



COURT OF MAGISTRATES (MALTA)

**MAGISTRATE DR.
GABRIELLA VELLA**

Sitting of the 31st October, 2011

Avviz Number. 209/2011

Professor Albert Fenech

Vs

Michel Vat and Carla Winter

The Court,

After having considered the request put forth by the defendants during the sitting held on the 11th October 2011 for the stay of these proceedings pending the outcome of the proceedings instituted by Carla Winter against Professor Albert Fenech, before the First Hall Civil Court in its Constitutional Jurisdiction for the alleged violation of her human rights and fundamental freedoms;

After having considered the Reply by Professor Albert Fenech filed on the 13th October 2011;

After having considered the Application submitted by Carla Winter before the First Hall Civil Court in its Constitutional Jurisdiction in the names “Carla Winter v. Professor Albert Fenech”, Application No. 55/11, exhibited by the defendants in the records of these proceedings on the 18th October 2011;

After having considered the requests put forth by Professor Albert Fenech against Michel Vat and Carla Winter by means of the present application and after having considered the Reply by Michel Vat and Carla Winter to said requests;

Considers:

On the 25th August 2011 the defendant Carla Winter instituted proceedings against the applicant Professor Albert Fenech before the First Hall Civil Court in its Constitutional Jurisdiction, requesting said Court to: (i) *tiddikjara li d-drittijiet fundamentali ta' l-esponenti kif protetti bl-Artikolu 38 tal-Kostituzzjoni ta' Malta u l-Artikolu 8 tal-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem kif ukoll l-Ewwel Artikolu ta' l-Ewwel Protokoll tal-Konvenzjoni Ewropeja gew vjolati rizultat ta' l-okkupazzjoni illegali tal-kamra tal-bejt mill-intimat fuq il-penthouse numru 13, The Elms, Triq Gorg Borg Olivier, Sliema, fil-perjodu illi din kienet mikrija lir-rikorrenti; (ii) tillikwida kull kumpens lilha dovut mill-intimat rizultat ta' l-okkupazzjoni minnu tal-kamra tal-bejt sovrapposta ghall-penthouse numru 13, The Elms, Triq Gorg Borg Olivier, Sliema fil-perjodu li kienet mikrija lir-rikorrenti u b'konsegwenza tal-vjolazzjoni tad-drittijiet fundamentali taghha kif fuq jinghad u konsegwentement tordna lill-intimat ihallas lir-rikorrenti l-kumpens hekk likwidat; (iii) taghti kull ordni u rimedju iehor xieraq jew opportun biex tigi spurgata l-vjolazzjoni tad-drittijiet fundamentali tar-rikorrenti hawn lamentata. Bl-ispejjez kollha kontra l-intimat. Following the institution of said proceedings, the defendants are requesting the stay of these proceedings pending the outcome of those proceedings.*

The applicant Professor Albert Fenech objects to the request for the stay of these proceedings on the basis of a number of reasons, these being : (i) *mir-Rikors Kostituzzjonali jirrizulta ictu oculi illi dan gie prezentat biss minn Carla Winter u mhux minn Michel Vat u ghalhekk il-kawza odjerna hija sia kontra Carla Winter u Michel Vat u ghalhekk semplicement ghal din ir-raguni din il-kawza tista' titkomplu u l-Qorti ma ghandhiex tissoprasjedi*; (ii) *kif jirrizulta ictu oculi, dan ir-rikors huwa frivolu u vessatorju stante illi l-Prof. Fenech m'huwiex enti pubblika u ghalhekk ma jista' bl-ebda mod jisker l-ebda drittijiet fundamentali ta' l-individwu*; (iii) *skond il-gurisprudenza taghna, anki kieku l-Prof. Albert Fenech huwa enti pubblika, qabel ma jigu esplorati u trattati l-azzjonijiet kollha spettanti lilha fil-kamp civili, hija ma tistax tipprezenta rikors kostituzzjonali ghal lamenti taghha. Illi hija setghet tipprezenta sia kawza ta' spoll jekk dak lamentat minnha huwa veretier li m'huwiex; jew ukoll kawza ghad-determinazzjoni ta' dak li jikkomprendi l-kuntratt ta' lokazzjoni. Illi ghalhekk hawn si tratta ta' relazzjonijiet guridici bejn sid u inkwilin fuq fond lokat lill-inkwilina u Michel Vat u jekk dak il-fond kienx jinkludi l-kamra tal-bejt*; (iii) *din il-Qorti skond il-Ligi qabel ma tiddeciedi s-soprasessjoni jew le trid per forza tara prima facei jekk ir-Rikors kostituzzjonali hux frivolu u vessatorju skond il-Ligi. Illi l-proviso ta' l-artikolu 46(2) tal-Kostituzzjoni ta' Malta jistipula illi din l-Onorabbli Qorti ghandha l-poter li tirrifjuta li tezercita s-setghat taghha, f'kull kaz meta tkun sodisfatta li mezz xieraq ta' rimedju ghall-allegat ksur ta' dritt huwa disponibbli. Illi fil-kawza odjerna r-rimedju kien disponibbli permezz ta' l-Artikolu 283(A) (5) tal-Kap.12 tal-Ligijiet ta' Malta, imma ghal xi raguni, tali rimedju ma giex ezawrit minn Carla Winter.*

After having considered the request put forth by the defendants in the light of the juridical principles which regulate the stay of proceedings, the Court is of the opinion that their request cannot be upheld. For a Court to order the stay of proceedings pending the outcome of other proceedings, even if the latter are of a Constitutional nature, it must be satisfied that *hu mehtieg fl-interess ta' l-amministrazzjoni tal-gustizzja f'kaz li tinqala' kwistjoni li d-*

decizjoni taghha tinfluwixxi sostanzjalment fuq l-ezitu tal-kawza, u fl-istess hin ma tistax tigi esaminata fl-istess kawza jew ikun spedjenti li tigi ezaminata f'kawza ohra separata. Is-soprasessjoni huwa indikat ghal dawk il-kazijiet meta jkun hemm lok ghas-soluzzjoni ta' xi punt li minnu tiddependi necessarjament il-kontinwazzjoni tal-kawza li tigi soprasseduta. Huwa provvediment rimess ghad-diskrezzjoni tal-gudikant skond ic-cirkostanzi partikolari u specjali tal-kaz¹.

The observation of these principles is of the utmost importance since the stay proceedings is an exceptional measure and must not be used or seen to be used as a means to obstruct the course of judicial proceedings. This has been specifically stated by the Constitutional Court in the judgment in the names **Onorevoli Imhallel Anton Depasquale v. Avukat Generali, Application No. 725/99** delivered on the 1st June 2001, so much that it established the principle that *ebda Qorti ma ghandha tissopprassjedi hlief kif provvdut fis-sub-artikolu (3) ta' l-Artikolu 46 tal-Kostituzzjoni fuq ikkwotat ghax l-accettazzjoni ta' dan il-principju jista' biss iwassal ghal kroll totali tas-sistema tal-gustizzja taghna li hija gia' mgħobbija b'diversi diffikultajiet li mhux il-kompitu ta' din il-Qorti li tidhol fihom f'din is-sentenza.*

From the above-mentioned judgment it is therefore clear that when issues of a Constitutional nature, and more specifically issues regarding the alleged breach of human rights and fundamental freedoms, are linked or sought to be linked to actions before a Court in its ordinary jurisdiction, that Court must stay proceedings only when it refers such issues to the First Hall Civil Court in its Constitutional jurisdiction in terms of Section 46(3) of the Constitution and not also when it is informed that separate direct proceedings have been instituted by any one of the parties before the First Hall Civil Court in its Constitutional jurisdiction.

¹ Joseph Gaffarena et v. Mixer Concrete Works et, Application No. 391/2004, delivered by the First Hall Civil Court on the 27th May 2005, also Francis Xuereb pro et noe v. Kontrollur tad-Dwana, Application No. 245/04 decided by the Court of Appeal (Inferior Jurisdiction) on the 10th October 2005.

From an examination of the application filed by Carla Winter before the First Hall Civil Court in its Constitutional jurisdiction, it is clear that she is founding her claim of breach of her human rights and fundamental freedoms on the allegation that the applicant arbitrarily occupied a room overlying penthouse No.13, The Elms, Gorg Borg Olivier Street, Sliema, when said room was rented out together with said penthouse in virtue of a lease agreement. It is thus clear that Carla Winter is alleging that the applicant infringed his contractual obligations as arising from the said lease agreement and as a consequence thereof he breached her human rights and fundamental freedoms, namely the right to the privacy of her home.

The merits of this case also revolve round the lease agreement pertinent to the penthouse No.13, The Elms, Gorg Borg Olivier Street, Sliema, and the alleged arbitrary occupation by the applicant of a room overlying said penthouse when that room formed part of the lease agreement. In fact, the applicant is seeking to enforce his rights as arising from the said lease agreement whilst the defendants oppose such action by claiming that no monies are due to the applicant because, amongst other things, he allegedly infringed his contractual obligations as arising from the agreement.

It is very clear that the matter forming the subject of the proceedings instituted by Carla Winter before the First Hall Civil Court in its Constitutional jurisdiction also forms the subject, or at least part of the subject, of these proceedings – it is merely being examined, or rather the Courts in their respective jurisdictions, are being requested to examine it from different perspectives: this Court from the perspective of contractual obligations and the First Hall Civil Court in its Constitutional jurisdiction from the human rights and fundamental freedoms perspective.

In the Court's opinion the alleged infringement of contractual obligations by the applicant is not a matter

which cannot be examined and determined by it for the purposes of the proceedings pending before it: such an issue falls within its jurisdiction and competence and is crucial within the context of the requests put before it by the applicant. The Court is also of the opinion that the determination of whether the alleged arbitrary behaviour of the applicant towards the defendants amounts or otherwise to a breach of the human rights and fundamental freedoms of Carla Winter is not a matter on which the ultimate outcome of these proceedings rests since. Whether or not the applicant breached his contractual obligations towards the defendants surely does not depend on whether or not the human rights and fundamental freedoms of Carla Winter have been breached: the two issues are totally separate one from the other.

Therefore the request for the stay of these proceedings pending the outcome of the proceedings instituted by Carla Winter before the First Hall Civil Court in its Constitutional Jurisdiction cannot be upheld.

The Court deems it necessary to point out that reasons given by the applicant for the rejection of the request for the stay of these proceedings cannot be considered by it since what he is requesting the Court to do effectively amounts to an examination of the validity or otherwise of the requests put forth by Carla Winter before the First Hall Civil Court in its Constitutional jurisdiction. Such an examination cannot and must not be done by this Court or any other Court for that matter, within the context of a request for stay of proceedings. The only instance when a Court can on a *prima facie* basis examine whether a request founded on the alleged breach of an individual's human rights and fundamental freedoms is frivolous and vexatious is when that same Court is asked to refer the matter to the First Hall Civil Court in its Constitutional jurisdiction in terms of Section 46(3) of the Constitution and Section 4(3) of Chapter 319 of the Laws of Malta.

In the light of the above the Court rejects the request by the defendants for the stay of these proceedings pending

Informal Copy of Judgement

the outcome of proceedings instituted by Carla Winter against the applicant before the First Hall Civil Court, and thus orders the continuation of these proceedings.

Costs will be determined in the final judgment.

< Partial Sentence >

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