



**CIVIL COURT
FIRST HALL**

**THE HON. MADAM JUSTICE
JACQUELINE PADOVANI GRIMA**

Sitting of the 16 th December, 2013

Rikors Number. 403/2013

**In the acts of Judicial letter No. 103/2012
filed in terms of Section 166A of Chapter 12 of
the Laws of Malta in the following names:**

**Kurt Abela
(ID No. 428881 M)**

-vs-

**Gennaro Sabatasso
(ID No 40107A)**

The Court,

Having seen the application of Gennaro Sabatasso of 25th April 2013 which reads as follows:

“Whereas applicant, who is a foreign national, and more precisely of Italian nationality — and this as also duly results from his identity card — was served with the judicial letter in question on the 8th of June 2012. Whereas

in spite of the fact that plaintiff Kurt Abela was aware of the fact that applicant is not a Maltese national, and does not understand Maltese, he failed to send — together with the judicial letter in the Maltese language — a translation of the said judicial letter in a language that applicant could comprehend.

Whereas as a consequence of this, and as a direct consequence of the fact that applicant did not comprehend the implications of not submitting a reply in the acts of the judicial letter in question, which resulted because of the fact that the letter served upon the applicant was altogether unknown to him, the said judicial letter was declared to constitute an executive title. Whereas applicant contends that that the amount being claimed is not effectively due.

Whereas recently, and no more than ten (10) days ago, applicant got to know that a garnishee order bearing reference number 32/2013 was filed against him, which executive warrant was filed subsequent to the judicial letter in question. As results from the said garnishee order, this warrant was not notified to applicant, and he only became aware of its existence after verifications made with the Bank because he could not withdraw any funds.

Whereas applicant is of the humble opinion that this judicial act, that is the judicial letter filed against him dated 8th of June 2012, is null and void, due to the fact that applicant was not notified with a translation of the said act into a language that applicant could understand, which translation is required ad validatem. Whereas, and by application of the provisions of Section 166A (5) of Chapter 12 of the Laws of Malta, the judicial letter in question is to be declared null and void. Now therefore, by means of this application, the applicant humbly requests that this Honourable Court:

1. Declares that the judicial letter bearing reference number 1810/2012 dated 8th June 2012 filed against

applicant is null and void, by application of Section 166A (5) of Chapter 12 of the Laws of Malta.

2. *Orders that this application is appointed for hearing, in terms of the said provision of the Law.*

3. *Gives any directives, as it deems necessary and opportune, including the suspension of the effects of the garnishee order that was filed against applicant, bearing reference number 32/2013, so as to impede Kurt Abela from effecting any withdrawals of funds that may have been deposited, or shall be deposited under the authority of this Honourable Court, until these proceedings are concluded.*

With costs.”

Having seen the response of Kurt Abela of the 6th June 2013, as translated on the 8th October 2013, wherein he premised:

“That preliminary this Honourable Court is not competent to hear and decide the case of the applicant Gennaro Sabatasso since, in terms of article 166A(5) of Chapter 12 of the Laws of Malta, being the sole article upon which the present action is based, the competence is vested solely in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as the case may be;

On the merits and without prejudice to the foregoing, the applicant’s claims are unfounded in fact and at law since the elements requested in terms of article 166A(5) of Chapter 12 of the Laws of Malta do not subsist:

- (i) the debtor was unaware of the said judicial letter because he was not duly notified; or*
- (ii) the judicial letter did not contain the requirements laid down in subarticles (1), (2), or (3,)*

and this since, as it will eventually result from the course of the proceedings. the notification of the said judicial

letter was valid and according to law and said judicial letter contained all the necessary requirements stipulated in sub-articles (1). (2) and (3) of article 166A of the Laws of Malta.

In this respect the claims of the applicant Gennaro Sabatasso are to be rejected in toto and expenses are to be borne by the same applicant.”

Having seen the decree of this Court, dated 29th April 2013, appointing these procedures for hearing;

Having heard the evidence on oath;

Having examined all exhibited documents and the record of the proceedings;

Having heard oral submissions of the parties;

Considers:

From the evidence proffered in these proceedings the applicant Gennaro Sabatasso stated on oath that although he has been residing in Malta for the laast eight (8) years he can only speak Italian. He stated that he received some documents from Court which were in the Maltese language. He decided against to show these documents to his wife, so as not to involve her in any of his problems. He confirmed he only received one (1) set of documents.

Gennaro Sabatasso confirmed on oath that he went to cash some money from an ATM and was told by his bank that his funds were frozen. He did not recall receiving a copy of the Garnishee Order, but went to the police station, where he was informed that he had go to Court and seek the services of a lawyer. He confirmed that he only received the act shown at page sixteen (16) of the record of the proceedings and that there was no translation of the same act in any other language.

Considers:

Kurt Abela chose to pursue his claim against Gennaro Sabatasso by the special procedure contemplated under Article 166A of Chapter 12 of the Laws of Malta which states the following:

166A. (1) In actions for the recovery of a debt certain, liquidated and due not consisting in the performance of an act, and where the amount of the debt does not exceed twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73), or such other sum as may be established from time to time by Order in the Gazette by the Minister, it shall be lawful for the creditor to proceed in accordance with the following subarticles of this article:

Provided that where the debt is not liquidated the creditor may proceed in accordance with this article if he limits his debt to an amount not exceeding twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) and expressly renounces to any part of his claim that may upon liquidation exceed

the said sum of twenty-three thousand and two hundred and ninetythree euro and seventy-three cents (23,293.73), or such other sum as may be established from time to time by Order in the Gazette by the Minister:

Provided further that the creditor may only proceed according to this article if the debtor is present in Malta and is not a minor or a person incapacitated according to law or if the debt is not due by a vacant inheritance. The appointment of curators under Title XI of Book Third of this Code shall not apply to proceedings under this article:

Provided further that, without prejudice to the provisions of the [Motor Vehicle Insurance \(Third Party Risk\) Ordinance](#), when a debt to which this article applies is covered by an insurance policy the insured shall, without prejudice to that stipulated in the insurance policy, within fifteen days from service upon him of the judicial letter made in accordance

with this article, give to the insurer notice in writing of the said judicial letter and of any particulars of the claim of which he is aware. In default, any executive title obtained in accordance with this article shall have no effect with regard to the insurer.

(2) The creditor shall proceed by filing a judicial letter which shall be drawn up in the form established by legal notice by the Minister responsible for Justice and the content of which shall be confirmed on oath by the creditor, either before the registrar or legal procurator appointed as Commissioner for Oaths under the [Commissioners for Oaths Ordinance](#), to be served upon the debtor wherein shall be stated clearly, under pain of nullity, the cause of the claim, the reasons why the claim should be upheld, and a statement of facts in support of the claim:

Provided that subarticles (3), (5) and (6) of article 187 of this Code may not be availed of to effect the service of the aforesaid judicial letter.

(3) The judicial letter shall also on pain of nullity contain an intimation to the debtor that if he does not reply within thirty days from service upon him of the said judicial letter by presenting a note in the record of the said judicial letter rebutting the claim and which note may be signed and presented in court by the debtor himself without the signature of an Advocate or of a Legal Procurator being required, such official letter shall, constitute an executive title:

Provided that:

(a) the debtor may in such note admit the claim in part only and oppose it in other parts, and where the claim is opposed in part only it shall be deemed admitted to the extent that it has not been so opposed;

(b) where the debtor shall have opposed a claim or part of a claim which is subsequently upheld, the costs relative to the claim or part thereof opposed and subsequently upheld shall be borne by him;

(c) the costs of any claim or part thereof that is opposed and not subsequently upheld shall always be borne by the creditor;

(d) where the debtor has duly opposed the claim, the special procedure contained in this article may not be used again against the debtor as regards the same claim contained in the judicial letter served on the debtor; and

(e) where the claim arises under the [Motor Vehicle Cap. 104. Insurance \(Third Party Risk\) Ordinance](#) the said judicial letter shall under pain of nullity be also notified to the authorised insurance which shall have the same rights under this article as though it were the debtor as aforesaid.

(4) Omissis

(5) Any executive title obtained according to the provisions of this article in the absence of any opposition on the part of the debtor shall be rescinded and declared null and void if upon a request by application in the Court of Magistrates (Malta) or in the Court of Magistrates (Gozo), as the case may be, to be filed by the debtor within twenty days from the first service upon him of any executive warrant or other judicial act based on the said title, the court is satisfied that:

(i) the debtor was unaware of the said judicial letter because he was not duly notified; or

(ii) the judicial letter did not contain the requirements laid down in subarticles (1), (2) or (3):

Provided that the said application shall be appointed for hearing within two weeks.

(6) Omissis”

Deliberates:

Having seen and examined the evidence and more importantly the acts exhibited in these proceedings, this Courts holds that in spite of the fact that Kurt Abela was very well aware of the fact that Gennaro Sabatasso was proficient only his mother tongue that is Italian, and had no knowledge of the Maltese, the same Kurt Abela decided to use the special procedures in the Maltese language.

This Court notes however that the Court Marshals effecting the notification of Gennaro Sabatasso declared that they forwarded a copy of Article 5 of Act 60 of the Laws of Malta (vide dorsal aspect of page 9) and Article 5 of Chapter 80 of the Laws of Malta (vide dorsal aspect of page 28).

This Court notes that Chapter 80 of the Laws of Malta concerns “**Aircraft (Application of Law Ordinance)**” whilst Chapter 60 of the Laws of Malta concerns “**Judicial Proceeding (Regulations of Reports)**”.

None of these Acts were the pertinent legislation to be served on Sabatasso.

The Court notes that the relevant extract which necessarily had to be served on Gennaro Sabatasso was Article 5 of **Chapter 189** that is “**Judicial Proceedings (Use of English Language Act)**” which states the following:

5. (1) Where any act is to be served on any person whom the registrar has reason to believe to be English-speaking, the registrar shall cause a translation thereof to be made into the English

language by an officer of the registry and service shall be effected by delivering a copy of the original and its translation.

(2) If, for any cause whatsoever, the translation into English of any such act is not served on an English-speaking person, such person may make in the registry, or forward to the registrar, in any manner, a declaration to the effect that he is an English-speaking person and apply for an English translation of the act served on him.

(3) Upon any such application, the registrar shall cause a translation of the act to be made as aforesaid and delivered to the applicant as soon as practicable; and, if in any such case the said application reaches the registry of the court not later than the time established for the closing thereof on the third working day after the date of service of the copy of the original act, any legal or judicial time the running of which is dependent on the service of the original act shall commence to run from the date of delivery of the translation.

(4) If it is proved that the said declaration was not made in good faith, the applicant shall be liable to proceedings for contempt of court.

(5) A copy in the English language of the provisions of subarticle (1) to (4) shall be reproduced on or annexed to every copy of any act which is to be served on any person.

This Court however, as the Civil Court First Hall, is denied the competence and jurisdiction to take cognizance of the matter in issue. This is due to the fact that, according to the Article 166A(5) of Chapter 12 of the Laws of Malta, **the only Courts**, before which an executive title obtained under the special procedures of the said 166A **may be rescinded**, are the **Magistrates Court (Malta)** or the **Courts of Magistrates (Gozo)** as the case may be.

Informal Copy of Judgement

Contrary to that submitted by the defence counsel to Sabatasso, the Court finds that there is no uncertainty or obfuscation as to the matter of the exclusive jurisdiction of the Magistrates' Court.

Therefore and inspite of the findings of this Court as above mentioned, this Court has no alternative but to deny the demands of Gennaro Sabatasso.

In the special circumstances of the case, the Court deems it just and proper that each party bears its own costs.

The Court orders that a copy of this judgement been notified to Director of Civil Courts and Tribunals, to ensure that all Marshal rubber stamps bear the correct Articles of Law.

Read.

< Final Judgement >

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