



**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
JOSEPH ZAMMIT MC KEON**

Seduta tal-31 ta' Mejju, 2011

Citazzjoni Numru. 742/2006

**Graham Pullin (I.D. 443981M), Colin John Pullin (I.D. 444981M), Anthony Aquilina (I.D. 864350M), Victoria Law xebba Aquilina (I.D. 742551M), Raymond Aquilina (I.D. 604953M), Paul Aquilina (I.D. 164957M), Michael Aquilina (I.D. 687559M)**

***kontra***

**Carmela sive Lina Zammit, Michael Zammit, Rose Galea, Edward sive Eddie Zammit u Suor Margaret Zammit**

**Il-Qorti :**

Rat ir-rikors guramentat prezentat fid-9 ta` Awissu 2006 li jaqra hekk –

1. Illi l-intimati huma z-zijiet tar-rikorrenti u precizament :

(a) hut omm ir-rikorrenti Graham u Colin John ahwa Pullin, cioe` Antoinette née Zammit, li mietet fil-21 ta` Dicembru 1992 ;

(b) hut omm il-hames rikorrenti l-ohra ahwa Aquilina, cioe` Mary née Zammit li mietet fl-4 ta` Ottubru 1994.

2. Illi omm ir-rikorrenti ahwa Pullin, omm il-hames rikorrenti l-ohra ahwa Aquilina u l-intimati kellhom zewg huthom ohra u precizament John Zammit li miet bla tfal fil-5 ta` Ottubru 1983 u Pauline Cefai li mietet l-Awstralja bla tfal fit-22 ta` Gunju 2003.

3. Illi bl-ahhar testment taghha (Dok. A) maghmul l-Awstralja l-imsemmija Pauline Cefai wara li hassret kull testment taghha sa dakinhar, appuntat lil Father Peter Williams sabiex ikun is-“Sole Executor and Trustee of this my last Will and Testment”, halliet xi legati u ddisponiet mill-kumplament ta` gidha fir-raba` u l-hames artikoli fejn qalet :

“THE REST AND RESIDUE OF MY ESTATE both real and personal I give devise and bequeath in equal shares to such of my brothers and sisters as shall survive me, HOWEVER should any such beneficiary predecease me or fail to survive me by thirty (30 days) then that share to which they would have been entitled shall be divided in equal shares between such of that deceased beneficiaries issue as shall survive them, however should such beneficiary die without issue then that share to which they would have been entitled shall be divided equally between my surviving brothers and sisters.

GIVE DEVISE AND BEQUEATH the whole of my property as aforesaid to my Trustee UPON TRUST to convert into money such of the same as shall not consist

*of money by private contract or public auction or otherwise upon such terms and conditions as he shall think fit AND to divide the net proceeds of such conversion together with any moneys of which I may die possessed after payment of all my debts funeral and testamentary expenses and all duties payable upon or by reason of my death among my beneficiaries such as are named in this my will."*

4. *Illi l-intimati rcivew fi flus u oggetti s-sostanzi netti illi othom Pauline Cefai kellha l-Awstralja u qasmuhom bejniethom minghajr ma taw lir-rikorrenti sehemhom mill-istess sostanzi u dan kontra dak li ddisponiet minnu l-istess Pauline Cefai fir-raba` u l-hames artikolu tat-testment taghha fuq citat.*

5. *Illi interpellati mir-rikorrenti sabiex jaghtu lill-istess rikorrenti sehemhom mill-eredita` ta` Pauline Cefai, l-intimati naqsu.*

6. *Illi r-rikorrenti jafu b`dawn il-fatti kollha personalment.*

7. *Illi ghalhekk kellha ssir din il-kawza.*

*Ghaldaqstant, in vista tal-premess, ir-rikorrenti jitolbu bir-rispett kollu illi din l-Onorabbli Qorti joghgobha -*

1. *Tiddikjara u tiddeciedi illi r-rikorrenti ahwa Pullin ghandhom ugwalment bejniethom settima parti indiviza mill-eredita ta` zijithom Pauline Cefai filwaqt illi l-hames rikorrenti l-ohra ahwa Aquilina ghandhom ukoll ugwalment bejniethom settima parti ndiviza mill-eredita ta` zijithom Pauline Cefai.*

2. *Tiddikjara u tiddeciedi illi l-intimati rcivew is-sostanzi ta` l-eredita ta` Pauline Cefai u li ma tawx lir-rikorrenti sehemhom mill-istess sostanzi.*

3. *Tillikwida s-sostanzi appartenenti lill-eredita ta` Pauline Cefai illi rcivew l-intimati.*

4. *Tikkundanna lill-intimati sabiex kull wiehed u wahda minnhom jaghtu lil kull wiehed miz-zewg rikorrenti ahwa Pullin wiehed minn sebghin mis-sostanzi illi huma rcivew mill-eredita ta` Pauline Cefai.*

5. *Tikkundanna lill-intimati sabiex kull wiehed u wahda minnhom jaghtu lil kull wiehed mill-hames rikorrenti ahwa Aquilina wiehed minn mija u hamsa u sebghin mis-sostanzi illi huma rcivew mill-eredita ta` Pauline Cefai.*

*Bl-ispejjez kontra l-intimati li huma minn issa ngunti in subizzjoni.*

Rat il-lista tax-xhieda ndikati mill-atturi u l-lista ta` dokument esebiti mar-rikors guramentat.

Rat ir-risposta guramentata tal-konvenuti prezentata fit-18 ta` Settembru 2006 li taqra hekk –

1. *Preliminarjament, u b`kull rispett lejn din l-Onorabbli Qorti, l-inkompetenza ta` din l-istess Onorabbli Qorti sabiex tiehu konjizzjoni tal-kawza odjerna billi, stante l-fatt li l-mejta Pauline Cefai kienet domiciljata l-Awstralja meta hija ghamlet it-testment taghha taht l-egida tal-ligi Awstraljana u permezz ta` tali testament holqot trust u appuntat bhala s-sole executor and trustee lir-Rev. Fr. Peter Williams, il-kawza kellha ssir l-Awstralja kontra l-istess trust u l-Ezekutur Testamentarju u Trustee ;*

2. *Preliminarjament, u minghajr pregudizzju ghas-suespost, l-esponenti ma humiex il-legittimi kontraditturi u t-talba attrici ghandha tigi michuda fil-konfront taghhom stante li l-wirt tal-mejta Pauline Cefai kien jiffirma parti minn trust u kien amministrat esklussivament mis-sole Executor and Trustee tad-decuius ;*

3. *Fil-mertu, u minghajr pregudizzju ghall-eccezzjonijiet preliminari fuq moghtija, it-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda minn dina l-Onorabbli Qorti bl-ispejjez kollha kontra l-istess atturi billi, kif jigi ppruvat ahjar waqt it-trattazzjoni tal-kawza, l-eccipjenti huma l-unici werrieta tal-mejta ohthom Pauline Cefai ;*

4. *Salvi eccezzjonijiet ulterjuri.*

*Bl-ispejjez.*

Rat il-lista tax-xhieda ndikati mill-konvenuti.

Rat il-verbal tal-udjenza tal-25 ta` Ottubru 2006 fejn din il-Qorti diversament presjeduta tat direzzjoni sabiex jinstemghu l-provi dwar l-ewwel eccezzjoni tal-inkompetenza.

Rat il-verbal tal-udjenza tal-4 ta` Dicembru 2006 fejn din il-Qorti diversament presjeduta tat direzzjoni sabiex jinstemghu l-provi tal-atturi dwar il-kontestazzjoni dwar ir-regolarita` tat-testment (*draft*) li kien esebit u dwar jekk hemmx trustee jew le.

Kopja Informali ta' Sentenza

Rat il-verbal tal-udjenza tat-28 ta` Marzu 2007 fejn id-difensuri tal-partijiet qablu li l-kontendenti huma kollha cittadini Maltin u domiciljati f` Malta. Ghalhekk il-konvenuti tiraw l-ewwel eccezzjoni.

Rat il-verbal tal-udjenza tas-16 ta` Frar 2009 fejn, wara li d-difensur talab sabiex jixhed l-Av. Dr. Paul Pullicino ghall-fini tal-*proof of foreign law*, din il-Qorti hatret lill-istess Dr. Pullicino ghal dak l-iskop.

Rat id-digriet taghha moghti fl-udjenza tas-16 ta` Marzu 2009 fejn din il-Qorti cahdet it-talba tal-konvenuti sabiex Av. Dr. Paul Pullicino ma jkunx mahtur ghall-iskop fuq riferit.

Rat il-verbal tal-udjenza tal-4 ta` Gunju 2009 fejn il-parijiet qablu li l-atturi Graham u Colin Pullin huma wlied il-mejta Antoinette Pullin, oht id-decujus Pauline Cefai, filwaqt li l-hames atturi l-ohra, ahwa Aquilina, huma ulied u unici eredi tal-mejta Mary Aquilina, li tigi wkoll ohti Pauline Cefai.

Rat li l-gbir tal-provi tal-partijiet ghalaq fl-udjenza tad-9 ta` Marzu 2010.

Qieset il-provi li tressqu u cioe` x-xhieda *viva voce* nkluza dik ta` Av. Dr. Paul Pullicino (fol 72 sa 79) li kien mahtur bhala espert tal-Ligi Awstraljana u li xehed kif dik tirrelata mal-fatti tal-kawza tal-lum, ix-xhieda bl-affidavit, u d-dokumenti esebiti.

Rat in-nota tal-osservazzjonijiet tal-atturi li kienet prezentata fl-10 ta` Settembru 2010.

Kopja Informali ta' Sentenza

Rat in-nota ta` osservazzjonijiet tal-konvenuti li kienet prezentata fit-30 ta` Novembru 2010.

Rat id-digriet taghha moghti fl-udjenza tat-18 ta` Jannar 2011 fejn din il-Qorti halliet il-kawza ghas-sentenza ghal-lum.

### **Ikkunsidrat :**

Il-fatti ta` din il-kawza huma semplici.

Id-decujus Pauline Cefai xebba Zammit kienet domiciljata l-Awstralja. Hija kienet armla u mietet bla wlied fit-22 ta` Gunju 2003.

Hija kellha seba` hutha :

il-hames konvenuti u cioe` Carmela sive` Lina Zammit, Michael Zammit, Rose Galea, Edward sive` Eddie Zammit u Suor Margaret Zammit li kienu kollha hajjin fid-data tal-mewt taghha ; u

Antoinette Pullin u Mary Aquilina li kienu lahqu mietu qabel il-mewt tad-decujus. Antoinette Pullin mietet fil-21 ta` Dicembru 1992 u l-unici eredi taghha huma wliedha l-atturi Graham u Colin Pullin, waqt li Mary Aquilina mietet fl-4 ta` Ottubru 1994 u l-eredi taghha huma l-hames atturi l-ohra ahwa Aquilina.

Is-successjoni ta` Pauline Cefai hija regolata **biss** permezz ta` testment li sar fl-Istat ta` New South Wales l-Awstralja fl-20 ta` Marzu 2002. F`dan l-att it-testatrici ddikjarat li kienet qeghda tirrevoka kwalsiasi testment li kienet ghamlet qabel dak. Mhux kontestat li bejn id-data meta sar dak it-testment u d-data tal-mewt taghha, Pauline Cefai m`ghamlitx testment iehor.

Fit-testment de quo, id-decujus hatret lil Fr. Peter Williams bhala *sole executor and trustee*. Wara li kiseb il-*probate*, wara li qassam il-legati u wara li llikwida l-wirt, l-esekutor qassam *the rest and residue* tal-wirt de quo bejn il-hames konvenuti.

Il-punt in kontestazzjoni huwa li filwaqt li skond il-konvenuti, il-qasma bejn il-hamest ahwa hajjin tad-decujus saret sewwa u skond it-testment taghha ghax l-ulied taz-zewgt ahwa l-ohra li lahqu mietu qabel id-decujus ma kellhom l-ebda dritt ghall-wirt, min-naha l-ohra skond l-atturi, l-ulied taz-zewgt ahwa tad-decujus, li lahqu mietu qabilha, ma setghux jinqatghu barra mill-wirt kif fil-fatt ghamel l-esekutor u kellhom dritt ghal sehem mill-istess wirt.

Irrizulta li kull wiehed u wahda mill-hamest ahwa hajjin hadu Lm 17831.23 fi flus li gew trasferiti mill-esekutor fil-kont tal-bank ta` kull wiehed u wahda minnhom. Waslu wkoll mill-Awstralja xi oggetti mobbli zghar, bhal pozati u platti, li baqghu ma nbieghu fl-Awstralja u li nqasmu bejn il-hamsa f` Malta.

Waqt il-kawza, inhatar l-Av. Dr. Paul Pullicino bhala espert ghall-fini ta` *proof of foreign law* u precizament il-ligi ta` New South Wales fl-Awstralja. Huwa sejjah dak kostitwit bit-testment tad-decujus bhala *fixed benefit trust*. Dr. Pullicino xehed hekk dwar il-*fixed benefit trust* (fol 74)

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*Tfisser illi l-beneficial interest, l-expectancy ta` min se jircievi, min holoq it-trust diga` indika, iddetermina x`se jiehu bhala beneficcju, u jekk jaghmel riferenza ghall-kawsola 4 tal-kopja tat-testment, it-termini hemmhekk tat-trust huwa tat-tip fixed. Ghaliex ? Ghax il-Qorti tista` tara, kulhadd jista` jara u jasal ghar-rizultat wahdu, x`hinuma l-ishma tal-beneficiaries. Issa ovvjament jien ma nistax*



*nghid ghax ma nafx kemm halla tfal it-tali jew ma nafx kemm hemm neputijiet. Pero` malli tistabilixxi min huma dawk il-membri tal-familja li jidhlu bhala beneficiaries, u ladarba t-termini huma illi there will be equal shares imbaghad hemm sistema tar-rapprezentanza, mela ghandek a fixed interest trust.*

**Bhala punt ta` dritt, din il-Qorti tghid li ladarba Dr. Pullicino kien mahtur bhala espert ghaall-fini ta` *proof of foreign law* hija sejra tammetti bhala prova kull ma xehed dwar il-ligi ta` New South Wales izda sejra tiskarta kull opinjoni jew osservazzjoni li seta` ghamel dwar il-fattispece tal-kaz ghax opinjonijiet jew osservazzjonijiet ta` din ix-xorta kienu johorgu barra mill-inkariku tieghu.**

#### **Ikkunsidrat :**

Fit-tieni eccezzjoni preliminari, il-konvenuti jghidu li 'l-wirt ta' Pauline Cefai kien jiforma parti minn trust u kien amministrat esklussivament *mis-sole executor and trustee*. Ghalhekk ma kienux il-legittimi kontraditturi tal-atturi. Din il-Qorti tghid li mill-impostazzjoni tal-kawza, huwa evidenti li l-atturi intavolaw il-kawza kontra l-konvenuti ghaliex qeghdin ighidu li mhux il-konvenuti wahedhom, izda anke huma, kellhom ikunu l-beneficjarji tal-wirt ta` Pauline Cefai. Ghalhekk m`ghandux ikun hemm dubbju li huma l-propju l-konvenuti li ghandhom iwiegbu ghat-talbiet attrici. Huwa minnu li fit-testment Fr Peter Williams kien mahtur bhala '*the Sole Executor and Trustee*' izda huwa minnu wkoll illi klawnsola 4 ma kienet thalli l-ebda diskrezzjoni lil Fr Williams dwar il-mod kif kellhom jitqassmu l-beni anzi tghid x`kellu jsir mill-beni. Id-diskrezzjoni li kellu Fr. Williams tirrizulta biss fil-Klawnsola 5 izda din ma tincidix fuq il-kwistjoni tal-identita` tal-beneficjarji. Din il-Qorti tghid li din it-tieni eccezzjoni preliminari qeghda tkun michuda.

**Ikkunsidrat :**

It-tielet eccezzjoni hija fil-meritu. L-atturi ghamlu din il-kawza ghaliex kienu eskluzi mill-qasma tal-wirt ta` z-zija taghhom Pauline Cefai. Isostnu illi l-atturi Graham u Colin John Pullin ghandhom jedd flimkien ghal settima parti ndiviza tal-wirt filwaqt li l-hames atturi l-ohra ahwa Aquilina flimkien ghandhom dritt ghal settima parti ohra.

Diga` rrizulta li l-ahhar volonta` ta` Pauline Cefai tirrizulta mit-testment taghha li sar fl-20 ta` Marzu 2002 (fol 91 u 92).

In disputa hija l-interpretazzjoni tal-klawsola 4 tat-testment li taqra hekk testwalment -

*THE REST AND RESIDUE OF MY ESTATE both real and personal I give devise and bequeath in equal shares to such of my brothers and sisters as shall survive me, **HOWEVER** should any such beneficiary predecease me or fail to survive me by thirty days (30 days) then that share to which they would have been entitled shall be divided in equal shares between such of that deceased beneficiaries issue as shall survive them, however should such beneficiary die without issue then that share to which they would have been entitled shall be dived [recte : "divided"] equally between my surviving brothers and sisters.*

Skond il-gurisprudenza taghna, fejn ma hemmx ambigwita` fil-kliem tat-testment, dak li jinghad fih hu proprju dak li ghandu jghodd u jorbot. Dan huwa konformi mal-principju *ubi nulla ambiguitas verborum est faciente voluntas questio* (ara s-sentenza tal-Qorti ta' l-Appell tal-1 ta` Ottubru 2004 fil-kawza "**Muscat Costantino pro et noe v. Muscat et**"). Ghalhekk, meta l-kliem ta` testment huwa car, ma hemmx lok ghal ebda interpretazzjoni u

wiehed jista' biss jezamina jekk dak il-provvediment mit-tifsira normali tieghu jmurx kontra l-ligi jew le. Huwa biss meta jirrizulta dubbju dwar is-sens tal-kliem, li f'dak il-kaz, ikun hemm lok ghal interpretazzjoni, sabiex wiehed jasal ghall-intenzjoni tat-testatur. Bhala norma, meta l-Qorti tintalab taghmel dan l-ezercizzju, wiehed ghandu jasal ghall-intenzjoni tat-testatur mill-kliem tat-testament innifsu u ma humiex ammissibli provi ohra (ara s-sentenza "**Buttigieg noe v. Cauchi pro et noe**" deciza mill-Qorti ta' l-Appell fit-28 ta' Novembru 2003). Ghalhekk l-ezercizzju li tkun trid tikkonduci l-Qorti sabiex tistabilixxi l-volonta' tat-testatur m'ghandu qatt isir b'mod li l-fatti cirkostanzjali jew konkomitanti rigwardanti t-testatur jithallew jippredominaw kwazi ghal kollox fuq dak li jkun jinsab imnizzel fit-testament. Apparti l-ezami tal-provi il-Qorti trid ukoll tezamina sew il-kliem testwali tat-testament u mhux tissodisfa ruhha biss b'fatti jew depozizzjonijiet tax-xhieda. Huwa wkoll pacifiku illi ma jkunx lecitu illi kliem li huwa car u inekwivoku jigi sostitwit bl-intruzjoni ta' fatti cirkostanzjali. Fejn ma hemmx ambigwita', il-kliem tat-testament huwa vinkolanti (ara s-sentenza tal-Qorti ta' l-Appell tal-31 ta' Mejju 2002 fil-kawza "**Galea noe v. Gauci**").

Wara li qieset b'reqqa l-kawsola 4 tat-testament ta' Pauline Cefai, din il-Qorti tghid li ma ssib l-ebda ambigwita' fil-mod kif tinsab espressa u ma thalli l-ebda dubbju dwar il-volonta' tat-testatrici.

Din il-Qorti diga` rrilevat li t-testament ta' Pauline Cefai sar fl-20 ta' Marzu 2002 u cioe` meta ohtha Antoinette Pullin kienet diga` ilha aktar minn disa` snin li mietet u meta ohtha l-ohra Mary Aquilina kienet diga` ilha aktar minn seba` snin mejta. Ghal din il-Qorti huwa ben evidenti li mill-mod kif inkitbet il-klawsola 4 it-testatrici riedet teskludi minn xi dritt fuq *the rest and residue of my estate* lill-ulied ta` z-zewg hutha li kienu diga` mietu meta hija ghamlet it-testament. It-testatrici kienet diga` ddikjarat li *the rest and residue of my estate both real and personal I give devise and bequeath in equal shares to such of my*

*brothers and sisters as shall survive me.* Kjarament kienet qeghda tirreferi ghal dawk il-*brothers and sisters* li jkunu ghadhom hajjin bejn id-data tat-testment taghha u d-data tal-mewt taghha.

Din il-Qorti ssostni li ghax il-genituri tal-atturi mietu qabel id-decujus ghamlet it-testment taghha, l-atturi ma jistghux jinvokaw favur tagghom dik il-parti tal-klawsola 4 li taqra hekk -

**HOWEVER** *should any such beneficiary predecease me or fail to survive me by thirty days (30 days) then that share to which they would have been entitled shall be divided in equal shares between such of that deceased beneficiaries issue as shall survive them, however should such beneficiary die without issue then that share to which they would have been entitled shall be dived [divided] equally between my surviving brothers and sisters.*

Il-premess appart, u **fi kwalunkwe kaz**, u dan anke b`riferenza ghal dak li nghad mill-konvenuti fin-nota ta` sottomissjonijiet tagghom, il-perijodu ta` tletin gurnata jghodd jew meta *any such beneficiary predecease me* jew *fail to survive me*. Dan ifisser illi t-testatrici riedet thalli *the rest and residue of my estate* indaqs lil hutha li jkunu ghadhom hajjin fid-data tal-mewt taghha (*in equal shares to such of my brothers and sisters as shall survive me*) b`dan illi (**HOWEVER**) fil-kaz ta` dawk minn hutha li jmutu sa tletin jum **qabel** il-mewt taghha **jew** dawk hutha li jmutu sa tletin jum **wara** l-mewt taghha, il-parti li kienet tmiss lilhom (*to which they would have been entitled*) tinghata lil uliedhom (*deceased beneficiaries issue*).

Fil-kaz tal-lum, huwa evidenti li t-testatrici riedet teskludi mill-wirt taghha lill-atturi u cioe` lil ulied hutha mejtin Antoinette u Mary, li kienu diga` mietu qabel ghamlet it-testment in kwistjoni. Huwa evidenti wkoll li bil-klawsola 4 it-testatrici riedet thalli *the rest and residue of*

Kopja Informali ta' Sentenza

*my estate* lill-hames hutha l-oħra li kienu għadhom hajjin meta għamlet it-testment tagħha. Billi daww il-hames hutha u cioe` il-konvenuti kienu kollha hajjin meta mietet it-testatrici, giet tapplika l-ewwel part ital-klawsola 4 bit-tieni parti u cioe` minn *HOWEVER* `il quddiem ma tapplikax.

Għalhekk din il-Qorti ssostni li l-qsim tal-wirt ta` Pauline Cefai sar tajjeb u skond id-disposizzjonijiet testamentarji tagħha

**Għar-ragunijiet kollha premissi, din il-Qorti qegħda taqta` u tiddeciedi din il-kawza hekk –**

**1) Tassjeni milli tiehu konjizzjoni ulterjuri tal-ewwel eccezzjoni preliminari stante li din giet ritirata fil-mori tal-kawza.**

**2) Tichad it-tieni eccezzjoni preliminari.**

**3) Tilqa` t-tielet eccezzjoni.**

**4) Tichad it-talbiet kollha attrici.**

**5) Tordna lill-atturi sabiex ihallsu l-ispejjez kollha ta` din il-kawza.**

**< Sentenza Finali >**

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