



**FIRST HALL OF THE CIVIL COURT
(CONSTITUTIONAL JURISDICTION)
Hon Madam Justice Audrey Demicoli LL.D**

Constitutional Application Nr **368/2023 (AD)**

CARMELO TURU SPITERI (MALTESE ID 0842452M)

VS

**L-ONOREVOLI SUR IMĦALLEF GIOVANNI M. GRIXTI U
L-ONOREVOLI AVUKAT TAL-ISTAT**

Sitting held on Thursday, 30th January 2025

The Court:

1. This is a final judgement pursuant to a claim brought by the plaintiff in which he is seeking: (a) the recusal of the Hon Mr Justice Giovanni M. Gixti from presiding the proceedings bearing Constitutional Application Nr 80/2023; and (b) for the issuance of an interim measure to stay and/or prohibit the Hon Mr Justice Giovanni M Gixti from delivering a judgement in the same case.

Preliminaries

2. By virtue of a Constitutional application filed on the seventeenth (17th) July 2023, the plaintiff **Carmelo Turu Spiteri** submitted that in proceedings brought before this Court as otherwise presided by the Hon. Mr Justice Giovanni M Gixti (Const Appl Nr 80/2023 in the names ***Carmelo Turu Spiteri vs The Honourable Mister Robert Abela, as Prime Minister for the Democratic Republic for the Islands of Malta***), he was being given an unfair hearing, alleging, *inter alia*, that he was not being served with decrees, proceedings were taking place in the Maltese language, he was not allowed to sit with robed lawyers during Court sittings, and he was deprived of the opportunity to make *viva voce* rebuttals during the sittings held;

3. Thus, by virtue of this application, the plaintiff requested the Court:
 - a. To order the recusal of the Hon Mr Justice Giovanni M Gixti from presiding over the proceedings bearing Constitutional Appl Nr 80/2023; and

 - b. To issue an interim measure to stay and/or prohibit the Hon Mr Justice Gixti from decreeing or adjudicating in the case bearing Constitutional Appl Nr 80/2023 until this matter is decided;

4. By virtue of a reply dated eleventh (11th) October 2023, the **Hon Mr Justice Giovanni M Gixti** raised the following pleas:
 - a. Preliminarily, that he could not, in his personal capacity, be the legitimate respondent to these proceedings and should therefore be declared non-suited;

 - b. Preliminarily, that the judicial action must fail in so far as it is directed to the respondent, as it is in breach of the legal doctrine of judicial immunity for acts committed by members of the Judiciary;

- c. Preliminarily, the *firma di favore* on the Constitutional application is invalid;
 - d. Preliminarily, the judicial action must fail because the plaintiff did not exhaust all local domestic remedies prior to instituting this case;
 - e. On the merits, the allegations raised by the plaintiff are false and baseless, intended as an unjust attack on a member of the Judiciary;
 - f. Finally, whereas the respondent had already decided on the matters complained of by the plaintiff in the form of decrees, respondent is legally precluded from answering to or commenting on pending proceedings before him;
5. By virtue of a reply filed by the **State Advocate** on the fourteenth (14th) August 2023, the respondent raised the following pleas:
- a. That the case should be decided summarily because it contains frivolous yet serious accusations towards a sitting member of the Judiciary;
 - b. Preliminarily, the application should be declared inadmissible because it breaches Article 178 of Ch 12 of the Laws of Malta;
 - c. Preliminarily, Hon Mr Justice Giovanni Grixti should not be a party to this case;
 - d. Preliminarily, that the respondent did not use the ordinary remedies at his disposal prior to filing the present case;
 - e. On the merits, the application is unfounded in fact and at law, and does not merit the attention of this Court;

6. During the sitting held on the twenty-first (21st) August 2023, the plaintiff requested that proceedings be conducted in the English language. This Court upheld the request and ordered that proceedings henceforth be conducted in the English language;
7. During the same sitting **the plaintiff declared that he was withdrawing the case against the Hon Mr Justice Giovanni Grixti in his personal capacity. He also declared that he would pay the expenses related to the filing of the reply by the Hon Mr Justice Giovanni Grixti;**
8. The Court rejects the request for the issuing of an interim measure as demanded by the plaintiff, by virtue of a decree dated nineteenth (19th) September 2023;
9. An appeal from the decree rejecting the request for the issuing of an interim measure was filed by the plaintiff before the Constitutional Court, and by virtue of a decree dated the eighth (8th) April 2024, the Constitutional Court revoked the decision delivered by this Court and ordered the temporary suspension of proceedings of Constitutional Appl Nr 80/2023 in the names *Carmelo Turu Spiteri vs The Hon. Robert Abela et* until final judgement could be delivered in this case.

The Court

10. Having seen the Constitutional application filed by the plaintiff;
11. Having seen the replies filed by the respondents;
12. Having seen that the case was withdrawn against Hon Mr Justice Giovanni Grixti in his personal capacity;
13. Having seen the acts of the case and the notes of final submissions filed by the parties;

14. Having seen that the case was adjourned for judgement for today;

15. Considers as follows:

Legal Considerations made by the Court

16. Essentially, the plaintiff sought two remedies when filing this case:

(a) The recusal of the Hon Mr Justice Gixti from presiding over the case instituted by virtue of Constitutional Appl Nr 80/2023; and

(b) The issuing of an interim measure suspending proceedings instituted by virtue of Constitutional Appl Nr 80/2023 pending a ruling in this case;

17. **The Court observes primarily that:**

(a) The Hon Mr Justice Gixti recused himself from the case instituted by virtue of Constitutional Appl Nr 80/2023 by virtue of a decree dated 2nd October 2024 (exhibited a fol 907-908 of the case file);

(b) The request for the issuing of an interim measure, although initially rejected by this Court, was eventually upheld by the Constitutional Court;

18. **Thus it transpires that the remedies sought by the plaintiff by virtue of the present case have already been granted, to the extent requested by the plaintiff, in a manner that there remains no other remedy requested by the plaintiff which this Court can afford the plaintiff;**

19. This is further proven through the fact that, in its deliberation leading to the formulation of this judgement, this Court found that the proceedings instituted by virtue of Constitutional Application Nr 80/2023 were decided

upon by virtue of a judgement given by this Court as presided by the Hon Madame Justice Doreen Clark on the 28th January 2025. This further affirms that there is neither a need for an interim measure staying proceedings, nor is there any need for the recusal of the presiding Member of the Judiciary;

20. The Court could stop at this point, declare the merits of the present cause exhausted, and move on to abstain from taking further cognisance of this case; however, prior to adjudicating to this effect, there are a few matters which the Court feels compelled to point out:

- i. The plaintiff reiterates that the Hon Mr Justice Grixti's behaviour violated his fundamental human rights as enshrined in, *inter alia*, the Constitution of Malta, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union; however, he consistently fails to specify the rights which he claims have been violated, choosing instead to list a number of allegations which he does not proceed to substantiate with evidence. He claims not to have received a fair, non-prejudicial, non-biased, non-discriminatory, meaningful, just and equitable process and hearing, and claims that the Hon Mr Justice Grixti abused of his discretion, abdicated of the Constitutional oath of office, and discriminated against him on the basis of language and on the basis of his choice to represent himself in Court. Nevertheless, this Court saw that ultimately Hon Mr Justice Grixti recused himself, and it was another member of the Judiciary who continued to hear the case and decide on its merits. Thus, if the plaintiff's main claim was that his right to a fair hearing was being violated, this was certainly no longer the case by the time the case reached final judgement;
- ii. Furthermore, the Court noted that, as in other proceedings which the plaintiff seems to have instituted before the Maltese Courts, the plaintiff opted to draft the application himself, and attempt to by-pass the procedure established by virtue of Article 178 of Ch 12 of the Laws of

Malta by obtaining the signature of a warranted lawyer as *firma di favore*, rather than having a warranted lawyer draft and sign the application himself. Whilst the Court applauds the plaintiff's audacity to represent himself before the Maltese Courts despite an evident unfamiliarity with the correct procedure to be followed, the Court cannot help but recall that which was in fact observed in the case filed by the plaintiff himself before this Court as otherwise presided, in the names ***Carmelo Turu Spiteri vs Eunice Grech Fiorini et***¹:

When a lawyer signs an act to be filed in Court he legally assumes responsibility for the contents of the said act and all that follows. The lawyer is also bound to act according to law and in accordance with the Code of Ethics being also considered an official of the Court. Applicant's idea of just getting a 'firma di favore' from a lawyer without such lawyer assuming responsibility of its contents is a very wrong application of the custom of 'firma di favore'. In fact this court agrees with the submissions made by respondents that the custom of 'firma di favore' is intended simply as a friendly custom between colleagues in cases where a lawyer who needs to urgently file an act cannot make it to actually sign the act therefore another lawyer signs instead of him. This does not mean that whoever signs the act is not also assuming certain responsibilities related to the same act, for example, that he has no legal conflict against the party whom he is signing. What the applicant is doing by obtaining a signature just to circumvent the need to be assisted by a lawyer is ethically, legally and procedurally wrong.

¹ Appl Nr 529/2022, First Hall of the Civil Court, Hon Madame Justice J Vella Cuschieri, 30th April 2024. Although an appeal was filed from this judgement, the appeal was declared null by virtue of a judgement of the Constitutional Court on the 2nd December 2024, as it was filed *fuori termine*.

iii. Finally, the Court also condemns the offensive language used in the application and submissions, particularly with reference to a Member of the Judiciary and with members of the legal profession. Whilst the plaintiff may have his reasons, opinions and beliefs for filing this case, these do not authorise him to adopt an attitude which does not befit judicial proceedings and the Courts of Justice in general. Such behaviour only serves to discredit him in the eyes of the Court;

21. Having considered the above, and in view of the fact that the remedies sought by the plaintiff have, in fact, already been accorded, the Court declares the merits of this case exhausted, and abstains from taking further cognisance of this application.

Decide

22. For these reasons, the Court declares the merits of this case exhausted, and abstains from taking further cognisance of this application.

All judicial costs are to be borne by the plaintiff.

Read in open Court.

Hon Madame Justice Dr Audrey Demicoli LL.D.

**Geraldine Rickard
Deputy Registrar**