



MALTA

**TRIBUNAL GHAL TALBIET ZGHAR**

**GUDIKATUR DR.**

**GRAZIELLA BEZZINA**

Seduta tas-26 ta' Gunju, 2015

Talba Numru. 393/2009

**Lucia widow of Carmelo Schembri and her children**

**Angelo and Rita brother and sister Schembri**

**vs**

**Emerenziana Agius**

**The Tribunal,**

Having seen the Claim wherein the claimants asked that the defendant should be condemned to pay damages, after their liquidation, caused by her against the claimants when abusively and in breach of the law, around August of the year 2007, she tore down television aerial communications and internet wires belonging to the claimants as a result of which they had to pay for a TV service when the aerial service was sufficient for them as wireless transmission was free, and these damages also include the initial costs for re-communication for the service illegally severed and, this in the case of need, a prior declaration that the defendant

## Kopja Informali ta' Sentenza

alone was responsible for the tearing down of the said wires, and therefore of the service that up to that date they were receiving free of charge.

With costs, including those that the claimants had to make privately with their legal counsel, the defendant being referred to her oath.

For the purposes of competence, it is being declared that the claimed damages do not exceed the sum of three thousand, four hundred and ninety four euros (€3,494).

Having seen the reply by the defendant wherein she pleads that the claimants' request should be dismissed for the following reasons: (i) Whereas the action lacks claimants' juridical interest since they are not the owners of the said wires and services; (ii) Secondly, and without prejudice to the above, every wire removed by the respondent was effected with the claimants' consent, as shall be proved during the examination of the case; (iii) Whereas if the claimants passed any wires this was done illegally, clandestinely and without the consent of the respondent and thus qualifies as an illegal cause; (iv) Whereas on the merits, the claim is unfounded in fact and at law, and is exaggerated. With costs.

Having seen the minutes of the sitting of the 28th January, 2010 and the decree given during the sitting whereby the claimant was authorised to file an additional reply.

Having seen the defendant's additional statement of defence by means of which she pleaded lack of competence and jurisdiction *ratione materiae* since as it results from the sitting held before the said Tribunal, the principal merits are in connection with whether the claimant enjoys the right to pass wires over the exponents' property and also because the claim as adduced is for liquidation and not for payment of some amount which is certain, liquid and due as requested by Sections 3 (2), (3) and (5) of Chapter 380 and Section 741 (b) of Chapter 12 of the Laws of Malta for which reason the exponent should not be suited, with costs against the claimant.

Having seen the minutes of the sitting of the 18th March, 2010, where the case was adjourned for final pleadings on the plea regarding juridical interest and competence of the Tribunal to determine and decide the case.

## Kopja Informali ta' Sentenza

Having seen the claimants' application dated 1st December, 2011, wherein they requested that the additional statement of defence filed by the defendant should be removed from the records; Having seen the defendant's reply dated 15th December, 2011; Having seen the decree given by this Tribunal dated 24th January, 2012 wherein the claim by claimant was dismissed.

Having heard the testimony of the parties and having taken cognisance of the documents exhibited by them.

Having seen the defendant's note of submissions.

Having heard the pleadings.

Having seen the judgement delivered by this Tribunal, dated the 28th September, 2012, whereby the plea of lack of competence *ratione materiae* of this Tribunal, was rejected.

Having seen the minutes of the sitting of the 8th February, 2013, whereby plaintiff requested that proceedings are conducted in the English language; having seen the decree given during the sitting of the 15th February, 2013, wherein this request was acceded to.

Having heard the further testimony of the parties and of the witnesses produced by them.

Considers,

By means of the present lawsuit plaintiffs are claiming that they sustained damages, consisting in the disbursement and payment of expenses incurred by them to have the television connection restored after defendant allegedly severed the connection abusively. Plaintiffs declare that they had installed the service, and since they live on the ground floor, the connection was via cables and wires which had been installed along the length of the *opramorta* on the roof of the block of apartments in question. Whereas plaintiffs live on the groundfloor, defendant lives in the apartment on the second floor. Plaintiffs claim that differences arose between the parties, as a consequence of which, defendant severed the wire that connected plaintiffs' television set to the satellite dish on the roof, and that defendant did

## Kopja Informali ta' Sentenza

this by cutting the wire that was hanging down through the internal shaft. Plaintiff Rita Schembri declares that she witnessed this act being committed by defendant, or more specifically by defendant's son upon instructions given to him by defendant. By means of this lawsuit, plaintiff is claiming the sum of three hundred euros (€300), which represents payments effected to General Technologies Limited, the sum of one hundred euros (€100) paid to Stefan Bezzina for wiring costs (Dok.'IS5' a fol.46), as well as the sum of four hundred and forty-two euros (€442.00) for the installation of a CCTV unit in the shaft (Dok.'IS7' a fol.47), which plaintiffs claim had to be installed to avert the incidents from repeating themselves. Moreover, plaintiff exhibited copies of various other receipts relating to the installation and repair of wiring relating to the television service, which documents are marked as Dok.'X1' and 'X3' (a fol.171 and 173 of the acts).

By means of his testimony, Johann Cassar, the neighbour who lives in the same block of apartments as the parties to this lawsuit, declared that he gave access to plaintiff and the workmen, whose services she employed for the purposes of installing and repairing the satellite dish and related wiring and cabling on his airspace. He stated that there was a time when said workmen and technicians were coming to the property quite frequently, and although he was aware of differences between the parties to this lawsuit, and he was aware of heated and animated arguments between them, nonetheless, he did not intervene in these discussions and preferred to remain neutral in the matter.

By means of his testimony, Police Sergeant 1133 Joseph Borg declared that after complaints were filed by plaintiff at the Police Station where he was stationed, he had spoken to defendant, and the latter had told him that plaintiff did not have a right to pass any cables and wires from the common areas or the shaft of the block of apartments where parties resided, with the exception of the usual services, such as drainage and water pipes. The Police Officer declared that he spoke to a workman who was on site, who confirmed that whilst he was carrying out installation works, the cables were removed by the neighbour. He declared that the complaints that were filed by plaintiff related to wires and cables that had been severed, and although he had been shown the said cables, he was not in a position to give any further information. He exhibited a report compiled by him, dated 9th January, 2010 (Dok.'JB1', a fol.244 of the acts).

## Kopja Informali ta' Sentenza

By means of his testimony, Charles Farrugia declared that he had installed a satellite dish on the airspace of the block of apartments in question upon directions given to him by plaintiff. He was accompanied by an employee, Malcolm Mifsud. He declared that whilst installing the satellite dish, and when his employee threw down the connecting wire from the roof to the apartment on the ground floor through the shaft so that it could be connected to the decoder, the said wiring was cut and severed, and they could not complete the installation. In fact, he had to go to this property several times in order to carry out the required works. He also confirmed that he installed the CCTV in the shaft upon plaintiff's instructions; however, he did not enquire into why it was required. He also declared that eventually this matter was resolved by having the wires re-directed through another shaft, and they were installed behind some vertical drainpipes running through the shaft.

By means of her testimony defendant confirmed that she did, indeed, remove a wire, however, this wire had been disconnected by Melita plc, and therefore no longer served a purpose. She declared that she could ascertain that it was no longer in use because she could see that the wire had been disconnected from the electricity pole positioned at the front of the block; this was done in the year 2007. She declared that the wire was removed insofar as it was attached to parts of the washroom, *opramorta* and shaft that belong to her, and she removed them after repeatedly asking plaintiff to remove them, failing which, defendant decided to remove them herself. She declared that she did not remove any part of the wire that was hanging outside her bathroom window, but only the wire that was attached to various sections of the divided share of the roof owned by her. She declared that prior to this she had removed a telephone wire that was not being utilised.

Considers,

That it results very clearly from the acts of these proceedings that there are substantial differences between the parties to this lawsuit, resulting from poor neighbourly relations. Plaintiffs allege that defendant severed the wires which provide aerial and cable connection to their television set, whereas defendant contends that she only removed those wires and cables that were no longer in service. The disputes between parties arose in 2007, and it would seem that defendant was objecting to wires and cables being attached to various parts and structures on her airspace, whereas plaintiffs contend that they have a right to install such services. From the various copies of police reports exhibited in the acts of these proceedings

## Kopja Informali ta' Sentenza

(Dok. 'X9' at fol.182 *et seq.* of the acts), it results that differences between the parties started arising at the beginning of September, 2007, whereby the plaintiff declared that the wire connection had been severed, and the plaintiff was attributing this fact to abusive action by defendant. It results from the evidence produced in these proceedings that the services, such as satellite dish and water tank, serving plaintiffs' property were installed on the divided part of the airspace belonging to another neighbour, namely Johann Cassar. In spite of this, and in view of the fact that some cables were connected to parts of defendant's *opramorta* and washroom and descended through the internal shaft, the defendant requested that these should be removed, with special reference to those wires and cables which were no longer in service. In fact, defendant declared that she did remove some wires from her roof which she concluded were no longer in use; however, she contends that she did not sever any wires from her bathroom window, that were hanging down in the shaft.

The Tribunal notes that the various receipts for expenses incurred by plaintiffs are dated, if at all, in February 2009, whereas the receipts exhibited as Dok. 'X1' at fol.171 of the acts, issued by Damian Pace are dated August, 2004. It would seem that these latter receipts relate to the installation / connection of the television service. Those exhibited as Dok. 'IS4' at fol.44 and 45 of the acts are dated 18th February, 2009, and seem to relate to the installation of the satellite dish, whereas the receipt issued by Stefan Bezzina, marked as Dok. 'IS6' at fol.46 of the acts, and relating to wiring, is dated 22nd September 2009. The receipts exhibited at fol.47 of the acts, and marked as Dok. 'IS7' are both dated 9th January 2010, and whereas one of the receipts relates to the installation of a CCTV unit, the other receipt relates to repairs carried out to the cable and antenna. Another receipt relating to the CCTV unit is dated 11th January 2010 and is marked as Dok. 'X1', and is at fol.224 of the acts.

The Tribunal notes that the evidence in these proceedings, especially the evidence submitted by plaintiffs, was not filed in a coherent, sequential manner – as results from the various documents scattered throughout the acts, apart from the several duplicates that are found in the same acts – and this is primarily a consequence of the fact that plaintiffs chose to represent themselves in these proceedings. Apart from that, the Tribunal could not fail to note and detect the animosity between the parties, which permeated these proceedings. In spite of this, the Tribunal's obligation towards the parties is to determine whether plaintiffs' claims, as duly contested by defendant, resulted from the evidence tendered in these proceedings.

## Kopja Informali ta' Sentenza

Considers,

That from the acts it results that the differences between parties arose in August 2008; the television connection to plaintiffs' apartment had been installed in 2004; plaintiffs experienced difficulties with the connection and service in August, 2007, whereupon they requested the intervention of Police, and police reports were duly filed and proceedings were instituted; in February, 2009 plaintiffs installed a satellite dish, however, the connection between the dish and television was executed in September, 2009. Subsequent to the installation of the satellite dish, plaintiffs attempted to have the aerial connected again to their television set, without success as defendant allegedly severed the connection again. In the meantime, the present lawsuit was filed on the 25th of May, 2009.

That from a reading of the statement of claim, it results that plaintiffs' claim relates to damages sustained by plaintiffs as a consequence of the television connection having been severed. The Tribunal is sufficiently convinced that the defendant did sever some wires running through the shaft, and although the defendant alleged that she had only removed those wires which were no longer in service, nonetheless the Tribunal is of the opinion that, on a balance of probability, the defendant severed other wires hanging alongside her bathroom window inside the internal shaft, and not only those that were not in service. This conclusion is being reached on the basis of what was declared under oath by one of the workers, Charles Farrugia, who was carrying out the installation accompanied by an employee when one such incident took place.

That in spite of this conclusion, and on the basis of evidence produced by plaintiffs, the Tribunal is not in a position to liquidate damages sustained by plaintiff, because from the evidence produced by them, it does not result sufficiently clearly what expenses were incurred by them as additional costs as a consequence of defendant's actions. This is being stated in view of the fact that it would seem that plaintiffs were utilising On-vol service, but they were already experiencing difficulties with this service prior to the incidents that arose with defendant, and intended to remove this service. The Tribunal reiterates what has been stated previously, that in spite of the fact that various receipts were exhibited by plaintiffs, it does not result which of these expenses were **additional** costs and expenses incurred by plaintiffs as a consequence of defendant's actions; therefore, and in the absence of clear

## Kopja Informali ta' Sentenza

proof, the Tribunal cannot reach such conclusions of its own initiative, and neither has it been sufficiently proven that all expenses incurred by plaintiffs were a direct consequence of any actions performed by defendant. Moreover, with reference to the CCTV unit, on the basis of the receipts exhibited in these acts it results that this was installed **after** the lawsuit was filed, and therefore, cannot be taken into account for the purposes of liquidation of damages allegedly incurred by plaintiffs pursuant to defendant's actions in August, 2007, apart from the fact that the Tribunal considers such installation to be a rather extreme measure taken by plaintiffs, especially in view of the fact that the wires and cables were eventually clipped onto the back part of the water and drainage pipes running through the shaft, and therefore out of sight and reach, which is were they should have been connected at the outset in order to avert all these outrageous differences between the parties to this lawsuit.

In view of these circumstances, and bearing in mind that the impetus that lead to this lawsuit being filed was excessive enmity between the parties, and not a solid, founded claim for damages sustained by plaintiffs, the Tribunal shall proceed to reject plaintiffs' claim.

Now therefore, whilst the Tribunal deems plaintiffs' claim for damages not sufficiently proven, it is hereby rejecting the claim advanced by plaintiffs against defendant.

Either party shall bear its own costs.

**< Sentenza Finali >**

-----TMIEM-----