



RENT REGULATION BOARD

**MAGISTRATE
DR. JOSEPH GATT LL.D.**

Sitting held on Friday, 6th of December 2024

**Application Number: 139/2024
Number on the list: 3**

**Following the judgement given on the 29th of September 2023 in
the proceedings before the Rent Regulation Board (Number:
220/2023) in the names:**

**Chev. Hadrien Majoie (K.I. 0083047A) duly represented in Malta
by special attorney Emanuel Debono (K.I. 539874M)**

vs

**Gilead Raphael Wiseburgh (Great Britan Passport Number:
538852741) and Marina Majoie who was allowed to intervene *in
statu et terminis* by a decree dated 18th October 2024**

The Board,

Having seen the sworn application filed by Raphael Gilead Wiseburgh (hereinafter referred to “the applicant”) filed on the 13th of March 2024¹ based on article 811(b) of Chapter 12 of the Laws of Malta, by which the applicant requested the retrial of the judgement given by this Board² in the names **Emanuel Debono noe vs Gilead Raphael Wiseburgh**, (App Number: 220/2023) on the 29th of September 2023.

Having seen the decree given on the 26th of March 2024³.

Having seen the sworn reply filed by Chev. Hadrien Majoie (hereinafter referred to as the defendant⁴) filed on the 24th of April 2024. Of interest for today’s judgement is the third plea which states that the applicant’s claims cannot be accepted as the other proceedings are still *sub judice*.

Having seen the minute dated 13th of May 2024⁵ whereby the relative lawyers (with regard to another application filed in terms of article 823 of Chapter 12 of Laws of Malta) dictated that the execution of the afore mentioned judgement will not occur pending the outcome of these proceedings. During that sitting it was agreed that these proceedings continue in the English language⁶.

Having seen the minute dated 18th of October 2024⁷ whereby Marina Majoie (hereinafter referred to as the intervenor) requested and was ultimately allowed to intervene *in statu et terminis* in terms of article 960 of Chapter 12 of the Laws

¹ Fol 1 *et seq* of the acts.

² Presided by Magistrate Joseph Mifsud.

³ At fol 8 of the acts.

⁴ As duly represented.

⁵ At fol 17 of the acts.

⁶ Due to this, the Board deems it fit to simply refer to relevant case-law in these footnotes without citing from the same in the Maltese language.

⁷ At fol 20 of the acts.

of Malta. The parties declared that they have no evidence to bring or submissions to make regarding the third plea. That day, these proceedings were deferred for judgement on the same plea.

Considers

Whereas, as has been established hereabove, today's judgement relates to the third plea raised by the defendant. The facts which led to today's proceedings are as follows:

- 1) The defendant had originally filed an action in terms of article 16A of Chapter 69 of the Laws of Malta, by which he requested *inter alia* the termination of the lease between the parties (this seemingly excluded the intervenor) regarding the interconnected apartments 1801 and 1901, East 3, Fort Cambridge, Tigne Street, Sliema. Through the same application, the defendant requested the eviction of the applicant and the liquidation and eventual payment of sums due as arrears of rent and the relatives due regarding the consumption of water and electricity.
- 2) By means of a decision handed down on the 20th of September 2023, this Board (differently presided) acceded to the first, second and third claim (regarding the termination and eviction of the applicant) and ordered that the applicant leaves the relative apartments within 30 days from the decision.
- 3) In that same decision, the Board ordered the continuation of those proceedings on the remaining requests.

- 4) The applicant commenced these proceedings stating that he was not duly notified with the acts of the other case. The basis of this sworn application is article 811(b) of Chapter 12 of the Laws of Malta⁸.
- 5) The defendant⁹ states that such an action is incorrect as the case is still ongoing.

Whereas, it has been consistently held that retrial proceedings are only allowed following the delivery of a final judgement¹⁰ or a judgement which leads to the conclusive termination of the whole suit between the parties¹¹. When a case is still being tried, it cannot be subject to a retrial. A retrial is requested due to what

⁸ This reads as follows: *A new trial of a cause decided by a judgment given in second instance or by the Civil Court, First Hall, in its Constitutional Jurisdiction, may be demanded by any of the parties concerned, such judgment being first set aside, in any of the following cases: (b) here the sworn application was not served on the party cast, provided that, notwithstanding such omission, such party shall not have entered an appearance at the trial;* It is worth noting at this stage that our Courts have held that retrial proceedings before this Board are not to be solely linked to article 42 of Chapter 69 of the Laws of Malta. Reference is made to the judgement in the names **Anna Mercieca vs Sammy Azzopardi**, (App Num: 272/2019) delivered by this Board (differently presided) on the 26th of November 2021. The Board also refers to the judgement in the names **Andre Meli vs Joseph Micallef et**, (App Number 58/2006/1) decided by the Court of Appeal (Inferior Jurisdiction) on the 26th of June 2009.

⁹ The intervenor also made hers the defendant's reply, (although she intervened when the time limit for written procedure had already been exhausted). *Vide* minute of the 18th of October 2024.

¹⁰ Reference is made to the judgement in the names **James Buttigieg et nomine vs Dottor Michael Caruana et nomine**, (App Num: 77/2010/2) decided by the Court of Appeal (Superior Jurisdiction) on the 8th of March 2016. Furthermore, reference is made to the judgement in the names **Filomena Rodo et vs Carmelo Grech et**, (Application Num: 504/2008/1) decided by the Civil Court, First Hall on the 28th of May 2009 (not appealed).

¹¹ Reference is made to the judgement in the names **Cosimo Marziano et vs Silvio Marziano et**, (App Number: 200/19/3) decided by the Court of Appeal (Superior Jurisdiction) on the 29th of March 2023. Of interest, amongst many others, are also the judgements in the names **Isabella Zananian Desira vs Kunsill Mediku**, (App Num: 740/2011) decided by the Court of Appeal (Superior Jurisdiction) on the 31st of May 2019 and the decision in the names **Dr. Patrick Spiteri vs Sylvana Spiteri**, (App Num: 55/2009/2) decided by the Court of Appeal (Superior Jurisdiction) on the 31st of May 2013.

occurred in the case and not necessarily solely what was decided in the judgement. In other words, the retrial is of the case and not of the judgement¹².

Whereas essentially the question is the following: Is the judgement of the 23rd of September 2023 to be considered as a partial judgement or a final one?

Whereas it should be noted that the character of a particular decision ought not to be solely examined by the reason for which it was originally deferred for. In other words, a case may be deferred for a partial judgement however it might become final as a result of the decision given. By way of example, should a case be deferred for a judgement solely on a plea of prescription to the principal action (therefore those proceedings would include a counter-claim), and that plea is accepted, then the judgement becomes final with regards to that principal action, notwithstanding the fact that the particular case continues with regards to the counter-claim¹³. The same is applicable to a situation where a case is deferred for a judgement on a first request (when there are other consequential requests) and that first request is rejected. The other requests, which are intrinsically linked to the first request, would also naturally be rejected. A partial judgement may also be deemed to be final with regards to some defendants and not others¹⁴, however

¹² Reference is made to the judgement in the names **Karmenu Mifsud Bonnici noe et vs John Scicluna noe**, decided by the Court of Appeal (Superior Jurisdiction) on the 26th of April 1993. This reasoning was subsequently reiterated in the judgements mentioned in the previous footnotes and the judgement in the names **Avukat Dottor Henry sive Eric Mamo noe et vs Michael Axisa et**, (App Num: 1320/1988/1) decided by the Court of Appeal (Superior Jurisdiction) on the 16th of December 2003.

¹³ By way of example, reference is made to the judgements in the names **Ursula Ellul Sullivan vs RECC Ltd**, (App Num: 83/2020) decided by the Court of Appeal (Inferior Jurisdiction) on the 17th of May 2023 and **Edrichton Estates Limited vs Perit Anthony et**, (App Num: 936/2010) decided by the Court of Appeal (Superior Jurisdiction) on the 28th of April 2017. The judgement in the names **Ivan Lautier vs J. Lautier Co. Ltd**, (App Num: 2393/1998/1) decided by the Court of Appeal (Superior Jurisdiction) on the 6th of December 2002 is also of interest in this regard.

¹⁴ Reference is made to the judgement in the names **Carmelo Cachia et vs Olga Mifsud et**, (App Number: 428/2007/2) decided by the Court of Appeal (Superior Jurisdiction).

this is not the case in these proceedings. Today's decision is also a proper illustration of this as, although the case was left for a decision solely on the third plea, should this Board accept this plea, it is natural that all the applicant's requests will automatically be deemed to be incorrect and ultimately rejected.

Whereas the Board notes that although the legislator, when promulgating (and continuously emending) article 16A of Chapter 69 of the Laws of Malta allowed for the question of eviction to be decided in the first sitting and other claims (linked to a particular lease agreement) to be decided after an examination of the merits¹⁵, the same legislator has not dealt with the possibility of enforcement or appeal from that initial judgement **in the special law**¹⁶. The Board appreciates that when used properly¹⁷, the point of special summary proceedings in cases such as these is the immediate eviction of the lessee, whilst other related claims can be delved into at a later stage. In default of specific provisions in the special law, one has to naturally fall to the provisions found in Chapter 12 of the Laws of Malta¹⁸.

¹⁵ Article 16A of Chapter 69 of the Laws of Malta begins as follows: *“In actions before the Rent Board, where the demand is solely for the eviction of any person from the lease or sub-lease of any urban, residential or commercial tenement, with or without a claim for rent or any other consideration due or by way of damages for any compensation, up to the date of the surrender of the tenement, it shall be lawful for the applicant to demand in the sworn application that the Board gives judgment allowing his demand, without proceeding to trial: Provided that when the demand for eviction is made with a claim for rent or any other consideration due or damages for any compensation, the Rent Board shall decide the demand for eviction at the first hearing before deciding any other demands made by the applicant”*

¹⁶ Article 24(2) of Chapter 69 of the Laws of Malta does not legislate appropriately for such a situation.

¹⁷ Reference is here made to the judgement in the names **Mary Rose Schembri vs Paulino Schembri**, (App Num: 121/2015) decided by the Court of Appeal (Inferior Jurisdiction) on the 7th of February 2017.

¹⁸ Article 20(1) of Chapter 69 of the Laws of Malta. Reference is made to the judgement in the names **Professor Dr. Alexander Briffa et vs Lawrence J. Sullivan**, decided by the Court of Appeal (Superior Jurisdiction) on the 7th of December 1956.

Whereas this Board (differently presided) delved into this matter when faced with a warrant of ejectment (or expulsion) in terms of article 384 of Chapter 12 of the Laws of Malta, in an attempt to execute a partial judgement (handed down in terms of article 16A)¹⁹, when the case was still ongoing on other ancillary requests. That Board held²⁰ that such an executive warrant could not be issued at the time when the proceedings were still ongoing since that judgement had not concluded decisively the whole suit.

Whereas this Board concurs and states that the judgement handed on the 29th of September 2023 is subject to article 231 of Chapter 12 of the Laws of Malta. Whilst the Board notes that the applicant might have had difficulty in applying for special leave to appeal²¹, since those proceedings are still ongoing, that judgement is still subject to an appeal following the final judgement in that case. However, these special retrial proceedings are not appropriate to attack the partial judgement. The judgement of the 29th of September 2023 cannot be deemed to be final or that it constitutes a *res judicata*²².

Whereas finally and simply *obiter*, as was minuted in the sitting held on the 13th of May 2024, the respective lawyers (at the time that of the applicant and defendant) with reference to the application filed in terms of article 823 of Chapter 12 of the Laws of Malta, stated that pending these proceedings the defendant will not execute the decision given on the 29th of September 2023. The

¹⁹ The partial judgement was that in the names **Lawrence Bonnici vs Clint La Rosa**, (App Number: 255/2020) decided by this Board (differently presided) on the 1st of February 2021 (the case was ultimately decided on the remaining requests on the 14th of September 2021).

²⁰ Reference is here being made to the decree in the warrant of ejectment proceedings in the names **Lawrence Bonnici vs Clint La Rosa**, (Warrant Number 340/2021) given by this Board (differently presided) on the 23rd of March 2021.

²¹ The basis of these retrial proceedings is the fact that allegedly the applicant was not duly served with the acts of that case.

²² Reference is made to the judgement in the names **Carmen Grixti vs Dr. Ivan Grixti**, (App Num:125/18/4) decided by the Court of Appeal (Superior Jurisdiction) on the 15th of November 2023.

Board notes that it has not been informed as to whether the defendant (applicant in the other proceedings) requested the immediate enforceability of the partial judgement in terms of article 266 of Chapter 12 of the Laws of Malta²³. For the reasons indicated above, this Board deems the same article to be applicable in such situations²⁴.

Whereas in conclusion, the third plea is correct, and the applicants' requests cannot be acceded to.

Therefore, the Board accepts the third plea raised by the defendant, declares all applicant's requests as inadmissible and rejects the same.

The expenses of these proceedings are to be borne solely by the applicant.

Dr Joseph Gatt LL.D.
Magistrate

Annalise Spiteri
Deputy Registrar

²³ Although this does not transpire from a reading of the partial judgement.

²⁴ By way of example, as an illustration of when an application under article 266 of Chapter 12 of the Laws of Malta with regards to the enforceability of a partial judgement was acceded to, the Board makes reference to the judgement in the names **Garden of Eden Garage Ltd vs Awtorità dwar it-Trasport f'Malta**, (Application Number: 474/2009) decided by the Civil Court, First Hall on the 29th of September 2011.