



CONSTITUTIONAL COURT

**HIS HONOUR THE CHIEF JUSTICE
SILVIO CAMILLERI**

**THE HON. MR. JUSTICE
GIANNINO CARUANA DEMAJO**

**THE HON. MR. JUSTICE
NOEL CUSCHIERI**

Sitting of the 28 th February, 2014

Civil Appeal Number. 48/2012/1

The Police [Inspector Norbert Ciappara]

v.

Gregory Robert Eyre

Preliminary

1. This is an appeal lodged by respondent [the appellant] from a judgment given by the First Hall Civil Court [the First Hall], in its constitutional jurisdiction, on the 9th July 2013, on a constitutional reference made on the 12th June 2012 by the Court of Magistrates [Malta] as a Court of Criminal Judicature in terms of section 46[3] of

the Maltese Constitution and of section 4[3] of Chapter 319 of the Laws of Malta.

2. The request made by virtue of the said reference was for the First Hall, in its constitutional competence, *“to define the question that the statement and subsequent confirmation on oath without legal assistance was in violation of article 6 of the European Convention of Human Rights”*.

3. The First Hall dismissed all appellant’s allegations and claims that his constitutional rights have been violated; with costs.

The Facts

4. This case concerns two statements released by appellant during police investigations, on the 11th and 12th of August, and the confirmation on oath of the latter statement before the Inquiring Magistrate. Criminal charges relating to drug trafficking were brought against appellant who, after pleading guilty, was found guilty as charged.

5. Subsequently he was brought to testify in the criminal case brought against a certain Mark Kenneth Stevens, both during the criminal inquiry on the 17th March 2006 and during the trial by jury on the 3rd. November 2008.

6. As a result of a decree dated 5th November 2008, the Criminal Court on a reasonable suspicion that appellant had given false evidence during the aforementioned sittings, ordered his arrest and that he be brought before the Magistrates Court for the necessary inquiry in terms of section 523 of the Criminal Code.

7. During the criminal proceedings that followed appellant claimed that the use in those criminal proceedings of the afore-mentioned statements released by him and subsequently confirmed on oath before the Inquiring Magistrate was in breach of his constitutional

rights under Article 6 of the Convention since at the time he released the statements he was not assisted by a lawyer.

The Appeal

8. Appellant is basing his appeal on three grounds: [1] that since the present constitutional proceedings began as a result of constitutional reference, “the concluding part of the judgment is absolutely wrong. The first Court could not reject but should have given directions to the Magistrates Courts. The same applies to the question of costs.”; [2] that the first Court has wrongly reached the conclusion that the matter raised by appellant in the criminal proceedings was a *res judicata*; [3] that he was not legally assisted during the inquiry when he released the statements; *“at that moment those statements referred to the importation of drugs, there is no evidence or any signed declaration that he was also warned about the consequences of confirming the same statements to the Magistrate.”*

9. For the above reasons appellant is requesting this Court to reject the first Court’s decision, and to direct the Court of Magistrates which ordered the reference to disregard and remove from the case file the statements made by him to the police and before the Inquiring Magistrate.

10. The Commissioner of Police and the Attorney General, both respondents in these proceedings, raised a procedural issue in the form of a preliminary plea to the effect that appellant’s appeal is out of time since more than 8 working days have passed from the 9th July, the date of the appealed decision, and the 29th July, the date on which appellant filed his appeal, and therefore his appeal is null and void.

11. Apart from this procedural issue, respondents gave other reasons on the merits of the issue requesting this Court to reject appellant’s appeal.

Court's Considerations

12. At this stage the Court has first to decide on the procedural issue raised by respondents, before proceeding with its considerations on the merits of the case. Since if the nullity plea raised by respondents is justified, then the Court cannot lawfully proceed to consider appellant's other grievances.

13. In this regard, reference is to be made to the procedural norm contained in the proviso of rule 4 [2] of the Court Practice and Procedure and Good Order Rules [S.L12.09] which reads as follows:

"....Provided that where the appeal is from a decision given upon a reference made in accordance with article 46[3] of the Constitution of Malta or article 4[3] of the European Convention Act such appeal shall be made within eight working days from the date of the decision appealed from."

14. Now, from the records of the case it appears quite clearly that the time-limit prescribed by the above rule has not been observed, and the appeal was filed out of time.

15. It is established local case law that the observance of the time-limits established in the Code of Organisation and Civil Procedure, as well as in other laws regulating the conduct of proceedings before the courts and tribunals are a matter of public policy and therefore cannot be ignored. These time-limits must be observed under pain of nullity¹.

16. For the above reasons, the Court considers this plea of nullity of the appeal to be justified in fact and at law, consequently declares the appeal to be null, and orders that it be struck off from the list of cases.

¹ App.S. **Julie Sultana v. Onor.Prim Ministru**, 21 April 1998; App.**Giuzeppi Caruana v Charles Psaila**, 22 Novembru 2002; App.Inf.**Polly Sant v. Direttur tas-Sigurta' Socjali**, 16 Dicembru 2002; App.Inf.**Paul Cassar et v. Victoria Tabone**, 17 Marzu 2003; App.Inf. **Ellis Limited v. Direttur Generali et**, 23 Jannar 2009; App.S. **Christopher Hall v. Awtorita` tad-Djar**, 31 Mejju 2013;

Informal Copy of Judgement

Expenses are to be borne by appellant.

< Final Judgement >

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