



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tat-12 ta' April, 2024

Appell Inferjuri Numru 84/2023 LM

Salik Murtaza (Karta ta' Identità nru. 0215560A)
('l-appellant')

vs.

Aġenzija Identity Malta
('l-appellata')

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul minn **Salik Murtaza (Karta ta' Identità nru. 0215560A)** [minn issa 'l quddiem 'l-appellant'] mid-deċiżjoni tad-19 ta' Lulju, 2023, [minn issa 'l quddiem 'id-deċiżjoni appellata'] mogħtija mill-Bord tal-Appelli dwar l-Immigrazzjoni [minn issa 'l quddiem 'il-Bord'] fil-konfront tal-

appellata **I-Aġenzija Identity Malta** [minn issa 'l quddiem 'l-Aġenzija appellata'], fejn ċaħad l-appell tiegħu.

Fatti

2. Il-fatti tal-appell odjern huma s-segwenti. L-appellant kienu ilu jaħdem u jirrisjedi hawn Malta mis-sena 2019, wara li kien inħariġlu permess uniku *ai termini* ta' L.S. 217.17. Fis-27 ta' Marzu, 2022 huwa rriżenja mix-xogħol tiegħu ma' Victoria Bars Limited fejn kien impjegat bħala *storekeeper*, sabiex isib xogħol b'kundizzjonijiet aħjar. Għalhekk fl-4 ta' April, 2022 huwa kien ippreżenta applikazzjoni mal-Aġenzija appellata għal permess uniku, iżda l-istess Aġenzija appellata nfurmatu li huwa kien jinsab hawn Malta b'mod irregolari, u permezz tal-ittra tagħha tat-8 ta' Awwissu, 2022 irrifjutat l-applikazzjoni tiegħu. Fil-frattemp, il-prinċipal prospettiv tiegħu kien irċieva *email* fl-4 ta' Lulju, 2023 fejn l-appellant ingħata ħamest ijiem sabiex iressaq prova kuntrarja għal dak li kienet qiegħda tallega l-Aġenzija appellata, b'dana li l-istess *email* intbagħtet biss lill-imsemmi prinċipal prospettiv, u mhux lilu wkoll.

Mertu

3. L-appellant appella minn din id-deċiżjoni quddiem il-Bord fl-10 ta' Awwissu, 2022, u fil-15 ta' Settembru, 2022 ippreżenta sottomissjonijiet ulterjuri tiegħu permezz tal-avukat difensur tiegħu.

4. L-Aġenzija appellata wiegħbet fis-17 ta' Awwissu, 2022.

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. Robert Galea, legal counsel to the appellant, submitted a brief letter of appeal on his behalf, describing the appellant as feeling aggrieved by ID Malta’s decision and stating that the appellant is hereby availing himself of the right to appeal from the said decision, whilst reserving the right to produce further evidence and make further submissions in terms of law and practice, humbly requesting the Honourable Board to cancel, quash and overturn the said decision and that consequently, the application for a Single Permit as regards Residence and Work will be accepted and that his residence permit be issued.

In its Reply, Identity Malta Agency stated that:

- The Agency fails to understand how it is being expected to reply to the appellant’s appeal, when the appellant failed to list down the grounds upon which he is appealing from the Agency’s decision;*
- The appellant lodged his appeal on 7th July 2022 and no further submissions have been made by 10th August 2022, the date when ID Malta Agency asked the Board whether any further submissions with regard to this appeal were made and the Board’s secretary replied in the negative;*

- *On 8th August 2022, ID Malta Agency issued a refusal letter to Mr. Murtaza, informing him that his application was being refused in view that he is not legally staying in Malta;*
- *Mr. Murtaza was granted a single permit on the basis of his employment with Victoria Bars Limited, on 13th September 2021, which was valid till 13th September 2022. His employment was however terminated on 27th March 2022 and hence the scope for which the single permit had been granted ceased to exist;*
- *The appellant submitted his application for a new single permit on 5th July 2022, under the single permit procedure, and therefore, more than three months after his employment had been terminated;*
- *The appellant still failed to submit a new application or a Change of Employer with Termination application within this 10-day grace period and as a result the appellant no longer enjoyed legal status in Malta;*
- *Prior to issuing a refusal letter on 7th July 2022, ID Malta Agency notified the appellant that his application could not be processed in view that he was living in an irregular immigration position in Malta at the time of submitting his application;*
- *In fact, Mr. Murtaza did not provide any proof to the contrary and hence a refusal letter was issued by Identity Malta Agency on 8th August 2022.*

The Board observes the documents in the appellant's file:

- *ID Malta's decision;*
- *The application form and letter of appeal through legal counsel;*
- *The Board's registered receipt of the appeal;*
- *The reply by Identity Malta Agency;*
- *Emailed correspondence pertaining to the appellant's case; and*
- *Termination of Employment form (Victoria Bars Limited).*

3. Considerations

The Board acknowledges ID Malta's statements and recommendations since it is verified that the appellant has in fact not presented a change of employer form or his new employment form and when granted the grace period, he did not bother to avail himself of it. Furthermore, the Board notes that the content within the legal counsel's appeals letter is in fact 'Intention' to appeal and does not qualify as the required formal letter of appeal. Hence, the Board refers to:

Communication showing intention to appeal is not an appeal. Articles 142, 143 and 144 of the COCP explain precisely what an appeal is and what form it should take. Appellant's email or communication respects absolutely none of these rules."

L-Appell

6. L-appellant ipprezenta r-rikors tal-appell tiegħu quddiem din il-Qorti fis-27 ta' Lulju, 2023, fejn qiegħed jitlob sabiex titħassar u tiġi revokata d-deċiżjoni appellata, u dan filwaqt li l-atti jiġu rinvjati lura quddiem il-Bord sabiex dan jisma' l-partijiet u jagħti d-deċiżjoni tiegħu, jew li din il-Qorti tisma' hija stess il-partijiet u tiddeċiedi dwar il-mertu billi tilqa' t-talba tiegħu, u b'hekk tordna lill-Aġenzija appellata sabiex toħroġ il-permess ta' residenza in kwistjoni, bl-ispejjeż kollha kontra l-istess Aġenzija appellata.

7. L-Aġenzija appellata wiegħbet fl-14 ta' Awwissu, 2023 fejn issottomettiet li l-appell intavolat mill-appellant għandu jiġi miċħud, bl-ispejjeż kontra tiegħu.

Konsiderazzjonijiet legali

8. Il-Qorti ser tgħaddi sabiex qabel xejn tikkunsidra l-kwistjoni tal-irritwalità tal-appell odjern li qiegħda tiġi ssollewata mill-Aġenzija appellata, u dan għaliex allegatament ir-rikors tal-appell sar wara t-terminu preskritt mil-liġi ta' għaxart (10) ijiem. Tikkunsidra li tassew is-subartikolu 25A(8) tal-Kap. 217 jirrikjedi li appell minn deċiżjoni tal-Bord jista' jsir fi żmien għaxart ijiem mid-data tal-imsemmija deċiżjoni. Fil-każ odjern id-deċiżjoni kienet ittiegħdet fit-28 ta' April, 2023, u l-appellant ipprezenta r-rikors tal-appell tiegħu tliet xhur wara fis-27 ta' Lulju, 2023. Għalhekk m'hemmx dubju dwar it-tardività tal-prezentata tal-appell odjern. Dan wara li huwa kien ġie avżat permezz ta' ittra tal-Bord tal-5

ta' April, 2023¹ indirizzata lilu u mibgħuta fl-indirizz tiegħu, kif indikat fir-rikors tal-appell tiegħu stess, sabiex jgħaddi jiġbor kopja tad-deċiżjoni appellata f'nofsinhar tat-28 ta' April, 2023, u kien biss fid-19 ta' Lulju, 2023 li huwa kien mar ġabar il-kopja skont kif jirrizulta mill-*email* datata 20 ta' Lulju, 2023 ta' Dorian Zammit mill-Uffiċċju tas-Segretarju Permanenti tal-Ministeru għall-Affarijiet Interni, Sigurtà, Riforma u Eġwaljanza.² Il-Qorti tikkunsidra li d-disposizzjonijiet tas-subartikolu 25A(8) tal-Kap. 217 huma ċari, u ma jagħtu lok għall-ebda deroga, u għalhekk l-appell odjern huwa inammissibbli.

Decide

Għar-raġunijiet premessi, il-Qorti tiddikjara li l-appell odjern huwa tardiv u għaldaqstant irritu u null.

L-ispejjeż huma a karigu tal-appellant.

Moqrija.

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

**Rosemarie Calleja
Deputat Registratur**

¹ Kopja 'Dok IMA1' a fol. 31.

² Kopja 'Dok. F' a fol. 18.