



Qorti tal-Maġistrati (Malta)

RIK NRU 119/2017: PHYLLIS MUSCAT (KI. 348959M) V. DAPHNE CARUANA GALIZIA U B'DIGRIET TAL-11 TA' JANNAR 2018 L-ATTI ĠEW TRASFUŽI F'ISEM L-EREDI TAGHHA PETER CARUANA GALIZIA (KI. 30056M), MATTHEW CARUANA GALIZIA (KI. 130886M), ANDREW CARUANA GALIZIA (KI. 384287M) U PAUL CARUANA GALIZIA (KI. 8989M)

(LIBELL - DANNI GHAL MALAFAMA - KAP. 248 ART. 28 - FAIR COMMENT - KUMMENTI ĠUSTI)

MAĠISTRAT: DR. VICTOR G. AXIAK

8 ta' Frar 2021

IL-QORTI,

wara li rat ir-rikors ta' Phyllis Muscat ("ir-rikorrenti") ippreżentat fl-4 ta' Mejju 2017, wara li rat ir-risposta ta' Daphne Caruana Galizia ("l-intimata") ippreżentata fit-13 ta' Ottubru 2017¹,

wara li rat li b' digriet tal-11 ta' Jannar 2018 il-Qorti laqgħet it-talba tal-eredi tal-intimata defunta, cioè ta' L-Avukat Dr. Peter Caruana Galizia, Matthew Caruana Galizia, Andrew Caruana Galizia u Paul Caruana Galizia ("l-intimati") sabiex l-ġudizzju jiġi trasfuż f'isimhom wara l-qtil tal-intimata²,

¹ Fol 15

² Fol 23

wara li rat id-dokumenti l-oħra kollha li ġew esebiti fil-kors tal-kawża,

wara li rat illi din il-kawża giet assenjata lil din il-Qorti kif presjeduta permezz tal-assenjazzjoni magħmula ai termini tal-Artikolu 520(1)(a) tal-Kap. 9 tal-Ligijiet ta' Malta u tal-Artikolu 11(9) tal-Kap. 12 tal-Ligijiet ta' Malta b'effett mill-10 ta' Mejju 2019,

wara li semgħet it-trattazzjoni finali magħmula għan-nom

- tar-rikorrenti, mill-Avukat Dr. Pawlu Lia,
- tal-intimati, mill-Avukat Dr. Joseph Zammit Maempel,

qed tagħti din is-

Sentenza

1. Ir-rikorrenti talbet lill-Qorti tikkundanna lill-intimata thallas lir-rikorrenti dik is-somma li din il-Qorti, tiddetermina ai termini tal-Att dwar l-Istampa, bħala danni u riparazzjoni tal-malafama li hija sofriet meta, nhar l-Erbgħa 3 ta' Mejju 2017 u fil-granet ta' wara fuq il-blog '*Running Commentary - Daphne Caruana Galizia's Notebook*', li ghalih hija responsabbli u mmexxi minnha bl-artikolu "*CHOGM 2015 task force led by PM's friend Phyllis Muscat asked hotels for kickbacks on delegate bookings*" miktub u pubblikat minnha, tat malafama lill-istess rikorrenti b'allegazzjonijiet foloz u malafamanti bil-għan li tagħmlilha ħsara, billi allegat li hija talbet xi ħlas illeċitu (kickback) meta kienet qegħda tmexxi c-CHOGM 2015. Skond ir-rikorrenti din l-allegazzjoni hija fabbrikata u għal kollox inveritiera minhabba li l-kummissjoni fuq l-akkomodazzjoni tad-delegati kienet wahda ufficjali u pagabbli direttament bi transfer bankarju fil-kont tal-Gvern mal-Bank Centrali, u ebda persuna ma rċeviet jew għamlet xi gwadann personali. Kopja tal-pubblikazzjoni giet esebita bħala Dok A. Ir-rikorrenti talbet ukoll l-ispejjeż u l-imgħaxijiet legali sad-data tal-pagament effettiv u ngungiet lill-intimata biex tidher in subizzjoni.
2. L-intimata pprezentat l-eċċezzjoni illi "*l-pubblikazzjoni tammonta għall-fair comment dwar fatti sostanzjalment veri*".
3. Tlett ijiem wara l-preżentata tar-risposta, l-intimata sfat maqtula u eventwalment l-gudizzju giet trasfuż f'isem l-eredi tagħha L-Avukat Dr. Peter Caruana Galizia, Matthew Caruana Galizia, Andrew Caruana Galizia u Paul Caruana Galizia³. Iktar tard

³ Fol 23

l-Avukat Dr. Peter Caruna Galizia assuma l-atti f'isem u għan-nom tal-assenti Matthew Caruana Galizia, Andrew Caruana Galizia u Paul Caruana Galizia.⁴

4. Ir-rikorrenti esebiet mar-rikors kopja tal-pubblikazzjoni lamentata kif dehret fil-blog www.daphnecaruanagalizia.com nhar it-3 ta' Mejju 2017 bit-titolu: "*CHOGM 2015 task force led by PM's friend Phyllis Muscat asked hotels for kickbacks on delegate bookings*". Il-kontenut tal-pubblikazzjoni huwa s-segwenti:

"An email leaked to this website and dated April two years ago (see below) shows that the task force set up by the Prime Minister to organise the Commonwealth Heads of Government Meeting in Malta that year asked the hotels for kickbacks - euphemistically described as "commission" - on hotel bookings for delegates. The email, which the Malta Hotels and Restaurants Association circulated to its hotel members, describes a meeting which the MHRA representatives had with the CHOGM task force on the subject of hotel bookings. and says 'We have been informed that the task force will be requesting a commission and we would like to emphasise that each member is free to negotiate the respective commission to be given directly with the CHOGM Task Force'"

Imbagħad il-kumpliment tal-pubblikazzjoni tikkonsisti f'riproduzzjoni tal-*email* imsemmija.

Ligi applikabbli

5. Qabel xejn għall-finijiet ta' preċiżjoni għandu jingħad illi fl-14 ta' Mejju 2018, cioe' f'it iktar minn sena wara l-ftuħ ta' din il-kawża, daħal fis-sehħ permezz tal-Att XI tal-2018 il-Kap. 579 intitolat 'l-Att dwar il-Midja u l-Malafama'. Għalkemm b'effett mill-14 ta' Mejju 2018 gie mħassar ukoll il-Kap. 248 tal-Ligijiet ta' Malta madanakollu ai termini tal-Artikolu 25(2) tal-Kap. 579:

'l-Att imħassar, kif fis-sehħ qabel ma jigi mħassar permezz ta' dan l-Att, għandu jkompli japplika fir-rigward ta' kawżi pendenti fil-qorti fiż-żmien li jithassar'

6. Għaldaqstant huwa ċar illi huma d-dispożizzjonijiet tal-Kap. 248 (L-Att dwar l-Istampa) li japplikaw għall-kawża odjerna.

⁴ Fol 42

Provi

7. Ix-xhieda li tressqu mir-rikorrenti fil-kors tal-kawża kienu s-segwenti:

1. Ir-rikorrenti nnifisha **Phyllis Muscat** xehdet bil-mezz ta' *affidavit* li gie pprezentat fit-3 ta' Mejju 2018⁵,
2. **Melvin Mallia**, rappreżentant tal-Bank Ċentrali li xehed *viva-voce* fis-seduta tat-12 ta' Novembru 2018,⁶
3. **Paul Dalli**, membru tat-*task force* tac-CHOGM Malta 2015 li xehed *viva-voce* fis-seduta tal-10 ta' Jannar 2019,⁷
4. **Jesmond Gatt**, rappreżentant tal-Bank Ċentrali li xehed *viva-voce* fis-seduta tal-10 ta' Jannar 2019⁸.

8. Ix-xhieda li tressqu mill-intimati kienu s-segwenti:

1. L-intimati l-**Avukat Dr. Peter Caruana Galizia** u **Matthew Caruana Galizia** xehdu bil-mezz ta' *affidavits* li gew ipprezentati fl-20 ta' Ġunju 2019.⁹

9. Fl-*affidavit* tagħha r-rikorrenti **Phyllis Muscat** spjegat kif hi kienet giet maħtura fil-Gvern bħala Kap ta' *Task Force* li kellu l-għan li "*jipprepara u jmexxi il-Commonwealth Heads of Government Meeting (maghruf bħala CHOGM) li nzamm f'Malta f'Novembru 2015. Dan il-kumitat kien magħmul mis-Segretarju Permanenti fil-Ministeru tal-Finanzi, Segretarju Permanenti fil-Ministeru tal-Intern, Segretarju Permanenti fil-Ministeru tal-Affarijiet Barranin, Segretarju Permanenti fil-Ministeru tat-Turizmu, ic-Chairman ta' Transport Malta u d-Direttur tal-Komunikazzjoni tal-Ufficju tal-Prim Ministru. Jiena kont kap u koordinatur ta' dan il-kumitat. Kelli funzjoni eżekuttiva.*"

⁵ Fol 28

⁶ Fol 40

⁷ Fol 54

⁸ Fol 72

⁹ Fol 86 *et seq.*

10. Xehdet kif il-kumitat kellu fost oħrajn jikkoordina u jorganizza l-akkomodazzjoni għad-delegazzjonijiet tal-pajjiżi u oħrajn li kienu ser jattendu għall-*meeting*. Għaddiet imbagħad biex tispjega illi fil-qasam tat-turiżmu hija prassi komuni illi min jorganizza konferenzi jidhul fi ftehim ma' lukandi għall-akkomodazzjoni tal-partecipanti u tal-kirja tal-*venue* versu hlas ta' kummissjonijiet jew tnaqqis fil-prezz lill-istess organizzatur. Skond ir-rikorrenti l-kumitat iddecieda li sabiex jirkupra parti mill-ispiza li kien ser ikollu joħroġ il-Gvern sabiex jorganizza l-laqgħa juża l-istess prassi sabiex jitlob *commission fee* jew traħħis fil-prezz mill-lukandi magħżula. B'hekk skond ir-rikorrenti: *"il-kummissjoni li s-soltu jhallsu lill-organizzaturi ta' events simili, jhallsuha lill-Gvern."* Effettivament filfatt *"mill-hlasijiet li ghamlu dawn id-delegati il-lukandi hallsu kummissjoni lill-Gvern"*. F'dawk il-każijiet fejn il-prezz tal-akkomodazzjoni kellu jithallas direttament mill-Gvern, il-lukandi in kwistjoni taw *rebate* lill-Gvern ekwivalenti għall-kummissjoni.
11. Ir-rikorrenti tgħid illi l-lukandi magħżula kienu xorta waħda ser jibbenefikaw in kwantu l-laqgħa kienet ser tinzamm fi żmien li tradizzjonalment huwa wieħed batut għat-turiżmu lokali. Qalet li wara li ssejjhet laqgħa mal-MHRA u ġew diskussi l-bżonnijiet li kellu l-Gvern għall-akkomodazzjoni tal-partecipanti u għall-*venue* il-Kumitat kien għamilha ċara magħhom li l-kummissjoni tas-soltu kellha tithallas lill-Gvern.
12. L-istess rikorrenti imbagħad għamiltha ċara illi: *"Dan il-ħlas qatt ma ġie fidejja jew fidejn il-kumitat jew xi membru tiegħu, iżda sar direttament fil-kont tal-Gvern tal-Bank Ċentrali...la jiena u ebda membru ieħor tal-kumitat ma għaddew għandu xi kummissjonijiet, la direttament u lanqas indirettament. Il-ftehim mill-bidu nett kien fis-sens li l-ħlas isir direttament fil-kont tal-Gvern. Bl-artikolu tagħha Daphne Caruana Galizia allegat li jiena, fil-kariga tiegħi imsemmija, tlabt xi hlas illeċitu (kickback) għaliya. Jiena nifhem li kienet qegħda tirreferi għall-kummissjonijiet li jiena tlabt għall-Gvern fil-kors tax-xogħol tiegħi kif diġà spjegajt aktar 'il fuq, iżda huwa ċar li kitbet b'mod li twassal il-messaġġ li min jaqra l-artikolu li jiena kont qed nieħu xi haġa għaliya jew qed nagħmel xi gwadann personali. Dan assolutament mhux minnu. Din l-allegazzjoni hija għal kollox bla bażi u intiża biex tkun qarrieqa u tagħmilli malafama. Intenni li l-hlasijiet kollha saru direttament lill-Gvern fil-Fond Konsolidat"*
13. Finalment ir-rikorrenti spjegat l-effett li kellu fuqha l-artikolu in kwistjoni: *"L-artikolu għamilli h̄sara kbira għaliex ta' impressjoni qarrieqa li jiena għamilt xi*

gwadann personali mix-xogħol tiegħi waqt ic-CHOGM. Ngħid li għalija kienet aktar serja fis-sens li l-blog jinqara mad-dinja kollha u n-nies li kelli kuntatt magħhom waqt ic-CHOGM meta jagħmlu search b'ismi fuq l-internet jiġu nfaċċati b'dan l-artikolu qarrieq dwari."

14. Permezz tax-xhiedha *viva voce* mressqa mir-rikorrenti fis-seduti tat-12 ta' Novembru 2018 (**Melvin Mallia** – rappreżentant tal-Bank Ċentrali ta' Malta) u tal-10 ta' Jannar 2019 (**Paul Dalli** - membru tat-*task force* ta-CHOGM Malta 2015 u **Jesmond Gatt** - rappreżentant ieħor tal-Bank Ċentrali ta' Malta), ġie ppruvat illi l-ħlas li għamlu ħames kumpaniji (operaturi ta' lukandi ewlenin f'pajjiżna) għal *commission fees* mitluba fil-fatturi maħruġa mill-Kumitat in kwistjoni (Dok PM2 sa Dok PM6¹⁰) ġew imħallsa direttament lill-Gvern tal-Malta fil-kont tal-Bank Ċentrali li jgħajjat lill-Uffiċċju tal-Prim Ministru. F'dan ir-rigward id-dokumentazzjoni turi:

1. Il-ħlas permezz ta' *wire transfer* ta' € 257,730 minn "Hilton Malta" ¹¹
2. Il-ħlas permezz ta' ċekk bankarju ta' € 44,039.30 minn "Five Star Hotels" (rigwardanti "Corinthia Hotel")¹²
3. Il-ħlas permezz ta' *wire transfer* ta' € 29,164.13 minn "Marina San Gorg Ltd"¹³
4. Il-ħlas permezz ta' *wire transfer* ta' € 65,726 minn "Island Hotels Group Ltd" (rigwardanti "Radisson Blu")¹⁴, u
5. Il-ħlas permezz ta' ċekk bankarju ta' € 18,977.35 minn "Eden Hospitality Ltd" (rigwardanti "Intercontinental Hotel")¹⁵

15. Min-naħa tagħhom l-intimati ressqu l-provi tagħhom permezz tal-affidavits maħlufa tal-Avukat Dr. Peter Caruana Galizia u ta' Matthew Caruana Galizia li jiġu r-raġel u t-tifel tal-intimata Daphne Caruana Galizia.

16. L-Avukat **Dr. Peter Caruana Galizia** xehed illi meta martu kienet ġiet notifikata b'din il-kawża hija ma' setgħetx tifhem x'kien hemm libelluż fil-*blog post* in kwistjoni fil-konfront tar-rikorrent u anke hu qabel perfettament magħha illi "*la fit-titolu u*

¹⁰ Fol 30-34

¹¹ Fol 50

¹² Fol 78-81

¹³ Fol 51

¹⁴ Fol 52

¹⁵ Fol 75-77

lanqas fl-istorja ta' taht it-titolu m'hemm xi allegazzjoni li Phyllis Muscat personalment hadet xi kickbacks jew commissions) mil-lukandi fejn gew ospitati d-delegati li attendew għall-laqgħa ta-CHOGM tas-sena 2015...II-blog post jghid car illi kien ic-CHOGM 2015 Task Force, u mhux Phyllis Muscat personalment, li talbet kickbacks mil-lukandi. Fil-fatt it-titolu tal-blog post jghid testwalment: "CHOGM 2015 task force Jed by PM's friend Phyllis Muscat asked hotels for kickbacks on delegate bookings... L-ebda parti tal-artikolu ma jghid illi kienet Phyllis Muscat li talbet kickbacks u li zammet xi flus għaliha. Anzi l-artikolu jagħmilha cara li l-kickbacks marru għand it-task force bhala entita' governattiva li twaqqfet apposta biex tiehu hsieb l-organizzazzjoni ta-CHOGM 2015"¹⁶

17. Spjega illi "l-mara tiegħi hasset illi r-reazzjoni ta' Phyllis Muscat, illi propju l-ghada tal-publikazzjoni tal-blog post fethet kawza ta' libell, kienet frott ta' nuqqas ta' familjarita' u esperjenza fl-uzu tal-lingwa Ingliza u li għalhekk fehmet, kontra kull logika u raguni, illi l-blog post kien qiegħed jallega li kienet Phyllis Muscat personalment illi talbet u hadet ii-commissions jew kickbacks mil-lukandi, mentri fil-verita', din l-allegazzjoni ma tirrizulta minn imkien.
18. Xehed ukoll illi skond hu r-rikorrenti ma' fehmitx sew il-pubblikazzjoni in kwistjoni u li filfatt "l-ispirazzjoni biex kitbet dak l-artikolu kien gej mill-fatt illi hasset li l-Gvern ta' Malta tramite ic-CHOGM task force kien skorret u mingħajr dekor meta talab il-lukandi jhallsu lura parti mill-prezz tal-allogg tad-delegati, u dan ovvjament mingħajr ma d-delegati jkunu jafu li parti mis-somma li halsu lil-lukanda għall-allogg tagħhom kien sejjer għand il-Gvern ta' Malta, u li minhabba f'hekk, kien probabbli hafna, li kellhom ihallsu rati izjed għoljin min-normali biex il-lukanda tkopri l-gidma li kien sejjer jiehu l-Gvern.
19. Finalment fuq it-tifsira tal-kelma "kickbacks" qal illi din hija kelma ekwivalenti għat-tifsira "commissions" u filfatt mill-provi hareġ illi kummissjonijiet "fuq l-allogg tad-delegati fil-lukandi" kienu intalbu mill-Kumitat u li dawn kienu fil-fatt tħallsu lill-Gvern ta' Malta. Jagħlaq billi jghid hekk: "Il-mara tiegħi dehrilha li l-Gvern ta' Malta ma kellux jinzel għal-livell li jitlob commissions mil-lukandi u l-artikolu tagħha kien purament fdan is-sens: opinjoni fuq fatt pruvat. Kwalunkwe allegazzjoni jew

¹⁶ Fol 86

implikazzjoni li Phyllis Muscat approfita ruhha personalment mill-pagamenti li saru mil-lukandi huwa biss fl-imaginazzjoni tagħha”.

20. **Matthew Caruana Galizia** xehed xi ftit jew wisq bħal Dr. Peter Caruana Galizia iżda qal ukoll fost oħrajn illi għalkemm ma’ kienx involut fil-kitba tal-pubblikazzjoni¹⁷: *“I remember discussing it with my mother both before and after publication. We both observed that the collection of kickbacks was not being done for the exclusive profit of Phyllis Muscat, but rather was fully institutionalised”. Spjega li: “To make it clear that the collection of kickbacks was institutionalised and not done exclusively and personally by Phyllis Muscat, my mother published, as part of the blog post, a screenshot of an email that was given to her by a source. The email says clearly: “... the task force will be requesting a commission” That sentence is quoted directly by my mother in the third and final paragraph of the blog post, for emphasis”*
21. Fir-rigward tat-tifsira tal-kelma “kickbacks” jgħid hekk: *“This is a word that, in this context, is equivalent to the meaning of the word “commissions”, which is used in the email provided by the source and which is quoted in the blog post... The World Bank defines a kickback as: “Payment made by a successful bidder to a third party as a result of an arrangement made prior to bidding. This is typically regarded as a share of proceeds from a bid that has been padded sufficiently to cover the payoffs and kickbacks to the parties involved. Kickbacks are usually arranged as a percentage of the bid amount and increase in size with the status of the party concerned” (World Bank. 2007. The Many Faces of Corruption)... This fits the definition of the arrangement that the Task Force made with hotels in that: a) the arrangement was made prior to bidding for lodging delegates; b) it is probable that rates were padded by hotels to cover the cost of kickbacks; c) the “commission” denoted on the invoices made out to Hotels by the Task Force is described as a percentage of the hotel’s rate... Professionals like me, working in the field of anti-corruption, whether as journalists, prosecutors, consultants, forensic accountants, investigators or employees of large international or supranational organisations like the World Bank, International Monetary Fund and United Nations make no distinction in practise between “commission” and “kickback” as the former is often used as an institutional euphemism for the latter... For example, the Swiss Federal Banking Commission, using information received from the committee investigating corruption in the UN Oil-for-*

¹⁷ Fol 89 et. seq.

- Food Program in Iraq, concluded that contracts financed by some banks involved bribes, "called commissions", to Iraqi officials. The SFBC defined these "commissions", requested by the Iraqi Government, as "without legitimate economic rationale" (SFBC 2005)."*
22. Spjega ukoll fuq dan il-punt illi *"There is an implicit link made, in the email published along with the blog post, between hotels being "featured in the secured CHOGM website" and the payment of the "commission". If the CHOGM 2015 Task Force intended to make that link, then being featured on the website would be based solely on the criterion of the hotels' willingness and ability to pay a "commission" and not on any quality-control criteria that would add value for the delegates using the website...The CHOGM 2015 Task Force, in its role as the event organiser, would normally have been expected by delegates to seek discounted rates through block bookings. That is the standard practice at every international event I have attended over the course of my career, including those organised by private organisations. The Task Force did the opposite of this...The "commission" requested by the CHOGM 2015 Task Force is therefore a payment made "without legitimate economic rationale" (SFBC 2005) and equivalent in practical definition to a kickback."*
23. Finalment jagħlaq l-affidavit tiegħu b'dawn il-kliem: *"My mother thought that the Government of Malta should not have reduced itself to distorting the free market, and behaving like a feudal baron, by asking for "commissions" from hotels, in return for providing no added value whatsoever. Her blog post was written purely in this sense: opinion based on proven fact. Any allegation or implication that Phyllis Muscat profited personally from the payments that were made by hotels exists only in her imagination"*

Kunsiderazzjonijiet

Phyllis Muscat ma' għamlet l-ebda gwadann personali u ma' rċeviet l-ebda kummissjonijiet mill-lukandi

24. Qabel xejn il-Qorti tirrileva illi jekk ma' hemm qbil fuq xejn bejn il-partijiet f'din il-kawża, tal-inqas il-lum il-ġurnata (u sa' minn tal-inqas l-20 ta' Ġunju 2019 – id-data ta' meta ġew ippreżentati l-affidavits tal-intimati) hemm qbil unanimu bejniethom illi **r-rikorrenti Phyllis Muscat ma' dahhlet xejn fil-but tagħha u ċioe m'għamlet l-ebda gwadann personali fil-forma ta' kummissjonijiet imħallsa lilha mill-**

lukandi li ospitaw il-partecipanti fil-laqgħa ta' CHOGM li seħhet f'Malta fl-2015.

25. Fil-verità dan ma' qaluhx biss ir-rikorrenti u l-intimati nfushom iżda gie ppruvat ukoll b'mod sodisfaċenti mir-rappreżentanti tal-Bank Ċentrali ta' Malta li ttellgħu jixhdu.
26. Il-partijiet però m'humiex qegħdin jaqblu fuq it-tifsira tal-pubblikazzjoni nnifisha. Ir-rikorrenti tishaq illi bil-*blog post* tagħha l-intimata għamlet allegazzjoni illi hija kienet ħadet ħlas illeċitu (kickback) għaliha bi gwadann personali. L-intimati jgħidu li r-rikorrenti ma' fehmitx sew il-pubblikazzjoni u filfatt it-tifsira li għandha tingħata għaliha hija dik illi t-*Task Force ta' CHOGM 2015* kien daħħal kummissjonijiet mill-lukandi in kwistjoni b'detriment għall-partecipanti nfushom illi ad insaputa tagħhom kienu spiċċaw ħallsu iktar għall-akkomodazzjoni tagħhom u dan sabiex il-lukandi ikopru l-*"gidma li kien sejjer jiehu l-Gvern"*.

"The Ordinary Meaning of Words" u s-*"Single Meaning"* tagħhom fil-liġi komuni Inġliża

27. Il-Gatley jgħid hekk:

*"While some indication, express or implied, of what underlies the alleged comment is necessary the ultimate question on whether the words are comment or fact is how they would strike the ordinary, reasonable reader and it is unlikely that any attempt to formulate general principles of construction will be of much help, especially bearing in mind that any particular statement must be taken in the context of the piece as a whole... Context: Words must always be read in their context and the context of the piece as a whole may point to the conclusion that words which could, taken literally, be statement of fact are comment."*¹⁸

28. Fis-sentenza mogħtija mill-*House of Lords* (li l-funzjoni ġudizzjarja tagħhom llum tappartjeni lill-Qorti Suprema tar-Renju Unit) fl-ismijiet: **Lewis v Daily Telegraph [1964] AC 234** *inter alia* inġhad is-segwent minn Lord Devlin:

"The ordinary meaning of words and the meaning enlarged by innuendo give rise to separate causes of action, but there has also been a divergence between the popular

¹⁸ Gatley on Libel and Slander (11th edition), (2008), The Common Law Library, ed. Milton P et. al., para.12.10-12.11, p. 346

and the legal meaning of " innuendo." The natural and ordinary meaning of words for the purposes of defamation is not their natural and ordinary meaning for other purposes of law. There must be added to the implications which a court is prepared to make as a matter of construction all such insinuations and innuendos as could reasonably be read into them by the ordinary man...

... My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory."

29. Fis-sentenza tal-Qorti tal-Appell tal-Ingilterra u Wales, **Slim and Others v. Daily Telegraph Ltd. and Others [1968] 2 Q.B. 157** Lord Diplock qal is-segwenti fuq id-duttrina tas-*"Single Meaning"* stabbilita fil-Common Law:

"In the spring of 1964 two short letters appeared in the correspondence columns of the "Daily Telegraph." Written by Mr. Herbert, they formed part of a robust though desultory controversy about the prospective use by motor vehicles of a public footpath forming part of Upper Mall in Hammersmith. Neither letter can have taken a literate reader of that newspaper more than 60 seconds to read before passing on to some other, and perhaps more interesting, item. Any unfavourable inference about the plaintiffs' characters or conduct which he might have drawn from what he read would have been one of first impression. Yet in this court three lords justices and four counsel have spent the best part of three days upon a minute linguistic analysis of every phrase used in each of the letters. If this protracted exercise in logical positivism has resulted in our reaching a conclusion as to the meaning of either letter different from the first impression which we formed on reading it, the conclusion reached is unlikely to reflect the impression of the plaintiffs' character or conduct which was actually formed by those who read the letters in their morning newspaper in 1964.

Nevertheless, the artificial and archaic character of the tort of libel makes the exercise necessary in this appeal, even though in the end we return to the first impression with which we began. Libel is concerned with the meaning of words. Everyone outside a court of law recognises that words are imprecise instruments for communicating the thoughts of one man to another. The same words may be understood by one man in a different meaning from that in which they are understood by another and both meanings may be different from that which the author of the words intended to convey. But the notion that the same words should bear different meanings to different men and that more than one meaning should be “right” conflicts with the whole training of a lawyer. Words are the tools of his trade. He uses them to define legal rights and duties. They do not achieve that purpose unless there can be attributed to them a single meaning as the “right” meaning. And so the argument between lawyers as to the meaning of words starts with the unexpressed major premise that any particular combination of words has one meaning which is not necessarily the same as that intended by him who published them or understood by any of those who read them but is capable of ascertainment as being the “right” meaning by the adjudicator to whom the law confides the responsibility of determining it.

*That is what makes the meaning ascribed to words for the purposes of the tort of libel so artificial. In the present appeal, although legal innuendoes (see *Lewis v. Daily Telegraph Ltd*) have been pleaded, no reliance has been placed in the argument upon them. The whole discussion has been about the “natural and ordinary meaning” of the words used in the letters. What is the “natural and ordinary meaning” of words for the purposes of the law of libel? **One can start by saying that the meaning intended to be conveyed by the publisher of the words is irrelevant** (sottolinear u emfasi tal-Qorti). However evil the imputation upon the plaintiff's character or conduct he intended to communicate, it does not matter if, in the opinion of the adjudicator upon the meaning of the words, they did not bear any defamatory meaning. However innocent an impression of the plaintiff's character or conduct the publisher of the words intended to communicate, it does not matter if, in the opinion of the adjudicator upon the meaning of words, they did bear a defamatory meaning. This would be rational enough if the purpose of the law of libel were to afford compensation to the citizen for the unjustifiable injury to his reputation actually caused by the publication of the words to those to whom they were communicated. But although in assessing damages the courts now accept this as the purpose of the civil action (see *Rookes v. Barnard* and *McCarey v. Associated Newspapers Ltd. (No. 2)*), we refuse to accept its logical corollary that the relevant question in determining liability for libel is: “What*

*did those to whom the words were published actually understand them to mean?" The best evidence of that would be the evidence of the persons to whom the words were actually published. Yet, save in exceptional cases where a "legal" innuendo is relied on, it is not even permitted to ask a witness to whom the words were published: "What did you understand them to mean?" What he did actually understand them to mean does not matter. This too might be rationalised on the ground that the publisher of the words ought to be responsible in law only for the injury caused to the plaintiff's reputation by those defamatory inferences which a reasonable man might draw from the words published, and the witness to whom the words were published may not have been reasonable in drawing the defamatory inferences which he in fact drew. But this rationalisation breaks down once it is conceded, as it has been by the House of Lords in *Lewis v. Daily Telegraph*, that one man might be reasonable in drawing one defamatory inference from the words and another man might be reasonable in drawing another defamatory inference. Where, as in the present case, words are published to the millions of readers of a popular newspaper, the chances are that if the words are reasonably capable of being understood as bearing more than one meaning, some readers will have understood them as bearing one of those meanings and some will have understood them as bearing others of those meanings. But none of this matters. What does matter is what the adjudicators at the trial thinks is the one and only meaning that the readers as reasonable men should have collectively understood the words to bear. That is "the natural and ordinary meaning" of words in an action for libel."*

30. Din id-duttrina giet ikkritikata matul iż-żminijiet u giet ukoll mwarrba f'dawk il-kawżi ta' libell li jirrigwardaw "*malicious falsehood*" u l-privileġġ kwalifikat fosthom tal-kondotta tal-ġurnalista fil-pubblikazzjoni ta' artiklu ("journalistic conduct")¹⁹. Madanakollu anke meta giet iffaċċjata bi kritika, xi kultant ħarxa, l-utilita ta' din id-duttrina giet xorta waħda rikonoxxuta:

"Language is inherently imprecise. Words and phrases and sentences take their colour from their context. The context often permits a range of meanings, varying from the obvious to the implausible. Different readers may well form different views on the meaning to be given to the language under consideration. Should the law take this into

¹⁹ Ara per eżempju ***Reynolds v Times Newspapers Ltd* [2001] 2 AC 127**, ***Jameel & Ors v Wall Street Journal Europe Sprl* [2006] UKHL 44** u ***Bonnick v. Morris* [2002] 3 WLR 820**

*account when applying the objective standard of responsible journalism? Or should the law simply apply the objective standard of responsible journalism to the single meaning the law attributes to the offending words, regardless of how reasonable it would be for a journalist or editor to read the words in a different, non-defamatory sense? ... At first sight there might seem to be some legal logic in applying the latter approach. The “single meaning” rule adopted in the law of defamation is in one sense highly artificial, given the range of meanings the impugned words sometimes bear ... **Nevertheless, given the ambiguity of language, the rule does represent a fair and workable method for deciding whether the words under consideration should be treated as defamatory. To determine liability by reference to the meaning an ordinary reasonable reader would give the words is unexceptionable** (enfasi miżjuda mill-Qorti).²⁰*

31. Imbagħad fis-sentenza tal-Qorti tal-Appell tal-Ingilterra u Wales, **Gillick v Brook Advisory Centres & Anor [2001] EWCA Civ 1263** il-Qorti kienet emfatika meta kkwotat lill-Qorti tal-Ewwel Istanza (Imħallef J. Eady):

*“Eady J produced what, if I may respectfully say so, was an impeccable synthesis of the authorities in this area of the law when directing himself as to the approach he should adopt to the respondents' application. I can do no better than to repeat this:
“The proper role for the judge when adjudicating a question of this kind is to evaluate the words complained of and to delimit the range of meanings of which the words are reasonably capable, exercising his or her own judgment in the light of the principles laid down in the authorities ... If the judge decides that any pleaded meaning falls outside the permissible range, then it will be his duty to rule accordingly. In deciding whether words are capable of conveying a defamatory meaning, the court should reject those meanings which can only emerge as the produce of some strained or forced or utterly unreasonable interpretation. The purpose of the new rule is to enable the court to fix in advance the ground rules and permissible meanings, which are of cardinal importance in defamation actions, not only for the purpose of assessing the degree of injury to the claimant's reputation but also for the purpose of evaluating any defences raised, in particular, justification and fair comment. **The court should give the article the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the article once** (emfaži miżjuda mill-*

²⁰ **Bonnick v. Morris [2002] 3 WLR 820**

Qorti). *Hypothetical reasonable readers should not be treated as either naive or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. **The court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts*** (emfaži miżjuda mill-Qorti). *Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader. **The court should certainly not take a too literal approach to its task.*** (emfaži miżjuda mill-Qorti) ”

32. Fis-sentenza tal-*High Court* tal-Ingilterra u Wales fl-ismijiet **Lowe v Associated Newspapers Ltd | [2006] 3 All ER 357** gie ikkonfermat ukoll illi d-duttrina tat-tifsira singolari tapplika ukoll għall-każijiet tad-difiża tal-*fair comment* minkejja li f'dik il-kawża kienet saret talba speċifika lill-Qorti appuntu sabiex teskludi l-applikazzjoni tad-duttrina f'tali każijiet.

L-applikazzjoni tad-duttrini msemmija għal din il-kawża

33. Il-posizzjoni tar-rikorrenti f'din il-kawża hija illi hija giet malafamata minn Daphne Caruana Galizia għaliex fil-*blog post* in kwistjoni hija allegat illi bħala l-kap tat-*Task Force* r-rikorrenti ħadet ħlas illeċitu (kickback) mill-lukandi fuq il-*bookings* tad-delegati u dan bi gwadann personali għaliha. Skond l-intimati l-gist tal-pubblikazzjoni kien differenti u tifsira tiegħu kienet illi bħala l-kap tat-*Task Force* hija kienet esigiet illi l-lukandi jagħtu “*commission*” lill-Gvern u dan b'detriment ta' min ikun qed jixtri l-akkomodazzjoni mingħandhom.
34. Kemm l-Avukat Dr. Peter Caruana Galizia u kemm l-intimat Matthew Caruana Galizia jishqu illi l-kelma “*kickbacks*” hija sinonima mal-kelma “*commissions*”. Tal-aħħar jispjega f'ċertu dettal illi professjonisti bħalu li jaħdmu fil-qasam tal-għieda kontra l-korruzzjoni ma' jagħmlu l-ebda distinzjoni bejn “*commissions*” u “*kickbacks*”. Pero l-istess Matthew Caruana Galizia imur oltre minn hekk u jispjega f'ċertu dettal illi l-ħlasijiet li saru lit-*Task Force* huma neqsin minn “*legitimate economic rationale*” u bħala tali jikkwalifikaw bħala “*kickbacks*” bħal ma' pereżempju kkwalifikat bħala “*kickbacks*” is-*Swiss Federal Banking Commission* meta kienet qed tirreferi għal ħlasijiet li ċertu banek kienu għamlu (fil-finanzjament tagħhom ta' ċertu kuntratti internazzjonali taħt il-*UN Oil-for-Food Program*) lill-Gvern tal-Iraq.

35. Il-Qorti m'hijiex ser taqa' fit-tentazzjoni illi tagħmel analizi elaborata wisq tal-kelma "kickbacks" stante illi kif ingħad l-iżjed importanti f'kawzi ta' din in-natura hija t-tifsira singolari (stabbilita mill-Qorti) illi qarrej ordinarju jagħti lill-pubblikazzjoni in kwistjoni. Madanakollu l-Qorti tħoss illi għandha tirmarkha illi l-element li bniedem ta' intelligenza ordinarja jagħraf jiddistingwi bejn "kickback" u "commission" huwa l-illecita *o meno* tal-ħlasijiet in kwistjoni. Fi kliem ieħor, ħlasijiet li soltu jgħaddu bħala *commission fees* ma' jibqgħux jikkwalifikaw bħala tali u jsiru "kickbacks" meta l-ħlasijiet ikunu pprojbiti minn xi liġi. Issa fil-*blog post* in kwistjoni l-intimata kienet qed tesponi l-aġir tat-*Task Force* f'isem il-Gvern illi jitlob ħlas ta' *commission fees* (li hija sejħitilhom "kickbacks") mill-lukandi preferuti u li magħhom t-*Task Force* kien laħaq ftehim probabbilment għad-detriment tal-partecipanti illi minflok ma' ħadu prezz irhas kellhom minflok iħallsu prezz għola. Aġir bħal dan jista' jkun "crass", bla etika, bla "*legitimate economic rationale*" u anke ta' detriment għas-suq ħieles, però ma' jistax jitqies illecitu proprju għaliex m'huwiex ipprojbit mill-liġi.

Dan huwa b'kuntrast mal-ħlasijiet ta' *commission fees* li kienu saru fuq medda ta' snin minn numru ta' kumpaniji internazzjonali lill-Gvern tal-Iraq u li għamel riferenza għalihom l-intimat Matthew Caruana Galizia fl-affidavit tiegħu. F'dak il-każ il-*commission fees* kienu verament *kickbacks* għaliex kienu tħallsu lill-istess Gvern (wara talba speċifika minnu li bdiet issir minn Awwissu 2000 'l quddiem sabiex kumpaniji li kienu qed ifornu servizzi u prodotti umanitarji lill-Gvern iħallsu *kickback* ta' ċirka 10% fuq il-prezz tal-kuntratti tagħhom) bi **ksur** tar-Regolamenti stretti tal-UN Oil-For-Food Programme u tas-Sanzjonijiet imposti fuq il-pajjiż mill-Ġnus Magħquda.

Kunsiderazzjonijiet tal-Qorti

36. Il-Qorti fliet u qrat il-pubblikazzjoni in kwistjoni (inkluż il-kummenti ppubblikati taħtu) għal diversi drabi. It-titolu gie kkunsidrat ukoll fil-kuntest tal-pubblikazzjoni sħiħa u dan *in omagġ* għall-principju tal-"*bane and antidote*" stabbilita fil-liġi tal-malafama:

"The publication must be read as a whole, and any "bane and antidote" taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken

*(even extinguish altogether) the defamatory meaning that the words bear if they were read in isolation (e.g. bane and antidote cases)."*²¹

37. Il-Qorti qieset ukoll il-kuntest taż-żmien meta nkiteb il-*blog post* in kwistjoni, żmien li kien sinonimu ma' rivelazzjonijiet, waħda fuq l-oħra, diversi minnhom mill-intimata Caruana Galizia nnifisha, dwar *kickbacks* u tixhim li fihom kienu allegatament involuti politiċi f'posizzjoni għolja fil-Gvern, inkluż il-Prim Ministru ta' dak iż-żmien. Ikkunsidrat ukoll l-emfażi li l-intimata għamlet fit-titlu nnifsu u ċioe illi r-rikorrenti kienet haħiba tal-Prim Ministru ta' dak iż-żmien.
38. Mill-analiżi tal-Qorti jirriżulta illi hemm tifsira waħda illi bniedem ta' intelligenza ordinarja jista' raġjonevolment jagħti lill-pubblikazzjoni in kwistjoni u din hija viċin haħna għal dik mogħtija mir-rikorrenti u filfatt tista' titqies ukoll malafamanti fil-konfront tagħha. Skond ir-rikorrenti, it-tifsira li għandha tingħata hija dik illi din talbet *kickbacks* mill-lukandi in kwistjoni "*meta kienet qed tmexxi c-CHOGM 2015*" sabiex tħaxxen il-bwiet tagħha. Il-Qorti tqis però illi kemm fit-titlu u kemm fil-korp tal-pubblikazzjoni l-intimata għamlet emfażi fuq il-fatt illi l-*kickbacks* intalbu mit-*Task Force* u mhux personalment mir-rikorrenti anke jekk dan it-*Task Force* kien immexxi mir-rikorrenti. It-tifsira korretta allura hija dik illi l-membri tat-*Task Force* (**inkluż possibbilment ir-rikorrenti nnifisha**) talbu l-*kickbacks* huma nfushom, bl-implikazzjoni li huma għamli dan għall-gwadann personali tagħhom. Hija din it-tifsira singolari illi l-Qorti sejra tatribwixxi lil din il-pubblikazzjoni. Bħala l-persuna li kienet (korrettement) identifikata bħala l-Kap ta' dan it-*Task Force*, r-rikorrenti kellha għalhekk kull raġun tħossha malafamata bil-pubblikazzjoni.
39. Il-Qorti ma' kellhiex u 'għandiex għalfejn tipprova tanalizza x'kienet l-intenzjoni tal-intimata meta giet biex tippubblika l-artikolu stante illi l-intenzjoni tagħha – tajba kemm setgħet kienet tajba – hija rrilevanti għal din il-kawża. Fil-verità **li kieku kien jeħtiġilha tagħmel hekk** il-Qorti hija konvinta, mhux biss minn dak li xehdu l-intimati nfushom, iżda anke minn analiżi ta' sorsi oħra illi l-ħsieb tal-intimata verament kien mhux li tallega illi r-rikorrenti daħħlet xi *kickbacks* fil-but tagħha iżda illi tixhet dawl fuq l-aġir diskutibbli tal-Gvern illi jitlob *commission fees* mill-lukandi tramite it-*Task Force*. Meta imbagħad il-qarrejja interpretaw l-pubblikazzjoni b'mod illi kien qed jinxtehet dawl ikraħ fuq it-*Task Force* u fuq ir-rikorrenti nnifisha (i.e. li

²¹ L-Imħallef Nicklin fis-sentenza **Koutsogiannis v. The Random House Group Ltd [2019] QBD**

kienu qed idahhlu l-flus f'buthom), **l-intimata ma' ghamlet l-ebda tentattiv ta' kjarifika f'dan ir-rigward.**

40. Fir-rigward tal-intenzjoni ta' min ikun allegatament ikkawża malafama, apparti dak li ġa inghad iżjed 'l fuq fil-korp ta' din is-sentenza, l-Imħallef William Harding qal hekk fis-sentenza tal-Qorti Kriminali tat-8 ta' Jannar 1959 fl-ismijiet: **Il-Pulizija v. L-Avukat Dr. Joseph Micallef Stafrace** (Kollez. Deciz. XLIII, D, part. iv, 880, pagni 908-909):

"Inghad fil-gurisprudenza Ingliza illi:- "The law looks at the tendency and at the consequences of the publication, not at the intention of the publisher...If the defendant has published words which have in fact injured plaintiff's reputation, he must be taken to have intended the consequences naturally resulting from his act"

Din il-gurisprudenza giet segwita mill-Qrati tagħna għall-finijiet tal-Att dwar l-Istampa, kemm fi proċeduri ta' natura kriminali u kemm dak ċivili. Il-kwistjoni tal-animus iniuriandi fil-kaz ta libell filfatt taffettwa l-kwantum tad-danni u mhux l-eżistenza o meno tal-att innifsu.

41. Apparti l-intenzjoni tad-diffamatur, daqstant ieħor jkun irrilevanti f'materja ta' libell li l-Qorti tanalizza l-interpretazzjoni li persuni dotati b'intelligenza oltre minn dik meqjusa bħala ordinarja (bħal dawk b'għarfien partikolari fuq is-sugġett u professjonisti, legali u mhux, illi jaħdmu fil-qasam tal-ġlieda kontra l-korruzzjoni) jistgħu jagħtu lill-pubblikazzjoni, fosthom per eżempju dik illi *kickbacks* u *commissions* huma kliem b'tifsira identika.

Kummenti ġusti (fair comments)

42. Dwar din id-difiza Gatley jgħid kif ġej:

"To succeed in a defence (of fair comment) the defendant must show that the words are comment, and not a statement of fact. However, an inference of fact from other facts referred to may amount to a comment. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of, at least to the extent of indicating that what is being stated is comment. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If the

Claimant can show that the comment was actuated by malice (which for this purpose means that the defendant was not expressing his genuine opinion) he will defeat the plea. It is not enough, however, to show that the comment was prejudiced or exaggerated or "unfair" in the ordinary sense of that word.²²

43. Fis-succint, l-elementi tad-difiża tal-*fair comment* skond Gatley kif sussegwentement elaborati mill-Qrati tagħna²³ huma s-segwenti:
1. Il-kumment irid ikun gie msejjes fuq fatti li jkunu ssemmev fil-pubblikazzjoni li minnha jitressaq l-ilment;
 2. Il-fatti imsemmija jridu ikunu sostanzjalment veri;
 3. Jekk il-kumment ikun dwar imputazzjoni ta' motivi korrotti jew dizonesti irid jintwera li dan il-kumment kien ġustifikabbli jew mistħoqq;
 4. Il-kumment irid ikun tali li jikkwalifika bhala kritika u mhux żebliħ, tghajjir jew insolenza; u
 5. Il-kumment irid jagħti l-fehma onesta tal-kummentatur u l-pubblikazzjoni ta' dik il-fehma ma tkunx saret b'hażen jew bil-ħsieb preciz li jwegga' lil dak li jkun.
 6. Il-kumment irid ikun fuq materja li tkun "*in the public interest*" jew tal-inqas tkun tali li dwarha l-pubbliku jkollu "*a legitimate concern*"
44. Għar-raġunijiet fuq imsemmija, din id-difiża ma' tistax tirnexxi ġaladarba l-fatti (kif interpretati minn qarrej ta' intelligenza ordinarja, cioè, li l-membri tat-*Task Force* ta-CHOGM Malta 2015 ħadu hlasijiet illeciti għall-gwadann personali tagħhom) ma' rrizultawx sostanzjalment veri.

Danni

45. Fir-rigward tad-danni taħt il-Kap. 248, din il-Qorti tgawdi minn diskrezzjoni meta tiġi biex tillikwidahom stante illi dawn huma ta' natura morali u ma' jirrapprezentawx telf attwali. Fil-verità però għad li dawn it-tip ta' danni mhumiex faċilment aċcertabbli, huma xorta waħda danni kumpensatorji ("*compensatory damages*") intiżi sabiex iqegħdu lill-persuna offiża lura fl-istat

²² Gatley on Libel and Slander Sweet and Maxwell (London) 11th ed., pagna 336

²³ Ara pereżempju **Dr Louis Galea vs Etienne St John u Felix Agius** (Rif Nru 946/1997 JRM deciza fit 30 ta' April 2015)

li kien qabel ma' sofra d-danni (*restitutio ad integrum*). Ċertament m'humieix danni punittivi jew eżemplari intiżi sabieix iservu ta' tagħlima għad-difamatur jew bhala deterrent għas-soċjetà in ġenerali. Kieku kien hekk il-każ, ma' jkunx jagħmel sens illi l-eredi tad-difamatur jiġu "puniti" u mgeġhla jhallsu għal aġir li huma ma' kellhom x'jaqsmu xejn miegħu.

46. Fil-liġi proċedurali ċivili tagħna, l-eredi ta' parti fil-kawża, inkluż tal-intimat, jista' jitlob b'rikors li l-atti tal-kawża jgħaddu fil-persuna tiegħu, sabieix jissokta l-kawża minflok il-parti mejta f'dik li tissejjaħ "it-trasfuzjoni tal-ġudizzju". Fin-nuqqas, il-parti l-oħra fil-kawża tista' titlob li jsir dan u eventwalment jekk l-ebda werriet ma' jidhol biex ikompli l-kawża, il-Qorti taħtar kuraturi biex jirrapprezentaw l-interessi tal-parti li tkun ġiet nieqsa.²⁴ F'din il-kawża t-trasfuzjoni tal-ġudizzju seħħ b'digriet li tat il-Qorti fil-11 ta' Jannar 2018 wara li kienet saret talba għal dan il-għan mill-eredi tal-intimata, u ċioe mill-Avukat Dr. Peter Caruana Galizia, Matthew Caruana Galizia, Andrew Caruana Galizia u Paul Caruana Galizia.

47. Il-liġi ma' tohloq l-ebda eċċezzjoni għal meta kawża li taqa' taħt il-kompetenza tal-Qorti Ċivili ma' tkunx tista' titkompla kontra l-eredi tal-persuna li tkun ġiet nieqsa. Mhux l-istess jingħad f'numru ta' ġurisdizzjonijiet barra minn xtutna. Per eżempju fil-liġi Ingliża, skond l-Artikolu 1(1) tal-*Law Reform (Miscellaneous Provisions) Act 1934* id-dritt ta' azzjoni li jkun eżistenti kontra jew favur persuna li tmut, eżattament qabel il-mewt tagħha, jibqa' shiħ anke wara l-mewt ta' dik il-persuna u dan **b'eċċezzjoni għall-kawzi ta' malafama:**

'1(1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. Provided that this subsection shall not apply to causes of action for defamation'

Fil-liġi Irlandiża, id-*Defamation Act 2009* jipprovdi għal emendi fis-*Civil Liability Act 1961* b'dan illi ġew introdotti s-segweni artikoli:

'8(1A) On the death of a person ... a cause of action subsisting against him shall survive against his estate.

²⁴ Art. 806 *et. seq.* tal-Kap. 12 tal-Liġijiet ta' Malta

(2A) Where by virtue of subsection (1A) of this section, a cause of action for defamation survives against the estate of a deceased person, the damages recoverable against the estate of that person shall not include general damages, punitive damages or aggravated damages.'

Dan ifisser li fil-liġi Irlandiża filwaqt li azzjoni ta' libell tista' titkompla kontra l-eredi tal-mejjet, madanakollu ma' jistgħux jingħataw danni li ma' jkunux ta' natura monetarja (i.e. telf li jkun kwantifikabbli).

Fl-Awstralja, il-liġijiet tal-malafama tal-istati u territorji differenti fil-pajjiż huma uniformi u l-Artikolu 10 jgħid hekk:

'10 A person (including a personal representative of a deceased person) can not assert, continue or enforce a cause of action for defamation in relation to—

(a) the publication of defamatory matter about a deceased person (whether published before or after his or her death); or

(b) the publication of defamatory matter by a person who has died since publishing the matter'

48. Kif ingħad però il-liġi Maltija inkluż il-liġi l-ġdida li tirregola l-midja u l-malafama (Kap. 579) ma' tohloq l-ebda eċċezzjoni f'dan ir-rigward. Filfatt il-Kap. 579 jipprovdi biss dwar il-possibilità illi tittiehed azzjoni għal malafama ta' persuna mejta mill-eredi iżda mhux dwar it-tkomplija ta' proċeduri mill-eredi jew kontra l-eredi.

49. Kif qalet il-Qorti tal-Appell fis-sentenza fl-ismijiet '**Andrew Borg Cardona et v. Aaron Farrugia**' (ECLI:MT:AINF:2018:114767 – 18.12.2018 – Imħallef Anthony Ellul):

"jkun iktar floku jekk f'kawża ta' libell l-ewwel qorti fis-sentenza tagħti r-raġunijiet li jkunu wassluha biex tillikwida s-somma li tikkundanna lill-konvenut iħallas. Hemm diversi raġunijiet, bħal per eżempju:

- *In-natura u s-serjetà tal-allegazzjoni li tkun saret fid-dikjarazzjoni malafamanti;*
- *Il-mezz tal-pubblikazzjoni;*
- *Kemm id-dikjarazzjoni malafamanti tkun inxterdet;*
- *Li l-awtur ikun għamel apologija jew offra li jagħmel apologija;*
- *Provi dwar ir-reputazzjoni tal-attur;*

- *Fejn il-konvenut ikun invoka l-verità tal-fatti, jekk parti mill-fatti li jkun ġew imxandra jkunu rriżultaw li huma veri;*

50. L-allegazzjoni li t-*Task Force* inkluż il-Kap tagħha, r-rikorrenti, talab u rċieva *kickbacks*, bl-implikazzjoni li dawn għamlu hekk għall-gwadann personali tagħhom, hija allegazzjoni serja li bla dubbju xeħtet dawl ikrah fuq ir-reputazzjoni tar-rikorrenti. Il-mezz tal-pubblikazzjoni użat, cioè *blog* li kienet popolari sew u moqrija mhux biss ġewwa pajjiżna iżda anke barra minn xtutna, ifisser illi l-pubblikazzjoni inxterdet mad-dinja kollha u għad tista' tinqara sal-ġurnata tal-lum. Għalkemm kif ingħad l-intenzjoni tal-intimata ma' kienetx li tgħid li r-rikorrenti daħħlet flus illeċiti fil-but tagħha, madanakollu meta kien ovvju li l-pubbliku kien qed jinterpreta l-istorja b'dak il-mod (ara f'dan is-sens il-kummenti ppubblikati taħt l-istorja nnifisha), hija m'għamlet xejn sabiex tikkjarifika dan il-punt. Kien biss meta l-intimati Dr. Peter Caruana Galizia u Matthew Caruana Galizia pprezentaw l-*affidavits* tagħhom, iżjed minn sentejn wara l-ftuħ tal-kawża, illi ġie ċċarat darba għal dejjem illi ħadd ma' kien qed jallega li r-rikorrenti kienet ibbenefikat personalment mill-*kickbacks* in kwistjoni.

51. Fir-rigward tad-danni għar-reputazzjoni tar-rikorrenti, fl-*affidavit* tagħha din stqarret is-segwenti:

"L-artikolu għamilli hsara kbira għaliex ta' impressjoni qarrieqa li jiena għamilt xi gwadann personali mix-xogħol tiegħi waqt ic-CHOGM. Nghid li għaliya kienet aktar serja fis-sens li l-blog jinqara mad-dinja kollha u n-nies li kelli kuntatt magħhom waqt ic-CHOGM meta jagħmlu search b'ismi fuq l-internet jigu nfaccati b'dan l-artikolu qarrieq dwari."

Fit-trattazzjoni finali tiegħu d-difensur tar-rikorrenti qal hekk:

"Mhux sewwa li jekk tagħmel google search fuq Phyllis Muscat, illum li jafuha madwar il-Commonwealth kollu jsibu dawn l- allegazzjonijiet dwarha. U jiena nghid l- allegazzjonijiet serja, hi serja għax din m' hemmx attwalita ta' zball. Mhux tgħid cemplitilha isma' x' għamiltu u ma għamiltux. Hija serja għaliex l- iskop tagħha huwa car anke fil- mod kif miktuba. Hija serja għall- effett tagħha mondjali."

52. Meħuda dawn l-elementi kollha in konsiderazzjoni, il-Qorti tikkunsidra illi fiċ-ċirkustanzi, apparti minn aċċertament ġudizzjarju illi r-rikorrenti ma' ottjeniet l-ebda

ħlas illeċiti minn din il-viċenda, hija għandha tillikwida d-danni morali fis-somma ta' seba' mija u ħamsin euro (€ 750).

Deċiżjoni

53. Għal dawn ir-raġunijiet il-Qorti qegħda tiddisponi minn din il-kawża billi tiċhad l-eċċezzjoni tal-intimati u tilqa' t-talbiet tar-rikorrenti b'dan illi:

- 1. Tiddikjara illi l-*blog post* bit-titolu "*CHOGM 2015 task force led by PM's friend Phyllis Muscat asked hotels for kickbacks on delegate bookings*" ippubblikat nhar l-Erbgħa 3 ta' Mejju 2017 fuq is-sit www.daphnecaruanagalizia.com u li għalih kienet responsabbli l-intimata kien malafamanti fil-konfront tar-rikorrenti ai termini tal-Art. 28 tal-Kap. 248 tal-Ligijiet ta' Malta;**
- 2. Tikkundanna lill-intimati jħallsu lir-rikorrenti s-somma ta' seba' mija u ħamsin euro (€ 750) bħala danni likwidati minn din il-Qorti taħt l-Artikolu 28(1) tal-Kap. 248 tal-Ligijiet ta' Malta bl-imghaxijiet legali dekoribbli mid-data tas-sentenza sad-data tal-pagament effettiv u bl-ispejjeż.**

V.G. Axiak
Maġistrat

M. Azzopardi
Dep. Registratur