

Kopja Informali ta' Sentenza

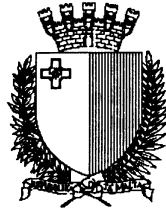


QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
FRANCESCO DEPASQUALE**

Seduta tal-15 ta' Ottubru, 2012

Avviz Numru. 375/2010



**QORTI TAL-MAGISTRATI (MALTA)
MAGISTRAT DR FRANCESCO DEPASQUALE LL.D.
LL.M. (IMLI)**

**Avviz Nru 375/2010 FDP
Fl-ismijiet:**

**Leo Camilleri, Joseph Camilleri, Rita Mifsud, Carmen
Spiteri, Ikoll ahwa ulied Paul Camilleri u Doris nee'
Dalmas, u St. Peter Developments Limited.**

VS

Alan Deidun u Steven Mallia

Il-Qorti,

Rat ir-rikors promotur ipprezentat fit-8 ta' Ottubru 2010 fejn ir-rikorrenti talbu lill-Qorti tikkundanna lir-rikorrenti ihallsu s-somma li tigi hekk likwidata in linea ta' danni ai termini ta' l-artikolu 28 tal-Kap 248, wara li jigi dikjarat li l-intimat ingurjaw u mmalafamw lir-rikorrenti b'kummenti u fotografiji li gew ippubblikati fil-gurnal The Sunday Times fit-18 ta' Ottubru 2009, fejn l-intimat Alan Deidun, bhala l-persuna li kitbet dawn il-kummenti malafamanti, ghamlet allegazzjonijiet li huma foloz u malafamanti fil-konfront tar-rikorrenti u li ghandhom bhala skop li joffendu l-unur u l-fama tar-rikorrenti u jesponuhom ghar-redikolu u ghad-disprezz tal-pubbliku.

Rat ir-risposta pprezentata fil-15 ta' Dicembru 2010 mill-intimati fejn laqghu ghall-akkuzi billi eccepew:-

1. Illi r-rikorrenti individwalment mhumiex identifikati u lanqas identifikabbli bhala persuni li huma involuti fil-pubblikazzjoni in kwistjoni u dan jinghad ukoll ghas-socjeta rikorrenti;
2. Illi fir-rigward tas-socjeta rikorrenti, dina m'ghandhiex dritt ta' azzjoni skond l-Artikolu 28 tal-Ligi tal-Istampa peress illi mhijiex persuna naturali;
3. Illi l-kontenut huwa informazzjoni ta' natura ta' kronaka mehudha minn 'press release' tal-Malta Environment and Planning Authority moghti lill-pubbliku ftit granet qabel il-pubblikazzjoni in kwistjoni, u l-kummenti huma gustifikati;
4. Illi m'hemm xejn malafamanti jew libelluz fl-istess publikazzjoni;

Rat l-artikolu ossija ritratt malafamanti ippubblikat fuq The Sunday Times tat-18 ta' Ottubru 2009 bil-caption tahtu "*MEPA direct action at Wied Qoton in Birzebbugia where illegal construction and flammable liquid storage facilities*

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were dismantled, despite strenuous resistance from an individual"

Rat ix-xhieda ta' **Leo Camilleri** moghtija fil-5 ta' Dicembru 2011 viva voce.

Rat ix-xhieda ta' **Alan Deidun** moghtija fil-5 ta' Dicembru 2011 viva voce.

Rat id-dokumentazzjoni esebita miz-zewg partijiet.

Ikkunsidrat

Illi l-kaz odjern jikkoncerna ritratt ippubblikat mill-intimat fil-pagna regolari ta' l-intimati intitolat 'Environment' ippubblikata fil-harga ta' The Sunday Times tat-18 ta' Ottubru 2009, liema storja kienet ir-rizultat ta' Press Release mahruqa mill-MEPA fis-6 ta' Ottubru 2009.

Illi tali ritratt kellu mieghu caption illi r-rikorrenti qiesu bhala malafamanti, li kien jghid "*MEPA direct action at Wied Qoton in Birzebbugia where illegal construction and flammable liquid storage facilities were dismantled, despite strenuous resistance from an individual"*

Illi jkun opportun li l-Press Release tigi riportata in intjier sabiex wiehed ikun jista jikkonstata l-argumenti mressqa mill-intimat u l-bazi o meno ta' l-azzjoni tar-rikorrenti.

Illi tali Press Release kienet tghid hekk:-

Illegal Stores in Wied il-Qoton Demolished

Man arrested for trying to disrupt direction action operation.

A large agricultural area, on the side of Wied il-Qoton, Birzebbugia, which over the years was illegally turned into a storage area for the garaging of flammable liquid bowsers and more recently for storing of building and construction material, was subject to a direct action

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operation by the Malta Environment and Planning Authority to restore the site back to its original state.

At the start of the operation, a man tried to disrupt the works being carried out, by threatening MEPA officials and resisting the ALE police present on site. The operation continued and the man was arrested and taken away from the site.

The Authority, through its direct action team, started pulling down two large open garages that were illegally constructed on agricultural land for storing different building materials and the garaging of commercial vehicles. MEPA personnel also removed large quantities of derelict objects and other pre-fabricated construction material that was being stored in other areas of the site. A large illegal gate, in the middle of a boundary wall, that was an access point for heavy vehicles to enter in and out of the agricultural area was also removed.

Over the years, this site has been a growing inconvenience and health hazard to the residents living across the road.

This operation was carried out with the assistance of the ALE Police

Ikkunsidrat

Jirrizulta, fix-xhieda tar-rikorrent Leo Camilleri, illi fil-fond propjeta' tar-rikorrenti, kienet inharget enforcement notice da' parte tal-MEPA madwar is-sena 1997 jew 1998, ghax il-plot ossija bitha, li kienet qed tinkera lil terzi, kienet qed tintuza illegalment biex tahzen bowsers illi kienu jgorru il-fuel.

Jirrizulta, fix-xhieda ta' l-istess rikorrent Leo Camilleri, illi fil-mument illi saret l-enforcement da' parte tal-MEPA, Alfred Mifsud, illi jigi r-ragel ta' ohtu, kien qieghed fuq il-fond u irrezista ma' l-ufficjali sabiex ma jsirx l-enforcement.

Jirrizulta wkoll, dejjem mix-xhieda ta' l-istess Leo Camilleri, illi fil-plot fejn saret l-enforcement, kien hemm ukoll ftit gebel u ftit zrar li jikkombacjaw mad-deskrizzjoni ta' building and construction material indikat fil-Press Release tal-MEPA.

Jirrizulta, minn naha l-ohra, skond ix-xhieda tal-intimat Alan Deidun, illi huwa kiteb dak li kiteb abbazi tal-Press Release mahruqa mill-MEPA, u ghalkemm kellu aktar informazzjoni minn sorsi gewwa il-MEPA, illimita ruhu illi jikteb dwar dak illi kien gie rrapportat fil-Press Release.

Ikkunsidrat

Illi l-ewwel eccezzjoni imressqa mill-intimati kienet dik rigwardanti l-identifikazzjoni tar-rikorrenti.

Illi, fuq dina l-kwistjoni, wiehed mill-kriterji fundamentali tal-libell fil-ligi Ingliza hu li:

“The statement must refer to the aggrieved party either directly or indirectly. It is therefore a requirement that the one who claims defamation must be able to point to their identification within the publication.”

Illi b'referenza ghal din, jinghand li fis-sentenza ta' l-Qorti ta' l-Appell ta' nhar il-hmistax (15) ta' Jannar 1997 fl-ismijiet “Farrugia vs Fava” jinghad dak li gej:-

“Dwar l-identifikazzjoni tal-persuna allegatement malafamata, hu ghal kollox immaterjali x'kienet l-intenzjoni ta' l-artikolista jew x'kellu f'rasu meta kiteb l-artikolu jew jekk f'mohhu dik il-persuna kienitx jew le identifikata. Hu ghal kuntrarju materjali t-test ta' l-artikolu u jekk il-qarrej ordinarju anke jekk ben informat meta jaqra l-artikolu jasalx biex jidentifika l-persuna ta' l-attur. Dana b'mod naturali u minghajr processi kumplikati ta' eliminazzjoni jew analizi xort'ohra. Dan ukoll b'certu grad ta' certezza' (ara ukoll f'dan is-sens Dr. Callus vs E Privitera datata disgha (9) ta' Frar 1984 – Vol LXV111 pt 5 pg 313; Onor.

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Joseph Fenech vs Louis Cauchi et datata sittax (16) ta' Jannar 2002 it-tnejn decizi mill-Qorti ta' l-Appell.”

Huwa opportun illi ssir ukoll referenza ghal sentenza ohra moghtija mill-Prim Awla tal-Qorti Civili nhar it-tmienja w ghoxrin (28) ta' Jannar 2005 fl-ismijiet Dr. Mario Vella et noe vs Dione Borg et fejn issir referenza ghal ktieb Libel and Slander ta' Carter Rock, fejn jinghad:

“The sole relevant question in every case is: would reasonable persons understand the words to refer the particular plaintiff? Factors to be considered in dealing this question are, as Lord Porter pointed out in Knupffen’s case “the size of the class, the generality of the charge and the extravagance of the accusation.”

L-awtur Robertson fil-ktieb Media Law jghid:

“Any story that carries the imputation of discreditable conduct by somebody will be actionable by a plaintiff qho can show that at least some readers would recognise him as the prson being criticized”.

Il-Gatley, imbaghad, fil-ktieb Libel and Slander 8th Edition p. 280 et seq jipprovdi li:

“There is abundant authority to show that it is not necessary for everyone to know to whom the article refers, this would in many cases be an impossibility; but if.....a substantial number of persons who knew the plaintiff reading the article, would believe that it refers to him an action assuming the language to be defamatory, can be maintained.”

Illi fil-kaz in ezami, il-pubblikazzjoni ta' ritratt flimkien mal-caption li tidher tahtha certament ma tista taghti ebda hjiel lill-persuna normali dwar min huma l-persuni involuti fil-kaz peress illi ma hemm ebda referenza ghall-persuni fiha salv li persuna kienet qieghda taghmel resistenza. Illi apparti minn hekk, apparti mill-fatt illi l-kontenut ma jaghmel ebda referenza ghall-persuni, certament ma ssir ebda referenza ghar-rikorrent b'ebda mod.

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Ghalhekk l-eccezzjoni imressaq mill-intimati hija wahda misthoqqa.

Illi t-tieni eccezzjoni hija li l-kumpannija ma ghandhiex dritt ta' azzjoni peress illi ma hijiex persuna naturali u ghalhekk ma ghandhiex locus standi.

Il-Gately, dwar dan il-punt jghid:

"A trading corporation or company "has a trading character, the defamation of which may ruin it" (Per Kay L.J. in South Hetton vs N-E News [1894]). It can maintain an action of libel or slander for any words which are calculated to injure its reputation in the way of its trade or business, and this without alleging or proving special damage".

Illi ghalhekk tali eccezzjoni ma ghandhix bazi legali.

L-ahhar eccezzjoni li saret mill-intimati kienet li l-kummenti kienu gustifikati u mehudha mill-Press Release tal-MEPA.

Illi fil-kaz in ezami, huwa car, kemm mill-kontenut tal-Press Release tal MEPA esebita mill-intimat, kif ukoll mix-xhieda tar-rikorrent, li dak irrapportat kien kollu korrett. Ir-rikorrent donnu jipprova joggezzjona ghal dak miktub peress illi jindika illi kien hemm 'flamable liquid storage facilities' indikati, li ma kienx minnu. Madanakollu, jirrizulta illi l-intimat Deidun kull ma ghamel kien illi rriproduca dak li intqal fil-Press Release tal-MEPA.

Illi kif qalu l-Qrati taghna,

"F'materja t'ingurja bl-istampa ghandha issir distinzjoni bejn "allegation of fact" u dak li huwa "comment". Biex tirnexxi id-difiza tal-verita` tal-konvicju, il-fatt ghandu jigi ppruvat. Il-comment biex ikun gustifikat, irid ikun "fair and bona fide", u ma jistax ikun "fair u bona fide" jekk il-fatt

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attribwit lill-kwerelant ma jkunx veru.” (Reginald Miller vs Harold Scory -XXXVI.IV.843.).

Fil-kaz odjern, jidher car illi r-rappurtagg ta' l-intimat Deidun kien wiehed in bona fide peress illi kull ma ghamel huwa rriproduca dak li qalu fil-pubbliku il-MEPA.

Ghalhekk dina l-eccezzjoni hija wahda li ghandha tintlaqa' mill-Qorti ukoll.

Konkluzjoni

Il-Qorti

Wara illi rat ix-xhieda kollha prodotta u rat id-dokumentazzjoni relattiva.

Wara illi rat il-pubblikazzjoni meritu tal-kaz odjern.

Tghaddi biex tiddeciedi l-kaz billi;

Filwaqt illi tichad t-tieni eccezzjoni, tilqa l-ewwel, tielet u raba eccezzjoni u ghalhekk;

Tichad it-talbet attrici.

Spejjez ta' dawna l-proceduri ghandhom ikunu a karigu tar-rikorrenti.

< Sentenza Finali >

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