



**FIRST HALL OF CIVIL COURT
HON. JUDGE TONI ABELA LL.D.**

Sitting of Thursday, 13th February 2025

Case number 7

Application number 274/2023

Ioannis Katakis K.I. Nru 0031065A

vs

**IZI Group plc (C34215) gja Pinnacle Gaming Group Ltd.,
Gaming Operations Limited (C29897)**

The Court:

Having seen the sworn application of Ioannis Katakis (the plaintiff) of the 16th of March 2023 by which he premised and demanded the following:

1. Premess illi **fid-9 t`April 2020** huwa kien ftiehem mas-socjeta **Pinnacle Gaming Group Limited** sabiex jassisthom fil-preparazzjoni ghall-offerta li kellhom isiru in konnessjoni mas-sejha ghal- koncessjoni fl-operat tal-Malta National Lottery Games, kopja ta` din l-ittra hija hawn ezibit u mmarkat bhala **Dokument A**;
2. U Billi f` din l-ittra gie spjegat li jekk l-intimati jew minn minnhom jew socjeta assocjata magghom ikollha success u tikseb il-koncessjoni fl-operat tal-Malta National Lottery Games, l-intimati kienu ser ihalsu s-segweni kumpens lir-rikorrenti:
 - a. Il-hlas ta` “Success fee” ta` mija u hamsin elf euro (€150,000) fi zmien xahar minn meta johrog il-licenzja appozita (klawsola 5 ta` l-ittra) U

- b. Jinghata impjieg fil-kumpanija bhala Chief Executive Officer bi paga li ghandha tigi miftehma bejn il-partijiet; **Jew** isir direttur tal-kumpanija responsabbli ghal perijodu ta` ghaxar snin u bil-paga ta` mitt elf (€100,000) fis-sena, u din ghax-xelta tal-kumpanija (klawsola 6 ta` l-ittra);
3. U Billi jirrizulta li l-intimati inghatat l-koncessjoni mill-Gvern ta` Malta ghall-operat tal-Malta National Lottery games u dana f` Marzu 2022
4. U Billi ghalhekk kellu jinghata kumpens lill-esponenti skond din l-istess ittra;
5. U Billi l-intimati qeghdin jirrifjutaw li jhalsu lill-esponenti u jaghtuh r-rwol ta` direttur u ghalhekk l-intimati huma moruzi fl-obbligi minnhom assunti fid-9 t` April 2020;
6. U Billi minkejja li l-intimati gew interpellati sabiex jersqu ghal likwidazzjoni u hlas ta` dak kollhu dovut lill-rikorrenti b` ittra ufficjali tat-8 ta` Frar 2023, l-intimati baqghu inadempjenti u minflok rrispondew b` ittra ufficjali tas-17 ta` Frar 2023, Dawn iz-zewg ittri huma esebiti u mmarkati bhala **Dokument B u Dokument C** rispettivament;
7. Illi ghalhekk l-esponent kellu jaghmel din il-kawza;

Ghaldaqstant ir-rikorrenti jitlob bir-rispett lil dina l-Onorabbli Qorti sabiex prevja kull dikjarazzjoni xierqa u opportuna,

1. Tiddikjara li l-intimati jew min minnhom huma moruzi fl-obbligi minnhom assunti minnhom assunti lejn ir-rikorrenti kif rifless fl-ittra tad-9 t` April 2020
2. Tillikwida l-ammont dovut mill-intimati jew min minnhom lir-rikorrenti;
3. Tikkundanna lill-intimati jew min minnhom ihalsu l-ammont hekk likwidat flimkien ma` l-imghax legali, kummercjali, skond il-ligi li jibdw jiskorru minn zmien xahar mid-data ta` meta l-intimati gew koncessi l-koncessjoni fuq imsemmija sad-data ta` pagament effettiv

Bl-ispejjez inkluz dawk ta` l-ittra ufficjali tat-8 ta Frar 2023 u l-ingunzjoni in subizzjoni tal-intimati.

Having seen the sworn answer of IZI Group Plc and Gaming Operations Ltd (the defendant companies) of the 28th of April 2023 by which they answered and pleaded the following:

1. Illi preliminarjament, is-soċjetajiet intimati jeċċepixxu n-nuqqas ta' kompetenza ta' din il-Qorti inkwantu illi r-relazzjoni tramite l-kontendenti fil-kawża hija emergenti minn kuntratt t' impjeg, kompetenza esklussiva tat-Tribunal Industrijali, F'dan ir-rigward għa jeżistu proċeduri li jinsabu pendent l-eżitu tal-Qorti tal-Appell Civili (sede Inferjuri) kif diversament presuduta fil-proċeduri fl-istess ismijiet bin-numru 159/2022 LM. Tali appell gie intavolat mis-soċjetajiet intimate li hassewhom aggravate mid-deċizzjoni mogħtija tat-Tribunal Industrijali (każ Numru 3979/HW) fid-29 ta Novembru 2022 wara proċeduri istitwiti mir-rikorrenti in segwitu għat-terminazzjoni tal-kuntratt ta impjeg data 9 ta' April 2020 li r-rikorrenti kellu mas-soċjeta intimata IZI Group plc (il-Kuntratt t' Impjeg), flimkien mal-arrangamenti kollha ancillary għall-Kuntratt t' Impjeg, inkluz l-ittra li ggib l-istess data tal-**Kuntratt t' Impjeg ("Side Letter") (Dokument A)** a bażi ta' liema huma msejjsa il-pretensjonijiet tar-rikorrenti.
2. Illi wkoll preliminarjament, u mingħajr pregudizzju għas-sueċċepit, jirriżulta illi permezz tal-proċeduri istitwiti quddiem it-Tribunal Industrijali surreferiti, ir-rikorrenti għa talab il-likwidazzjoni ta' kumpens a bażi tas-Side Letter, liema talba it-Tribunal Industrijali ma laqax u mill-liema deċiżjoni ir-rikorrenti ma' appelax. Dunque dak promos u pretiz mir-rikorrenti mhu xejn għajr tentattiv f'jakk da parti tiegħu sabiex jittenta jiehu rimedju minn din l-Onorabbli Qorti għa la darba dan ma hax, u li stante d-dekors tat-terminu għall-appell incidental m'għandux fiż-żmien jittenta jiehu quddiem il-Qorti kompetenti.
3. Illi mingħajr pregudizzju għas-sueċċepit, u fil-mertu, l-esponenti jichdu bis-sahha kollha kwalsiasi allegazzjoni u pretensjoni dedotta fir-rikors gumentat bhala infondati fil-fatt u fid-dritt u dan għar-ragunijiet li ser jirriżultaw ampjament waqt il-mori u smiegħ tal-kawża u elenkati fis-segwenti:-
 - i. Is-side Letter li a bażi tagħha qed issir din l-azzjoni hija sussidjarja u parti integrali mill-Kuntratt t' Impjeg permezz ta' liema r-rikorrenti gie impjegat mas-soċjeta`esponenti IZI Group plc bhala *Deputy Chief Executive Officer* ("DCEO") kopja ta' liema qiegħed hawn jigi anness u mmarkat bhala "**IZI 1**" Dan il-Kuntratt t' impjeg gie tterminat nhar id-disgħa (9) ta' Frar tas-sena elfejn wiehed u għoxrin (2021) flimkien ma kwalsiasi ftehiem u arrangement iehor sussidjarju u ancillary, inkluz l-istess Side Letter, B' hekk għal darbha illi l-imsemmi Kuntratt t' Impjeg u Side Letter ma baqgħhux aktar

applikabbli ex lege u de facto. Kopja tal-ittra ta' terminazzjoni qiegħda tigi hawn annessa u mmarkata bhala **"IZI 2"**

- ii. Illi kif inhu ben evidenti mill-istess Side Letter, Bhala kundizzjoni indispensabbli għall-eligibilità tal-eventwali *"Success Fee"* u rwol fl-entità li ser tkun qed topera il-lotterija nazzjonali ta' Malta, ir-rikorrenti kellhu jixpruna dan il-progett, senjament it-thejjija tal-offerta tas-soċjeta esponenti jew ta' xi sussdjarja tagħha għall-eventwali sejha kif ukoll xogħol preparattorju iehor, liema xogħol qatt ma sar mir-rikorrenti in kwantu dan ma kienx għadu involute bl'ebda mod u ma kien għadu jikkupa ebda rwol fis-soċjetajiet esponenti meta harget is-sejha għall-offerti għal-konċessjoni deċennali għall-operat tal-lotterija nazzjonali ta' Malta (is-**"Sejha għall-Offerti"**) u cioè fit-30 ta' Lulju 2021.
- iii. Illi in ogni kaz kienet s-soċjeta susidjarja tal-esponenti IZI Goup plc u cioè National Lottery plc (CLC100229) li parteċipat fis-Sejha għall-offerti u li finalment rebhet il-Konċessjoni u mhux is-soċjetajiet esponenti infishom, kif jallega ir-rikorrenti fir-rikors promotur. Tali kumpanija giet kostitwita fis-16 ta' Settembru 2021 u cioè aktar minn seba' xhur wara li gie terminat il-Kuntratt ta' Impjieg, is-side Letter u kwalsijasi relazzjoni bejn ir-rikorrenti u s-soċjetajiet intimati.

Salv eċċezzjonijiet ulterjuri skont kif tippermetti l-ligi.

Bl-ispejjez

Having seen all the documents and acts of the case.

Having heard or read the depositions.

Having seen that the case has been adjourned for today to deliver a Decision on the preliminary plea of jurisdiction.

Points of facts

By means of an agreement dated 9th April 2020 the plaintiff came to an agreement with Pinnacle Gaming Group Limited to assist in the

preparations regarding the possible acquisition of a concession to operate and manage the Malta National Lottery.

This letter amounted is a side agreement to the main agreement of employment dated the 9th of April 2020. By means of the said side letter, the parties agreed that if the respondent companies succeeded in winning the concession the Plaintiff was (1) entitled to receive the one time payment in the form of a success fee to the amount of €150,000 (2) or he was to be engaged with the group of companies, amongst which the defendant companies, as a Chief Executive Officer against a salary that was to be agreed by the parties or else be appointed as a director for a period for 10 years, with an annual remuneration of €100,000 a year. The defendant companies retained the sole discretion to decide which of the two should be.

The defendant companies were successful in getting the said concession to operate the Malta National Lottery in March 2022. This meaning, that the obligations undertaken by respondent companies in terms of the above-mentioned side letter came into effect.

This notwithstanding the defendant Companies are refusing to honor their obligations towards the plaintiff. His employment was in fact terminated by means of a letter dated 9th February 2021. Furthermore, his claim for unpaid salaries was a decision of the Industrial Tribunal dated 10th of October 2023 by virtue of which the plaintiff was awarded compensation in

the amount of €75,000 which amount has been deposited under the authority of the Courts.

Points of Law and considerations

At this stage of the proceedings, the matter to be decided is as to whether this Court has jurisdiction or otherwise competence, to decide the substance of the matter being claimed by the plaintiff in the sworn writ.

From the first preliminary plea the Court understands that what is being claimed by the plaintiff falls outside the jurisdiction of the ordinary Courts. Being a matter of employment termination of an indefinite contract of employment, jurisdiction solely appertains to the Industrial Tribunal by virtue of article 75 of Chapter 452 of the laws of Malta which states:

“(1) Notwithstanding any other law, the Industrial Tribunal shall have the exclusive jurisdiction to consider and decide –

(a) all cases of alleged unfair dismissals;

(b) all claims made in accordance with sub-articles (11) and (12) of article 36 of this Act, for sums which may become due to a worker or to an employer following the termination of a contract of service for a fixed term before the expiration of the term definitely specified in the contract; and

(c) all cases falling within the jurisdiction of the Industrial Tribunal by virtue Title I of this Act or any regulations prescribed there under, for all purposes other than proceedings in respect of an offence against any enactment and the remedy of a worker so dismissed or otherwise alleging a breach of his right under Title I of this Act shall be by way of reference of the complaint to the Industrial Tribunal...".

Clause 20 of the proper contract of employment states that *"This contract shall be deemed to be a Maltese contract and shall accordingly be governed, construed and interpreted in accordance with the laws for the time being in force in Malta and the Maltese Courts and tribunals shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of the contract"* (a' fol 39 tergo). Furthermore, According to clause 1.1 states that *"In this agreement unless the context otherwise require the 'Applicable law' includes any statutes, laws, directives, by laws, regulations, rules, orders or delegated or subsidiary legislation of Malta"* (a' fol 41 tergo).

Now the plaintiff is basing himself solely on the contents of the side letter and not the contract proper of employment. In that side letter, sent by Johann Schembri, as Director Pinnacle Gaming Group Limited, it is expressly stated (in the last paragraph) that *"In the event that the company pots to trigger any of the options under points 6(a) above, the termination of the contract shall be deemed a consensual one and no compensation*

linked to the termination of the employment stipulated in the Contract shall be due”.

Although it could well mean that the side letter is to be read in the light of the contract of employment, this does not however mean that these two written instruments are one and the same thing. Had the parties wanted this, they could have either included as a condition in the main contract of employment or the least they could have done is, to include it as an annex to that contract. There are a number of annexes to the contract of employment.

Furthermore, the side letter makes it clear that in the eventuality that the Plaintiff elects to take up the post of CEO, the defendant Company could request the Plaintiff to forgo his employment. Thus, impliedly distinguishing between the two.

Therefore, it is amply clear to this Court, that the effects of the side letter do not fall within the remit of the Industrial Tribunal. There is no doubt, that employment under the terms of this letter has not come into existence and therefore with the termination of that letter, the defendant companies did not terminate a contract of employment but only the possibility of one yet to exist.

This can easily be surmised by the fact, that contract that could have arisen under the terms of the letter would have extinguished the employment under the contract. This is also evident from the contents of the termination

letter dated 9th February 2021 (a' fol 45). That letter clearly states that the defendant Companies are terminating the employment under the proper contract of employment dated 9th April 2021 on grounds of redundancy. As regards to the side letter only its effects were terminated, if ever.

What is more, there is a clear distinction between the success fee and future salaries. The first clearly does not fall within the jurisdiction of the Tribunal because this is a pure contractual obligation. It is neither a salary nor an obligation accessory to wages or employment conditions. Therefore, this matter could not have fallen under the jurisdiction of the Industrial Tribunal by virtue of article 75 above mentioned but did not. In fact, the Industrial Tribunal rightly pronounced itself of the matter of wages and steered away from the side letter.

Lastly, what the Plaintiff is seeking compensation not only for the payment of the success fee but also for the missed opportunities under the side letter. The reference is to wages and salaries that could have arisen in his favor had the employment under this letter come true. This is likewise a pure civil obligation, meaning that notwithstanding that this may have consisted in a new employment with more or less favorable wages, this is clearly not a matter that falls within the jurisdiction of the Industrial tribunal.

The Tribunal only takes cognizance of real effective employment contracts and not contracts to be. In other words, there is nothing that can stop the plaintiff from seeking compensation for wages and employment benefits

which could have otherwise come were it for the fault of others. A matter which does not fall within the jurisdiction of the Industrial Tribunal.

The plaintiff is not *alleging unfair dismissal* nor is he making a *claim in accordance with sub-articles (11) and (12) of article 36 of this Act, for sums which may become due to a worker or to an employer following the termination of a contract of service for a fixed term before the expiration of the term definitely specified in the contract*. The whole matter hinges on the fact, that a new employment did not arise under the side letter.

Decide

Now therefore the Court decides the matter by **rejecting** the first plea of jurisdiction of the defendant Companies.

Costs and expenses of this partial decision to be borne by defendant Companies.

Judge Toni Abela

Deputy Registrar