the rejection of the application for special tax status under the Global Residence Program Rules, 2013 in respect of Mr. Betty Mathew Antony Mukkattu.

We regret to inform you that Ms. Betty Mathew Antony Mukkattu cannot be accepted under the Global Residence Program as she is

⁴⁷ Fol. 154

⁴⁸ Fol. 10, 196

*not considered to be in receipt of stable and regular resources for the purposes of paragraph of rule 4 of the Global Residence Programme Rules, 2013*⁴⁹;

27. As confirmed by defendant's representative,⁵⁰ this letter was simply a response to plaintiff's newly appointed ARM informing him about the decision which the defendant had already taken on the 6th February 2020. In the interim there was no review process.

28. Indeed, plaintiff's correspondence in November and December 2020 was unilateral. There is no evidence that defendant re-opened the matter for discussion or re-evaluation. As rightly pointed out by the first court, plaintiff's claims to the contrary⁵¹ are just hearsay. Her ARM, Dr. Victor Bugeja, who she claims was advised by defendant to correct the application and submit an objection, did not testify. Neither did her husband, who was allegedly liaising with Dr. Victor Bugeja.

29. Therefore the Civil Court, First Hall correctly concluded that the six month period stipulated in Article 469A(3) for the filing of an action of judicial review of defendant's decision refusing plaintiff's application for special tax status started with effect from the 6th February 2020. Since plaintiff filed this case on the 23rd July 2021, that is almost a year after defendant's final decision, the case is time-barred.

⁴⁹ Fol. 10, 196

⁵⁰ Fol. 33 *et seq*

⁵¹ Fol. 159

30. Finally, any excuse relative to the pandemic is manifestly unfounded. The Closure of the Courts of Justice Order, 2020 (L.N. 65 of 2020) came into effect on the 16th March, 2020 and was repealed on the 5th June, 2020 (L.N. 230 of 2020). The latter also provided that:

“3. The suspension of the time limits as in force prior to the coming into force of this Order for the filing of any acts before a court following the conclusion of any proceedings before any Tribunal, board, commission, committee or other entity which does not operate from a building of the Courts of Justice shall remain in force for twenty (20) days from the coming into force of this order.

4. The suspension of time limits as in force prior to the coming into force of this order for the filing of any acts before a court or other tribunal, board, commission, committee or other entity which operates from the building of the Courts of Justice shall remain in force for a period of seven (7) days from the coming into force of this order.”

31. That therefore, with the exception of above time window, when legal time limits were in any case suspended, plaintiff had no impediment to file these proceedings within the time limit prescribed by law.

32. The Court therefore rejects plaintiff's first complaint.

Second Complaint.

33. By means of her second complaint plaintiff contends that the onus of proof should be on the defendant, and that any doubt resulting from conflicting versions should be interpreted in her favour.

34. The version of facts recounted by defendant's representative is supported by documentary evidence. On the other hand, plaintiff's affidavit is based on hearsay evidence which was never corroborated by her ARM, Dr. Victor Bugeja. Nor is it supported by any other documentary evidence. Consequently, there is no reason why the First Court should have relied on plaintiff's version of facts and discarded that of the defendant's representative.

35. Therefore, the court rejects also the second complaint.

Decision

For these reasons the Court rejects the appeal filed by plaintiff and confirms the judgement delivered by the Civil Court, First Hall on the 11th November, 2022.

All judicial costs are at the sole charge of the plaintiff.

Mark Chetcuti
Chief Justice

Giannino Caruana Demajo
Judge

Anthony Ellul
Judge

Deputy Registrar
da