IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum is-26 ta' Mejju, 2026

Rikors numru: BCT/05/2026 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)

Raymond Galea

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 l-4 ta' Diċembru, 2025, li permezz tagħha imponiet penali amministrattiva ta' elf u ħames mitt euro (€1500) tiġi revokata fl-intier tagħha.

Ir-rikors promotur jaqra testwalment kif ġej:

Dear Chairman,
Re: Decision of the Building and Construction Agency regarding construction works carried out at 83, L-Ghabex, Triq Serafin Tanti, Zebbug (Malta) (PA 3624/21)
I write in my capacity as the appointed architect and technical representative of Mr Raymond

Galea (the "Applicant" or the "Appellant") in connection with the Administrative Penalty of one thousand five hundred Euro (€1,500) (the "Administrative Penalty" or the "Penalty") imposed by the Building and Construction Authority (the "BCA" or the "Authority") through its letter dated 4 December 2025 (reference BCA/P06/0075/2025), a copy thereof is herewith attached, relating to development permission PA 3624/21. This correspondence is submitted as a formal appeal in terms of Article 44 of the Building and Construction Authority Act (Chapter 623 of the Laws of Malta) and is addressed to the Building and Construction Tribunal accordingly.

By way of background, Development Permit PA 3624/21 was issued in January 2022. In August 2022, all substantive documentation required under the 'Avoidance of Damage to Third Party Property Regulations' (Subsidiary Legislation 623.06) was duly submitted to the Authority, including neighbour condition reports, method statements covering demolition, excavation and construction, the required bank guarantees, and Contractors' All Risks insurance. Following these submissions, and upon formal request, the Authority issued partial clearance on 12 August 2022, thereby expressly allowing works to proceed. At a later stage, the Authority requested a minor administrative clarification relating to documentation already submitted. No refusal was ever issued, no enforcement or stop action was taken, and the matter was not pursued further by the Authority. Consequently, and notwithstanding that all substantive requirements had already been satisfied, final clearance remained pending. Works were completed in an orderly and compliant manner without any intervention by the BCA. On 23 February 2024, a Final Completion Certificate was formally requested. Subsequently, on 13 January 2025, the Authority released the bank guarantee. This step, by its very nature, constitutes an administrative confirmation that no outstanding technical, safety or compliance issues were deemed to subsist in relation to the development.

In 2025, a separate development application was submitted on the same site under PA 4926/25, for which a permit was issued and fresh BCA clearance was requested. Only at this stage, more than three years after commencement of works and well after completion, the present Administrative Penalty was issued, alleging that works were carried out without the necessary clearance. The Authority's prolonged inaction, coupled with its own conduct throughout the process, including the issuance of partial clearance, the absence of any contemporaneous enforcement, and the eventual release of the bank guarantee, gave rise to a clear and legitimate

expectation that the development was being processed and accepted in good faith. It is procedurally unfair and legally untenable to retrospectively penalise the Applicant at this late stage for a matter which was administrative in nature, was never refused, and was never enforced at the relevant time. The imposition of an Administrative Penalty after completion of works, without prior warning or an opportunity to regularise or submit representations to the Authority, and in circumstances where no prejudice to public safety, third parties or regulatory compliance has arisen, is manifestly disproportionate, excessive and unjustified, and contrary to basic principles of natural justice and good administration. At all times, the Applicant acted on the basis of a valid development permit and in reliance on the Authority's clearances and conduct.

Therefore, in light of the above, and for reasons that may be brought during the proceedings before this Tribunal in terms of law, the Appellant respectfully but firmly requests this Honourable Tribunal to revoke in its entirety the decision of the BCA of the 04 December 2025 and the consequent Penalty, declare that the alleged breach be deemed procedurally and substantively unsustainable, and accordingly, upholds this appeal with costs against the Authority.

Ra r-risposta tal-Awtorita' intimata 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 qegħdin jkunu annessi u immarkata bħala Dok BCA 1 – Affidavit u Dok BCA2 – Clearance (immarkata 119a);*

3. *Illi jidher ċar li min dak sottomess l-awtorizzazzjoni sabiex issir l-kostruzzjoni qatt ma kienet ingħatat, u kwindi l-penali hija ġustifikata;*

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 ta' demolizzjoni, skavar u kostruzzjoni li seħħew mingħajr ma nkisbet l-awtorizzazzjoni mingħand l-Awtorità intimate sabiex isir skavar. Mill-provi kollha prodotti u mill-ammissjoni tal-partijiet stess, jirriżulta li l-fatti mhumiex kontestati. L-appellant kien fil-pussess ta' permess validu tal-Planning Authority (PA 3624/21) u kien preżenta d-dokumentazzjoni u l-garanziji kollha meħtieġa. Jirriżulta bl-aktar mod ċar ukoll li l-BCA stess kienet tat clearance parzjali u awtorizzazzjoni espliċita sabiex isiru x-xogħlijiet ta' demolizzjoni fit-12 ta' Awissu, 2022. Madanakollu, wara li ntalbu t-trial pits u r-ritratti relattivi biex tinħareġ il-clearance speċifika għall-fażi tal-iskavar, dawn ir-ritratti ma ġewx sottomessi. Għalhekk, l-awtorizzazzjoni finali bil-miktub għall-iskavar u bini formalment qatt ma ħarġet.

Ir-Regolament 7(12) tal-Leġislazzjoni Sussidjarja 623.06 jipprovdi b'mod imperattiv:

(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.

Kif diġà ġie deċiż minn dan it-Tribunal, l-obbligu li tinkiseb din l-approvazzjoni huwa wieħed strett u amministrattiv, u mhuwiex dipendenti fuq jekk ix-xogħol sarx b'galbu jew jekk twettqux danni lill-proprjetajiet ta' terzi. L-iskop ta' dan l-għarbiel huwa li l-BCA jkollha kontroll u moniteraġġ sħiħ mill-bidu sal-aħħar fuq kull fażi ta' sit ta' kostruzzjoni sabiex jiġu evitati l-perikli.

Għaldaqstant, safejn huwa l-punt tal-ksur ir-Regolamenti, l-appellant legalment jinstab responsabbli peress li għadda biex wettaq l-iskavar tal-ħofra tal-lift u l-bini relattiv mingħajr ma kellu f'idu d-dokument ta' clearance uffiċjali maħruġ għal dik il-fażi speċifika.

Madanakollu, fl-evalwazzjoni tal-quantum tal-penali amministrattiva imposta, it-Tribunal għandu d-dmir li jikkunsidra l-fatti kollha u ċ-ċirkostanzi partikolari li jduru madwar dan il-każ:

1. Nuqqas ta' Intenzjoni u Ħabi: It-Tribunal huwa kompletament konvint u jqis kredibbli l-verżjoni li dan kien nuqqas u żball purament amministrattiv. Ma kien hemm ebda aġir malizzjuż jew attentat li x-xogħol isir barra mill-għajn tal-Awtorità. Dan huwa pruvat mill-fatt li l-perit kien f'komunikazzjoni kontinwa mal-portal tal-BCA u l-ebda avviż ta' twaqqif jew infurzar ma nħareġ waqt li s-sit kien attiv.

2. Ix-Xogħlijiet kienu Minimi u bl-Idejn: Ix-xogħol ta' skavar kien wieħed limitat u żgħir ħafna, li kien jikkonsisti biss f'ħofra ta' lift pit (metru u nofs b'metru u nofs u metru fond) ġewwa tromba tat-taraġ eżistenti. Il-Perit Henry Abela jgħid li dan l-iskavar sar kollu permezz ta' *handheld tools* (jiggers u jack hammers) mingħajr l-użu ta' excavators maġġuri, u b'hekk l-impatt fuq il-binja u t-terzi kien minimu.

3. Il-Kondotta u l-Aġir tal-Appellant stess: Kien l-appellant stess u l-perit tiegħu li b'mod trasparenti infurmaw lill-BCA li x-xogħlijiet kienu lesti meta mlew u sottomettew il-Completion Certificate fit-23 ta' Frar, 2024.

4. L-Aġir tal-Awtorità stess u r-Rilaxx tal-Garanzija: Element ta' piż kbir f'dan il-każ huwa li l-BCA stess, wara li rċeviet il-Completion Certificate u r-ritratti tal-bini magħluq, ipproċediet fit-13 ta' Jannar, 2025 biex tirrilaxxa l-garanziji bankarji kollha tal-applikant. Kif ikkonferma l-uffiċjal Sean Mizzi taħt ġurament, dan ir-rilaxx isir meta l-Awtorità tkun sodisfatta li x-xogħol tlesta, is-sit m'għadux periklu, u l-ebda ħsara ma saret lit-terzi.

Huwa l-fehma tat-Tribunal li meta l-Awtorità stess tirrilaxxa l-garanzija bankarja mingħajr ebda riserva, hija tkun qed tagħti sinjal amministrattiv li l-proċess huwa magħluq b'mod regolari. Il-fatt li l-penali inħarġet b'mod retroattiv kważi sena wara li l-garanzija bankarja kienet ġiet rilaxxata, u dan biss minħabba li nfetħet applikazzjoni oħra separata fuq il-bejt, joħloq element ta' sproporzjonalità meta mqabbel maċ-ċirkostanzi u l-kooperazzjoni sħiħa tal-appellant.

Għaldaqstant, filwaqt li t-Tribunal iqis li l-Awtorità legalment kellha bażi li tinnota l-ksur fl-atti stante n-nuqqas formali tal-clearance tal-iskavar, il-penali amministrattiva ta' €1,500 imposta hija eċċessiva u m'għandhiex tiġi kkonfermata fl-intier tagħha. Fiċ-ċirkostanzi kollha msemmija, il-piena għandha tiġi mitigata u ridotta b'mod konsiderevoli sabiex tirrifletti l-bona fede u n-natura purament amministrattiva u minima tan-nuqqas.

Decide

Għaldaqstant it-Tribunal qiegħed jilqa' l-appell in parte u filwaqt li jirriduċi l-ammont tal-penali amministrattiva imposta mill-Awtorità tal-Bini u l-Kostruzzjoni nhar l-4 ta' Diċembru, 2025 għas-somma ta' ħames mitt euro (€500), qiegħed jikkonferma l-bqija tal-avviż u deċiżjoni de quo.

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