IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum il-15 ta' Jannar 2026

Rikors numru: BCT/78/2025 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)

Nazzarenu Camilleri

vs

L-Awtorita' tal-Bini u l-Kostruzzjoni

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

To whom it may concern,

With reference to the contravention notice issued under Subsidiary Legislation 623.08, concerning the alleged "nuqqas ta' tindif immedjat, knis, hasil jew tneħħija ta' Trab", I wish to respectfully submit the following explanation and appeal:

1. Timing of Photographs and Cleaning

The photographs presented in connection with the alleged offence were taken while workers were still on site carrying out their duties (during the morning).

□ Immediately after their departure, the area was fully cleaned, and all dust and materials were removed.
□ Therefore, the images in question do not accurately reflect the final condition of the premises after completion of works.
□ An email received Shanika Haidon from the BCA Enforcement and compliance team on 30/09/2025 clearly stated that whilst works were on going, I was obliged to clean the common area from dust and other materials which I have clearly done.
□ What is mostly showing in the photos taken by BCA enforcement officials on 9 October 2025 is mostly fine dust generated from the same morning the photos were taken.
□ I was always my intention to carry out a deep cleaning of the common area once the works have been finalised.
□ On days when we used the chaser and jigger for a prolonged period of time, we always ensured that the stairs and railings were thoroughly washed.
□ Please refer to Annex A for photographs taken after the clean-up carried out on 9 August 2025 immediately following the completion of the water and electricity works.
□ It is clearly visible that the stairs and railings are spotless and that a full clean-up was performed from top to bottom.

2. Unauthorized Use of Common Areas

□ It should also be noted that all the furniture and frames placed in the common areas of the building were installed without my consent or authorization.
□ This constitutes an unauthorized use of common property, which is contrary to Maltese law.
□ Under the Condominium Act (Chapter 398 of the Laws of Malta): "No portion of the common rights may be divided or disposed of without the consent
of all the condominium owners."

□ This means that no person may place or alter items in common areas without the agreement of all co-owners.
□ Such actions are therefore in breach of the rights of other residents and of the provisions regulating common ownership.
□ I would also like to bring to your attention the condition of the common area prior to the commencement of our works.
□ As shown in Annex B, the front door was covered in dust on various dates during September and October 2024, clearly indicating that it had not been properly cleaned or maintained for several years.
□ This demonstrates that the general state of cleanliness in the common areas was already unsatisfactory before our intervention.
□ As further evidence, Annex C includes two photographs of the railing located at the top part of the common area.

□ The first photograph, taken on 11 April 2025, shows the railing covered in bird droppings prior to the commencement of works.
□ The second photograph, taken on 9 August 2025 after I personally cleaned the area, clearly demonstrates that the railing was restored to a clean and well-maintained condition.

3. Appeal of Fine

□ In view of the above, I formally appeal the fine, as it does not reflect the real facts of the situation.
□ The photographs were taken in the morning while the workers were still present, which provides a misleading and unjust representation of the circumstances.
□ The area was duly cleaned immediately following the completion of the work.
□ I therefore respectfully request that the fine be reconsidered and revoked in light of the true facts presented above.
□ A fine of Eur500 is in my opinion excessive and unwarranted given that I have

always tried my best to keep the inconvenience to the minimum.

Thank you for your attention and understanding.
Yours faithfully,

Nazzareno Camilleri ID no. 752861M

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 preliminarjament l-esponenti Awtorita' tissoleva il-fatt li fejn si tratta liġijiet li ma jinkwadrawx fil-Kap 623, l-Awtorita' ma għandha l-ebda poter legal biex taġixxi;*
3. *Illi skont ir-regolamenti 623.08, kull min jkun iqegħed jagħmel xogħol taħt l-istess regolamenti jrid jassigura li ma jikkawżax, fost loħrajn inkonvenjent lit-terz, hekk kif ġara f'dan il-każ;*
4. *Illi qegħdin jkunu annessi u mmarkati bħala DOK A trial of event u DOK B sett ta' ritratti, in sostenn tad-deċiżjoni tal-Awtorita';*
5. *Għaldaqstant fuq dak suindikat, l-Awtorita' appellata qiegħda umilment titlob lil dan l-Onor. Tribunal sabiex tiċħad l-appell odjern;*
6. *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:

Dan l-appell jittratta penali amministrattiva maħruġa fil-konfront tal-appellant datata id-9 ta' Ottubru, 2025 ġewwa Flat 2, Żiemel Flats, Triq il-Magħsar, Żabbar. Il-bażi tal-penali amministrattiva hija:

Nuqqas ta' tindif immedjat, knis, ħasil jew tneħħija ta' trab

In sostenn tal-avviż tagħha, l-Awtorita' preżentat dokument titolat 'Trail of Events' u kif ukoll numru ta' ritratti tas-sit. In vista' li l-Appellant ikkonferma r-ritratti meħudin u preżentati mill-Awtorita', l-Awtorita' ma resqet ebda xhud u straħet fuq id-dokumenti preżentati.

L-Appellant ressaq lill-ibnu sabiex jixhed, Mark Camilleri, li kkonferma li fiż-żmien li kienu qed isiru l-ilmenti kienu qegħdin jagħmlu x-xogħlijiet. Huwa kkonferma li kienu jagħmlu l-aħjar possibli li jżommu nadif anke billi jikinsu iżda mhux dejjem kien ikun possibli li jżommu kullimkien nadif minħabba n-natura tax-xogħol. Huwa jgħid li anke mir-ritratti preżentati mill-Awtorita' jirriżulta li l-ħmieġ li qed issir referenza għalih huwa biss għabra li tiġi kkawżata mill-kostruzzjoni.

Fid-dawl ta' dan kollu it-Tribunal ser jibda biex jagħmel referenza għal artikolu 6 tal-Ewwel Skeda tal-Leġislazzjoni Sussidjarja 623.08 li jipprovdi:

6.Is-segwenti faċilitajiet u miżuri adegwati għandhom jittieħdu sabiex jiżguraw li s-sit u l-prossimità immedjata tiegħu jinżammu ndaf:

(a)kwalunkwe skart jew debris għandu jinżamm fuq is-sit u jintrema ġo reċipjenti magħluqa ta' l-iskart sabiex jiġi evitat li dawn jinfirxu barra mis-sit għal ġo kwalunkwe żona pubblika bir-riħ, xita jew xi movimenti oħra relatati mal-proċess tax-xogħlijiet;

(b)ix-xogħlijiet m'għandhom joħolqu l-ebda rimi ta' prodotti tat-tindif, żebgħa, żjut, materjal ieħor li jniġġeż, jew skart perikoluż fis-siti pubbliċi jew fis-sistemi ta' drenaġġ jew fil-baħar;

(ċ)tindif immedjat ta' materjal relatat max-xogħlijiet li seta' waqa jew tniġġiż;

(d)knis, ħasil jew tneħħija bil-vacuum ta' trab mit-triq;

(e)pits fejn isir il-ħasil, miksers tal-konkos jew tjun u postijiet li jżommu l-kimika għandhom jiġu lokalizzati 'l bogħod minn sistemi ta' drenaġġ u kanali tal-ilma jew proprjetà ta' terzi; u

(f)qabel kwalunkwe moviment ta' vetturi mis-sit ta' kostruzzjoni għal fuq kwalunkwe żona pubblika, dawn għandu jkollhom ir-roti maħsulin minn kull ħmieġ, trab jew xi materjal ieħor li jista' jinġarr fuq żona pubblika u jaqa' fuqha.

Minn dak supraċitat huwa evidenti li huwa s-subinċiż (ċ) li huwa rilevanti għall-proċeduri odjerni. Kif diġa esprima ruħu f'okkazzjonijiet preċedenti, it-Tribunal jifhem li l-intenzjoni tal-leġislatur wara dawn il-provvedimenti huwa mmirrat sabiex kwalunkwe kostruzzjoni toħloq l-anqas inkonvenjent possibli għal terzi u utenti taż-żoni tal-madwar. B'hekk huwa ċar li kwalunkwe żviluppatur għandu l-obbligu li filwaqt li jagħmel ix-xogħlijiet li jkun awtorizzat li jagħmel, dan jagħmlu billi jżomm iż-żona nadifa. Minkejja dan it-Tribunal japprezza ukoll li tul ix-xogħlijiet, ċertu ħmieġ jista' jiġi kkawżat bħala riżultat tal-istess xogħlijiet u dan huwa inevitabbli. Il-leġislatur stess jirikonoxxi dan fejn jgħid li għandu jkun hemm tindif ta' materjal li "*seta' waqa".* B'hekk it-Tribunal ma jqisx li l-liġi qed tippretendi li ma jiġix kreat ħmieġ kawża tal-kostruzzjoni iżda li fejn dan isir, l-iżviluppatur jara li dan jiġi mnaddaf. It-Tribunal ma jqisx li huwa prattiku u raġnevoli li jiġi mistenni li xogħlijiet ta' kostruzzjoni ma jikkreawx xi forma ta' ħmieġ. Lanqas l-liġi ma tippretendi hekk stante li dak li tippretendi l-liġi huwa li jkun hemm tindif immedjat.

It-Tribunal, wara li fela l-provi prodotti u ra x-xhieda ta' Mark Camilleri, iqis kredibbli ix-xhieda tiegħu fejn jgħid li l-ħmieġ in kwistjoni seħħ kawża tax-xogħlijiet li kienu għadhom kif saru. It-Tribunal iqis kredibbli ukoll il-verżjoni tal-istess xhud fejn jgħid li wara li kienu lesti x-xogħlijiet sar it-tindif neċessarju u b'hekk ġie sodisfatt it-test tal-liġi fejn tirrikjedi "tindif immedjat". Fuq kollox it-Tribunal iqis li l-ħmieġ li jirriżulta mir-ritratti esebiti huwa verament minimu u jaqbel mal-appellant li dak li kien hemm huwa aktar konsistenti ma għabra, aktar milli ħmieġ u trab. Dan meqjus, it-Tribunal ma jqis li l-Appellant naqas f'xi wieħed mill-obbligi tiegħu.

It-Tribunal jifhem id-dritt ta' kull terza persuna li jilmenta, iżda pero' ma jqisx li dan id-dritt għandu jiġi abbużat u użat bħala *arm twisting* b' tali mod li dak li jkun qed jagħmel x-xogħlijiet jaqla' penali bħala vendikazzjoni ta' xi kwistjoni oħra passata. It-Tribunal qed ikun ċar f'dan ir-rigward.

Għar-rigward tal-ilment tal-Appellant dwar ħwejjeġ li kienu mpoġġija b'mod illegali, it-Tribunal ma huwiex jieħu konjizzjoni ta' dan l-ilment stante li ma taqax fil-kompetenza tiegħu.

Għaldaqstant it-Tribunal ser jgħaddi sabiex jilqa' l-appell.

Decide

Għaldaqstant it-Tribunal, għar-raġunijiet kollha msemmija hawn fuq qed jiċħad l-eċċezzjonijiet kollha tal-Awtorita' appellata u jilqa' l-appell tal-appellant u b'hekk jirrevoka l-avviż maħruġ nhar id-9 ta' Ottubru, 2025 u l-penali amministrattiva imposta fl-ammont ta' ħames mitt euro (€500).

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

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