



Court Of Appeal

Judges

**THE HON. CHIEF JUSTICE MARK CHETCUTI
THE HON. MR. JUSTICE JOSEPH R MICALLEF
THE HON. MR JUSTICE TONIO MALLIA**

Sitting of Wednesday, 26th January, 2022.

Number 19

Application Number: 421/18/2 TA

Appeal from a decree in the acts of sworn application no. 421/18/TA

Director of Public Registry

v.

Ahmad Aziz

1. On the 4th of May 2018 plaintiff filed a sworn application wherein he requested the First Hall of the Civil Court to declare as false the declaration made by defendant with regards to his birth; to consequently declare defendant's birth certificate 3925/07 as containing incorrect and false information; and to order the cancellation of said birth certificate.
2. On the 13th of August 2018 defendant filed his sworn reply wherein he stated his pleas.

3. On the 1st of June 2021 plaintiff filed an application in the acts of the case wherein he explained that he had been notified with a set of documents by means of which “*defendant is attempting to add new pleas*”. With reference to defendant’s claim that the pleas were filed in accordance with **Art. 158(11)** of Chapter 12 of the Laws of Malta, plaintiff underlined the fact that additional pleas may only be submitted with the Court’s permission, after an application is filed in accordance with Article **728(2)** of Chapter 12. Plaintiff thus maintained that the documents filed by defendant are incompatible with the provisions of Chapter 12 and respectfully demanded the Court to order the expungement of said documents.

4. On the 14th July 2021 the First Hall of the Civil Court delivered a decree whereby it upheld plaintiff’s request and ordered the expungement of the documents at issue.

“Having seen the application of the Director of Public Registry of the 1st June 2021;

Having seen the answer of respondent of the 16th June 2021.

Considerations of this Court

In the first instance the Court reproaches the respondent for having failed to observe the appropriate procedure before presenting what he has styled as “*separate statement adding new pleas in the term of article 158 of Chapter 12 of the Laws of Malta.*”

The said article is always to be read in the light of article 728(1) **[recte: 728(2)]** of Chapter 12 of the Laws of Malta. Were this court to accept the presentation of additional pleas in such an unorthodox manner and in breach of this article, not only will it be encouraging procedural confusion but would also be putting the plaintiff in a disadvantaged position.

Now therefore in view of the above, the Court accedes to the request of the Director of Public Registry and orders that all documents from a fol 265 to 294 be expunged from the acts of the case.”

5. Defendant felt aggrieved by said decree, and on the 15th of July 2021 filed an appeal in front of this Court of Appeal, “*in term of article 34, 143(3)(4), 229(2)(b), 234 chapter 12 laws of Malta and in term of article 95(2) constitution of Malta against the decision in decree of dated 14 July 2021 from the CIVIL COURT FIRST HALL court of Mr Justice Dr Toni Abela in THE ACTS OF SWORN APPLICATION WITH NUMBER 421/2018/TA, IN THE NAMES the director public registry vs Ahmad Aziz*” wherein he prayed the following:

“PRAYER:

- A) That this appeal is being filed within the prescribed period of limitation, the decree under appeal having been passed on 14 July 2021. In the above circumstances the appellant prays that this appeal be allowed, the decree under appeal be annulled and proceeding in the ACTS OF SWORN APPLICATION WITH NUMBER 421/2018/TA, IN THE NAMES the director public registry vs Ahmad Aziz should be suspended.
- B) Honourable court of appeal should declare that Maltese courts has no jurisdiction to entertain any action under article 263 chapter 16 laws of Malta when alleged offences under article 263 chapter 16 laws of Malta were committed abroad and when action is time barred and it is therefore requested to annul court decree.
- C) Honourable Court should declare that subject matter of action is not within the jurisdiction of civil court first hall and it is therefore requested to annul court decree.
- D) Honourable Court of appeal should declare that there is breach of principle of *lis pendens* when matter is *res judicata* and matter is already decided by the competent Pakistani court with same alleged facts and there are parallel proceedings still going on with same alleged facts in 2 different Maltese courts one in civil court and second in criminal court, it is also requested to declare that when criminal proceedings are still going on with same alleged facts and civil court first hall ordered the appellant to give his testimony under oath is breach of right of silence and it is therefore requested to annul court decree.
- E) Declare that there is breach of appellant’s constitutional, fundamental and

human rights in the decree of court under appeal it is therefore requested to annul the decree of the court.”

6. On the 17th of August 2021 plaintiff presented his reply to defendant’s appeal application, wherein he stated that he considers said appeal as frivolous, vexatious and wholly without merit and consequently requested this Court of Appeal to reject it in its entirety, for the following reasons:

“1. According to Art. 229(1)(j) of Chapter 12 an appeal from a decree “*allowing or disallowing the expunging of a document from the records of the case*” shall only lie after the definitive judgment and together with an appeal from such judgment.

2. The appeal was filed incorrectly under the names “Ahmad Aziz vs Director of Public Registry” and without the sworn application number; hence the application was inadmissible *ab initio* since it is missing various procedural requirements.

3. The articles under which the appeal has been submitted according to appellant (34, 143(3)(4), 229(2)(b), 234 of Chapter 12; and 95(2)(d) of the Constitution of Malta) are all inapplicable.

4. The appellant’s requests lettered B, C, D, E, and part of the request lettered A wherein he is requesting the suspension of the civil case 421/2018/TA are unrelated to the decree appealed from and the supposed merits of the appeal.

5. Appellant has submitted, for the third time in a month, his additional pleas and claims and documents, allegedly substantiating his pleas in from of this court under the guise of an appeal. In submitting this appeal the appellant is twisting and abusing the civil courts’ procedure.

6. This behaviour is pointlessly lengthening the procedure in front of the First Hall Civil Court and appellant should be admonished.

7. Appellant is attempting to submit his additional pleas and institute constitutional redress proceedings within the acts of both this appeal and the present, ongoing, civil proceedings in front of the court of first instance.

8. In the light of the above, this appeal is frivolous and vexatious and in terms of Art 229(9) of Chapter 12 the plaintiff/respondent demands this court of appeal to award double costs.”

CONSIDERATIONS OF THIS COURT OF APPEAL

7. In the first place this Court observes that, as rightly pointed out by respondent, the appeal application in question was incorrectly filed as “**Ahmad Aziz v. Director of Public Registry**” and no case number provided next to the case name. Even if from the contents of the appeal application it is evident that the appeal is actually an appeal from a decree given in the acts of the case “**Director of Public Registry v. Ahmad Aziz**” (number 412/2018/TA), the fact remains that the appeal was incorrectly filed.

8. In any case, as respondent also rightly points out, this appeal is inadmissible in terms of Article 229(1)(j) of Chapter 12 of the Laws of Malta, which states that:

“229.(1) An appeal from the decrees mentioned hereundershall only lie after the definitive judgment and together with an appeal from such judgment, and such decrees may not be challenged before the definitive judgment is delivered:

.....

(j) a decree allowing or disallowing the expunging of a document from the records of the case;”

9. Consequently defendant’s appeal is being rejected. The costs of this appeal are to be borne by the appellant Aziz Ahmad.

Mark Chetcuti
Chief Justice

Joseph R Micallef
Judge

Tonio Mallia
Judge

Deputy Registrar
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