Fil-Qorti Tal-Magistrati (Malta)
bhala Qorti ta' Gudikatura Kriminali

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta’ nhar l-Erbgha hamsa u ghoxrin (25) ta’ Marzu 2015

Libell Nru 8/12

Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (Malta)

vs

Emanuel Curmi

Il-Qorti,

Rat it-Tahrika ta’ Kawza Privata mahruga fil-konfront ta’l-akkuzat Emanuel Curmi mill-Pulizija Ezekuttiva fit 13 ta’ Awissu 2012 abbazi ta’ kwerela tal-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (Malta) datata 1 ta’ Settembru 2011 fejn hua gie akkuzat illi, permezz ta’ taht l-artikolu intitolat “**Hunters vow action over government policy**”, tajt malafama lill Federazzjoni Kaccaturi u Nassaba Konsevazzjonisti (Malta) bil-hsieb li ttelliha jew tnaqqsilha mir-reputazzjoni jew gieh taghha, u dana bi ksur tal-artikolu 11 tal-Kap 248 tal-Ligijiet ta’ Malta u tal-Artikolu 252 tal-Kap 9 tal-Ligijiet ta’ Malta.

Rat il-kwerela tal-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (Malta) datata 1 ta’ Settembru 2011 flimkien ma’ dokumentazzjoni hemm annessa.

Rat l-artikolu ppubblikat fuq is-sit elettroniku ‘*www.timesofmalta.com*’ fit-30 ta’ Awissu 2011 u il-kumment illi dwaru kienu talbu li jinbdew il-proceduri odjerni illi gie ppubblikat fit 30 ta’ Awissu 2011 fid 09.52 ta’ filghodu u li gie indikat li nkiteb minn ‘Mr Emanuel Curmi’.

Semghet ix-xhieda ta’ **Lino Farrugia**, Segretarju tal-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (Malta) moghtija fis 17 ta’ Jannar 2013.

Semghet ix-xhieda ta’ **Joseph Perici Calascione**, President tal-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (Malta) moghtija fis 17 ta’ Jannar 2013.

Rat id-dokument ippresentat mill-prosekuzzjoni fil 21 ta’ Marzu 2013, ossija numru ta’ licenzji ta’ kacca mahruga mill-Pulizija, illi b’total kien hemm 11,170 licenzja mahruga.

Semghet ix-xhieda ta’ **Christopher Scicluna**, wiehed mill-persuni responsabbli ghas-sit elettroniku ‘*www.timesofmalta.com*’, illi xehed fis 16 ta’ Mejju 2013.

Semghet ix-xhieda ulterjuri ta’ **Lino Farrugia** moghtija fis 16 ta’ Mejju 2013 flimkien mad-dokumentazzjoni minnu esebita illi turi n-numru ta’ kaccaturi registrati mal-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (Malta) bejn is-snin 2003 u 2013.

Rat id-dokument ossja rapport mahrug mis-Cyber Crime Unit fis 26 ta’ Ottubru 2011 u esebit mill-Prosekuzzjoni fil 21 ta’ Novembru 2013.

Rat ix-xhieda tal-**PS 1146 Edward Zammit**, stazzjonat is-Cyber Crime Unit, moghtija fid 19 ta’ Novembru 2014, fejn ikkonferma r-rapport fuq imsemmi datat 26 ta’ Ottubru 2011.

Semghet ix-xhieda ta’ **Dr Stephanie Zarb**, rappresentant tal-Melita p.l.c., mogtija fid 19 ta’ Novembru 2014.

Rat illi fit 28 ta’ Jannar 2015, il-Qorti ddikjarat il-provi prosekuzzjoni maghluqa.

Rat illi fis seduta tal-25 ta’ Frar 2015, l-intimat ghazel illi ma jixhidx u talab lill-Qorti illi tghaddi ghas-sentenza fuq il-provi illi hemm.

Ikkunsidrat

Jirrizulta mill-provi prodotti illi l-kwerela mibghuta mill-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (Malta) hija bbazata fuq kumment illi deher bhala ‘blog post’ taht artikolu riprodott u intitolat ‘**Hunters vow action over government policy**’. Dana l-artikolu, ippubblikat fit 30 ta’ Awissu 2011, kien jghid is-segwenti:

> *“The Federation for Hunting and Conservation yesterday said it would embark on a “different course of action” over the government’s attempts to “gradually eradicate” hunting and trapping.*
>
> *The federation did not, however, spell out what that course of action might be.*
>
> *In a strongly-worded statement, it claimed that the government was “led by the nose by BirdLife Malta” and described the lack of fixed hunting seasons as a “puerile” tactic by the government.*
>
> *“The unnecessary ban on afternoon hunting in September was never endorsed by the Ornis Committee in its annual recommendations. The government simply ignores Ornis and bows to the demands of BirdLife and the German-based CABS, both of whom want to usurp the Maltese countryside for their extremist ends.”*
>
> *The criticism comes on the back of the publication of the government’s hunting and trapping policy guidelines, which banned autumn trapping and dismissed the possibility of any derogations being issued for the trapping of quail or turtle doves.*
>
> *According to the FKNK, the policy guidelines make it clear it is the government’s intention never to permit trapping for the quail and the turtle dove, to always impose the September afternoon ban, to never allow hunting in May and that it was planning further restrictions on Sundays, public holidays and even during school holidays.*

Having sent a detailed critique of these guidelines to the government, the opposition and the Ornis Committee, the FKNK was now "constrained to embark on a different course of action" and not "allow any government to remove what rightfully and legally belongs to the Maltese hunters and trappers".

Jirrizulta illi dakinhar illi gie ppubblikat fl-artikolu, ezattament fid 09.52am, sar kumment minn persuna indikata bhala 'Mr Emanuel Curmi' fejn sar is-segwenti kumment:

Now that is going to be a difficult one. The hunting lobby has resorted to just about everything. Intimidation, arsonry, vandalism, lobbying, threatening, beatings etc the list is long, to say nothing about the blatant breaking of hunting and trapping law every single day. Thinking something new and original is really going to take a lot of imagination. The Open season hasn't even started and it is shooting galore already in case nobody noticed.

Ikkunsidrat

Jirrizulta illi fl-1 ta' Settembru 2011, il-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (Malta) ghamlet kwerela kontra l-Pulizija fejn talbu sabiex jittiehdu passi kontra l-awtur tal-kummenti fuq indikat, li ismu ma kienx maghruf.

Jirrizulta illi l-akkuzat, fil-11 ta' Awissu 2012, gie arrestat mill-Pulizija u, mistoqsi jekk attwalment kienx ippubblika il-kumment li dwaru qed jilmentaw il-kwerelanti, huwa ammetta fi stqarrija illi kien hu li ghamel il-kumment. Huwa gie rappurtat illi, dwar dak minnu allegat, stqarr illi:

"Dawk huma affarjiet li naqrawhom ta' kulljum f'rapporti u ahbarjiet fuq il-gazzetti u fuq esperjenza personali"

Dwar x'provi kellu, huwa jghid li gej:

"Iva, Dawn l-incident huma kollha ddokumentati f'rapporti tal-media u sahansitra videos fuq Youtube. Apparti minn hekk, dikjarazzjonji tal-FKNK jaghtu hjiel car ta' din id-dikjarazzjoni"

Dwar jekk qatt kellux xi problema mal-Federazzjoni, huwa stqarr li gej:

"Xejn, pero gieli kont birdwatching u gejt intimidat minn kaccaturi. Jigu fuqi u jghiduli biex ma nidholx avolja tkun art pubblika. Dawn huma sahansitra fuq suggerimenti li ghamlu l-FKNK lill membri taghhom"

Ikkunsidrat

Jirrizulta, mix-xhieda tar-rappresentanti tal-kwerelanta, ossija Joe Perici Calascione u Lino Farrugia, bhala President u Segretarju rispettivament tal-Federazzjoni, illi l-huma jikkontendu li jirrappresentaw tmenin fil-mija (80%) tal-kaccaturi kollha ta' Malta u Ghawdex u ghalhekk, stante illi l-akkuzat, fil-kumment tieghu, irrifera ghall "hunting lobby" u stante illi l-artikolu kien jirrigwarda azzjoni illi l-Federazzjoni kienet ser tiehu kontra l-Gvern tal-gurnata, huma

kienu hassew illi tali kummenti kienu diretti lejn l-Federazzjoni u kien ghalhekk illi hassewhom malafamati bil-kontenut ta' dak li qal.

Jirrizulta mill-provi illi, apparti mill-FKNK, hemm ukoll ghaqdiet ohra bhalma huma Kaccaturi San Uberto, Dilettanti Senter Gabjuni u Moviment Kaccaturi u Nassaba li maghhom hemm kaccaturi affiljati.

Jirrizulta ammess mill-kwerelanti illi l-kummenti ta' l-akkuzat seta kienu intiz ghall kaziijjet izolati li fihom kienu involuti kaccaturi.

Ikkunsidrat

Kif jinghad f'Gatley on Libel and Slander

> *"The question is whether the libel designates the plaintiff in such a way as to let those who knew him understand that he was the person meant. It is not necessary that all the world should understand the libel; it is sufficient if those who knew the plaintiff can make out that he is the person meant...i.e. meant by the words employed...There is abundant authority to show that it is not necessary for everyone to know to whom the article refers; this would in many cases be an impossibility; but if, in the opinion of a jury, a substantial number of persons who knew the plaintiff, reading the article, would believe that it refers to him, in my opinion an action, assuming the language to be defamatory, can be maintained; and it makes no difference whether the writer of the article inserted the name or description unintentionally or by accident, or believing that no person existed corresponding with the name or answering the description. If upon the evidence the jury are of opinion that ordinary sensible readers, knowing the plaintiff, would be of opinion that the article referred to him, the plaintiff's case is made out...It is the circumstances in which a statement is made which give it colour, meaning and thrust: they may combine to make a statement, seemingly innocuous in itself, an infamous defamation of a person who is caught and pointed to by those circumstances...Even if the ordinary member of the public who reads a defamatory statement in its context would not regard it as referring to the plaintiff, nevertheless it will be held to refer to the plaintiff if it has been published to readers who as a result of special facts or special knowledge would understand it as so referring. The question is "how ordinary sensible men having the special knowledge proved could understand the words complained of...."*

Kif jinghad fil-ktieb ta' Carter Rock "Libel and Slander":

> *The sole relevant question in every case is: Would reasonable persons understand the words to refer the particular plaintiff? Factors to be considered in deciding this question are, as Lord Porter pointed out in Knupffen's case " the size of the class, the generality of the charge and the extravagance of the accusation".*

Ikkunsidrat

Jirrizulta ben ippruvat illi l-kumment illi ghadda l-akkuzat kien kumment li sar wara li gie pubblikat artikolu li fih intqal illi l-kaccaturi kienu ser jiehdu azzjoni kontra decizjoni mehudha mill-Gvern.

Jirrizulta wkoll illi, apparti l-kumment ta' l-akkuzat, kien hemm diversi kummenti ohra illi saru dwar dak li inkiteb fl-artikolu.

Jirrizulta wkoll illi, ghall-kumment illi ghamel l-akkuzat, u li dwaru l-kwerelanti hassuhom malafamati, kien hemm erbgha persuni illi kkummentaw dwar il-konkluzjonijiet minnu milhuqa, u, dawna l-persuni kollha huwa l-ahjar prova sabiex il-Qorti tara u tifhem kif il-qarrej komuni seta fehem il-kumment meritu tal-kawza odjerna.

Jirrizulta car, mill-kummenti illi saru ghall-asserzjoni ta' l-akkuzat, li dawna l-persuni fehmu li l-kummenti illi kien ghamel l-akkuzat kienu indirizzat lejn kaccaturi u nassaba ("hunters and trappers") u minn imkien ma jirrizulta li xi hadd fehem illi l-kummenti kienu intizi lejn il-Federazzjoni innifisha.

Jirrizulta car illi l-kumment ta' l-akkuzat jaghmel referenza ghall "hunting lobby" u f'ebda mument ma qatt saret referenza diretta lejn l-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (Malta).

Jirrizulta ben ippruvat, anke mix-xhieda tar-rappresentanti tal-Federazzjoni kwerelanta stess, illi, apparti l-Federazzjoni, kien hemm diversi ghaqdiet ohra li kienu jirrappresentaw lill-kaccaturi f'Malta u Ghawdex, u ghalhekk, ghalkemm il-Federazzjoni kwerelanta tikkontendi illi hija attwalment il-"hunting lobby" li ghaliha jirreferi l-akkuzat, di fatti, il-'hunting lobby' ma hijiex biss il-Federazzjoni, izda hemm ghaqdiet u entitajiet ohra illi, b'xi mod jew iehor, jippromuovu l-kacca u l-insib.

Ghalhekk, anke abbazi tal-kummenti sussegwenti li jidher li saru fuq is-sit elettroniku www.timesofmalta.com wara l-kumment ta' l-akkuzat, il-Qorti hija konvinta illi l-akkuzat, fl-artikolu tieghu, ma riedx jattakka direttament lill-FKNK, izda kien qieghed jaghmel referenza ghall kaccaturi u nassaba illi jiksru il-ligjiet, u ghalhekk ebda referenza ma kienet qed issir lill-Federazzjoni kwerelanta.

Abbazi tal-konsiderazzjonijiet fuq maghmulha, l-akkuzi kif maghmulha ma gewx ippruvati u ghalhekk

Tillibera lill-akkuzat mill-akkuzi kollha migjuba kontra tieghu.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur