



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tad-19 ta' Ġunju, 2024

Appell Inferjuri Numru 91/2023 LM

Rabin Karki
('l-appellant')

vs.

- 1. Id-Direttur taċ-Ċittadinanza u Affarijiet tal-Espatrijazzjoni; u**
- 2. L-Aġenzija Identity Malta**
('l-appellati')

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul minn **Rabin Karki (Visa app. Nru. 01692850)** [minn issa 'l quddiem 'l-appellant'] mid-deċiżjoni tal-20 ta' Settembru, 2023, [minn issa 'l quddiem 'id-deċiżjoni appellata'] mogħtija mill-Bord tal-Appelli dwar l-Immigrazzjoni [minn issa 'l quddiem 'il-Bord'] fil-konfront tad-**Direttur**

taċ-Ċittadinanza u Affarijiet tal-Espatrijazzjoni u tal-**Aġenzija Identity Malta**
[minn issa 'l quddiem 'id-Direttur appellat' u 'l-Aġenzija appellata'
rispettivament, u flimkien 'l-appellati'], fejn iddikjara l-appell null.

Fatti

2. Il-fatti tal-appell odjern huma s-segwenti. L-appellant kien qiegħed jirrisjedi hawn Malta taħt permess uniku, li skont l-appellati skada fid-19 ta' Jannar, 2022, u sussegwentement ma saret l-ebda applikazzjoni oħra mal-Aġenzija appellata sabiex jinħariġlu permess ieħor.

Mertu

3. L-appellant ippreżenta appell quddiem il-Bord fid-19 ta' Settembru, 2022 minn allegata ittra ta' rifjut datata 17 ta' Mejju, 2022.

4. Id-Direttur appellat wieġeb fid-19 ta' Ottubru, 2022, fejn issottometta li huwa ma kienx f'pożizzjoni li jintavola risposta ġaladarba l-appellant kien naqas milli jissottometti l-ittra ta' rifjut jew ta' revoka li minnha huwa kien qiegħed jintavola l-appell tiegħu.

Id-deċiżjoni appellata

5. Il-Bord wasal għad-deċiżjoni appellata wara li għamel is-segwenti 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.

The Board was not presented with a letter of appeal.

In its Reply, Malta Identity Agency stated that:

- It fails to understand the basis of Mr. Karkis' appeal given that he has failed to submit any refusal letter or revocation letter from which he is appealing;
- In fact, ID Malta Agency has carried its checks on Mr. Karki and it has transpired that his last valid residence permit dates back to 19th January 2022 and from that date onwards, he has never filed a formal application for a single permit before ID Malta Agency;
- Therefore, ID Malta is not a position to file a reply to Mr. Karki's unfounded appeal;
- If Mr. Karki would like to lodge a single permit application, and if he is staying in Malta in an irregular position, he is being guided to leave the Schengen Area and submit a still abroad application with his desired prospective employer.

The Board notes the following documents:

- The Board's registered receipt of the appeal;
- ID Malta's reply; and
- Emailed correspondence.

3. Considerations

After having read the relative submissions, the Board notes that besides several missing documents which the appellant has failed to present in support of his single permit application, the appellant has not even brought forward neither ID Malta's revocation decision, nor has he laid down any grounds in order to rebut the said decision. Hence, the Board refers to the following Court Judgement:

*The Board refers to the judgment of the Court of Appeal **Albert Beliard vs. Id-Direttur tad-Dipartiment qhaċ-Ċittadinanza u l-Expatriate Affairs** decided on 9th July 2020 in which it was held:*

“kif tajjeb irrilevat fil-ġurisprudenza ċċitata mill-abbli Avukat tal-Istat, l-essenzjal tal-fair hearing hu li kull parti tingħata l-opportunità li tressaq il-każ tagħha, b’mod li l-Qorti tkun f’qagħda li, kif jgħid il-Malti, tisma’ ż-żewġt iqniepen. M’hemmx għalfejn li jkun hemm trattazzjoni orali. Barra minn hekk, hija għal għal kollox inaċċettabbli l-qagħda tal-appellant li quddiem il-Bord ma pproduċa l-ebda aggravju in sostenn tal-appell tiegħu u minn fuq jippretendi li l-Bord jagħmillu xogħlu hu.”

The Board wholeheartedly shares the reasoning of the Court of Appeal in that case and can apply it to the current case. In the present case, the appellant brought forward no grievances and no submissions to address the merits of the case.”

L-Appell

6. L-appellant ippreżenta r-rikors tal-appell tiegħu quddiem din il-Qorti fid-29 ta’ Settembru, 2023 fejn, qiegħed jitlob sabiex:

“... tannulla u tħassar id-deċiżjoni tal-Bord tal-Appelli dwar l-Immigrazzjoni datata 20 ta’ Settembru 2023 u tibgħat l-atti lura quddiem l-istess Bord sabiex jagħti deċiżjoni mill-ġdid u dan wara li jkun ħa in konjizzjoni d-dokumentazzjoni kollha pprovduta mill-appellant fil-prim’istanza u wara li jkun sema’ il-verżjoni taż-żewġ partijiet.”

Jgħid li l-aggravju tiegħu huwa li d-deċiżjoni appellata hija nieqsa minn motivazzjoni xierqa.

7. L-appellati wiegħbu fis-16 ta’ Ottubru, 2023, fejn issottomettew preliminarjament li l-appell odjern huwa null u inammissibbli *ai termini* tas-subartikolu 25A(8) tal-Kap. 217 stante li l-appellant mhuwiex persuna msemmija fit-Taqsima III ta’ dik il-liġi, u dan kif ikkonfermat minn din il-Qorti fis-sentenzi tagħha fl-ismijiet **Zoran Ducic vs. Identity Malta Agency**, App. Inf. Nru.

103/22LM, u **Dragana Stoilkovic vs. Identity Malta Agency**, App. Inf. Nru. 56/22LM. Fil-mertu, sostniet li d-deċiżjoni appellata hija legalment u fattwalment korretta, u għandha tiġi kkonfermata fl-intier tagħha.

Konsiderazzjonijiet ta' din il-Qorti

8. Il-Qorti ser tgħaddi sabiex qabel xejn tikkunsidra l-ewwel kwistjoni li qiegħda tiġi ssollewata mill-Aġenzija appellata, li hija l-inammissibilità tal-appell odjern stante li l-appellant mhuwiex persuna ndikata taħt it-Taqsima III tal-Kap. 217. Filwaqt li kif diġà ngħad, tagħmel riferiment għall-insenjament ta' din il-Qorti, hija issostni li l-istess argument japplika hawnhekk, u l-appell odjern għandu jiġi ddikjarat null.

9. Il-Qorti kkunsidrat id-disposizzjonijiet tas-subartikolu 25A(8) tal-Kap. 217, u anki dawk tal-artikolu 4A tal-Parti III. Tgħid li l-appellati għandhom raġun. Fir-risposta tal-appell tagħhom, huma jirrivaw li l-appellant kellu permess uniku maħruġ mill-Aġenzija appellata, u li kien skada fid-19 ta' Jannar, 2022, iżda fil-frattemp ma saret l-ebda applikazzjoni oħra. Mill-*email* ta' ċertu Martin Zerafa li baġhat lill-Aġenzija appellata fit-12 ta' April, 2022, jirrizulta li l-appellant filfatt kellu permess uniku li kien skada f'Ottubru 2021, u li kienet saret xi applikazzjoni. Madankollu l-appellant ma pproduċa l-ebda prova dokumentarja quddiem din il-Qorti, li permezz tagħha hija setgħet tifhem aħjar x'kienet il-pożizzjoni tiegħu hawn Malta, u dan ukoll fejn gie rinfaccjat fl-appell odjern minn eċċezzjoni tan-nullità tal-appell tiegħu, stante li huwa mhux persuna li jaqa' taħt it-Taqsima III tal-Kap. 217.

10. Il-Qorti għalhekk tgħid li l-appell odjern huwa tassew inammissibbli. Tqis li d-dispożizzjonijiet tal-liġi huma ċari u appell huwa permess biss f'dawk il-każijiet li jirrigwardaw il-kategoriji ta' persuni mfissra taħt l-artikolu 4A tat-Taqsima III tal-Kap. 217. Peress li ma jirriżultax li l-appellant jaqa' f'xi waħda minn dawk il-kategoriji, il-Qorti tgħid li l-appell odjern ma setax isir.

Decide

Għar-raġunijiet premessi, il-Qorti tastjeni milli tiegħu konjizzjoni tal-appell odjern, stante li huwa inammissibbli *ai termini* tas-subartikolu 25A(8) tal-Kap. 217.

L-ispejjeż tal-preżenti proċeduri fiż-żewġ istanzi, għandhom ikunu a karigu tal-appellanta.

Moqrija.

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

**Rosemarie Calleja
Deputat Registratur**