MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
MARK CHETCUTI

Seduta tat-30 ta' April, 2013

Citazzjoni Numru. 1951/1997/1

Joseph Micallef
vs
Dr. Ivan Vella MD u Dr. Josie Muscat MD in rappresentanza
tas-Summit Eye Laser Clinic u St. James Health Centre

Il-Qorti,

Rat ic-citazzjoni tal-attur tal-4 ta’ Settembru 1997 fejn qal hekk:

Peress illi l-attur gie ammess fis-Summit Eye Laser Clinic gewwa s-St. James Health Centre, fejn il-konvenut Dr. Ivan Vella kellu jaghmillu ’Excimer Laser Treatment’ ta’ ghajnu l-leminija;

Peress illi b’rizultat tat-trattament li nghata l-attur, kien hemm deterjorament rapidu tal-vista ta’ ghajnu l-leminija;

Peress illi, ghalkemm l-attur irrikorra minnufih ghand il-konvenut Dr. Ivan Vella wara t-trattament u nfurmah li l-vista ta’ ghajnu l-leminija kienet imzellga u sfukata hafna, huwa baqa’ jinsisti li kollox kien sewwa u biz-zmien kien ser ighaddilu kollox, u sahansitra wasal biex qal lill-attur ’Int iggibhom bi kbar wisq’;

Peress illi ghalkemm il-konvenut kien ghadu fil-hin biex jassigura li l-attur jinghata minnufih il-kura mehtiega biex ma jkomplix dan id-deterjorament rapidu fil-vista ta’ ghajnu l-leminija, b’negligenza grossolana huwa halla z-zmien ighaddi, u kien biss ghaxar (10) xhur wara t-trattament illi huwa qal lill-attur li ma seta’ jsir xejn biex tigi salvata l-vista ta’ ghajnu l-leminija;

Peress illi l-attur, bhala rizultat ta’ dan, sofra dizabilita’ permanenti fil-vista ta’ ghajnu l-leminija;

Jghidu l-konvenuti, jew min minnhom, ghaliex din il-Qorti m’ghandhiex:

1. Tiddikjara illi l-attur sofra dizabilita’ permanenti fil-vista ta’ ghajnu l-leminija b’rizultat tat-trattament moghti mill-konvenut Dr. Ivan Vella;

2. Tiddikjara lill-konvenuti responsabbli ghad-danni kollha konsegwenzjali sofferti mill-attur;

3. Tillikwida d-danni sofferti mill-attur;

4. Tikkundanna lill-konvenuti jhallsu d-danni hekk likwidati;

Bl-ispejjes, inkluzi dawk ta’ l-ittra ufficjali tad-29 ta’ Mejju 1997, kontra l-konvenuti li huma ngunti ghas-subizzjoni;

Bl-imghax skond il-ligi.

Rat in-Nota tal-eccezzjonijiet tal-konvenut Dr. Josie Muscat in rapprezentanza tas-St. James Health Centre li jghid hekk:

1. Preliminarjament illi l-azzjoni attrici hija preskritta ai termini tal-artikolu 2153 tal-Kodici Civili;

2. Illi s-St. James Health Centre mhijiex persuna guridika u ghalhekk ic-citazzjoni ma tistax triegi fil-konfront tal-konvenut ”Dr. Josie Muscat in rapprezentanza tas-St. James Health Centre”;

3. Illi f’kull kaz u bla pregudizzju ghas-sueccepit, l-eccepjent nomine mhuwiex legittimu kontradittur f’din il-kawza u konsegwentement ghandu jigi liberat mill-osservanza tal-gudizzju billi s-Summit Eye Laser Clinic titmexxa mill-kumpanija Summit Eye Laser Clinic Limited li hija ghal kollox awtonoma mill-kumpanija li tmexxi s-St. James Health Centre;

4. Illi bla pregudizzju ghas-sueccepit it-talbiet attrici huma nfondati fil-fatt u fid-dritt billi l-eccepjent nomine ma kien responsabbli ta’ ebda negligenza fil-konfront tal-attur;

5. Salvi eccezzjonjiet ulterjuri.

Rat in-Nota tal-eccezzjonijiet tal-konvenuti Dr. Ivan Vella u Dr. Josie Muscat in rapprezentanza tas-Summit Eye Laser Clinic li jghidu hekk:

1. Preliminarjament illi l-azzjoni attrici hija preskritta ai termini tal-artikolu 2153 tal-Kodici Civili;

2. Illi s-Summit Eye Laser Clinic mhijiex persuna guridika u ghalhekk ic-citazzjoni ma tistax triegi fil-konfront tal-konvenut ”Dr. Josie Muscat in rapprezentanza tas-Summit Eye Laser Clinic”;

3. Illi bla pregudizzju ghas-sueccepit it-talbiet attrici huma infondati fil-fatt u fid-dritt billi l-intervent u l-kura fuq l-attur saru skond id-dettami tax-xjenza u tal-professjoni medika u l-eccepjenti bl-ebda mod ma kienu negligenti jew b’xi mod naqsu fil-konfront tal-attur;

4. Salvi eccezzjonjiet ulterjuri.

Rat ix-xhieda, id-dokumenti, l-atti kollha prezentati inkluz ir-rapport mediku, l-eskussjoni u n-noti ta' sottomissjonijiet tal-partijiet.

Ikkunsidrat

Din hi kawza fejn l-attur qed jallega negligenza pofessjonali f'intervent fuq ghajnu l-leminija maghruf bhala excimer laser treatment li sehhet f'St. James Health Centre, Zabbar fis-16 ta' Dicembru 1994. Dan l-intervent, pjuttost gdid ghal Malta f'dak iz-zmien kien intiz biex jkkoregi 'nearsightedness' li l-attur kellu f'ghajnu l-leminija. Hu jallega illi wara l-intervent gie hafna aghar milli kien.

Fil-qosor l-ilmenti li jressaq l-attur huma li:
1. Il-kirurgu Dr. Ivan Vella naqas li jinforma lill-attur dwar ir-riskji li kien hemm u kien ghalhekk li hu accetta li joqghod ghall-intervent, cioe fi ftit kliem l-attur ma kellux l-opportunita li jaghti informed consent.
2. Kien hemm negligenza da parti tal-konvenuti meta inghata 'consent form' ghall-intervent ftit qabel l-intervent meta kien qed jinghata medikazzjoni ghall-ghaju ghalhekk ma kienx jaf x'qed jiffirma.
3. L-intervent sar b'appart mhux approvat mill-awtoritajiet.
4. Kien hemm rabta diretta bejn l-intervent u l-effetti negattivi fuq l-attur kawza tan-nuqqas tal-kirurgu.

Din il-kawza tressqet fil-konfront tal-kururgu, u kontra Dr. Josie Muscat in rapprezsentanza tas-St. James Health Centre u Summit Eye Laser Clinic.

Qabel mal-Qorti tidhol fil-mertu tal-azzjoni tajjeb li qabel xejn jigu trattati l-eccezzjonijiet preliminari tal-konvenuti.

Legittimu kontradittur

Gie eccepiet illi Summit Eye Laser Clinic ma hix persuna guridika peress illi dan il-clinic li hu awtonomu minn St. James Health Centre jitmexxa minn kumpanija Summit Eye Laser Clinic Limited.

In kwantu ghal St. James Heath Centre, din hi proprjeta ta' St. James Helath Centre Limited.

Jean Claude Muscat ikkonferma li l-kumpanija Summit Eye Laser Clinic Limited twaqqfet f'Lulju 1994 u d-diretturi taghha kienu Dr. Vella u Dr. Muscat. Din il-kumpanija giet akkwistata fl-2001 minn St. James Hospital Limited u l-isem inbidel ghal St. James Eye Clinic Limited (fol. 420 tal-process).

Ghalhekk in kwantu ghal Summit Eye Laser Clinic jidher li Dr. Josie Muscat hu iccitat hazin u ghandu jigi liberat mill-osservanza tal-gudizzju.

In kwantu pero ghal St. James Health Centre ghalkemm Jean Claude Muscat ighid li din kienet titmexxa mill-kumpanija St. James Health Centre Limited u iktar tard l-isem inbidel ghal St. James Hospital Holdings Limited, Dr. Josie Muscat meta xehed a fol. 457 tal-process qal li St. James f'Haz-Zabbar kien tieghu personalment f'dak iz-zmien pero St. James ma kellu x'jaqsam xejn mal-kumpanija Summit Eye Laser Clinic Limited u l-unika konnessjoni kienet li l-imsemmija socjeta kienet tuza kamra minn St. James u hu ma kellu x'jaqsam xejn mal-intervent hlief li kien shareholder tal-kumpanija Summit Eye Laser Clinic Limited. Jean Claude Muscat izid illi l-makkinarju fil-fatt inxtara minn Summit Eye Laser Clinic Limited u kien proprjeta taghha.

Kwindi hawn ukoll ma hemm ebda konnessjoni bejn St. James Health Centre u l-attur fejn jirrigwarda responsabilta o meno ghal dak li allegatament sehh lilu billi l-konnessjoni kienet biss bejnu, il-kirurgu u semmai l-kumpanija li kienet tmexxi s-Summit Eye Laser Clinic cioe Summit Eye Laser Clinic Limited. Il-fatt li ghall-intervent mar St. James Health Centre mnejn kienet topera Summit Eye Laser Clinic limited ma jbiddel xejn sakemm ma jigix pruvat konnessjoni legali jew ekonomika bejn Summit Eye Laser Clinic Limited u St. James Health Centre fl-operat tal-istess Summit Eye Laser Clinic Limited liema prova ma saritx u kien jinkombi fuq l-attur li jippruvaha. Ghalhekk anki din l-eccezzjoni qed tigi milqugha u St. James Health

Centre kif citata bhala rapprezentata minn Dr. Joseph Muscat ma ghandha ebda rabta legali mal-attur stante li l-ilmenti mressqa mill-attur ma humiex diretti ghal xi nuqqas ta’ St. James Health Centre izda lejn l-operat tal-kirurgu u minn kien imexxi l-Eye Clinic li kif jirrizulta l-ebda wahda minnhom ma kienet taqa’ b’xi mod fir-responsabilta jew b’xi partecipazzjoni allura ta’ St. James Health Centre.

Ghalhekk din l-eccezzjoni qed tigi milqugha.

Eccezzjoni tal-preskrizzjoni ai termini tal-artikolu 2153

Din l-eccezzjoni tqajmet mill-konvenuti kollha. Billi l-konvenuti Summit Eye Laser Clinic u St. James Health Centre mhux legittimi kontraditturi, ma hemmx lok li din l-eccezzjoni tigi ezaminata fil-konfront taghhom.

Mhux l-istess jinghad pero ghal konvenut Dr. Ivan Vella li hu legittimu kontradittur f’din l-azzjoni qua kirurgu responsabbli ghall-intervent. L-artikolu 2153 ighid illi l-azzjoni ghad-danni mhux kagonata b’reat hi preskritta bl-gheluq ta’ sentejn. Prima facie jidher li l-intervent sehh fis-16 ta’ Dicembru 1994 u l-kawza giet prezentata fl-4 ta’ Settembru 1997. Ghalkemm jinghad li giet prezentata ittra ufficjali fid-29 ta’ Mejju 2007 ma gietx esebita kopja taghha. Il-Qorti tqis pero illi r-rapport bejn l-attur u t-tabib Ivan Vella kien wiehed bejn pazjent privat u t-tabib kirurgu tieghu li bejniethom hemm rabta kontrattwali bejn professjonist u klijent u bejniethom ghalhekk ma japplikax il-preskrizzjoni ta’ sentejn izda semmai dik kontrattwali ta’ hames snin (ara f’dan is-sens **Busuttil vs Dr. J. Muscat**, deciza mill-Prim’Awla fit-30 ta’ Novembru 2010 paragrafu 29 tas-sentenza). F’dan is-sens jinghad ukoll:
"ir-relazzjoni bejn tabib u pazjent tixbah aktar in-natura ta' kuntratt, b'dan, pero, li mit-tabib mhux mistenni dejjem rizultat possittiv, ghax l-obbligazzjoni tieghu mhux dik di risultato izda di mezzi, fis-sens li l-obbligu tat-tabib huwa deskritt bhala li 'egli e' tenuto ad usare la diligenza che la natura dell'attivita esercitata esige' (Corte Cassazione d'Italia, 21 ta' Lulju, 1989; kaz nmru 3476). Dan ifisser li filwaqt li t-tabib ikun irid jipprova li hu agixxa kif if-professjoni tistenna minnu, il-pazjent irid juri, fl-ewwel lok,

li gara xi haga hazina waqt l-intervent kirurgiku, xi haga, jigifieri, mhux mistennija li ssehh f'operazzjoni ta' dik ix-xorta” (**Tessie Ellul et vs Dr. Astrid Camilleri**, App. 28/05/20I0).

"Ghalkemm, kif inghad, il-posizzjoni hawn Malta giet ezaminata fil-kuntest tar-regoli ta' kwazi delitt, din il-Qorti hija tal-fehma li jkun aktar logiku li r-relazzjoni bejn pazjent u tabib tigi ezaminata fil-kuntest ta' kuntratt. Hu veru li kuntratt jehtieg il-kunsens ta' zewg partijiet, izda hu veru wkoll li dan il-kunsens jista jkun tacitu, u anki implicitu, basta tkun tezisti l-volonta fil-partijiet li jassumu l-obbligazzjonijiet fil-konfront ta' xulxin. Meta pazjent jersaq lejn tabib anke jekk dan it-tabib ikun imhallas mill-Gvern biex ikun ghas-servizz tal-poplu, dak il-pazjent ikun qed ipoggi l-bzonnijiet tieghu f'idejn dak it-tabib u meta t-tabib jaccetta li jaghti s-servizz tieghu, ikun qed jintrabat fil-konfront ta ' dak il-pazjent - li jaqdi d-doveri tieghu skond l-ahjar hila tieghu. Jista jinghad li tabib impjegat mal-Gvern majistax jirrifjuta li jaqdi pazjent, pero jekk hu hekk, l-ghazla jkun ghamilha meta mpjega ruhu mal-Gvern, u inoltre, tabib, allavolja impjegat, jibqa professjonist u jekk ikun rinfaccjat b'kaz li mhux tal-hila tieghu, ghandu obbligu jghaddi l-kaz lit-tabib aktar kompetenti minnu f'dik il-materja, u dan l-istess bhal kull tabib privat. Meta tabib, avolja impjegat, jaccetta li jikkura pazjent, jidhol f'relazzjoni diretta mieghu, relazzjoni kuntrattwali li tista twassal ghall-hlas tad-danni f'kaz ta’ inadempjenza” (**Rose Gauci et vs Mr Donald Felice et**, App. 31/10/2008).

"L-obbligazzjonijiet kuntrattwali, fis-sistema civili Malti, jistghu jkunu di dare, di fare Jew di non fare, u f'kaz ta' tabib ir-responsabbilta tieghu titqies bhala wahda di fare, fejn it-tabib qed jigi mqabbad biex jaghti s-servizz tieghu bi skop li jottjeni ghan definit. Dan ma jfissirx, pero, li mit-tabib hu mistenni rizultat, u jekk ma jottjenix rizultat, allura jkun responsabbli ghad-danni" (**Ibid**).

Ghalhekk din l-eccezzjoni qed tigi michuda.

Indoli legali

Jinghad illi f'rnaterja ta' valur ta' prova dwar ir-rapport tekniku l-insenjament gurisprudenzjali huwa fis-sens li, ghalkemm ir-rapport tekniku huwa kontrollabbli mill-gudikant bhal kull prova ohra u l-Qorti mhix tenuta li taccetta l-konkluzzjonijiet peritali kontra l-konvinzjoni taghha, il giudizio dell'arte kif espress mill-Perit Tekniku m'ghandux jigi skartat sakemm ma jkunx jidher sodisfacentement illi l-konkluzzjonijiet peritali huma, fil-kompless kollu tac-cirkostanzi rragjonevoli. Il-Qorti m' ghandhiex tiskarta i l-konkluzzjonijiet tal-espert, specjalment fuq materja purament teknika, b'mod legger jew kappriccjuz. Il-konvinzjoni kuntrarja taghha ghandha tkun "*infurmata u bbazata fuq ragunijiet li gravament ipoggu fid-dubbju dik l-opinjoni teknika*" (App. Civili **Giswarda Bugeja vs Emmanuele Muscat**, Vol. LI/1/390; u App. Civili **Philip Grima vs Carmelo Mamo,** 29 ta' Mejju, 1998). Ara ukoll **Dingli Estates & Co vs Mangion**, deciza mill-Onor. Prim' Awla tal-Qorti Civili fit-30 ta' Mejju, 2002 fejn inghad illi "*f'materja ta' perizja teknika japplika l-principju li sakemm ma jigux indikati oggezzjonijiet gravi u serji ta' piz li jinducuha li tisostitwixxi l-gudizzju taghha ghal dak tekniku, dan ma taghmlux*". Finalment fuq dan l-aspett l-Onorabbli Qorti tal-Appell fil-kawza fl-ismijiet **Benjamin Camilleri noe vs Charles Debattista et noe**, 9 ta' Frar, 2001 qalet illi "*f'cirkostanzi bhal dawn ikun pruzuntuz ghall-gudikant illi jiddipartixxi bla raguni verament valida mir-relazzjoni teknika. Dan mhux biss ghax ma kellux il-mezzi ghad-disposizzjoni tieghu biex serenament jinoltra ruhhu fl-aspetti teknici tal-meritu, imma wkoll ghaliex necessarjament tkun tonqsu dik il-konoxxenza mehtiega biex, b'mod kritiku, jasal ghal konvinciment divers minn dak li jkunu waslu ghalih l-esperti nominati minnu*".

Issa, f'dan il-kaz il-perizja medika maghmula mill-espert mahtur mill-Qorti Dr. Jan Janula tikkonkludi billi tghid li l-konvenut ma huwiex responsabbli ghall-akkadut msemmi fic-citazzjoni. Ikun utili li f'dan l-istadju li l-Qorti tissottolineja l-gurisprudenza lokali fir-rigward tas-suggett tar-responsabbilita medika. Il-Kodici Civili ma jipprovdi ebda norma specjali fir-rigwrd tal-professjoni medika u

ghalhekk japplikaw in-normi generali tad-dritt civili fil-materja ta’ responsabilta (ara artikolu 1031 sa 1033 tal-Kap. 16). Inoltre minn qari ta' gurisprudenza fuq il-materja, wiehed jista’ jislet is-segwenti kostatazzjonijiet:
“Il danno e' sempre sventuratamente troppo certo in coteste deplorevoli controversie; quanto all colpa, il tribunale dovra apprezzarla" (**Laurent** - **Principii di Diritto Civile** Vol. XX. para. 516 pg. 422).

"Non e' possible determinare in modo generale il limite della responsabilita dei medici. Spetta al magistrato ravvisarla in ciascuna specie, secondo i fatti e le circostanze, che possono infinitamente variare, non perdendo mai di vista quell principio fondamentale che deve sempre servirgli di guida, val dire che per aversi responsabilita professionale fa d'uopo che taluno abbia commesso una colpa, non usando la volute vigilanza sopra se medesimo o sui propri atti, 0 dando prova di una ignoranza imperdonabile nell'esercizio della sua professione; spetta ai tribunali applicare questa massima con discernimento, lasciando all scienza tutta la latitudine che si deve, ma accordando del pari alia giustizia e al diritto tutto quanto loro appartiene” (**Ibid**).

"Il-Qorti taqbel mal-periti li zball fl-interpretazzjoni la 'fatti klinici ma ghandux jirrendi t-tabib Jew kirurgu responsabbli ghall-konsegwenzi taghhom. Zbalji jistghu jittiehdu, u fil-fatt jittiehdu; u kien ikun gwaj sewwa kieku l-professjonista kellu jirrispondi ghal kull zball li jiehu l-ghaliex ma jirnexxilux jiggudika rettament; imma - u dana del resto ammettewh l-istess periti - ghandha issir distinzjoni bejn meta l-izball jittiehed ghal ragunijiet indipendenti mill-volonta u mill-agir ta ' min jiehdu u meta l-izball jittiehed minhabba xi mankanza f'min jiehu dak l-izball. F'dan l-ahhar kaz, min jiehu l-izball ikun in kolpa minhabba dik il-mankanza tieghu, li minghajrha x 'aktarx l-izball ma kienx jittiehed; u allura huwa jirrispondi ghall-konsegwenzi la' dak l-izball li jkun ittiehed minhabba dik il-htija tieghu. Jekk, per ezempju, tabib Jew kirurgu jaqa f'errur la' gudizzju u jizbalja wara li jkun ezamina sewwa l-kaz ta' quddiemu u jkun ghamel il-possibbli kollu biex jistudjah u jaghrfu, allura certament l-ebda responsabbilita

professjonali ma jista jkollu ghall-konsegwenzi; imma, ghall-kuntrarju, jekk l-izball jiehdu ghaliex ma jkunx ezamina l-kaz kif imissu, u l-ezami jsir b 'negligenza, allura huwa responsabbli ghall-konsegwenzi tal-izball tieghu" (**Victor Savona pro et noe vs Dr. Peter Asphar et**, PA 31/10/1949).

"ghandu jigi ritenut illi t-tabib mhux tenut ghad-danni rizultanti minn zball professjonali ammenoche dan l-izball majkunx grossolan, u ammenoche l-hsara ma tkunx tistax tigi lilu addebitata minhabba nuqqas ta' prudenza, diligenza u attenzjoni ta ' bonus paterfamilias" (**Ibid**).

"Dwar il-grad ta' diligenza li professjonist bhat-tabib ghandu juza, il-gurisprudenza estera hija konkordi li mhux mistenni mit-tabib grad gholi ta' diligenza, izda dik normali li wiehed jistenna minn professjonist tal-affari tieghu. Dak li hu mistenni minn tabib hu li jzomm ruhu aggornat bl-avvanza fil-medicina, u fil-kaz konkret li jkollu quddiemu, jezercita d-diligenza li professjonist ordinarju bhat-tabib in kwistjoni kien jezercita. It-test hu necessarjament oggettiv, fis-sens li wiehed ghandu jara kif kien jezercita l-mezzi tieghu professjonist normali, bid-degree of skill li suppost ghandu t-tabib partikolari; pero, darba determinat dan il-livell, it-tabib ikun mistenni li jaqdi dmiru skond l-'accepted standard practice'. Il-fatt li t-tabib inzerta, f'dik l-okkazzjoni, li kellu hafna xoghol, u kien ghajjien, bl-ebda mod ma tnaqqas mid-drittijiet ta' pazjent" (**Rose Gauci et vs Mr Donald Felice et**, App. 31/10/2008).

"A charge of professional negligence against a medical man was serious. It stood on a different footing to a charge of negligence against the driver of a motor car. The consequences were far more serious. It affected his professional status and reputation. The burden of proof was correspondingly greater. As the charge was so grave, so should the proof be clear” (**Tessie Ellul et vs Dr. Astrid Camilleri**, App. 28/05/20I0).

"Dwar l-oneru tal-prova, ir-regola hi li 'incombe al cliente, il quale assuma di aver subito un danno, I'onere di provare la diffettosa o inadequate prestazione professionale e il

nesso casuale tra questa e il danno' Corte di Cassazzione tal-ltalja 21 ta' Dicembru, 1978. Hekk ukoll **Margaret Brazier** (Medicine, Patients and the Law, Penguin Books, 1987 Edit. Pg. 80) tinnota li 'proving negligence by the doctors does not conclude the case in the patient's favour. He must also show that his injury, his worsened or improved condition, was caused by the doctor's negligence’" (**Rose Gauci et vs Mr Donald Felice et**, App. 31/10/2008).

Fatti u mertu

Fil-kaz in ezami l-allegazzjonijiet principali kontra Dr. Vella huma li ma nfurmax sew lill-attur bir-riskju qabel sehh l-intervent, li uza makna mhux approvata, li l-attur iffirma consent form f’hin meta ma kienx f’pozizzjoni jifhem u jara sew dak li kien qed jiffirma u illi l-kirurgu ghamel l-intervent meta l-kundizzjoni tal-attur kienet taqa’ barra l-parametri tal-uzu effettiv tal-makna, u kwindi hemm ness dirett bejn id-dannu soffert u l-operat tal-kirurgu.

Ilment li l-makna uzata ma kienitx approvata

L-attur esebixxa estratti mill-internet fejn skond il-Food and Drugs Administration tal-Istati Uniti l-makna uzata ghal excimer laser fuq ghajn l-attur maghrufa bhala summit apex giet approvata ghall-uzu lejn l-ahhar tal-1995.

Dan l-ilment tal-attur ma hux utili ghal pretensjoni tieghu. Fl-ewwel lok l-attur naqas li jghid ghalfejn socjeta Maltija li qed tuza l-apparat f’Malta ghandha tistenna l-approvazzjoni tal-FDA Amerikan biex tuza tali makkinarju. Fit-tieni lok anki r-rapporti imnisslin mill-attur mill-internet ma jghidu illi dan il-makkinarju kellu xi difett jew ma kienx tajjeb ghall-uzu.

Din il-makna kienet ilha tintuza u iccertifikata fl-Ewropa mnejn inxtrat u fl-Ingillterra kienet ilha tintuza mill-1988. Meta xehed Dr. John Cachia in rapprezentanza tat-Tabib Ewlieni tal-Gvern qal illi f’dak iz-zmien ma kienx hemm licenzi tant illi meta St. James talbu biex juzaw dan l-

apparat ir-risposta kienet li ghandhom jigu segwita l-guidelines tar-Royal College of Opthalmologists tal-Ingilterra. Zied illi f'dak iz-zmien l-uniku oftalmologu li kellu l-kapacita necessarja u l-kwalifika li jaghmel intervent tal-excimer laser kien Dr. Ivan Vella.

Ghalhekk il-provi juri illi din il-makna kienet idonea ghall-intervent simili fiz-zmien li sar l-intervent u illi skond ir-rapprezentant tat-Tabib Ewlieni tal-Gvern, Dr. Vella kien l-uniku oftalmologu bl-esperjenza u kapacita li juza l-makna. Ma ngiebet ebda prova li turi li din il-makna ma kienitx sikura ghall-iskopijiet li ghalihom setghet tintuza cioe ghal correction ta' short sightedness.

L-appart intuza barra mill-parametri tieghu

L-ewwel ilment iwassal lil Qorti biex tevalwa t-tieni lment cioe li Dr. Vella uza dan l-apparat li skond l-attur kien intiz biex jikkoregi myopia ta' bejn -1 sa -7 diopters ta' myopia u dan kif jidher fid-dokumenti tal-Awtorita Amerikana dwar is-summit laser. Hu fatt illi l-attur kellu myopia ta' -10.5. hu fatt ukoll illi bil-laser treatment Dr. Vella ikkreja l-myopia b'7 diopters biex gab il-vista tal-ghajn il-leminija tal-attur ghal -3.5 diopters ta' myopia.

L-attur jilmenta illi l-applikazzjoni tal-makna tal-laser kienet tpoggi lill-attur f'riskju ikbar tenut kont tal-qies ta' applikazzjoni taghha. Dr. Vella jixhed illi kull kaz iried jittiehed ghal rasu u illi in ogni kaz hu uza l-appart biex jiehu l-beneficcju massimu ghal pazjent cioe li jnaqqaslu l-myopia b'-7 diopters cioe l-qies massimu applikabbli ghal pazjent, u b'hekk jikkontendi li ma uzax il-makna barra mill-funzjoni ottimali taghha.

Dwar din il-kwistjoni l-espert tal-Qorti Dr. Jan Janula ma jghid xejn. Id-dokumenti in sostenn tal-allegazzjoni attrici cioe Dok. JM2 u JM4 mehudin mill-internet ighidu li s-summit laser hu intiz ghall-uzu "to correct mild to moderate near sightedness (-1.5D to -7.0D) with concomittant astigmatism no greater than 1.5D".

Mid-dokument tar-Royal College of Ophtalmologists mahrug fl-1995 li stabilixxa l-guidelines ghal uzu tal-laser, liema dokument gie prezentat minn Dr. John Cachia, Supretendent tas-Sahha, jidher illi dan it-tip ta' intervent bil-laser kien ilu jintuza mill-1983. Jinghad f'dawn il-guidelines illi
Lasers are now available which are capable of treating up to 20 dioptres of axial myopia and 6 dioptres of associated astigmatism. Despite these theoretical figures, results indicate that only patients with relatively low degrees of myopia (-1.5 to -5 dioptres) with little associated astigmatism (less than 1.5 D.e.) can expect a high proportion of satisfactory results. Patients with more myopia and more astigmatism can certainly be treated, but the proportion of successful outcomes steadily falls with the increasing degree of initial refractive error.

Treatment of high myopia (more than 10.00 dioptres) is certainly possible either by PRK or by ALK (automated lamellar keratoplasty) both of which techniques employ the excimer laser. The results of such treatment, however, are still very variable and both are subject to regression, over-correction and under-correction and in a higher proportion of cases than is seen with the lower degrees of refractive error. Some lasers currently available do have a facility for managing astigmatism while others do not. Results so far available from those investigators which have this facility indicate that astigmatism can certainly be reduced in many cases, though seldom eliminated completely.

Patients for PRK must be well motivated and well informed as to the rationale for treatment, its predictability and the time course of events which may include an interim period of ocular disassociation.

Clinical results of excimer laser photoablation of the cornea - photo refractive keratectomy (PRK) indicate that low degrees of myopia (1.5-5 dioptres) enjoy a high proportion of satisfactory outcome. Higher degrees of refraction, however, while treatable are associated with diminishing returns in terms of the proportion of

successes achieved. The complication rate for the higher degrees of refractive error is significantly increased and these complications include over-correction, under-correction, regression of myopia, persistent corneal opacity, induced irregular astigmatism, loss of contrast sensitivity and loss of 1, 2 or in some rare cases, 3 lines of best corrected visual acuity.

Outpatient follow up visits for medical supervision are required on a frequent and regular basis in order to monitor the eye for complications and to appraise the refractive result. These visits should continue for not less than twelve months after treatment.

Evidence to date suggests that most eyes are stable after twelve months. For the higher degrees of myopia, however, regression may continue for eighteen months or even two years.

Patients whose myopia regresses after PRK may benefit from retreatment. This should be delayed until 6-12 months after the original treatment. The results are the subject of investigation, and appear to be associated with similar degrees of unpredictability, the higher degrees of regression doing less well.

It-trattament uzat fuq l-attur hu dak maghruf bhal PRK cioe photo refractive keratectomy. Ghalkemm l-attur jinsisti illi l-apparat intuza barra mill-parametri li ghalih kien intiz, Dr. Vella jixhed illi wiehed ma jridx iqis il-parametri izda li wara li jsir ezami akkurat tal-pazjent tittiehed id-decizjoni jekk l-intervent jistax ikun ta’ beneficcju ghall-istess pazjent. Hu jzid li kienet l-opinjoni tieghu li l-intervent seta’ kellu beneficcji ghall-attur u illi l-qies tal-uzu bil-laser li effettwa fuq l-attur ma kienx ser jeccedi -7 diopters li kien il-massimu ta’ korrezzjoni li l-makna tippermetti u ghalhekk ma harigx il-barra mill-parametri tal-makna. Hu sostna illi ma jfissirx illi intervent seta’ jsir biss fuq pazjenti li ghandhom massimu ta’ -7 diopters ta’ myopia izda li l-ahjar rizultati jingiebu generalment ghal pazjenti li ma ghandhomx aktar minn -7 diopters ta’ myopia.

Il-Qorti ser tistrieh fuq il-guidelines tar-Royal College of Ophtalmologists kif kienu fi zmien l-intervent u dan billi hi l-fehma tal-Qorti li dawn il-guidelines huma l-ahjar prova fl-atti, tal-informazzjoni akkreditata u affidabbli ezistenti fuq l-uzu tal-laser ghal interventi simili. Skond dawn il-guidelines jidher illi interventi fuq pazjenti li ghandhom myopia ta’ aktar minn -7 diopters ta’ myopia huma permissibbli pero ovvjament ir-riskji huma akbar u komplikazzjonijiet u rata ta’ insuccess tizdied aktar ma l-pazjent ikollu myopia gravi.

Il-Qorti tqis li l-attur kellu myopia qawwija pero b’daqshekk ma jfissirx illi ma kienx idoneju ghall-intervent bl-apparat li ntuza. Fl-ewwel lok Dr. Vella kien rikonoxxut bhala l-uniku oftalmologu bil-kredenzjali li jaghmel dawn l-interventi kif jixhed Dr. Cachia, u id-djanjosi ta’ qabel l-intervent ma kienx jeskludi li jsir l-intervent. Dan ighidu l-konvenut Dr. Vella meta jixhed illi l-attur kien ilu pazjent tieghu ghal hafna zmien, kien jafu sew mill-lat kliniku, kellu l-vista stabbli u l-astigmatism fi zmien l-invervent kien baxx hafna cioe -.25. Ma kien hemm ebda fattur li seta’ jxaqleb il-mizien kontra li jsir l-intervent stante xi riskju tant gravi li seta’ pperikola l-pazjent. Dan hu konfermat mill-espert tal-Qorti fl-eskussjoni li saritlu meta kkonferma li fl-istess pozizzjoni ta’ Dr. Vella, bil-fatti klinici a dispozizzjoni tieghu dwar l-attur, hu kien jaghmel l-intervent.

Ghalhekk fil-kuntest tal-uzu tal-apparat ghall-intervent li sar fuq l-attur tenut kont tal-fatti dwar il-vista li kellu l-attur u jekk b’din il-vista setax isir l-intervent bl-apparat tal-laser uzat, il-Qorti tqis illi Dr. Vella agixxa fil-parametri medici accettabbli.

Nuqqas ta’ informazzjoni dwar l-intervent

Din il-kwistjoni tiftah kapitolu iehor fir-responsabilta u doveri ta’ kura tal-professjonist verso l-pazjent tieghu. Fuq dan il-punt hemm divergenza qawwija bejn il-partijiet. Filwaqt li l-attur jinsisti li ma kienx inghata informazzjoni cara biex jiehu dak imsejjah bhala ’informed consent’, Dr.

Vella jishaq illi hu kien car hafna mil-attur dwar l-aspetti kollha tal-intervent.

Jibda biex jinghad illi l-attur hu deskritt anki mill-espert mediku tal-Qorti bhala persuna metikoluza, b'mohh li kapaci jirraguna hafna u intelligenti. Bejn Dr. Vella u l-istess attur kien gia hemm, minn zmien qabel, relazzjoni professjonali u ghalhekk Dr. Vella kien ilu jimmonitorja l-vista tal-attur. Kien hemm fiducja reciproka bejn il-kontendenti. Relevanti li kien l-attur li attira l-attenzjoni tal-konvenut ghal dan l-intervent wara li qara riklam dwaru fil-gazetta. Tra parentesi ghalkemm l-attur jaghmel enfasi fuq in-nuqqas ta' spjegazzjoni dwar ir-riskji f'din il-pubblicita u l-brochure ta' dan it-tip ta' intervent li kien ikun hemm fil-clinic ta' St. James, u anki passi dixxiplinari li ttiehdu kontra l-konvenuti peress li ma tqis etiku li tabib jippubblicizza lilu nnifsu permezz ta' reklamar, dawn il-fatturi fil-fehma tal-Qorti ma humiex ta' relevanza ghal mertu tal-azzjoni u dan peress illi l-Qorti ma tistax tikkontempla li d-decizjoni tal-attur ittiehdet biss fuq dak li qara fil-gurnali jew fil-brochure tal-clinic.

Jirrizulta illi l-attur attenda laqgha generali dwar dak li jikkomporta intervent fejn hu jixhed illi meta t-tabib gie mistoqsi x'inhi l-aghar ipotesi wara li jsir l-intervent l-konvenut irrisponda li l-aghar ipotesi hi li l-pazjent jibqa' l-istess. Din l-allegazzjoni hi michuda minn Dr. Vella.

Il-Qorti tqis illi din il-laqgha kienet biss wahda informattiva biss u intqal x'intqal fiha ma kienitx din il-laqgha li wasslet lill-attur jiehu d-decizjoni ghall-intervent. Fil-fatt jirrizulta illi l-attur kellu zewg laqghat individwali mal-konvenut fejn gie diskuss specifikament l-intervent fuq l-attur. Il-Qorti tqis irragonevoli illi f'zewg laqghat il-konvenut ma accennax ghal riskji inerenti f'dan l-intervent partikolarment b'referenza ghal dak li setghu jirrizultaw bhala side effects. Il-konvenut jixhed li f'dawn il-laqghat hu spjegalu kollox, inkluz is-side effects. Hu spjegalu fid-dettall il-procedura li kien ser jaddotta (ara xiehda a fol. 139 u 310). Billi l-attur hu persuna metikoluz, preciz u intelligenti, staqsa hafna u kien jiccekkja kull haga li tinghadlu (fol. 143) u ghalhekk il-konvenut kellu jidhol fid-dettal. L-attur stess ma jichadx

dan u jghid fil-fatt illi kien jiehu pjacir jisma' lil Dr. Vella jispjegalu (fol. 19 u 20).

Wara kollox kif spjega Dr. Janula fir-rapport tieghu, ir-riskji maghrufa inerenti f'dan it-tip ta' intervent huma ta' natura rutina u ghalhekk ma setax jikkontempla li l-konvenut ma kienx infurmah dwarhom (fol. 176). Dan il-fatt ukoll gie konfermat min Dr. Azzopardi Giappone li mar ikellmu l-attur wara l-intervent (fol. 103). Anke l-attur jsemmi li meta kellem tabiba barranija fi klinika l-Mosta din qaltlu li min jaghmel dan it-tip ta' intervent dejjem ghandu dan ir-riskju (fol. 28) u kompliet li dawn ir-riskji huma maghrufin min kulhadd (fol. 129). Il-Qorti issib inverosimili li maghdud dan kollu u r-relazzjoni professjonali gia ezistenti bejn il-partijiet qabel l-intervent u l-grad ta' intelligenza tal-attur li tistrih fuq dak li jghid l-attur cioe li 'kulhadd kien jaf barra hu' (fol. 103).

Daqstant iehor jista' jigi koncepit illi Dr. Vella ggarantixxa success fl-intervent. Hu aktar verosimili illi tenut kont tal-fatturi favur u kontra, hu kien tal-opinjoni professonali li l-attur kien idoneju ghall-intervent u illi l-ezitu tal-intervent kien ser ikun utili ghall-attur. Il-Qorti hi propensa li taccetta l-verzjoni tal-konvenut meta qal li hadd ma jiggarantixxi success specjalment fil-kirurgija ghax kollox ghandu side effects (fol. 411). Hi l-fehma tal-Qorti li l-attur kien jaf bis-side effects pero kien ottimist li bil-fiducja li irripona fil-konvenut tenut kont tar-relazzjoni professjonali pre-ezistenti bejniethom l-istess konvenut kien ser jaghmillu l-ahjar li jista' professjonalment biex itejjiblu l-kundizzjoni tal-vista tieghu. Kin intqal fis-sentenza tal-Qorti tal-Appell **V. Sammut vs Dr. C. Fenech** (01/12/2006) li taghmel referenza ghal ktieb **'Law and Medical Ethics' ta' Mason & Mc Call Smith (Butterworths, 3rd Edit),** fejn jinghad, f'pagna 248, li biex jigi deciz x'ghandu jinghad lill-pazjent, it-test li soltu jigi segwit huwa dictum ta' Woodhouse J. fil-kawza **Smith v. Auckland Hospital Board,** deciza mill-Qorti tal-Appell ta' New Zealand fl-1965. It-test gie espress hekk:
'As it seems to me, the paramount consideration is the welfare of the patient and, given good faith on the part of the doctor, I think the exercise of his discretion in the area

of advice must depend upon the patient's overall needs. To be taken into account should be the gravity of the condition to be treated, the importance of the benefits to be expected to flow from the treatment or procedure, the need to encourage him to accept it, the relative significance of its inherent risks, the intellectual and emotional capacity of the patient to accept the information without such distortion as to prevent any rational decision at all, and the extent to which the patient may seem to have placed himself in his doctor's hands with the invitation that the latter accept on his behalf the responsibility for intricate or technical decisions.'

Ara wkoll f'dan is-sens **Zerafa vs Avramov et,** App. 30/5/2008.

Fil-ktieb ippubblikat fl-2002 mill-**Professur Maurice Cauchi ('Bijoetika fl-Ewropa tal-lum**') l-awtur jenfasizza fuq il-htiega ta' informazzjoni dwar l-ghan u n-natura tal-intervent, kif ukoll dwar il-konsegwenzi u r-riskju tieghu. Jghid li l-pazjent ghandu jkun informat bid-dettalji kollha mehtiega biex ikun jista' jiehu decizjoni. Ikompli jispjega, f'pagna III, li 'L-informazzjoni lill-pazjent ghandha tkun bizzejjed biex ikun jista' jiehu decizjoni. Din ghandha tinkludi l-iskop, in-natura u l-konsegwenzi tal-intervent kif ukoll ir-riskji sewwa tal-intervent li jkun qed jigi propost, kif ukoll l-alternattivi li jistghu jezistu. U dan ghandu jinghata b'lingwagg li jiftiehem mill-pazjent.'

Il-Qorti tqis li ma nghatatx prova sodisfacenti tali mill-attur li l-Qorti ghandha tkun konvinta moralment li l-konvenut naqas f'dan l-aspett.

L-attur jilmenta wkoll illi qabel l-intervent ma nghatax l-opportunita li jifli u jistudja l-consent form billi inghatatlu ftit hin biss qabel l-intervent u billi nurse li tatu l-consent form kienet qed tamministralu xi qtar f'ghajnejh, ma setax jra x'inhu jiffirma.

Il-provi juru mod iehor. Hu minnu illi l-consent form esebit a fol. 67 tal-process inghatat lill-attur minn nurse qabel l-intervent pero ma ngiebet ebda prova konvincenti mill-

istess attur li gie mgieghel jiffirma. Inoltre l-allegazzjoni li ma setax jara x'qed jiffirma ghax kellu l-qtar f'ghajnejh, l-espert mediku fir-rapport tieghu jghid illi din l-allegazzjoni hi frott memorja hazina billi dawn id-drops anestetici ma jipproducux dan l-effett u ma hemmx raguni li ghaliha kellu jinghata xi drops ohra li setghu affettwaw il-vista altrimenti l-procedura kien ikollha tigi posposta (fol. 503).

Inoltre l-Qorti taqbel ma dak li qal il-konvenut cioe l-qtar ma jaffettwawx il-kapacita mentali tal-pazjent, l-effett taghhom hu ta' ftit sekondi, u illi l-ghajn it-tajba ma giet effetwata bl-ebda mod. Inoltre billi l-attur ibati minn short sightedness, il-fatt li nehha n-nuccali ma impeditux milli jaqra l-consent form ghax bla nuccalli seta' jaqra ahjar billi hu jbati minn short sightedness. Dan ukoll hu konfermat min Dr. Janula fir-rapport mediku tieghu (ara fol. 504).

Il-konvenut jikkon tendi illi l-consent form iddiskutiha mal-attur fid-dettal u fit-tul fil-laqghat li kellu mieghu qabel l-intervent u ghalhekk l-attur ma kien qed jiffirma xejn li ma kienx jaf bih minn qabel.

Hawn ukoll il-Qorti ma ssibx li gie ippruvat xi negligenza fl-operat tal-kirurgu u l-provi ma jwasslux lil Qorti tikkonkludi li l-attur gie b'xi mod ingannat jew mgieghel jiffirma ghal xi haga li ma kienx jaf biha qabel, jew li ma gharafx l-import taghha qabel ma ffirmaha tenut kont tal-livell ta' skola tal-attur.

Ghalhekk anki dan l-ilment qed jigi michud.

Rabta bejn l-intervent u l-hsara sofferta

Hi l-kontenzjoni tal-attur illi wara l-intervent hu gie aghar milli kien. Jirrizulta illi wara l-intervent ghalkemm il-myopia naqset minn -10.5 ghal -3.5, l-astegmitism li qabel l-intervent kien minimu cioe -.25, wara l-intervent sar -1.

Tajjeb li f'dan l-istadju tigi spjegata l-kondizzjoni tal-attur u dak li zviluppa wara l-intervent. Dan gie spjegat b'mod semplici mill-espert mediku Dr. Jan Janula hekk:

Myopia - shortsightedness is the refractive error when the eye is too long or its dioptric system too strong. This causes the light rays not to be focused on the retina, but in front of it therefore the image on the retina is blurred. In addition to this, in higher myopia the vitreous body has a tendency to degenerate and to be replaced by fluid. The retina is thinner and very often peripheral degeneration is present. Person with myopia sees well for close distance but far distance is blurred. Myopia can be corrected by glasses with concave lenses, concave contact lenses or by reshaping the cornea by excimer laser to become more concave. None of these options influences the degeneration of vitreous body or thins the retina.

Photorefractive keratectomy (PRK) is the technique, where by using specialized excimer laser, the surgeon reshapes the anterior part of cornea. In this way the refractive error is removed or reduced.

The technique involves the following: After application of anesthetic drops, the eyelid speculum is introduced in order to keep the eyelids open. The surgeon commences the procedure by removing the most superficial layer of the cornea - epithelium. Following this, the excimer laser is applied to remove part of anterior stroma of cornea and in this way, reshape the cornea. In patients with myopia the cornea becomes postoperatively more concave. Postoperatively antibiotics and corticosteroid ointment or drops is applied and the eye covered. It takes a few days for the superficial layer of the cornea - epithelium (which was removed at the beginning of the surgery) to regrow and cover the corneal surface. Until this happens, patients feel substantial discomfort.

The possible complications which might happen after PRK are the following:

Overcorrection - patient from myope becomes hypermetrope

Undercorrection- patient retains some of his original refractive error

Central islands - uneven surface of the cornea causing double or blurred vision

Decentered ablation - reshaping of the cornea is eccentric

Dry eye - need to use artificial tears

Corneal haze - causing misty vision - usually transient

Complication of the postoperative steroids use: can cause glaucoma

Persistent corneal defects - epithelium does not heal properly

Corneal ulcer - infection of the cornea

Irregular astigmanismus - irregular refractive error impossible to correct conventionally.

Dak li gara lill-attur hu illi sofra zewg side effects maghrufin ta' dan l-intervent, cioe irregular astigmatism kif ukoll mild corneal haze. Kif jirizulta skond il-guidelines Inglizi gia imsemmija hi importanti l-kura post operativa. Ma irrizultax illi l-attur sofra xi dannu kawza ta' nuqqas tal-kirurgu fl-operat tieghu waqt l-intervent. Infatti ma saret ebda prova li turi li dan kien il-kaz. L-effetti li sofra l-attur kienu dawk li setghu jigru anki bl-applikazzjoni korretta tal-intervent kif inhu l-kaz. Dak li qed jilmenta l-attur hu illi nonostante diversi appuntamenti fuq perjodu ta' disa' xhur ghand il-kirurgu l-vista tieghu ma ghamlitx progress anzi ghamlet regress. Dr. Vella spjega fid-dettal il-visti li saru u dak li rriskontra bhala rizultat. Hu jzid li fehem lill-attur li kien hemm lok u l-fakolta li jsir trattament iehor meta l-ghajn tistabilizza ruhha pero l-attur qabad u mar ghand terzi u ghamel intervent iehor ghandhom. Hu qal li filwaqt li kien hemm 'marked improvement' fil-korrezzjoni tal-ghajn il-leminija bit-tnaqqis fil-myopia pero l-irregular astigmatism zdied u dan mhux b'effett dirett tal-laser u ma jistax jigi previst ghalkemm seta' gie korrett bi trattament iehor meta l-ghajn tal-attur tistabilizza ruhha. Pero l-attur

naqas li jkompli jsegwi l-pariri tal-konvenut u mar ghand haddiehor.

L-attur ma jaqbilx mal-konvenut dwar il-progress anzi jinsisti li kellu regress u illi hu mar ghand haddiehor ghax Dr. Vella qallu li ma seta' jaghmillu xejn aktar.

Fuq din il-kwistjoni Dr. Janula l-espert tal-Qorti jghid fir-rapport tieghu illi hu ezamina lill-attur fis-16 ta' Awwissu 2005 cioe hdax-il sena wara. Dwar dan l-ezami hu jghid hekk:
I myself have examined Mr Micallef in 2005 and found him to have on the right eye(the eye which had refractive laser) best corrected visual acuity 6/12 with mild residual myopia, clear cornea and mild myopic changes on his retina. Best corrected visual acuity on his left eye was 6/6. The visual acuity on his lasered right eye is reasonably good -just two rows of Snellen optotypes worse than normal vision. This is probably due to some irregular astigmatismus and also some degenerative changes in the central part of retina.

Dan l-ezami sar wara li l-attur kien gia mar fi klinika ohra ghal retreatment. L-espert mediku jghid hekk:
He [l-attur] was not satisfied with the result of the laser surgery as he saw very blurred and misty. According to Mr Vella he had mild corneal haze which caused misty vision and gradually cleared, the reason for blurred vision was partly residual myopia and partly irregular astigmatismus, which was according Mr Micallef confirmed by American ophthalmologists in the clinic of Dr F.Portelli. He was offered laser retreatment by Mr.Vella which he refused and went for laser retreatment to Dr F. Portelli clinic.

This retreatment apparently improved his vision as when I was able to examine him his vision was not perfect but reasonably good.

Mr Micallef underwent refractive laser treatment for high myopia on his right eye in St. James Hospital by the use of excimer laser. He developed recognized postoperative complications - corneal haze and irregular astigmatism us.

He also remained slightly shortsighted. The first complication - corneal haze gradually cleared as it is usually transient. His irregular astigmatism us was treated in the clinic of Dr F. Portelli with partial success. As a result best corrected visual acuity on his right eye is slightly reduced. I do not consider this reduction of vision as serious and cannot even state with 100% certainty, that it is caused by the complication of the refractive laser.

Din hi l-konkluzzjoni li wasal ghaliha l-espert tal-Qorti.

Kif inhi l-gurisprudenza prevalenti l-opinjoni tal-espert tal-Qorti, specjalment meta hi wahda teknika u specjalizzta ma tistax tigi skartata mill-Qorti jekk ma jkollhiex dubbju serji dwar ir-rizultanzi u r-raguni li jkunu waslu lill-espert ghal opinjoni esperta tieghu.

Minn dan ir-rapport u mix-xiehda li nghatat, il-Qorti ghalkemm konvinta illi l-intervent ma hallix is-success mixtieq, pero l-komplikazzjonijiet li nsorgew kienu dawk maghrufa li jistghu jigru u illi l-konvenut ma kellu ebda responsabilta fl-operat tieghu ghal tali komplikazzjonijiet. Del resto r-rapport tal-espert mediku jghid illi l-ewwel wahda miz-zewg komplikazzjonijiet cioe l-corneal haze marret u dan jidher anki meta kien invistah fl-2005. L-astigmatismus gie trattat fi klinika ohra u ghalkemm il-vista tieghu giet ridotta bi ftit l-espert mediku ma setax ighid jekk din kienitx rizultat tal-laser minhabba li l-attur kellu intervent iehor fuq l-ghajn mhux mill-istess kirurgu u illi in ogni kaz il-vista hi ridotta bi ftit hafna. Hi l-fehma tal-Qorti li anki l-ezami twil u dettaljat li sar tal-espert mediku in eskussjoni tar-rapport mediku tieghu ma biddel xejn minn dak minnu dikjarat fir-rapport mediku.

Il-Qorti ghalhekk ma tistax taghmel ness ta’ kazwalita bejn id-dannu, jekk jista’ jissejjah hekk, u l-operat tal-konvenut billi l-attur ma stenniex li l-konvenut jaghmel trattamenti ohra rimedjali malli l-ghajn il-leminja stabilizzat wara l-intervent.

L-attur ma gabx prova li l-konvenut naqas billi ma kompliex isegwi lill-attur u b’hekk kellu jirrikorri ghand terzi

ghal intervent iehor intervent dal resto prevedibbli kif ighidu l-istess guidelines tar-Royal College of Ophtalmologists. Il-konvenut jichad li hu waqaf isegwi lil attur jew qallu li ma kien jista' jaghmel xejn aktar u anki saru provi ghalkemm konfliggenti dwar inkontri li setghu saru ma jbiddel xejn mill-oneru tal-prova li kellu jaghmel l-attur cioe li juri illi l-komplikazzjonijiet kienu r-rizultat tan-negligenza tal-konvenut jew li l-konvenut naqas li jsegwi lill-attur wara l-intervent b'mod li jaghtih l-ahjar kura u pariri ghal komplikazzjonijiet li nsorgew.

Ghalhekk dan l-ilment qed jigi respint.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-eccezzjoni tal-preskrizzjoni mqajma mill-konvenuti kollha, tilqa' l-eccezzjoni ta' Dr. Josie Muscat li mhux legittimu kontradditur meta mharrek in rapprezentanza ta' Summit Eye Laser Clinic u St. James Health Care u ghalhekk tilliberah mill-osservanza tal-gudizzju u finalment tilqa' l-eccezzjoni fil-mertu ta' Dr. Ivan Vella illi bl-ebda mod ma kien negligenti jew naqas fil-konfront tal-attur fl-intervent u kura li ppresta lill-attur u kwindi tichad it-talbiet attrici, bl-ispejjez kontra tieghu.

< Sentenza Finali >

--------------------------------TMIEM--------------------------------