



QORTI TA' L-APPELL KRIMINALI

**ONOR. IMHALLEF
JOSEPH GALEA DEBONO**

Seduta tas-16 ta' Ottubru, 2008

Appell Kriminali Numru. 213/2008

**Il-Pulizija
(Spt. B. Spiteri)
Vs
Dorian Flores**

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellat quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli fis-26 t'April, 2008, ghall-habta ta' 3.35 a.m., bhala l-persuna li f'ismu ghandu l-licenzja ta' "substitute" tal-hanut tal-birra w xorb spirituz bl-isem ta' Brass Monkey, maghruf bhala Koyote, li jinsab gewwa Triq San Gorg, Paceville, San Giljan

1. dejjaq jew ippermetta li tindaqq muzika b'kull mezz gewwa post kummercjali li huwa licenzjat biex idoqq muzika amplifikata b'tali mod li jinstema' minn barra wara s-1.00 a.m;

Kopja Informali ta' Sentenza

2. biddel l-isem ta' l-imsemmi hanut minn Brass Monkey ghall-Koyote minghajr licenzja ta' l-Awtorita' kompetenti.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tad-19 ta' Gunju, 2008, li biha, wara li rat ir-regolament 27 ta' l-Avviz Legali 392/29, ma sabitx lill-appellat hati tal-ewwel imputazzjoni w minnha lliberatu w wara li semghet l-ammissjoni rigward it-tieni imputazzjoni kkundannatu ghall-ammenda ta' tmienja w hamsin Euro w tlieta w ghoxrin centezmu (€58.23).

Rat ir-rikors tal-appellant Avukat Generali minnu pprezentat fid-9 ta' Lulju, 2008, li bih talab li din il-Qorti joghghobha thassar, tirrevoka w tannulla s-sentenza appellate, tghaddi biex issib lill-appellat hati tal-akkuzi migjuba kontrih u tiddeciedi l-appell ai termini tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Fliet l-atti kollha processwali.

Rat in-Nota ta' l-appellat tal-15 ta' Ottubru, 2008, li pero' mid-dokumenti esebiti maghha jidher li l-appellat iddecieda li jibbukja biex isiefer wara li gie notifikat bid-data ta' dan l-appell, minghajr ma ghamel rikors biex l-appell jigi differit. F' kull kaz, trattandosi ta' appell tal-Avukat Generali, l-appell jista' jinstemgha anki fl-assenza tal-appellat (art. 422 (2) tal-Kodici Kriminali).

Rat il-verbal li bih l-appellat eccepixxa n-nullita' tar-rikors tal-appell tal-Avukat Generali ghaliex ma ntalbitx ir-riforma tas-sentenza appellata kif kien indikat u minnflok intalbet ir-revoka taghha w dan bi ksur ta' dak li jiddisponi *ad validitatem* l-artikolu 419(1)(c) tal-Kodici Kriminali w l-gurisprudenza.

Semghet it-trattazzjoni dwar dan il-punt;

Ikkonsidrat ;

Illi minn ezami tar-rikors ta' l-appell, minkejja li fis-sentenza appellata, l-appellant gie liberat mill-ewwel

imputazzjoni w nstab hati tat-tieni imputazzjoni, l-appellant talab biss testwalment hekk :-

"li din il-Qorti joghogobha thassar, tirrevoka u tannulla s-sentenza appellata , tghaddi biex issib lill-imputat hati tal-akkuzi migjuba kontrih u tiddeciedi l-appell ai termini tal-Kapitolu 9 tal-Ligijiet ta' Malta."

Illi hemm lista formidabbli ta' decizjonijiet ta' din il-Qorti diversament preseduta fejn dejjem giet dikjarata in-nullita' tal-appell - liema nullita' hija **sollevabbli "ex officio"** - ghaliex dejjem gie ritenut li , meta talba kellha tkun dik ta' riforma jew varjazzjoni tas-sentenza , izda, minnflok tintalab ir-revoka taghha, dan igib bhala konsegwenza li ma jkunx gie osservat il-paragrafu (c) tas-subartikolu (1) tal-Artikolu 419 tal-Kodici Kriminali , b'mod ghalhekk li l-istess rikors tal-appell ikun null . (App. Krim. **Pul. vs. Mario Camilleri**" -[3.12.2001]; **Il-Pulizija vs. Joe Borg** [21.7.1995] u ohrajn).

Illi din il-Qorti diversament preseduta dahlet funditus f'din il-kwistjoni fl-appell kriminali "**Il-Pulizija vs. Joseph Galea** [30.6.1995]) Per V. De Gaetano J. fejn gie ritenut li :-

"minn ezami tal-gurisprudenza rigward in-nullita' ta' appell, il-Qorti ta' l-Appell Kriminali waslet ghas-segweni konkluzzjonijiet :-

(a) Bhala regola generali, l-artikolu 419 (1) , cioe' li r-rikors ghandu jkun fih it-talba ghat-thassir **jew** ghat-tibdil tas-sentenza , giet "*very strictly and rigidly interpreted*" - "**The Police vs. John Hill**", Criminal Appeal, [23.9.1972]

(b) ghalkemm il-ligi titkellem dwar talba ghat-thassir jew ghal tibdil , fil-prassi ta' din il-Qorti dejjem gie accettat , fil-kazijiet li hekk jippermettu , li jkun hemm kemm talba ghat-thassir kif ukoll talba ghat-tibdil , PURCHE' LI DIN IT-TALBA TKUN SUBORDINATA GHALL-EWWEL WAHDA (enfasi ta' din il-Qorti). In fatti ,anki jekk jintalab biss it-thassir , din il-Qorti tista' flok thassar ghal kollox is-sentenza u konsegwentement tillibera lill-appellant jew

issib hati lill-appellat - skond min ikun appella - tilqa' l-appell in parti u tbidel is-sentenza , per ezempju limitatament ghall-piena inflitta fuq l-appellant . Mill-banda l-ohra , jekk is-sentenza appellata tkun in parti sabet hati lill-appellant u in parti illiberatu minn xi akkuzi jew imputazzjonijiet , gie dejjem ritenut li jekk flok talba ghat-tibdil issir talba ghat-thassir , ir-rikors ikun null. “ **(Pul.vs. Anthony Zammit** , [1.10.60], Vol. XLIV, iv. p.940; **Pul. vs. Richard Vincenti Kind** , App. Krim. [16.9.72]; **Pul. vs. Carmelo Agius** , App. Krim. 14.10.1972).

Inoltre l-istess principju gie ribadit aktar recentement minn din il-Qorti diversament preseduta mill-Prim' Imhallef V.De Gaetano fis-sentenza “**Il-Pulizija vs. Lewis Muscat**” [31.8.2006] fejn intqal:-

“....article 419 of the Criminal Code provides, with regard to applications of appeal like the one under examination, that “...the application shall, under pain of nullity, contain (a) a brief statement of the facts, (b) the grounds of the appeal; and (c) a demand that the judgment of the inferior court be reversed or varied” (emphasis added). It is also true that this provision is a special provision, providing for the nullity of the judicial act, in the event of any omission mentioned, and to that extent it must be regarded as overriding the general provision contained in article 175 of the Code of Organisation and Civil Procedure (rendered applicable to acts filed before a Court of Criminal Justice by virtue of article 520(1)(c) of the Criminal Code), including sub-article (2) thereof which states: “Any court of appellate jurisdiction may also order or permit, at any time until judgment is delivered, the correction of any mistake in the application by which the appeal is entered or in the answer, including any mistake in the indication of the court which delivered the decision appealed from, in the name or character of the parties, or in the date of the judgment appealed from” (emphasis added). Clearly what is null by express provision of the law – article 419 of the Criminal Code – cannot be rectified by invoking article 175 of Chapter 12. Thus one cannot invoke article 175 when the “brief statement of the facts” are left out, or when the “grounds of the appeal” are omitted from the application of appeal, or when the demand for reversal or variation is left

out. Likewise, if the demand should have been for the variation of the judgment and instead the reversal of the judgment is requested – which amounts to the total absence of the appropriate demand – no correction can be effected under the said article 175. Similarly no new grounds of appeal may be added by invoking article 175, as this would clearly change the substance of the appeal and of the reply thereto on the merits (article 175(1)).”
(sottolinear ta' din il-Qorti).

Illi sentenzi ohra li minnhom kienu jemergu dawn il-principji huma : **“La Polizia vs. Ernesto Laiviera”**, [18.10.1930] ; Vol. XXVII , iv. P.829; **“La Polizia vs Carmelo Carabott et.”** [8.11.1933], Vol. XXVIII, iv. P.205; **Pulizija vs. Francis Saviour Zammit Cutajar** , App.Krim. [23.1.1971]; **Pulizija vs. Carmelo Farrugia et.** App. Krim. [11.11.1976] ; **Pulizija vs. Carmelo sive Lino Scicluna** , App. Krim.[1.9.1977]; **Pulizija vs. Victor Anthony Camilleri et** , [26.4.1985]; **Pulizija vs. Anthony Zammit** [1.10.1960] Vol. XLIV , iv. P.940 ; **Pulizija vs. Richard Vincenti Kind** , App. Krim. [16.9.1972] ; **Pulizija vs. Carmelo Agius** App. Krim. [14.10.1972]; **Pulizija vs. Emmanuel Bonnici** , App. Krim. [5.10.1990]; **Pulizija vs. Joseph Desira** [18.3.1972] ; **Pulizija vs. Crusifix Buttigieg** , [18.3.1972]; u **Pulizija vs. John Vella Chretien** App. Krim. [6. 5. 1972] u **II-Pulizija vs. Jesmond Farrugia** [13.2.2001].

Issa fil-kaz odjern hu ovvju li l-appellant suppost fl-ewwel lok talab ir-riforma jew tibdil jew varjazzjoni tas-sentenza appellata gjaladarba hu kien qed jitlob revoka tal-liberazzjoni fuq l-ewwel imputazzjoni w biss varjazzjoni fil-piena fir-rigward tat-tieni imputazzjoni fejn instabet htija fuq ammissjoni tal-appellat. It-talba kellha ghalhekk tigi redatta b' mod li din il-Qorti tirrifirma s-sentenza appellata, billi fl-ewwel lok tikkonfermaha fejn sabet htija tat-tieni imputazzjoni w tirrevokaha fejn sabet lill-appellat mhux hati tal-ewwel imputazzjoni w fejn ikkundannat lill-appellat ghall-ammenda ta' E58.23c u minnflok issib lill-appellat hati ukoll tal-ewwel imputazzjoni w tapplika l-piena skond il-ligi, u tapplika wkoll il-piena skond il-ligi ghat-tieni imputazzjoni. F' dal-kaz pero' ma sarx hekk.

Kopja Informali ta' Sentenza

Illi fil-fehma ta' din il-Qorti dan id-difett fl-istezura tar-rikors tal-appell igib in-nullita' tar-rikors tal-istess appell.

Ghal dawn il-motivi din il-Qorti qed tilqa' l-pregudizzjali sollevata mill-appellat w tiddikjara l-appell null u tastjeni milli tiehu konjizzjoni ulterjuri tieghu.

< Sentenza Finali >

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