



TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
VINCENT GALEA**

Seduta tat-8 ta' Jannar, 2014

Talba Numru. 785/2012

Frank GALEA

Vs

John McDonald

The Tribunal,

Having seen the Notice of Claim put forward by the applicant on the 26th November, 2012 by means of which he requested the Respondant to pay him the sum of one thousand two hundred and twenty five euro [€1,225] and this after stating:

“L-attur qed jitlob li dan it-Tribunal jordna lill-konvenut is-somma ta' elf mitejn u hamsa u ghoxrin euro (1225) rappreżentant arretrati fuq kont tad-dawl u ilma fuq il-fond St. John House, Triq San Aristarku, San Pawl il-Bahar liema fond kien mikri lilek mill-mittenti u li sal-lum ghadek ma hallastx il-kontijiet pendenti tad-dawl u ilma li hemm fuq dan l-fond u li jirreferu ghal konsum li ghamilt int.

Bl-ispejjez u l-imghax legali kontra l-konvenut sad-data tal-pagament effettiv”.

Having seen the Reply filed by the Respondant on the 5th February, 2013 by means of which he replied thus to the Claim put forward by the Applicant:

“1) Preliminarjament qed jiġi eccepit l-inkompetenza ta’ dan it-Tribunal;

2) Illi l-ammont mitlub ta’ elfejn mitejn u hamsa u ghoxrin euro (€1,225) f’kontijiet ta’ dawl u ilma ma jappartjenux kollha lill-konvenut huwa ilu joqghod fil-fond “St. John House, Triq San Aristarkus, San Pawl il-Bahar;

3) Illi l-attur kien jaf u konxju li l-ammont mitlub huwa wiehed esaġerat u ma waslux li jkun hemm soluzzjoni mhux min naha tal-konvenut;

4) Illi ghalhekk l-konvenut ma ghandux isofri l-ispejjez ta’ din il-procedura u l-interessi;

5) Bl-ispejjez”.

Having seen the note of the 5th of February, 2013 whereby the Tribunal acceded to the request to hold these proceedings in the English language;

Having seen the said note whereby the Respondant stated that “... *he used to lease the premises St. John House, St. Aristarkus Street, Saint Paul’s Bay, and any arrears, if due, occurred during the rental period of the property in question*” (fol. 12).

Having seen the note of the 11th June, 2013 and that of the 26th September, 2013 whereby the case was adjourned for judgement on the plea of lack of competence.

Having seen the Acts;

Considers:-

1. From what has been submitted and stated to date, it results that Applicant is reuquesting the Respondant to pay him the amount of €1,225 which amount is due for the consumption of water and electricity made by the latter whilst he was residing in St. John House, Saint Aristarkus Street, Saint Paul's Bay.

2. First and foremost, the Tribunal has to decide whether the Claim under review falls within its jurisdiction as otherwise, the Tribunal would have to declare that it has no jurisdiction to examine the issue in question. This plea can even be raised by the Tribunal itself¹. It has been stated that in our legal system, *"l-inkompetenza hi sollevabbli "ex officio" meta ghar-raguni ta' materja tal-kawza ma tkunx ta' kompetenza tat-tribunal adit"*². *Dan ghar-raguni illi l-kompetenza ratione materia hi ta' ordni pubbliku*³ *u din allura lanqas tista' titwarrab bi ftehim bejn il-partijiet*⁴.

3. Thus the Tribunal is duty bound to decide on the question of jurisdiction even if none of the parties raise such an objection.

4. Article 1525 of the Civil Code states that:

1525. (1) A contract of letting and hiring, whether of things or of work and labour, may be made either verbally or in

¹ See article 774 of Chapter 12 of the Laws of Malta;

² **Emmanuele Vella v. Raffaella Barbara**, Court of Appeal, 31st May 1957; **Patrick Grixti Soler v. Vincent Sultana**, Court of Appeal 27th March 1981).

³ Vol. XXIX pII p468

⁴ **Carmelo Degiorgio noe v. George Farrugia**, Court of Appeal, 8th May, 1981; **John Spiteri et v. Stephanie Spiteri pro et noe**, decided by the Rent Regulation Board on the 12th of December, 2001 and confirmed by the Court of Appeal on the 20th October, 2003, **Sea Services Limited v. Paul Aquilina**, decided by the First Hall of the Civil Court on the 12th of December 2001 and **Joe Borg Olivier pro et noe v. Il-Ministru ta' l-Edukazzjoni, Xoghol u Familja**, preliminary judgement given by the Administrative Review tribunal on the 26th September, 2011.

writing, provided that a contract of letting and hiring of urban property and of a residence and of a commercial tenement entered into after the 1st January, 2010 shall be in writing.

The Rent Regulation Board, (hereinafter referred to as the "Rent Board"), established under the Reletting of Urban Property (Regulation) Ordinance shall have exclusive competence to decide on all matters relating to contracts of lease of urban property and of a residence and of commercial tenements. Other leases fall under the competence of the courts of civil jurisdiction while matters relating to agricultural leases shall fall under the competence of the Rural Leases Contol Board appointed according to the provisions of the Agricultural Leases (Reletting) Act (emphasis by the Tribunal).

5. The point at issue and which has to be debated is whether the Tribunal has the jurisdiction to decide this case in view of what Article 1525 of the Civil Code states.

6. In the case **PL John Privitera noe et vs Josephine Camilleri** decided by the Court of Appeal (Inferior Jurisdiction) on the 16th of July, 2012 stated:

*“... l-artikolu 1525 tal-Kap. 12 [recte: 16] jaghti lill-Bord li Jirregola l-Kera “kompetenza esklussiva li jiddeciedi kwistjonijiet konnessi ma’ kuntratti ta’ kiri ta’ fond urban u ta’ dar ta’ abitazzjoni u ta’ fond kummercjali”. Mela allura kull kwistjoni dwar kera, inkluz hlas ta’ kera, taqa fil-kompetenza esklussiva tal-istess Bord li Jirregola l-Kera, u dan gja gie deciz bid-decizjoni fl-ismijiet **Joseph Camilleri et vs International Trading Company Limited** (PA (JA) – 31 ta’ Ottubru, 2011) fejn proprju fuq talbiet ghal hlas ta’ kera, minkejja li ma kienx hemm eccezzjoni ta’ kompetenza dwar l-istess talbiet, l-istess Qorti sostniet korrettament li ghalkemm ma hemmx eccezzjoni ta’ kompetenza, din hija materja ta’ ordni pubbliku u inghad*

“huwa car li din il-Qorti ma tistax titratta kwistjoni ta’ hlas li ma hijiex kompetenza taghha...”.

“Illi la darba din titratta l-ligi specjali li qed takkorda kompetenza esklussiva ta’ certu tip ta’ kawzi u cjoe’ daww dwar kuntratti ta’ kera tal-fondi ndikati lill-Bord li Jirregola l-Kera mela tali Ligi tipprevali fuq l-ligi li tirregola l-kompetenza tal-Qrati ordinarji, u taffetwa l-istess, fis-sens li kawzi li qabel kienu fil-kompetenza tal-Qrati ordinarji, issa huma fil-kompetenza tal-Bord li Jirregola l-Kera, u allura l-iskop tal-emendi li saru bl-Att X tal-2009 kellhom l-iskop li kawzi li kienu qabel fil-kompetenza tal-Qrati ordinarji, issa dahhlu fil-kompetenza esklussiva tal-Bord li Jirregola l-Kera, u allura d-disposizzjonijiet tal-artikolu 3 (2) tal-Kap. 380 dwar money claims ma japplikawx meta l-kwistjoni tkun relattata għall talba ta’ hlas ta’ kera, għaliex din ma tistax tkun fil-kompetenza tat-Tribunal Għal Talbiet Zghar, izda tal-Bord tal-Kera kif espressament indikat fl-artikolu 1525 tal-Kap. 12 [recte: Kap. 16].

Illi f’dan il-kaz il-ligi hija cara u ma hemm l-ebda lok ta interpretazzjoni u dan iktar u iktar in vista ta’dak provdut fl-artikolu 39 (5) tal-Att X tal-2009. L-artikolu 38 (a) jipprovdi subartikolu gdid wara l-artikolu 16 (3) tal-Kapitlu 69 li jghid:-

“(4) Minkejja d-disposizzjonijiet ta’ kull ligi oħra il-Bord għandu wkoll jiddeciedi l-materji kollha li jolqtu kirjiet ta’ fondi urbani li jinkludu fondi residenzjali kif ukoll fondi kummerċjali u dan għat-termini ta’ Titolu IX tat-Taqsima II tat-Tieni Ktieb tal-Kodiċi Ċivili, Fuq il-Kuntratti tal-Kiri, inklużi kawżi dwar okkupazzjoni ta’ fondi urbani fejn il-kirjiet ikunu ntemmu wara t-terminazzjoni ta’ kirja”;

7. Moreover, in accordance with sub-article (5) of article 39 of Act X of 2009:

(5) The Rent Board appointed by virtue of the Reletting of Urban Property (Regulation) Ordinance shall have exclusive jurisdiction to decide matters connected with the letting of urban property including both commercial tenements and residences. **Sohowever that causes**

relating to lease contracts which on the 1st January, 2010 are still pending before the Courts or other Tribunals shall still be dealt with by the same Courts or Tribunals. (emphasis by the Tribunal)

8. The Privitera judgement seems to have suggested that it was the Rent Regulation Board which was the competent fora to deal with all matters connected with lease.

9. Recently, the Honourable First Hall of the Civil Court in the case **Massih Massihnia vs Stivala Properties Limited et** decided on the 2nd of July, 2013 gave a more restricted view of the legal situation. It stated that “... *ladarba l-Bord tal-Kera hu xorta wahda Tribunal Specjali, allura l-gurisdizzjoni tieghu ghandha tigi interpretata b'mod restrittiv u ghandha tipprevali l-gurisdizzjoni ordinarja tal-Qorti fejn ma jirrizultax car li l-Bord inghata gurisdizzjoni*”. Thus, the Court stated that “*kwalunkwe kwistjoni ohra⁵ li tinsorgi wara tmiem il-kirja ghalkemm konnessa u relatata ma' kirja ma tistax taqa fil-gurisdizzjoni tal-Bord tal-Kera li kien u baqa bord speċjali b'poteri li jwasslu biss safejn taghtih il-ligi*”.

10. The Honourable First Hall of the Civil Court basing itself on the judgements **Enriketta Bonnici vs Gordon Borg⁶** and **Romina Delicata Mohnani vs Alfred Borg⁷** drew a distinction between current leases and expired or lapsed leases. In the first case, it was the Rent Regulation Board which was competent to hear the case whilst if there are issues which result after the contract of lease has expired, then it is the Civil Courts which have jurisdiction.

11. The case before the Tribunal deals with arrears of water and electricity. There is no issue with regards to the contract of lease, as from the declaration made by the

⁵ Except where at the end of the lease, there is an issue related to the lease which has just been terminated, that is compensation for illegal occupation, where this was included in the jurisdiction of the Rent Regulation Board.

⁶ Decided by the Rent Regulation Board on the 28th June, 2012 and confirmed by the Court of Appeal (Inferior Jurisdiction) on the 4th of December, 2013;

⁷ Decided by the Court of Magistrates (Malta) on the 9th of April, 2013;

Respondant on the 5th of February, 2013 it results that the lease has lapsed and that *“any arrears, if due, occurred during the rental period of the property in question”* (fol. 12). Thus this Tribunal is competent to hear and decide this Claim.

12. For these reasons, the Tribunal declares that it has the competence and has the required jurisdiction to decide this Claim. The Claim is being adjourned for the

Costs for this preliminary judgement are to be borne by the Respondant.

< Sentenza In Parte >

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