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**QORTI TAL-MAGISTRATI
(GHAWDEX) GURISDIZZJONI SUPERJURI**

**MAGISTRAT DR.
ANTHONY ELLUL**

Seduta tal-15 ta' Frar, 2011

Citazzjoni Numru. 81/2010

Rodney and Judith Metters

Vs

**The Malta Environment and Planning Authority and
Christopher Thewma, and by a court order dated 12th
November 2010 Gina Grace Thewma was included as
a defendant**

The plaintiffs are contesting the validity of a development permit (numbr 773/06) issued by the defendant authority. They are requesting a declaration that the administrative action whereby the said permit was issued in favour of the other defendant, is ultra vires and irregular. They are also requesting the court to condemn the authority to take all necessary action in terms of law to remove all irregularities.

The court ordered that at this stage of the proceedings the preliminary pleas would be dealt with.

Defendants Thewma raised a preliminary plea that the action is time barred in terms of Article 469A(3) of the Code of Organization and Civil Procedure¹.

The other defendant is claiming:-

1. Lack of jurisdiction in terms of Chapter 356 of the Laws of Malta.
2. The plaintiffs had other remedies to their complaints. Therefore by applying Article 469A(4) of Chapter 12 of the Laws of Malta the Court should declare that it has no jurisdiction.
3. The action is time barred in terms of Article 469A(3) of Chapter 12 of the Laws of Malta.
4. The nullity of the action as it was not based on any of the grounds contemplated in Article 469 for judicial review.

In brief the facts of the case are:-

1. Plaintiffs are the owners of the house Kinabalu, Triq Sant'Anton, Xaghra, Gozo.
2. Defendants Thewma own an adjacent house which was built after a full development permit was granted on the 26th August 2008 (fol. 19) for the demolition of an existing building and building of a house. Originally defendants filed an application for the issue of a full development permit, on the 6th February 2006. The case category given by the Authority was **Outside Development Zone**. On the 28th August 2007 the Authority refused the request. However on the 24th September 2007 the applicant filed a request for reconsideration and the request was granted, thereby overturning the original decision.
3. The Plaintiffs claim² that Thewma's building is:-
 - a) Obstructing the views previously enjoyed from their property. Judith Metters declared on oath that "*Due to the*

¹ Vide fol. 16.

² Vide the note filed by plaintiffs on the 20th October 2010 (fol. 12).

development we have no privacy, they can look into our pool area and also into our bathroom.” (fol. 27).

b) The house was built in an area classified as an outside development zone, and therefore the permit was issued in breach of the law.

c) The notice referring to the planning application was never fixed on site.

With regards to the application filed by the plaintiffs on the 19th November 2010, the court does not agree that the consideration of another application by Malta Environment and Planning Authority for sanctioning of the building, would prejudice the merits of the case. Therefore the court rejects the request made by the plaintiffs.

The court will first consider the preliminary plea filed by defendants Thewma, that is that the action filed by plaintiffs is time-barred. A similar plea was raised by Malta Environment and Planning Authority.

There is no doubt that all permits issued by the Malta Environment and Planning Authority, are issued without prejudice to third party rights. The permit in issue expressly states:- ***“This permit is granted saving third party rights.”*** (fol. 22). Therefore, whatever decision is taken by the Authority, it is not binding on third parties. Plaintiffs are third parties. The court is of the opinion that plaintiffs complaint that the uninterrupted view they enjoyed is now obstructed and that they have no longer any privacy, are not planning issues but matters of a purely private nature.

The court has no doubt that the action filed by plaintiffs deals with the judicial review of administrative action. According to Article 469A(3) an action contesting an administrative act has to be filed *“within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.”*

The development permit was issued on the 26th August 2008, whereas the case was filed on the 4th October 2010.

From the testimony of plaintiff Judith Metters it transpires that:

a. In 2008 the plaintiffs saw on going activity in defendant's property. They enquired with the Malta Environment and Planning Authority and were advised "... *we would need an architect to go to the MEPA office to see the relevant file. They informed us that there was a file, they gave us a number and also the name of the applicant, it was a certain Theuma.*" (fol. 26).

b. In November 2008 Judith Metters took a photograph of the building permit which is being contested by plaintiffs, and which was attached to a wall of the room that was in defendant's land (vide photo Doc. JM15 with a note at the back "**TAKEN 11/11/08**").

c. Plaintiffs sought advice from architect Anna Maria Attard Montalto in 2009.

d. In September 2009 the groundfloor was still being built. Plaintiffs took a photo of the progress of works (Doc. MJ6). Judith Metters declared that "*If I recall correctly, it was at this stage that is around September two thousand and nine (2009), that we contacted a Solicitor, Dr Alfred Grech.*" (fol. 27).

e. On the 18th October 2009 plaintiffs downloaded from the website of the Malta Environment and Planning Authority, information relating to application number 773/06 (Doc. MJ14).

It is evident that the plaintiffs did not file the action for judicial review within six (6) months from when they became aware that a building permit had been issued by Malta Environment and Planning Authority. The fact that they contend that in September 2009 they "... *were still presuming that everything was fine in the sense that the permit was in place and that we could do absolutely nothing about it.*" (fol. 27), is not enough. When in November 2008 they became aware that a full development permit had been issued, there was nothing to

stop or hinder the plaintiffs from acquiring all necessary information from the Malta Environment and Planning Authority. It is no excuse to claim that no enquiry was made because the plaintiffs were presuming that everything was in order. Had they done the necessary research at the time they certainly would have become aware of the development authorised by the Authority. Judith Metters confirmed that when originally they went to the Authority's office, they were advised to contact an architect so that they could have access to the relevant file. However at that stage they decided not to pursue the matter. Furthermore, although they declared that in 2009 they consulted a lawyer, they filed this action in November 2010. In the circumstances it is evident that the action filed by the plaintiffs is time-barred in terms of Article 469A(3) of Chapter 12 of the Laws of Malta.

Since the court will be upholding the second plea raised by the defendants Thewma, it sees no reason why it should consider the other pleas raised by Malta Environment and Planning Authority.

The Court on the basis of this reasoning upholds the second plea filed by defendants Thewma and the third plea upheld by Malta Environment and Planning Authority, and therefore declares that the action filed by the plaintiffs is time-barred in terms of Article 469A(3) of the Code of Organization and Civil Procedure. Plaintiffs are to pay the legal costs.

< Sentenza Finali >

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