IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum il-15 ta' Jannar, 2026

Rikors numru: BCT/51/2025 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)

Richard Muscat Azzopardi

vs

Awtorita' tal-Bini u l-Kostruzzjoni

Ra r-rikors tal-appell ippreżentat mill-Perit Kurt Vella għan-nom tal-appellant fejn huwa premetta u talab is-segwenti:

Dear Members of the Tribunal,

I am writing to formally appeal the €1,000 administrative fine imposed on Mr. Richard Muscat Azzopardi for the following alleged contraventions under SL 623.06 of the Laws of Malta:

1. *Failing to submit the required documentation*
2. *Commencing works without written approval from BCA*

1. *Submission of Documentation*

The documentation in question refers to:

- *The licensing status of the appointed contractor (responsibility form)*
- *The inclusion of document references in the insurer's declaration (insurance)*

I would like to clarify that in both cases; the relevant documentation was submitted correctly from our end. The alleged failure stems from minor administrative discrepancies, which appear to be the result of evolving internal requirements from BCA. Further details are provided below:

1.1. Responsibility Form

In Document 109a dated 6th December 2024, it was noted that the nominated mason was not licensed and the contractors were not registered with the Authority. In Document 115a dated 17th July 2025, the issue concerned the absence of license numbers for the demolition contractor.

It is important to note that during this period (late 2024 to early 2025), BCA was undergoing changes to its contractor registration system. The appointed contractor, Mr. Shawn Portelli (ID: 025987G), held a valid mason's licence for 2023 and was awaiting its renewal at the time (see Doc. 110a). Regarding his contractor status for demolition and construction, he was similarly awaiting registration. However, it appears that the process for demolition registration did not proceed due to an incorrect email address in BCA's records.

Moreover, the works approved under the demolition method statement are minor in nature as per the definitions outlined in SL 623.09. These include aperture alterations, formation of a beamed opening, and replacement of damaged xorok. Such scope of work arguably does not require a registered demolition contractor under the relevant legislation.

1.2. Insurance

Document 109a (6th December 2024) highlighted the need to include correct dates in Section 2 of the insurance certificate, while Document 115a (17th July 2025) requested more specific referencing, such as "minute numbers" of method statements and any appendices/addenda.

A valid insurance certificate was in fact submitted (see Docs. 104d and 104e). The evolving and somewhat arbitrary requirements regarding document references and date formatting-though understood in principle-should be formally reflected in the pro-forma templates used by BCA. These expectations should also be communicated through official circulars to all stakeholders. Without such clarity, it becomes challenging to anticipate BCA's requirements, particularly when they extend beyond what is stipulated in legislation.

Further complicating matters, attempts to seek clarification by phone are consistently met with callback requests. Unfortunately, these callbacks are often received at unpredictable times and are not repeated if missed, making it extremely difficult to obtain timely feedback.

2. *Commencement of Works Without Written Approval*

With respect to the allegation of works commencing without BCA's written approval, I refer to my correspondence at Document 112a dated 17th January 2025. I phoned the Authority where I was informed by an official that the documents had been approved in late November 2024.

While I regret that I do not have a record of this phone call nor the name of the official I spoke with, I did communicate this information to the client via message on 30th January 2025. Unfortunately, a formal response to Doc. 112a was never received until the Stop Works notice issued under Doc. 113a on 16th July 2025. By that point, works had commenced on site around early June 2025, in good faith and based on the verbal assurance received.

Conclusion

In light of the above, I respectfully request that the €1,000 fine be reconsidered and withdrawn. The issues raised appear to be the result of evolving internal procedures at BCA and not of deliberate non-compliance. Documentation was submitted in good faith and, to the best of our knowledge, met the requirements in place at the time. Furthermore, the commencement of works was based on verbal confirmation from a

BCA official, and at no point was there an intention to bypass the Authority's procedures.

I trust that this explanation provides a clear and reasonable account of the circumstances and invite your understanding and fair judgment in reviewing this appeal.

Ra r-risposta tal-Awtorita' appellata li permezz tagħha hija eċċeppiet 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 qegħdin jkunu annessi "Trail of Event" immarkat bħala DOC BCA 4 (flimkien ma DOC 1 sa DOC 5), kif ukoll ritratti b'dati differenti annessi u immarkati bħala DOC BCA 1, DOC BCA 2 u DOC BCA 3;*
3. *Illi hekk kif jidher mil-anness DOC BCA 4, l-Awtorita' imxiet korrettament meta imponiet l-penali minħabba nuqqas ta' dokumentazzjoni;*
4. *Għaldaqstant fuq dak suindikat, l-Awtorita' appellata qiegħda umilment titlob lil dan l-Onor. Tribunal sabiex tiċħad l-appell odjern;*
5. *Salv eċċezjonijiet 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 jittratta avviż tal-Awtorita' appellata maħruġ nhar it-22 ta' Lulju, 2025 li permezz tiegħu ġie mwaqqaf kwalunkwe żvilupp ġewwa s-sit 8, Triq il-Knisja, Żebbuġ, Għawdex u kif ukoll l-imposizzjoni ta' elf ewro (€1,000) penali amministrattiva peress illi skond l-Awtorita' seħħew xogħliiet ta' kostruzzjoni mingħajr l-approvazzjoni tal-istess Awtorita' u mingħajr ma kienu ġew sottomessi d-dokumenti kollha meħtieġa.

Il-Perit tal-Appellant, Kurt Vella, preżenta għadd ta' rapporti u anke l-verżjoni tiegħu fit-tul tramite l-appell innifsu. Minn dawn jirriżulta b'mod ċar li x-xogħlijiet kienu fil-fatt seħħew u li awtorizzazzjoni għal dan ma kienx hemm. Il-Perit, iżda pero' jiġġustifika dan billi jgħid li ż-żewġ raġunijiet li għaliha ma ngħatawx l-approvazzjoni kienu minħabba li l-liċenzja tal-bennej ma kinitx ġiet imġedda u kif ukoll minħabba li l-assikurazzjoni ma ġietx approvata bil-miktub. Il-Perit Kurt Vella jgħid li dan ġie kkawżat frott ta' *misunderstanding* in vista' tal-fatt li fuq telefonata huma ngħataw l-informazzjoni li d-dokumentazzjoni kollha kienet kif mitlub u ħames xhur wara bdew bix-xogħlijiet.

L-Awtorita' ħarket lil Christopher Mercieca sabiex jixhed li kkonferma li wara li l-Awtorita' ġiet notifikata b'ittra uffiċjali kien irriżulta li kienu seħħew xogħlijiet fuq is-sit mingħajr l-awtorizzazzjoni meħtieġa. Hu jgħid ukoll li l-Perit Kurt Vella ġie mitlub jippreżenta dikjarazzjoni li m'hemmx periklu għal terzi u din għamilha. Mill-assjem tal-provi jirriżulta li dawn ġew preżentati.

It-Tribunal jinnota li l-partijiet qegħdin jaqblu fuq il-fatti kif seħħew u ma jirriżultax li hemm kontradizzjoni bejn dak li qed jgħid l-appellant u bejn dak li sostna r-rappreżentant tal-Awtorita'. Għaldaqstant it-Tribunal ser ikun qed jgħaddi sabiex jiddetermina jekk meqjus il-fatti kif preżentati, kinitx korretta l-Awtorita' li timponi l-ordni *de quo.*

Illi kif it-Tribunal diga` kellu l-opportunita` li jiddeciedi f'tali rigward ghandu jigi nutat li r-reg 2(1) tal-Sl. 623.06 kienu jipprovdi kjarament li l-iskop tal-istess Regolamenti huwa dak li jipprovdi ghal mizuri intizi biex jimminimizzaw il-hsara lill-proprjeta` ta' terzi jew korrimenti kawza tax-xogholijiet:

(1) L-iskop ta' dawn ir-regolamenti hu li jassikuraw li qabel ma jinbeda xi tip ta' xogħol ta' demolizzjoni, skavar jew kostruzzjoni, jitħejjew metodoloġiji li huma teknikament

siguri sabiex jiġi minimizzat ir-riskju ta' ħsara lil proprjetà ta' terzi persuni jew korriment lil persuni li jistgħu jiġu kkawżati mix-xogħlijiet proposti.

Ir-Regolament 4 tal-istess LS 623.06 jipprovdi wkoll testwalment li:

Dawn ir-regolamenti huma applikabbli għal kwalunkwe xogħol ta' kostruzzjoni li jinvolvi:
(a) skavar, li fiż-żona affettwata tiegħu jinkludi proprjetà ta' terzi; jew
(b) id-demolizzjoni jew tneħħija ta' kull struttura eżistenti, jew bejt jew struttura li tmiss mal-limiti ta', jew biswit eżatt ta', jew sottostanti jew sovrastanti xi proprjetà ta' jew okkupata minn terzi persuni jew xogħol ta' ingaljar ma bini eżistenti; jew
(ċ) il-bini ta' sulari addizzjonali jew ħitan ta' sapport jew strutturi fuq xi proprjetà ta' jew okkupata minn terzi persuni; jew
(d) il-kostruzzjoni ta' bini ġdid jew sulari addizzjonali biswit proprjetà eżistenti ta' terzi persuni.

Mill-provi prodotti jirriżulta ampjament pruvat li x-xogħol li kien qed isir kien xogħol ta' kostruzzjoni kif imifisser mil-liġi u liema xogħol jirrikjedi l-awtorizzazzjoni ċara u bil-kitba tal-Awtorita' biex ikun jista' jibda. Dan jirrikjedi mhux biss l-awtorizzazzjoni iżda anke s-sottomissjoni ta' dokumentazzjoni, li kruċjali fosthom hija l-metodoloġija tax-xogħol sottomessa u approvata mill-Awtorita'. Il-liġi ma tipprovdi għall-ebda eċċezzjoni, ikun kemm ikun żgħir ix-xogħol rikjest.

Fil-fatt ir-Reg 7(12) tal-LS 623.06 jipprovdi testwalment is-segwenti:

(12) Il-bidu ta' kwalunkwe xogħol ta' skavar, demolizzjoni jew kostruzzjoni jistgħu jidħlu fis-seħħ biss wara li l-Awtorità tal-Bini u l-Kostruzzjoni tagħti approvazzjoni bil-miktub.

It-Tribunal jemmen li din il-kwistjoni ġiet ikkawżata frott ta' nuqqas ta' komunikazzjoni mill-għadd ta' persuni involuti fil-proġett. Minkejja dan, il-liġi hija ċara u l-appellant naqas bis-sħiħ f'li jagħmel ix-xogħlijiet, żgħar kemm huma żgħar, mingħajr l-awtorizzazzjoni tal-Awtorita'. B'hekk huwa evidenti li l-appellant għandu jinżamm responsabbli ta' dan in-nuqqas.

Għar-rigward tal-ammont tal-penali it-Tribunal iqis li dan għandu jiġi ridott. Tenut kont tal-entita' tal-proġett, il-fatt li kif tenna r-rappreżentant tal-Awtorita' stess, il-Perit Kurt Vella ikoopera bis-sħiħ u tenut kont ir-raġunijiet miġjuba mill-appellant, il-penali amministrattiva imposta għandha titnaqqas għall-ammont ta' ħames mitt ewro (€500).

Decide

Għaldaqstant it-Tribunal qiegħed jilqa' l-appell in parte sakemm kompattibli mas-suespost u filwaqt li jirriduċi l-ammont tal-penali amministrattiva għal ħames mitt ewro (€500) qiegħed jikkonferma l-bqija tal-ordni tal-Awtorita' appellata maħruġa nhar it-22 ta' Lulju, 2025.

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

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