



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 Tuesday, 3rd September 2024

Number: 4

Application Number: 740/2011/3 GM

Isabella Zananian Desira

v.

Medical Council

The Court

1. This judgment ensues an appeal filed by the plaintiff from a judgment delivered by the First Hall of Civil Court on the 25th of October 2022. The First Hall ordered the Medical Council to pay the plaintiff two hundred and twenty-eight thousand and eight hundred and ninety-six Euros (EUR228,896) in damages suffered by the plaintiff after the Medical Council refused her registration in the Medical Register.

Preliminaries

2. The plaintiff filed a sworn application on the 2nd of August 2011 against the Medical Council, whereby she requested the Court to declare that a decision of the Medical Council, dated the 3rd of February 2011 and a decision of the Appeals Committee, dated the 22nd of June 2011, were unjust, anti-constitutional, discriminatory, illegal, ultra-vires and against the principles of natural justice, also due to a wrong interpretation of the law. She requested the Court to declare such decisions as null and invalid and to revoke such decisions. Moreover, the plaintiff requested that the Court orders the Medical Council to register her as a doctor on the register of the Medical Council and to declare that she suffered damages and liquidate such damages, to be paid to her.

3. The plaintiff, a Georgian national married to a Maltese citizen, has several degrees related to medicine, which degrees, include a Master of Arts and a PhD, and which were recognised by the Malta Qualifications Recognition Information Centre by virtue of a letter of the 28th of February 2008. On the 3rd December 2010, she applied with the Medical Council to register as a Medical Practitioner in the Medical Register and to which she received a letter, dated the 7th of January 2011, requesting that she provides evidence of her training as a Medical Doctor with the relevant curriculum and achievements.

4. Following this, the Medical Council rejected her application to

register her unless she sat for the Medical Council examination for Medical Practitioners intended for fifth year University of Malta students, which she was informed, was in line with standard policy since the plaintiff graduated with a non-EU first degree. The plaintiff claimed that the standard policy had no legal basis and was discriminatory.

5. The Medical Council, by virtue of a reply filed on the 14th of September 2011, rebutted all claims.

6. By virtue of a **partial** judgment of the First Hall of Civil Court, delivered on the 14th of February 2017, the Court found:

“Upholding plaintiff’s first request as being founded in law and in fact in that the decisions handed down by the respondent Council on February 3rd 2011 as confirmed by the Appeals Committee on the 22nd June 2011 were based on a wrong application of the applicable law and ultra vires the powers conferred by law on the Council;

Upholding plaintiff’s second request by declaring the afore-said decisions to be null and void and by quashing the said decisions for all effects and purposes of the law;

Rejecting plaintiff’s third request since it falls beyond the remit of this Court as a reviewing Court, but directing the respondent Council to reconsider plaintiff’s request to be enrolled in the Register without delay and in conformity with the considerations made in this judgment;

Rejects respondent Council's pleas on the merits insofar as they relate to the plaintiff's first two requests;

Ordains that respondent Council bear the legal costs in connection with this judgment; and

Adjourns the case for evidence and submissions regarding plaintiff's third, fourth and fifth requests."

7. The Medical Council was given leave to appeal from the partial judgment by virtue of a ruling of the 9th of March 2017, following which the Court of Appeal, by a decision of the 2nd of March 2018 ruled that:

"In view of the above, this Court rejects the appeal application filed by defendant Kunsill Mediku, and confirms the judgment delivered on the 14th February, 2017 by the First Hall of the Civil Court. Costs are to be borne by defendant Kunsill Mediku, appellant. The records of the case are to be sent back to the First Hall of the Civil Court for continuation."

8. The Medical Council filed an application for a retrial on the 20th of April 2018 and a request for a stay in execution of judgment, which request was rejected by virtue of a decision of the 14th of December 2018. By virtue of a decision of the 31st of May 2019, the Court of Appeal rejected the application for a retrial:

"In view of these considerations the Court of Appeal decides that the request for a retrial of the judgment of the Court of Appeal dated 2 March 2018 is inadmissible in law and is being dismissed at this stage of the proceedings saving defendants' right at law at a future stage. With costs against defendant Medical Council."

9. The case readjusted in front of the First Hall of Civil Court to decide on the issue of damages¹. By virtue of a decision of the 25th of October 2022, the subject of this appeal, the First Hall of Civil Court determined that:

*“(1) **Upholding plaintiff’s fourth request** by finding that, because of its actions, the respondent Council is liable to make good for the damages sustained by her.*

*(2) **Upholding plaintiff’s fifth request** by liquidating the damages suffered by plaintiff in the sum of €228,896.*

*(3) **Upholding plaintiff’s sixth request by condemning** the respondent Council to pay her the damages thus liquidated. (4) **Ordains** that respondent Council bear the legal costs in connection with this judgment.”*

10. The plaintiff filed an appeal from this decision on the 24th of November 2022, to which a reply was filed by the Medical Council on the 23rd of December 2022.

11. The plaintiff (hereinafter also referred to as the appellant) based her appeal on two grievances: (1) that the judgment contains a misinterpretation of her application (2) that the damages liquidated are too low considering that the Medical Council ruined her professional career when she could have been included in the Specialist Register.

Legal Considerations

¹ Fol. 570

12. This Court saw the acts of the case and shall address the grievances put forward by the plaintiff.

First Ground of Appeal

13. By virtue of the **First Grievance**, the appellant complains that the legal considerations made by the First Hall were incorrect as it reproduced arguments made by the Medical Council which were ultimately thrown out when the judgment regarding the first 3 pleas was rendered *res judicata*. The appellant links this argument with a further complaint that she was not included in the Specialist Register when it is aptly clear that she had the right qualifications and when the first judgment had recognised that she had re-submitted an application to be registered as a specialist. She complains that had the case been heard by the same Judge, the complexities of the case would not have been lost on the sitting judge to the detriment of the appellant. Once again she claims that no reasonable person would have imposed on her the requirement to sit for an examination intended for final year medical students. She complains that her dignity was hurt, including when she was consistently not referred to as a Maltese national. She questions why the First Hall, when all it had to do was liquidate damages, decided to rewrite aspects of a judgment which today have been deemed as *res judicata*.

14. She argues that the First Hall ignored the fact that the Medical Council, Registrar of the Medical Council and the Registrar of the Specialist Accreditation Committee were led by the same person and that previously to her case one application would have been filed with the Medical Council and that would have been circulated internally with the Specialist Accreditation Committee. She complains that no transitory provision was applied and that the same chapter of law governs applications for the medical and specialist registry and that such registries are only governed by different articles albeit of the same law.

15. The **Medical Council** (hereinafter also referred to as the appealed party) replied that the appellant has continuously attempted to broaden the parameters of the lawsuit and erroneously continues to insist that her lawsuit relates to her inclusion in the Specialist Register rather than the Medical Register, even though the contents of the appellant's sworn application reflect otherwise and that these arguments were already raised multiple times and rejected. The appealed party stated that the appellant was registered as a Medical Practitioner in the Medical Register with effect from the 4th of January 2019.

16. The Medical Council noted that the First Hall had not ordered the Medical Council to register the plaintiff as a medical practitioner but had recommended such registration. Moreover, it pointed out that the First Hall had already commented on the issue regarding the specialist

accreditation and concluded that this issue did not result from the content of the sworn application which related to her registration as a medical practitioner. It reiterates that that medical register and specialist register are distinct from one another as is the procedure for specialists to be included in such registries.

17. The appealed party provides that the appellant attempts to re-open the merits of the first judgment delivered on the 14th of February 2017 and that the appellant took the case off on a tangent.

18. The Medical Council continues to rebut what it deems as inaccurate several assertions such as that her inclusion in the Medical Register rather than the Specialist Register is offensive to her, when the plaintiff persistently fails to see that a distinction exists between the medical and special registry. Moreover, the appellant continues to assert that had the second partial judgment been delivered by the same Judge who delivered the first partial judgment, the decision would have been different. The appealed party claims that this is entirely unfounded as the claim submitted by the plaintiff herself clearly relates to her registration in the Register for Medical Practitioners.

19. With regards to the plaintiff's argument that she was treated as a Georgian national when she had already acquired Maltese citizenship, the appealed party argues that this matter was already addressed and

that although it is undisputed that the plaintiff acquired Maltese citizenship throughout these judicial proceedings, when she filed her application she was not a Maltese national yet and consequently her application had to be evaluated as that originating from a third country pursuant to article 11(1) (c) of Chapter 464 of the Laws of Malta.

20. Moreover, and with regards to the appellant's argument that the same individual held the role of registrar, the Medical Council reiterates that the Medical Council and the Specialist Accreditation Committee are two separate and distinct entities respectively established by article 9 and article 30 of Chapter 464 of the Laws of Malta. Moreover, when the plaintiff submitted her second application, the roles of the Medical Council and the Specialist Accreditation Committee were not occupied by the same person.

21. Firstly, and for all intents and purposes, **this Court** notes that it rejects the grievances aired by the plaintiff that the First Hall somehow misquoted the partial judgment of the 14th of February 2017.

22. **This Court notes** that the appeal filed by the plaintiff is from the judgment of the 25th of October 2022, which specifically had to deal with plea 4, 5, 6:

“4. Tiddikjara l-Kunsill Mediku intimat responsabbli ghad-danni li l-istess rikorrenti sofriet u li qiegħedha u tista’ ssofri;

“5. Tillikwida d-danni sofferti mir-rikorrenti anki, jekk ikun il-kaz, permezz ta’ Perit nominandi;

“6. Tikkundanna lill-Kunsill Mediku intimat għall-hlas lir-rikorrenti tal-ammont ta’ danni hekk likwidat.

“Bl-ispejjez kontra l-Kunsill Mediku inkluzi l-ispejjez tal-Protest Gudizzjarju intavolat mir-rikorrenti kontra l-Kunsill Mediku bid-data tal-ghoxrin (20) ta’ Lulju elfejn u hdax (2011)”.

23. **The First Hall in fact ordered the liquidation and payment of damages on the basis of the following legal considerations:**

“Plaintiff’s demand is restricted to the period starting from the 3rd February 2011, and not before. She was registered as a general practitioner on 4 th January 2019. According to the agreement between the Government of Malta and the Medical Association of Malta, she was entitled to a Salary Scale No. 6 entitled to €28,612. Over a period of approximately 8 years, plaintiff is entitled to €228,896.”

24. The First Hall also considered that:

“Respondent included plaintiff’s name in the Medical Register in terms of Art. 11(1) Chap. 464 as from the 4th January 2019.

When the records of the case were sent back to this court, plaintiff filed three consecutive applications demanding that the Medical Council adhere to the Court’s direction to include plaintiff’s name in the Specialist Register held by the Medical Council. The Court dismissed all three applications for the reasons therein stated.

*Plaintiff’s claim is one for judicial review. In its preliminary judgment above cited, **this Court has already upheld the claim to nullify the decision to refuse registration; and has already rejected plaintiff’s demand to this Court to order her inclusion in the Medical Register because this goes beyond the competence of this Court as a tribunal of judicial review.** This Court made a recommendation -not an order – to the Medical Council to include plaintiff as a medical doctor, which in fact it did.*

Plaintiff is claiming that the Medical Council should have included her also in the Specialist Register. Again, this goes beyond the remit of this Court as a tribunal of judicial review. It can quash decisions, but not impose decisions of its own.

Moreover, the issue regarding specialist accreditation does not result from the content of the sworn application – which is restricted to the decision by the Medical Council not to register plaintiff as a medical practitioner - and therefore falls outside the parameters of the present proceedings as set by plaintiff herself. The decision which this Court has annulled was one effectively made by the Medical Council (established under Art.9 of Chap. 464). A decision to include a practitioner in the specialist register, although recorded in a register held by the Medical Council, is not made by the Medical Council itself but by the Specialist Accreditation Committee (SAC) established by a different rule (Art. 30 Chap. 464). **The court can only decide strictly iuxta alligata et probata. It is also bound by its preliminary judgement.**

25. At this stage of proceedings the only pending matter is that relating to the issue of damages. The Court notes that the first grievance is nothing but a ploy to reopen the merits of the case on an issue which, as noted by the First Hall, did not form part of the merits of the sworn application and for which the First Hall issued several decrees stating that such issue is extraneous to the merits of the case as the plaintiff had made no claim to be registered in the specialist register in her sworn application. The last decree on this issue was indeed delivered on the 17th of September 2020² and stated:

“<.. That applicant is asking for the issue of a warrant in procinctu, claiming that the Medical Council is failing to conform what has been decided by means of judgements delivered by the Court of Appeal; and that the Medical Council is bound by the decision of

² Decree of the 17th of September 2020 – Page 883 et. seq.

this Court as subsequently confirmed by the Court of Appeal not only to put her name in the Medical Register, but also in the Specialist Register;

*That the Court sympathises with applicant and has urged the parties to come to an amicable solution, which unfortunately failed to materialize. But it is not empowered to accede to her request. **The claims made in her Sworn Application were limited to the decision regarding her registration in the Medical Register.** Indeed premise number 10 of the Sworn Application specifically based plaintiff's 3 claims upon Article 11(1)(c) of Chapter 464. The partial judgement of this Court was in accordance with these claims. **The Medical Council duly executed what was required of it by the judgment. The applicant is claiming that placing her name in the Medical Register also implied including her in the Specialist Register, since both registers are in the control of the Medical Council. Applicant claims that historically, the Medical Council and the Special Accreditation Board were two bodies acting jointly. Whatever the historical antecedents may be, it is clear that at least since 2005 they have definitely been separate bodies (Art. 30 Chap. 464).** The inclusion or otherwise of a name in the Specialist Register may only occur following the completion of the procedure which is established by Art. 29 of the same Chapter, and therefore after approval is duly obtained from the Specialist Accreditation Committee established by Article 30 abovementioned. Article 29(4)(c) of the same Chapter clearly and unequivocally stipulates that the Specialist Registers are to include the name of such healthcare professional as shall be 'in possession of any specialist qualification recognized by the Specialist Accreditation Committee for the relevant profession';*

That these proceedings were initiated in 2010, after the present law came into effect. The Special Accreditation Committee is not a party to the case. The Medical Council has no control over it at law;

*That therefore this Court cannot issue the requested warrant, for two distinct reasons: (1) applicant did not request inclusion in the specialist register and therefore the judgment of this Court could not and did not extend to it and (2) the Medical Council has no legal power to include a name in the Specialist Register unless authorized to do so by the Specialist Accreditation Committee. The function of this court in the present action is one of judicial review of administrative actions, that is, to ensure that state executive organs fulfill their duties *intra vires* in the wide sense 4 of the word. Should they exercise their powers *ultra vires* it annuls their decisions. But having done so, it cannot come to a decision itself;*

in this respect it is a court of cassation, not an administrative court. Still less can it compel an administrative body to exceed its powers in law;

That this Court has already made the position clear, albeit concisely, in its decree dated 30th August 2019 rejecting applicant's claim that the Kunsill Mediku is in contempt of court for ignoring the decision of the Court;

The Court has on purpose not decreed a second application, filed on the 12th November 2019, asking this Court to force the Kunsill Mediku to comply with its judgment, but proceeded to urge the parties to come to an amicable solution;

That this Court, whilst understanding applicant's frustration at this ongoing saga, directs her to stop repeating demands which have been rejected by the Court, and to explore the possibility of an alternative solution;

For these reasons, the Court has no option but to reject the demands of applicant, with costs."

26. Had the plaintiff any qualms regarding the merits of the case, she should have appealed from the partial judgment of the 14th of February 2017. No such appeal was filed by the plaintiff. At this stage the merits have been exhausted and what remains is the issue related to the liquidation of damages. Consequently, this grievance is being rejected.

Second Ground of Appeal

27. The second grievance concerns the liquidation of damages. The appellant claims that damages owed to her should have been calculated from 2006, being the year in which she first filed her application with the Medical Council until year of judgment regarding damages. Appellant

argues that there is no reason to curtail damages and that liquidation of damages excluded the fact that she was awarded damages based on the basic income and that potential private practice profits were excluded. The judgment did not contain a correct evaluation of damages sustained by the plaintiff.

28. The Medical Council replied that the timeframe considered by the First Hall was correct, that is when it considered the date in which the Medical Council gave its decision on the 3rd of February 2011 regarding the application filed by the appellant on the 3rd of December 2010. It argues that the application filed in 2006 does not concern the merits of the case and that claims relating to the period from 2006 till the beginning of 2011 are unjustified and unfounded as are the claims made for the years 2019 to 2022, since the plaintiff was registered on the Medical Registry on the 4th of January 2019.

29. The Medical Council argues that the arguments brought forward by the plaintiff, that had she been registered earlier on she would have qualified for the post of a consultant due to her being in possession of a PhD, were unfounded. The Medical Council argues that an agreement exists between the Government of Malta and the Medical Association of Malta that vacancies for the grade of a consultant are filled after a public call as per eligibility criteria; therefore, the appointment to the post of a consultant is not automatic on a candidate being in possession of a PhD.

Thus, the arguments put forward by the plaintiff, that the applicable scale should have been that of Consultant at scale 4 instead of General Practitioner at scale 6 are unfounded.

30. With reference to the arguments made by the plaintiff, regarding the potential income from private practice, the Medical Council argues that the claims made with regards to loss of salary and career (EUR1,072,524) and material damages (EUR9,335) were not proven and were only mentioned in the note of submissions and thus remain unsubstantiated. In fact, the Medical Council argues that the damages awarded should have been lower, even if it refrained from appealing on this point since the appellant was already working as a Medical Laboratory Scientist.

31. With regards to material damages, the appealed party argues that these damages relate to the period prior to the submission of the application which application is the basis of the merits of this case.

32. **Firstly, this Court finds no issue with the timeframe considered by the First Hall for the liquidation of damages** and contrary to what the plaintiff has argued, the applicable period of time to be considered for the liquidation of damages is from the date of refusal of registration in the Medical Register, 3rd February 2011, until date of actual registration in the Medical Register on the 4th of January 2019. It is clear

that the merits of the case do not pertain to any application that may have been filed prior to 2010 and this Court is not taking into consideration any losses and material damages prior to the 3rd February 2011.

33. Moreover, as actual registration of the plaintiff in the Medical Register, took place in 2019, the objective of the case, other than liquidation of damages, has been exhausted. There is thus no reason to liquidate damages beyond 2019.

34. With regards to the loss of wages based on the salary that the plaintiff could have earned had she worked as a doctor with the Government of Malta, the First Hall made the following calculation:

“According to the agreement between the Government of Malta and the Medical Association of Malta, she was entitled to a Salary Scale No. 6 entitled to €28,612. Over a period of approximately 8 years, plaintiff is entitled to €228,896.”

35. This Court notes that the Government of Malta and the Medical Association of Malta, signed a collective agreement on the 27th of February 2013³ and that such agreement had to expire on the 31st of December 2016. No updated agreement was presented and the Court is relying on this agreement.

36. This Court saw that according to the testimony of Ivan Falzon,

³ Fol. 655 et seq.

Chief Executive Officer of Mater Dei at the time of testimony⁴:

"<... As a CO of Mater Dei I am not the right person to talk about payroll etc etc. Obviously I know, I have exposure, I have visibility on that, but there are people that are responsible for payroll and there is a separate structure – financial structure. There is no difference between payments to foreigners and Maltese. We pay according to the positions that we recruit in. I will just give you an idea of the basic pay for different level of Doctors, ok?, medical grades.

Generally there are 8 level of Doctors, the foundation year program 1 Doctors, that go in to Scale 9 step 5, as the latest agreement and the latest government scale this translates to some twenty two thousand three hundred seventy nine Euros point thirty four cents per annum. Then there is the FY2 Foundation Year Program Year 2 Doctors, which go to Scale 9 step 7, which translates to twenty three thousand two hundred seventy four Euros per annum. Then there is a BST 1 which is.. - BST is Basic Specialist Trainee, which is Scale 8 step 5 which translates to twenty three thousand eight hundred ninety eight Euros and thirty four cents per annum. These are Euros.

Then there is a BST 2 - Basic Specialist Trainee 2 which is Scale 7 step 5, it translates twenty five thousand five hundred fifty five Euros and sixty six cents per annum.

HST 1 to 2, Scale 6 step 7, translates to twenty eight thousand six hundred and twelve Euros. Then there is the residence specialist, we are talking now specialist grades, Scale 5 step 4, which translates twenty eight thousand six hundred ninety one Euros and ninety nine cents per annum. And then there are the consultant grades. The consultant grades are scale 4 which translates to thirty four thousand five hundred and four Euros.

Now in terms of specialist that is the basic pay. But on top of that once they get employed according to the conditions of the employment, the hospital the entity at entity level, so the central ministry employs the Doctor issues the qualifications etc etc; but then the entity goes into a one to one contract with that specialist in terms of the needs of the service. Ok? And there will be payments in session. But that depends on the exigencies/ the needs, the particulars of the call, the perimeters of deployments, the specialization. Just to give you an idea. You might have

⁴ Fol. 635 et seq.

someone who works in a highly specialized area and he is required to be on call 24 - 7, he might get more payment then someone that is required for particular number of hours per day, ok? So we are talking the basic and then according to the exigencies...”

37. The Court notes that the Medical Council did not contest that the plaintiff would have been eligible for scale 6, which is the grade of a Higher Specialist Trainee, in fact no appeal was forthcoming by the Medical Council on this point. However, considering that calculation of loss of wages was carried out on the basis of a hypothetical scenario, that the plaintiff would have worked in that scale category in question for the number of years considered, this Court agrees with the calculations made by the First Court for potentially entitled salary and deems such calculations to be realistic. One should also consider that there is no guarantee that advancements in one’s career would have been made as such advancements do not solely depend on one’s qualifications but on other factors, such as other potential candidates for the same specialised position and the needs of the medical department concerned.

38. With regards to the loss of earnings from private practice, which the plaintiff includes as EUR1,072,524.00⁵ in her note of submissions, this Court notes that, as pointed out by the Medical Council, no evidence was brought forward regarding the figure quoted by the plaintiff. Indeed, the plaintiff was not clear in her position, that is whether she would have

⁵ Fol.1062

expected to generate that amount of money as a general practitioner or as a virologist. No other professionals were called to the witness stand to grant a comparative idea of how much the plaintiff would have expected to earn via private practice.

39. To this end this Court deems that it is in no position to liquidate any damages for loss of private practice.

40. Consequently, this grievance is being rejected.

Decision

41. To this end, this Court rejects the plaintiff's appeal and confirms the decision of the First Court. Costs pertaining to the appeal shall be borne by the plaintiff.

Mark Chetcuti
Chief Justice

Giannino Caruana Demajo
Judge

Anthony Ellul
Judge

Deputy Registrar
SS