



MALTA

**QORTI TAL-APPELL**  
**(Sede Inferjuri)**

**ONOR. IMĦALLEF**  
**LAWRENCE MINTOFF**

Seduta tat-23 ta' Marzu, 2022

Appell Inferjuri Numru 13/2021LM

**L-Avukat Dr. Ramon Bonett Sladden u l-Prokuratur Legali Luisa Tufigno**  
**b'digriet tat-22 ta' Settembru, 2021, ġew maħtura bħala kuraturi deputati**  
**sabiex jirrapreżentaw lil Kumar Pranam (Passaport Indjan Numru: K0168383)**  
*(l-appellat')*

**vs.**

**L-Uffiċjal Prinċipali tal-Immigrazzjoni**  
*(l-appellant')*

**Il-Qorti,**

**Preliminari**

1. Dan huwa appell magħmul mill-intimat **I-Uffiċjal Prinċipali tal-Immigrazzjoni** [minn issa 'l quddiem 'l-appellant'] mid-deċiżjoni tal-5 ta' Frar,

2021, [minn issa 'l quddiem 'id-deċiżjoni appellata'] mogħtija mill-Bord tal-Appelli dwar l-Immigrazzjoni [minn issa 'l quddiem 'il-Bord'], li permezz tagħha ċaħad l-appell tar-rikorrent **Kumar Pranam (Passaport Indjan Numru K0168383)** [minn issa 'l quddiem 'l-appellat'] għar-raġunijiet hemm imfissra, u kkonferma d-deċiżjoni għar-ritorn tiegħu, b'dana li ordna li dik id-deċiżjoni m'għandhiex tiġi eżegwita sakemm l-appellat jispiċċa l-kors ta' studju tiegħu.

### **Fatti**

2. Il-fatti tal-appell odjern jirrigwardaw id-deċiżjoni tal-appellant tat-2 ta' Novembru, 2020 meħuda *ai termini* tar-regolament 3 tal-A.L. 81 tal-2011, li permezz tagħha giet imwaqqfa r-residenza tal-appellat hawn Malta għaliex irriżulta li kien immigrant ipprojbit.

### **Mertu**

3. L-appellat jidher li dakinhar stess kkontesta dik id-deċiżjoni, fejn huwa ddikjara li ma xtaqx japplika għal perijodu ta' '*voluntary departure*'.

### **Id-deċiżjoni appellata**

4. Il-Bord wasal għad-deċiżjoni appellata wara li għamel is-segventi konsiderazzjonijiet:

**“Preliminary**

*The Board:*

*Saw that on 2nd November 2020, the Principal Immigration Officer issued a Return Decision against the appellant stating that the same appellant was a prohibited immigrant in terms of Article 5 of the Immigration Act as he had:*

- Landed or been in Malta without leave from the Principal Immigration Officer;*
- Been unable to show that he had the means to support himself and was therefore likely to become a charge on public funds; and*
- Contravened the provisions of the Immigration Act or any of the regulations made thereunder.*

*Saw that the appellant appealed the Return Decision and declared that he did not want to avail himself of voluntary departure.*

*Heard all the witnesses and examined all the documentation submitted.*

**Submissions filed, evidence produced and considerations**

*The Board observed:*

- 1. That there testified Mr Stephen Micallef, who stated that he was the chief security officer at Zara, an establishment in Sliema. He stated that one Sunday in November, he was approached by the Immigration Police who requested information with regard to the appellant’s attendance at that establishment. This information was duly provided. The witness recognised the appellant and stated that he (the appellant) worked for Clentec Limited but was assigned to Zara. He added that the cleaners at Zara were required to sign the Clentec Limited logbook and a form indicating the times they went in and went out, for purposes of eventual payment. Having been shown the attendance sheets, the witness confirmed the documentation presented to the Board by Inspector Abela. The logbook was not necessarily signed in the presence of the witness and the witness could not tell how long the appellant had been working there. Under cross-examination, the witness stated that the role of the chief security officer entailed taking care of nine cleaners, previously fourteen cleaners. The cleaners themselves differed from one day to another and in fact, the witness could not remember the cleaners’ names. He wrote the names of the cleaners who entered the establishment on a daily basis and there were times when he saw them signing. He could confirm that they would have entered the premises. The cleaners wore Clentec Limited t-shirts and there was no other company providing cleaning services to Zara.*

2. *There testified also Mr. Simon Turner, a director of Clentec Limited. He stated that he recognised the appellants and that due to the pandemic, some employees had to be spread around. Co-ordination of workers was done through WhatsApp as Clentec's administration was working through teleworking. The witness explained that he was ordered to prepare the necessary paperwork for the appellant and others and that the appellant would then visit Jobsplus himself to apply for permission to work for Clentec Limited. Mr Turner stated that on 29th July 2020, the appellant sent him a message asking if any work was available. Questioned by the Board, the witness stated that there was no link with Recruitgiant Limited. He added that he did not know they were registered with another employer as in their messages, they had said they had no job. The witness said that the appellant was employed for around five weeks before the police intervened. A copy of the relative Jobsplus application was also filed, together with payslips. Mr Turner confirmed that he did not meet the appellant in person but spoke to them on WhatsApp. He advised them to go to Jobsplus and then it was the company's supervisor who met them to provide uniforms. He said that he interviewed potential employees over a number of days and through WhatsApp. He identified the appellant through the photograph on the identity card.*
3. *During the sitting of 8th January 2021, there testified Mr Tomas Mikalauskas. He stated that the appellant worked for him as food delivery drivers with a valid permit. They used the Bolt platform as he had an agreement with Bolt for food delivery on a part-time basis. Bolt was a platform or a tool rather than an employer. To his knowledge, they did not work for someone else. He stated that the appellant received his permit to work around September or October 2020 and that this was valid until February or March 2021. Furthermore, he would be willing to offer them an extension of their current employment provided the competent authorities decided to grant the relative permit. He added that he was aware that they had a student visa or permit and that they were reading business studies, that they took their studies seriously and had a 100% attendance rate. He stated that the appellants worked fifteen to twenty hours per week and that they were exemplary workers about whom he never received any complaints and who never had any reports filed against them.*
4. *That document A is a copy of a licence issued by the Employment Licences Unit on 6th October 2020 which states that the appellant was authorised to act as*

*a delivery driver with Recruitgiant Limited and that such licence was valid between 6th October 2020 and 5th February 2021.*

- 5. That Inspector Christian Abela confirmed that upon verification with the school, it was true that the appellants were studying and doing well. E-mails presented by Inspector Abela confirmed that the appellant had a Residence Permit issued in order for him to study at EIE Institute of Education, which permit on 5th February 2021.*
- 6. Whilst it is true that the appellants were working for Clentec Limited de facto, Mr. Mikalauskas stated that they were working for his company (Recruitgiant). In fact, there is evidence (document ST2) that Mr Turner, on behalf of Clentec, seemingly prepared the paperwork necessary for the appellant to be issued with a new employment licence for the purposes of secondary employment (with Clentec Limited).*
- 7. In this particular case, the Principal Immigration Officer confirmed, after verification, that the appellant was a diligent student.*
- 8. It is most likely the case that the appellant sought work from Clentec Limited as Recruitgiant Limited did not assign them work or did not assign them enough work.*
- 9. That as regards the necessary applications, there must have been some misunderstanding, possibly even due to the language barrier, which led the appellant to believe that Clentec Limited would submit the relative application to Jobsplus, and not them.*
- 10. Therefore, whereas the Principal Immigration Officer was correct to issue the Return Decision, the Board, in view of the appellant's academic performance, sees fit to order that the execution of the Return Decision be delayed until such time as the appellant's current course finishes."*

## **L-Appell**

5. L-appellant ippreżenta r-rikors tal-appell tiegħu quddiem din il-Qorti fil-15 ta' Frar, 2021, fejn talab sabiex titħassar in parti d-deċiżjoni appellata fejn il-Bord iddeċieda li d-deċiżjoni tiegħu m'għandhiex tiġi eżegwita sakemm l-appellat jispiċċa l-kors tal-istudji tiegħu, u minflok tordna lill-Bord sabiex

jiddeċiedi l-kwistjoni fil-parametri tal-liġi mingħajr ma tiġi soġġetta għall-ebda kundizzjoni, bl-ispejjeż taż-żewġ istanzi kontra l-appellat. Jgħid li s-segwenti huma l-aggravji tiegħu: (i) il-Bord mar lil hinn minn dak permess mil-liġi u applica regolamenti b'mod żbaljat; u (ii) il-Bord qatt ma seta' jimponi kundizzjonijiet fuq l-eżekuzzjoni tad-deċiżjoni tiegħu.

6. Wara d-digriet ta' din il-Qorti tat-22 ta' Settembru, 2021 fejn ġew maħtura l-Avukat Ramon Bonett Sladden u l-P.L. Luisa Tufigno bħala kuraturi deputati sabiex jidhru għall-appellat, huma pprezentaw risposta fejn iddikjaraw li huma ma kienux edotti mill-fatti u għalhekk talbu sabiex jiġu awtorizzati li jipprezentaw risposta ulterjuri. Għalhekk fis-26 ta' Ottubru, 2021 huma għaddew sabiex ipprezentaw ir-risposta tagħhom, fejn talbu lil din il-Qorti sabiex tiċhad l-appell interpost, filwaqt li tikkonferma d-deċiżjoni appellata.

### **Konsiderazzjonijiet ta' din il-Qorti**

7. Il-Qorti ser tgħaddi sabiex tikkonsidra l-aggravji tal-appellant fid-dawl ta' dak li ġie deċiż mill-Bord, filwaqt li tiegħu wkoll konjizzjoni tas-sottomissjonijiet tal-appellat kif imressqa mill-kuraturi deputati fuq imsemmija.

8. L-appellant jikkontendi li l-Bord skarta għal kollox ir-rekwiżiti tal-Kap. 217 u l-L.S. 217.12. Filwaqt li jiċċita l-para. (ċ) tas-subartikolu 25A(1) tal-Kap. 217, jissottometti li l-Bord ma setax jiddeċiedi dwar l-appelli quddiemu mingħajr ma jispjega l-bażi legali tad-deċiżjoni tiegħu. Jikkontendi li l-fatt li l-appellat kien sejjer tajjeb fl-istudji tiegħu u kien student diliġenti, ma kien ixejjen xejn mill-fatt li l-appellant għandu dmir jiegħu deċiżjoni *ai termini* tas-subregolament 3(6)

tal-L.S. 217.12, u li d-deċiżjoni tiegħu hija waħda tajba. Jispjega li l-Bord kien tenut jinvestiga jekk ir-rekwiżiti legali mposti fuq l-appellant skont dik il-liġi sussidjarja kienux ġew sodisfatti, iżda mhux jiddeċiedi dwar kwistjonijiet li fuqhom ma kellu l-ebda kompetenza. L-appellant jgħid li l-Bord kellu s-setgħa li jissospendi d-deċiżjoni tiegħu b'mod temporanju, iżda mhux b'mod indefinit jew indeterminat, u hawn huwa jagħmel riferiment għas-subregolament 11(2) tal-L.S. 217.12. Jispjega li fil-fatt l-appellat kien diġà applika mal-iskola sabiex jagħmel sena oħra ta' studji hawn Malta, u jekk id-deċiżjoni tal-Bord tiġi kkonfermata, huwa seta' jestendi l-istudji tiegħu hawn Malta *ad infinitum* skont ir-rieda u x-xewqa tiegħu.

9. Il-kuraturi deputati rappreżentanti l-appellat, filwaqt li jagħrfu li l-ilment tal-appellant huwa essenzjalment li l-Bord ma kellux is-setgħa li jissospendi l-eżekuzzjoni tad-Deċiżjoni ta' Ritorn, jagħmlu riferiment għas-subartikolu 11(3) tal-L.S. 217.12 u jiċċitaw l-istess. Jissottomettu li għall-kuntrarju ta' dak li kien qed jikkontendi l-appellant, il-kors ta' studju ma jinvolvi perijodu indefinit. Jissottomettu wkoll li l-liġi tħalli l-Bord liberu fir-rigward tat-tul tas-sospensjoni tal-eżekuzzjoni, u jirrilevaw li sabiex ċittadin ta' pajjiż ieħor ikun jista' jistudja hawn Malta, dan kellu bżonn il-permess relattiv mill-Aġenzija Identità Malta, liema permess kien f'id l-appellat meta nqabad jaħdem illegalment hawn Malta. Ikompli jispjegaw li kienet il-prassi ta' dik l-Aġenzija li fejn persuna tkun qed issegwi kors ta' aktar minn sena, hija qabel ma ggedded permess li jkun inħareġ għar-raġuni ta' studju, titlob lill-istituzzjoni edukattiva għal informazzjoni dwar l-attendanza ta' dik il-persuna u anki għal rapport akkademiku. Għalhekk, fil-każ odjern l-appellat ma setax ikompli jistudja hawn Malta jekk l-Aġenzija ma

ggeddix il-permess min-naħa tagħha, u li wkoll tieħu in konsiderazzjoni l-informazzjoni li tingħata mingħand l-*Immigration Police*. Il-kuraturi deputati jispjegaw li fejn f'deċiżjonijiet bħal dik odjerna l-persuna ma jkunx baqgħalha wisq żmien sabiex tispicċa l-kors ta' studju, huma kienu tal-fehma li mhuwiex għust li dak il-kors jintemm ħesrem u b'hekk jintilfu l-flus kollha li dik il-persuna tkun nefqet sabiex tistudja hawn Malta. Izda min-naħa l-oħra l-Bord kien jagħraf biżżejjed li dik il-persuna m'għandhiex tingħata *carte blanche* sabiex tibqa' hawn Malta tistudja għal sena jew sentejn jew iktar, meta tkun inqabdet taħdem illegalment. Jirrivevaw li d-deċiżjoni appellata ttieħdet fid-dawl tal-fatt li l-Ispettur Christian Abela kien informa lill-Bord li mill-verifiki kien irrizulta li l-appellat kien qed isegwi kors u anki kien qed jagħmel progress akkademiku. Jgħidu li l-permess li ngħata lill-appellat għall-fini ta' studju kien jiskadi fil-5 ta' Frar, 2021, u dan filwaqt li jirrivevaw li l-*policy* ta' *Jobsplus* kienet li persuni f'Malta li jkunu qegħdin jistudjaw jithallew jaħdmu sa 20 jew 25 siegħa fil-gimgħa sakemm jinħareg permess għal *secondary employment* mill-*Employment Licences Unit* fi ħdan il-*Jobsplus*.

10. Il-Qorti tibda billi tikkonsidra dak li jipprovdi għalih is-subregolament 11(3) tal-L.S. 217.12:

*“(3) Il-Bord għandu jirrevedi deċiżjonijiet relatati mar-ritorn fuq applikazzjoni taċ-ċittadin ta' pajjiż terz kif imsemmi fis-subregolament (2) u jista' jissospendi l-eżekuzzjoni tagħhom b'mod temporanju.”*

M'hemmx dubju li huma ċari u inekwivoċi l-parametri tal-Bord kif stabbiliti minn dan is-subregolament, fir-rigward ta' dik id-deċiżjoni li huwa jista' jieħu meta jirrevedi deċiżjoni tal-appellant fir-rigward tar-ritorn ta' ċittadin ta' pajjiż terz.



Tgħid li permezz ta' dawn id-disposizzjonijiet il-Bord għandu s-setgħa li jissospendi l-eżekuzzjoni ta' deċiżjoni li tkun ingħatat mill-appellant, u dan b' mod temporanju. Dan il-punt ma jidherx li qed jiġi kkontestat mill-imsemmi appellant, iżda minflok huwa jikkontendi li fil-każ odjern id-deċiżjoni appellata kellha l-effett li tissospendi l-eżekuzzjoni tad-deċiżjoni appellata għal żmien indefinit, meta dan mhux ikkontemplat mil-liġi. Iżda l-Qorti tgħid li għall-kuntrarju meta l-Bord ordna li dik id-deċiżjoni appellata “...*should not be executed until the appellant's current course ends*”, huwa kien qed iżomm fil-parametri tad-diskrezzjoni mogħtija lilu mil-liġi. Il-Bord għamilha ċara li s-sospensjoni kienet qegħda tingħata għaż-żmien li l-appellant kellu bżonn sabiex itemm il-kors kurrenti tal-istudju tiegħu, u għalhekk is-sospensjoni ma kellhiex tibqa' *in vigore* hekk kif huwa jtemm l-imsemmi kors.

11. Għaldaqstant din il-Qorti ssib li l-aggravji tal-appellant mhumiex ġustifikati u tiċhadhom.

### **Decide**

**Għar-raġunijiet premissi, il-Qorti tiċhad l-appell odjern u tikkonferma d-deċiżjoni appellata fl-intier tagħha.**

**L-ispejjeż tal-appell odjern u dawk tal-proċeduri quddiem il-Bord, għandhom ikunu a karigu tal-appellant.**

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.**  
**Imħallef**

**Rosemarie Calleja**  
**Deputat Registratur**