IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum it-3 ta' Lulju, 2025

Rikors numru: BCT/25/2025 CV

Membri:

Avukat Christopher L. Vella L.L.B., Dip. Not., LL.D.(Melit.)
Perit Samuel Formosa B.E.&A.(Hons), M.Sc. Arch.(Lond), M.Sc.(Env.Pln.& Mgt.), A.&C.E.
Inġ. Johan A. Psaila B. Eng. (Hons.), Pg. Dipl. (Brunel)

Jurgen Borg

vs

Awtorità tal-Bini u l-Kostruzzjoni

It-Tribunal

Ra r-rikors tal-appell ippreżentat mill-appellant fejn huwa ppremetta u talab is-segwenti:

> *Reference is made to the subject fine (also attached), where we are hereby submitting a formal appeal for the consideration of the Building and Construction Tribunal based on the following reasons:*
> *1. Lack of Sufficient Notification and Due Process*
> *On 5th March 2025 at 09:53, Mr. Faure (from the BCA Enforcement and Compliance Team) informed my father, the owner of the site, that bricks should not be placed on the pavement in front of the site. However, at no point was it communicated that a fine would be issued, either before or after the situation was rectified.*
> *2. Lack of Legal Basis for the Fine (Safe Passage Was Always Maintained)*

Regulation 7 of the Second Schedule of S.L.623.08 specifies that a safe passage must be ensured for pedestrians. In this case, a safe passage of approximately 10 metres remained available, as shown in the attached photographic documentation (Image: Safe and Clean Passage Way).

Given that pedestrian access was never obstructed, the fine has no factual or legal basis.

3. Lack of Sufficient Reasons for the Fine

The decision to issue this fine lacks adequate reasoning. In this case:

□ The fine was issued under vague and unspecified grounds of "lack of safe passage in front of the site", without an explanation of how pedestrian access was obstructed.

□ No specific evidence of obstruction was provided at the time of issuance.

□ The only clarification was given after we inquired about the reason (attached email correspondence).

This lack of reasoning prevents a fair challenge to the fine and suggests arbitrary decision-making.

4. Ownership of the Area in Question

As indicated in the attached Lands Department document, the section of the pavement where the bricks were temporarily placed is private property and not public land.

This matter was also immediately brought to Mr. Faure's attention, when my father sent a photo of a sign issued by Attard Local Council (also attached), confirming that this land is private property. Therefore, the enforcement action lacks jurisdictional authority.

5. Immediate Compliance and Good Faith

Despite the above, my father, demonstrated full cooperation and removed the bricks within a few hours of being notified.

Furthermore, photographic evidence of compliance was submitted on the same day via WhatsApp to Mr. Faure (99165497). The absence of any further communication from Mr. Faure led us to reasonably believe that the matter was resolved. The imposition of a fine after compliance contradicts principles of fair and proportional enforcement.

6. Unclear Enforcement Grounds and Third-Party Construction Activities

On the same day as the inspection, a crane belonging to an adjacent, unrelated

construction site was present, as shown in the attached photograph (Image: Safe and Clean Passage Way). If the fine was based on a general observation of obstruction, rather than clear attribution of liability, this further undermines the legitimacy of the penalty.

Conclusion and Request for Revocation

In light of the above, we respectfully submit that:

1. The fine was issued without prior notice or an opportunity to address concerns, in violation of natural justice principles.

2. The fine lacks sufficient reasoning, as no clear evidence or explanation was provided before or at the time of issuance, making it procedurally unfair and arbitrary.

3. The bricks were placed on private property, not public land, which falls outside the scope of enforcement.

4. A safe passage was always ensured, as per Regulation 7 of the Second Schedule of S.L.623.08.

5. The bricks were removed immediately upon notification, demonstrating good faith and compliance.

6. The presence of third-party construction activities may have influenced the enforcement decision, making the attribution of liability unclear.

Given these facts, I formally request that the Building and Construction Tribunal review and revoke the fine in the interest of fair and just enforcement, as well as lift the 'Stop Works Notice'. Should further clarification or documentation be required, we are prepared to provide additional evidence during the appeal hearing.

We appreciate your time and consideration of this matter.

Best regards,

Jurgen Borg

Ra r-risposta tal-Awtorita' li permezz tagħha wieġbet u eċċepiet is-segwenti:

1. Illi l-Awtorità appellata qegħda umilment tissottometti li kwalunkwe deċiżjoni meħuda kienet in konformita' ma dak rikjest mil-liġi, u kwindi korretta f'kull aspett;

2. Illi qeghdin jkunu anessi Trial of Event (Dok A) u ritratti mertu talkaz (Dok B);

3. Illi jidher ampjament car li mir-ritratti provduti jidher li hemm ksur fejn si tratta L.S. 623.08;

4. Għaldaqstant fuq dak suindikat, l-Awtorita' appellata qiegħda umilment titlob lil dan l-Onor. Tribunal sabiex tiċħad l-appell odjern;

5. Salv eċċezzjonijiet ulterjuri.

Ra l-atti u d-dokumenti kollha.

Ra l-verbali tas-seduti kollha li seħħew quddiem it-Tribunal.

Ra d-deposizzjonijiet tax-xhieda kollha li tressqu quddiem it-Tribunal.

Ra li l-partijiet iddikjaraw l-istadju tal-provi tagħhom magħluq.

Semgħa it-trattazzjonijiet finali tal-partijiet.

Ra li l-kawża tħalliet għall-llum għas-sentenza.

Ikkunsidra:

L-appell odjern jitratta avviż ta' infurzar maħruġ mill-Awtorita' intimata nhar is-6 ta' Marzu, 2025 li permezz tiegħu ġiet imposta penali amministrattiva fl-ammont ta' ħames mitt ewro (€500). Il-bażi tal-penali in kwistjoni hija li kien hemm '*Nuqqas ta' passaġġ sikur quddiem is-sit'*.

In sostenn tal-appell, xehed ħu l-appellant, Bjorn Borg, li enfasizza li l-parti fejn hemm l-skip huwa proprjeta' privata *stante* li huma s-sidien tagħha. Fid-dawl ta' dan hu jargumenta li l-posizzjoni fejn qiegħed il-bricks ma jinstabx fuq il-pavimentar iżda jinstab bħala parti mis-Sit. Ix-xhud jargumenta li huma għamlu ċert li minkejja t-tqegħid tal-materjal, xorta jassiguraw li jkun hemm passaġġ sikur u dan billi kien hemm passaġġ ta' madwar erba' metri mis-siġra sat-tarf tal-bankina. Hu żied jgħid li huma mill-ewwel ikkooperaw.

Sandro Faure, bħala rappreżentant tal-Awtorita' intimata xehed ukoll f'dawn il-proċeduri u kkonferma li l-bażi tal-multa huma t-tliet filati bricks li kien hemm quddiem is-Sit. Ix-xhud jikkonferma li l-bankina kienet ostakolata nofsha permezz tal-bricks. Huwa ikkonferma ukoll li t-tower crane ma kellu xejn x'jaqsam mal-appellant peress li kien qed jaqdi s-sit adjaċenti. Finalment ix-xhud ikkonferma li mal-mument li ta l-istruzzjonijiet lill-appellant il-brikks tneħħew u ra kooperazzjoni sħiħa da parti tal-appellant.

It-Tribunal fela il-provi u r-ritratti preżentati mill-Awtorita' intimata.

L-artiklu rilevanti għal din il-penali huwa artikolu 7 tat-Tieni Skeda tal-Avviż Legali :

7. Il-klijent għandu jiżgura li jkun hemm passaġġ sikur quddiem is-sit. Meta jkun hemm ħtieġa ta' ostruzzjoni tal-bankina pedonali waqt ix-xogħlijiet u tkun approvata mill-Kunsill Lokali, għandha tiġi pprovduta bankina pedonali temporanja li fl-ebda ħin m'għandha tkun ostakolata

It-Tribunal wara li qies ix-xhieda mressqa u r-ritratti preżentati mhux iqis li kien hemm nuqqas ta' passaġġ sikur quddiem is-sit. It-Tribunal jinnota li l-bankina hija wiesa' biżejjed u jidher ċar li kien hemm passaġġ pedonali komdu li bl-ebda mod ma ostakola it-traffiku ta' individwi li riedu jgħaddu bir-riġel minn fuq il-bankina in kwistjoni. Lanqas ma jidher li kien hemm xi periklu bit-tqegħid tal-bricks in kwistjoni.

Għaldaqstant it-Tribunal ser jgħaddi sabiex jikkonferma l-appell odjern u jirrevoka l-avviż maħruġ mill-Awtorita' intimata nhar is-6 ta' Marzu, 2025.

Decide

Għaldaqstant għal dawn ir-raġunijiet kollha msemmija hawn fuq, it-Tribunal qiegħed jilqa' l-appell u jirrevoka l-avviż maħruġ mill-Awtorita' tal-Bini u l-Kostruzzjoni ta' nhar is-6 ta' Marzu, 2025 u sussegwentament qed jirrevoka ukoll l-penali amministrattiva fl-ammont ta' ħames mitt ewro imposta mill-Awtorita' fl-istess avviż.

********** VERU KOPJA TAL-ORIĠINAL **********

Dr Christopher L. Vella	**Perit Samuel Formosa**	**Inġ. Johan A. Psaila**
Chairperson	Membru	Membru