



Rent Regulation Board
Magistrate Dr. Charmaine Galea B.A. LL.D.

Today, the 26th November 2024

Sworn Application No. 87/2024

Daniel Abela (K.I272680M), Andrew Abela (K.I 48191M), Victoria Jameson (K.I 349984M) Ilkoll bhala eredi ta' missierhom Joseph Abela

-vs-

Richard Kandler (K.I 18783A) u Alexander Kandler (K.I 18782A) għal kull interess li jista' jkollu

The Board,

Having seen the sworn application dated the 22nd February 2024 whereby the applicants submitted and requested the Board as follows:

- 1. Illi r-rikorrenti huma, in solidum bejniethom, proprjetarji tal-fond 29, Cipress, Triq Ta' Marmora, San Giljan liema proprjeta kienet mikrija lill-intimat minn missier l-esponenti u cioe Joseph Abela li miet nhar il-25 ta' Settembru tas-sena 2021, ricerki testamentarji tal-istess defunt Joseph Abela annessi u mmarkata bhala **Dok.DA1**.*
- 2. Illi l-proprjeta kienet tinkera mill-intimat Richard Kandler, originarjament versu l-kera ta' seba mitt ewro (€700) permezz ta' skrittura privata datata l-15 ta' Novembru tas-sena 2011 (**Dok.DA2**) li sussegwentament l-istess skrittura giet estiza għal sentejn oħra tramite skrittura oħra datata l-15 ta' Novembru 2012 għal kera ta' sitt mija u ħamsin ewro (€650) fix-xahar, ftehim immarkat u anness bhala (**Dok. DA3**).*

3. Illi l-kirja fuq esposta in vista tal-aħħar skrittura ffirmata bejn l-intimat u missier ir-rikorrenti, kienet valida sa' Novembru tas-sena 2014 izda l-intimat baqa jokkupa l-fond lilu mikri mingħajr ebda jedd legali u għadu qiegħed jokkupa hekk sal-lum.
4. Illi għalkemm l-intimat gie nterpellat sabiex jizgombra mill-imsemmi fond u jirrilaxxah battal favour l-esponenti rikorrenti u dan tramite diversi korrisondenzi mal-istess, minn **Dok. DA4** sa **Dok. DA7** rispettivament, l-intimat Richard Kandler baqa jokkupa l-fond in kwistjoni mingħajr titolu validu fil-Ligi.
5. Illi safejn jafu l-esponenti, flimkien mal-intimat Richard Kandler jgħix għol-fond in kwistjoni it-tifel tiegħu u cioe l-intimat Alexander Kandler. Tal-aħħar qatt ma kellu ftehim ma' missier ir-rikorrenti rigward il-lokazzjoni ta' tali fond.
6. Illi in vista tal-fuq espost jirrikorru l-elementi preskritti mill-Artikolu 16A tal-Kap. 69 tal-Ligijiet ta' Malta sabiex din il-kawza tigi deciza bid-dispensa tas-smiegħ tagħha u billi safejn jafu l-esponenti rikorrenti, l-intimat m'għandux eċċezzjonijiet x'jagħti kontra t-talbiet tagħom.

Għaldaqstant, l-esponenti prevja kwalsiasi dikjarazzjoni necessarja u opportuna u għar-ragunijiet premessi u kif dispensata mis-smiegħ tal-kawza odjerna bil-proceduri sommarji speċjali kif stabbiliti mill-Ligi a tenur tal-Artikolu 16A tal-Kap. 69 tal-Ligijiet ta' Malta, jitlob lil dan l-Onorabbli Bord biex jordna lill-intimat sabiex jidher quddiemu fil-gurnata u ħin kif stabbilit mill-istess Bord u f'każ li l-intimat ikun kontumaci f'dik is-seduta, jew inkella jekk huwa jonqos milli juri f'dik is-seduta li jkollu difiżà li jiswa' u li jista' jagħmel sabiex jikkontesta t-talbiet tar- rikorrenti, l-imsemmi Bord li Jirregola l-Kera għandu:

1. Jiddikjara u Jiddeciedi bid-dispensa tas-smiegħ ai termini tal-Artikolu 16A Tal-Kap. 69 tal-Ligijiet ta' Malta.
2. Jordna l-izgumbrament tal-intimat Richard Kandler mill-fond 29, Cipress, Triq Ta' Marmona, San Ġiljan, ġia Cipress, fi Triq Marmora, San Ġiljan fi zmien qasir u perentorju u dan stante illi l-istess intimat qiegħed jokkupa l-istess fond abbużivament u mingħajr ebda jedd legali.

Illi l-fuq espost qiegħed jiġi kkorrobat b'dikjarazzjoni tar-rikorrenti Daniel Abela bil-gurament hawn annessa u mmarkata bhala **Dok DA8**.

Having seen that the respondents were duly notified in terms of Section 187 of Chapter 12 of the Laws of Malta;

Having seen that during the sitting of the 4th June 2024, both respondents asked the Board to authorise them to file a reply since they had a *prima facie* defence;

Having seen the decree delivered during the same sitting by means of which both defendants were given the right to submit a reply;

Having seen the reply submitted by respondent Richard Kandler on the 19th June 2024 whereby he pleaded as follows:

1. *Whereas the demands brought forward by the plaintiffs are manifestly unfounded in fact and at law and should be rejected with costs against the plaintiffs for the following reasons:*
 - a. *Preliminarily, since the plaintiffs and/or their predecessor in title have failed to register this lease with the Housing Authority in terms of Chapter 604 of the Laws of Malta, which constitutes a criminal offence and a breach of rules of public order, this Board should decline to provide the remedy requested by the plaintiffs;*
 - b. *On the merits, the defendant is enjoying the premises 29, Cipress, Triq ta' Marmora, San Giljan under a valid title of lease, so much so that the plaintiffs and/or their predecessor in title had been readily accepting lease payments until very recently;*
 - c. *Without prejudice to the foregoing, no legally valid notice of termination lease has been given to the defendant;*
 - d. *Additionally, the defendant is a person afflicted by disabilities as duly certified and acknowledged by the CRPD and as such, should be treated fairly and equitably;*
2. *Saving other pleas which may lawfully be raised.*

Having seen that during the sitting of the 11th July 2024 the Board ordered that the parties produce proof and make submissions on the first plea of the respondent;

Having heard Daniel Abela and Richard Kandler;

Having seen all the acts and documents submitted so far;

Having seen the Notes of Submission filed by the parties;

Having seen that the case was adjourned for today for judgement with regards to the first plea of respondent Richard Kandler;

Considered:

From the evidence produced so far it results that the applicants own the property number 29, Cipress, Triq Ta' Mormora, San Giljan, which property was rented out to respondent Richard Kandler by means of a private writing dated 15th November 2011 and a further agreement dated 15th November 2012,¹ by means of which the respondent Richard Kandler rented out the property till November 2014. According to documentation attached to the sworn application, the applicants solicited the respondent Richard Kandler to vacate the property by means of two legal letters dated 4th January 2024 and 29th January 2024.

David Abela explained that after the passing away of his father, the applicants inherited a number of properties which were being rented out. He stated that he needed a tenement as his residence and he chose to evict the respondent since he was the least co-operative and least conducive to a good environment in the complex. He stated that the last rent he received from Mr. Kandler was in March 2024, after which he instructed the Bank not to accept any further payments.

Richard Kandler testified that the rent agreement was renewed every year since he did not receive a termination letter. He stated he has paid the rent in July 2024 and the Bank accepted it. He also explained that he tried to register the lease agreement himself but he only got a confirmation that he reported the tenancy as the contract is not legal.

¹ Documents DA2 and DA3 a fol. 12-15

Respondent Richard Kandler pleaded that this Board should decline to provide a remedy to the applicants since they did not register the said lease with the Housing Authority in terms of Chapter 604 of the Laws of Malta.

Considered:

From the acts of the case it results that the applicants inherited the property in question after the passing away of their father on the 25th September 2021. According to Daniel Abela they continued to receive rent till March 2024 while according to respondent he paid rent until July 2024. On the 4th January 2024, the applicants informed the respondent that the lease will be terminated on the 3rd February 2024.

In terms of article 5 (2) of Chapter 604 of the Laws of Malta, the lease in question had to be registered by the lessor with the Housing Authority till the 1st January 2021. In default, the lessee had the right to register the lease himself at the expense of the lessor.

It results that neither the original lessor, nor the applicants registered the lease with the Housing Authority. Neither did the respondent register the lease within the prescribed period. It was only after this case was insitituted that the respondent tried to register the lease. However the Board does not have any proof **that** the lease was in fact registered.

Hence the respondent is arguing that since the lease was not registered, the Board cannot give any remedy to the applicants.

The Board notes that according to article 4 of Chapter 604 of the Laws of Malta it is only contracts which have been concluded after the coming into force of the same act that are considered null and void if they are not registered with the Housing Authority. With regards to contracts that were drawn up after the 1st of June 1995 but before the entering into force of the mentioned Act, there is no similar sanction.

The Board makes reference to a judgement delivered on the 17th January 2024 in the names of *Paul Muscat et vs Caroline Grace Leonard et*, whereby the Court stated the following:

13. Il-Qorti tosserva però, li filwaqt li fir-rigward ta' kirjiet li bdew wara d-dhul fis-sehħ tal-Kap. 604, il-legislatur ipprova għall-possibilità ta' reġistrazzjoni tardiva bil-ħlas ta' miżata amministrattiva addizzjonali għal dan in-nuqqas, kif pprova wkoll għan-nullità tal-ftehim jekk il-kirja tibqa' ma tigix irreġistrata, il-liġi hija siekta dwar x'għandu jsir fil-każ ta' kirjiet residenzjali privati li saru wara l-1 ta' Ġunju, 1995, u li kienu għadhom fis-sehħ meta gie ppromulgat il-Kap. 604, jekk ir-reġistrazzjoni tibqa' ma ssirx. L-artikolu 5 tal-Kap. 604 jipprova illi:

"5(1) Kirjiet residenzjali privati li saru wara l-1 ta' Ġunju, 1995 imma qabel id-dhul fis-sehħ tal-Att, u li xorta jibqgħu fis-sehħ fl-1 ta' Jannar, 2021, kemm jekk fit-terminu originali jew imġedded tagħhom għandhom jiġu rreġistrati.

...

5(2) Għandu jkun id-dmir ta' sid il-kera li jirreġistra l-kuntratt ta' kiri residenzjali privat mal-Awtorità skont is-subartikolu (1) sal-1 ta' Jannar, 2021.

5(5) Jekk sid il-kera jonqos milli jħares l-obbligu tiegħu stipulat fis-subartikolu (1), il-kerrej jista' jipproċedi sabiex jirreġistra l-kuntratt huwa stess, bi spejjeż għal sid il-kera. ...".

14. Min-naħa l-oħra l-artikolu 4 tal-Kap. 604 jistipula li kull ftehim dwar kirjiet residenzjali privati għandu jiġi rreġistrat, u f'każ li tali ftehim lokatizju jibqa' ma jiġix irreġistrat, il-kirja tkun nulla u mingħajr effett. Minkejja dan, il-liġi tagħti l-possibilità li l-kirja tiġi rreġistrata b'mod tardiv, f'liema eventwalità jrid isir il-ħlas ta' miżata amministrattiva, iżda r-reġistrazzjoni jkollha effett retroattiv, daqs li kieku saret fi żmien għaxart ijiem mill-bidu tal-kirja kif tistipula l-liġi. Dan l-artikolu tal-liġi jipprova wkoll għall-possibilità li jekk sid il-kera jonqos milli jirreġistra l-kirja, l-inkwilin ikun jista' jipproċedi bir-reġistrazzjoni tal-kirja huwa stess.

15. Il-Qorti tqis li ladarba l-liġi hija siekta dwar jekk kirja li bdiet bejn l-1 ta' Ġunju, 1995 u l-promulgazzjoni tal-Kap. 604 tal-Liġijiet ta' Malta u li ma tigix irreġistrata hijiex nulla, m'għandux ikun hemm il-preżunzjoni li kirja bħal din hija nulla u mingħajr effett. Il-legislatur lanqas ma kien favur in-nullità f'każ li kirja residenzjali privata tibqa' ma tigix irreġistrata wara d-dhul fis-sehħ tal-Att, minkejja li minn meta gie ppromulgat il-Kap. 604

tal-Liġijiet ta' Malta, huwa prezunt li kulhadd – sidien u inkwilini – sar jaf jew ġie mgħarraf b'dan l-obbligu tar-registrazzjoni tal-ftehim mal-Awtorità tad-Djar. Il-kirja titqies li hija nulla jekk qatt ma tiġi rreġistrata, għalkemm din dejjem tista' tiġi salvata bir-registrazzjoni, issir meta ssir. L-unika penali li tipprospetta l-liġi f'każ ta' registrazzjoni tardiva hija l-ħlas ta' miżata amministrattiva. Mill-bqija l-kirja tibqa' attiva u r-registrazzjoni saħansitra hija effettiva sa mill-bidu tal-kirja. Għall-finijiet u effetti tal-liġi, dan ifisser li kirja residenzjali privata li tiġi rreġistrata, irrispettivament minn meta tiġi rreġistrata, hija valida.

16. *Fir-rigward ta' kirjiet residenzjali privati li kienu diġà fis-seħħ meta ġie ppromulgat il-Kap. 604 tal-Liġijiet ta' Malta, bħall-kirja odjerna, il-legislatur ma pprovidiex għan-nullità tal-kirja fl-eventwalità li din ma tiġix irreġistrata. Jgħid biss li hemm l-obbligu tar-registrazzjoni u li jekk is-sid jonqos milli jonora dan l-obbligu, l-inkwilin jista' jipproċedi biex jonora dan l-obbligu huwa stess. Għaldaqstant, il-Qorti ma tistax tipprezumi li l-legislatur kien qiegħed jipprospetta n-nullità ta' kirjiet bħal dawn jekk il-kirja ma tiġix irreġistrata sal-1 ta' Jannar, 2021. Hawnhekk il-Qorti taqbel mal-Bord li l-ispirtu tal-liġi huwa li kull kirja għandha tiġi salvata, u l-importanti huwa li l-obbligu tar-registrazzjoni tal-kirja jiġi onorat. Fil-każ odjern jirriżulta li anki jekk b'mod tardiv, ir-registrazzjoni tal-kirja saret. Il-Qorti tiġbed l-attenzjoni tal-appellanti għall-fatt li bħala sidien ta' nofs indiviż tal-fond, huma wkoll kellhom l-obbligu li jirreġistraw tali kirja hekk kif saru jafu biha. L-appellanti jistgħu jargumentaw li huma ma kinux jafu bil-kirja, jew li ma kellhomx f'idejhom kopja tal-ftehim tal-kirja li sar bejn l-appellati, u għalhekk ma setgħux jagħmlu r-registrazzjoni tal-kirja huma stess, iżda l-appellanti kellhom l-għażla li qabel jistitwixxu l-proċeduri odjerni li permezz tagħhom qegħdin jitolbu l-iżgumbrament tal-inkwilini mill-fond, jinterpellaw lill-intimati fil-vesti varji tagħhom, kemm bħala sidien jew bħala inkwilini, sabiex jonoraw l-obbligi tagħhom ai termini tal-liġi.*

The Board fully agrees with this line of reasoning and deems that since the legislator did not stipulate that in the event of non-registration the said lease is null, it cannot decline to provide the remedies requested by the applicants should they be founded in law.

Hence the Board is rejecting the first plea of the defendant Richard Kandler.

DECIDE

For the above reasons, the Board is hereby rejecting the first plea of the respondent Richard Kandler and thus orders the continuation of the case.

The costs with regards to this plea are to be borne by the respondent.

Dr. Charmaine Galea
Magistrate

Antonella Cassar
Deputy Registrar