



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tat-23 ta' Lulju, 2025

Appell Inferjuri Numru 19/2025 LM

Ahmed Hassan Moustafa Moussa Ebid
(‘l-appellant’)

vs.

L-Uffiċjal Prinċipali tal-Immigrazzjoni
(‘l-appellata’)

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mir-rikorrent **Ahmed Hassan Moustafa Moussa Ebid** [minn issa ‘l quddiem ‘l-appellant’] mid-deċiżjoni mogħtija fis-6 ta’ Marzu, 2025, [minn issa ‘l quddiem ‘id-deċiżjoni appellata’] mill-Bord tal-Appelli dwar l-Immigrazzjoni [minn issa ‘l quddiem ‘il-Bord’] fl-ismijiet fuq premessi, li

ddeċieda l-appell fil-konfront tal-intimata **I-Uffiċjal Prinċipali tal-Immigrazzjoni** [minn issa 'il quddiem 'l-appellata'], kif ġej:

“In view of the considerations above the Immigration Appeals Board rejects appeal.

Copy of this judgement is to be sent to the Principal Immigration Officer.

Fatti

2. Ir-rikorrent ressaq l-appell tiegħu quddiem il-Bord, mid-Deciżjoni ta' Ritorn, Ordni ta' Tneħħija, u Projbizzjoni ta' Dħul maħruġa fit-12 ta' Frar, 2024 mill-intimat I-Uffiċjal Prinċipali tal-Immigrazzjoni [minn issa 'il quddiem 'l-appellat'], u mogħtija lill-appellant fl-istess ġurnata.

Mertu

3. Fl-appell tiegħu quddiem il-Bord, l-appellant spjega li ħassu aggravat bl-imsemmija Ordni ta' Tneħħija u Ordni ta' Ritorn. Qal li r-raġuni mogħtija mill-appellat għall-imsemmija Ordni ta' Tneħħija u Ordni ta' Ritorn kienet li *“the subject was found guilty by the Maltese courts”*. L-appellant qal li mhuwiex kontestat li fit-12 ta' Frar, 2024, l-appellant instab ħati mill-Qorti tal-Maġistrati (Malta)(Bħala Qorti ta' Ġudikatura Kriminali) fuq ammissjoni ta' ħtija tiegħu stess, u wara li kkoopera bi sħiħ mal-prosekuzzjoni u in vista taċ-ċirkostanzi tal-każ, l-appellant ġie ssentenzjat għall-perijodu ta' *probation*. Qal li huwa ma ngħatax sentenza ta' ħabs effettiva, u ngħata *probation* biex jirriabilita lill-unfsu, u huwa jinsab f'pożizzjoni li jagħmel dan għaliex fehem u skuża ruħu għall-imġieba tiegħu li kienet wasslet biex ġie akkużat. Qal li l-imsemmija Ordni

ta' Tneħħija maħruġa mill-Uffiċjal Prinċipali tal-Immigrazzjoni fejn huwa ġie ddikjarat li huwa immigrant ipprojbit, teċċedi r-raġunijiet stabbiliti fl-artikolu 5 tal-Att dwar l-Immigrazzjoni, Kap. 217 tal-Liġijiet ta' Malta, u barra minn hekk, la hija proporzjonata u lanqas hija skont l-ispirtu tas-sentenza tal-Qorti tal-Maġistrati fejn ġie deċiż li l-appellant jimmerita *probation* u mhux priġunerija. L-appellant qal li sakemm inqala' dan il-każ, huwa dejjem kien persuna eżemplari u ħadem ħafna f'Malta f'dawn l-aħħar sebgħa snin. Huwa kien dejjem qiegħed jaħdem regolarment, u fil-fatt kien qiegħed jistenna li jinħariġlu *single permit* biex jaħdem mal-prinċipal prospettiv tiegħu Door2Door Ltd. Għal dawn ir-raġunijiet, l-appellant talab lill-Bord jirrevoka d-deċiżjoni tal-Uffiċjal Prinċipali tal-Immigrazzjoni, u li jithalla joqgħod Malta flimkien ma' ibnu minuri.

Id-Deciżjoni Appellata

4. Il-Bord, fid-deċiżjoni tiegħu tas-6 ta' Marzu, 2025, iddeċieda t-talbiet tar-rikorrent, wara li għamel is-segwenti konsiderazzjonijiet:

"This is an appeal from a Return decision, Removal order and entry ban issued to appellant Ahmed Hassan Moustafa Moussa Ebid dated 12th of February, 2024 and handed to appellant on the same day.

An appeal was filed by appellants legal representative. Various sittings were held by the Immigration appeals board. Witnesses were produced to testify and present related documents.

Note of submissions and a further note of submissions was presented by the appellant.

At the initial stage of this appeal and following a request for bail, appellants request was upheld under conditions as imposed by the Immigration appeals board.

Partial judgement was also delivered by the Immigration appeals board following an objection to the presentation of judgement handed by the Court of Criminal

Judicature, dated 12th of February, 2024 in the names Ir-Repubblika ta Malta vs Ahmed Hassan Moustafa Moussa Ebid, which partial judgement was delivered on the 28th of November, 2024 which decide read as follows,

"With regards to appellants legal representatives request that of expunging document (judgement), from the acts of this appeal, the Immigration appeals board does not uphold such request. The document, sic judgement was the mentioned at the start of this appeal, is the crux behind the issuance of the removal order and the return decision. Also, the Immigration appeals board would still have referred to the judgement, accessible to it online when deciding this removal order and return decision. As already stated it was appellant himself who referred to the judgement in his reply to this appeal".

The Immigration Appeals Board proceeded to give its judgement.

Return decision and removal order dated 12th of February, 2024

The grounds upon which return decision, removal order and entry ban have been issued are :

- o You landed or are in Malta without leave from the Principal Immigration Officer;*
- o You are unable to show that you have the means of supporting yourself and your dependents (if any) or you or any or your dependents is likely to become a charge on the public funds;*
- o You did not comply, or ceased to comply with any of the conditions, including an implied condition, under which you were granted leave to land or to land and remain in Malta or was granted a residence permit;*
- o The circumstances which determined the granting of leave to land or to land and remain in Malta or the extension of such leave or the granting of a residence permit ceased to exist;*
- o Subject was found guilty by the Maltese Courts.*

Facts of the case

Appellant was served with the return decision and the removal order on the day he was served with judgement handed by the Court of Criminal Judicature, dated 12th of February, 2024 in the names Ir-Repubblika ta Malta vs Ahmed Hassan Moustafa Moussa Ebid, on the grounds as indicated above.

Representative form Identità testified and stated that appellant had a change in employer application in progress. His single permit was revoked on the 12th of February, 2024. This was related to his employment at the time with WT Global. Following the revocation of the residence card, appellant re-submitted a change in

employer to engage in employment with Door to Door Limited as a general construction labourer.

Copy of judgement delivered by the Court of criminal judicature was presented. Revocation letter dated 12th of February, 2024 and NIDMS report which reflects revocation which took place on the 12th of February, 2024 were also presented, besides various other documents which were presented to sustain the bail request made by appellant.

Considerations

Partial judgement dated 28th November 2024

"The Immigration appeals board will refer to the partial judgement delivered on the 28th of November, 2024, which read,

"By means of an application filed by appellants legal representative, the Immigration Appeals Board was asked to;

1. Remove document from the file;
2. Investigate how and when document was place in the file;
3. Provide the appellant with transcripts and recordings.

The Immigration appeals board will deliver its decision in parte after having considered the parties requests and objections.

After having reviewed the transcripts on file the Immigration appeals board confirms that the document in question, that is the judgement handed by the Criminal Court on the 12th of February, 2024 was inserted by the Inspector in charge of this appeal during a sitting held on the 25th of July, 2024 to which neither appellant nor appellants legal representative were present.

The Immigration appeals board also notes that reference thereto was made to the judgement by appellant himself in his reply to this appeal. This confirms that the fact that a hard copy of said judgement was inserted in the acts of this appeal on the date as mentioned does and would not have changed the Immigration appeals board complete findings in helping the board reach its final decision. The Immigration appeals board itself would have referred to the judgement.

The Immigration appeals board invites the appellants legal representative to request a copy of all transcripts for all sittings held. Recordings are the Board secretaries prerogative to use to assist her during the Immigration appeals board sittings and are not available since they are first and foremost transcribed word by word and they are superseded by each and every following sitting.

With regards to appellants legal representatives request that of expunging document (judgement), from the acts of this appeal, the Immigration appeals board does not uphold such request. The document, sic judgement was the mentioned at the start of this appeal, is the crux behind the issuance of the removal order and the return decision. Also, the Immigration appeals board would still have referred to the judgement, accessible to it online when deciding this removal order and return decision. As already stated it was appellant himself who referred to the judgement in his reply to this appeal".

The Immigration appeals board must reiterate that irrespective of whether the judgement in the names Ir-Repubblika ta' Malta vs Ahmed Hassan Moustafa Moussa Ebid was presented to the Immigration appeals board or not, the Immigration appeals board would have referred to it as it is the basis on which the removal order and return decision was issued.

The premise upon which the removal order and return decision dated 12th February, 2024 was issued to appellant was strictly on the basis of the judgment delivered by the Court of Criminal Judicature, in the names Ir-Repubblika ta' Malta vs Ahmed Hassan Moustafa Moussa Ebid. Prior to this date the appellant never had any brushes with the law. However following the incident which led to the charges being issued against the appellant, and the subsequent conviction, the Immigration Police served the appellant with the removal order and return decision. This incident and conviction were not disputed by the appellant.

Prohibited Immigrant under the provision of Article 5(2)(d)

Under Article 5(2)(d) of the Immigration Act (Chapter 217 of the Laws of Malta), a Prohibited Immigrant is a person who:

Has been convicted in Malta or abroad of a crime punishable by imprisonment for one year or more and is considered undesirable to remain in Malta.

The main aspects of this article applies to both Maltese and foreign criminal convictions. The crime must be punishable by at least one year of imprisonment. The person committing the crime is considered to be undesirable by the authorities, which allows for discretion in enforcement, which lead to the issuance or the removal order and return decision.

Best evidence rule and Beyond reasonable doubt

In his note of submissions, appellant refers to the best evidence rule which denotes that a party wanting to admit proof is expected to produce the best or in accordance with Article 638 of the Criminal code.

Whilst on the other hand in his reference to the theory of beyond reasonable doubt, this theory is the highest standard of proof in criminal law. It means that the prosecution must prove the guilt of the accused so clearly and convincingly that there is no reasonable doubt left in the mind of a rational person.

Such arguments do not find comfort in these proceedings since the Immigration appeals board is not a criminal court but an administrative board with quasi judicial body that reviews immigration related decisions made by Maltese authorities. However, decisions of the Immigration Appeals Board can be challenged in Malta's courts, particularly before the Court of Appeal (Inferior Jurisdiction) on points of law.

L-Appell

5. L-appellant ippreżenta r-rikors tal-appell tiegħu fis-17 ta' Marzu, 2025, fejn talab lil din il-Qorti sabiex:

"... jogħgħobha tħassar id-deċiżjonijiet tal-Bord tal-Appelli dwar l-Immigrazzjoni ta' nhar is-sitta (6) ta' Marzu tas-sena 2025 u it-tmienja u għoxrin (28) ta' Novembru tas-sena 2024, kif ukoll d-deċiżjoni preċedenti tal-Uffiċjal Prinċipali tal-Immigrazzjoni ta' nhar it-tnax (12) ta' Frar tas-sena 2024, u tagħti dawk il-provvedimenti opportuni illi din il-Qorti jidhrilha xierqa, bil-għan illi l-appellant jinħariġlu permess ta' residenza."

6. L-appellant ibbaża r-rikors tal-appell tiegħu fuq tliet aggravji: (i) l-inawtencità tad-dokument ppreżentat; (ii) il-Bord ħaddem il-proċedura tiegħu b'mod żbaljat.

7. L-appellat wieġeb billi qal li l-appell tal-appellant għandu jiġi miċħud bl-ispejjeż kontra tiegħu, b'riżerva għall-produzzjoni ta' provi u sottomissjonijiet ulterjuri permessi mil-Liġi f'każ li dan ikun meħtieġ.

Konsiderazzjonijiet ta' din il-Qorti

Din il-Qorti ser tgħaddi sabiex tikkunsidra l-aggravji tal-appellant, u dan fid-dawl ta' dak li kkonstata u ddeċieda l-Bord, u meħudin in konsiderazzjoni s-sottomissjonijiet tal-appellat.

L-Ewwel Aggravju: [L-inawtenticità tad-dokument ipprezentat]

8. L-appellant qal li l-appellat ma pprovdix kopja awtentikata ta' allegat sentenza mill-Qorti tal-Maġistrati li tistabbilixxi li l-appellant instab ħati ta' reat, jew anki ta' reat li huwa punibbli bi priġunerija ta' aktar minn sena. L-appellant jikkontendi li l-appellat pprezenta biss fotokopja ta' allegat sentenza u ordni ta' *probation*, li mhijiex kopja vera jew imfissra bil-ġurament, jew b'xi mod awtentika, li mhijiex l-aħjar evidenza disponibbli f'għarfien biex tappoġġja l-allegazzjonijiet tiegħu li l-appellant kien ħati li wettaq reat punibbli bi priġunerija ta' aktar minn sena, u għalhekk il-prosekuzzjoni ma pproduċietx l-aħjar evidenza, jew kif tistabbilixxi l-liġi, '*l-aħjar prova li tista' titlob raġonevolment*', li l-appellant kien ħati ta' reat punibbli bi priġunerija ta' aktar minn sena.

9. Fir-risposta tiegħu, l-appellat jikkontendi illi dan huwa aggravju verament fjakk jekk mhux vessatorju. L-appellat qal li huwa ma kienx tenut jipprezenta kopja awtentikata tas-sentenza, u dan għaliex l-appell quddiem il-Bord tal-Appelli dwar l-Immigrazzjoni mhuwiex xi appell li jiċċentra fuq proċeduri penali, u d-difiza li huwa xtaq jagħmel saret fuq bażi ta' probabilità, kif wara kollox titlob il-liġi fi proċeduri ċivili u/jew amministrattivi. L-appellat għamel riferiment

għal sentenzi ta' din il-Qorti fejn jingħad b'mod ċar li proċeduri ta' din ix-xorta huma ta' natura amministrattiva, fejn ma jsibu l-ebda applikazzjoni d-dispożizzjonijiet tal-proċedura fil-qrati kriminali. Qal li f'dawn is-sentenzi jingħad ukoll li fi proċeduri quddiem il-Bord, l-Uffiċjal Prinċipali tal-Immigrazzjoni ma jidhirx bħala uffiċjal prosekutur, imma bħala l-parti li d-deċiżjoni tagħha qiegħda tiġi kkontestata, u dan fi proċeduri ta' natura amministrattiva. L-appellat qal ukoll li meta l-appellant qiegħed jikkontesta d-deċiżjoni tal-appellat rigward d-deportazzjoni tiegħu, huwa kellu l-obbligu illi sabiex jikkontesta l-bażi tad-deċiżjoni ossija r-rekwiżit taħt l-artikolu 5(2)(d) tal-Kap, 217 tal-Liġijiet ta' Malta, iġib quddiem il-Bord prova illi d-deċiżjoni tiegħu kienet żbaljata. Dan seta' jagħmlu billi jippreżenta s-sentenza tat-12 ta' Frar 2024 tal-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali fl-ismijiet **Ir-Repubblika ta' Malta vs. Ahmed Hassan Moustafa Moussa Ebid**, u jargumenta fil-mertu illi dik is-sentenza ma tissodisfax ir-rekwiżit taħt dak l-artikolu tal-Liġi. Qal li kull parti għandha l-obbligu illi tinforma lill-Bord b'fatti rilevanti għall-kawża, u mhux tonqos milli tippreżenta sentenza ta' Qorti fejn l-appellant ġie mixli b'akkużi serji, u ċjoé li wettaq att ta' natura sesswali mingħajr kunsens u ta fastidju lil terz, imma mhux hekk biss, l-appellant ammetta dawn l-akkużi. Qal li wara kolloxx kien l-appellant stess fl-appell tiegħu quddiem il-Bord li qal:

“where it is not disputed by the appellant that on the 12th of February 2024 he was found guilty by the Court of Magistrates (Criminal Section) on his own admission of guilt, and that, following his full cooperation with the prosecution and the circumstances of the case, the appellant was sentenced to a period of probation.”

L-appellat qal li apparti dan, mill-inkartament tal-proċeduri quddiem il-Bord, jirrizulta illi giet ipprezentata l-ordni ta' *probation* iffirmata mill-appellant stess, u li tirreferi għas-sentenza mogħtija fl-istess għurnata mill-Qorti tal-Maġistrati bħala Qorti ta' Ġudikatura Kriminali.

L-appellat qal li mkien l-appellant ma jikkontesta illi l-artikolu 5(2)(d) tal-Kap. 217 tal-Liġijiet ta' Malta ma għex sodisfatt b'dik is-sentenza. L-appellat qal li tenut kont tal-fatt illi l-appellant stess irrikonoxxa l-eżistenza ta' dawn il-fatti kontrib u tal-imsemmija sentenza, kwalsiasi forma ta' protesta issa għaliex il-kopja tas-sentenza ma kinitx awtentikata mir-Reġistru tal-Qorti Kriminali, m'hija xejn hlief tentattiv frivolu u vessatorju.

10. Il-Qorti tqis li dan l-aggravju tabilhaqq huwa wieħed frivolu u vessatorju, tenut kont li fl-appell tiegħu quddiem il-Bord, l-appellant iddikjara li mhuwiex ikkontestat li fit-12 ta' Frar, 2024, huwa nstab ħati mill-Qorti tal-Maġistrati (Malta)(Bħala Qorti ta' Ġudikatura Kriminali) fuq ammissjoni tiegħu stess. Il-Qorti tqis li din id-dikjarazzjoni hija suffiċjenti bħala prova tas-sentenza għall-finijiet tal-artikolu 5(2)(d) tal-Kap. 217 tal-Liġijiet ta' Malta, tenut kont li l-proċeduri quddiem il-Bord huma ta' natura amministrattiva u mhux ta' natura kriminali, fejn il-piż tal-prova huwa fuq bilanċ ta' probabbilitajiet, u mhux lil hinn minn kull dubju dettat mir-raġuni. Oltre dan, il-Bord seta' jieħu *judicial notice* tal-imsemmija sentenza, peress li din tinsab disponibbli *online*. Fuq kollox bħala tribunal amministrattiv, il-Bord tal-Appelli dwar l-Immigrazzjoni jirregola l-proċedura tiegħu stess, u strettament mhuwiex marbut bir-regoli tal-proċedura stipulati fil-Kap. 12 u fil-Kap. 9 tal-Liġijiet ta' Malta, 'il għaliex ma teżisti l-ebda

dispożizzjoni fil-liġi li tagħmel l-imsemmija regoli proċedurali applikabbli għall-Bord tal-Appelli dwar l-Immigrazzjoni.

Għar-raġunijiet suesposti, tqis li dan l-aggravju mhuwiex misthoqq, u tiċċdu.

It-Tieni Aggravju: [Il-Bord ħaddem il-proċedura tiegħu b'mod żbaljat]

12. Fir-rikors tal-appell tiegħu, l-appellant irrileva illi t-talba tal-appellant sabiex id-dokument li gie mqiegħed b'mod irregolari fl-atti tal-Bord jiġi kkunsidrat inammissibbli, giet rifjutata mill-Bord tal-Appelli dwar l-Immigrazzjoni, u dan minkejja illi l-appellant kif ukoll ir-rappreżentant legali tiegħu ma kienux preżenti għall-imsemmija seduta, u l-appellant kif ukoll r-rappreżentant legali tiegħu lanqas biss kellhom għarfien ta' din is-seduta. Qal li dan minkejja ukoll illi l-partijiet kienu ġia għalqu l-provi tagħhom, u t-terminu għal noti tas-sottomissjonijiet kien ġia skada. L-appellant qal illi wara li kienu ingħalqu l-provi tal-parijiet involuti u anke saħansitra saru is-sottomissjonijiet finali, l-Uffiċjal Prinċipali tal-Immigrazzjoni qabad u ppreżenta dokument mingħajr lanqas biss talab il-permess tal-Bord illi jerga' jiftaħ l-istadju tal-provi tiegħu, u lanqas ma gie mitlub jagħti ġustifikazzjoni 'il għaliex it-tali prova saret fi stadju tant tardiv u 'il għaliex din ma setgħetx issir fil-mument opportun, u ċjoé fl-istadju tal-provi tal-Uffiċjali Prinċipali tal-Immigrazzjoni. L-appellant qal ukoll illi dan id-dokument gie inserit fl-atti tal-Bord ad insaputa tal-appellant, u għaldaqstant ma ngħatax l-opportunità li jiddefendi ruħu jew jagħmel kontro-eżami dwar l-imsemmi dokument. L-appellant jikkontendi li hawnhekk qiegħda tiġi ttrattata deċiżjoni li twassal għad-deportazzjoni ta' persuna, u allura l-konsegwenza hija materjalment serja ħafna, u għandha impatt kbir fuq il-ħajja tal-appellant. L-

appellant saħaq li l-Bord tal-Appelli dwar l-Immigrazzjoni ma jistax jiftaħ seduta *in absentia* mingħajr mill-inqas il-preżenza tal-appellant u l-avukat tal-appellant, jew l-għarfien tagħhom li hemm seduta li qed ssir, u aktar minn hekk, li jippermetti lill-Uffiċjal Principali tal-Immigrazzjoni jippreżenta evidenza ġdida, wara li l-istadju tal-provi jkun magħluq, u s-sottomissjonijiet finali jkunu saru miż-żewġ partijiet involuti, aktar u aktar meta l-appellant ma jkunx ġie avżat dwar dawk il-provi ġodda. Qal li n-nuqqas ta' trasparenza u l-vjolazzjonijiet proċedurali msemmija għandhom implikazzjonijiet serji fuq id-dritt tal-appellant għal smiġħ xieraq kif protett bl-artikolu 39 tal-Kostituzzjoni ta' Malta u l-Artikolu 6 tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem, li jiffukaw fuq il-protezzjoni tad-dritt għal proċedura ġusta u smiġħ xieraq. L-appellant qal li fin-nuqqas ta' preżentazzjoni tas-sentenza li fuqha kienet imsejsa d-deċiżjoni ta' ritorn u ordni tat-tneħħija skont il-proċedura li toħroġ mill-liġi u fil-forma li trid il-liġi, il-Bord ma seta' qatt jissana dan in-nuqqas huwa stess billi jgħid li seta' jagħmel riferiment għal xi sentenza *online* jew bi kwalunkwe mod ieħor, għaliex dak li mhuwiex fl-atti mhuwiex fid-dinja, *quod non est in actis non est in mundo*.

13. Fir-risposta tiegħu, l-appellat qal illi hawnhekk għandu jingħad li huwa paċifiku illi dina l-Qorti m'għandiex il-mansjoni li tiddeċiedi dwar xi allegat ksur tad-drittijiet fundamentali, u s-sentenzi ta' din il-Qorti fuq dan il-punt huma kollha konsistenti. Qal li għalhekk din l-allegazzjoni hija waħda li setgħet tiġi evitata, għaliex huwa magħruf illi dina l-Qorti tiddeċiedi appelli skont l-artikolu 25A(8) tal-Kap. 217 tal-Liġijiet ta' Malta, u mhux skont l-artikolu 46 tal-Kostituzzjoni ta' Malta. Qal li għalhekk kwalsiasi allegazzjoni dwar ksur ta' drittijiet fundamentali għandha tiġi skartat *ab initio*. Qal li fi kwalsiasi każ, għal darb'oħra l-appellant qiegħed jagħmel konfużjoni bejn proċeduri

amministrattivi u dawk kriminali. Qal li ma teżisti l-ebda regola illi twaqqaf lill-Bord illi jmexxi seduta mingħajr parti, u dan għaliex ir-regola li teżisti fil-kamp kriminali illi seduta ma tistax titmexxa *in absentia* tal-akkużat, mhijiex regola li tapplika fil-kamp amministrattiv.

Dwar l-allegazzjoni illi l-appellant kellu jingħata l-opportunità li jikkontesta tali produzzjoni ta' sentenza u jagħmel sottomissjonijiet dwar l-applikazzjoni tas-sentenza għall-appell quddiem il-Bord, l-appellat qal li l-appellant għamel talba lill-Bord sabiex jisfilza l-produzzjoni tal-imsemmija sentenza, liema talba giet miċħuda b'sentenza jew digriet *in parte*. Qal li l-appellant ingħata l-fakultà jippreżenta sottomissjonijiet ulterjuri dwar din is-sentenza, u saħansitra kellu d-dritt illi jippreżenta appell fuq punt ta' liġi quddiem din il-Qorti. L-appellat qal li allura huwa wisq ovvju illi l-appellant ingħata kull opportunità illi jikkontrolla dak li ġara fil-proċeduri quddiem il-Bord, u għalhekk din l-allegazzjoni wkoll ma ssib ebda sostenn fattwali.

L-appellat qal li l-appellant bl-ebda mod ma jindirizza l-fatt illi s-sentenza tal-Qorti hija waħda aċċessibbli, u għalhekk il-Bord seta' jieħu *judicial notice* tal-istess sentenza. Qal li l-prinċipju legali *quod non est in actis non est in mundo*, ma japplikax għal dokumenti ta' Qrati li huma aċċessibbli, imma japplika biss għal provi li Qorti jew enti ġudikanti żgur m'għandiex aċċess għalihom. Qal illi wara kollox l-Bord jista' jirregola l-proċedura tiegħu stess.

L-appellat qal li t-talba finali tal-appellant ma tistax tintlaqa', għaliex din il-Qorti m'għandiex is-setgħa li tordna li l-appellant jinħariġlu permess ta' residenza mill-ġdid, u dan ukoll għaliex din is-sentenza lanqas tista' torbot lill-Aġenzija

Identità, li mhijiex parti f'dan l-appell. Qal li b'hekk anki it-talba finali hija waħda monka *ab initio*.

14. Qabel xejn, din il-Qorti hija u tqis dan l-aggravju, tagħmel riferiment safejn huwa applikabbli, għall-konsiderazzjonijiet li hija għamlet meta qieset l-ewwel aggravju. Hemmhekk gie stabbilit illi għall-finijiet tal-onus probatorju għall-finijiet tal-artikolu 5(2)(d) tal-Kap, 217 tal-Ligijiet ta' Malta, gie sodisfatt permezz ta' elementi probatorji oħrajn, u mhux neċessarjament mill-kopja mhux awtentikata tas-sentenza in kwistjoni. Ewlenin fost dawn l-elementi probatorji oħrajn, kien hemm id-dikjarazzjoni li saret mill-appellant innifsu fil-proċeduri quddiem il-Bord, illi *"... it is not disputed by the appellant that on the 12th of February 2024 he was found guilty by the Court of Magistrates (Criminal Section) on his own admission of guilt ..."*. Għalhekk il-kwistjoni tal-inammissibilità u l-isfilz *o meno* tal-kopja mhux awtentikata tal-imsemmija sentenza, hija immaterjali għall-finijiet tal-proċeduri odjerni, għaliex il-prova tagħha xorta waħda saret permezz ta' elementi probatorji oħrajn. Għaldaqstant tqis li dan l-aggravju mhuwiex ġustifikat, u tiċċdu.

Decide

Għar-raġunijiet premessi l-Qorti taqta' u tiddeċiedi dwar dan l-appell, billi tiċċdu, filwaqt li tikkonferma d-deċiżjoni appellata fl-intier tagħha.

L-ispejjeż ta' dawn il-proċeduri fiż-żewġ istanzi, għandhom jithallsu mill-appellant.

Moqrija.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Christian Sammut
Deputat Registratur