



## **QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta tat-22 ta' Jannar, 2014

Appell Civili Numru. 53/2013

**Lewis Vella**

**vs**

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar**

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Lewis Vella tas-16 ta' Awwissu 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Lulju 2013 li ddecieda illi l-mertu tal-appell illum gie ezawrit billi gie verbalizzat mill-partijiet li kien gie prezentat minor amendment application, hareg il-compliance u l-enforcement notice gie maghluq u ghalhekk it-Tribunal astjena milli jiehu konjizzjoni ulterjuri tal-appell. L-applikazzjoni PA 1284/09 kienet 'to sanction shutter, additions and alterations at back, alterations at first floor, proposed extension at back of basement and ground floor and sign';

Kopja Informali ta' Sentenza

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:  
Ikkunsidra:

B'applikazzjoni tat-30 ta' Marzu, 2009 – Full Development Permission – PA/01284/09 fejn l-appellant, f' Lav Garage, Triq l-Imgarr, Xewkija, talab:

“To sanction shutter, additions and alterations at back, alterations at first floor, proposed extension at back of basement and ground floor and sign.”

Illi permezz ta' rifjut tat-2 ta' Frar, 2011 il-Kummissjoni Ghall-Kontroll Dwar l-Izvilupp cahdet it-talba ghall-hrug tal-permess kif mitlub ghar-ragunijiet segwenti:

“1. The proposal cannot be considered further unless the following illegal development s first sanctioned or removed and this in terms of policy Circulars 2/96 and 2/98. The illegal development consists of a closed terrace at the back of the ground floor, relocation of flue and non compliance with condition 14 of permission PA 5198/07.”

Illi l-Perit Micallef ressaq l-aggravju tal-appellant inter alia kif gej:

“I write on behalf of my client, Lewis Vella of 121, Gnien Xibla Street, Xaghra, Gozo and make reference to the DCC refusal for the aforementioned application, dated 22nd February 2010 (copy attached).

On behalf of my client, I am hereby submitting an appeal against this decision on the grounds that:

The proposal includes the sanctioning and hence is not contrary to Policy 2/96.

For these reasons we respectfully ask the Appeals Board to approve the proposed development. Payment of €186.35 & site plan are attached.”

Illi permezz ta' l-ewwel rapport taghha l-Awtorita' ressqet il-kummenti taghha kif gej:

"Preliminary Plea

On a preliminary point, the Authority respectfully asserts that this Tribunal does not have jurisdiction to hear and decide the refusal of this appeal illegalities are present on site and are not included for sanctioning in this application albeit the appellant is claiming the contrary.

The illegalities consist of a closed terrace at the back of the ground floor, position and specifications of the chimney flue and non compliance with condition 14 of permit PA5108/07.

Article 14 (1) of the LN 514/10 states that where illegal development is present on a site, new development on that same site will not be considered unless it is regularized. The appellant should rectify this situation, prior to further consideration of this proposed development.

Closed Terrace

The approved terrace at the back of the ground floor has been closed off without a permit and thus constitutes an illegality. The drawings are indicating that this element is to be removed to permit the proposed extensions to the back. According to Article 14 (4) of LN 514/10, a proposal description must not propose the removal of illegal development from the site but must be eliminated from the drawings. In this case the closed terrace is shown in yellow – colour coding for proposed demolition.

Chimney flue

The chimney flue is not connected to the extractor fan at the back of the panel beater/sprayer garage and therefore it does not function. This is clearly illegal and runs counter to Condition 16 of permit PA 5108/07.

Furthermore, the actual position, dimensions and specifications of the chimney stack/flue are different from that shown in the submitted drawings; albeit the chimney flue is indicated on the plans (but not section drawings) as

for sanctioning. This means that the existing chimney is not being properly requested to be sanctioned.

Condition 14 of PA 5108/07

Permit PA 5108/07 (latest permit on site establishing the use of sprayer/panel beater on site) was issued on condition that the appellant, shall not start operating as a sprayer/panel beater until the Final Compliance (Completion) Certificate has been issued by MEPA. Moreover the Final Compliance Certificate shall not be issued before the applicant submits clearance from the National Commission for Persons with Disability and certification from the Enemalta Corporation and the Malta Resources Authority.

According to enforcement action ECF 661/09, no such clearances have been obtained and no Final Compliance Certificate has been issued. Hence the current activity is illegal because it is in breach of condition 14 of PA5108/07.

Consequently, this appeal should be dismissed for the above reasons.

Without prejudice to the above, the Authority reserves its right to reply on the merits of the appeal, if it would become necessary, after the decision of this Tribunal on the above preliminary point. "

Illi l-Perit Micallef irrisponda ghal-ewwel rapport tal-Awtorita' kif gej:

"Closed terrace

The proposal reads: "To sanction shutter, additions and alterations at back, alterations at first floor and proposed extension at back of basement and ground floor and sign".

Hence the proposal includes:

- a) First the sanctioning of the closing of the back terrace (alterations and additions at back).
- b) Secondly the proposed extension at back which inevitably involves the removal of the back aluminium aperture and parapet wall enclosing the back terrace so

that the proposed extension interconnects with existing garage.

The removal of the back aluminium aperture and parapet wall (which are firstly being sanctioned in the first part of proposal) are shown in yellow on the plans. Obviously I cannot mark the same wall in violet and yellow at the same time. I had to mark the wall in yellow as if I opted to mark the wall in violet, the proposed extension will end up segregated from the existing garage on the final approved plans.

Hence proposal involves first the sanctioning of back terrace closure and its later proposed removal and thus cannot be considered contrary to art 14(4) of LN 514/10.

Chimney flue.

The chimney flue was destroyed during a storm but has now been re-installed as can be verified by the building inspector.

The chimney is shown on the proposed plans in its original approved position (blue- sanctioning removal) and in its actual position (violet – sanctioning erect). The plans are not detailed construction drawings and show the chimney location only and not its exact specifications.

Finally it is common practice to show the color coding on the plans only and not on the section. Such a practice has always been considered acceptable by MEPA and I can produce many approved planning permissions with the color coding shown on plan and not on section.

Condition 14 of PA 5108/07

Permit PA 5108/07 sanctioned the change in use to a panel beater after applicant paid the stipulated fine. Condition 14 is hence in conflict with the approved permit which consisted of sanctioning and cannot be used as a justification to refuse the proposed development.

Nonetheless I am attaching the specified clearances, namely:

- 1) NCPD. This was in fact already submitted to MEPA when we requested the compliance certificate for the original development.
- 2) Clearance from Enemalta
- 3) Request for clearance and the reply from MRA

A final compliance certificate will be requested once this development including the sanctioning of alterations is approved.

Finally it is being pointed out that site lies in an industrial area and proposed use is perfectly acceptable in this location. It should in fact be encouraged. Unfortunately, the owner of the adjacent premises, which has illegally used his premises for habitation as per ECF 800/09, has launched an aggressive attack against my client to prevent him from operating his premises as a panel beater. I trust that the illegal use of my client's neighbor will ultimately not prevent my client from operating his legitimate use in this industrial area.

For these reasons we respectfully ask the Tribunal to approve the proposed development."

Illi permezz tat-tieni rapport taghha l-Awtorita' ressqet il-kummenti taghha, inter alia, kif gej:

#### "1.2.1 Comments on Arguments raised during Second Statement

As illustrated in detail in initial report submitted by the Authority, he approved terrace at the back of the ground floor has been closed off without permit and thus constitutes an illegality. Notwithstanding the comments made by the appellant the proposed development does not request to remove all illegal development from site and hence runs counter to counter Regulation 14(4) of L.N. 514/10.

#### 1.2.2 Actions against Breach of Condition 14

In previous permit PA 5108/07, a condition (Condition 14) was imposed onto the appellant to not commence

operation as a sprayer/panel beater prior to issue of a Final Compliance Certificate by MEPA; which required clearance from the NCPD, Enemalta and the MRA prior to issue. In spite of the fact that the appellant is now presenting clearances by NCPD and Enemalta (and application for clearance by MRA), this is an Appeal against the decision to refuse the proposed development in view of breach to condition of previous permit; and is hence not the proper channel to present these documents.

### 1.2.3 Final Comments

In submission, the appellant is arguing that the site is situated in an industrial area and therefore the type of development proposed is perfectly compatible to the acceptable land-uses for the area. This statement is frivolous to the arguments at hand as the type of development is not being contested by the Authority. As reflected in the site history, development of an industrial nature has been approved on site in the past and the reasons for this refusal do not reflect in any manner that the type of development requested is not acceptable."

Illi l-Perit Micallef irrisponda ghat-tieni rapport tal-Awtorita' kif gej:

"1). Closed terrace at the back of the ground floor, Whilst the alterations and additions at back are included both in proposal and in approved plans, the removal of the back aluminium closure is also shown in yellow on the plans.

The EC could have requested that the closure be removed within a maximum of 6 months from decision, prior to issue of permit, as in fact contemplated in article 14(5) of LN 514/10.

Hence PA 2/96 is not justified for this part of the illegality.

### 2) Relocation of chimney flue

The chimney flue is shown relocated on plans for sanctioning.

Hence again PA 2/96 is not applicable for this part of the illegality as the flue is being sanctioned.

3) Non compliance with condition 14 of PA 5108/07.  
Applicant did not bring the panel beater into use after the approval of condition 14 in PA 5108/07. This is being said for the obvious reason that the panel beater was in use before the approval of PA 5108/07.

In fact PA 5108/07 consisted of the sanctioning of the change in use into a panel beater and indeed a fine was paid prior to issue of permit.

We would have brought the panel beater into use after the permit approval only if the permit was for a proposed change in use to a panel beater and not sanctioning.

In this case Condition 14 was not breached."

Illi permezz tat-tielet rapport taghha l-Awtorita' ressqet il-kummenti taghha, inter alia, kif gej:

"1. The appellant in his latest comments submitted in reply to the Authority's second statement to the Tribunal is arguing that:

(a) the EPC could have granted the permit on condition that the closed terrace at the back of the ground floor is removed within 6 months from the decision as permitted to do according to Regulation 14(5) of LN 514/10,

(b) the submitted plans indicate the sanctioning for the relocation of the chimney flue and thus the provisions of PA Circular 2/96 do not apply,

(c) the appellant did not bring the panel beater into use after the approval of PA 5108/07 since this application was for sanctioning an illegal use - i.e. a use that is already present. Thus condition 14 of PA 5108/07 is not valid because how could it require that the panel beater is brought into use only after the related conditions are



satisfied when the panel beater already existed as per proposal description (request for sanctioned).

2. The Authority has the following comments to make:

### 2.1 Regulation 14 of LN 514/10

The provision that all illegal development not indicated for sanctioning is removed prior to the submission of an application is grounded in Article 14(1) and 14(5) of LN 514/10 (the provisions superseding PA Circular 2/96 and 2/98).

Article 14(1) of LN 514/10 states that “[...] when existing development on a site is wholly or partly illegal, the Authority shall refuse a development application relating to new development on that site, unless the illegal development is included for sanctioning and the illegal development complies with current policies” (emphasis added).

Subsequently, Article 14(5) states that “Any illegal development not indicated for sanctioning is removed prior to the submission of the application [...]” (emphasis added).

Therefore the Authority cannot understand how the appellant asserts that the reason for refusal in relation to the closed terrace is not valid. It is true that the EPC can issue a permit subject that any illegality is removed within 6 months, but is clear that this proviso is (a) discretionary and (b) not intended for cases such as the one in this case where there are other and more significant illegalities.

The Authority also notes that Article 14(7) of LN514/10 (as amended by LN 116/12) actually permits the Authority, the EPC and the Tribunal to order the removal of any illegal development at any time during the processing of an application.

### 2.2 Chimney flue

The chimney flue is not connected to the extractor fan at the back of the panel beater/sprayer garage and therefore it does not function. This is clearly illegal and runs counter to Condition 16 of permit PA 5108/07.

Furthermore, the actual position, dimensions and specifications of the chimney stack/flue are different from that shown in the submitted drawings; albeit the chimney flue is indicated on the plans (but not section drawings) as for sanctioning. This means that the existing chimney is not being properly requested to be sanctioned and therefore the Authority was correct to refuse the application on the basis of PA Circular 2/96 (now superseded by Regulation 14 of LN 514/10) in its regard.

### 2.3 Validity of Condition 14 in PA 5108/07

The appellant's claim that Condition 14 of PA 5108/07 is not valid or cannot be contravened because it states that the activity had to be brought into use after compliance with certain conditions when the activity was already in place is preposterous. More importantly such claim is not grounded in established legislation or policy frame work.

Point 1. Whenever an activity is requested for sanctioning, the activity itself should cease during the course of the application, otherwise it would tantamount to a breach of enforcement and could thus be dismissed under the provisions of Article 86 (10) of Act X of 2010 – previously Article 52(7) of the Development Planning Act 1992.

Point 2. Therefore Condition 14 in PA 5108/07 is entirely valid because the Authority granted the permit on the assumption that the illegal activity ceased to operate during the course of the application. Otherwise it would have proceeded with dismissal of the application as explained in Point 1 above. Thus the Authority granted the permit on condition that the activity can be resumed when certain criteria are satisfied. This also means that the appellant (then the applicant) did not provide all the

necessary information during the processing of PA 5108/07.

Point 3. Further to Point 2, the appellant himself admitted that the current activity is illegal and in contravention to Condition 14 of PA 5108/07 when he did not appeal from Enforcement Notice ECF 661/09.

Point 4. The appellant is also admitting that the illegal activity has continued and is still currently taking place. This means that there is breach of enforcement and the application should be dismissed by the Tribunal."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba biex jigu sanzjonati addizzjonijiet u alterazzjonijiet fuq wara tas-sit u alterazzjonijiet fit-tieni livell u biex tinbena extension fuq wara tal-basement u l-ground floor u biex jitwahhal sign.

Fl-ewwel rapport taghha l-Awtorita' resqet oggezzjoni preliminari fis-sens li dan it-Tribunal m'ghandhux gurdizzjoni jisma u jiddeciedi dan l-appell peress li jjezistu illegalitajiet fuq is-sit li l-appellant mhux qed jitlob is-sanzjonar taghhom.

Dawn l-illegalitajiet jikkonsistu fis-segwenti:

- Terrazzin maghluq fuq wara tal-ground floor;
- Il-pozizzjoni u l-ispecifikazzjonijiet ta' cumnija mhux skond il-permess originali; u
- In-non compliance ma' kundizzjoni 14 tal-permess PA 5108/07.

Jirrizulta wkoll illi fir-rigward tat-tielet illegalita' imsemmija hawn fuq, is-sit huwa kopert minn enforcement notice, ECF661/09, peress li l-appellant beda jopera bhala panel beater/sprayer qabel ma' hareg il-Final Compliance Certificate li kellu johrog biss wara li l-clearances mill-Enemalta, MRA u l-KNPD jkunu hargu.

Skond il-PA Circular 2/96 (illum l-Art 14 (4) tal-LN 514/10), l-appellant kellu jew jirrizolvi dawn l-illegalitajiet qabel japplika jew jinkludi talba biex jissanzjona dawn l-illegalitajiet fl-applikazzjoni tieghu. Din l-applikazzjoni ghalhekk tikser l-Artiklu 14 (4) tal-LN 514/10.

Fis-seduta li saret fis-6 ta' Dicembru, 2012 gie rregistrat il-verbal segwenti:

“Il-partijiet jaqblu illi l-oggezzjonijiet tar-rifjut gew indirizzati billi saret minor amendment application, l-enforcement inghalaq u hareg il-compliance certificate.”

Ghalhekk, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell jirrizulta li l-mertu ta' dan l-appell illum gie ezawrit billi giet pprezentata minor amendment application li tissupera l-applikazzjoni PA 1284/09 mertu ta' dan l-appell, hareg il-Compliance Certificate u l-enforcement notice, ECF 661/09 gie maghluq. F'dawn ic-cirkostanzi t-Tribunal jastjeni milli jiehu konjizzjoni ulterjuri ta' dan l-appell billi l-mertu ta' dan l-appell gie ezawrit.

### **Ikkunsidrat**

L-aggravju tal-appellant hu s-segwenti:

1. It-Tribunal naqas li jiddeciedi l-mertu proprju tal-applikazzjoni billi l-verbal li ndirizza t-Tribunal biex wasal ghad-decizjoni tieghu kien jikkolpuxxi biss dik il-parti tal-applikazzjoni fejn l-Awtorita ma kinitx qed taqbel illi din l-applikazzjoni kienet tkopri l-illegalitajiet kollha. Fil-fatt sar il-minor amendment biex l-oggezzjoni in principju tal-Awtorita li jibda jinstema' l-mertu tal-applikazzjoni jigi sorvolat. Dan kien l-iskop tal-verbal li gie malintiz mit-Tribunal u kwindi naqas li jiddeciedi dak li kien obligat jiddeciedi.

Il-Qorti wara li rat l-atti tqis li dan hu kaz fejn nuqqas lampanti ta' kjarezza f'verbal jista' jwassal ghal pregudizzju ghal parti jew ohra. Hu minnu illi verbal tal-Qorti u b'somiljanza verbal ta' Tribunal b'poteri kwasi gudizjarju johloq vinkolu u rabta bejn il-partijiet u t-Tribunal gudikanti, u ma jistax jintuza kontra dak deciz in

konformita ma' tali verbal, pero hu logiku u gust li fejn il-verbal ma hux esplicitu f'dak dikjarat, it-Tribunal gudikanti jrid jimxi mal-parametri tieghu tenut kont tal-iskop tal-vertenza bejn il-partijiet.

F'dan il-kaz jirrizulta illi l-applikant kellu permess ezistenti PA 5108/07 ghal sprayer/panel beater and office space. Jirrizulta illi nhareg kontrih enforcement notice 661/09 billi gie allegat illi l-applikant kellu zvilupp li kien jikkonsisti f'zieda ta' verandah maghluqa fuq wara tal-ground floor, varjazzjoni fil-pozizzjoni tal-floor u ksur tal-kondizzjoni 14 (dwar clearance certificate). Wara dan l-enforcement notice saret l-applikazzjoni odjerna 'to sanction shutter, additions and alterations at back, alterations at first floor, proposed extension at back basement and ground floor and sign'.

L-Awtorita fid-decizjoni taghha rrifjutat milli tiehu konjizzjoni tal-applikazzjoni sakemm l-illegalitajiet ma jigux sanzjonati jew rimossi skond policy circulars 2/96 u 2/98. L-appell quddiem it-Tribunal maghmul mill-applikant kien precizament talba ghal revoka ta' tali decizjoni billi l-applikazzjoni kienet tinkludi sanzjonar u ghalhekk in konformita mal-ligi.

Saru diversi sottomissjonijiet quddiem it-Tribunal dwar jekk l-applikazzjoni kinitx tkopri sanzjonar tal-allegati illegalitajiet kollha li din il-Qorti mhix ser tidhol fihom pero jidher illi sal-verbal tas-6 ta' Dicembru 2012 quddiem it-Tribunal, l-Awtorita kienet ghadha ssostni l-pozizzjoni taghha in kwantu d-decizjoni taghha mertu tal-appell quddiem it-Tribunal. Dan jidher mit-tielet statement tal-Awtorita quddiem it-Tribunal tal-21 ta' Awwissu 2012.

Fis-6 ta' Dicembru 2012 sar verbal mill-partijiet fejn qablu li sar minor amendment application, l-enforcement inghalaq, u hareg il-compliance certificate u ghalhekk l-oggezzjonijiet tar-rifjut gew indirizzati.

Ma giex spjegat f'hiex kien jikkonsisti l-minor amendment application u tenut kont tal-applikazzjoni odjerna, is-sanctioning propost zgur ma hux wiehed de minimis

gustifikat b'minor amendment application. In oltre, kif ighid l-istess verbal dan kien biss application u ma kienx indikazzjoni x'gie solvut. Jinghad pero li l-enforcement inghalaq u nhareg compliance certificate. Anki jekk ghal grazzja tal-argument, wiehed kellu jinferixxi li ghalhekk l-Awtorita ma kinitx ghadha qed tinsisti fuq rimozzjoni ta' illegalitajiet qabel jigi deciz il-mertu tal-applikazzjoni in kwistjoni cioe PA 1284/09, ma jfissirx illi din l-applikazzjoni ma baqghetx vigenti. Hadd mill-partijiet ma ddikjara li l-mertu tal-applikazzjoni kien ezawrit jew li l-permess PA 5108/07 kif kolpit b'minor amendment application (mhux permess izda biss applikazzjoni) elimina l-bzonn ta' din l-applikazzjoni odjerna. L-appell ma giex cedut mill-appellant anzi skond l-istess verbal tas-6 ta' Dicembru 2012 l-appell gie differit ghal decizjoni.

It-Tribunal kellu jindirizza sew il-kwistjoni u jekk il-verbal ma hux car dwar dak li fil-fatt kien sehh bejn il-partijiet, messu rrikjama l-appell ghal kjarifika ta' x'iridu verament il-partijiet u mhux astjena milli jiehu konjizzjoni tal-appell billi qal biss li l-mertu gie ezawrit. Minn imkien ma jirrizulta li l-mertu hu ezawrit. L-aktar li jista' jinghad hu illi ma hemmx aktar enforcement u l-oggezzjoni tal-compliance kienet maghluqa. Din il-kwistjoni tal-compliance semmai indirizzat it-tielet raguni ghaliex inhareg l-enforcement notice.

Jekk it-Tribunal kellu ghal grazzja tal-argument jirrikonoxxi illi dan il-verbal kien jikkolpuxxi direttament ir-rifjut tal-Awtorita ghal applikazzjoni a bazi ta' dak deciz mill-Awtorita fit-2 ta' Frar 2011, li ta' lok ghal dan l-appell, dan seta' jfisser biss illi t-Tribunal kellu f'idejh atti ta' applikazzjoni li fil-mertu kien ghadu lanqas beda jigi kunsidrat mill-Awtorita. Ghalhekk l-obbligu tat-Tribunal wara d-debita certezza fuq dak li fil-fatt ivverbalizzaw il-partijiet fis-6 ta' Dicembru 2012, kellu jiddikjara li l-eccezzjoni preliminari tal-Awtorita quddiem it-Tribunal ma kinitx aktar tregi u jirrimetti lura l-atti lil Awtorita biex tipprocessa l-applikazzjoni fil-mertu u b'hekk f'kaz ta' ezitu negattiv ghall-applikant ikollu d-dritt ghal doppio esame quddiem it-Tribunal.

Kopja Informali ta' Sentenza

Dan in-nuqqas bl-ebda mod ma jista' jigi gustifikat u din il-Qorti qed tilqa' l-aggravju tal-appellant.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tannulla d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tat-30 ta' Lulju 2013, u in linea ma' dak deciz, terga' tirrimetti l-atti lura lit-Tribunal biex jerga' jikkonsidra l-appell mill-gdid. Spejjez ghall-Awtorita.

### **< Sentenza Finali >**

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