



MALTA

**THE ADMINISTRATIVE REVIEW TRIBUNAL
MAGISTRATE DR.
GABRIELLA VELLA**

Sitting of the 17 th November, 2014

Rikors Number. 7/2009

Robert Hughes, William James Leader, Regis Maurice Auguste Pissot, Catherine Sprangers, Eleonora Talarico, Ivan Tsvetanov Totev, Marie Paule Wagner, Jennifer Jane Potter

Vs

**Permanent Secretary, Ministry for Finance, Economy and Investment and Manager Licensing and Testing Directorate
Authority for Transport in Malta**

The Tribunal,

After having considered the application submitted by Robert Hughes, William James Leader, Regis Maurice Auguste Pissot, Catherine Sprangers, Eleonora Talarico, Ivan Tsvetanov Totev, Marie Paule Wagner and Jennifer Jane Potter on the 27th November 2009 by means of which they request the Tribunal to declare that: (i) the Registration Tax and Annual Circulation Licence Fees Guidelines published on the website of the Authority for Transport in Malta were sufficiently precise and clear as to create in them a legitimate expectation as safeguarded by Section 469A of Chapter 12 of the Laws of Malta; (ii) by means of the amendment to the Motor Vehicles Registration and Licensing Act which provided that persons applying for an exemption from payment of vehicle registration tax had to be resident in Malta since the 3rd November 2008, their legitimate expectations as safeguarded by Section 469A of Chapter 12 of the Laws of Malta have been infringed; (iii) the amount of vehicle registration tax levied by the Authorities is in violation of the principle of proportionality resulting from Section 469A of Chapter 12 of the Laws of Malta; and consequently to (iv) order the Authorities to reconsider their applications for an exemption from vehicle registration tax in the light of the Registration Tax and Annual Circulation Licence Fees Guidelines and this in

view of their legitimate expectations; with costs against the Permanent Secretary, Ministry for Finance, Economy and Investment and the Manager, Licensing and Testing Directorate Authority for Transport in Malta;

After having considered the Registration Tax and Annual Circulation Licence Fees Guidelines attached to the Application at folios 5 to 25 of the records of the proceedings;

After having considered the Reply submitted by the Permanent Secretary, Ministry for Finance, Economy and Investment by means of which he opposes the requests put forth by the Applicants as unfounded in fact and at law and submits that the same should be rejected, with costs against the Applicants, since: (i) in the first instance, contrary to that alleged by the Applicants he did not act in an *ultra vires* manner in terms of Section 469A of Chapter 12 of the Laws of Malta; and (ii) secondly and without prejudice to the first plea, none of the Applicants qualifies for an exemption from vehicle registration tax in terms of Chapter 368 of the Laws of Malta;

After having considered the Reply submitted by the Authority for Transport in Malta by means of which it pleads: (i) preliminarily, that the proper designation of the Respondent Authority is “Authority for Transport in Malta” and therefore the relative correction is necessary; (ii) the lack of competence of this Tribunal *rationae materiae* since the requests as put forth by the Applicants do not fall within the ambit of Section 40 of the Authority for Transport in Malta Act; (iii) without prejudice to the first and second preliminary pleas, the Authority is not the proper respondent in these proceedings and the Applicants should therefore be declared non suited since decisions concerning the granting of an exemption from vehicle registration tax on the basis of permanent residence outside Malta are, in terms of Regulation 10 of the Exemption from Motor Vehicles Registration Tax Rules, taken exclusively by the Ministry for Finance, Economy and Investment and the Authority has no part in the consideration and decision of such requests; (iv) without prejudice to the first three pleas, the action put forth by the Applicants is null and void at law since there is no connection between the Applicants and they cannot be treated together and contemporaneously; and (v) finally, the requests put forth by the Applicants should be rejected, with costs against them, since the decision being contested is just and lawful and must therefore be confirmed;

After having seen that in the light of the first preliminary plea raised by the Respondent Authority the Tribunal by decree dated 19th May 2011, ordered that the Authority’s designation be corrected to “Authority for Transport in Malta”;

After having seen that during the sitting held on the 19th May 2011, the Respondent Authority withdrew its second plea and the parties agreed that notwithstanding that stipulated in Section 3 of Chapter 490 of the Laws of

Malta, the Tribunal should prior to addressing the merits of the case first consider and determine the fourth plea raised by the Respondent Authority concerning the alleged nullity of the proceedings since there is no connection between the Applicants and thus they cannot be treated together and contemporaneously;

After having seen that the Applicants were given various opportunities to put forth their submissions with regard to the fourth plea raised by the Respondent Authority but repeatedly failed to do so;

After having seen and considered all the records of the proceedings;

Considers:

The present proceedings have been instituted by eight individuals, namely Robert Hughes, William James Leader, Regis Maurice Auguste Pissot, Catherine Sprangers, Eleonora Talarico, Ivan Tsvetanov Totev, Marie Paule Wagner and Jennifer Jane Potter, who are claiming that the Respondents have, following an amendment to the Motor Vehicles Registration and Licensing Act, Chapter 368 of the Laws of Malta, violated their legitimate expectations, which legitimate expectations resulted from the provisions of the Registration Tax and Annual Circulation Licence Fees Guidelines published on the website of the Authority for Transport in Malta prior to the introduction of the mentioned amendment.

The Applicants contend that the Registration Tax and Annual Circulation Licence Fees Guidelines stipulated, amongst other things, the conditions necessary for a person to be eligible for an exemption from vehicle registration tax on a vehicle brought to Malta by such individual on his transferring his/her permanent residence to Malta. They claim that even though these Guidelines were not at the time supported by relative legislation, they were sufficiently clear and precise as to create in them a legitimate expectation that they were eligible for an exemption from vehicle registration tax on their vehicles, since they qualified under all the conditions as set out in the Guidelines, so much so that most of them started the necessary procedures to import their vehicles to Malta. However, they claim that in view of the fact that the competent authorities were receiving a large number of requests for exemptions from vehicle registration tax the exemption and registration process was delayed and prolonged with the consequence that when the actual legal provisions pertaining to exemptions from vehicle registration tax came into force an additional condition not previously set out in the Guidelines was introduced, namely that only persons who took up residence in Malta on or after the 3rd November 2008 were eligible for an exemption from vehicle registration tax. The Applicants also claim that the vehicle registration tax being levied by the authorities is much higher than the value of the vehicles sought to be registered and this is in direct violation of the principle of

proportionality enshrined under Section 469A of Chapter 12 of the Laws of Malta.

On the basis of these claims the Applicants request that the Tribunal declare that: (i) the Registration Tax and Annual Circulation Licence Fees Guidelines published on the website of the Authority for Transport in Malta were sufficiently precise and clear as to create in them a legitimate expectation as safeguarded by Section 469A of Chapter 12 of the Laws of Malta; (ii) by means of the amendment to the Motor Vehicles Registration and Licensing Act which provided that persons applying for an exemption from payment of vehicle registration tax had to be resident in Malta since the 3rd November 2008, their legitimate expectations as safeguarded by Section 469A of Chapter 12 of the Laws of Malta have been infringed; (iii) the amount of vehicle registration tax levied by the Authorities is in violation of the principle of proportionality resulting from Section 469A of Chapter 12 of the Laws of Malta; and consequently to (iv) order the Authorities to reconsider their applications for an exemption from vehicle registration tax in the light of the Registration Tax and Annual Circulation Licence Fees Guidelines and this in view of their legitimate expectations.

The Respondents object to the requests put forth by the Applicants on various grounds however, at this stage of the proceedings the only plea which is being considered is the fourth plea put forth by the Respondent Authority namely that the proceedings instituted by the Applicants are null and void at law since there is no connection between the Applicants and they cannot be treated together and contemporaneously.

It is very clear that the Respondent Authority is claiming that the Applicants could not put forth a joint action [*azzjoni kollettiva*] in terms of Section 161(3) of Chapter 12 of the Laws of Malta because the elements necessary for the institution of such an action, namely the connection between the Applicants, do not subsist in this case.

The Tribunal observes that the right to file a joint action was introduced in the Maltese procedural system in 1985 under Section 156A of Chapter 12 of the Laws of Malta. The said section of the Law has since been repealed but the right to file a joint action is today enshrined in Section 161(3) of Chapter 12 of the Laws of Malta which provides that *two or more plaintiffs may bring their actions by one sworn application or by one not sworn application as the case may be, if the actions are connected in respect of the subject matter thereof or if the decision of one of the actions might affect the decision of the other action or actions and the evidence in support of one action is, generally, the same to be produced in the other action or actions. The cause and subject matter of the actions shall be clearly and specifically stated in respect of each plaintiff.* As a matter of fact the possibility of filing a joint action was accepted and acknowledged by our Courts well before 1985 and in their various

judgments over the years the national Courts set out the necessary requirements for the filing of a joint action.

Prior to the introduction of Section 156A of Chapter 12 of the Laws of Malta in 1985, the Maltese Courts observed that *ghall-ammissibilità tal-gudizzju kollettiv, huwa mehtieg mhux biss il-kwistjoni li tkun trid tigi risoluta tkun identika ghal kull wiehed mill-atturi, imma wkoll li l-interess derivanti mit-titolu l-oggett tal-kawza jkunu komuni, jigifieri li c-citazzjoni kollettiva hija ammissibbli kull darba li diversi persuni, li jffiguraw bhala atturi, jipproponu sabiex jirrizolvu kwistjoni ta' dritt uniku w identiku, u jkun eskluż 'a priori' li mir-risoluzzjoni ta' l-istess kwistjoni, f'sens jew iehor, tista' tikkonkorri xi cirkostanza ta' fatt specjali ghal wiehed jew l-iehor minn dawh il-persuni atturi. U trid issir dik l-eskluzjoni 'a priori' ghaliex ma jistax jigi ammess gudizzju kollettiv preventiv, li fih jigi deciz jekk hemmx jew le dik ic-cirkostanza specjali li tista' tinfluwixxi fuq ir-risoluzzjoni tal-kwistjoni ta' dritt. Jekk ma jikkonkorru dawn ir-rekwiziti u l-parti konvenuta topponi ruhha ghall-proponibilità ta' l-azzjoni b'gudizzju kollettiv, il-Qorti ma tistax taghmel hag' ohra hlief tiddikjara dak il-gudizzju improcedibbli, bhala null – **Mamante Azzopardi et v. Carmelo Micallef** delivered by the First Hall Civil Court on the 16th December 1953.*

In the judgment in the names **Charles Galea et v. Perit Arkitett Oscar Caruana Montaldo** delivered on the 30th April 1963¹, the First Hall Civil Court further observed that *biex diversi atturi jkunu jistghu jagixxu permezz ta' citazzjoni kollettiva jehtieg li l-kwistjoni li tkun trid tigi risoluta tkun identika ghal kull wiehed mill-atturi, u li l-interess derivanti mill-oggett u b'titolu tal-kawza jkunu komuni.*

Following the introduction of Section 156A of Chapter 12 of the Laws of Malta, the Courts observed that *dan l-artikolu, emenda ricenti ta' l-1985, hu mahsub biex jiffacilita l-uzu ta' l-azzjoni kumulattiva minn diversi atturi biex kemm hu possibbli jnaqqas l-ammont ta' litigazzjoni f'certi kazi. L-artikolu effettivament sa' certu punt iwessa' l-kazijiet meta tali azzjoni tista' tigi ezercitata. Fil-fatt jipprospetta l-uzu ta' dan it-tip ta' azzjoni kumulattiva anke meta l-atturi mhux necessarjament ikollhom l-istess interess fil-kawza kontra l-istess konvenut u meta t-talbiet jistghu ikunu diversi anki jekk jiskaturixxu mill-istess cirkostanzi - **Mary Vella et v. Josephine mart Carmel Bugeja** delivered by the First Hall Civil Court on the 4th June 1991². Following the repeal of Section 156A of Chapter 12 of the Laws of Malta and the introduction of Section 161(3) of Chapter 12 of the Laws of Malta, the Courts observed that *biex tista' ssir azzjoni kollettiva, hu mehtieg mhux biss illi l-kwistjoni li trid tkun risolta tkun l-istess ghal kull wiehed mill-atturi, imma wkoll li l-interess mislut mit-titolu u l-ghan tal-kawza jkun l-istess ghalihom ukoll. Fi kliem iehor, azzjoni kollettiva titqies ammissibbli kull**

¹ Collection of judgments by the Superior Courts, Vol. XLVIID-770.

² Collection of judgments by the Superior Courts, Vol. LXXV. iii.712.

*darba li numru ta' persuni jipproponu azzjoni sabiex jirrisolvu kwestjoni ta' dritt uniku w identiku u jkun eskluż a priori illi mir-risoluzzjoni ta' l-istess kwistjoni, f'sens jew iehor, tista' tikkonkorri xi cirkostanza ta' fatt specjali għall-wiehed jew għall-iehor minn fosthom. Illi l-effett ta' nuqqas ta' konkorenza ta' dawn ir-rekwiziti, flimkien mal-kontestazzjoni tal-parti mharrka (mhux imqanqla mill-Qorti ex officio) twassal biex l-att ta' citazzoni jitqies null u l-azzjoni improsegwibbli. Madanakollu gie ccarat li din l-identità mehtiega tkun tirrizulta jekk l-azzjoni tkun mibnija fuq fatt illecitu allegat a bazi tad-delitt jew kwazi-delitt, minkejja li l-atturi jkollhom rabtiet kuntrattwali differenti (jew m'ghandhom saħansitra l-ebda rabta kuntrattwali) ma' l-imharrkin. Illi meta mbaghad, kif inghad, iddahhal fil-Kodici l-artikolu li ta jedd ta' l-azzjoni kollettiva formalment, gie meqjus li lanqas kien għadu mehtieg li l-atturi kollha jkollhom l-istess interess fil-kawza jekk kemm-il darba t-talbiet setghu jkun l-istess u johorgu mill-istess cirkostanzi³. Dan għaliex gie mfišser li l-artikolu 156A kien mahsub biex ihaffef din l-ghamla ta' azzjoni biex inaqqas l-ammont ta' kwestjonijiet fuq hwejjeg marbutin ma' xulxin, u minhabba li l-artikolu 156A innifsu kien jistabilixxi f'liema cirkostanzi setghet issir l-azzjoni kollettiva. Kif inghad aktar 'l fuq, dawk ir-rekwiziti huma l-illuminemija fl-artikolu 161(3) - **Dr. Patrick J. Galea noe v. Airswift Couriers Limited et, Application No. 2503/00** delivered by the First Hall Civil Court on the 12th June 2003.*

From the above-quoted jurisprudence and sections of the Law, that is Section 156A and subsequently Section 161(3) of Chapter 12 of the Laws of Malta, it results that a joint action can to date be instituted by two or more plaintiffs/applicants when, even though they might not necessarily have the same interest in the action, (i) the actions are connected in respect of the subject matter thereof; or (ii) when the decision of one of the actions might affect the decision of the other action or actions; and (iii) the evidence in support of one action is, generally, the same to be produced in the other action or actions. It must further be pointed out that as observed in the above-mentioned judgment **Vella v. Bugeja** *l-fatt li l-atturi pprocedew b'azzjoni kumulattiva motivata b'interess komuni fl-istess mertu u b'talba wahda bazata fuq kawzali identika, ma jostax li 'l quddiem jista' jirrizulta li tali talba tista' tigi akkolta għal uhud mill-atturi, u michuda fir-rigward ta' ohrajn jekk jirrizultaw cirkostanzi li jiggustifikaw tali diversità ta' decizjoni*⁴ which effectively means that in a joint action there doesn't necessarily have to be one single outcome for all the plaintiffs/applicants concerned, provided that the circumstances of the case justify such a diversity in the decision.

When the claims and consequent requests put forth in the Application are duly considered it results that there is a common subject matter for the all the Applicants that is, the contestation of the amended Motor Vehicle Registration and Licensing Act in so far as concerns the provisions pertinent to the

³ Underlining by the Tribunal.

⁴ Underlining by the Tribunal.

exemption from vehicle registration tax. This of itself indicates that the Applicants could proceed by means of a joint action against the Respondents however this does not automatically mean that the proceedings as instituted by them conform to that provided for in Section 161(3) of Chapter 12 of the Laws of Malta and are consequently valid at Law. In fact upon proper consideration of the claims and requests as set out in the Application, it results that the proceedings as instituted by the Applicant fail in legal admissibility in one major respect, namely the fact that the Applicants failed to abide by the requirement set out in the last part of Section 161(3) of Chapter 12 of the Laws of Malta, that is that the cause and subject matter of the actions shall be clearly and specifically stated in respect of each plaintiff⁵.

Apart from the fact that this requirement is a *sine qua non* requirement set out in the law itself, in this particular case it was particularly important for **each** Applicant to set out the cause and subject matter pertinent to **his/her** action since not all the Applicants seem to have had submitted their application for an exemption from vehicle registration tax when the amended legislation came into force and therefore their respective positions are not necessarily the same or similar to each other. This diversity in position between the various Applicants results from the Application itself where the Applicants claimed that that *sakemm giet promulgata din il-ligi l-bicca l-kbira tar-rikorrenti*⁶ *kienu qeghdin jippruwaw, minghajr success, jottjenu ezenzjoni mit-taxxa tar-registrazzjoni fir-rigward li wiehed ikun jista' jgib il-vettura bil-mutur tieghu Malta, in linja ma' dak ippubblikat fil-Linji Gwida dwar it-Taxxa tar-Registrazzjoni u t-Tariffi Annwali ghal-Licenzji tac-Cirkolazzjoni*⁷.

As observed by the First Hall Civil Court in the above-mentioned judgment in the names **Dr. Patrick J. Galea noe v. Airswift Couriers Limited et**, *jekk azzjoni mibdija bhala kollettiva ma tkunx twettaq xi wiehed mir-rekwiziti imsemmija fl-Artikolu 161(3), taqa' sewwasew taht ic-censura tan-nullità kif mahsuba taht l-artikolu 789(1)(a) marbuta ma' l-artikolu 156(1)(a) u 156(4) li jridu jitharsu kif imiss*. From the said observation it clearly results that if a joint action is instituted before the Tribunal but the requirements set out in Section 161(3) of Chapter 12 of the Laws of Malta are not adhered to, then that action is null in view of that provided for in Section 789(1)(a) of Chapter 12 of the Laws of Malta: *the plea of nullity of judicial acts is admissible – (a) if the nullity is expressly declared by law –* which provision, in the case of proceedings before the Tribunal, must be read and applied in conjunction with that provided for in Section 15(2) of Chapter 490 of the Laws of Malta: *proceedings before the Administrative Review Tribunal shall be commenced by the filing of an application. The applicant shall file an application in the Registry of the Administrative Review Tribunal. The said application shall contain: (a) a clear and correct statement of the subject-*

⁵ Underlining by the Tribunal.

⁶ Underlining by the Tribunal.

⁷ The Tribunal is purposely quoting direct text from the Application since this particular extract is fundamental within the context of the issue being dealt with in this judgment.

matter and the cause of the claim; (b) the claim or claims; (c) a clear and detailed statement of the facts of the case of which the applicant may be aware; (d) the name of witnesses the applicant intends to produce, including the subpoena of the other party, stating in respect of them the proof the applicant intends to establish by their evidence, and (e) the remedy being requested, with costs against the public administration.

In the light of the above the Tribunal is of the opinion that the proceedings as instituted by the Applicants are null and void at Law because they failed to adhere to that provided for under Section 161(3) of Chapter 12 of the Laws of Malta when they did not individually clearly state the cause and subject matter of his/her own action.

Although Section 161(4) of Chapter 12 of the Laws of Malta provides that *nevertheless, any of the actions so brought together shall be tried separately at the request of a plaintiff with regard to his action; and the court may also order that any action be tried separately when it is not expedient that the actions of all the plaintiffs be tried together. Any such order may be made at any stage of the proceedings before final judgement*, in the present case the Tribunal cannot avail itself of this provision of law because the Applicants did not identify whom of them had by the time the amended legislation came into force, submitted an application for the grant of an exemption from vehicle registration tax and whom had not, thus making it impossible for the Tribunal to determine and consequently order which actions ought to be tried separately.

Therefore, in conclusion the Tribunal declares that the fourth plea raised by the Respondent Authority is justified since the proceedings as instituted by the Applicants are indeed null and void at Law and therefore merits to be upheld.

For the said reasons, the Tribunal upholds the fourth plea raised by the Respondent Authority and declares that the proceedings as instituted by the Applicants are null and void at Law.

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

< Final Judgement >

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