IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum is-27 ta' April 2026

Rikors numru: BCT/26/2026/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)

Perit Robert Sarsero

vs

Awtorita' tal-Bini u l-Kostruzzjoni

It-Tribunal,

Ra r-rikors tal-appell ippreżentat mill-appellant li permezz tiegħu huwa talab sabiex id-deċiżjoni tal-Awtorita' intimata ta' nhar id-29 ta' Ottubru, 2023 tiġi revokata fl-intier tagħha. Ir-rikors tal-appellant, testwalment, jaqra kif ġej:

> *The Appellant respectfully submits:*
> *A) The appellant commenced works on site on the 7th of October 2019.*
> *B) The appellant completed all work on site on the 26th of October 2023.*
> *C) The authority issued an administrative fee against the applicant on the 29th of October 2023.*
> *D) The applicant feels aggrieved by the decision of an administrative fee and is hereby submitting this appeal.*

Together with this appeal, the appellant is submitting:
A copy of the administrative fee letter and subsequent notifications
A marked site plan A copy of all the documentation as per LS 623.06

The Planning Authority refused this application for the following reasons:

Fid-29 ta' Ottubru 2023 u fix-xhur u fis-snin ta' qabel, saru xogħlijiet ta' kostruzzjoni li mhumiex konformi mal-Legislazzjoni Sussidjarja 623.06, Senjazzjoni dwar il-bini u xogħol ta' bini MINGĦAJR Sottomissjoni ta' dokumenti kollha kif meħtieġ u MINGĦAJR I-approvazzjoni bil-miktub mill-Awtorità tal-Bini u l-Kostruzzjoni. (Tlestew ix-xogħlijiet ta' bini u ma kienx hemm Clearance mill-BCA, u ġiet intella' l-Final Completion Certificate fis-26/10/2023)

Dan l-aġir jikkostitwixxi ksur ta' Regolamenti tal-Liġi Sussidjarja 623.06 u għalhekk b'saħħa tar-Regolamenti 21 u 22 ta' l-istess Liġi, kif ukoll fuq dak li jipprovdi I-Kap. 623 tal-Liġijiet ta' Malta, qiegħda timponi fuqek Penali Amministrattiva fi-ammont ta' Elf Euro (€1,000).

Jekk ma thallasx din il-Penali Amministrattiva ta' Elf Ewro (€1,000) fi żmien ħamsa u għoxrin (25) jum minn notifika ta' din l-ittra, l-Awtorità ma ssirx ikollha ebda triq oħra għajr li tibda proceduri kontra tiegħek bil-mezzi kollha li trid il-liġi.

Il-liġi tagħtik dritt informattiv li tista' tappella din id-deċiżjoni fi żmien għoxrin (20) jum mid-data tan-notifika ta' dan l-Avviż, billi tagħmel rikors skont id-dispożizzjonijiet tal-Artikolu 44 tal-Kapitolu 623 tal-Liġijiet ta' Malta u tibgħatu b'imejl fuq appeals@bca.org.mt quddiem it-Tribunal IIIi dan I-Avviż qiegħed jinħareġ sabiex ikollu l-effetti kollha tal-liġ

The Appellant respectfully submits this appeal against the administrative fees imposed under reference BCA/P/112/2023 and sets out the following grounds in support of the request that the decision is to be overturned.

1. *The Authority has wrongly imposed administrative fees on the alleged basis of lack of documentation during the execution of construction works. This allegation is factually*

and legally incorrect. All documentation required at law was duly prepared, compiled, and retained prior to the commencement of works. At no stage was the Appellant notified of any deficiency, irregularity, or omission. The imposition of administrative fees on such grounds is therefore unfounded and procedurally improper.

2. *The Authority's assertions that works were carried out on the 29th of October and the preceding days are entirely without basis. The Appellant formally declared completion of works on the 26th of October in accordance with the applicable legal provisions. Any allegation suggesting continued work beyond that date is unsupported by evidence and contradicts the official declaration submitted by the Appellant.*

3. *The Appellant confirms that all legally required documentation was prepared and available prior to the commencement of works, including: . Commencement Notice (Doc A) . Responsibility Forms as applicable at the time (Doc B) . Engagement of the registered Building Contractor . Engagement of the Licensed Mason . Condition Reports (Doc C) . Method Statements (Doc D) . Insurance Policy . Bank Guarantees*

   This documentation is mandatory for the issuance of a valid insurance policy, thereby confirming that all requisite documentation had in fact been duly prepared prior to the commencement of works. At the outset of the project, the demolition and excavation documentation was formally submitted to lawfully initiate works. Subsequently, the documentation relating to the building phase was also presented, including the details of the licensed mason and the appointed building contractor. The method statement for the building works was likewise submitted. It is noted, however, that for unknown reasons, this document is presently not visible on the Authority's online portal. Notwithstanding the above, at no stage did the Authority indicate that any documentation was missing or deficient. Works were therefore allowed to proceed without interruption, reinforcing the Appellant's position that all statutory requirements had been satisfied and accepted at the time.

4. *The Appellant's approach throughout the project was guided by strict adherence to statutory requirements and regulatory instructions. All requested amendments were addressed diligently and without delay. Furthermore, the development permit was*

secured by two separate insurance policies and corresponding guarantees to reflect the distinct ownership structures of the two dwellings under development. This demonstrates a proactive and bona fide effort to comply with all regulatory and financial safeguards required by law. 5.

5. *Throughout the construction phase, representatives of the Building and Construction Authority were present on site on multiple occasions, and communication was maintained via email correspondence (Docs E&F). At no point during these inspections or communications was any issue raised concerning missing documentation. Works were allowed to proceed uninterrupted. The absence of any objection or notification is highly significant and strongly undermines the Authority's present position.*

6. *It is incomprehensible and unjust that administrative fees are now being imposed despite: • The preparation and availability of all required documentation. • The Authority's ongoing presence and oversight. • The absence of any prior notice alleging irregularity. • The Appellant's bona fide compliance efforts.*

   If any alleged irregularity existed, which is categorically denied, the Authority had ample opportunity to notify the Appellant during the execution of works. The failure to do so renders the subsequent imposition of administrative fees procedurally unfair and contrary to principles of legitimate expectation and good administration.

   Subsequently, in view of the afore presented, and further submissions that the appellant reserves to present, the appellant feels severely aggrieved by the administrative fees imposed under BCA/P/112/2023 and respectfully requests this Honorable Tribunal to consider this appeal, overturn the original decision and suspend the imposed fees of BCA/P/112/2023.

Ra r-risposta tal-Awtorita' appellata 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 qed jkun anness u immarkat bħala Dok BCA1 affidavit tal-uffiċjal tal-Awtorita';*

3. *Illi mid-dokumenti annessi mil-appellant u Dok BCA1 jidher li effettivament qiegħed jkun ikkonfermat li l-iżvilupp sar mingħajr l-approvazzjoni ta' l-Awtorita';*

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 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-appell odjern ġie differit għas-sentenza għal-llum.

Ikkunsidra:

L-appell odjern jittratta xogħlijiet li seħħew mingħajr ma ġew sottomessi d-dokumentazzjoni kollha rikjesti u allura mingħajr ma kien hemm l-approvazzjoni tal-Awtorita' intimata sabiex isiru x-xogħlijiet.

Xehed il-Perit Robert Sarsero li kkonferma li d-dokumenti kienu ġew sottomessi u kienu kollha fil-pussess tiegħu tul ix-xogħlijiet. Hu jikkonferma li kien rċieva awtorizzazzjoni tad-demolizzjoni u skavar iżda mhux tal-kostruzzjoni. Hu jispjega li dan ix-xogħol kien sar fl-għeqqel tal-pandemija COVID-19 u kien anke inbidel il-bennej minħabba li numru ta' ħaddiema kienu telqu mill-pajjiż. Hu jispjega li d-dokumentazzjoni ġiet preżentata u inbdew ix-xogħlijiet u sakemm tlesta kien hemm diversi korrispondenza u spezzjonijiet mal-Awtorita' appellata.

It-Tribunal jinnota li ġiet preżentata korrispondenza li kienet saret mill-Awtorita' appellata nhar is-27 ta' April, 2022 u b'hekk it-Tribunal jemmen li huwa minnhu li minkejja li l-Awtorita' kienet qed tattendi fuq is-sit fuq medda ta' numru ta' snin, din fl-ebda punt ma nġiebdet l-attenzjoni li ma kienx hemm l-awtorizzazzjoni sabiex isiru x-xogħlijiet ta' kostruzzjoni.

L-appellant stess jikkonferma li x-xogħlijiet seħħew u li awtorizzazzjoni, minkejja li kien hemm dik għal skavar u demolizzjoni ma kinitx inħarġet dik għall-kostruzzjoni.

Xehed ukoll il-Perit Jeremy Scerri li kkonferma li l-proġett ilu magħluq sa mill-2023 u li l-ewwel darba li saru jafu b'dan in-nuqqas kien propju malli rċevew l-avviż odjern.

It-Tribunal jinnota li l-partijiet qegħdin jaqblu fuq il-fatti kif seħħew u ma jirriżultax li hemm kontradizzjoni bejn dak li qed tgħid l-appellanta 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.

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.

In vista' ta' dan, it-Tribunal iqis li l-appellant naqas f'li beda u lesta x-xogħlijiet mingħajr ma kellu fil-pussess tiegħu l-awtorizzazzjoni neċessarja sabiex jagħmel dan. Minkejja dan, it-Tribunal japprezza li dan kollu seħħ minħabba malintiż u mhux għax l-appellant kellu xi intenzjoni li jevita l-proċess tal-Awtorita'. It-Tribunal japprezza ukoll li l-Awtorita' setgħet kienet aktar diliġenti u ġibdet l-attenzjoni tal-appellant malli rat li dan seħħ u l-fatt li kienet qed tikkorispondi miegħu u tagħmel spezzjonijiet mingħajr ma ġibditlu l-attenzjoni dwar dan in-nuqqas ma għenx is-sitwazzjoni.

Tenut kont ta' dawn iċ-ċirkostanzi, it-Tribunal iqis li filwaqt li l-Awtorita' ma kellhiex għażla oħra għajr li ssib lill-appellant responsabbli għal dan in-nuqqas, il-penali amministrattiva imposta għandha titnaqqas sabiex tirrifletti ir-raġunijiet provduti mill-appellant, liema ma ġewx kontestati mill-Awtorita' appellata. Fiċ-ċirkostanzi, it-Tribunal iħoss li l-penali għandha tiġi ridotta għas-somma ta' mitejn u ħamsin euro (€250).

Decide

Għaldaqstant it-Tribunal qiegħed jilqa' l-appell in parte sakemm kompattibli mas-suespost u filwaqt li jirriduċi l-ammont tal-penali amministrattiva għal mitejn u ħamsin euro (€250), qiegħed jikkonferma l-bqija tal-ordni tal-Awtorita' appellata maħruġa nhar id-29 ta' Ottubru 2023.

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