



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tal-11 ta' Frar, 2015

Appell Civili Numru. 49/2014

**Zaren Cassar**

**vs**

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar**

**Il-Qorti,**

Rat ir-rikors tal-appell tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar tat-13 ta' Awwissu 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-24 ta' Lulju 2014 li laqghet PA 814/03 'to sanction existing pig farm';

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

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Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni għall-Kontroll ta' l-Izvilupp, fit-18 ta' Gunju 2009, irrifjutat l-applikazzjoni għall-permess tal-izvilupp PA 814/03 – Site at Triq is-Siggiewi, Mqabba: To sanction existing pig farm.

Ir-ragunijiet għar-rifjut kienu s-segwenti:

“1. The site is just 50 m from an important header pumping Station of Ta' Kandja. The proposed development would lead to the contamination of a water catchment area and so does not comply with Structure Plan policy RCO 28, which provides for the protection of important water catchment areas.

2. The proposal fails to satisfy the eligibility criteria set out in section (3) of policy 2.3C of Policy & Design Guidance - "Agriculture, Farm Diversification and Stables" (December 2007) in that the proposed use is liable to contaminate a water catchment area. Furthermore, the building as erected fails to complement the surrounding rural environment and hence runs counter to Policy 1.3A of Policy & Design Guidance on Agriculture, Farm Diversification and Stables which states that proposed development which would have an unacceptable adverse impact on the rural landscape will not be permitted.

3. The proposal involves the total coverage of the site by buildings, and consequently there can be no provision for hard or soft landscaping on the site. It would therefore detract from the visual amenity of the area and would not comply with Structure Plan policy BEN 17 which requires the landscaping of development.

4. The proposal goes against Structure Plan Policy AHF 5 since the existing building does not meet the design criteria for buildings essential to the needs of agriculture which should blend in with the surrounding rural landscape and do not utilize good quality agricultural land.

5. No sufficient information has been provided with regard to how long the applicant has worked in this farming sector. The proposal thus runs counter to section (1) of policy 2.3C of Policy & Design Guidance - "Agriculture, Farm Diversification and Stables" (December 2007) which makes reference to criterion 1(b)(i) of Policy 2.3A

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of the same guidance and stipulates that the proposal satisfies at least one of these conditions. Criteria 1(b)(i) of Policy 2.3A specifies that:

'(i) the applicant is operating an officially registered livestock farm unit in conformity with valid licences (including licensed quota/s) issued by the Department of Agriculture and the Food and Veterinary Regulation Division for at least 2 consecutive years prior to the application, or

(ii) has at least 5 years experience in animal husbandry, or

(iii) has successfully followed a course in animal husbandry recognised by the Department of Agriculture;"

6. The proposed site falls within a Public Safety Zone. Due to high risk of aircraft accidents, as a measure to safeguard people and property within this zone, development of buildings will not be allowed. Therefore, the proposed development is objectionable since it may be hazardous in this location. The Civil Aviation Department and the Malta International Airport objected to the proposed development."

B. In-nota tal-Perit Ludivico Micallef għall-Appellant, ipprezentata fit-2 ta' Lulju 2009, senjatament il-punti segwenti:

"The main reason for which this appeal is being submitted is that, contrary to what has been stated in the above-mentioned refusal, the existing farm has been in operation since the seventies and is presently still licensed and officially registered with the Department of Agriculture and with the Food and Veterinary Regulation Division. This was also confirmed during the hearing of the reconsideration by a member of the DCC who is also the representative of the Department of Agriculture.

It has to be pointed out that this application originally dates back to 1999 – ten years ago – and now the applicant is being told to conform to the criteria, regarding farm buildings, which was issued in December 2007. This is not fair especially when one considers that the original refusal was issued in 2003 and since then the applicant has been requested to carry out a number of amendments to the plans and also to prepare a Waste Management Plan. These were all submitted to the Planning Directorate, it seems to no avail, but just to waste time."

C. In-nota risponsiva ta' Lorinda Vella għall-Awtorita', ipprezentata fis-16 ta' Settembru 2009, inter alia l-punti segwenti:

“5.1 As the farm complex was constructed prior to 1992, Policy 2.3E was considered for the proposed farm sanctioning and upgrading. This policy provides guidance for farms that were constructed prior to 1992, and enables such farms to be considered as legal commitments where it is proven that the farm was operational in accordance with a license issued by the competent authorities of the time. In the case of this application subject to appeal, the Department of Agriculture and the Department of Veterinary Services have been reluctant in confirming whether the farm was legally operational and whether any licenses were issued for the farm prior to 1992. The applicant on the other hand only produced licenses dating back to 2003.

5.2 It is clear that there has been a lack of proper evidence from the applicant's part to ascertain whether the farm was legally active prior to 1992, and hence section (2) of Policy 2.3E is applicable. This section states that where it cannot be confirmed whether a farm built prior to 1992 was operating with valid licenses issued by the Department of Veterinary Services and the Department of Agriculture, the farm is to be considered as having no development permit. In view of this, its sanctioning would be required, and would be subject to evaluation against Policy 2.3C and hence to be considered as a new farm on uncommitted and undeveloped land.

5.3 When reviewing the proposed farm against Policy 2.3C and other planning policies, the principle of establishing an animal husbandry farm on this particular site cannot be favourably considered on the grounds of two main issues, being:

a. The site is located within the Immediate Groundwater Protected Zone, and more specifically within only 50 metres from the Mqabba Heading Gallery from Ta' Kandja Pumping Station. Accepting the proposed development within such a sensitive water protection area is not permitted by Criterion (3) of Policy 2.3C, which specifically requires that farms are located at least 300 metres away from sources used for the abstraction of water intended for human consumption, such as boreholes, and that any such development would not pose a threat to the quality of groundwater runoff. The Malta Resources Authority (Water Directorate) clearly objected to the proposed development in their consultation response letter at blue 12.

b. The site is located within close proximity to the Luqa Airfield Runway and within a Critical Public Safety Zone, and hence where any form of development is prohibited. In their consultation replies at red 103 & 104, the Civil Aviation Department and the Malta International Airport respectively indicated that the site is located within a high risk area being directly adjacent to the aerodrome fence and

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on the extended centerline of Runway 05. In view of this the site is located within an area that is considered to carry notable risk from exposure to potential aircraft accidents, and hence both these entities stated that they do not recommend that the development is sanctioned.

5.4 Moreover, apart from these two crucial issues, the proposed development is also not acceptable on the grounds of the visual impact created by the development, and the fact that no form of mitigation is being proposed to address this. While animal husbandry farms are considered as legitimate development outside the development zone, Structure Plan policy AHF 5 clearly states that any such development is required to blend in well with the site's surrounding rural environment, while Policy BEN 17 requires that landscaping is mandatory for all development. No form of landscaping or mitigation measures through sensitive design is included in this application, and hence the Authority deems that the development cannot be sanctioned on this principle as well."

D. In-nota ta' sottomissjonijiet tal-Perit Ludivico Micallef ghall-Appellant, ipprezentata fl-14 ta' Frar 2011, precizament il-punti segwenti:

"As stated in that meeting the farm in question was operative way back before 1992, i.e. before the coming in operation of MEPA.

Attached please find a declaration from the Agriculture and Fisheries Regulation Division of the Ministry for Resources and Rural Affairs, which states that according to their records applicant, Mr. Nazz. Cassar, used to rear pigs at the same address as far back as 1988. Mr. Cassar states also that his father started the farm on the same site as far back as the mid-seventies.

Attached also please find a statement from the Dept. of Agriculture and Fisheries which shows that in 1998, applicant was licensed to keep a number of pigs in the same farm.."

E. Il-verbal tas-Seduta numru 27, mizmuma fil-21 t' April 2011, senjatament il-punti segwenti:

"B' referenza ghall-ittra tal-Miniseru ghar-Rizorsi u Affarijiet Rurali tal-14 ta' Jannar 2011, iffirmata minn L. Formosa ghad-Direttur Generali ghall-Awtorita' jitlob illi jigi

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kkonfermat il-kontenut tal-istess ittra u ghalhekk talab li dan jitharrek ghas-seduta li jmiss.”

F. Ix-xhieda ta' Dott. Anthony Gruppetta, Direttur Generali fi hdan il-Ministeru ghar-Rizorsi u l-Affarijiet Rurali, prodott mill-Awtorita' u moghtija bil-gurament waqt is-Seduta numru 76, mizmuma fl-20 t' Ottubru 2011, inter alia s-segwent:

“[...] Ghax tal-majjali bdew johorgu permessi bis-sistema kif inhi llum ezattament wara l-marda tal-African Swine Fever and that goes back to 1980. Tant hu hekk, illi l-Legal Notice hija 86 of 1980 li tipprevedi licenzjar tal-farms tal-majjali. Zaren huwa wiehed minn dawn il-farms.”

[...]

“Dan ghandu licenzja ezattament minn wara l-marda tal-African Swine Fever li kienet fl-1980-1981. Jiena personali ili nafu hemm 23 years kwazi 24 years hemm b'dak l-indirizz u l-licenzjar. Dak ic-certifikat huwa wiehed minnhom tal-1999. Dak ghax ma kienux qed johorguhom hekk in that manner imma kienu registrati kollha bhala farms. Irridu naghmlu distinzjoni bejn il-licenzjar tajtux f'idejh bhala licenzja jew le, hekk iva nista' naqbel mieghek li bdew johorgu hekk mill-1999. Il-farms tal-majjali ilhom irregistrati b'mod u manjiera b'numerous clausus jigifieri bil-kwoti u l-affarijiet biex hadd ma jaqbad u jkompli jrabbu, since after l-episodju tal-African Swine Fever which was in 1980 u allura l-Legal Notice 86 ta' 1980 li ghadha tezisti.”

[...]

“Kienu johorgu imma mhux b'din il-format u manjiera u jista' jkun li d-Dipartiment ma zammx kopji taghhom imma huma kienu jezistu u kienu illicenzjati kollha. Jiena ili nafu lis-Sinjur personalment biss biss 23 sena fl-istess post irabbu l-majjali u l-licenzjar.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba sabiex f' font li jinsab barra z-zona tal-izvilupp (ODZ) fl-Imqabba, jigi ssanat razzett tal-majjal. Is-sit jinsab fl-ilbic tar-runway tal-ajruport f' zona indikata bhala groundwater protected zone, vicin il-pumping station ta' Kandja.

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Precedentement kienet saret applikazzjoni sabiex jinbnew xi kmamar ghall-ghodda (PA 5540/99) li pero' giet rifjutata. Sussegwentement is-sit intlaqat b' avviz biex tieqaf u ta' twettieq (ECF 33/04) li jaqra kif gej:

“Ghandek zvilupp li jikkonsisti minn bini ta' diversi kmamar li prezentament qeghdin jintuzaw ghat-trobbija tal-majjali kif ukoll garaxx u dan kollu minghajr permess.”

Ir-raguni ghar-rifjut jistghu jigu riassunti kif gej:

- L-attivitá' tat-trobbija tal-bhejjem tista sservi ta' hsara ambjentali:

Is-sit jinsb f' water catchment area u f' distanza ta' hamsin metru (50 m) minn pumping station. Peress li l-attivitá' tista tirrizulta fit-tniggiz ta' l-ilma naturali, it-talba hi f' kunflitt mal-policy 2.3C tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables kif ukoll il-policy RCO 28 tal-Pjan ta' Struttura.

- Id-dehra tal-izvilupp qed jgharraq l-ambjent cirkostanti:

Peress li mhux qed jigi propost l-ebda tip ta' landscaping, l-izvilupp qed jgharraq l-aspett rurali taz-zona. It-talba hi di konsegwenza in kontravvenzjoni tal-policy 1.3A tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables u l-policy BEN 17 tal-Pjan ta' Struttura.

- L-attivitá' tal-livestock farm mhix wahda stabbilita u qed tinhela art agrikola:

Peress li ma giex ippruvat li l-attivitá' tat-trobbija tal-majjal hi wahda konsistenti, it-talba tikser il-policies 2.3A u 2.3C tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables, u billi minn dan isegwi li r-razzett qed jokkupa art agrikola tajba, l-izvilupp hu wkoll in kontravvenzjoni tal-policy AHF 5 tal-Pjan ta' Struttura.

- Ir-razzett jinsab f' zona perikoluza biswit l-ajruport:

Hemm ukoll oggezzjoni minghand id-Dipartiment tal-Avjazzjoni Civili minhabba l-fatt li r-razzett jinsab fil-public safety zone tal-ajruport.

L-aggravji tal-Appellant jistrieħu fuq il-fatt li r-razzett ilhu jopera bil-licenzja sa' mis-snin sebgħin (1970s) u li illum hu registrat mad-Dipartiment tal-Agrikoltura (Food and Veterinary Regulation Division). Jispjega li l-ewwel darba li ttenta jissana r-

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razzett kien fis-sena 1999 u li fl-2003 inhariglu rifjut. Ghalhekk, fil-frattemp kien ghamel numru ta' emendi fl-izvilupp u anke rranga r-razzett (hejja wkoll waste management plan sabiex ikun konformi mal-policies ta' dakinhar), madankollu fis-sena 2007 gew ppublikati l-Policy and Design Guidance – Agriculture, Farm Diversification and Stables u ghalhekk illum qed isibha difficli jirregola l-izvilupp.

L-Awtorita' zammet ferm l-oggezzjoni taghha u rilevat li mir-ritratti mill-ajru tas-sena 1988 kien hemm biss zewg rearing/fattening units fuq in-nahha tal-punent u n-nofsinhar tas-sit. In oltre, billi ma ngabet l-ebda prova li r-razzett kien licenzjat bhala livestock farm sa' minn qabel is-sena 1992 (l-ewwel licenzja sottomessa kienet dik tas-sena 2003), illum ma jistax jigi permess l-ebda sanar u/jew ameljorament tar-razzett.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, jigi osservat li l-argument principali li jistrieħ fuqu dan l-appell jirrigwarda l-istatus legali tar-razzett in kwantu kemm hu wiehed legittimu – cjo'e' jekk kellux licenzja antika u kemm ilhu jopera bhala tali. Din hi d-divergenza bejn il-partijiet: Skond l-Awtorita' l-eqdem prova ta' licenzja hi mis-sena 2003, madankollu l-Appellant iddikjara li hu ilhu jrabba l-majjal mis-sena 1988 u li missieru kien beda din l-attivita' fis-snin sebghin.

Mix-xhieda tad-Veterinarju Dott. Anthony Gruppetta, Direttur fi hdan il-Ministeru ghar-Rizorsi u Affarijiet Rurali li nghatat fil-mori tal-appell, gie nutat li l-permessi għall-irziezet tal-majjal bdew johroghu bis-sistema prezenti skond l-Avviz Legali 86 tal-1980, ezattament wara li f' Malta kien hawn il-marda tal-African Swine Fever. L-ewwel darba li bdew jinhargu c-certifikati għall-licenzji kien fis-sena 1999, meta l-irziezet tal-majjal kienu joperaw b' sistema ta' numerus clausus. Minn dan isegwi li huwa ferm difficli li jigi ppruvat li razzett (tal-majjal) kien jopera bhala tali qabekl is-sena 1992. Madankollu, skond ix-xhieda tal-istess direttur veterinarju, l-Appellant ilhu jrabbi l-majjal f' dan l-indirizz sa' almenu s-sena 1988.

Fil-fehma kkunsidrata ta' dan it-Tribunal, din hi prova bizzejjed li r-razzett ilhu jopera bil-licenzja sa minn qabel is-sena 1992, u fic-cirkostanzi dan l-appell jimmerita konsiderazzjoni favorevoli.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, dan il-Tribunal qed jiddisponi minn dan l-appell billi jilqa l-istess limitament u jhassar ir-rifjut għall-PA 814/03 kif mahrug mill-Kummissjoni għall-Kontroll ta' l-Izvilupp, fit-18 ta' Gunju 2009, u jordna li f' zmien xahar mil-lum, l-Awtorita' tohrog il-permess mitlub mill-Applikant ai termini tal-Artikolu 41(14) tal-Att X tal-2010 (Kap. 504) biz-zieda tas-segwenti kundizzjonijiet ma dawk normalment imposti f' permessi simili u jekk ikun il-kaz, l-imposizzjoni ta' multa xierqa, kif gej:



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1. Li tigi pprezentata management plan akkurat tal-istrutturi kollha li prezentement hemm fuq is-sit, u dan sabiex jigi indikat kif ser jintuzaw il-kmamar li nbnew wara s-sena 1988. Kemm il-darba jirrizulta li hemm strutturi li mhux qed jigu utilizzati fl-attivitá' tat-trobbija tal-majjal, dawn iridu jitnehew u minflokhom issir landscaping scheme adegwata;
2. Li tigi mposta garanzija bankarja sabiex jigi assikurat li l-izvilupp isir kif approvat; u li jsir monitoring minn ufficjali tal-Awtorita' biex jigi vverifikat li l-izvilupp ikun dejjem konformi mal-permess u r-rekwiziti tad-Dipartimenti koncernati;
3. Dan il-permess hu marbut u kondizzjonat ghall-attivitá' prezenti tal-Appellant; cjoé t-trobbija tal-majjal. Kemm il-darba din l-attivitá' tieqaf u tispicca, il-permess jigi revokat, u billi skond il-Pjan Lokali, is-sit hu ndikat bhala public safety zone, jekk jibqa' hekk (jew simili), meta tispicca l-attivitá' tat-trobbija tal-annimali, s-sit irid jigi ripristinat ghall-istat originali agrikolu tieghu, u kwalsiasi kostruzzjoni titnehha ghall-kollox.

### Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal applika hazin il-policy 2.3E para(1) tal-Policy and Design Guidance, Agriculture, Farm Diversification and Stables peress li kellu jigi applikat para (2) u dan peress li ma saret ebda prova li kien hemm licenzja qabel l-1992 ghalkemm il-farm kien mibni;
2. It-Tribunal naqas li jikkonsidra s-sottomissjonijiet tal-Awtorita billi qies biss il-kwistjoni tal-licenzja qabel l-1992;
3. It-Tribunal ippronunzja ruhu u wasal ghad-decizjoni in bazi ta' fatt manifestament zbaljat cioé l-kwistjoni tal-licenzja.

### L-ewwel aggravju

L-appellant isostni li hi applikabbli policy 2.3 para (2) ghax ma saret ebda prova illi l-farm kien licenzjat qabel is-sena 1992. Din il-Qorti tqis illi dak li l-Awtorita qed titlob lil Qorti hi li

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tivvaluta hi l-fatti prodotti u terga' tasal ghal konkluzjoni. Dan mhux permess speċjalment meta t-Tribunal ikkunsidra l-fatti li ingiebu u wasal ghal konkluzjoni li mix-xiehda prodotta ma kienx faċli jigu prodotti licenzji billi dawn bdew jinhargu bil-format prezenti fl-1999. Pero t-Tribunal strah fuq ix-xiehda ta' Dr. Anthony Gruppetta, direttur generali fi hdan il-Ministeru ghar-rizorsi u affarijiet rurali li qal li l-farm ilu licenzjat ghal mill-anqas 23 jew 24 sena kemm ilu jaf lil applikant u qablu lil missieru, ghalkemm il-licenzji ma kienux jinhargu kif bdew jinhargu fl-1999. It-Tribunal ghandu kull dritt jaghmel apprezzament tal-provi u jasal ghal konkluzjonijiet tieghu. Ma sar ebda zball ta' fatt riprodott mit-Tribunal. Il-konkluzjoni tieghu f'dak li hu apprezzament tal-fatti jista' jkun soggett ta' nuqqas ta' qbil pero zgur li din mhix kwistjoni ta' zball ta' fatt li jista' jaghti lok ta' appell jekk id-decizjoni tkun ibbazata fuq l-izball.

Ghalhekk dan l-aggravju qed jigi michud.

### **It-tieni aggravju**

Dan l-aggravju jimmeritah li jigi milqugh mhux ghax l-Awtorita ghandha ragun ghar-ragunijiet ta' rifjut moghtija minnha izda ghaliex it-Tribunal kellu l-obbligu, darba stabbilit minnu illi ghall-izvilupp kien applikabbli policy 2.3E(1) tal-Policy and Design Guidance tal-2007, ir-ragunijiet l-ohra ta' rifjut kienux jew le applikabbli f'dan il-kuntest ta' farm licenzjat qabel l-1992 u jekk le r-raguni ghaliex, u jekk applikabbli ghaliex tali ragunijiet ma jiggustifikawx ic-cahda tal-permess. Sfortunatament id-decizjoni hi siekta fuq din il-kwistjoni u kif qal l-appellant, it-Tribunal strah biss fuq il-kwistjoni tal-licenzjar tal-farm biex wasal ghal konkluzjoni tieghu li l-izvilupp kien jimmeritah konferma. Ir-ragunijiet ta' rifjut kienu ta' natura ta' sustanza li kellhom jigu kunsidrati mit-Tribunal fil-kuntest li saru tenut kont tal-konkluzjoni tat-Tribunal fuq il-kwistjoni tal-licenzja tal-farm.

### **It-tielet aggravju**

Dan l-aggravju hu bla bazi tenut kont dak li esprimiet ruhha fuqu din il-Qorti fl-ewwel aggravju. Ma sar ebda zball ta' fatt izda semmai hemm divergenza mill-partijiet fuq l-interpretazzjoni tal-fatti. L-atti juru dak li elenka t-Tribunal bhala fatt. L-apprezzament u

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interpretazzjoni taghom hi fdata fid-diskrezzjoni tat-Tribunal u dan hu wiehed minn dawk il-kazijiet.

Ghalhekk l-aggravju qed jigi michud.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar limitament ghal dak deciz u kwindi tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-24 ta' Lulju 2014, u tirrinviija l-atti lura lit-Tribunal biex jerga' jiddeciedi l-appell. Spejjez jibqghu bla taxxa.

## **< Sentenza Finali >**

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