Il-Qorti tal-Maġistrati (Malta) Bħala Qorti ta' Ġudikatura Kriminali

IL-PULIZIJA (SPETTUR NICHOLAS VELLA, SPETTUR RACHEL AQUILINA) V. CARMELA GRECH (KI. 558161M)

MAĠISTRAT: DR. VICTOR G. AXIAK

23/04/2024

IL-QORTI,

Rat l-imputazzjonijiet segwenti li nħarġu kontra l-imputata Carmela Grech bint Angelo Mifsud u Rita nee' Camilleri, mwielda fit-28 ta' Awwissu 1961 ġewwa l-Pieta' u residenti l-Mosta (imsejjħa "l-imputata") u ċioe talli fid-19 ta' Frar 2023 fil-ħin ta' bejn 08.00 hrs u 09.00 hrs ġewwa Triq Sant' Andrija, Swieqi, bħala sid il-vettura bin-numru ta' reġistrazzjoni MTN 785:

1. **Ħalliet lil persuna oħra tuża vettura bil-mutur fit-toroq meta għall-użu ta' dik il-vettura minn dik il-persuna ma kienx hemm fis-seħħ polza tal-assigurazzjoni dwar ir-riskji ta' terzi persuni (Art. 3(1) tal-Kap. 104).**

2. **Kellha vettura bil-mutur fit-triq, kemm ipparkjata, kemm qed tintuża, mingħajr ,a kellha liċenzja maħruġa mill-Awtorita' għat-Trasport f'Malta u naqset li ġġeddidha kull sena (Reg. 13(2) tal-Leġislazzjoni Sussidjarja 368.02).**

3. **Bħala sid tal-imsemmija vettura bil-mutur, naqset li tara li jkollha dejjem u f'kull żmien liċenzja ta' ċirkolazzjoni maħruġa mill-Awtorita' għat-Trasport f'Malta (Art. 14(3) tal-Leġislazzjoni Sussidjarja 368.02).**

Semgħet ix-xhieda miġjuba quddiemha mill-Prosekuzzjoni u ċioe ix-xhieda ta' PS 649 James Buhagiar (*affidavit)*.

Rat li fl-istadju tal-provi tad-difiża, l-abbli avukat difensur tal-imputata talab li jiġi sfilzat l-affidavit ta' PS 649 James Buhagiar stante illi fil-fehma tiegħu ġaladarba l-ġurament tal-istess PS 649 ittieħed quddiem Spettur tal-Pulizija (ossia Spettur Keith Scerri) u peress illi l-istess Spettur Xerri kien qed jaġixxi in rappreżentanza tal-Kummissarju tal-Pulizija, tali ġurament ma tteħidx skond dak li jiddisponi l-proviso tal-Art. 4 tal-Kap. 79 tal-Liġijiet ta' Malta billi l-Ispettur Xerri, fil-kapaċita' tiegħu msemmija, kellu u għandu "interess" fil-kawża.

Rat in-noti ta' sottomissjonijiet rispettivi ppreżentati:

- għan-nom tal-Prosekuzzjoni mill-Ispettur Rachel Aquilina,
- għan-nom tal-imputata mill-Avukat Dr. Charles Mercieca

Rat l-atti proċesswali.

Qed tagħti dan id-

Digriet

1. Qabel xejn il-Qorti trid tagħmel distinzjoni bejn il-punt imqajjem f'din il-kawża, u ċioe dak illi uffiċjal tal-korp tal-Pulizija, ossia Spettur, ma jistax jaġixxi bħala Kummissjunarju b'setgħa li jagħti l-ġurament f'atti li jkunu ser jintużaw fi proċeduri penali u l-punt imqajjem f'kawża diversi, quddiem din il-Qorti kif presjeduta, fis-sentenza fl-ismijiet **__Il-Pulizija v. Emanuel Degabriele__** (627/2022, 28/11/2023), liema sentenza ġiet appellata u qed tistenna l-eżitu finali tagħha. Fl-aħħar sentenza msemmija t-talba ta' sfilz ta' affidavit saret għaliex l-iSpettur illi aġixxa bħala Kummissjunarju b'setgħa li jagħti l-ġurament kien l-istess Spettur illi ppreżenta l-akkużi fil-konfront tal-imputata u li mexxa l-Prosekuzzjoni matul il-kors tal-proċeduri penali. Hemmhekk din il-Qorti kienet qalet fost affarijiet oħra s-segwenti:

    4. "L-*affidavit* imsemmi *inter alia* jġorr fuq kull paġna tiegħu l-firma ta' PC 386 J. Camenzuli bħala l-persuna li kien qiegħed jagħmel l-istess *affidavit* kif ukoll it-timbru u l-firma tal-Kummissjunarju b'setgħa li jagħti l-ġurament, li inzerta li kien l-Ispettur Nicholas Vella. Huwa proprju fir-rigward ta' dan tal-aħħar illi l-avukat difensur saħaq illi l-*affidavit* ma sarx kif suppost u dan għaliex skond hu l-Ispettur Vella ma setax joħroġ l-akkużi u jmexxi l-prosekuzzjoni kontra l-imputat u fl-istess ħin jagħti l-ġurament lix-xhieda li jkunu jridu jiddeponu bil-mezz tal-*affidavit*.

5. L-Art. 4 tal-Kap. 79 jipprovdi kif ġej:

'4. Il-Kummissjunarji hawn fuq imsemmija jistgħu jagħtu l-ġurament u jirċievu affidavits għall-ħwejjeġ kollha li jkunu meħtieġa minn liġijiet ta' Malta jew ta' xi pajjiż ieħor, inkella li jkollhom x'jaqsmu ma proċedimenti li jkunu qegħdin isiru jew li jkunu sejrin isiru quddiem qorti, inkella li raġonevolment sejrin iservu għal skop ġudizzjarju, inkella li jirrigwardaw l-eżerċizzju ta'jedd ċivili:
Iżda l-Kummissjunarji hawn fuq imsemmija ma jistgħux jeżerċitaw is-setgħat mogħtija lilhom minn dan l-artikolu <u>fi proċeduri li fihom huma jkunu l-avukati ta' waħda mill-partijiet jew li fihom huma jkollhom interess</u>.'

6. Skond l-avukat difensur, l-Ispettur Nicholas Vella bħala l-Ispettur li ħareġ iċ-*charges* u li mexxa l-prosekuzzjoni kontra l-imputat, kellu interess fl-eżitu tal-proċeduri u għalhekk ma setax ikun hu li jagħti l-ġurament lil PC 386 J. Camenzuli fl-*affidavit* tiegħu.

7. Il-Qorti tqis li kollox jħoll u jorbot fuq it-tifsira tal-kelma "*interess*". Sfortunatament id-dibattiti parlamentari li ppreċedew id-dħul fis-seħħ tal-artikolu in kwistjoni, kif sussegwentement emendat, ma jixħtu l-ebda dawl fuq din il-materja stante illi kien biss permezz tal-Att III tal-2002 illi daħlet fis-seħħ fil-liġi Maltija permezz tal-Art. 360A tal-Kap. 9, il-possibilità illi uffiċjali pubbliċi jibdew jiddeponu fi proċeduri sommarji quddiem il-Qorti tal-Maġistrati (Ġudikatura Kriminali) bil-mezz tal-*affidavit*.

8. Il-Qorti madanakollu tħoss illi l-kelma *interess* fil-proviso tal-Art. 4 tal-Kap. 79 m'huwiex l-istess interess ġuridiku rikjest fi proċeduri ta' natura ċivili liema interess, kif ġie ritenut diversi drabi fil-ġurisprudenza, għandu jkun **<u>dirett,</u>** **<u>personali</u>** u **<u>attwali</u>**. Hija l-fehma tal-Qorti illi l-interess rikjest fl-Art. 4 tal-Kap. 79 jista' jkun anke wieħed indirett jew saħansitra wieħed professjonali. Filwaqt li l-Ispettur Nicholas Vella ċertament ma kellu l-ebda interess dirett u personali f'din il-kawża (f'liema każ huwa lanqas kien ikun jista' jwettaq id-dmirijiet tiegħu bħala Prosekutur fiha), madanakollu fil-kapaċità tiegħu ta' Spettur tal-Pulizija u bħala l-persuna responsabbli għall-ftuħ tal-azzjoni kriminali u għat-tmexxija tagħha quddiem din il-Qorti, fl-isem tar-Repubblika ta' Malta[1], huwa ċertament kellu interess fl-eżitu tagħha fis-sens illi jara li din

[1] Art. 4(1) tal-Kap. 9 tal-Liġijiet ta' Malta

titmexxa sal-aħħar tagħha, skond il-proċeduri u r-rekwiżiti stabbiliti fil-liġi, qabel ma l-Qorti tagħti d-deċiżjoni finali tagħha u l-kawża eventwalment tgħaddi *in ġudikat.*

9. Fiċ-ċirkustanzi il-Qorti taqbel li ma kellux ikun l-Ispettur Vella li jagħti l-ġurament lil PC 386 J. Camenzuli fl-*affidavit* tiegħu u għalhekk tordna l-isfilz tiegħu."

2. Kif ġa ngħad apparti li din is-sentenza għadha qed tistenna l-eżitu finali mill-Qorti tal-Appell, il-fattispecie tat-talba għall-isfilz huma sostanzjalment diversi minn dawk tat-talba analoga f'din il-kawża għaliex fil-kawża *de quo* l-iSpettur illi aġixxa bħala Kummissjunarju b'setgħa li jagħti l-ġurament ma kellu xejn x'jaqsam la mal-investigazzjoni tar-reati ravviżati u lanqas mal-prosekuzzjoni tagħhom.

3. Huwa għalhekk illi l-Qorti ma tistax tikkondividi l-ħsieb tal-Prosekuzzjoni meta fin-nota ta' osservazzjonijiet tagħha saħqet illi l-Qorti għandha tħalli dan id-digriet għal wara li jiġi deċiż l-appell fis-sentenza msemmija.

4. Issa fil-kawża odjerna d-difiża *inter alia* qed targumenta illi l-Ispettur Keith Scerri, li quddiemu PS 649 James Buhagiar ħalef bil-ġurament tiegħu l-*affidavit* ippreżentat fl-atti, huwa subaltern u rappreżentant tal-Kummissarju tal-Pulizija, kif huma ukoll subalterni u rappreżentanti tal-Kummissarju, l-Ispettur Rachel Aquilina u l-Ispettur Nicholas Vella li qed imexxu l-prosekuzzjoni f'din il-kawża, u għalhekk peress illi l-azzjoni kriminali qed titmexxa f'isem l-Istat Malti mill-Pulizija Eżekuttiva, għan-nom tal-Kummissarju tal-Pulizija, l-Ispetturi kollha msemmija għandhom interess komuni u ċioe dik illi jwasslu l-kawża għal dikjarazzjoni ta' ħtija. Għalhekk, skond id-difiża, l-Ispettur Keith Scerri kellu u għandu "interess" f'dawn il-proċeduri daqs kemm għandhom interess l-Ispetturi li qed jmexxu l-prosekuzzjoni, xi ħaġa li hija pprojbita taħt il-proviso tal-Art. 4 tal-Kap. 79.

5. Fir-riċerka tagħha dwar din il-kwistjoni l-Qorti ma setgħetx tistrieħ fuq il-ġurisprudenza tal-Qrati tagħna billi ma rriżultax illi dan il-punt qatt ġie imqajjem fi proċeduri penali lokali. Lanqas ma setgħet tagħmel riferenza għal xi dibattiti parlamentari peress illi l-Kap. 79 tal-Liġijiet ta' Malta, daħal fis-seħħ bis-saħħa tal-Ordinanza VIII tal-1934, ossia għexieren ta' snin qabel ma daħal fis-seħħ fil-liġi Malta l-

Art. 360A tal-Kap. 9 (bis-saħħa tal-Att III tal-2002), liema artikolu introduċa l-possibilita' illi uffiċjali pubbliċi jibdew jiddeponu fi proċeduri sommarji quddiem il-Qorti tal-Maġistrati (Ġudikatura Kriminali) bil-mezz tal-affidavit.

6. L-Ordinanza VIII tal-1934 ġiet promulagata mill-Gvernatur bis-saħħa tal-poteri mogħtija lilu taħt il-liġijiet ta' dak iż-żmien, fis-6 ta' Frar 1934, u hija bbażata fuq l-istatut Ingliż li kien fis-seħħ fl-Ingilterra u Wales sa mill-1889 u ċioe fuq il-*Commissioners for Oaths Act 1889*. L-Artikolu 1 ta' dan l-Att kien jiddisponi kif ġej:

> **'1. Appointment and powers of commissioners for oaths.**
> **(1) The Lord Chancellor may from time to time, by commission signed by him, appoint persons being practising solicitors or other fit and proper persons to be commissioners for oaths, and may revoke any such, appointment.**
>
> **(2) A commissioner for oaths may, by virtue of his commission, in England or elsewhere, administer any oath or take any affidavit for the purposes of any court or matter in England, including any of the ecclesiastical courts or jurisdictions, matters ecclesiastical, matters relating to applications for notarial faculties, and matters relating to the registration of any instrument, whether under an Act of Parliament or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the Supreme Court, including all proceedings on the revenue side of the Queen's Bench Division.**
>
> **(3) Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding in which he is solicitor to any of the parties to the proceeding, or clerk to any such solicitor, or in which he is interested.** (sottolinear tal-Qorti)'

7. Ma jirriżultax lill-Qorti illi teżisti xi ġurisprudenza Ingliża fuq id-definizzjoni ta' *"interess"* fil-kuntest ta' *commissioner for oaths* li jkun membru tal-korp tal-Pulizija partikularment għaliex sa mill-2007[2] il-fakolta' li jiġi amministrat il-ġurament ġiet klassifikata bħala *"a reserved legal activity"* riservata għal membri tal-professjoni legali

[2] Legal Services Act 2007

bħal *practising solicitors, barristers* u persuni oħra li jkollhom *legal background* u li jkunu ġew appuntati mill-*Lord Chancellor*.

8. Il-Qorti għalhekk ikollha tirrikorri għall-ġurisprudenza ta' pajjiżi oħra fejn il-liġijiet tagħhom huma, almenu *in parte,* tradizzjonalment ibbażati fuq il-liġi komuni Ingliża fosthom l-Afrika t'Isfel. Skond ir-*Regulations governing the Administering of an Oath or Affirmation* promulgati taħt il-*Justices of the Peace and Commissioners of Oaths Act* hemm provdut fost oħrajn illi:

> **'7. (1) A commissioner of oaths shall not administer an oath or affirmation relating to a matter in which he has an interest.**
>
> **(2) Subregulation (1) shall not apply to an affidavit or a declaration mentioned in the Schedule.**
>
> **...**
>
> **SCHEDULE**
> **DECLARATIONS EXEMPTED FROM THE PROVISIONS OF REGULATION 7(1)**
>
> **1. ...**
> **(b) ... A declaration taken by a commissioner of oaths who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty'**

9. F'sentenza riċenti mogħtija mis-*Supreme Court of Appeal* tal-Afrika t'Isfel fl-ismijiet: **Kouwenhoven v Minister of Police (2022 (1) SACR 164 (SCA))** l-appell kien jittratta fost affarijiet oħra l-kwistjoni dwar jekk *affidavit* li kien ġie mogħti minn *Warrant Officer Van der Heever* tal-*Pretoria National Central Bureau of Interpol* in sostenn ta' applikazzjoni magħmula għal ħruġ ta' mandat t'arrest fi proċeduri ta' estradizzjoni, kienx validu jew le stante illi l-affidavit kien ġie attestat minn ċertu Sergeant Van Hagen li kienet impjegata bħala uffiċjal tal-Pulizija fl-istess uffiċju ta' WO Van der Heever. L-Imħallef Malcolm John David Wallis f'deċiżjoni unanima *inter alia* stqarr is-segwenti:

"[28] … the attack was limited to one on the attestation of W.O. van der Heever's affidavit by Sergeant van Hagen. The complaint was that, as she was a police officer employed in the same office as the deponent, she had an interest in the litigation that disqualified her from acting as commissioner of oaths. The basis for this was regulation 7(1) of the regulations governing the administration of oaths and affirmations (the regulations) which provides in terms that a commissioner of oaths shall not administer an oath or affirmation relating to a matter in which they have an interest. Under regulation 7(2) that provision does not apply to an affidavit or declaration mentioned in the schedule to the regulations. Item 2 of the Schedule provides: 'A declaration taken by a commissioner of oaths who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty.'…

[29] Regulation 7(1) and its predecessors have been the subject of judicial interpretation. The cases hold that the regulation requires commissioners to be independent in the exercise of their duties. An interest has been held to be a pecuniary interest, or some interest by which the legal rights or liabilities of the commissioner are affected. In *Benjamin* affidavits attested before the Deputy Master in litigation involving the Master and his staff were held to be inadmissible as contravening the regulation…

[30] The usual instances in which the commissioner has been held to have an interest are cases where an affidavit has been attested before an attorney acting in the litigation or proceedings for which the affidavit is tendered, or before that attorney's partner or agent. These cases overlap with a rule of evidence derived from English law that an affidavit deposed to before such an attorney is inadmissible…

…

[32] In the case of police officers investigating crimes two judgments holding that they had a disqualifying interest in relation to affidavits signed by witnesses **in the course of their investigations** (emfasi u sottolinear tal-Qorti), were overruled by this court. In *Royal Hotel Dundee* it was said that item 2 in the schedule to the regulations appeared to cover the case of a police officer.Despite that, in *Dyani*, three affidavits deposed to by police officers were held to be inadmissible because they had been attested before commissioners of oaths who were themselves police officers. Another affidavit was excluded because the commissioner of oaths was a police officer and employee of the respondent. In excluding them Jafta J said:

> *' In this matter the affidavits by Mnyakaza, Mgodeli and Jooste were deposed to by colleagues of the commissioners of oath who, by virtue of their relations to the deponents, do not meet the requirement of an independent, unbiased and impartial commissioner. Botoman's affidavit*

> *is also tainted by the fact that the commissioner of oaths is the employee of the first respondent and that other respondents were also colleagues of the commissioner. It is quite clear that all those commissioners could be regarded as having interest in the subject matter of these proceedings.'*

It is unclear from the report how closely linked the deponents were to the commissioners of oaths, or whether the decision was based solely on the fact that both the deponents and the commissioners were police officers. The quoted passage suggests that it was a general rule that police officers could not act as commissioners of oaths in respect of affidavits deposed to by other police officers or other witnesses in any proceedings where the Minister of Police was involved. It is also unclear whether the judge was saying that the attestation was improper, or applying the rule of evidence in regard to their admissibility, which would have involved a substantial extension of that rule. There was no reference in the judgment to regulation 7(2) or to item 2 of the Schedule to the regulations.

[33] In *Sihlobo*, after a careful consideration of the regulations, and in particular regulation 7(2), Pakade J held that *Dyani* was clearly wrong insofar as it held that a policeman could not act as a commissioner in relation to the affidavit of another police officer. That decision was followed in *Van Rooyen*. It is necessary to resolve the uncertainty in this regard.

[34] Commissioners of oaths are persons designated by the Minister of Justice as such by virtue of their office. The current designation includes no fewer than 77 categories of officers, ranging from members of the National Executive and a number of persons holding office in the administration of justice (but curiously not judges, although their secretaries are designated), to the chairperson of management of a children's home in Pretoria. In terms of s 7 of the statute all of these are authorised to administer an oath or affirmation or take a solemn or attested declaration within the area for which they are a commissioner. Regulation 7(1) precludes a commissioner from performing these functions 'relating to a matter in which they have an interest'. The authorities already cited say that this must be a pecuniary interest or an interest whereby the rights and obligations of the commissioner would be affected.

[35] The mere fact of employment by a person having an interest in the matter has not been regarded as constituting a disqualifying interest, save in the two cases involving police officers that were overruled in *Rajah*, and now possibly in *Dyani.* The implications of extending the concept of an interest

in the matter under the regulations to employees would be far-reaching. Could a judge depose to an affidavit before their secretary, or the secretary of a colleague, or the registrar of the court? Could they depose to an affidavit before a magistrate? One merely has to peruse the list of persons who are appointed as commissioners of oaths to realise the complexities that would potentially arise if that approach to an interest were to be adopted. Fortunately it is not the approach adopted by our courts and Regulation 7(2), read with Item 2 of the Schedule, puts the matter beyond doubt. If the only interest arises out of the commissioner's employment and in the course of their duty it does not fall under regulation 7(1). In that sense regulation 7(2) may not embody an exception in the usual sense of a provision that cuts down what would otherwise be the scope of regulation 7(1). Its purpose is rather more to operate *ex abundante cautela* by making it clear that the performance of a commissioner's functions arising out of their employment and in the course of their duties is not prohibited. To the extent that *Dyani* decided otherwise it was incorrect and is overruled.

[36] The facts in this case fall squarely within item 2 of the schedule to the regulations. **Sergeant van Hagen is stationed at the General Desk of the Interpol bureau in Pretoria and has no involvement in extradition matters. She had not been involved in the proceedings against Mr Kouwenhoven and said that she was unaware of the matter and had not even heard her colleagues discussing it.** (emfasi u sottolinear tal-Qorti). She commissioned W.O. van der Heever's affidavit because she is a police officer and was readily available to do so. The argument that she had an interest in the matter disqualifying her from doing so had no merit…

[41] ... The challenge to the commissioning of W.O. van der Heever's affidavit must fail."

10. Il-Qorti hija konxja illi l-proviso tal-Art. 4 tal-Kap. 79 ma tagħmilx eċċezzjoni speċifika, bħal ma huwa l-każ fl-Afrika t'Isfel, għal *affidavits* jew dikjarazzjonijiet li jinħalfu quddiem *commissioner of oaths* li ma jkunx avukat u li l-unika interess li jista' jkollu huwa purament interess li joħroġ *"out of his employment and in the course of his duty".* Ma jfissirx dan li f'każijiet eċċezzjonali, partikularment fin-nuqqas ta' ġurisprudenza lokali, l-Qorti m'għandiex tislet minn dak li jkunu ddeċidew qrati f'ġurisdizzjonijiet esteri fl-applikazzjoni tagħhom ta' liġijiet li għad li ma jkunux identiċi għal dawk nostrani ikunu sostanzjalment ibbażati fuq sors legali komuni. Anzi huwa addirittura dover tal-ġudikant illi minħabba ċ-ċirkustanzi speċjali tal-każ – u f'dan il-każ ċ-ċirkustanzi huma tabilħaqq speċjali – sabiex jagħmel tali eżerċizzju ħalli jara x'kienet il-

probabbli intenzjoni tal-leġislatur u jinterpreta l-liġi b'mod li jista' jirrikonċiljaha ma dik l-intenzjoni.

11. Fil-każ in eżami, mill-atti ma jirriżultax illi l-Ispettur Keith Scerri, ċioe l-kummissjunarju li amministra l-ġurament lil PS 649 J. Buhagiar, kien involut fl-investigazzjoni tar-reati imputati lill-imputata u lanqas ma jirriżulta li b'xi mod huwa involut fil-prosekuzzjoni tagħha.

12. Ai termini tal-Art. 3 tal-Kap. 79 tal-Liġijiet ta' Malta:

> **'3.(1) Il-Ministru responsabbli għall-ġustizzja jista' minn żmien għal żmien, b'warrant iffirmat minnu, jaħtar persuni, li jkunu uffiċjali pubbliċi, impjegati pubbliċi avukati jew prokuraturi legali, bħala Kummissjunarji b'setgħa li jagħtu ġurament, u jista' f'kull żmien iħassar kull ħatra bħal dik.**
>
> **...**
>
> **(4) Kull ħatra magħmula taħt dan l-artikolu għandha tiġi ppubblikata fil-Gazzetta tal-Gvern, u kull ħatra bħal dik magħmula wara l-1 ta' Jannar, 1980 għandu jkollha effett biss mid-data ta' dik il-pubblikazzjoni.'**

13. L-Ispettur Keith Scerri ġie appuntat bħala Kummissjunarju b'setgħa li jagħti ġuramenti, mill-Ministru tal-Ġustizzja, "***fil-qadi tad-doveri tiegħu u sakemm jibqa' fil-kariga***," b'effett mit-2 ta' Diċembru 2022.[3]

14. Il-Qorti jidhrilha illi għalkemm kif ġa qalet fil-kawża fuq ċitata, **Il-Pulizija v. Emanuel Degabriele**, l-interess rikjest fil-proviso ta' Art. 4 tal-Kap. 79 jista' jkun wieħed indirett jew saħansitra wieħed professjonali, dan il-kunċett m'għandux jiġi estiż sabiex jeskludi uffiċjali tal-pulizija **li ma jkunux involuti fl-investigazzjoni u/jew prosekuzzjoni tal-każ** u li jkunu ġew appuntati proprju sabiex jaqdu l-funzjoni ta' kummissjunarji b'setgħa li jagħtu ġurament, milli jeżerċitaw dik is-setgħa sabiex jagħtu l-ġurament lil uffiċjali oħra tal-korp f'affidavits ippreżentati minnhom fi proċeduri penali. Dan jgħodd

[3] Avviż tal-Gvern ippubblikat fil-Gazzetta tal-Gvern Numru 20,969 tat-2 ta' Diċembru 2022

minkejja li, kif sew qalet id-difiża, kwalsiasi Spettur tal-Pulizija huwa subaltern u rappreżentant tal-Kummissarju tal-Pulizija.

15. Inoltre ma taqbel xejn il-Qorti mal-analoġija imressqa mid-difiża fin-nota ta' osservazzjonijiet tagħha, illi uffiċjal tal-Pulizija ma jistax jeżerċita s-setgħa li jagħti ġurament fi proċeduri penali daqs kemm ma jistax jaqdi l-funzjoni ta' espert li jkun mitlub jagħti opinjoni. Dan qed jingħad għaliex id-dmirijiet ta' Kummissjunarju b'setgħa li jagħti l-ġurament taħt il-Kap. 79 (senjatament taħt l-Art. 5 u 7 tal-istess Kap. 79[4]) ma jistgħu qatt jiġu ekwiparati mad-dmirijiet u setgħat ta' espert li jkun mitlub li jeżerċita s-sengħa u ħila speċjali tiegħu sabiex jifforma opinjoni.

Deċiżjoni

Għar-raġunijiet msemmija l-Qorti qegħda tiċħad it-talba għall-isfilz tal-affidavit ta' PS 649 James Buhagiar magħmulha mid-difiża fis-seduta tas-16 ta' Jannar 2024.

V.G. Axiak	**Y.M. Pace**
Maġistrat	**Dep. Reġistratur**

[4] 5(1) Kull Kummissjunarju b'setgħa li jagħti ġurament għandu, qabel ma jagħti l-ġurament, jissodisfa ruħu mill-identità tal-persuna li qed tieħu l-ġurament u li dik il-persuna tifhem sewwa dak li tkun ser taħlef. (2) L-identità tal-persuna li tkun qed tieħu l-ġurament għandha tiġi żgurata bil-produzzjoni ta' dokument ta' identifikazzjoni legalment validu, tal-passaport jew ta' xi dokument uffiċjali ieħor...

7.Kull Kummissjunarju li quddiemu jiġi meħud ġurament jew magħmul affidavit bis-saħħa ta' din l-Ordinanza għandu jiddikjara sewwa fil-jurat jew fl-attestat il-lok u d-data li fihom il-ġurament ikun ġie meħud jew l-affidavit ikun sar ...