



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
JOSEPH AZZOPARDI**

Seduta tal-15 ta' Dicembru, 2010

Citazzjoni Numru. 856/2002

**L-Avukat Dr Jose' Herrera bħala prokuratur speċjali
ta' Francis Abela, Manuel Abela, Margaret Camilleri,
Rose Cooper u Vincent Abela**

-vs-

**Angela sive Angiolina Abela, Generoso sive John
Abela, Dr Martin Fenech u l-Prokuratur Legali Luisa
Tufigno li b'digriet tat-13 t'Awissu 2002 ġew maħtura
bħala kuraturi deputati sabiex jirrapprezentaw l-
interessi tal-eredi inċerti tal-mejjet Anthony Abela, l-
interessi tal-werrieta inċerti tal-mejjet Michael Abela, l-
interessi tal-werrieta inċerti tal-mejjet Grazio Abela u
l-interessi tal-werrieta inċerti tal-mejjet Giovanni
Abela; u b'digriet tal-10 ta' Settembru 2002, Rose mart
Paul Galea, Generoso Abela, Anthony Abela, Angelo
Abela u Rita mart John Borg assumew l-atti għall-
interessi tal-wirt ġacenti ta' Grazio Abela; u b'digriet
tat-28 ta' Novembru 2003 ġie kjamat fil-kawża John
Mary sive Marjohn Abela.**

II-Qorti;

Rat iċ-ċitazzjoni ppreżentata fl-24 ta' Lulju 2002 li permezz tagħha l-atturi ppremettew:

Illi Veneranda Abela xebba Caruana għamlet testment datat 26 ta' Lulju 1945 li qiegħed hawn anness u mmarkat Dokument 'FA1'

Illi wara l-mewt tal-imsemmija Veneranda Abela xebba Caruana u per konsegwenza tal-imsemmi testment saru żewġ atti notarili, u ċjoe' att ta' immissjoni fil-pussess datat 2 ta' Settembru 1983 fl-Atti tan-Nutar Pubbliku Dottor Joseph Cachia, u att ta' diviżjoni datat 21 ta' Marzu 1984, fl-Atti tan-Nutar Pubbliku Dottor Joseph Henry Saydon hawn annessi u mmarkati Dokumenti 'FA2' u 'FA3' rispettivament.

Illi fl-imsemmija żewġ atti notarili jidher illi saret prokura datata 2 ta' Settembru 1983 fejn l-aħwa Abela, u ċjoe' l-atturi taw prokura lill-konvenuta Angiolina Abela u appuntaw ukoll bħala prokuratur sostitut lil binha l-konvenut Generoso Abela.

Illi fuq iż-żewġ atti notarili hawn fuq indikati, u ċjoe' dak l-att ta' immissjoni fil-pussess datat 2 ta' Settembru 1983 fl-Atti tan-nutar Pubbliku Dottor Joseph Cachia u att ta' diviżjoni datat 21 ta' Marzu 1984 fl-Atti tan-Nutar Pubbliku Dottor Joseph Henry Saydon jidher illi l-konvenut Generoso Abela deher bħala prokuratur sostitwit mill-imsemmija ommu l-konvenuta Angiolina Abela f'isem l-atturi kollha.

Illi l-atturi qatt ma ffirmaw l-ebda prokura *ossia* taw xi tip ta' awtorizzazzjoni mill-Awstralja, fejn joqogħdu u jirrisjedu l-istess atturi, lil Angiolina Abela jew lil binha Generoso Abela u dana hekk kif jidher mid-dikjarazzjonijiet hawn annessi u mmarkati Dokumenti 'FA4' u 'FA5' rispettivament, u kif ikollhom l-opportunita' illi jipprovaw fil-mori tal-kawża odjerna.

Illi per konsegwenza ż-żewġ atti notarili hawn fuq indikati ġiet diviża l-eredita' kollha tal-mejta Veneranda Abela xebba Caruana u dan b'mod abbusiv da parti tal-konvenuti jew min minnhom u mingħajr il-kunsens tal-atturi.

Jgħidu l-konvenuti jew min minnhom għalfejn dina l-Onorabbli Qorti m'għandhiex:

1. Prevja kull dikjarazzjoni li hi jidhrilha li hija xierqa u opportuni ili tagħti fiċ-ċirkostanzi, tiddikjara illi l-atturi qatt ma ffirmaw l-ebda prokura datata 2 ta' Settembru 1983;

2. Tiddikjara illi f'każ illi teżisti xi prokura, din hija nulla u bla effett *ai fini* u effetti tal-liġi *stante* illi din ma ġietx iffirmata mill-konvenuti jew minn minnhom.

3. Tiddikjara illi l-konvenut Generoso *sive* John Abela ma kellu l-ebda awtorita' illi jidher bħala prokuratur tal-atturi fuq iż-żewġ atti notarili, u ċjoe' att ta' immissjoni fil-pussess datat 2 ta' Settembru 1983 fl-Atti tan-Nutar Pubbliku Dottor Joseph Cachia u att ta' diviżjoni datat 21 ta' Marzu 1984 fl-Atti tan-Nutar Nutar Pubbliku Dottor Joseph Henry Saydon.

4. Tiddikjara per konsegwenza illi ż-żewġ atti notarili, u ċjoe' l-att ta' immissjoni fil-pussess datat 2 ta' Settembru 1983 fl-Atti tan-Nutar Pubbliku Dottor Joseph Cachia u att ta' diviżjoni datat 21 ta' Marzu 1984 fl-Atti tan-Nutar Pubbliku Dottor Joseph Henry Saydon saru mingħajr il-kunsens tal-atturi.

5. Tiddikjara illi ż-żewġ atti notarili hawn fuq indikati huma per konsegwenza nulli u bla effett *ai fini* u effetti kollha tal-liġi *stante* illi wieħed mir-rekwiziti *ad validitatem* tal-kuntratt huwa nieqes.

6. Tordna r-rexxissjoni ż-żewġ atti notarili, u ċjoe' l-att ta' immissjoni fil-pussess datat 2 ta' Settembru 1983 fl-Atti tan-Nutar Pubbliku Dottor Joseph Cachia, u att ta'

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diviżjoni datat 21 ta' Marzu 1984 fl-Atti tan-Nutar Pubbliku Dottor Joseph Henry Saydon.

7. Tinnomina Nutar Pubbliku biex jippubblika l-att ta' rexxissjoni relattiv.

8. Tinnomina kuraturi deputati biex jidhru fuq l-att relatti fil-kontumaċja tal-konvenuti.

Bl-ispejjeż u l-konvenuti minn issa ngunti in subizzjoni.

B'riserva għal kull azzjoni spettanti oħra lill-atturi fil-konfront tal-konvenuti.

Rat id-dikjarazzjoni maħlufa tal-attur Dr Jose' Herrera nomine u l-lista tax-xhieda.

Rat in-nota tal-eċċezzjonijiet tal-konvenuti Rose Galea, Generoso Abela, Angelo Abela u Rita Borg, preżentata fid-29 ta' Novembru 2002, li permezz tagħha eċċepew:

1. Illi fl-ewwl lok l-azzjoni attriċi hija preskritta *ai termini* tal-artikoli 2140, 2156(f) u 2157 tal-Kapitolu 16 tal-Liġijiet ta' Malta;

2. Illi *in linea* preliminari wkoll, għandu jiġi stabbilit jekk l-atturi jistgħux jipproċedu għudizzjarjament kontra l-eċċipjenti peress li l-azzjoni tagħhom kellha tiġi *semmai* diretta kontra l-mandatariji tagħhom Angolina Abela u / jew binha Generoso Abela.

3. Illi fil-mertu taż-żewġ atti li l-atturi qedgħin jittantaw jimpunjaw huma assolutament validi u għalhekk ukoll it-talbiet attriċi għandhom jiġu miċħuda.

4. Illi fuq kollox l-atturi ilhom snin jafu li ġew iffirmati dawna l-kuntratti, u għalhekk ukoll illum ma jistgħux jittantaw jimpunjawhom.

Rat id-dikjarazzjoni maħlufa tal-konvenuti Rose Galea, Generoso Abela, Anthony abela, Angelo Abela u Rita Borg u l-lista tax-xhieda.

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Rat in-nota tal-eċċezzjonijiet tal-konvenuti kuraturi deputati pprezentata fit-13 ta' Novembru 2002, li permezz tagħha eċċepew:

1. Illi huma għadhom mhux edotti mill-fatti tal-każ u għalhekk jirriservaw illi jirrispondu f'aktar dettall u preċiżjoni fi stadju ulterjuri.
2. Salv eċċezzjonijiet ulterjuri.

Rat id-dikjarazzjoni maħlufa ta' Dr Martin Fenech u l-Prokuratur Legali Luisa Tufigno u l-lista tax-xhieda.

Rat in-nota tal-eċċezzjonijiet tal-konvenuti Generoso *sive* John Abela u Catherine Tabone prezentata fl-4 ta' Novembru 2003, li permezz tagħha eċċepew:

1. Illi preliminarjament l-azzjoni attriċi, *in kwantu* qed titlob ir-rexxissjoni tal-kuntratti msemmija fiċ-ċitazzjoni, hija preskritta *ai termini* tal-Artikolu 1222 tal-Kapitolu 16 tal-Liġijiet ta' Malta.
2. Mingħajr preġudizzju għall-premess, l-allegazzjoni ta' l-atturi li l-prokura giet iffiramta u ingħatat lill-eċċipjenti mill-istess atturi u kopja awtentikata min-Nutar Pubbliku Dottor Joseph Cachia qiegħda fil-pussess tal-eċċipjenti, liema kopja hija ammissibbli u għandha l-istess saħħa u effetti legali daqs l-oriġinal hekk kif stipulat fl-Artikolu 636 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.
3. Mingħajr preġudizzju għall-premess, it-talbiet tal-atturi huma nfondati fil-fatt u fid-dritt *stante* li l-kuntratti msemmija fiċ-ċitazzjoni huma validi.

Bir-riżerva ta' eċċezzjonijiet ulterjuri.

Rat id-digriet tat- 28 ta' Novembru 2003 li permezz tiegħu ġew awtorizzati ż-żidiet fiċ-ċitazzjoni u wkoll ġie msejjaħ fil-kawża John Mary *sive* Marjohn Abela;

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Rat illi l-istess imsejjañ fil-kawża ma pprezentax nota tal-eċċezzjonijiet u allura huwa kontumaċċi skond il-liġi;

Semgħet il-provi;

Rat l-atti proċesswali;

Rat in-noti ta' sottomissjonijiet tal-partijiet;

Rat il-verbal tas-seduta tas-27 ta' Ottubru 2010 illi permezz tiegħu l-kawża tħalliet għas-sentenza;

Ikkunsidrat;

Illi kif jidher miċ-ċitazzjoni l-attur nomine qed jitlob in-nullita' ta' kuntratt ta' diviżjoni u kuntratti oħra sussegwenti minħabba l-fatt li skond, il-prokura li permezz tagħhom saru ma ġewx iffirmati mill-mandatarji tiegħu.

Illi għall-aħjar intendiment tal-kawżali, il-Qorti se tiċċita l-affidavit kollu ta' Frank Michael Abela, wieħed mill-atturi:

"1. I am one of the Plaintiffs. I was born on 5th November 1934, in Malta. I first came to Australia with my new wife in 1959. My parents and younger siblings had earlier arrived in Australia. Australia has been my permanent home since that time. The first occasion that I had to visit Malta, since coming to Australia, was in March 1999. In other words, I was absent from Malta from 1959 until 1999.

2. Until fairly recently, I had only been able to sight what appeared to be notarized copies of two (2) Powers of Attorney, one dated 2nd September 1983 and the other undated. Both showed only typed names, not signatures, but were notarized by Notary Cachia. I have never met Notary Cachia. Notary Cachia has never seen me sign my name. For these reasons I say that Notary Cachia could not notarize my signature. I believe that the same applies to all of my siblings, who were all also in Australia at the time, i.e. on or about September 1983.

3. *When I visited Malta in March 1999, I had only been made aware a few weeks earlier that the division of my late grand parent's properties, that had taken place in the mid 1980's, was not a fair and equal division. I believe that my late father Anthony's share was less in area and/or value that the other shares for the other members of his family.*

4. *During my said visit to Malta in March 1999, I visited Notary Saydon, who could only show me the copies of the Powers of Attorney referred to in paragraph 2 above. The same occurred when I also visited Notary Tabone. I was unable to see Notary Cachia to challenge him concerning his apparent authorization of my signature, even though I had never met him personally, because Notary Cachia had died some time before March 1999.*

5. *My father, Anthony Abela, passed away in 1980. Whilst I cannot recall signing any Powers of Attorney to my Aunt Golina Abela relating to any division of property, I can recall signing some paperwork, concerning my late father's estate, in or about 1983. I cannot recall the specific name of any person(s) appointed to act on my late father's estate in Malta. I did not go to Malta to sign the paperwork for my late father's estate, nor did any of my siblings, nor my mother Carmen Abela. We all signed this paperwork at Fairfield in Australia and sent it back to Malta.*

6. *During the present court proceedings, as late as November 2005, my lawyers in Malta Messrs Herrera Herrera Giglio were able to obtain copies of some Powers of Attorney with the actual signatures. It had taken some years after 1999 before I was able to get hold of relative Powers of Attorney in order for myself and my legal counsel to have some idea of the situation and what actually took place. This was only fully clarified during the opening of the court case when Notary Saydon gave his deposition to the court. I have also now sighted these signed copies and state as follows:-*

(a) On page number 3265 there are signatures, including inter alia for myself, stated as Francis Abela. The signature ascribed to me appears to be mine, but I do not ever recall signing a document such as this which appointed Golina Abela. I believe that my signature and these of my siblings and mother that are shown on said page 3265 are in fact the signatures which we made to enable our late father's estate to be processed, whether or not Golina Abela was the person appointed in respect of my late father's estate, although I cannot now recall who it was we entrusted to administer my late father's estate.

(b) Further to (a), I note that Golina Abela's name as shown on page 3265 appears on the third (3rd) dotted line provided on the pro-forma document for insertion of the name of the appointed attorney, rather than on the first or second dotted line. I have observed some partly erased words that were on the said first and second dotted lines but which are in decipherable to me based on the copy furnished to me. I believe that these partly erased first and second dotted lines contained the name(s) of the appointed attorney(s) to act on my late father's estate, and that Golina Abela's name has been substituted without the permission of myself, my siblings, nor my mother.

(c) Page number 3264 shows signatures, inter alia, of "Angela Abela", not Golina Abela, and a stated and signed witness to signature and identity by Notary Cachia. I state that Notary Cachia did not witness my signature and could not have identified me as I have never met Notary Cachia and he has never otherwise seen me sign my name. The same applies to my siblings and mother. I say that Notary Cachia could only have witnessed the signature of Angela Abela, who's signature appears before his and possibly also my uncle Grazio, my cousin Generoso Abela (son of Golina), and my aunt Carmen, wife of Grazio, whose signatures also appear.

(d) Further as to page number 3264, this shows a number of discrepancies from the earlier exhibited notarized copy, as follows:-

(i) Page number 3264 states that it was signed in Valetta (Malta) on the 26th August 1983, whereas the earlier exhibited notarized copy shows execution at Fairfield NSW Australia on 2nd September 1983. I also say that Notary Cachia could not possibly have signed the original on or before the date of his Certification on 2nd September 1983 because he was not in Australia at that time and the family actually forwarded the paperwork, in respect of my late father's estate, back to Malta by mail, so it would have been some time after the 2nd September 1983 before it actually reached Malta.

(ii) Page number 3264 shows seven (7) handwritten lines which appear to be substituting Generoso Abela. Whilst I understand that standard clause 13 enables such a substitution, it was not with my approval, and this is supported by the fact that the earlier exhibited notarized copy does not show any of these additions.

7. Having regard to the aspects of the matter set out in the above paragraphs, I restate my above statement in paragraph 5 above that I recall signing some paperwork in about 1983 at Fairfield in Australia, solely for the purpose of administering my late father's estate in Malta, not for any division of property, and certainly not one that was distributed in unequal proportions

8. According to the only records available to me, the property division occurred in respect of two (2) parcels i.e.

(a) Bugħarbiel (Zejtun) - Town block - Divided by the defendants as follows:-

- New lots / parcels 1, 2, 4 & 8 to Angelina's family, comprising a total of 513.63 m²;*
- New lots / parcels 3 & 7 to Grazio's family, totaling 330.25 m²;*

- *New lots / parcels 5 & 6 to my father Anthony's family totaling 270.77 m².*

I say that the above divisions should have been equal in area, and that both Angelina's family and Grazio's family have achieved an unfair advantage over myself and my siblings as a result of the unequal division.

(b) Hal Tmien (Zejtun) - Farm block - Divided by the defendants into three (3) new lots/parcels which are also unequal in size.

10. I say that even if the defendants used the Power of Attorney that I signed for my late father's estate for the purpose of the property division, I would have expected them to ensure that such a division was a fair and proper one, based both on area apportionment as well as to value and improvements thereon, but that is not how the division ended up. I say that the defendants, being extended family members, had a duty to ensure fairness to avoid any conflict of interest, which they did not follow, made all the more serious because they themselves obtained an unfair advantage as a result of signing off on the division, relative to the interests of myself and my siblings. Angelina Abela and / or Generoso Abela should have informed myself and my family about the division and the portion of my late father's estate that was due to me and my siblings, as a consequence of the contracts that they signed in their name and on our behalf."

Illi fil-fehma tal-Qorti l-paragrafu 6(a) huwa l-iktar wieħed importanti; l-attur imsemmi jirreferi għall-prokura in kwistjoni (in-numru 3265 jirreferi għan-numru fl-atti tan-Nutar li ippubblika l-kuntratt – fil-verita' hija fol. 148 tal-proċess). L-imsemmi Michael Abela fil-fatt qed jammetti li l-firma hija tiegħu – pero' qal li ma jiftakarx illi huwa qatt ħatar lill Ġolina Abela bħala prokuratur tiegħu u ta' ħutu; fil-verita' jgħid li anzi jemmen li l-firem huma tiegħu u ta' ħutu.

Illi ġara allura huwa ċar ħafna għall-Qorti, illi fl-1983 l-atturi (kif jidher mill-korrispondenza li kien hemm bejn il-partijiet) rċevew il-prokura mingħand il-konvenuti (jew l-awturi tagħhom) u kellhom struzzjonijiet biex jiffirmawhom u jibagħtuhom lura, kif fil-fatt għamlu. Kif sewwa rrimarkaw il-konvenuti, ladarba kienu kuntenti jiffirmawhom ma jistgħux jiġu issa jallegaw li l-prokuri huma foloz. Il-Qrati mhumieq qegħdin biex permezz tagħhom xi ħadd isewwi dak li ġara minħabba non kuranza tiegħu stess. L-atturi kienu jafu li dak li kienu qed jagħmlu kien biex jiġi likwidat il-wirt li kellhom in komun mal-konvenuti u kien messhom ħasbu sew u vverifikaw x'kienet t'fisser il-firma tagħhom fuq dak id-dokument. Ta' min iżid illi ma hemm ebda rekwiżit li ffirmata fuq skrittura privata (kif inhija prokura) tkun awtentikata minn professjonist; l-awtentikazzjoni issir biex ma jkunx hemm perikolu li xi ħadd fil-futur jgħid illi dik il-firma ma tkunx tiegħu.

Illi *una volta* stabbilit, dan l-azzjoni attriċi ma tistax tirnexxi kif proposta u jekk għandhom xi lanjanza fir-rigward tad-diviżjoni in kwistjoni għandhom jipproċedu mod ieħor. Lanqas allura ma għandha għalfejn il-Qorti tidhol fl-eċċezzjonijiet l-oħra.

Għaldaqstant il-Qorti tiddeċidi din il-kawża billi tilqa' t-tielet eċċezzjoni tal-konvenuti Rose Galea, Generoso Abela, Angelo Abela u Rita Borg, u t-tieni u t-tielet eċċezzjoni ta' Generoso Abela u Catherine Tabone, u tiċċhad it-talbiet tal-attur nomine bl-ispejjeż kontra tiegħu.

Moqrija.

< Sentenza Finali >

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