



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-1 ta' Awwissu, 2013

Appell Civili Numru. 61/2012

Michael Farrugia

vs

**L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamat in kawza Antonio Ganado**

Il-Qorti,

Rat ir-rikors tal-appell ta' Michael Farrugia tat-18 ta' April 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 dwar il-hrug ta' permess numru PA 758/03 ghal full development permission ta' groundfloor garage and overlying dwelling fi Triq Annetto Caruana, Mqabba;

Rat ir-risposta tal-Awtorita u ta' Charles Camilleri bhala kjamat fil-kawza li fil-mertu ssottomettew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Kopja Informali ta' Sentenza

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:
Ikkunsidra:

B'applikazzjoni pprezentata fil-5 ta' Frar 2003, full development permission PA 0758/03, l-applikant Antonio Ganado fuq il-Plot 35, Triq Annetto Caruana, Mqabba, ippropona zvilupp ta' "ground floor garage and overlying dwelling".

L-applikazzjoni giet milqugha bil-permess tat-28 ta' Novembru 2005 – Red 84 fil-file PA 0758/03 bil-kundizzjonijiet segwenti:

"1. Air conditioning units shall not be located on the facades of the building which are visible from a public space. Any such units located at roof level shall be set back from the facade by at least 1 metre.

2. The balcony(ies) shall not project more than 0.75 metres from the facade of the building.

3. The parking arrangement should be as per approved documents PA 758/03/67A/67B.

4. A water cistern with a volume in cubic metres of 30% of the total roof area (in square metres) of the building(s) shall be constructed to store rainwater run-off from the built-up area of the development. This cistern shall be completed and available for use prior to the development hereby permitted being first brought into use.

5. There shall be no service pipes, cables or wires visible on the front elevation or on any other elevations of the building which are visible from the street.

6. Adequate measures shall be taken to ensure that the vehicles leaving the site/engaged in the construction works do not deposit mud or other materials on the public highway.

7. All services located on the roof of structures on the roof of the building shall be screened by a wall 1.4 metres (5 courses) high constructed in Franka stone. The services shall not exceed the height of this wall.

8 a) This development permission is valid for a period of FIVE YEARS from the date of this notice but will cease to be valid if the development is not completed by the end of this five year period.

b) It should be noted that a third party may have the right of appeal against this permission. Any development which is carried out when such an appeal has been made, or until the time limit for the submission of such an appeal has expired, is undertaken at the risk that this permission may be revoked by the Planning Appeals Board or quashed by the Court of Appeal.

c) This development permission does not remove or replace the need to obtain the consent of the land/building owner to this development before it is carried out. Furthermore, it does not imply that consent will necessarily be forthcoming nor does it bind the land/building owner to agree to this development. Where the land/building is owned or administered by the Government of Malta a specific clearance and agreement must be obtained for this development from the Land and/or Estate Management Departments.

d) All works shall be carried out strictly in accordance with the approved plans and the conditions of this permission. Where a matter is not specified on the plans then the conditions of this permission and of Development Control Policy and Design Guidance shall take precedence and modify the plans accordingly.

e) All building works shall be erected in accordance with the official alignment and proposed/existing finished road levels as set out on site by the Malta Environment & Planning Authority's Land Surveyor. The Setting Out Request Notice must be returned to the Land Survey Unit

of the Malta Environment & Planning Authority when the setting out of the alignment and levels is required.

f) Before any part of the development hereby permitted commences, the enclosed green copy of the Development Permit shall be displayed on the site. This must be mounted on a notice board, suitably protected from the weather and located not more than 2 metres above ground level at a point on the site boundary where it is clearly visible and can be easily read from the street. The copy of the permit must be maintained in a good condition and it shall remain displayed on the site until the works are complete.

g) The enclosed Commencement Notice shall be returned to the Malta Environment & Planning Authority so that it is received at least five days prior to the commencement of the development hereby permitted.

h) Copies of all approved plans and elevations shall be available for inspection on site by Malta Environment & Planning Authority staff at all reasonable times.

i) Where the street bordering the site is unopened, it shall be opened up prior to the commencement of the building operations hereby permitted.

j) Work shall not commence on the construction (including excavation), alteration or demolition of the building until a covered way or a fence, boarding or barricade has been constructed as follows

A Where the construction or demolition activity is located less than 2 metres from a public way used by pedestrians a covered way shall be provided (unless the work is carried out within a solid enclosure; site work conditions are more than 2 metres from a public way used by pedestrians, or the work duration does not exceed 5 days). This covered way shall

(i) have a clear height of not less than 2.5 metres;

(ii) have a clear width of not less than 1.5 metres or the width of the public way whichever is the lesser;

Kopja Informali ta' Sentenza

- (iii) be designed and constructed to safely support all loads that may be reasonably be expected to be applied to it;
- (iv) have a weather tight roof sloped towards the site or if flat be equipped with a splash board not less than 300mm high on the road side;
- (v) be totally enclosed on the site side with an enclosure having a reasonably smooth surface facing the public way;
- (vi) have a railing 1 metre high on the road side where the covered way is supported by posts on the road side, and
- (vii) be adequately lighted between sunset and sunrise.

B Where the construction or demolition activity is located 2 metres or more from a public way used by pedestrians, a strongly constructed hoarding, boarding or barricade shall be erected between the site and the public way or open sides of a construction site, and the hoarding, boarding or barricade shall

- (i) be not less than 1.8 metres high;
- (ii) have a reasonably smooth surface facing the public way;
- (iii) be without openings, except those required for access. Access openings shall be equipped with solid gates which shall be kept closed and locked when the site is unattended and shall be maintained in place until completion of the construction or demolition activity.

Authorisation for these arrangements must be obtained from the Local Council.

k) No building material, waste material, machinery or plant shall obstruct the pavement or the smooth flow of traffic on the road in the vicinity of the site. The deposit of materials or the placing of equipment in the street must be authorised.

l) Any soil on the site shall not be built over but shall be collected for reuse. A permit from the Director of Agriculture is required to remove the soil from the site. All soil shall be deposited at the place indicated by the Director of Agriculture.

m) Rock spoil, boulders and other waste materials resulting from excavations or from demolition on this site shall be deposited at an official waste disposal site or used as fill material. If waste materials from the development are not to be reused, they shall not be disposed of other than at an official waste disposal site. A permit from the Environmental Protection Directorate is required to this effect.

n) The height of the building shall not exceed both the permitted number of 3 floors and the maximum allowable height of 12 metres measured from the highest street level.

o) The facade of the building shall be constructed in local stone, except where other materials, finishes and colours are indicated on the approved plans and drawings.

p) Apertures and balconies shall not be constructed of gold, silver or bronze aluminium.

q) A water cistern with a volume in cubic metres of 30% of the total roof area (in square metres) of the building(s) shall be constructed to store rainwater run-off from the built-up area of the development. This cistern shall be completed and available for use prior to the development hereby permitted being first brought into use.

r) The development hereby permitted shall not be brought into use until the Final Compliance (Completion) Certificate, certifying that the development has been carried out in full accordance with the plans approved by this permission and with the other conditions imposed in this permission, has been issued by the Malta Environment & Planning Authority.

s) The permit is issued on condition that, where applicable, any excavation shall be subject to the requirements of the Civil Code regarding neighbouring tenements."

Fl-appell tieghu l-Avukat Dottor Peter Fenech ghall-appellant Michael Farrugia issototmetta s-segwenti:

1. L-applikazzjoni ma tikkonformax mar-rekwiziti tal-ligi mill-lat ta' ippjanar u ma setghet qatt tigi kkunsidrata;
2. Il-konsiderazzjonijeit tad-Dipartiment tal-Agrikoltura ma inghatawx l-importanza dovuta.
3. Li l-izvilupp in kwistjoni hu parti minn zvilupp akbar – u l-Awtorita' kellha tikkunsidra l-impatt tal-progett fl-intier tieghu.
4. Li dan l-izvilupp kellu jkun soggett ghall-EIA.
5. Il-Bord naqas li jikkonsidra l-fatt li l-progett jirrikjedi toroq godda fuq raba saqwi.

L-Avukat Dottor Peter Fenech ikkonferma li l-appellant ghandu razzett f'din il-lokalita fejn trabbi l-annimali u jahdem r-raba' – cirka 14-il tomna. L-appellant ilu jahdem dan ir-raba ghall-dan l-ahhar 45 sena, u ghal diversi generazzjonijiet mill-familja tieghu; li l-pjanti pprezentati ma jurux numru ta' strutturi li jinsabu fuq is-sit; li l-Awtorita' naqqset li taghti l-importanza dovuta ghall-kummenti tad-Dipartiment ta' l-Agrikoltura; li r-raba hu saqwi u ghandu jigi protett; li r-razzett hu fonti importanti ghall-ghajxien tal-appellant, ohtu u huh.

L-Awtorita fir-rapport taghha 'inter alia' kkummentat kif gej:

"1.1 This is a Third Party Appeal against the approval of development permission issued for the construction of residential development and ancillary garages. The appeal refers to permission issued on 8 separate sites, however which are located adjacent and within close vicinity to each other. Permission issued for these applications all consist of outline development consent, with the exception of PA 0758/03 for which full development permission has been issued.

1.2 The attached site plan illustrates the relationship between the sites subject to appeal, and also reveals that the area was subject to four other similar applications (Sites E, H, K, L) for which an appeal was not registered.

1.3 The sites subject to appeal are located within the development zone boundary of Mqabba, with access from Triq l-Ahwa Ghigo. In accordance with Temporary Provision Scheme 68, the sites are zoned for terraced house development. The sites presently consist of cultivated agricultural land, while part of the area is also occupied by an animal husbandry farm.

2.0 Comments on Appellant's Arguments

2.1 The applications subject to this appeal have been issued development consent as the sites for development are located within the Temporary Provision Scheme boundary identified for Mqabba, and the nature of the proposed developments comply with the zoning designations for these sites, i.e. terraced house development. Notwithstanding this, an objector to the issuance of permission has filed an appeal for these applications, with the main grounds for appeal consisting of the following:

- a) The sites are used for agricultural purposes, which include irrigated agricultural land and an animal farm;
- b) A total of 12 separate applications have been submitted, and this has not enabled a comprehensive assessment of the developments and their impact on the surrounding streetscape;
- c) The development of these sites should have been subject to an EIA.

2.2 Present Use of the Site for Agricultural Purposes

The area of land applied for development through these applications include the appellant's animal husbandry farm, and agricultural land cultivated by the appellant for several years. Notwithstanding this, this area of land has been schemed for terraced house development since 1988 in accordance with TPS 68, while the South Local Plan issued for public consultation retains this area with such zoning conditions. In view of this, the issuing of development permission for the construction of residential development is justified as the developments comply with

the zoning conditions for each site, and as permitted by the provisions of Structure Plan policy SET 8.

Furthermore, although the Department of Agriculture have indicated that the area of land is intensively used for agricultural purposes and the land is registered as irrigated, this same Department has also indicated that the land has been recently registered as irrigated land with the use of an unregistered borehole. Moreover, the retention of an animal husbandry farm on this land is not justified, as Structure Plan policy AHF 9 encourages the relocation of livestock units from existing and committed urban areas to more suitable sites where the impacts generated by such activities may be minimised. In fact, paragraph 1.9.1(c) requires that animal husbandry farms are distant by at least 200m from urban areas.

2.3 Comprehensive Assessment of Applications

The appellant is also stating that MEPA has not adequately assessed the proposed development in terms of the impact that may be created on the streetscape of the area. The appellant further states that these applications should have been assessed in a holistic and comprehensive manner, rather than each of the 12 applications being assessed on its own merits. Notwithstanding this, the appellant has only appealed against 8 of the submitted applications, whereas a total of 12 development permission applications were submitted in the area. This does not offer a comprehensive assessment of the developments proposed in the area for the Planning Appeals Board.

However, it is also to be pointed out that when a decision was issued for these applications, the DCC was aware that several development permission applications were submitted in the area, as highlighted by the Planning Directorate in the DPA Report. Hence, a comprehensive assessment was enabled, notwithstanding the fact that 12 separate applications were submitted instead of a single application. Furthermore, the consequence of these 12 separate applications would result in the same impact on

the streetscape if the land was sold to third parties, parcelled into plots, and each individual plot owner applied for their own development permission. Such practices are common forms of development in the Maltese Islands, and there appears to be no form of evidence that indicate that the development of parcels of land has resulted in negative visual impacts on a particular streetscape.

2.4 Requirement of an EIA

The appellant is also claiming that an EIA should have been requested for these applications prior to issuing an approval. L.N. 204 of 2001 'Environment Impact Assessment Regulations, 2001' list the procedures and categories of development that require the preparation of an Environment Impact Statement (EIS) or an Environment Planning Statement (EPS). According to Schedule 1, Section 3 – Land Use & Built Development Projects, none of the applications subject to this appeal qualify for the preparation of either an EIS or and EPS. Even if all the 12 applications submitted in the area were considered as a single development, an EIS or an EPS would not be required according to the provisions of Schedule 1, Section 3. Therefore, the appellant's argument that and EIA should have been requested is unfounded."

L-Avukat Dottor John Refalo ghall-applikant fin-nota tat-28 ta' Novembru 2007 ghamel referenza ghall-applikazzjoni PA 6593/04 fejn l-appellant Michael Farrugia ippropona alterazzjonijiet u ziediet fil-farm – u l-permess inghata fit-23 ta' Settembru 2008, limitatament ghall-kostruzzjoni ta' 'manure clamp'. L-applikazzjoni ma gietx michuda kif gie dikjarat fl-imsemmija nota, pero' l-fatt li l-approvazzjoni kienet limitata ghall-manure clamp – iffisser li l-Awtorita' ma tapprovax estensjonijiet ta' din l-attivitá' billi l-area hi zoned ghall-bini, u ghalhekk l-permess inghata biss ghall-manure clamp biex tigi assicurata aktar indafa.

Ikkunsidra ulterjorment:

Kopja Informali ta' Sentenza

L-Eccezzjoni Preliminari

Il-konsulent legali tal-applikant eccepixxa n-nullita' ta' l-appell billi ma sarux l-oggezzjonijiet mill-appellant fit-termini tassatttivamente stabbiliti mill-ligi.

L-Artikolu 15(1)(d)(i) u (iv) tal-Kap. 356, jghati lit-terz interessat d-dritt tal-appell kemm il-darba jkun oggezzjona bil-miktub fuq ragunijiet ta' ippjanar fit-termini tal-Artikolu 32(5) tal-Kap 356; l-istess artikolu jstabilixxi terminu ta' 15-il gurnata mill-pubblikazzjoni tal-proposta tal-izvilupp fil-gazzetta lokali.

Skond is-subincis (4) tal-imsemmi Artikolu 32 – barra l-Pubblikazzjoni tal-applikazzjoni, l-Awtorita' twahhal site notice fuq is-sit de quo.

Id-dikjarazzjoni tal-interess hi illum regolata bl-Artikolu 7 tal-Avviz Legali 514 ta' l-2010.

Is-site notice tinsab f'Red 8 tal-file PA 0758/03; iggib id-data 27 ta' Frar 2003, u tistieden lil kull min jaghmel rapprezentazzjonijiet jikteb mhux aktar tard mit-23 ta' Marzu 2003;

L-oggezzjoni bil-miktub tal-Avukat Dottor Peter Fenech ghall-appellant bbazata fuq ragunijiet ta' ippjanar waslet ghand l-Awtorita' fis-6 ta' Marzu 2003 – Red 13 cjoe qabel id-23 ta' Marzu 2003 – d-data ndikata fis-site notice.

Fic-cirkostanzi ghalhekk din l-eccezzjoni ma tirrizultax fondata, u qed tigi michuda billi l-oggezzjoni tal-appellant saret konformi mat-termini imposti mill-ligi.

Il-mertu

L-appellant qed jopponi ghall-izvilupp urbanistiku propost billi fl-istess sit ghandu razzett fejn irrabbi l-annimali u jahdem cirka 14-il tomna raba – xoghol li ilu jaghmel ghal cirka 50 sena, u qablu generazzjonijiet shah minn antenati tieghu fil-familja. Raguni li certament tiggustifika l-oppozizzjoni tieghu ghall-izvilupp propost.

Applikazzjonijiet għall-izvilupp jigu kkonsidrati pero' mhux tant fuq ezigenzi personali, izda skond id-dispozizzjonijiet tal-ligi. L-artikolu 69 tal-Att X ta' 2010 Kap. 504, precedentement l-Artikolu 33 tal-Kap. 356 jelenka l-kriterji li fuqhom jigu determinati applikazzjonijiet għall-izvilupp cjo' l-pjanti, l-policies, l-Pjan ta' Struttura, kunsiderazzjonijeit materjali fosthom dawk ambjentali, estetici, u sanitarji.

L-Artikolu 33(1)(a)(i) tal-Kap. 356 jsemmi wkoll t-Temporary Provisions Schemes. Fil-kaz in ezami irrizulta li sa minn 1988, t-Temporary Provision Scheme 68, l-lokalita in kwistjoni giet indikata bhala zona ta' terraced house development. L-istess zoning conditions gew indikati mis-South Local Plan li gie ppubblikat f'Lulju 2006. In oltre skond lis-Structure Plan Policy AHF 9 dawk l-irziezet ghandhom jigu traslokati ghal siti aktar addattati ghal dan l-uzu, tant li skond l-paragrafu 1.9.1(c), farms ghat-trobbija tal-annimali ghandhom ikunu distanti almenu 200 metri minn areas urbanizzati u residenzjali.

L-appellant seta' joggezzjona ghaz-zoning tal-area meta saru t-Temporary Provisions Schemes fin-1988, u wara meta gie ppubblikat d-draft ta' South Malta Local Plan għall-konsultazzjoni pubblika qabel il-2006 meta gie ffinalizzat.

Appell minn terz, kontra permess mghoti skond zoning ufficjali ma jstax iservi, u mhux l-istrument adegwat biex jinbidel iz-zoning stabbilit.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma l-permess PA 0758/03 moghti favur Antonio Ganado fis-28 ta' Novembru 2005; salvi u impregudikati d-drittijiet civili tal-appellant.

Ikkunsidrat

L-aggravji tal-appellant fil-mertu huma s-segwenti:

1. Id-decizjoni tat-Tribunal mhix soddisfacentement motivata billi illimita ruhu ghaz-zoning taz-zona in kwistjoni u ma qies l-aggravji tal-appellant;
2. It-Tribunal naqas li japplika l-policies rilevanti ghal kaz, liema policies gew indikati mill-istess appellant;
3. L-applikazzjoni kellha tigi michuda ghax intavola diversi applikazzjonijiet fuq l-istess art biex jiskapula obligazzjonijiet li kienu jkunu inkombenti fuqu ta' Environment Impact Assesemnt skond Avviz Legali 114/2007 li kieku tressqet applikazzjoni wahda dwar l-izvilupp shih.

Qabel xejn il-Qorti tirrelewa illi l-atti tal-appelli kollha tal-appellant Michael Farrugia fuq l-art mertu ta' dawn l-appelli huma applikabbli mutatis mutandis.

L-ewwel aggravju

Dan l-aggravju jimmerita konsiderazzjoni peress illi t-Tribunal ghandu mhux biss jiddeciedi l-vertenza pero irid jaghti ragunijiet ghaliex qed jiddeciedi bil-mod kif issostni u wkoll billi jezmna u jevalwa l-ilmenti tal-appellant fil-kuntest ta' dak deciz. Tajjeb kemm hu tajjeb ir-ragunament tat-Tribunal irid jaghti aditu ghal lanjanzi sostantivi tal-appellant u jaghti ragunijiet ghalfejn dawn ma jisthoqqilhomx jigu milqugha fid-dawl ta' dak deciz. Mhux necessarju li t-Tribunal jinvestiga kull sottomissjoni li ssir min appellant izda aggravji, li jekk fondati, jistghu ibiddu d-direzzjoni ta' vertenza, iridu jigi konsidrati u tinghata raguni ghaliex qed jigu skartati.

Hu lampanti minn ezami ta' din id-decizjoni illi t-Tribunal strah esklussivament fuq iz-zoning tas-sit mertu tal-applikazzjoni. Bla dubbju t-Tribunal kien legalment korrett illi z-zona kienet intiza ghal bini skond l-outline application li saret pero dan ma kienx l-ispirtu tal-appell tal-appellant. Hu ma hux jikkontesta z-zoning, haga li difficilment jaghmel meta dan hu l-istat fattwali u legali pertinenti tas-sit in kwistjoni. Pero l-appellant talab lil Bord li jqis jekk l-ghoti tal-permess hux gustifikat jew gustifikabbli in vista ta' policies ohra, fl-opinjoni tieghu, daqstant rilevanti ghal protezzjoni tal-appellant fuq art li fiha ilu jrabbu l-annimali,

cioe art agrikola, ghal ghexiren ta' snin u l-impatt u konsegwenzi li jistghu jinsorgu mill-hrug tal-permess minghajr ma jigu konsidrati jekk l-aggravji tal-appellant ghandhomx fundament fil-ligi li jistghu irazznu l-hrug tal-permess tal-bini. Dak li l-appellant kien qed itlob effettivament hu li t-Tribunal jaghmel ezami komparattiv ta' policies applikabbli u jiddeciedi x'japplika ghal kaz jew x'ghandu jipprevali fic-cirkostanzi.

B'dankollu irid jirrizulta illi l-appellant kien irrefera ghal policies li dehrli li kienu applikabbli ghal kaz u mhux jistenna lit-Tribunal li jiddezumihom hu jew li aggravju maghmul b'mod generiku dwar policies applikabbli jigu imlahhma mit-Tribunal.

F'dan il-kaz l-appell innifsu kien wiehed generiku u l-aggravju kien fis-sen li l-applikazzjoni ma tikkonformax ruhha mal-ligi u li l-kundiserazzjonijiet tad-Dipartiment tal-Agricoltura ma nghatawx debita importanza; u wkoll illi ma ttiehidx kont tal-effett tal-izvilupp fuq l-istreetscape, u l-krejjazzjoni ta' toroq fuq art agrikola saqwi u rilokazzjoni ta' razzett minhabba t-toroq krejati.

Pero harsa lejn in-noti ta' sottomissjonijiet tal-appellant senjatament dik prezentata fis-16 ta' Ottubru 2006 juri illi l-appellant semma diversi policies u argumenti relatati senjatament policy BEN 1 u BEN 2, RLO 1 u l-konformita mal-policy AHF 9 dwar ir-rilokazzjoni ta' rziezet gia ezistenti fejn art issir zviluppabbli u hi anqas minn mitejn metru mill-irziezet u r-Rural Strategy Topic Paper – Policy 7.6.1. rigward art ta' valur agrikolu.

L-appellanti talbu li t-Tribunal jikkonsidra dawn il-policies ghal fatti quddiemu, fost affarijiet ohra u kien il-kompitu tat-Tribunal li rinfaccjat b'dawn il-kwistjonijiet li jaqghu pjanament fil-kompitu tieghu kien obligat taht l-artikolu 69(1) u 69(2) tal-Kap. 504 li jikkunsidrahom u b'mod dettaljat u studjat jilqa' jew jiskarta argument minn iehor u jispjega ghaliex policy ghandha tipprevali fuq ohra jew wahda tigi skartata favur ohra.

Dan mhux kaz fejn policy hi kjament inapplikabbli jew bla ebda relevanza avolja anki hawn, la darba tigi mressqa mill-appellant bhala sottomissjoni favur it-tezi tieghu, it-Tribunal obligat jaghti sodisfazzjon ghaliex mhix applikabbli.

F'dan il-kaz taqra kemm taqra d-decizjoni tat-Tribunal ma nghatat ebda gustifikazzjoni sodisfacenti fil-ligi ghaliex s-sottomissjonijiet tal-appellant ibbazati fuq policies specifici kienu qed jigu rigettati a favur tal-argument uniku tat-Tribunal li z-zoning tal-art jippermetti l-permess tal-bini minghajr ma kkonsidra ebda kwistjoni ohra mqajma. Il-fatt li semmihom, u mbaghad u jiddeciedi minghajr ma kkummenta dwar il-validita o meno taghhom fil-kuntest tal-applikazzjoni ma jekwivalix ghal gustifikazzjoni ragonevoli ghad-decizjoni. Id-diskrezzjoni tat-Tribunal hi ampja pero mhix arbitrarja u trid tissodisfa l-elementi bazilari ta-certezza legali tal-gudikat ghal partijiet.

Ghalhekk dan l-aggravju qed jigi milqugh.

It-tieni aggravju

Dan l-aggravju hu subordinat ghall-ewwel aggravju pero ma fihx mertu per se billi kieku t-Tribunal ikkonsidra l-policies li rrefera ghalihom l-appellant u skartahom ghar-ragunijiet konsidrati tieghu, ma kienx ikun hemm lok ta' appell billi hawn si tratta ta' evalwazzjoni u apprezzament ta' fatti, u l-applikazzjoni tal-policies li fil-fehma tat-Tribunal kellhom jipprovdu tenut kont tal-fattispecie tal-kaz. Dan hu kompitu li jaqa' fid-diskrezzjoni tat-Tribunal munit bl-esperjenza teknika li jevalwa u jiddeciedi dawn il-kwistjonijiet ta' planning u li dwarhom din il-Qorti ma ghandhiex tinterferixxi. Fi kliem iehor dan l-aggravju mehud fl-isfond ta' dak li qed jinghad lanqas kien jikkwalifika bhala punt ta' ligi appellabbli. Kif intqal f-ewwel aggravju l-Qorti taqbel mal-appellant li t-Tribunal naqas li jikkonsidra l-policies msemija mill-appellant u jasal ghal konkluzzjonijiet tiehu pero l-Qorti ma tistax taqbel mal-appellant la darba konsidrati kienu bil-fors iwasslu ghal-konkluzjoni li t-Tribunal naqas li japplikahom. Jekk humiex

Kopja Informali ta' Sentenza

applikabbli jew le jaqa' fil-mansjoni tat-Tribunal li din il-Qorti ma tistax tissostitwixxi ruhha floku f'dak li hu applikabbli o meno qua policies.

Ghalhekk kif impostat dan l-aggravju ma jistax jigi milqugh peress li t-Tribunal naqas li jikkonsidrahom u wara dan l-ezami jara hux applikabbli o meno.

It-tielet aggravju

Dan l-aggravju msemmi fl-appell tal-appellanti, u dibattut mill-partijiet hu punt legali li kellu jigi investigat mit-Tribunal u jekk jikkunsidrah bla mertu, jichdu. Izda ma kellux id-dritt li jinjarah ghax jekk l-appellant kellu raguni legalment fondata fuq din il-kwistjoni, cioe li ma kellhomx isiru diversi applikazzjonijiet fuq l-istess mertu ta' zvilupp izda wahda holistika u kwindi per necessita kien ikun obligatorju Environment Impact Assesement, allura l-fondament tad-decizjoni tal-Bord kienet tkun zbaljata u t-Tribunal kien ikun obligat jannula d-decizjoni ta' approvazzjoni ghax nieqsa minn rekwizit essenzjali ghal valutazzjoni kompleta tal-applikazzjoni ta' zvilupp. Dan pero gie totalment injorat mit-Tribunal u ghalhekk tonqos ic-certezza tal-gudizzju necessarja fil-konfront tal-partijiet. It-Tribunal lanqas jaccenna ghal dan l-aggravju u jonjarah kompletament li essendo aggravju sostanzjalment rilevanti ghall-ezitu tal-kaz kollu kellu jigi trattat u jekk jinsab mhux floku, jigi michud izda mhux skartat bla ebda raguni.

Ghalhekk dan l-aggravju qed jigi milqugh.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Michael Farrugia, u tirrevoka decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tad-29 ta' Marzu 2012 u tirrorvija l-atti lura lit-Tribunal biex jerga' jisma' l-kaz skond il-ligi. Bl-ispejjez kontra l-appellati.

Kopja Informali ta' Sentenza

< Sentenza Finali >

-----TMIEM-----