Court Of Appeal

Judges

THE HON. CHIEF JUSTICE SILVIO CAMILLERI
THE HON. MR. JUSTICE TONIO MALLIA
THE HON. MR. JUSTICE JOSEPH AZZOPARDI

Sitting of Tuesday 15th December 2015

Number:

Application Number: 449/14 RGM

Dr Joseph R. Pace as Special Mandatary of Atef Elabassiry Mohamed Nasr Eldin absent from these Islands

v.

Noura Hamed Ahmed Mohamed

The Court:

In this case, applicant, on behalf of the father of the minor Karim, is requesting that defendant, the mother of the said child, returns the child to his habitual residence in Egypt, where he resides. The child has dual nationality, Maltese and Egyptian, and the parties had lived for a time in Malta, so much so that the child attended a Kindergarten here in Malta. The father returned to his country, but

the mother, who also has Maltese citizenship, has remained in Malta with the child. The Father is seeking a declaration that the actions of the mother amount to “an international abduction” and is seeking “the immediate return” of the child to Egypt.

By decision dated 28th May 2015, the Family Section of the Civil Court rejected the request for a declaration of abduction and a removal order for the child to be sent to Egypt, on the grounds that it lacked competence to so provide. The first Court noted that applicant was basing his case on the 1980 Hague Convention on the Child (recte: Civil) Aspects of International Child Abduction, incorporated in Chapter 410 of the Laws of Malta, but Egypt is not one of the countries with whom Malta has an arrangement for the reciprocal application of that Convention. Applicant appealed from this decision on the 30th June, 2015, claiming that his action was not based on the said Convention as incorporated into Maltese Law, and that these laws and conventions were only quoted “*exemplo gratia*”.

Defendant has submitted, in her first plea, that the appeal is *fuori termine*.

The Court agrees with appellant’s submission. This Court has already stated that in matters of the competence of the Courts, an

appeal is granted as of right (Article 234 of the Code of Orgnanization and Civil Procedure) without the need of seeking prior permission from the Court. In fact in **Mehmet noe v. Micallef Starfrace noe** decided by this Court on the 3rd of February, 2010, this Court had observed:

> "Ghalhekk hawn isib distinzjoni netta bejn appelli minn sentenzi preliminari ta' kull generu li jehtiegu l-awtorizzazzjoni tal-Qorti biex dak l-appell jigi ntavolat qabel is-sentenza finali, u dawk l-appelli minn sentenzi preliminari dwar il-kompetenza tal-Qorti li ma jehtiegux din l-awtorizzazzjoni. Naturalment sentenza dwar kompetenza fejn il-Qorti tiddikjara li ma ghandhiex gurisdizzjoni tiehu konjizzjoni tal-kawza, qatt ma tista' tirrikjedi l-permess tal-Qorti li tkun ppronunzjata biex isir appell u dan billi tali sentenza, fiha nnifisha, ma tkunx wahda preliminari izda pjuttost finali billi b'dak il-pronunzjament il-gudizzju jigi terminat. F'dan il-kaz il-legislatur ma kellux bzonn li jipprovdi billi jkunu japplikaw l-provvediment generali koncernati appelli minn sentenzi finali. Biss fil-kaz ta' sentenza fejn il-Qorti tkun cahdet l-eccezzjoni ta' nuqqas ta' gurisdizzjoni taghha, u b'hekk iddikjarat ruhha kompetenti li tiehu konjizzjoni tal-kaz, bhal fil-kaz in ezami, dik is-sentenza tkun wahda preliminari billi l-process gudizzjarju jibqa' mixi. F'dan il-kaz, ghalhekk, il-legislatur, kieku ried, halla l-kwistjoni ta' l-appellabilita` minn dik is-sentenza qabel is-sentenza finali li tigi regolata bl-Artikolu 231 bhal kazijiet l-ohra. Izda jidher li dan ma kienx dak li ried il-legislatur billi mhux talli f'dawn il-kazi, kkonferixxa dritt ta' appell lill-parti interessata minghajr ir-rekwisiti tal-Artiklu 231 talli ddispona oltre meta kkonferixxa fuq il-Qorti tal-Ewwel Grad id-diskrezzjoni tal-ghazla li twaqqaf is-smigh tal-kawza sakemm jinqata' dak il-punt fil-Qorti fi grad ta' Appell."

The same position was adopted by the Court in the cases **Gaming VC Corportation Ltd. v. Boss Media Malta Casino Ltd.** also decided on the 3rd of February, 2010, and **"Vella et v. Malta Industrial Parks Ltd."** decided on the 26th of June, 2015.

It follows that an appeal from the decision in question should have been filed within 20 days from the date of judgement. This appeal has clearly been filed late.

The first Court might have been wrong in its reasons for dismissing plaintiff's case, but if this is the ground of the appeal then such appeal need be filed and this within the peremptory term imposed by law. Since the decision of the 28th May, 2015, was final no permission to appeal was necessary, and the appeal should have been filed within 20 days from the date of the decision.

It is true that the decision of the first Court was delivered *in camera*, but the Court had decreed it would so proceed during the sitting of the 15th April, 2015, and none of the parties objected. Furthermore, after the delivery of its decision on the 28th May, 2015, none of the parties exercised its right to request a reading of the judgement in open Court for appeal reasons, but seemed satisfied with the way the Court proceeded. The appellant, in any case, knew of the decision early enough because on the 3rd of June, 2015, he filed an application requesting permission to appeal from the "*decision of the 28th May, 2015*". As noted, no permission is required in case of a final decision, and an appeal should have been filed within 20 days from the date of the decision.

For the above reasons, the appeal of Dr. Joseph R. Pace nomine is refused due to the fact that it was filed late – *fuori termine.*

All costs of this case are to be borne by appellant Dr. Joseph R. Pace nomine.

Silvio Camilleri Prim Imhallef	Tonio Mallia Imhallef	Joseph Azzopardi Imhallef

Deputat Registratur
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