



MALTA

**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
RAYMOND C. PACE**

Seduta ta' l-1 ta' Ottubru, 2003

Citazzjoni Numru. 1606/2001/1

**Geremia Esposito**

**VS**

1. **Ilham Brida**
2. **Daniel Attard**
3. **Direttur tar-Registru  
Pubbliku**
4. **Dr. Peter Fenech u l-P.L.  
Victor Bugeja li b'digriet tal-Qorti tad-19 t'Ottubru  
2001 gew nominati bhala Kuraturi Deputati sabiex  
jirrapprezentaw lill-minuri Ines Attard.**

**Il-Qorti,**

**I. PRELIMINARI.**

Rat ic-citazzjoni attrici a fol. 1 fejn gie premess:-

Kopja Informali ta' Sentenza

Illi l-konvenuti Daniel Attard u Ilham Brida zzewgu fil-21 ta' Marzu 1998;

Illi qabel dan iz-zwieg, il-konvenuta Ilham Brida kienet tikkoabita mal-attur, u minn din ir-relazzjoni kellhom tarbija, u cjoe' tifel li huwa registrat regolarment bhala iben l-attur u l-konvenuta Ilham Brida;

Illi fit-23 ta' Lulju 2001, il-konvenuta Ilham Brida welldet tarbija, cjoe' tifla bl-isem Ines, u dan skond kif jirrizulta mill-anness certifikat tat-twelid numru 3100/01.

Illi l-konvenut Daniel Attard gie mnizzel u registrat fl-imsemmi certifikat ta' twelid bhala missier l-imsemmija tifla minuri.

Illi pero', ffit wara z-zwieg taghhom, il-konvenuti Daniel Attard u Ilham Brida kienu sseparaw minn xulxin *de facto* u minn dakinhar l-istess konvenuti ma ghammru aktar flimkien, filwaqt illi l-konvenuta Ilham Brida kompliet tghammar b'mod permanenti mal-attur sal-lum.

Illi l-perjodu ta' separazzjoni fizika tal-konvenuti Daniel Attard u Ilham Brida teccedi sostanzjalment il-perjodu ta' tliet mitt jum stabbilita fil-Ligi ghall-fini tal-prezunjoni tal-legittimita' tal-wild ta' mara mizzewga.

Illi l-konvenut Daniel Attard lanqas biss kien jaf, sa zmien wara t-twelid tat-tarbija Ines Attard, bit-tqala tal-konvenuta Ilham Brida, u wisq anqas bit-twelid tat-tarbija;

Illi ghalhekk fil-perjodu stabbilit mill-Ligi, il-konvenut Daniel Attard kien fl-impossibilita' fizika li jghammar ma' martu billi kien boghod minnha.

Illi l-imsemmija tarbija, Ines Attard, ma hijiex il-wild naturali tal-konvenut Daniel Attard, izda tal-attur.

Illi l-istess attur talab lil din l-Onorabbli Qorti sabiex ghar-ragunijiet premessi:-

## Kopja Informali ta' Sentenza

1. Previa, okkorrendo bl-opera ta' esperti medici, u okkorrendo wkoll permezz ta' dawg it-testijiet u verifiki genetici u xjentifici kontemplati mill-Kapitolu 16 tal-Ligijiet ta' Malta, illi jistghu jigu ordnati minn dina l-istess Qorti u kondotti mill-esperti medici talvolta nominati, tiddikjara u tiddeciedi illi l-imsemmija minuri Ines Attard ma hijiex il-wild naturali tal-konvenut Daniel Attard, izda hija t-tifla naturali tal-attur, b'mod li ghalhekk hemm lok ghall-korrezzjoni tal-att tat-twelid tal-imsemmija minuri f'dan is-sens.

2. Tordna ghalhekk il-korrezzjoni fl-att tat-twelid ta' l-imsemmija minuri Ines Attard, numru 3100/01 b'mod illi r-rizultanzi ta' l-ewwel talba jigu korrettement u fedelment rispekkjati fl-istess certifikat ta' twelid billi, *inter alia*, jigu kkancellati minn kull fejn jinsabu mnizzla fl-istess att tat-twelid, l-isem u l-konnotati kollha l-ohra tal-konvenut Daniel Attard u l-istess jigu sostitwiti bl-isem u konnotati kollha l-ohra tal-attur.

Bl-ispejjez kontra l-konvenuti illi minn issa huma ngunti ghas-subizzjoni.

Rat id-dikjarazzjoni attrici a fol. 3 u 4 tal-process;

Rat il-lista ta' xhieda u d-dokumenti esebiti a fol. 5 sa 7 tal-process;

Rat ir-rikors tal-attur datat 3 t'Ottubru 2001 fejn talab li jigu nominati kuraturi deputati sabiex jirrapprezentaw lill-imsemmija konvenuta minuri Ines Attard ghall-fini tal-kawza u ghall-fini tal-atti kollha l-ohra konnessi.

Rat id-digriet sussegwenti tal-Qorti datat 19 t'Ottubru 2001 fejn laqghet it-talba u nnominat lil Dr. Peter Fenech u lill-Prokuratur Legali Victor Bugeja bhala kuraturi ghall-finijiet kollha tal-ligi.

Rat in-nota tal-eccezzjonijiet tal-kuraturi deputati tal-15 ta' Jannar 2002 a fol. 25 fejn gie eccepit:-

## Kopja Informali ta' Sentenza

1. Illi huma m'humix edotti mill-fatti u jirriservaw il-pozizzjoni taghom sakemm ikollhom opportunita' jiddiskutu l-kaz mal-persuni koncernati.

2. Salv eccezzjonijiet ulterjuri permessi skond il-ligi.

Rat id-dikjarazzjoni u l-lista tax-xhieda tal-kuraturi deputati a fol. 26 tal-process.

Rat in-nota tal-eccezzjonijiet tad-Direttur tar-Registru Pubbliku tal-21 ta' Jannar 2002 a fol. 27 fejn gie exceptit:-

1. Illi huwa mhux edott mill-fatti li taw lok ghall-kawza odjerna u ghalhekk jirrimetti ruhu ghall-provi migjuba u ghall-gudizzju ta' din l-Onorabbli Qorti;

2. Illi bla pregudizzju ghas-suespost, f'kaz li jintlaqghu t-talbiet attrici ghandhom jinghataw id-dettalji personali kollha relattivi ghall-attur li huwa qed jitlob li jigu nseriti fl-att tat-twelid in kwistjoni *oltre* l-fatt li ghandhom jigu kancellati l-kliem "*the said*" mill-kolonna li tirreferi ghall-partikolaritajiet tal-omm;

3. Illi huwa m'ghandux jigi soggett ghall-ispejjez tal-istanti;

4. Salvi eccezzjonijiet ulterjuri.

Rat id-dikjarazzjoni u l-lista tax-xhieda tad-Direttur tar-Registru Pubbliku a fol. 28 tal-process.

Rat il-verbali tas-seduti tas-6 ta' Frar 2002 u tal-24 t'April 2002.

Rat ir-rikors tal-attur datat 30 ta' Lulju 2002 fejn talab li l-konvenut Daniel Attard jigi notifikat bic-citazzjoni u l-avviz tas-smiegh tal-kawza wara l-hinijiet legali.

Rat id-digriet sussegwenti tal-Qorti tal-31 ta' Lulju 2002 fejn laqghet it-talba.

Kopja Informali ta' Sentenza

Rat il-verbali tal-10 t'Ottubru 2002 fejn inghata digriet affidavit tal-partijiet b'terminu ta' erbghin (40) gurnata kull wiehed, bil-fakulta' li tali affidavits jistghu anke jsiru bl-Ingiliz.

Rat ir-rikors tal-attur tas-17 ta' Dicembru 2002 fejn talab estensjoni tat-terminu biex jipprezenta l-affidavits tieghu flimkien ma' l-istess rikors, liema talba giet milqugha b'digriet tal-Qorti tad-19 ta' Dicembru 2002.

Rat in-nota tal-attur ukoll datata 17 ta' Dicembru 2002 fejn permezz taghha pprezenta l-imsemmija affidavits kif dikjarat fir-rikors tieghu tal-istess gurnata.

Rat in-nota tad-Direttur tar-Registru Pubbliku tat-3 ta' Jannar 2003 li permezz taghha rriserva d-dritt ta' kontro-ezami ta' l-affidavits tal-attur Geremia Esposito, ta' Ilham Brida, u ta' George sive Gino Cauchi.

Rat in-nota tal-kuraturi deputati datata 6 ta' Jannar 2003 li permezz taghha rriserva d-dritt tal-kontro-ezami tal-affidavits ta' l-attur, ta' Daniel Attard, ta' Ilham Brida u ta' George Cauchi.

Rat il-verbal tal-25 ta' Marzu 2003 fejn il-kawza giet differita ghas-sentenza ghall-lum l-1 t'Ottubru 2003.

Rat in-nota tal-attur tal-10 ta' Lulju 2003 fejn ta ruhu b'notifikat bl-avviz tas-smiegh tal-kawza.

Rat id-dokumenti esebiti.

Rat l-atti kollha l-ohra tal-kawza.

## **II. KONSIDERAZZJONIJIET.**

### **(i) PROVI PRODOTTI.**

Illi l-attur **Geremia Esposito** permezz tal-affidavit tieghu sostna illi:-

*"I met Ilham Brida in 1995 in Malta. We started going out together, and after a while started living together at Marsascala. From this relationship, a child was born, named Rima Esposito. She was born on 25<sup>th</sup> October 1996 at St. Luke's Hospital, Pieta'. Rima is registered as the daughter of Ilham Brida and Geremia Esposito, both with the Maltese and Italian authorities. In fact, she even holds an Italian passport. Around a year after Rima was born, we left each other. However, we kept in touch by telephone, since I always wanted news of Rima. I frequently sent Ilham money to maintain Rima. In the meantime, Ilham got to know Daniel Attard.*

*They got married on the 21<sup>st</sup> March 1998 in Malta. After less than two years following their marriage, their marriage broke down, and Daniel left her, without giving her any maintenance. When I got to know that Daniel had left Ilham, I came back to Malta.*

*Shortly after their break-up, we started going out together again and after a short while started living together again in Marsascala — the precise address being "Pennene Court", Flat 4, Triq San Nikola, Marsascala. Since we started going out together again, we never left each other and Ilham never went back to Daniel. Around November 2000, that is approximately five or six months after we had resumed our relationship, Ilham had told me that she was pregnant.*

*From this new relationship another child was born, named Ines. She was born on the 23<sup>rd</sup> July 2001. Ilham always lived with me both before, during the nine months of her pregnancy when she was expecting Ines, and after Ines was born.*

*Since Ilham is still registered as the wife of Daniel Attard, Ines was automatically registered as the daughter of Ilham Brida and Daniel Attard at the Public Registry. Since Daniel and Ilham had been factually separated for more than one year before the birth of Ines and since they had never met again since then, it is physically impossible that Ines could be the daughter of Daniel Attard. In fact,*

*Daniel did not even know that Ilham was pregnant and that the baby was born. At St. James Hospital, where Ines was born, she is registered as the Ines Esposito, daughter of Ilham Brida and Geremia Esposito, since I was present and assisted Ilham during the birth of Ines. A copy of this certificate is being attached hereto as Document "GE".*

*On 12<sup>th</sup> August 2001, The Sunday Times of Malta also reported that on 23<sup>rd</sup> July 2001 a child was born to Ilham Brida and Geremia Esposito, named Ines Esposito. A copy of this report is being attached hereto as Document "GE2". Ines already has a sister named Rima, who holds my surname Esposito, so I would want also Ines to hold my surname, like her sister Rima. Daniel is willing to allow Ines to change her surname from Attard to Esposito, because he is sure that Ines is not his child. In fact, he has never even seen this child. Even her mother Ilham, would want Ines to hold my surname, like her other daughter Rima, since she is my natural daughter".*

Xehdet il-konvenuta **Ilham Brida** wkoll permezz tal-affidavit li xehdet illi:-

*"I got to know Geremia Esposito at the end of 1995 in Malta. After we went out together for a while, we started living together in Marsascala, at the same address where I reside today. As a result of this relationship I got pregnant. On the 25<sup>th</sup> October 1996 our daughter was born, named Rima Esposito at St. Luke's Hospital, Pieta'. Rima is registered as the daughter of Geremia Esposito and Ilham Brida, both in Malta and in Italy. Rima also holds an Italian passport. Around a year after Rima's birth, we ended our relationship and went our separate ways.*

*However, we remained in contact by telephone, because Geremia always wanted to know about Rima's well-being. He also used to send me money so that I could maintain Rima. In the meantime I met Daniel Attard and we got married on the 21<sup>st</sup> March 1998 in Malta. Shortly after we got married, we realised that our marriage was not working. After less than two years Daniel left me. The next*

*time I spoke to Geremia on the phone, I informed him about the breakdown of my marriage with Daniel. Sometime after, he returned to Malta and contacted me. We started going out together again.*

*I must explain that I never stopped loving Geremia and, shortly after we resumed our relationship, we started living together again in Marsascula. A few months later, I found out that I was pregnant again. Our second daughter, named Ines, was born on 23<sup>rd</sup> July 2001 at St. James Hospital. Geremia assisted me at times during the pregnancy, paying all bills including those relative to Ines' birth at St. James Hospital. Since we started going out together again, we never left each other and at the moment, Geremia, Rima, Ines and I are living together as a family. I never went back with Daniel. I lived with Geremia throughout all the pregnancy, when I was expecting Ines.*

*When I went to register Ines under her natural father's surname, Esposito, I was informed that, as I was still registered as the wife of Daniel Attard, Ines would automatically be registered as the daughter of my lawful spouse, that is Daniel Attard. I found this very strange, since Daniel and I had been factually separated for more than one year before Ines was born, and we had never met or even spoken to each other again. Daniel had gone his way, and I had gone mine. It was therefore physically impossible that Ines could possibly be Daniel's daughter. In fact, Daniel did not even know that I was pregnant and not even that Ines was born. He has never even seen Ines.*

*Ines is registered at St. James Hospital, where she was born, with Geremia's surname, Esposito. As I already explained, Geremia always assisted me during the pregnancy and was also present at Ines' birth. On the 12<sup>th</sup> August 2001, Ines' birth was announced on The Sunday Times of Malta, as having been born to Geremia Esposito and Ilham Brida. Ines already has a sister, named Rima, who holds her father's surname, Esposito. I would want*



*that even Ines could hold the same surname, as her sister Rima.*

*When I spoke to Daniel, he acknowledged that the child was not his and also consented immediately to having Ines' surname changed from Attard to Esposito, because he knows that Ines is not his daughter. Even Geremia would want Ines to hold his surname, like her sister Rima, since she is his natural daughter”.*

Min-naha tieghu l-konvenut **Daniel Attard** permezz tal-affidavit sostna illi:-

*“At the end of 1997 I met Ilham Brida. We went out together for sometime and after a few months decided to get married. On the 21<sup>st</sup> March 1998 we got married. Shortly after our marriage, we realized that our marriage was a mistake and after less than two years, we noticed that our marriage was not working, so I decided to leave her. We never met again. I am exhibiting a copy of my Identity Card, which shows that my residential address is 26, Triq il-Kappuccini, Floriana (Document “DA”).*

*Almost two years after we had separated, I got to know that Ilham had gone back to the Italian, whom she lived with prior to our marriage, and that they had given birth to another child.*

*I did not want to accept the fact that this child was registered as my child, since I knew fully well that the child was not mine and I never requested any local authority to be registered as the father. Besides it was physically impossible for me to be considered as the father of this child, since I had not even met or spoken to Ilham for a period of approximately two years after I had left her.*

*I agree that the child should be given the surname of her natural father”.*

**(ii) LIGI U GURISPRUDENZA.**

Illi din il-kawza saret sabiex il-minuri Ines Attard li giet registrata bhala t-tifla tal-konvenut Daniel Attard tigi dikjarata li Geremia Esposito hu l-missier naturali taghha u mhux Daniel Attard. Fil-fatt l-istess Geremia Esposito qed jitlob it-tibdil fic-certifikat tat-twelid tal-minuri Nru: 3100/2001.

Illi jidher car li l-attur qed jipprevalixxi ruhu mill-**artikolu 77 tal-Kap 16** li jghid testwalment li:-

*“Il-legittima’ ta’ tifel imwieled matul iz-zwieg tista’ tigi attackkata wkoll minn kull min ikollu nteress, jekk jipprova illi, fiz-zmien bejn it-tliet mitt gurnata u l-mija u tmenin gurnata qabel it-twelid tat-tifel, ir-ragel kien fl-impossibbilta’ fizika li jghammar ma’ martu minhabba li kien ‘il boghod minnha”.*

Illi ma hemm l-ebda dubju li jekk l-attur qed jippretendi li huwa l-missier tal-minuri huwa ghandu nteress li jaghmel din il-kawza, pero’ qabel ma tigi trattata l-istess, trid tigi sorvolata d-dispozizzjoni tal-**artikolu 81 tal-Kap 16** li tipprovdi li:-

(1) *“Hadd ma jista’ jitlob stat kuntrarju ghal dak li jaghtuh l-att tat-twelid bhala iben legittimu u l-pussess ta’ stat li jaqbel ma’ dak l-att.*

*Hekk ukoll, hadd ma jista’ jattakka l-istat tal-iben legittimu ta’ tifel li jkollu l-pussess ta’ stat li jaqbel ma’ l-att tat-twelid tieghu”.*

Illi huwa car li l-hsieb tal-ligi huwa dak li jipprotegi l-istat ta’ legittima tal-persuna, ladarba din twieldet fiz-zwieg, u ladarba l-istat tal-istess minuri huwa konformi mal-istess diskrezzjoni wkoll hajja tieghu, hekk mizmum fir-rejalta’ socjali bhala iben l-istess konjugi. Illi fil-fatt fil-kawza fl-ismijiet **“Pierre Travers Tauss vs Direttur tar-Registru Pubbliku et”** (P.A. (FGC) 10 ta’ Mejju 1996) inghad li:-

*“Dak li jissejjah ir-‘raison d’etre’ ta’ din id-dispozizzjoni tal-ligi nostrali jinsab enkapsulat fil-kumment tal-awtur Ricci meta huwa jikkummenta dwar dispozizzjoni analoga tal-*

*Kodici Taljan ... ....* “Egli ha osservato esistere nell’ordine stesso delle cose una presunzione che sta per la inviolabilita’ dal talamo a per il rispetto della fedelta’ coniugale, la quale presunzione viene avvalorata dalla vita comune degli sposi e fa riguardare il marito come il padre dei concepiti da sua moglie durante il matrimonio. I giuconsulti romano intesero questa presunzione e l’ incarnazione della formula solenne ‘*pater is est quem justae nuptiae demonstrat*’. A questo principio, che non e’ tanto un dettato dell’ antica sapienza, quanto un postulato della stessa ragione, confortato dall’ esperienza di molti secoli, si e’ attentuato il legislatore patrio, e percio’ nell’ articolo 159, che il marito e’ padre del figlio concepito durante il matrimonio” - (**Diritto Civili**. Vol. 1 para 49 pag. 76).

Illi in effetti l-**artikolu 67 tal-Kap 16**, (li jikkorrispondi mal-artikolu 159 tal-Kodici Taljan) jipprovdi li:

*“L-iben imnissel matul iz-zwieg jitqies li hu bin zewg ommu”.*

Illi fil-fatt din l-azzjoni ttentata mill-attur hija wahda minn tliet azzjonijiet permissibbli fil-ligi taghna sabiex tigi attackkata l-legittimita’ ta’ l-ulied u cjoe’:

(1) L-azzjoni ta’ diskonoxximent jew ta’ *denegata paternita’* a bazi tal-**artikolu 70 tal-Kap 16** li hija miftuha ghar-ragel li fic-certifikat tat-twelid huwa ndikat bhala missier it-tifel imwieled fiz-zwieg, u dan fil-kazijiet indikati tassattivament fis-**subartikolu (1) (a) sa (d)**, liema azzjoni tattakka l-presunzjoni “*pater est quae iustiae demonstrat*”, u twassal biss mhux biex jigi determinat il-missier tat-tarbija imma biss ghad-dikjarazzjoni li r-ragel ta’ l-omm ma huwiex il-missier, liema azzjoni ghandha tigi prezentata fit-termini stretti moghtija fl-**artikolu 73 tal-Kap 16**.

(2) It-tieni azzjoni hija dik moghtija biss lit-tifel *ai termini* tal-**artikolu 84** sabiex jitlob l-istat ta’ iben legittimu u ghalha japplikaw ir-regoli stabbiliti fl-**artikoli 82 sa 85 tal-Kap 16**.

Illi a propozitu ta' din l-azzjoni nghad fil-kawza “**Antonio Scerri Gauci vs Dottor Giovanni Scicluna nomine et**” (A.C. 14 ta' Jannar 1952):-

*“Illi din l-ahhar azzjoni tat-tfittxija ta' paternita' hija moghtija biss lit-tifel u hija estiza lill-werrieta jew dixxendenti tieghu fil-kaz biss previst mill-ligi.*

*It-tifel ghandu d-dritt li jitlob stat kuntrarju ghal dak li jaghtih l-att tat-twelid meta ma jkollux pussess ta' stat konformi ma' l-att tat-twelid, u ebda limitazzjoni ohra ma timponilu l-ligi ghall-ezercizzju ta' dik l-azzjoni. Ghaldaqstant lilu ma tolqtux il-limitazzjoni li tolqot lil persuni ohra nteressati, konsistenti f'illi huma jkollhom jippruvaw l-impossibbilta' fizika ta' koabitazzjoni tal-prezenti genituri tat-tifel fi zmien rilevanti minhabba lontananza.*

*Meta t-tifel ma hux ostakolat fl-ezercizzju ta' l-azzjoni ta' ricerka tal-paternita' tieghu bil-fatt li dik l-impossibbilta' fizika ma tirrizultax; l-unika limitazzjoni li tolqtu hija dik illi tolqtu meta huwa jkun jippossjedi stat konformi mal-att tat-twelid tieghu”*

Illi f'kaz maghmul a bazi ta' din l-azzjoni fis-sentenza “**Walter Ahar nomine vs Pio Micallef**” (P.A. (AJM) 21 ta' Frar 1996) inghad illi “*minn dan it-tagħlim jidher li l-fatt li r-ragel ta' omm it-tarbija kien prezenti Malta u kellu l-possibbilta' li jkollu relazzjoni ma' martu, ma ghandu jkun ta' ebda xkiel fl-indagini li ghandha ssir sabiex tigi stabbilita l-identita' tal-missier naturali tal-istess attur*”.

(3) It-tielet azzjoni hija dik kontemplata fl-**artikoli 76 u 77 tal-Kap 16** fejn ghal dak li huwa rilevanti ghal dik il-kawza fl-**artikolu 77** jinghad li:-

*“Il-legittimita' ta' tifel imwieled matul iz-zwieg tista' tigi attakkata minn kull min ghandu nteress, jekk jipprova illi, fiz-zmien bejn it-tliet mitt gurnata u l-mija u tmenin gurnata qabel it-twelid tat-tifel, ir-ragel kien f'impossibbilta' li jghammar ma' martu minhabba li kien ‘il bogħod minnha”.*

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Illi din l-ahhar azzjoni msemmija ta' mpunjazzjoni ta' legittimita' hija miftuha ghal kull terz, inkluz lill-omm u lill-istess tifel peress li hija disponibbli ghal min ghandu nteress, inkluz il-persuna li tallega li hija missier it-tifel.

Illi minn dan kollu jirrizulta li l-ligi taghti l-opportunita' lill-diversi persuni fil-parametri hemm indikati, u biss bl-azzjonijiet fuq indikati sabiex tigi denagata l-paternita' jew anke kontestata l-legittimita'.

Illi pero' fl-opinjoni ta' din il-Qorti l-azzjoni a bazi tal-**artikolu 77** hija subordinata ghal dak li hemm provdut fl-**artikolu 81** li jipprovi li l-istat ta' iben legittimu ma jista' jigi attackat minn hadd, lanqas mill-iben innifsu jekk il-minuri jkun akkwista l-*istatus* ta' iben legittimu mill-att tat-twelid u l-pussess tal-istess stat li jaqbel ma' tali att.

Illi fi kliem iehor l-azzjoni ttentata skond l-**artikolu 77** sabiex tirnexxi trid issir fl-ewwel lok a bazi ta' iben jew bint li skond l-att ta' twelid ma jkunx ikkunsidrat bhala legittimu, jew ghalkemm l-istess att ta' twelid jikkunsidrah legittimu, huwa ma jkunx jipposedi l-istess stat ta' legittimu.

Illi l-pussess ta' l-istat ta' iben legittimu skond l-**artikolu 80** "*stabbilit minn gabra ta' fatti, mehudin flimkien, li jiswew biex juru r-rabta ta' filjazzjoni u ta' demm bejn it-tifel u l-familja li hu jghid li hi l-familja tieghu.*

*L-ewlenin fost dawn il-fatti huma:-*

*(a) Illi t-tifel ikun gieb dejjem il-kunjom tal-missier li tieghu jghid li huwa l-iben;*

*(b) Illi l-missier ikun trattah bhala ibnu, u, f'dik il-kwalita' haseb ghall-manteniment u edukazzjoni tieghu, u sabiex jikkollokah;*

*(c) Illi t-tifel gie dejjem maghruf bhala tali min-nies;*

*(d) Illi huwa ikun maghruf bhala tali mill-familja".*

Illi dan ifisser skond is-sentenza “**Malika Cachia Ejjebili et vs Ahmed Kamel El Din et**” (PA (RCP) 26 ta' Jannar 2000) li skond il-provvedimenti tal-**artikolu 82 tal-Kap 16 tal-Ligijiet ta' Malta**, huwa biss jekk ikun hemm “*nuqqas ta' att ta' twelid jew tal-pussess ta' stat* (u dan skond kif definit fl-**artikolu 80 tal-Kap 16**) *inkella jekk it-tifel ikun gie registrat taht isem falz, ... .. li l-prova tal-filjazzjoni tista' ssir b'xhieda ohra li tista' tingieb skond il-ligi*”.

Illi mis-sentenzi fuq citati din hija l-unika konkluzjoni logika li tista' tinghata meta jigu mqabbla l-**artikoli 81 mal-artikolu 77**, *stante* li jidher li fl-opinjoni ta' din il-Qorti, l-kundizzjoni kontenuta fl-**artikolu 77** dwar l-impossibbilta' fizika, hija wkoll kundizzjoni ohra li kull persuna ohra, apparti l-minuri jekk dan jagixxi *ai termini* tal-ligi.

Illi dan jinsab ikkonfermat fis-sentenza “**Mario Maugeri vs Direttur tar-Registru Pubbliku**” (PA (RCP) 13 ta' Jannar 1999) fejn inghad b'riferenza ghall-fatti f'dik il-kawza li “*Dwar l-artikolu 81 ... .. jigi ndikat li tali artikolu ma huwiex ta' ostakolu ghall-azzjoni odjerna, peress li jidher car mis-segweni fatt fuq esposti, li l-istess minuri qatt ma kellu l-pussess ta' stat ta' iben legittimu li jaqbel mal-att tat-twelid peress li l-persuna ndikata kienet ilha nieqsa ... .. u ommu kienet tghix biss mal-attur*”.

Illi minn dan johrog car li jekk iben jew bint ikollhom stat ta' wild legittimu, u jkollhom ukoll il-pussess tal-istess stat konformi mal-att ta' twelid, **hadd** ma jista' jattakka dan l-istat a bazi tal-**artikolu 77** anke jekk tigi ppruvata l-impossibbilta' fizika ndikata fl-istess artikolu. Illi dan gie wkoll konfermat fis-sentenzi “**Concetta Conti nomine vs Angelo Camilleri**” (Vol.XXXII.ii.309) u “**Jesmond Zammit vs Anthony Rapa et**” (PA (RCP) 18 ta' Jannar 2000) fejn inghad li:-

*“Illi dan ifisser illi skond il-provedimenti tal-artikolu 82 tal-Kap 16 tal-Ligijiet ta' Malta, jekk ikun hemm nuqqas ta' att ta' twelid jew ta' pussess ta' stat (u dan skond kif definit fl-artikolu 80 tal-Kap 16) inkella jekk it-tifel ikun gie registrat taht isem falz ... .. il-prova tal-filjazzjoni tista' ssir b'xhieda ohra li tista' tingieb skond il-ligi. Fi kliem iehor*

*jekk il-pussess ta' stat ma jaqbilx mac-certifikat tat-twelid il-prova li tohrog mic-certifikat tar-Registru Pubbliku mhux insindakabli”.*

Illi dawn il-principji kollha gew kkonfermati fis-sentenzi **“Stephen Healey vs Clyde Farrugia Vella”** (PA (RCP) deciza fl-1 ta' Marzu 2001 Cit Nru: 1841/98/RCP); **“Carmel Grima et vs Carmelo Borg et”** deciza fil-5 ta' Lulju 2001 Cit Nru. 190/97/RCP, **“Anthony Sant vs John Cutajar et”** (PA (RCP) 10 ta' Novembru 1999); **“Carmel Grima et vs Carmelo Borg et”** (P.A. (RCP) deciza fil-5 ta' Lulju 2001 Cit Nru: 190/97/RCP); **“Natalino Scerri vs Giovanni Minafo`”** (P.A. (RCP) deciza fl-14 ta' April 2000 – Cit Nru 1919/98/RCP) u **“Domenic Briffa vs Therese Fenech et”** (P.A. (RCP) deciza 30 ta' Mejju, 2002 - Cit Nru 1916/00/RCP) u ohrajn.

Illi dwar l-interpretazzjoni tal-**artikolu 77** u dwar il-kuncett ta' *“impossibbilita' fizika”* hemm indikata, wiehed jirreferi ghas-sentenza **“Ronald Bray vs Charmaine Bray et”** (N.A. 19 ta' Novembru 1997) fejn inghad li *“l-impossibbilita' fizika li ghalha hemm riferenza ghandha tkun wahda li setghet taffetwa b'xi mod il-koncepiment tat-tarbija”*. (**“Noelle Spiteri vs Ernest Cilia”**).

Illi mill-provi prodotti jirrizulta car li l-ligi giet sodisfatta nkwantu jirrigwarda t-talbiet attrici u dan peress li mill-provi jirrizulta konkludentement illi l-minuri hija frott ta' relazzjoni li kellu l-attur mal-konvenuta Ilham Brida, tant li fi zmien il-koncepiment tal-istess tarbija, l-istess persuni kienu qed jghixu flimkien u l-konvenuta kienet *de facto* separata minn zewgha; jidher ukoll li t-terminu msemmi mill-ligi jinsab ukoll sodisfatt; u fl-ahharnett jirrizulta wkoll li fit-termini stipulati kien hemm l-impossibbilita' fizika dettata mill-ligi sabiex jinghad li l-istess minuri ma tistax tkun wild tal-konvenuti Ilham Brida u Daniel Attard u dan jinsab kategorikament ikkonfermat mix-xhieda rispettiva taghhom li bl-ebda mod ma giet kontestata.

Illi apparti dan, jirrizulta wkoll li din l-istess minuri qatt ma kellha l-istat ta' bint legittima, tant li zewg il-konvenuta Brida addirittura pprojbixxa lill-konvenuta, omm l-istess

minuri, milli tindika l-istess minuri bhala bintu; li dan ma sarx kien biss minhabba d-dispozizzjonijiet legali li jipprojbixxu li dan isir jekk ma jkunx hemm decizjoni tal-Qorti li tikkonferma l-paternita` tal-istess minuri; tenut kont tal-fatt li l-istess konjugi f'dak iz-zmien kienu biss *de facto* separati.

Illi apparti dan jidher li l-istess minuri dejjem giet kkonsiderata bhala bint l-attur kif fil-fatt kien u dan mhux biss bejn il-kontendenti izda in generali, u r-relazzjoni tal-istess minuri rigward il-missier hija biss ma' l-attur u qatt mal-konvenut Daniel Attard. Ovjament taht dan l-aspett u wkoll dak appena accentat fil-paragrafi precedenti d-dikjarazzjoni tal-omm hija ta' mportanza massima kif ritenut fil-gurisprudenza fuq citata.

Illi ghalhekk minn dan jidher li r-rekwiziti tal-**artikolu 77 tal-Kap 16** gew ilkoll sodisfatti *stante* li fit-terminu ndikat fl-istess artikolu r-ragel tal-konvenuta qatt ma kellu jew seta' jkollu relazzjoni mal-istess martu u dan kollu skond l-interpretazzjoni tal-istess **artikolu 77** moghtija u kkonfermata diversi drabi minn dawn il-Qrati tant li dwar il-kuncett ta' "*impossibbilta' fizika*" hemm indikata fl-istess dispozizzjoni tal-ligi, wiehed jirreferi ghas-sentenza "**Ronald Bray vs Charmaine Bray et**" (P.A. (N.A.) 19 ta' Novembru 1997) fejn inghad li "*l-impossibbilta' fizika li ghalha hemm riferenza ghandha tkun wahda li setghet taffetwa b'xi mod il-koncepiment tat-tarbija*" ("**Noelle Spiteri vs Ernest Cilia**" P.A. (N.A.) 30 ta' Jannar 1998; "**Francis sive Frank Xuereb vs Maria Bonello**" (P.A. (RCP) 22 ta' Marzu 2002).

Illi ghalhekk it-talbiet attrici ghandhom jigu milqugha.

**(ii) APPREZZAMENT TAL-PROVI.**

Illi mill-provi prodotti jirrizulta li l-konvenuta Ilham Brida fis-sena 1995 kellha relazzjoni mal-attur, mill-liema relazzjoni twieldet tifla bl-isem ta' Rima fil-25 t'Ottubru 1996, u ovvjament l-istess minuri giet registrata f'isem l-attur. Din ir-relazzjoni jidher li ntemmet u l-konvenuta bdiet



relazzjoni mal-konvenut Daniel Attard u zzewgu fil-21 ta' Marzu 1998.

Illi f'anqas minn sentejn l-istess konjugi sseparaw u l-konvenut Daniel Attard telaq mid-dar, irritorna l-attur u rega' beda r-relazzjoni tieghu mal-konvenuta, tant li bdew jghixu flimkien fi *flat* Marsascale. Wara *circa* sitt xhur il-konvenuta nqabdet tqila, u fit-23 ta' Lulju 2001 twieldet il-minuri Ines, li giet anke mhabbra li hija l-bint naturali tal-attur u l-konvenuta, kif jidher hawn minn estratt mill-gazzetta "*The Sunday Times*" datata 12 t'Awissu 2001, u wkoll mic-certifikat ta' St. James Hospital rispettivament esebiti a fol. 45 u 46 tal-process bhala Dok. "A" Dok. "B".

Illi l-partijiet kollha fil-kawza (ovvjament hlief ghad-Direttur tar-Registru Pubbliku u l-kuraturi deputati) kollha jaqblu ma' dawn ir-rizultanzi processwali li minnhom jirrizulta b'mod konkluziv li minn meta l-konvenuta u l-konvenut Daniel Attard sew fuq is-sena qabel it-twelid tal-istess minuri, huma qatt ma raw izjed lil xulxin u wisq anqas kellhom xi forma ta' relazzjoni flimkien, u allura abbazi tal-gurisprudenza vigenti, u kkonfermata kemm-il darba minn din il-Qorti kif presjeduta, jirrizulta li hemm "*impossibilita`*" fizika li l-konvenut Daniel Attard huwa l-missier tal-istess tarbija.

Illi wkoll jirrizulta li l-istess minuri, *nonostante* dak li hemm fic-certifikat tat-twelid, jidher li gie ppruvat b'mod konkluziv li hija qatt ma gawdjet mill-istat ta' bint legittima tal-konvenut Daniel Attard, tant li mill-mument tat-twelid taghha sal-lum (anke kif rifless fl-avviz fil-gazzetta kkwotata) hija dejjem trabbiet bhala bint l-attur, hekk jidher li maghrufa minn kulhadd inkluz il-familjari tal-partijiet, u effettivament trabbiet u dejjem giet mantnuta mill-attur.

Illi f'dan il-kuntest id-dikjarazzjoni tal-omm, ghar-ragunijiet ovvji hija ta' mportanza vitali, u f'dan il-kaz is-sahha probatorja taghha hija aktar sinifikanti meta tqis li dwar il-fatt hemm qbil totali, u ghalhekk il-verzjoni taghha hija kkorroborata mill-attur u mill-konvenut Daniel Attard, l-aktar persuna msemmija tiddikjara kategorikament li lanqas taf it-tarbija. Dan ukoll jinsab korroborat mix-xhud

George sive Gino Cauchi fl-affidavit tieghu tat-12 ta' Dicembru 2002.

Illi abbazi tal-premess it-talbiet attrici jirrizulta li ghandhom jigu milqugha.

### **III. KONKLUZJONI.**

Illi ghalhekk ghal dawn il-motivi, din il-Qorti, **taqta' u tiddeciedi**, billi filwaqt li tichad l-eccezzjonijiet tal-konvenut, id-Direttur tar-Registru Pubbliku u tal-kuraturi deputati tal-istess minuri u nkwantu l-istess huma b'xi mod inkompatibbli ma' dak hawn deciz, u fil-kontumacija tal-konvenuta Ilham Brida u ta' Daniel Attard, **tilqa' t-talbiet attrici** b'dan illi:-

1. Tiddikjara u tiddeciedi li l-imsemmija minuri Ines Attard ma hijiex il-wild naturali tal-konvenut Daniel Attard, izda hija t-tifla naturali tal-attur, b'mod li ghalhekk hemm lok ghall-korrezzjoni tal-att tat-twelid tal-imsemmija minuri f'dan is-sens, b'dan li l-istess minuri tigi ndikata bhala li hija l-bint naturali tal-attur Geremia Esposito.

2. Tordna ghalhekk il-korrezzjoni fl-att tat-twelid ta' l-imsemmija minuri Ines Attard, numru 8100/01 b'mod illi r-rizultanzi ta' l-ewwel talba jigu korrettement u fedelment rispekkjati fl-istess certifikat ta' twelid hekk, *inter alia*, jigu kkancellati minn kull fejn jinsabu mnizzla fl-istess att tat-twelid, l-isem u l-konnotati kollha tal-konvenut Daniel Attard, b'dan li kull referenza ghalih u ghad-dettalji tieghu bhala missier il-minuri Ines tigi kkancellata, u l-istess jigu sostitwiti bl-isem u l-konnotati kollha l-ohra tal-attur Geremia Esposito, bin Enrico u Anne Marie nee' Bono, imwieled Napli, l-Italja u residenti Marsascale, id-dettalji l-ohra rilevanti tal-attur li ghandu n-numru ta' Passaport 626247 (B), u wkoll li fil-kolonna li tirreferi ghall-partikolaritajiet tal-omm, il-kliem "*the said*" jigu kkancellati.

Illi l-Qorti tordna wkoll li *ai termini* tal-**Artikolu 256 tal-Kap 16 tal-Ligijiet ta' Malta** li kull korrezzjoni hawn ordnata ghandha ssir mid-Direttur tar-Registru Pubbliku fi zmien ghaxart (10) ijiem minn dakinhar li s-sentenza tghaddi

Kopja Informali ta' Sentenza

f'gudikat u ghandha ssir bis-sahha ta' kopja vera tas-sentenza li tinghata lilu mir-Registratur tal-Qrati Superjuri, bil-mod preskritt fl-istess dispozizzjonijiet tal-**Kap 16**.

Illi dwar il-kap tal-ispejjez dawn ghandhom jigu sopportati mill-istess attur *proprio* u l-konvenuta Ilham Brida, *stante* li ma jirrizultax mill-provi li tali zball kien imputabbli ghal xi raguni lill-konvenuti l-ohra.

**Moqrija.**

**< Sentenza Finali >**

-----TMIEM-----