FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta taʼ nhar it-Tnejn tnejn u ghoxrin (22) taʼ Jannar 2018

Rikors Numru 157/14 FDP

Anthony Micallef
(ID 164646M)
vs

Martin Vella

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit 2 ta' Mejju 2014 fejn ir-rikorrenti talab lill-Qorti

> *Prevja dikjarazzjoni ta' din Onorabbli Qorti illi pubblikazzjonijiet konsistenti f emails mibghuta mill-intimat u distribwiti lil numru ta' persuni fil-25 ta' April, 2014 u fit-28 ta' April, 2014 huma libelluzi u malafamanti fil-konfront tar-rikorrent billi z-zewg pubblikazzjonijiet fihom dikjarazzjoni cara illi r-rikorrent huwa 'persona non grata' liema dikjarazzjoni, inoltre ghall-fatt illi hija infondata, hija palezement intenzjonata sabiex ittellef jew tnaqqas ir-reputazzjoni tar-rikorrent u sabiex tesponih ghar-redikolu jew ghad-disprezz tal-pubbliku, thallas lir-rikorrent in linea ta danni dik is-somma li tigi likwidata minn dina l- Onorabbli Qorti a tenur tal-Artikolu 28 tal-Att dwar Istampa, Kapitlu 248 tal Ligijiet ta' Malta.*

Rat ir-risposta ta' Martin Vella ippresentata fl-14 ta' Mejju 2014 fejn laqa' ghal dak miltub mir-rikorrenti billi qajjem is-segwenti eccezzjonjiet:

1. *Illi fl-ewwel lok l-emails li qed jilmenta minnhom ir-rikorrent Anthony Micallef ma humiex malafamanti jew b'xi mod inaqqsu jew itellfu ir-reputazzjoni tieghu kif ser ikun ippruvat waqt it-trattazzjoni tal-kawza;*
2. *Illi kif ser jirrizulta waqt it-trattazzjoni tal-kawza ir-rikorrent innifsu kien palezement idejjaq lill- esponent biex bi prepotenza jattendi u jkun kelliem ewlieni f'attivita organizzata mill-esponent ghan-nom tas-socjeta li*

jirraprezenta bla ma kien invitat li jaghmel dan u li sahansitra l-istess rikorrent kien sostna li kien ser jaghmel il-hsara Ilill esponent;

3. *Illi il-frazi 'persona non grata' ma hijiex libelluza u dan stante li tfisser biss li tali persuna ma hijiex accettata f'post jew sitwazzjoni minn persuna jew persuni ohra'.*
4. *IIli tali decizjoni li ir-rikorrent giet dikjarat persona non grata ma hadhiex l-esponent imma mill kumitat organizzattiv ta' l-event in kwistjoni.*
5. *Salv eccezzjonijiet ulterjuri*

Semghet ix-xhieda tar-rikorrent **Anthony Micallef** moghtija l-20 ta' Ottubru 2014 u d-29 ta' Jannar 2015 u rat id-dokumentazzjoni minnu esebita.

Rat illi fit 2 ta' Marzu 2015 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet il-kontro ezami tar-rikorrenti illi saret fis 27 ta' April 2015, fl-14 ta' Marzu 2016 u fis 7 ta' Novembru 2016 flimkien mad-dokumentazzjoni minnu esebuta.

Semghet ix-xhieda ta' l-intimat **Martin Vella** moghtija fis 26 ta' Jannar 2017 u rat id-dokumentazzjoni minnu esebita.

Rat l-affidavit ulterjuri ta' Martin Vella ippresentat fis 27 ta' Marzu 2017 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Margaret Brincat**, prodott mill-intimat u moghtija in ezami u kontro ezami fis 27 ta' Marzu 2017.

Rat illi fit 12 ta' Ottubru 2017 l-intimat iddikjara illi ma kienx hemm aktar provi x'jippresenta.

Semghet it-trattazzjoni ta' l-abbli difensuri taz-zewgt partijiet moghtija fl-14 ta' Dicembru 2017, wara liema data il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Jirrizulta, mill-provi ppresentati quddiem dina l-Qorti, ir-rikorrent Anthony Micallef, ghandu business privat tieghu bl-isem ta' Office Group Limited, illi huma agenti ta' varji apparati mehtiega ghall-ufficini, fosthom printers tad-ditta Konica Minolta.

Jirrizulta wkoll illi r-rikorrent kien ukoll il-President tal-Maltese Libyan Chamber of Commerce illi ghandha l-ufficji taghha gewwa Hal-Balzan.

Jirrizulta illi l-intimat Martin Vella jahdem fil-qasam tal-publishing u kien l-editur ta' magazine bl-isem ta' Property & Life, illi huwa kien propretarju tieghu, kif ukoll kien l-editur tal-magazine Economic Update, illi kien propjeta' tas-socjeta Network Publications illi fih l-intimat kien impjegat.

Jirrizulta wkoll illi n-Network Publications u Economic Update kienu wkoll tqabbdu mill-Ambaxxjata Tunesina sabiex jorganizzaw il 'Malta-Tunisia-Libya B2B Networking Forum 2014' illi inzamm gewwa Smart City fit 8 ta' Mejju 2014.

Jirrizulta illi r-rikorrent, bhala President tal-Maltese-Libyan Chamber of Commerce, qabel ma gie involut l-intimat fl-organizazzjoni tal-konferenza fuq imsemmija, kien iddiskuta l-possibbilta' illi

tigi organizzata tali attivita mal-Ambaxxatrici tat-Tunesija u di fatti l-istess rikorrent kellu jindirizza l-konferenza fil-ftuh ufficjali taghha. (fol 48)

Jirrizulta, madanakollu, illi hekk kif l-intimat assuma r-reponsabbilta' tal-organizazzjoni tal-Konferenza, il-programm tal-attivita' illi kien gie redatt mill-Ambaxxata gie mibdul u ir-rikorrent ma' baqax aktar indikat bhala kelliem tal-konferenza.

Jirrizulta illi r-rikorrent gie a korrent ta' dan u, fil-25 ta' April 2014, fit-8.53am baghat email indirizzata lill Martin Vella u kkupjata lill Margaret Brincat, Ray Borg tal-Malta Libyan Maltese Chamber u John Formosa, fejn ir-rikorrent qal is-segwenti: (fol 32)

> *Re: Malta-Tunisia-Libya B2B Networking Forum*
>
> *Dear Sirs,*
>
> *Please note that I am one of the main speakers being the President of the Libyan Maltese Chamber of Commerce for this planned forum. Although you only inserted a "VIP" instead of my name on the program, my participation and that of my council members had been agreed at prior meetings with the Tunisian Embassy before Economic Update were approached for organising the event. Do not worry Mr. Vella - I will forward your mail addressed to me below to her Excellency Tunisian Ambassador for her direction. To tell you the truth have just received the invitation to the dinner at her Excellency Residence and I wonder why this was not also received through your office being the main organiser.*
>
> *Regards*

Jirrizulta illi ghal dina l-email, l-intimat Martin Vella irrisponda fil-**<u>25 ta' April 2014 fin-12.30pm</u>** permezz ta' email indirizzata lir-rikorrent Anthony Micallef b'kopja lill kull min kien imnizzel fl-email tar-rikorrent u dahhal ukoll lill Ambaxxata Tunesina f'Malta kif ukoll l-Ispettur George Cremona, f'liema email l-intimat qal is-segwenti: (fol 3)

> *Dear Sir,*
>
> *Although the company and the Organising Committee, appreciates all that you have pointed out in your email, your request to participate in our event cannot be granted.*
>
> *After careful review, we regret to inform you that we are unable to grant you registration to attend. We are sorry about the difficulties you are experiencing, and we hopw that you will be able to find another solution to your problems. Kindly note that for the moment you are a '**persona non grata**', and as head of the Organising Committee, this decision is binding.*
>
> *We do not wish to take any action which might impair you and therefore request that you give this matter your most immediate attention.*
>
> *I hope you will understand why we must take this position and your are kindly requested not to send any further emails to us, neither try to harass us or bring our good reputation into disrepute.*

Jirrizulta billi b'risposta ghall-email ta' l-intimat fuq prodotta, l-Ispettur George Cremona dakinhar stess, fil-25 ta' April 2014, fil-12.56, baghat email kupjata lill kull min kienet indirizzata l-email fuq imsemmija ta' l-intimat, flimkien mad-Deputat Kummissarju Andrew Seychell, fejn inqtal is-segwenti: (fol 36)

Dear Mr Vella

We have noted the exchange of communications and cannot understand for what reason you have included us in the mailing list.

Kindly note that we are not and cannot be involved in such issues and the only purpose that we contacted you is to see the premies where the event will be held for our own assessment and nothing else.

So kindly desist of copying us with mails which are in no way our remit to be aware of.

Thank you

Jirrizulta illi l-intimat irrisponda ghall-email mibghtua mill-Ispettur Cremona, permezz ta' email ohra datata 25 ta' April 2014 fis-13.11pm, u ikkupjata lill kull min kien imnizzel fl-email tal-Ispettur Cremona, illi mieghu din id-darba l-intimat dahhal l-Kummissarju tal-Pulizija Pietru Pawl Zammit, fejn ghal dak mitlub mill-Ispettur Cremona rrisponda kif gej: (fol 19)

Dear Insp Cremona,

Thanks your email and contents noted.

However, this wanted to keep you in the loop of undesirable or unwanted persons and as organisers wanted you to be fully aware of that. We will have our own security and they are being notified accordingly, as we will not allow or permit unregistered persons into the conference.

We want to run a smooth operation and you must understand that it is our duty and obligation to keep you informed about this.

Trust you understand, as we only want full cooperation, having supplied list to you yesterday"

Jirrizulta illi fit-28 ta' April 2014 fid-9.37, Ray Borg, illi huwa l-Administration Manager tal-Libyan Maltese Chamber of Commerce, kiteb lill-intimat, fejn gharrfu sabiex "to refrain from mentioning the 'Libyan Business Council' which is included in your programme of the Forum" ghax sahaq li "This Co council does not exist in Malta and your reference to such an institution is giving conflicting messages related to our activity as the Chamber that represents Libyan-Maltese business interests".

Jirrizulta illi ghal dina l-email, l-intimat irrisponda permezz ta' email datata **<u>28 ta' April 2014 fil 11.14am</u>**, illi hija t-tieni email illi dwarha jilmenta r-rikorrent fir-rikors promotur tieghu, email indirizzata, din id-darba, lill Ray Borg, tal-Libyan Maltese Chamber, u kkupjata lill John Formosa, indirizzata wkoll lill Ambaxxata Tunesina u indirizz iehor, illi kienet tghid is-segwenti: (fol 4)

Dear Ray,

I refer to your email below and would kindly draw your attention to the following:

A. *Please be informed that we had already removed the Libyan-Maltese Chamber form (sic) our programme, which was inadvertently listed in our initial draft; In fact, several amendments have been done as there were change/addenda of speakers, since we have been overwhelmed with requests and registrations for this event.*
B. *Kindly note it is/was never our intention to give out any conflicting messages related with anyone's activity. However, we wish to draw your attention to the fact that we called the Libyan-Maltese Chamber several times without success to inform them about this as no one replied. It was following my initiative last week that I called you personally to inform you that we could not accept the presence of your acting President Mr Anthony Micallef, a persona non grata, for various reasons I mentioned and highlighted, one of them being that Mr Micallef had personally sent threatened us stating he would harm a our future interests and give us a bad name wherever he is, something which is most unbecoming of his position.*
C. *Furthermore, please note that the extract you are quoting is fully correct and your Council is misinterpreting and misguiding what is declared, since if you read carefully we are stating that the foreign companies, including the Libyan Business Council, whom we have met together with the representatives of the Libyan Embassy, "are being brought over". In fact, we also sated (sic) together with the Libyan Business Council (of Libya- nothing to do with Malta) in Malta (since the event is taking place in Malta);*
D. *Therefore, we are NOT referring to a Council in Malta, but as correctly and appropriately declared, it is the Libyan Business Council from Libya, who are coming to Mala (sic);*
E. *Therefore, the Council of the Libyan-Maltese Chamber of Commerce is wrong in it assumptions, conclusions and speculation that there is a Libyan Council in Malta and if the Council which you are directed to represent is interpreting it that way, than that is mere speculation and incorrect- something which we condemn and any references you alleged to such an institution is fictional and is meant to give a conflicting view, and/or opinion, which cannot be further than the truth possibly can be;*
F. *Therefore, we repudiate your claim that we are providing conflicting messages in any way, form or manner and so please refrain from trying to give a false impression about us making false declarations, which do not exist.*
G. *It is apparent that the Council of the Libyan-Maltese Chamber of Commerce, which you have been directed, is doing its best to confuse, harm and misinterpret instead of acting out its duties, obligations and roles, according to its statute.*
H. *May I kindly remind you that this event is our initiative and not an initiative which Mr Micallef incorrectly claims to have had; If he wanted to be credible than how come he never did organise this in past an during the long term he has been president of your institution?*

In light of the above, we kindly request you to ***Cease and Desist*** *from sending us any further emails of this kind, since you are making reference to a Council that does not exist in Malta intentionally to disrupt our good work and reputation, and harm our interests.*

Moreover, even the fact that you are directing your email to the Tunisian Embassy, is evidence enough your false intentions to create as much confusion and bad light on us and is badly reflecting on your Chamber a this is unprofessional, unethical and comes in bad taste.

However, please note that we had already warned the Tunisian Embassy what to expect from in the circumstances and we condemn this behaviour from your Chamber, as we are the sole organisers of this event and any such messages should be directed only to us, as the Tunisian Embassay are not responsible with the publication of any programme, even if they are associated with the event.

It is therefore the Council of the Chamber of Commerce, which you have been you directed, that is making reference to such an institution and as such, it is the institution which you representing which is giving conflicting message, and which we distance ourselves from completely.

Likewise, we reserve every right of legal action to safeguard all our commecial interests and the good standing and reputation we have earned through our work serving all the business and diplomatic community with outstanding and exceptional results in past.

Please be guided accordingly.

Jirrizulta illi dana l-iskambju u posizzjoni mehudha mill-intimat tidher illi holqot mhux ftit imbarazz lill-Ambaxxata Tunesina, tant illi, fit-2 ta' Mejju 2014, l-Ambaxxata Tunesina, sabiex tirriafferma x-xewqa taghha illi r-rikorrent jattendi, kienet baghtet stedina ufficjali lill-Maltese Libyan Chamber of Commerce fejn qalet is-segwenti: (fol 47

The Embassy of the Republic of Tunisia presents its compliments to the Maltese-Libyan Chamber of Commerce and has the honor to transmit herewith the program of Tunisian-Maltese-Libyan Forum, which will take place at Smartcity on May, 8th 2014, and would like to reiterate the invitation addressed by the Ambassador to Honorable President of the Esteemed Chamber, to pronounce a speech at the inaugural ceremony of Forum.

The Embassy will also be grateful to the members of the Chamber Council to take part to this important event and also to the reception organized by the Ambassador at its Residence on May 9th 2014.

For the first time in Malta, a Tunisian business delegation of forty five members, led by the main economic organizations (Tunisian Union of industry, Trade and Handicrafts (UTICA) and the Foreign Investment Promotion Agency (FIPA), will be present at this Forum, in order to discuss with their counterparts from Malta and Libya on ways to develop business and partnership at a triangular level.

The relations of cooperation and friendship between Tunisia, Libya and Malta are excellent and we wish to improve them for the benefit of our three countries. That is the aim of the Forum. But that could be possible only with the support of the Maltese-Libyan Chamber of Commerce.

While wishing a positive response from the honorable members of the Chamber's Council, the Embassy of the Republic of Tunisia avails itself of this opportunity to

renew to the Maltese-Libyan Chamber of Commerce the assurances of its high consideration.

Jirrizulta illi l-intimat gie a konoxxenza ta' l-invit ufficjali lir-rikorrent, u fit 2 ta' Mejju 2014 kiteb lill-Ambaxxatrici Tunesina (li hija l-meritu tal-kawza fl-istess ismijiet bin-numru 232/14FDP li qed tigi deciza kontestwalment mal-kawza odjerna) u, f'email ta' tlett faccati, insista dwar l-oggezzjoni tieghu u, fost il-kliem li kiteb, qal dan li gej: (fol 49)

Dear Ambassador,

We fully understand your position and why you sent the invitation, however, our position remains the same in the light of threats made against us by the said President of the LMCC.

The LMCC have registered members from the Libyan Libyan-Maltese Chamber of Commerce to the Forum, but the President CANNOT be welcomed and will be barred from entering by security. This is an event which is costing us thousands and Mr Micallef is not welcome. He has done events last year and this year and did not want us there, so we respected that and do not want him in any of our events for a number of reasons and We DO NOT want him.

….

We hope you appreciate the fact that we are conceding enough room to accept other members or representatives from the LMCC but Mr Micallef is not wanted and cannot come. I do not have an personal problems with Mr Micallef. Mr Micallef has problems with our company and with interests our company represents, and has tried to defame us and slander us, and is always harming our interests wherever he is. Mr Micallef cannot attend or try to disrupt our event, as we are having to fork out over Euro 25,000 for the organisation and we will hold him fully responsible. I have shown Anchelique just small part of the costs this morning.

Please understand this is not a personal issue and it is our collective decision …

….

What we want to see is positive attitude and gestures from Mr Micallef himself not threats, lies and coercion to try to intimidate us. Please note we had already Mr Micallef email to register but he refused, preferred to make an issue out of nothing, insisting to speak, actions which are arrogant, irresponsible and unethical.

…

This is not about me or Mr Micallef, it is about Malta-Tunisia-Libya. Mr Micallef is a negative, destructive and obstinate person, as we had given him plenty of opportunities and offered him our handshake in past, but he refused and instead wanted only to harm us. The responsible and positive attitude must come from Mr Micallef and not vice-versa.

…

> *I suggest brief meeting Monday and I am discussing this during the weekend but if Mr Micallef really wishes to sincerely attend, then he must make a formal apology in front of you and offer his handshake as gentlemen should do, not continue to do things behind our backs. I think we cannot do more than that.*

Jirrizulta illi, eventwalment, l-Ambaxxatrici Tunesina kitbet lir-rikorrent fil 5 ta' Mejju 2014 fejn gharrfitu bis-segwenti:

> *Dear Mr. Micallef,*
> *Further to the program I sent to Mr. Vella showing that you'll be a key speaker at the Forum, I received a letter from him, which I found very irrespectful towards you and towards me.*
>
> *I am sorry to sent you his letter but this man is threatening you and I am afraid of his reaction.*
>
> *From my side, be sure that I and my colleagues at the Embassy appreciate and respect you as well as the members of the Esteemed Libyan-Maltese Chamber of Commerce and if nobody from the chamber will come to our Forum we'll understand.*
>
> *But please, come to my reception on the 9th May.*
>
> *I would like to add this an informative meeting and I hope that next year, your chamber that Forum will be will be the initiator of the 2nd Libyna-Maltese Tunision Forum, which will institute a Business Council related to the three Countries, under your supervision.*

Jirrizulta illi, nelfrattemp, ir-rikorrent kien gia nieda l-proceduri odjerni kontra l-intimat in rigward l-email tal-25 ta' April 2014 u l-email tat-28 ta' April 2014 fuq gia ri-prodotti.

Ikkunsidrat

Jirrizulta, mix-xhieda ta' l-intimat, illi bejn l-intimat u ir-rikorrenti kien hemm kwistjonijiet illi kienu nqalghu fil-passat illi eventwalment wasslu ghall-iskambju tal-emails u l-pusizzjoni mehudha kontra r-rikorrenti mill-intimat.

Jirrizulta, di fatti, illi l-intimat jikkontendi illi r-rikorrent, bhala agent tad-ditta Konica Minolta, kien qieghed jaghmel pressjoni fuq impjegati tieghu sabiex jaghlqu bejgh ta' 'printer' kbir lill-intimat, liema bejgh l-intimat ma riedx jikkonkludi ghax il-kundizzjonijiet ma kienux favorevoli ghalih.

Jirrizulta illi l-intimat jikkontendi hekk kif l-intimat irrifjuta illi jixtri il-printer tad-ditta Konica Minolta minghand il-kumpannija tar-rikorrenti, r-rikorrenti kien qal lill haddiema tieghu illi kien ser ipattiha lill-intimat.

Jirrizulta illi sussegwentement, ir-rikorrent kien ghamel intervista fuq il-magazine Economic Update, illi tieghu l-intimat kien l-editur, u kien intervistat mill-istess intimat.

Jirrizulta, madanakollu, illi sussegwentement, wara il-harga tal-magazine Economic Update, l-intimat jikkontendi illi r-rikorrent beda jirrifjuta illi jhallas l-€1,200 illi kellhom jithallsu ghall-intervista u riklami illi dehru fil-magazine, taht il-pretest illi ma kien kuntent bil-kontenut tal-intervista illi kien ghamel l-intimat.

Jirrizulta, finalment, illi l-intimat jikkontendi illi dana in-nuqqas ta' hlas kien attwalment it-tpattija li r-rikorrent ried jaghmel lill-intimat talli l-intimat ma xtarax l-printer minghandu u, bhala rizultat, sid il-magzine Economic Update, ossija John Formosa ta' Network Publications Ltd, kien irrabjat hafna mar-rikorrent u kienet din ir-raguni ghaliex Formosa insista ma' l-intimat illi r-rikorrent ma jippartecipa bl-ebda mod fil-konferenza illi kienu qed jorganizzaw ghall-Ambaxxata Tunesina.

Ikkunsidrat

Jirrizulta illi r-rikorrent, da parte tieghu, jikkontendi illi l-kwistjoni illi kien hemm bejnu u bejn l-intimat kienet tirrigwarda l-intervista illi kien ghamillu l-intimat fuq il-harga ta' Ottubru 2013 fuq il-magazine Economic Update, liema intervista, skond ir-rikorrent, kienet mimlija zbalji, illi ghalihom l-intimat ma riedx jammetti.

Jirrizulta wkoll, skond ir-rikorrent, illi wara illi huwa rrifjuta illi jhallas, l-intimat beda jattakka lir-rikorrent u sahansitra, fil 31 ta' Jannar 2014, kiteb email ta' erbgha faccata shah lill-principali tieghu tal-Konika Minolta gewwa l-Gappun u f'pajjizi ohra, sabiex jattakka lir-rikorrent ta' "*unbecoming and unprofessional behaviour by your representative in Malta, Mr Anthony Micallef of Office Group Ltd*" (fol 62 sa 65).

Jirrizulta illi r-rikorrent jishaq illi, a differenza ta' dak illi qieghed jittenta jghid l-intimat, meta jwahhal f'John Formosa, sid il-kumpannija Network Publications Ltd, ghad-decizjoni illi jiddikjarah "persona non grata', kienet attwalment decizjoni ta' l-intimat biss illi r-rikorrent jigi eskluz minn kollox, u dana sabiex ipattihielu tal-fatt illi ma hallasx ghall-intervista.

Ikkunsidrat

Qabel ma tigi ikkunsidrata d-difiza ta' l-intimat, ikun opportun illi jigu kkunsidrat certi aspetti legali.

Dwar jekk email jikkwalifikax jew le bhala stampat jew xandira a tenur tal-Kap 248, ghandha ssir referenza ghall-artikolu principali illi jipprovdi ghall-azzjoni odjerna kif ukoll ghad-definizzjonijiet pprovduti fl-istess Att.

L-Artikolu 3 tal-Kap 248 jipprovdi illi:

> *Ir-reati msemmija f'din it-Taqsima ta' dan l-Att isiru permezz tal-pubblikazzjoni jew tqassim f'Malta ta' stampat, ikun x'ikun il-post li minnu joriġina dak l-istampat, jew bil-mezz ta' xi xandir.*

L-Artikolu 2 tal-Kap 248 jidefenixxi 'pubblikazzjoni' bhala

> *kull att li bih kull stampat jiġi jew jista' jiġi ikkommunikat jew imgħarraf lil xi persuna jew li bih kliem jew immaġini viżwali jiġu mxandra;*

L-istess Artikolu jidefenixxi 'stampat' bhala:

> *kull kitba stampata b'tipi tipografiċi jew bil- litografija jew b'mezzi jew proċessi oħra bħal dawn fuq karta jew sustanza oħra, kif ukoll kull kartellun jew avviż ieħor li jitwaħħal li jkun fih xi sinjal jew kitba miktuba, stampata, impinġija, riżaltata jew*

xort'oħra impressa, u tinkludi kull diska, tape, film jew mezz ieħor li bih kliem jew immaġini viżwali jistgħu jinstemgħu, jitwasslu jew jiġu riprodotti;

L-istess Artikolu jidefenixxi ukoll il-kelma 'xandir' billi jiddefeniha bhala:

it-trasmissjoni permezz ta' fili jew minn ġewwa l-arja, inkluża wkoll permezz ta' satellita, f'għamla kodifikata jew mhijiex; ta' kliem jew immaġini viżivi, sew jekk dawk il-kliem jew immaġini jkunu fil-fatt riċevuti minn xi persuna sew jekk le.

Fil-kaz odjern, ghandna komunikazzjoni varja illi saret permezz ta' email. Ghalkemm email ma jidhirx illi hija kkunsidrata bhala 'xandir' da parte tal-legislatur, stante illi jidher li xandir huwa aktar intiz bhala dak li jintwera u jissemma fuq it-television u ir-radio, certament tali emails ghandhom jitqiesu bhala 'stampat' stante illi l-ligi tikkontempla "*jew mezz ieħor li bih kliem jew immaġini viżwali jistgħu jinstemgħu, jitwasslu jew jiġu riprodotti*".

Ghaldaqstant, il-Qorti ma ghandha ebda dubju illi l-kontenut tal-emails huma suggetti ghall-legislazzjoni li tirregola l-libelli, ossija l-Kap 248 tal-Ligijiet ta' Malta.

Dwar l-elementi tal-pubblicita' tal-email, il-Qorti taghmel referenza ghal dak illi qal il-**Gately on Libel and Slander** fejn jghid is-segwenti:

No civil action can be maintained for libel or slander unless the words complained of have been published. "The material part of the cause of action in libel is not the writing, but the publication of the libel." In order to constitute publication, the matter must be published to (communicated to) party, that is to say, at least one person other than the claimant. "A cannot sue B for defaming him to A himself, or to B himself; that is to say where B reads to himself his libel on A and then locks it away. A must prove that B defamed him to C." Defamation protects a person's reputation and his reputation is not the good opinion he has of himself but the estimation in which others hold him. A defamatory statement about the claimant communicated to the claimant alone may injure his self-esteem but it cannot injure his reputation. The requirement that there be a publication to a third party is also a requirement of malicious falsehood.
…

It is not sufficient that the matter has been merely communicated to the third party: it is also necessary that it be communicated in such a manner that it may convey the defamatory meanings and that persons acquainted with the claimant could understand it to refer to him. If, therefore, a defamatory letter was handed to a person who could not read or who could not read the language in which it was written, there would be no publication nor would there be where words were spoken in a foreign language not understood by those who heard them"; and where a defendant sent to a third person on a privileged occasion a postcard defamatory of the plaintiff, though his name was not mentioned, and no stranger unacquainted with the circumstances would have identified him as the person referred to, it was held that there was no publication to the postman or other persons through whose hands the postcard passed."

Jirrizulta, fil-kaz odjern, illi l-intimat, fiz-zewgt emails illi dwarhom jilmenta r-rikorrenti fil-proceduri odjerni, illi huma biss tnejn minn hafna email skambjati, dawna l-emails ma intbghatux biss lir-rikorrent, izda intbghatu ukoll lill-persuni ohrajn, kemm illi kienu gia involuti fl-organizazzjoni tal-konferena, kif ukoll persuni illi ma kellhomx x'jaqsmu xejn mal-organizazjoni, bhalma kienu l-Ispettur George Cremona w il-Kummissarju tal-Pulizija Peter Paul Zammit.

Jirrizulta ghalhekk illi, kif anke jikkontendi l-Gately, ladarba hemm pubblikazzjoni ta' allegazzjoni dwar persuna lill terza persuna, hemm elementi sufficjenti ta' pubblikazzjoni biex dawna l-emails ikunu suggett ta' proceduri ta' libel.

Ikkunsidrat

Jirrizulta, skond ma jinsisti l-intimat, illi r-rikorrent kien gharraq bl-intimat meta ingaggah jaghmillu intervista fuq il-magazine Economic Update u wara ma hallsux, peress illi l-intimat jikkontendi illi r-rikorrent ghamillu dan bi tpattija talli ma xtarax printer minghandu.

Jirrizulta illi, biex jissustanzja tali allegazzjonijiet, l-intimat jsemmi zewgt persuni, Stephen Holland u Andre Ribeiro, illi skond huma kienu huma illi gharrfuh li r-rikorrent kien ghamel hekk bie iqarraq bih.

Jirrizulta, madanakollu, illi l-intimat ma tellax lill Stephen Holland u Andre Ribeiro sabiex jikkonfermaw tali fatti, u jistrieh biss fuq emails illi l-intimat jghid illi gew mghoddija lilu minn Andre Ribeiro, u partikolarment email datata 17 ta' Ottubru 2013 fejn jinghad is-segwenti:

> *On another note did they ever decide in closing the Production Printing Sale (I am talking of Economic Update). I can always ask them to give us a deposit even if this reflect the money for the advert. This way the sale would be blocked. Please advise.* (fol 174)

Jirrizulta illi l-intimat jikkontendi, fix-xhieda tieghu, illi r-rikorrent ghamel kollox bi tpattija kontra tieghu talli l-intimat ma xtarax minghand ir-rikorrent printer tad-ditta Konika Minolta illi kien jiswa madwar €50,000. (fol 141)

Jirrizulta wkoll illi l-intimat jikkontendi illi l-email datata 17 ta' Ottubru 2013 fuq kwotata hija prova ta' dan.

Il-Qorti, madanakollu, ma tistax ma tosservax, l-ewwel u qabel kollox, illi l-intimat ippresenta zewgt kopji ta' l-istess email, wahda fejn il-kitba fuq riprodotta tinsab miktuba bil-karattri bl-iswed skur, ossija 'bold' (fol 174), u email ohra identitka, izda fejn ma jidher ebda kitba bil-karatti bl-iswed skur ossija 'bold' (fol 184), u l-Qorti ma tistax ma tikkonkludix illi wahda minn dawna z-zewgt emails hija mbaghbsa, bir-rizultat illi ma jistax jigi esklus wkoll illi l-kontenut ta' tali emails gie mbaghbas ukoll.

Apparti minn hekk, il-Qorti ma tistax ma' tosservax ukoll illi, f'kaz illi jitqies illi l-kontenut ta' tali email ma giex imbaghbas, l-email inniffsu jsemmi "Production Printing Sale" illi kien relatat ma' "I am talking of Economic Update" filwaqt illi l-kwistjoni tal-printer li jsemmi l-intimat hija kwistjoni illi tirrigwarda l-magazine Property & Life Magazine, kif jidher mill-email ta' l-intimat a fol 132A tal-process kif ukoll l-Invoice illi tidher a fol 141, liema magazine kienet propjeta esklussiva ta' l-intimat u ma kellhx x'taqsam assolutament xejn mal-magazine Economic Update, illi kienet tad-ditta Network Publications Limited.

Ikkunsidrat

Jirrizulta illi l-intimat jikkontendi illi d-decizjoni illi r-rikorrent jigi dikjarat bhala "persona non grata" ma kienetx tieghu, izda kienet ta' John Formosa, illi kien il-propretarju tad-ditta Network Publications Limited u li kien l-employer tieghu.

Sabiex jikkorrobora tali dikjarazzjoni, huwa pproduca bhala xhud lill Margaret Brincat, illi kienet tahdem flimkien ma' l-intimat gewwa Network Publications Limited u li bejniethom kien hemm relazzjoni.

Jirrizulta, madanakollu, illi l-intimat naqas illi jipproduci lill John Formosa, illi kien ikun l-ahjar prova sabiex jiskolpa lilu nniffsu mill-kontenut tal-varji emails illi l-intimat jghid li gew dejjem iddettati minn John Formosa.

Il-Qorti, madanakollu, ma tistax ma tosservax illi, fil-brochure illi kien gie prodott sabiex jippromuovi il-Malta-Tunisia-Libya B2B Networking Forum 2014 illi kien qieghed jigi organizzat u illi dwaru inqalghu dawn id-disgiwidi kollha li wasslu ghall-emails meritu tal-kawza odjerna, hemm miktub bl-aktar mod car is-segwenti:

"The Economic Update's editor MartinVella is organising a one day business even comprising of conference, forum with open debate, networking activities, exhibition display stands and entertainment"

Tali dikjarazzjoni tidher illi hija diametrikament opposta ghal dak illi jittenta x'jaghti jifhem l-intimat fil-proceduri odjerni, peress illi l-Qorti ma ghandhiex dubju illi kieku kien attwalment minnu illi John Formosa u d-ditta Network Publications Limited kienu attwalment qed jmexxu l-organizazzjoni huma stess, certament ma kienx jippermetti illi jinkiteb fil-brochure ufficjali illi kollox kien qieghed isir mill-intimat biss!

Ghaldaqstant, hija difficili li titwemmen u inverosimili illi ma kienx l-intimat illi baghat l-emails meritu tal-kawza odjerna, u dana huwa anke sopportat mill-varji emails illi esebew iz-zewgt partijiet, inkluz l-email twila illi baghat l-intimat lill-Konika fil-Gappun fil 31 ta' Jannar 2014, illi lkoll ghandhom l-istess format u forma mentis fihom - dak illi jattakkaw lir-rikorrent u joskurawh ma kullmin qieghed jaqra l-email.

Ikkunsidrat

Il-Qorti, finalment, ma tistax ma taghmilx is-segwenti osservazzjonijiet:

L-intimat, fid-difiza tieghu, jipprova jiggustifika il-kontenut tal-emails tieghu billi jghid zewgt argumenti principali:

1. Illi "*ir-rikorrent innifsu kien palezement idejjaq lill- esponent biex bi prepotenza jattendi u jkun kelliem ewlieni f'attivita organizzata mill-esponent ghan-nom tas-socjeta li jirraprezenta bla ma kien invitat li jaghmel dan u li sahansitra l-istess rikorrent kien sostna li kien ser jaghmel il-hsara lill esponent*"
2. Illi "*id-decizjoni li ir-rikorrent giet dikjarat persona non grata ma hadhiex l-esponent imma mill kumitat organizzattiv ta' l-event in kwistjoni*".

Mill-provi prodotti, jirrizulta bl-aktar mod car illi l-Ambaxxata Tunesina, illi kienet qabbdet lill-intimat sabiex jorganizza l-event, kienet tassew stiednet lir-rikorrent sabiex jitkellem, kemm verbalment kif ukoll ufficjalment, izda kien l-intimat illi kien qieghed jirrifjuta bis-sahha li l-intimat ma jitkellimx u baqa jirrifjuta sakemm attwalment ma marx ghall-attivita', la ir-rikorrent u hadd mill-Libyan-Maltese Chamber of Commerce.

Mill-provi prodotti jirrizulta wkoll illi l-intimat f'ismu kien qieghed jorganizza l-attivita' u ma kien hemm ebda kumitat organizattiv, kif jalludi l-intimat fid-difiza tieghu. Ma ngiebet ebda tip ta' prova li turi l-involviment ta' John Formosa jew persuni ohra fit-tmexxija tal-konferenza.

Fl-ahhar nett, il-Qorti ma tistax ma tosservax illi, l-fatt illi persuna jkollha problema ma' persuna ohra u ghalhekk ikun irrabjat ma' tali persuna ghal xi azzjoni illi huwa jhoss illi saret kontrih, ma jaghtih ebda licenzja sabiex jattakka ir-reputazzjoni tal-persuna l-ohra ma persuni ohra illi huma ghal kollox barra minn tali kwistjonijiet u illi ma kellhom ebda involviment fil-kwistjoni ta' bejniethom.

Il-fatt illi l-intimat hass il-htiega li jiccirkola l-email b'allegazzjonijiet u deskrizzjoni tar-rikorrent bhala '*persona non grata*' u "*undesirable or unwanted person*" mal-Kummissarju tal-Pulizija u membri gholja ohra tal-Korp tal-Pulizija, kif ukoll l-Ambaxxatrici Tunesina juri l-intenzjoni cara ta' l-intimat - illi jaghmel hsara lir-rikorrent u jipprova jimmalafama u jhassar ir-reputazzjoni tar-rikorrent ma' tali persuni.

Tali fatt, wahdu, huwa sufficjenti biex il-kaz kollu tar-rikorrent jigi ppruvat u kwalswiasi difiza illi qajjem l-intimat tkun meghluba.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti quddiemha

Wara illi semghet it-trattazzjoni ta' l-abbli difensur tal-partijiet

Tghaddi biex taqta u tiddeciedi l-kawza billi

Tichad l-eccezzjonijiet kollha ta' l-intimat u, ghalhekk

Tilqa it-talbiet attrici kollha u ghalhekk

Tiddikjara illi l-emails mibghuta mill-intimat fil 25 ta' April 2014 fin 12.30 u fit 28 ta' April 2014 fil 11.24 lill terzi persuni kienu jikkontjeni kliem u allegazzjonijiet illi kienu malafamati u libelluzi fil-konfront tar-rikorrent u, a tenur tal-Artikolu 28 tal-Kap 248 tal-Ligijiet ta' Malta, u ghalhekk

Tikkundanna lill-intimat Martin Vella ihallas lir-rikorrent Anthony Micallef is-somma ta' erbat elef Euro (€4,000) bhala danni likwidati minn dina l-Qorti.

Spejjez tal-proceduri odjerni ikunu kollha a kariku ta' l-intimat.

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur