MALTA

QORTI TA' L-APPELL

**S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO**

**ONOR. IMHALLEF
JOSEPH D. CAMILLERI**

**ONOR. IMHALLEF
JOSEPH A. FILLETTI**

Seduta tat-8 ta' Novembru, 2004

Appell Civili Numru. 21/2004

Patrick Calleja

v.

L-Avukat Dott. Tonio Azzopardi u l-Prokuratur Legali Liliana Buhagiar b'digriet ta' l-10 ta' Awissu 2004 nominati kuraturi deputati biex jirrapresentaw l-interessi ta' l-assenti Fatima Aarab

Il-Qorti:

Dan hu provvediment dwar it-talba kontenuta fir-rikors ta' Patrick Calleja tal-1 ta' Lulju, 2004 li fih talab li din il-Qorti

tordna r-registrazzjoni tad-decizjoni moghtija mit-Tribunal Metropolitan ta’ l-Arcidiocesi ta’ Malta fit-8 ta’ Gunju, 2004 ghall-fini tal-Att dwar iz-Zwieg, Kap. 255, u b’mod partikolari ghall-fini tal-Artikoli 23(1) u 24(1) tal-imsemmi Att. Permezz ta’ din id-decizjoni, l-imsemmi tribunal ekklesjastiku iddikjara null iz-zwieg kattoliku celebrat fil-Knisja Parrokkjali tal-Gzira fit-28 ta’ Settembru, 2002 bejn l-imsemmi Patrick Calleja u Fatima Aarab, u dan minhabba impediment tar-rabta, u cioe` peress li, skond l-imsemmi Tribunal Metropolitan, Fatima Aarab fid-data tat-28 ta’ Settembru, 2002 kienet ghadha mizzewga lil Aziz Bin Omad Bin El-Sarif Bin Mohamed. Il-partijiet relevanti mill-imsemmija decizjoni tat-Tribunal Metropolitan huma s-segwenti:

The marriage ceremony, which was celebrated at the parish church of Gzira, on the 28th September 2002, was therefore only an attempted marriage but no marriage at all since, until the contrary is proved, Fatima was and still is the lawful wife of Aziz Bin Omad Bin El-Sarif Bin Mohamed.

Consequently, after having considered the *Animadversiones* of the Defender of the Bond who did not bring up any objection against a declaration of nullity of this marriage, I return an *Affirmative* decision that this marriage is to be declared null on the grounds of the impediment of a previous marriage bond.

Having therefore, carefully and accurately examined and weighed all the elements in this present case, both in Law and in Fact, and invoked the Holy name of Christ, I, the undersigned Judicial Vicar and in this same case, applying the terms of Canon 1686, the Lord God being my sole guidance, do hereby declare and decree: *Constare de Nullitate in casu ob impedimentum ligaminis.*

Din il-Qorti, wara li ezaminat l-imsemmija decizjoni, u wara li kkonstatat li kemm il-kuraturi deputati kif ukoll id-Direttur tar-Registru Pubbliku kienu gew notifikati bir-rikors

ta’ l-1 ta’ Lulju, 2004 skond ma jirrikjedi s-subartikolu (2) tal-Artikolu 24 tal-Kap. 255, b’digriet tat-18 ta’ Ottubru, 2004 appuntat l-istess rikors ghas-smigh ghall-1 ta’ Novembru, 2004 *“…biex il-partijiet jispjegaw kif, f’dan il-kaz, gie sodisfatt il-paragrafu (ii) [ta’ l-Artikolu 24(5) tal-Kap. 255]…”*. Ghandu jinghad, ghall-precizjoni, li la l-kuraturi deputati biex jirrapresentaw lill-assenti[1] u lanqas id-Direttur tar-Registru Pubbliku ma oppona r-registrazzjoni. Minkejja dan, fil-fehma tal-Qorti f’dan il-kaz ma tiskattax id-disposizzjoni tal-Artikolu 31[2] tal-Kap. 255, u dan peress li l-kwistjoni ossia ostakolu ravvizat minn din il-Qorti fit-termini tal-paragrafu (ii) tas-subartikolu (5) tal-Artikolu 24 imsemmi huwa wiehed ta’ ordni pubbliku, sollevabbli fi kwalunkwe kaz *ex officio* minn din il-Qorti, kif effettivament gie sollevat. Fl-udjenza ta’ l-1 ta’ Novembru, 2004 id-difensuri tal-partijiet – l-Avukat Dott. Karmenu Mifsud Bonnici ghar-rikorrent, l-Avukata Dott. Roma D’Alessandro ghad-Direttur tar-Registru Pubbliku u l-kuratur deputat l-Avukat Dott. Tonio Azzopardi – ghamlu s-sottomissjonijiet taghhom f’dan ir-rigward.

Il-problema li din il-Qorti tara f’dan il-kaz hija semplici. Skond l-Artikolu 24(5)(ii) tal-Kap. 255, din il-Qorti, qabel ma tordna r-registrazzjoni tad-decizjoni tat-Tribunal Metropolitan, trid tkun sodisfatta, *inter alia*, li *“…matul u waqt il-procedimenti quddiem it-Tribunal il-partijiet tgharrfu sew bid-dritt taghhom ta’ azzjoni u ta’ difiza b’mod sostanzjalment mhux differenti mill-principji tal-Kostituzzjoni ta’ Malta…”* [3]. Fost dawn il-principji hemm dak tad-dritt ghal smigh xieraq – Artikolu 39(2) tal-Kostituzzjoni – li, fil-kaz ta’ persuna li tkun assenti minn Malta, jigi assigurat billi ghall-anqas dik il-persuna jkollha f’dawk il-procedimenti civili lil xi hadd li jirrapresenta l-

[1] Il-kuraturi deputati gew nominati fil- proceduri quddiem din il-Qorti, cioe` quddiem il-Qorti ta’ l-Appell. Mill-atti ma jirrizultax jekk l-imsemmija kuraturi deputati kellhomx kuntatt o meno ma’ Fatima Aarab.

[2] **31** (1): *“Meta persuna li tigi notifikata b’rikors skond ma hemm fl-artikoli 24 u 26 ta’ dan l-Att ma topponix ghat-talba ghar-registrazzjoni fiz-zmien moghti ghall-prezentata ta’ risposta, hija ghandha titqies li tkun ammettiet ir-rikors”*. (2) *“Meta l-partijiet kollha f’rikors ikunu ammettew l-istess haga, il-Qorti ma ghandhiex tappunta r-rikors ghas-smiegh izda tghaddi biex tiddekreta r-rikors* in camera*”*.

[3] Fit-test ingliz tal-ligi *“...during and in the proceedings before the Tribunal there was assured to the parties the right of action and defence in a manner substantially not dissimilar to the principles of the Constitution of Malta…”*.

interessi taghha. Dana huwa l-minimu neccessarju biex ikun jista' jinghad li persuna assenti minn Malta, u li qatt ma setghet tigi notifikata bl-atti tal-kawza, inghatat smigh xieraq.

Minn ezami tad-decizjoni tat-Tribunal Metropolitan tat-8 ta' Gunju, 2004, jirrizulta li l-intimata Fatima Aarab ma setghetx tinstab; izda dak it-Tribunal ma jirrizulta li ha ebda passi biex jassigura li l-interessi taghha jigu b'xi mod salvagwardjati. Kullma jinghad fid-decizjoni huwa:

It was not possible to contact Respondent since her whereabouts are unknown. Whereupon, after having read the evidence of Petitioner and two relatives of Respondent, the Judicial Vicar decreed that the case be passed to the Defender of the Bond for his observations.

Il-fatt li quddiem l-imsemmi Tribunal il-procedura addottata kienet dik celeri kontemplata fil-Kanoni 1686 sa 1688 (*de processu documentali*) tal-Kodici Kanoniku vigenti ma jaghmilx anqas mehtieg, ghall-finijiet tal-Artikolu 24(5)(ii) tal-Kap. 255, li xi hadd jittutela l-interessi tal-parti li ma tkunx tista' tinstab – dan dejjem, s'intendi, qed jinghad fil-kuntest ta' dak li tirrikjedi l-ligi civili ta' Malta fl-imsemmi Artikolu 24(5)(ii) tal-Kap. 255, u mhux bhala xi forma ta' kritika tad-Dritt Kanoniku jew tal-procedura segwita mit-Tribunal Metropolitan f'dan il-kaz. Fi kliem iehor, dak li sar f'dan il-kaz seta' kien perfettament legittimu u ritwali ghal dak li hu d-Dritt Kanoniku, izda dan ma jnaqqasx mill-htiega li din il-Qorti trid tkun sodisfatta li tharsu fis-sustanza l-principji msemmija fl-Artikolu 24(5)(ii) imsemmi.

L-abbili difensur tar-rikorrent, Dott. Karmenu Mifsud Bonnici, fil-kors tat-trattazzjoni orali fl-udjenza ta' l-1 ta' Novembru 2004, filwaqt li rrikonoxxa li t-Tribunal Metropolitan ma ha ebda passi biex jassigura li l-interessi ta' Fatima Aarab jigu tutelati f'dak il-procediment bin-nomina ta' xi hadd biex jirrapresentaha, argumenta, pero`, li fil-kaz *de quo* kwalsiasi interess li seta kellha l-imsemmija Aarab li tghid li z-zwieg li kien qed jigi impunjat kien fil-fatt validu, kien f'dan il-kaz imhares mid-Difensur

tal-Vinkolu. Din il-Qorti ma taqbilx. Kif tajjeb gie osservat f'***Code of Canon Law Annotated*** [4] b'referenza ghal dak li jiddisponi l-Kanone 1434:

Neither the words nor the spirit of this canon attempt to solve the doctrinal question of whether or not the promotor of justice and the defender of the bond are parties in the hearings, either as plaintiff or respondent, or as procurator or advocate. However, it is important to bear in mind that both these persons, when promoting justice or defending the bond, <u>are protecting the public interest by virtue of their office; in contrast to the parties and their representatives who act directly in defence of a private interest</u>. [5] (sottolinear ta' din il-Qorti).

L-interessi tad-Difensur tal-Vinkolu ma humiex neccessarjament l-interessi ta' parti jew ohra – u fil-kaz *de quo* aktar u aktar jidher li d-Difensur tal-Vinkolu ma setax jiddefendi xi interess li seta' talvolta kellha Fatima Aarab li tghid li z-zwieg taghha mar-rikorrent Calleja kien validu peress li l-imsemmi Difensur addirittura tant qabel mat-tezi li z-zwieg kien invalidu li ddikjara li ma kienx hemm il-htiega ta' appell kif prospettat fil-Kanone 1687(1) [6]. Il-htiega li l-interessi ta' parti jigu tutelati b'mod li jkun jista' jinghad li dik il-parti inghatat smigh xieraq jew il-possibilita` ta' tali smigh, jipprexxindi kompletament mill-kwistjoni ta' jekk id-decizjoni *de quo* hix wahda korretta fil-meritu – u din il-Qorti hi prekluza milli tidhol fil-meritu (ara l-Artikolu 28 tal-Kap. 255). Kif tajjeb gie osservat minn Lord Wright fil-kawza deciza mill-House of Lords fl-ismijiet ***General Medical Council v. Spackman*** [7]:

If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial

[4] E. Caparros, M. Theriault u J. Thorn edituri, pubblikat minn Wilson & Lafleur Limitee (Montreal), 1993.
[5] <u>ibid.</u> p. 892.
[6] *"As the Defender of the Bond has rightly noted in his* Animadversiones *'The degree of certainty about the facts under consideration is high enough to constitute moral certainty, and renders unneccessary the appeal foreseen by can. 1687(1) in cases where the defects are prudently judged not to have been established with certainty'"* – ara l-ahhar faccata tad-decizjoni tat-Tribunal Metropolitan.
[7] [1943] AC 627.

whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision[8].

Fil-kaz in dizamina din il-Qorti mhix imsejha biex tiddeciedi jekk id-decizjoni tat-Tribunal Metropolitan hix wahda valida o meno – din il-Qorti tista' biss ma tirregistrax dik id-decizjoni jekk ma tkunx sodisfatta skond is-subartikolu (5) tal-Artikolu 24.

Ghar-ragunijiet premessi, peress li din il-Qorti mhix sodisfatta li quddiem it-Tribunal Metropolitan thares id-dritt ta' smigh xieraq ta' Fatima Aarab peress li din f'ebda stadju f'dawk il-proceduri ma kienet rappresentata bhala persuna assenti, tichad it-talba tar-rikorrent kif kontenuta fir-rikors tieghu tal-1 ta' Lulju, 2004. Spejjez, jekk hemm, jithallsu mir-rikorrent Calleja.

< Sentenza Finali >

-------------------------------TMIEM-------------------------------

[8] F'pagni 644, 655.