

Informal Copy of Judgement

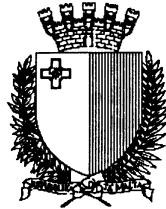


THE ADMINISTRATIVE REVIEW TRIBUNAL

**MAGISTRATE DR.
GABRIELLA VELLA**

Sitting of the 17 th September, 2012

Rikors Number. 89/2009



**Administrative Review Tribunal
Magistrate
Dr. Gabriella Vella B.A., LL.D.**

Application No. 89/09VG

Paul Wesley Howes

Vs

Ministry of Finance, The Economy & Investment

The Tribunal,

After having considered the Application submitted by Paul Wesley Howes on the 17th December 2009, by means of which he requests the Tribunal to revoke the decision by the Ministry of Finance, The Economy & Investment dated 30th November 2009 and instead declare that he satisfies the requirements set out in Section 19 of Chapter 368 of the Laws of Malta for an exemption from payment of vehicle registration tax on the vehicle Toyota Land Cruiser having Registration Number V539 MJB, and consequently order that he should be exempted from payment of vehicle registration tax on the said vehicle, under any terms and conditions the Tribunal deems fit to impose;

After having considered the decision by the Ministry of Finance, The Economy and Investment dated 30th November 2009, attached to the Application at folio 3 of the records of the proceedings;

After having considered that the Ministry of Finance, The Economy and Investment though having been duly served with the Application submitted by Paul Wesley Howes, failed to submit a Reply to the same;

After having heard and considered the testimony given by the Applicant during the sittings held on the 19th May 2011¹ and the 24th October 2011² and after having considered the document submitted by the Applicant during the sitting held on the 24th October 2011 marked as Doc. "PW1" at folio 17 of the records of the proceedings, after having heard and considered the testimony given by Herald Bonnici during the sitting held on the 28th November 2011³ and after having considered the documents submitted by the Respondent Ministry by means of a Note filed on the 1st February 2012⁴;

After having considered the Note of Submissions filed by the Applicant on the 11th May 2012⁵ and the Reply submitted by the Respondent on the 15th June 2012⁶;

¹ Folio 11 of the records of the proceedings.

² Folio 16 of the records of the proceedings.

³ Folio 19 & 18 of the records of the proceedings.

⁴ Folio 24 to 60 of the records of the proceedings.

⁵ Folio 63 to 66 of the records of the proceedings.

After having considered all the records of the proceedings;

Considers:

By means of these proceedings the Applicant is contesting the decision by the Respondent Ministry dated 30th November 2009⁷, by means of which his request for an exemption from payment of vehicle registration tax on the vehicle Toyota Land Cruiser having Registration Number V539 MJB was rejected on the grounds that *documents provided show that you have not been residing and using your vehicle outside Malta for the last 24 consecutive months prior to your application. In fact, documents show that you have taken up residence in Malta before the date established in the Act.*

The Respondent Ministry, though validly served with the Application submitted by the Applicant before this Tribunal, failed to Reply to the same and in view of such default the Tribunal is obliged to apply the procedural rules pertinent to such a situation, namely that: (i) in spite of the default on the part of the Respondent Ministry to reply to the Applicant's requests, the Applicant is nonetheless bound to satisfactorily prove his case – *il-kontumacja ma tehlisx lill-attur milli jissodisfa r-rekwizit tal-ligi li jressaq provi sal-grad almenu ta' probabilità u li jressaq l-ahjar prova*⁸; and that (ii) the Respondent Ministry is precluded from submitting any evidence before the Tribunal but has the right to make submissions in support of its decision against the Applicant – *kwantu ghal kontumacja, imbaghad, hu ferm pacifiku illi ghalkemm il-kontumaci mhux prekluz li jappella u jittratta, huwa però ma jistax igib provi u xhieda quddiem din il-Qorti kemm-il darba ma jiggustifikax in-nuqqas tieghu*⁹.

⁶ Folio 68 to 70 of the records of the proceedings.

⁷ Folio 3 of the records of the proceedings.

⁸ Joseph Vella v. Pierre Cremona, Appeal No. 138/00 decided by the First Hall Civil Court on the 12th October 2001 and confirmed by the Court of Appeal on the 10th October 2003.

⁹ Jesmond Sacco et v. Concetta Charles et, Appeal No. 5/03 decided by the Court of Magistrates (Malta) on the 6th February 2003 and confirmed by the Court of Appeal in its Inferior Jurisdiction on the 7th May 2004.

In view of the above-mentioned principles and of the fact that the Respondent Ministry did not justify its default to reply to the Appeal lodged by the Applicant, the Tribunal will not take into consideration the testimony given by Herald Bonnici during the sitting held on the 28th November 2011¹⁰ and the document submitted by the Respondent Ministry on the 15th June 2012 at folio 24 to 60 of the records of the proceedings, and orders their removal from the records of the proceedings.

The Tribunal must now therefore consider the merits of this Appeal in the light of evidence put forth by the Applicant and determine whether he has satisfactorily proved that the decision by the Respondent Ministry to reject his request for an exemption from payment of vehicle registration tax on the vehicle Toyota Land Cruiser having Registration Number V539 MJB is incorrect since, contrary to that determined by the Ministry he qualifies for such an exemption in terms of Section 19 of Chapter 368 of the Laws of Malta.

As correctly submitted by the Applicant in his Note of Submissions the Tribunal must consider his Appeal in the light of the provisions of the Law – namely Chapter 368 of the Laws of Malta and Subsidiary Legislation 368.01 – as in force at the time when he submitted his application to the Respondent Ministry for an exemption from payment of vehicle registration tax. From the testimony given by the Applicant during the sitting held on the 19th May 2011, it results that he submitted his application for an exemption from payment of vehicle registration tax on the vehicle Toyota Land Cruiser having Registration Number V539 MJB in **2009**. In fact during that sitting the Applicant declared that *sometime a little over three years ago I came to Malta together with my family to work temporarily over here. At the time I also brought my car over with me. After fifteen months however, my family and myself decided to stay in Malta, take up permanent residence over here and open a business. When we took the*

¹⁰ Folio 19 and 20 of the records of the proceedings.

decision I decided to register my car which until that time was on a temporary permit. I looked up the legislation which stated that if the car was owned by the applicant for more than three years and in fact I had owned the car for six years, I could apply for registration and be exempted from the payment of tax.

Exemptions from payment of vehicle registration tax are regulated by Section 19 of Chapter 368 of the Laws of Malta and since 2009 by Regulation 4 of Subsidiary Legislation 368.01. In **2009** the then existing Section 19 of Chapter 368 of the Laws of Malta was substituted by virtue of Act VI of 2009 and subsection (3)(i) of Section 19 as substituted provided that *exemptions from the payment of registration tax and, in the case of vehicles supplied under sub-paragraphs (ii) to (vii) hereunder, also from the payment of circulation licence fees shall be applicable where the motor vehicle – (i) is the personal property of a private individual and is being brought permanently into Malta by the individual when he is transferring his residence from a place outside Malta to a place in Malta: Provided that a motor vehicle brought into Malta on or after the 1st July, 2008, by a person who has taken up his residence in Malta on or after the 3rd November 2008, shall qualify for an exemption from the payment of registration tax.* In terms of subsection (5) of Section 19 as introduced by Act VI of 2009 *the exemptions under subarticle (3) shall be granted under those conditions as the Minister may specify by regulations.*

The Regulations in question are the Exemption from Motor Vehicles Registration Tax Rules, 2009, introduced by Legal Notice 196 of 2009, which came into force on the 1st January 2009 and the specific Regulation which refers to the transfer of residence for the purposes of Section 19(3)(i) of Chapter 368 of the Laws of Malta is Regulation 4 which in 2009 provided that: *the exemption under sub-article (3) (i) of article 19 of the Act shall be granted to a motor vehicle which is the personal property of a private individual and is being brought or imported permanently into Malta by the individual when he is transferring his residence from a place outside Malta to a place in Malta:*

Provided that – (a) that person has been residing outside Malta for a continuous period of more than twenty-four months before his transfer of residence to Malta; (b) the motor vehicle has been in his possession and used by him outside Malta for at least twenty four months before the date on which he ceased to have his residence outside Malta; (c) the vehicle is registered in his name or in the name of his or her spouse where applicable; (d) that person holds a valid driving licence; (e) the vehicle shall be imported or brought into Malta within twelve months of the individual's transfer of residence; (f) the motor vehicle shall not be sold, given away, disposed of, hired out or lent following its importation or its bringing into Malta unless the vehicle registration tax to which the exemption aforesaid relates is paid thereon in accordance with the provisions of the First or Second Schedule to the Act.

From the above-mentioned provisions of the Law it therefore clearly results that with effect from the 1st January 2009, for an individual to be eligible for an exemption from payment of vehicle registration tax under Section 19(3)(i) of Chapter 368 of the Laws of Malta, he had to satisfy the requirements set out **both** in Section 19(3)(i) of Chapter 368 of the Laws of Malta **and** in Regulation 4 of Legal Notice 196 of 2009 (Subsidiary Legislation 368.01). Thus the Applicant's submission that *ir-raguni li ta l-Ministeru ghac-cahda tal-applikazzjoni, u cioè li r-rikorrent ma kienx qed jirrisjedi u juza l-vettura tieghu barra minn Malta ghal erbgha u ghoxrin xahar qabel ma ssottometta l-applikazzjoni tieghu, ma jirrizultax bhala kriterju fil-ligi vigenti dak iz-zmien. Illi in effetti dan il-kriterju dahal bhala rekwizit fil-ligi taghna bis-sahha tal-Att IV ta' l-2011¹¹*, is not correct.

As already noted above the reason given by the Respondent Ministry for rejecting the Applicant's request for an exemption from payment of vehicle registration tax on the vehicle Toyota Land Cruiser having Registration Number V539 MJB was that *documents provided show that you have not been residing and using your vehicle*

¹¹ Note of Submissions filed by the Applicant, folio 63 to 66 of the records of the proceedings.

outside Malta for the last 24 consecutive months prior to your application. In fact, documents show that you have taken up residence in Malta before the date established in the Act. Regulation 4 of Legal Notice 196 of 2009 inter alia provided that an individual could be eligible for an exemption under Section 19(3)(i) of Chapter 368 of the Laws of Malta if: (a) that person has been residing outside Malta for a continuous period of more than twenty-four months before his transfer of residence to Malta; and (b) the motor vehicle has been in his possession and used by him outside Malta for at least twenty four months before the date on which he ceased to have his residence outside Malta. Therefore, the Respondent Ministry was perfectly within the parameters of the law - as correctly pointed out in the Ministry's Note of Submissions - when it took these issues into account when considering the Applicant's request for an exemption from payment of vehicle registration tax on the vehicle Toyota Land Cruiser having Registration Number V539 MJB.

The Applicant however further argues that even though the Respondent Ministry could, in terms of the law, consider the requirements set out in Regulation 4 of Legal Notice 196 of 2009 when considering his application for an exemption from payment of vehicle registration tax on the vehicle Toyota Land Cruiser having Registration Number V539 MJB, the decision delivered on the 30th November 2009 is nonetheless incorrect since the Ministry gave a wrong interpretation of Regulation 4 as in force in 2009.

In his Note of Submissions the Applicant submits that *l-intimat jista' jargumenta illi l-Avviz Legali 196 tal-2009 (li dahal fis-sehh fl-1 ta' Jannar 2009) huwa wkoll applikabbli stante li r-rikorrent applika ghat-trasferiment ta' residenza fil-15 ta' Settembru 2009. Illi r-Regolament 4(3)(c) ta' l-Avviz Legali 196 ta' l-2009, kif sostitwit mill-Avviz Legali 6 ta' l-2012, jipprovdi li sabiex vettura tista' tikkwalifika ghal ezenzjoni: "il-persuna li tkun qieghda tapplika ghall-ezenzjoni trid tkun ilha tghix barra minn Malta ghal perjodu kontinwu ta' ghall-inqas erbgħa u ghoxrin xahar minnufih qabel id-data li fiha hija ma tibqax ikollha r-*

residenza normali taghha barra minn Malta". Illi però fil-perjodu relattiv ir-Regolament 4 kien jaqra s-segwentii: "din il-persuna trid tkun ilha tghix barra minn Malta ghal perjodu kontinwu ta' aktar minn erbgha u ghoxrin xahar qabel it-trasferiment tar-residenza taghha lejn Malta" – skond l-Avviz Legali 196 tal-2009. Illi l-istess tezi tapplika ukoll u cioè li dan it-Tribunal, bir-rispett, ghandu japplika l-Ligi kif kienet fis-sehh meta r-rikorrent issottometta l-applikazzjoni tieghu. Illi peress li ghandu jigi applikat l-Avviz Legali 196 tal-2009, mhuwiex mehtieg li r-rikorrent kien jghix barra ghal perjodu kontinwu ta' aktar minn erbgha u ghoxrin xahar minnufih qabel it-trasferiment tar-residenza izda huwa bizzejjed li r-rikorrent kien jghix barra ghal tali zmien qabel ma issottometta l-applikazzjoni tieghu. Illi in effetti skond kif jirrizulta mid-dokumentazzjoni li pproduca r-rikorrent flimkien ma' l-applikazzjoni tieghu dan il-kriterju gie sodisfatt; u fil-fatt ir-rikorrent kien jissodisfa ukoll dawn ir-regolamenti kif kienu fis-sahh dakinhar.

Even though the Applicant does not say so in so many words, it is clear that he implies that the requirement set out in Regulation 4(1)(a) of Legal Notice 196 of 2009 can be considered to be satisfied if the individual applying for an exemption from payment of vehicle registration tax resided outside Malta for a continuous period of 24 months **at any time** before submitting his application. The Tribunal however does not agree with the submission put forth by the Applicant and is of the opinion that the very wording of the Law – particularly of the proviso to Section 19(3)(i) of Act VI of 2009 – proves that the Applicant's interpretation of Regulation 4(1)(a) of Legal Notice 196 of 2009 is not correct and that contrary to what he claims, he does not satisfy the requirement for eligibility for an exemption from payment of vehicle registration tax as set out in the said Regulation.

As already pointed out above, Section 19(3)(i) of Chapter 368 of the Laws of Malta as introduced by Act VI of 2009 provided that *exemptions from the payment of registration tax and, in the case of vehicles supplied under subparagraphs (ii) to (vii) hereunder, also from the payment*

of circulation licence fees shall be applicable where the motor vehicle – (i) is the personal property of a private individual and is being brought permanently into Malta by the individual when he is transferring his residence from a place outside Malta to a place in Malta: Provided that a motor vehicle brought into Malta on or after the 1st July, 2008, by a person who has taken up his residence in Malta on or after the 3rd November 2008, shall qualify for an exemption from the payment of registration tax.

From the wording used by the Legislator, particularly in the proviso to Section 19(3)(i), it is very clear that the exemption from payment of vehicle registration tax as introduced on the 30th April 2009¹² with retrospective effect as from the 1st January 2009, was to apply to those individuals who transferred their residence from outside Malta to Malta on or after the 3rd November 2008 and to those vehicles imported by the said individuals on or after the 1st July 2008. The fact that this particular tax exemption regime was to apply to this specific category of individuals and their vehicles is confirmed by a reply given by the Minister responsible for Finance to a question put to him by another Member of Parliament during the sitting held on the 28th April 2009. To the question: *Jista' l-Ministru jidhol fil-kaz, li d-dettalji tieghu qed jintbaghtu separatament, u jghaddi biex jippermetti li l-vettura, li d-dettalji taghha qed jintbaghtu separatament, ta' din il-persuna tigi registrata taht is-sistema Maltija tar-registrazzjoni tal-vetturi minghajr ma thallas taxxa ta' registrazzjoni (i.e. thallas biss tal-pjanci) u dan stante li din il-vettura ilha iktar minn sentejn fil-proprjeta' ta' din il-persuna? Ghal kull buon fini jrid jinghad li l-persuna hija Ingliza, twieldet l-Ingilterra, abitat dejjem l-Ingilterra ghal 30 sena shah u giet toqghod Malta permanentement f'Ottubru li ghadda. Il-vettura giet mixtrija fl-2001 fl-Ingilterra stess. The Minister responsible for Finance replied Ngharraf lill-Onor. Interpellant illi taht l-Abbozz ta' Ligi, kif gie emendat, persuna tkun tista' tikkwalifika ghal ezenzjoni fuq il-vettura taghha taht l-iskema tat-*

¹² Act VI of 2009.

trasferiment ta' residenza, jekk il-persuna tkun ittrasferiet ir-residenza taghha f'Malta fit-3 ta' Novembru, 2008 jew wara dik id-data u l-vettura trid tkun ingiebet hawn Malta mill-1 ta' Lulju 2008 'l hawn¹³. Biex wiehed ikun jaf jekk jikkwalifikax jew le, irid, l-ewwelnett, japplika u jipprovdri provi sufficjenti tat-trasferiment ta' residenza abbazi tad-dokumenti msemmija fl-applikazzjoni. Fil-jiem li gejjin, il-kumitat imwaqqaf fi hdan il-Ministeru tal-Finanzi ha jkun qed jipprocessa kazijiet ta' applikazzjonijiet li ghandhom x'jaqsmu ma' meta persuna tittrasferixxi r-residenza taghha minn post barra minn Malta ghal dak f'Malta.

In the light of the above it therefore results that the 24 continuous month period referred to in Regulation 4(1)(a) of Legal Notice 196 of 2009 must not be considered in the abstract or at any time before the submission of an application for an exemption from payment of vehicle registration tax as expected by the Applicant, but must be considered - in so far as concerns those applications which fell under the law as applicable prior to the amendments introduced by Act XI of 2010¹⁴ - at least as at 3rd November 2008 which is clearly the "cut-off" date set by the Legislator for eligibility for this particular tax exemption.

From evidence submitted by the Applicant it results that he was already residing in Malta on the 3rd November 2008, since he had been resident here since the 1st January 2008 and officially took up permanent residence on the 17th October 2009, when he was issued with a Maltese Identity Card. Even though *prima facie* these facts indicate that the Applicant is eligible for an exemption from payment of vehicle registration tax on the vehicle having Registration Number V539 MJB, in reality he is not so eligible since during the months prior to the 3rd November 2008 he was residing here in Malta. In fact, since as at the 3rd November 2008 he had already been residing in Malta for a period of eleven months, calculated from the 1st January 2008, he could not and cannot be considered to have resided outside Malta for a continuous

¹³ Underlining by the Tribunal.

¹⁴ Act entered into force on the 1st January 2010.

period of 24 months before his transfer of residence here as required by law.

The Respondent Ministry clearly took this particular fact into account when considering the application submitted by the Applicant for an exemption from payment of vehicle registration tax on the vehicle Toyota Land Cruiser having Registration Number V539 MJB, since in its decision it stated – *documents show that you have taken up residence in Malta before the date established in the Act.*

The facts of this case also show that the vehicle in question too is not eligible for an exemption from vehicle registration tax since it was imported into Malta by the Applicant prior to the 1st July 2008, which is the date set out in the proviso to Section 19(3)(i) of Chapter 368 of the Laws of Malta as introduced by Act VI of 2009. In fact, the Applicant declared that he brought over the vehicle to Malta on the 1st January 2008 and the only time when the said vehicle was out of the Island was between the 13th March 2009 and the 15th March 2009, when he travelled to Pozzallo¹⁵.

In the light of the above, it therefore results that the decision by the Respondent Ministry to reject the request by the Applicant for an exemption from payment of vehicle registration tax on the vehicle Toyota Land Cruiser having Registration Number V539 MJB, is correct.

For the above reasons the Tribunal, whilst ordering the removal from the records of the proceedings of the testimony given by Herald Bonnici during the sitting held on the 28th November 2011 and the document submitted by the Respondent Ministry on the 15th June 2012 at folio 24 to 60 of the records of the proceedings, dismisses the Appeal submitted by the Applicant on the 17th December 2009.

Costs pertinent to these proceedings are to be borne by the Applicant.

¹⁵ Testimony given by the Applicant during the sitting held on the 24th October 2011, folio 16 of the records of the proceedings.

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