



FIRST HALL, CIVIL COURT

JUDGE

HON. JOSEPH R. MICALLEF LL.D.

Case No. 67

Applic. No. 511/13JRM

Sadek Mussa ABDALLA

VS

BORD TAL-APPELLI DWAR IR-RIFUGJATI u l-Avukat Ġenerali

The Court:

This is an order in terms of article 229(2)(e) of the Code of Organisation and Civil Procedure following a request made by counsel to respondents during the hearing of the 9th of December, 2015¹, that this court stays proceedings in the light of an appeal raised by applicant Abdalla from a decision by the Refugee Commission dated November 7th, 2015², which rejected a subsequent application filed by plaintiff for recognition for international protection under the Refugees Act (Chap 420 of the Laws of Malta);

¹ Pg 326 of the records

² Docs "KK" and "KK2", at pp. 323 – 5 of the records

This request was opposed to by plaintiff's learned counsel who submitted that the hearing of the lawsuit was to proceed irrespective of the appeal lodged by his client, which appeal is acknowledged and agreed to be still pending;

Having considered:

That in this lawsuit, plaintiff has raised the following requests: (a) (i) he has a right to appeal from a decision which rejected his claim for subsidiary protection status as a form of internationally-recognised protection, and that (ii) either the decision handed down by the defendant Refugees Appeals Board on November 23rd., 2012, from a decision by the Refugee Commissioner in his regard denying him asylum was the result of a wrong interpretation of the law, or (iii) that Maltese law is not in conformity with the requirements of article 39(1) of Council Directive 2005/85/CE of December 1st., 2005 regarding minimum procedural standards in Member States for granting and withdrawing refugee status; (b) declare that, in the present case, the defendant Board failed to observe the principles of natural justice and procedural obligations when determining his case for the purposes of regulation 9(2) of the Procedural Standards in Examining Applications for Refugee Status Regulations 2008 (Legal Notice 243 of 2008; S.L. 420.07) and generally in terms of the principles upheld in the Maltese legal system; (c) consequently, quash the decision handed down by the defendant Board as afore-said; and (d) otherwise remit the matter to the defendant Board to reconsider the merits of his application and otherwise to grant him any other remedy which the Court may deem expedient to grant in the circumstances;

That during the hearing of this case, on or around the first half of 2015³, plaintiff appears to have filed a subsequent application to the Refugee Commission to re-open his case;

That the Refugee Commission reconsidered his case and on November 7th, 2015, rejected his application. Plaintiff was duly served with a copy of the decision and informed of his right to appeal;

That plaintiff has availed himself of the right to appeal and lodged his appeal from the afore-said decision. The appeal is pending;

³ *Vide* Dok "NMZ7" at p 320 of the records and affidavit of Nathalie Massa Żerafa at p 295 of the records

That it is established practice that the Court is empowered in its discretion⁴ to grant a stay of proceedings in exceptional circumstances⁵. Such an order is of an interlocutory nature⁶ and can, therefore, in terms of law⁷, be revoked or rescinded at any stage if circumstances so warrant;

That an order to stay proceedings is deemed to be an extraordinary measure which suspends the hearing of a case, against the norm that cases appointed for hearing ought to be heard without interruption⁸. It is also firmly established that a stay of proceedings be granted when the supervening circumstance (another pending lawsuit or some other proceeding) relates to an issue whose solution affects the merit or a substantial part thereof of the lawsuit in which the request for stay of proceedings is raised⁹;

That in no case would a stay of proceedings be granted if it were to be shown that such a grant would cause prejudice to the other party from the prolonged hearing of the case¹⁰;

That the fact that plaintiff has lodged an appeal from the Refugee Commission's decision is, in the Court's considered view, a circumstance which would directly impinge on some of his requests as outlined above and it would be imprudent for the Court to proceed with the hearing of the case before that appeal is heard and decided. It is a circumstance which shows that plaintiff is seeking a remedy which he is expressly enjoining this Court to grant him through his first request in this lawsuit;

That the granting of a stay in proceedings in this case can be of no discernible prejudice to the plaintiff in the current situation. And in any case the outcome of the appeal lodged by him could only help to clarify his status, whatever the outcome of the appeal, in such a manner that this Court may be in a better position to weigh and determine any further interest which he might have in his present lawsuit once the appeal has been determined;

⁴ Comm. App. 26.3.1984 in the case *Dr Leslie Grech noe vs Dr Emanuel Buttigieg et noe* (unpublished)

⁵ Civ. App. 28.10.1935 in the case *Mifsud noe vs Abela et* (Vol: XXIX.i.1295)

⁶ Civ. App 22.5.1989 in the case *Mallia et vs Beżżina et* (Vol: LXXXI.iii.83)

⁷ Art. 230 of Chap 12

⁸ Civ. App. 4.11.1957 in the case *Cardona vs Pisani* (Vol: XLI.i.547)

⁹ Civ. App. 6.10.1999 in the case *Grima et vs Frendo et* (Vol: LXXXIII.ii.393)

¹⁰ F.H. JZM 25.3.2013 in the case *Amber Properties Ltd vs Central Holidays (Travel Agents & Organisers) Ltd et (in parte)*

For these reasons, the Court decides to **uphold the request to stay proceedings** made by respondents until such time as the appeal lodged by plaintiff has been decided;

The Court will make the necessary orders for the continuation of this case once either party informs it of the outcome of the appeal proceedings.

Read and delivered this day, the 28th of January, 2016.

**Joseph R. Micallef LL.D.,
Judge**

28th January 2016

**Carmen Scicluna
Deputy Registrar**

28th January 2016