Qorti ta' l-Appell
(Kompetenza Inferjuri)

Imhallef Anthony Ellul

Appell Civili numru:- 152/2009AE

Perit Conrad Thake

vs

Anna Zarb

Il-Gimgha, 5 ta' Frar 2016.

Permezz ta' Avviz prezentat fl-24 t'April 2009 ir-rikorrent talab lill-Qorti tal-Magistrati (Malta) sabiex tikkundanna lill-intimata thallsu somma a tenur tal-artikolu 28 ta' l-Att dwar l-Istampa (Kap 248 tal-Ligijiet ta' Malta) bhala danni u riparazzjoni tal-malafama li huwa sofra meta f'ittra mibghuta minnha lill-*Ethics Committee* tal-Kamra tal-Periti u kkupjata lill-Prim Ministru u lis-*Shadow Minister* ghall-Ambjent, hija ghamlet allegazzjonijiet foloz u malafamanti fil-konfront tieghu bil-ghan li jtellfulu jew inaqqsulu r-reputazzjoni tieghu u li ghandhom bhala skop li joffendulu l-unur u l-fama tieghu u li jesponuh ghar-redikolu u disprezz tal-pubbliku. Bil-kontenut tal-ittra msemmija l-intimata nsinwat li r-rikorrent kien qieghed jaghmel atti lleciti kontra l-etika professjonali u l-procedura fit-twettiq tad-dmir tieghu bhala membru tal-Bord ta' l-Appell dwar l-Ippjanar, meta dan kien kompletament inveritier. Nonostante dan, hija xorta wahda ghazlet li tghidhom. Bl-ispejjez u bl-imghaxijiet legali.

Fir-risposta taghha[1] l-intimata eccepiet illi hija ma kinitx passibbli ghall-azzjoni ta' libell civili peress li l-ittra miktuba minnha kienet tammonta ghal rapport legittimu lill-awtoritajiet kompetenti kif ukoll li l-istess ittra kienet koperta mill-privilegg jew kwazi-privilegg. Ghalhekk hija kellha tigi liberata mill-osservanza tal-gudizzju. Subordinament hija rrespingiet il-pretensjonijiet tar-rikorrent fil-mertu u rribattiet li l-ittra in kwistjoni, datata 7 ta' Marzu 2009, la kienet libelluza u lanqas malafamanti fil-konfront tar-rikorrent peress li kienet tikkontjeni biss fatti veri /kritika li tammonta ghal *fair comment* dwar sitwazzjoni partikolari li kellha titqies bhala kumment accettabbli f'socjeta' demokratika kemm a tenur tal-Ligijiet tal-Istampa kif ukoll skont il-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem. Fi kwalunkwe kaz l-*animus iniuriandi* huwa assenti.

Il-fatti saljenti li jirrizultaw mill-atti tal-kaz huma:-

[1] Fol 11.

i. Ir-rikorrent hu perit li ghandu l-prattika privata. Kien ukoll membru tal-Bord tal-Appelli dwar l-Ippjanar, liema kariga okkupa ghal diversi snin;
ii. Ghan-nom ta' klijenta tieghu kien applika mal-MEPA ghall-permess biex isiru alterazzjonijiet f'residenza. L-applikazzjoni giet approvata mill-Kummissjoni ghall-Kontoll tal-Izvilupp.
iii. L-intimata Zarb, li kienet gara tal-klijenta tal-attur, appellat quddiem il-Bord tal-Appell dwar l-Ippjanar. L-appell gie appuntat ghas-27 ta' Frar 2009.
iv. Irrizulta li r-rikorrent kien membru tal-Bord li kellu jisma' l-appell. Ir-rikorrent jixhed[2] li kif sar jaf, kien informa kemm lill-klijenta tieghu kif ukoll lis-Segretarju tal-Bord li huwa kellu kunflitt ta' nteress u li ghalhekk kien ser jastjeni mis-smiegh tal-kaz. Is-Segretarju nfurmah li peress li d-data tas-smiegh tal-kaz kienet diga' giet pubblikata fil-*website* relattiva, kellu jqajjem il-kwistjoni mac-*Chairman* waqt is-seduta. Ir-rikorrent insista li huwa hekk ghamel tant li waqt l-ewwel seduta ma sar xejn hlief verbal li ndika li kien hemm lok li l-kaz jinstema' minn Bord diversament kompost u l-appell gie differit.
v. Min-naha taghha l-intimata xehdet[3] li meta attendiet ghal din is-seduta kien l-avukat taghha li nfurmaha bil-prezenza tal-perit Thake fuq il-Bord u li kien l-istess avukat, u mhux il-perit, li verbalment qajjem il-kwistjoni tal-kunflitt ta' nteress. Skond l-intimata nhela hafna hin ghax l-appell kellu jigi differit ghal darb'ohra. Originarjament gie differit ghal Gunju izda fuq talba taghha l-appell gie rikjamat ghal April.
vi. In segwitu ghal dak li sehh waqt is-seduta ta' Frar quddiem il-Bord tal-Appelli, l-intimata baghtet ittra lill-*Ethics Committee* tal-Kamra tal-Periti u kkupjata lill-Prim Ministru u lis-*Shadow Minister* ghall-Ambjent (datata 7 ta' Marzu 2009) fejn ilmentat mhux biss dwar il-mod kif hassitha li giet trattata izda anke dwar il-komportament tar-rikorrent ghax dehrilha li huwa kien qieghed jabbuza bil-pozizzjoni tieghu ghall-gwadann tal-klijenti privati tieghu.
vii. B'decizjoni datata 10 ta' Jannar 2011, dan il-Kumitat sab li l-Perit Thake agixxa korrettement u ddikjara li ma kienx hemm kaz kontrih. L-ilment tal-intimata gie michud.
viii. Permezz ta' ittra datata 10 t'April 2011[4] ndirizzata lill-Kumitat, l-intimata rribattiet il-kunsiderazzjonijiet u l-konkluzjonijiet tieghu.

B'sentenza datata 15 t'Ottubru 2012, il-Qorti tal-Magistrati cahdet l-eccezzjonijiet kollha tal-intimata u laqghet it-talbiet kollha tar-rikorrent kif mitluba. Hija kkundannat lill-intimata thallsu s-somma ta' elf u hames mitt Ewro (€1,500) a tenur

[2] Affidavit a Fol 16 u xhieda viva voce waqt is-seduta tas-27 t'Ottbru 2010 a fol 45 et seq
[3] Xhieda viva voce waqt is-seduta tas-27 t'Ottubru 2010 a fol 48 et seq u affidavit a fol 52 et seq
[4] Fol 129

tal-Artikolu 28 tal-Kap 248. Spejjez a karigu tal-intimata wara li osservat:

"Il-Qorti, madankollu, ma tistax tifhem ir-raguni ghaliex l-intimata ghazlet illi taghmel rapport lill-Ethics Committee dwar l-agir tal-perit Conrad Thake u, aktar u aktar, xandret tali rapport mal-Prim'Ministru kif ukoll mal-Membru tal-Parlament tal-Opposizzjoni li tahtu taqa' l-MEPA.

Illi huwa car li l-intenzjoni tal-intimata ma kinitx dik illi tilmenta dwar id-dewmien fil-proceduri quddiem il-MEPA u l-hrug tal-permess illi hija kienet qed tikkontesta, izda hija riedet timmalafama u tattakka l-integrita professjonali u thammgu mal-Awtoritajiet b'mod illi taghmillu hsara. Dana jidher car daqs il-kristall meta hija tghid:-

'Mr C Thake should not use his position he was trusted with to gain advantage for his client'.

Illi huwa cara li tali kliem kienu indikat unikament sabiex timmalafam lir-rikorrent, u ghalhekk tali kliem ghandhom jitqiesu bhala libelluzi".

L-intimata Anna Zarb appellat minn din is-sentenza u r-rikorrent wiegeb. Fil-mori tal-proceduri fl-appell l-intimata giet awtorizzata mill-Qorti tesebixxi kopja ta' ittra mibghuta lilha mill-Bord ta' l-Appelli Dwar l-Ippjanar fl-24 ta' Marzu 2009 b'avviz li d-data tas-smiegh tal-appell quddiem Bord diversament kompost kienet giet iffissata ghat-8 t'April 2009[5]. Waqt is-seduta tas-7 t'April 2014[6] dehru l-partijiet assistiti mid-difensuri taghhom li ghamlu sottomissjonijiet orali.

Il-Qorti rat it-traskrizzjoni tat-trattazzjoni u l-bqija tal-atti.

L-aggravju tal-intimata appellanti.

L-appellanti lmentat illi minkejja li l-ewwel Qorti accettat l-applikazzjoni tal-kuncett tal-kwazi-privilegg kif adottat mill-Qrati Maltin, l-istess Qorti ma skagunathiex mir-responsabbilta' ghax attribwiet il-*malafede* fil-kummenti taghha fl-ittra tas-7 ta' Marzu 2009 ndirizzata lill-*Ethics Committee* tal-Kamra tal-Periti. Hija tinsisti li ezami tal-atti u l-provi mressqa minn lenti komprensiva kellu jwassal ghall-konkluzjoni opposta da parti tal-istess Qorti.

Huwa pacifiku, kif tajjeb qalet l-ewwel Qorti, li l-Qrati taghna laqghu u applikaw il-

[5] Fol 38.
[6] Fol 44.

kuncett ingliz tal-"privilegg kwalifikat"[7] a favur min ikun ghamel xi kummenti altrimenti meqjusa difamatorji jew libelluzi. Fis-sentenza "**Angelo Spiteri vs Joseph Bugeja**" deciza mill-Prim Awla tal-Qorti Civili fl-1 ta' Ottubru 2002[8], kwotata kemm mill-ewwel Qorti u anke mill-partijiet, kien intqal hekk:

"Illi hemm diversi okkazzjonijiet fejn l-istess kwazi privilegg jista' jigi eccepiet, pero' dan bl-ebda mod ma jfisser li tali okkazzjonijiet jistghu jigu delineati b'mod preciz ghaliex kollox jiddependi fuq il-kaz partikolari, pero' dan certament jinkorpora incidenti fejn jsiru dikjarazzjonijiet meta wiehed ikun obbligat li jaghmel dan f'termini kemm privati u kemm pubblici, bhal meta persuna f'kariga jaghmel rapport kontra impjegat anke ta' azjenda privata, jew isir rapport minn individwu lil xi awtorita' kompetenti bhal per ezempju lill-Pulizija, jew lil xi awtorita' ohra sabiex l-istess kaz, ilment, allegazzjoni, anke di fronte ghall-persuna jigi nvestigat.

Illi dan l-obbligu jew necessita' li jsir rapport ta' din in-natura jista' ma jkunx legali izda obbligu morali jista' jkun bizzejjed.....

Illi l-pre-suppost ghall-applikazzjoni ta' dan il-principju huwa li l-obbligu tal-persuna li taghmel l-istess kommunikazzjoni irid jezisti kontemporanjament mal-interess tal-persuna li lejha l-istess kommunikazzjoni tkun diretta. Hekk kemm l-obbligu tal-persuna li taghmel l-istess dikjarazzjoni u l-interess tal-persuna li tircievi l-istess dikjarazzjoni jridu jkunu jezistu bhala fatt, u d-determinazzjoni tal-istess hija fiha nfisha kwistjoni ta' fatt.....

Illi l-istess interess irid ikun legittimu u jrid jezisti dak li jissejjah 'reciprocity of interest" "in the party to whom the communication is made as well as in the person making it", u taht dan il-kategorija jaqghu kommunikazzjonijiet li jsiru 'in the discharge of a duty" bhal per ezempju character references ta' impjegati u ohrajn, rapporti dwar temm ta' impjieg, rapporti ta' allegati abbuzi ta' persuni f'hi sfera partikolari ta' kummerc lill Awtoritajiet kompetenti, u hafna okkazjonijiet ohra, dment li l-istess dikjarazzjonijiet jsiru in bona fede.....

Illi f'dan il-kaz l-azzjoni ta' libell ma tistax tirnexxi jekk ma jigix ippruvat li l-konvenut agixxa in mala fede bl-intenzjoni specifika li jimmalafama lil dak li jkun."

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[7] Fir-risposta tieghu ghall-appell, l-appellat ghadu qieghed jinsisti li dan il-kuncett mhuwhiex applikabbli ghall-kaz odjern izda ma ressaq ebda appell principali jew incidentali dwar dan.

[8] Cit Nru 2149/1997. Dan il-kuncett tal-"privilegg kwalifikat" kompla jigi applikat mill-Qrati anke f'sentenzi sussegwenti: **AIC William Carbonaro vs AIC Raymond Vassallo** (Rik 96/2009) deciza mill-Qorti tal-Magistrati (Malta), 15 t'Ottubru 2012; **Lawrence Muscat vs Herman John Thornton pro et noe** (Rik 191/1994) deciza mill-Prim'Awla, 29 ta' Marzu 2007.

Mis-sentenza tal-ewwel qorti hu evidenti li accettat bhala li japplika fil-qasam guridiku Malti, il-kuncett ta' privilegg kwalifikat kif kunsidrat mill-Qrati Inglizi. Fil-fatt osservat: *"…. liema kuncett dina l-Qorti gia kellha l-opportunita illi timplimenta f'sentenzi ohra"*. F'dan ir-rigward fis-sentenza ta' din il-qorti[9] fil-kawza **Piju Camilleri vs Carmel Attard et**, deciza fl-10 ta' Novembru 2004:-

*"Jispjega l-**Gatley** fl-opra omonima tieghu "**On Libel and Slander**" (Seventh Edition, para. 441 et seq.) illi:-*

(1) "There are occasions upon which, on grounds of public policy and convenience, a person may, without incurring legal libiality, make statements about another which are defamatory and in fact untrue ... These occasions are called occasions of qualified privilege." (para. 441)

(2) "Statements published on an occasion of qualified privilege are protected for the common convenience and welfare of society ... In such cases no matter how harsh, hasty, untrue, or libellous the publication would be but for the circumstances, the law declares it privileged because the amount of public inconvenience from the restriction of freedom of speech or writing would far out-balance that arising from the infliction of a private injury" (para. 443);

(3) "The principle on which these cases are founded is a universal one, that the public convenience is to be preferred to private interests and that communications which the interests of society require to be unfettered may freely be made by persons acting honestly without actual malice notwithstanding that they involve relevant comments condemnatory of individuals" (para. 443)".

Kuncett li gie rikonoxxut fil-*common law* Ingliza:-

"The common law has long recognised the importance of encouraging statements made from a social or moral duty. It accords them a privilege from action for defamation, on the condition that they are made honestly. However unfounded the allegations made on a protected occasion may subsequently prove, they are privileged unless made with malice. Communications made out of social or moral duty – reference between employers, for example, or allegations about criminal conduct made to the police – are made on privileged occasions. So, too, are communications made to further a common interest – a circular published to shareholders in a company, or to fellow members of a trade union, or an inter-office memorandum. A communication is protected if it is made to a person who has a duty to receive and act upon it: thus complaints to higher authority are privileged whenever the authority complained to is in a position to investigate or discipline or supervise" (*Media Law*, G. Robertson & A. Nicol, Fifth Edition, Pengunin Books (2008) pagna 157).

Fl-ittra l-appellanti kitbet:

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[9] Imhallef P. Sciberras.

"Dear Sir,

May we as you to look into the following matter, which we consider is an abuse of trust by members of your profession ? We would appreciate it if you take the necessary steps to see that the public is treated fairly and stop what we consider fiddling behind the scene…..

As soon as we entered the board room our lawyer informed us that her architect Mr Conrad Thake who made the application for Permit no. 3251/08 was sitting as one of the Board members.

We were betrayed. There is no way anyone can convince us that Mr Thake did not know that one of the case was his application. If they did not take a look at the list of the Appeals that were to be heard on that day, his client Ms C Bugeja informed him as he attended alone of course knowing he was there. We didn't know who Mr C. Thake was so if it wasn't for our lawyer the Appeal could have been carried out as we were unaware of his presence on the board.

Deoesn't this create a conflict of interest when architects are on Boards while carrying out private practices ? We expect more professionalism from people who are trusted by the Prime Minister with such appointments. Mr C. Thake should have been the one to ask for this Appeal to be heard by another board not our lawyer.

All we want is to be treated fairly, reasonably and equitably. Mr C Thake should not use the position he was trusted with to gain advantage for his client".

Fil-fehma tal-qorti fir-rapport li ghamlet l-intimat, hemm malizja. Hi allegat li kien fuq intervent tal-avukat difensur taghha li l-appell ma nstemax mill-Bord kif kien kompost, u li l-perit Thake messu minn jeddu ha l-inizjattiva u talab li l-appell jinstema' minn Bord iehor. Iddikjarat li kieku ma kienx ghall-intervent tal-avukat li kien qieghed jassistiha, *"…. the Appeal could have carried out as we were unaware of his presence on the board"*. Jirrizulta li l-intimata kienet prezenti ghal dik is-seduta u allura taf x'gara. L-intimata pingiet xenarju fejn ir-rikorrent baqa' passiv u kien grazzi ghall-oggezzjoni tal-avukat li kien qieghed jassistiha li l-perit Thake rtira milli jisma' l-appell[10]. L-allegazzjonijiet tal-intimata li kien hemm *"fiddling behind the scene"* u li *"Mr C. Thake should not use the position he was trusted with to gain advantage for his client"*, huma mibnija madwar 'il fatti kif rapportati minnha fl-ittra oggett tal-kawza. Pero' l-provi juri xenarju differenti minn dak li rrakkontat l-appellanti. F'dan ir-rigward issir riferenza ghall-affidavit tal-perit Saviour Borg u l-avukat Dr Ian Spiteri Bailey (fol. 17 u 18), membri tal-istess Bord, li kkonfermaw li kif issejjah l-appell tal-intimata, il-perit Thake mill-ewwel informa lic-Chairman li kellu nteress professjonali fl-appell tal-intimata peress li kien il-perit tal-applikant tal-permess numru PA03251/08, u ghalhekk talab li jastjeni milli jisma' dak l-appell. F'dan il-kuntest hu wkoll rilevanti l-affidavit ta' Charles Schembri, segretarju tal-

[10] Fl-affidavit tat l-istess verzjoni: *"Kif bdiet is-seduta kien l-avukat tieghi biss li tkellem u gibed l-attenzjoni li s-sur Conrad Thake kien fost il-membri tal-Bord u li kien l-istess perit tal-permess ikkontestat"* (fol. 53).

Planning Appeals Board, li xehed (fol. 19) li granet qabel is-seduta, il-perit Thake *"….. infurmani verbalment li peress li hu kien il-perit ta' Carmen Rita Bugeja, l-applikanta tal-permess PA 03251/08, suggett ta' l-appell PAB 280/08 intavolat minn Anna Zarb, huwa kellu nteress professjonali u kien sejjer jitlob li jastjeni mill-kaz in kwistjoni"*. Verzjoni li tikkorabora dak li xehedu l-membri l-ohra tal-Bord tal-Appell li lilu gie assenjat l-appell mill-permess PA 03251/08. Ic-Chairman stess ta' dak il-Bord xehed (affidavit a fol. 20) li ftit minuti qabel bdiet is-seduta tas-27 ta' Frar 2009, il-perit Thake kien infurmah li kien involut fl-appell dwar il-permess in kwistjoni u ghalhekk kien ser jitlob li jastjeni mill-Bord li kellu jisma' l-appell. Persuna li taghmel rapport bhal dak li ghamlet l-intimata, ghandha d-dmir li tirrapporta l-verita' u mhux tpingi xenarju differenti minn dak li fil-fatt gara. Ir-rapport li ghamlet l-intimata lil Ethics Committee kien mibni fuq fatti li kienet taf li ma kienux veri.

Fir-rikors tal-appell, l-appellanti qalet:-

"4. Huwa car illi fil-mument li fih kitbet l-ittra, il-konvenuta kienet temmen li 'l fatti hemm kontenuti kienu veri. Fil-fatt ma kinitx taf ….. lanqas li l-Perit Thake kien fil-bidu tas-seduta talab ir-rikuza tieghu stess (ghal darb'ohra skond dak illi ntqal fil-kawz). Ma kinitx taf ghaliex dawn 'il fatti la ma ntqalu lilha u lanqas lill-avukat taghha dak iz-zmien li hija kitbet l-ittra, imma saret taf bihom biss waqt din il-kawza" (fol. 12).

Hu veru li tista' tghid li dan hu ripetizzjoni ta' dak li qalet fl-ahhar parti tal-affidavit taghha[11]. Verzjoni li fil-fehma tal-qorti m'hijiex ippruvata. Il-qorti ma tifhimx kif l-appellanti argumentat li ma kinitx taf bil-fatt li kien il-perit Thake li waqt is-seduta ddikjara li kellu nteress personali fl-appell u kien ser jastjeni, meta hi stess xehedet li attendiet ghas-seduta u taf x'sar fil-bidu tas-seduta. Sahansitra:-

- Fl-affidavit qalet: *"Kif bdiet is-seduta kien l-avukat tieghi biss li tkellem u gibed l-attenzjoni li s-sur Conrad Thake kien fost il-membri tal-Bord u li kien l-istess perit tal-permess ikkontestat"*.
- *Viva voce* qalet[12]:- *"Meta dhalna l-avukat tieghi gibed l-attenzjoni ghall-fatt illi l-perit tal-gara kien membru fuq il-Bord u ghalhekk talab is-sospensjoni tal-Bord u mbaghad ic-Chairman tal-Bord iddifferixxa l-procedura"*.
- F'ittra datata 4 ta' Gunju 2009 li l-intimata baghtet lill-Kumitat tal-Etika tal-Kamra tal-Periti u Inginera, regghet qalet li fis-seduta tas-27 ta' Frar 2009, *"My lawyer drew the attention of the chairman to this who immediately re-scheduled the appeal to the 3rd June 2009 to be heard by another board"*. Hawn ukoll qeghda terga' tinsinwa li kien grazzi ghall-intervent tal-avukat taghha li l-perit Thake astjena. Fatt li m'huwiex konfermat mill-provi.

Mill-provi li tressqu ma jirrizultax li kien minhabba l-intervent tad-difensur tal-appellanti li l-appellat ma baqax jippresjedi fl-appell li fih kienet involuta l-appellanti.

[11] *"Jiena meta ktibt dik l-ittra naturalment ma kontx naf dak illi issa sirt naf li qeghdin ighidu l-perit Thake u x-xhieda tieghu. Jekk tassew sar dak li huma qeghdin ighidu illi sehh, dana sar mhux quddiemna u jiena ma kelli ebda lok li nkun naf"*.
[12] Seduta tas-27 ta' Ottubru 2010 (fol. 48-49).

'Il fatti ma grewx kif irrakkontat l-appellanti. Ir-rikorrent stess xehed: *"Li meta rega' ssejjah il-kaz u meta missu t-turn tieghu, jiena ergajt ghollejt idejja u ergajt infurmajt lic-Chairman u lin-nies prezenti li kelli l-kunflitt ta' interess in kwistjoni"*. L-appellata tat x'tifehm li r-rikorrent baqa' passiv, meta dan ma kienx il-kaz. Ghalhekk ma jistax ikun li ma kinitx taf x'gara fis-seduta tas-27 ta' Frar 2009. Minkejja li kienet taf x'gara, fl-ittra tas-7 ta' Marzu 2009 rrakkontat fatti li kienet taf li m'humiex minnhom. Fatti li kienu l-bazi ghad-dikjarazzjonijiet li ghamlet fl-ittra tas-7 ta' Marzu 2009:- *"…. stop what we consider fiddling behind the scene"*; *"We expect more professionalism from people who are trusted by the Prime Minister with such appointments. Mr C. Thake should have been the one to ask for this Appeal to be heard by another board not our lawyer"*; u *"Mr C Thake should not use the position he was trusted with to gain advantage for his client"*;

Il-konkluzjoni hi li l-intimata kienet in *mala fede* meta rraportat fatti li kienet taf li m'humiex minnhom, u li fuqhom bniet l-akkuzi fil-konfront tar-rikorrent. Fic-cirkostanzi ma tistax tirnexxi d-difiza tal-privilegg kwalifikat.

Is-sustanza tal-mertu tal-ittra huwa evidentement dirett lejn l-agir u l-imgieba tal-Perit Conrad Thake fil-kwalita' professjonali tieghu u bhala membru fuq il-Bord ta' l-Appelli dwar l-Ippjanar. L-ittra tibda b'dan il-kliem: *"May we ask you to look into the following matter, which we consider is an abuse of trust by members of your profession?"*. Is-sustanza tal-ilment mela huwa wiehed – allegat abbuz minn membru tal-professjoni tal-periti. L-uniku perit li jissemma fl-ittra hu l-Perit Conrad Thake. Fl-affidavit l-appellanti qalet:-

"Semmejt il-Perit Thake ghax f'din ic-cirkostanza kien hemm hu, izda bl-ebda mod b'referenza ghalih personalment."[13]

Meta l-appellanti xehedet *viva voce*, dwar l-ittra in kwistjoni qalet:

"Dik ktibtha wara li kont intavolajt appell fuq xi xoghol li kien qieghed isir u meta ssejjah l-appell u kont ili nistenna minn Novembru, sibt illi wiehed mill-periti tal-Bord kien l-istess perit li kien tal-gara tieghi. Meta sibtu hekk bdejt nahseb u nara minn xhiex ghaddejt. ***Ghalhekk ktibtha l-ittra, ma bdejtx nahseb personali fuqu****."*[14]

Li kieku l-appellanti riedet li l-ilment taghha jkun generiku, kienet tikteb f'dak is-sens. Izda' f'dan il-kaz m'ghamlitx hekk. Hija ghamlet insinwazzjonijiet specifici dwar persuna specifika u dan f'diversi partijiet tal-ittra. Tant dan hu minnu li l-ittra in kwistjoni nkitbet lill-Ethics Committee tal-Kamra tal-Periti, u talbet li jinvestiga l-kaz. Il-qorti m'ghandhiex dubju li r-rapport kien fil-konfront tal-perit Thake personalment, tant hu hekk li fl-ittra ssemma xejn inqas minn hames darbiet.

Fl-eccezzjonijiet il-konvenuta eccepiet ukoll id-difiza tal-*fair comment*, u li ma jidhirx li gie trattat fir-rikors tal-appell. F'kull kaz il-qorti tosserva li:-

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[13] Fol 59.
[14] Seduta tas-27 t'Ottubru 2010 a fol 48.

i. Din l-eccezzjoni m'hijiex kompatibbli ma' dik tal-privilegg kwalifikat, fejn wiehed ikun qieghed jaccetta li dak li qal huma fatti, li pero' anke jekk mhux veru m'ghandhomx jesponi lill-awtur ghal sanzjoni minhabba li jgawdi l-privilegg kwalifikat;

ii. Fl-ittra oggett ta' dawn il-proceduri, hemm allegazzjonijiet ta' fatt fil-konfront tal-attur. Fatti li ma gewx pruvati u ghalhekk zgur li m'hemmx bazi ghad-difiza tal-*fair comment*. F'sentenza tal-Qorti tal-Appell (Superjuri) fl-ismijiet: **Emanuel Cuschieri vs Daphne Caruana Galizia** (29 ta' Mejju 2015):

"il-konsiderazzjonijiet li għamlet l-ewwel qorti dwar il-verita tal-fatti ma kinux irrelevanti għax għandhom jitqiesu fid-dawl tal-fatt illi l-ewwel qorti iddistingwiet bejn allegazzjoni ta' fatt u comment u effettivament waslet għall-konklużjoni illi l-konvenuta tagħmel mhux biss comment iżda wkoll allegazzjoni jew attribuzzjoni ta' fatt. Ma ninsewx, wara kollox, illi l-eċċezzjoni tal-konvenuta kienet fis-sens illi l-kitba tagħha kienet "fair comment ibbażat u mibni fuq fatti sostanzjalment veri u ta' interess pubbliku". Jekk il-fatti ma humiex "sostanzjalment veri", il-kummenti dwarhom ma jistgħux jitqiesu xierqa". Il-qorti ghamlet riferenza wkoll ghad-dottrina li: *"[T]he defence is not available where a comment is based upon 'facts' which turn out to be incorrect—even where the comments have been made in the honest belief that they are true facts. The defence must prove that the facts commented on are substantially true. While in other respects fair comment is an easier defence for the media to make than justification, the requirement that the true facts be proven on the basis of evidence that was available at the time of publication may be somewhat more challenging in the context of a particular story"* (D. Goldberg, G. Sutter and I. Walden (eds), *Media Law and Practice*, O.U.P. 2009, p. 406).

Ghal dawn il-motivi l-Qorti tichad l-appell bl-ispejjez kontra l-appellanti.

Anthony Ellul