IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum l-20 ta' Ottubru 2026

Rikors Numru: BCT 61/2026 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)

Simon Mizzi u Perit Josef Zahra

vs

Awtorita' tal-Bini u l-Kostruzzjoni

It-Tribunal,

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

> *To whom it may concern,*
> *This appeal is made pursuant to Article 44 of Chapter 623 of the Laws of Malta against two Administrative Penalty Notices, both dated 22 July 2026, issued by the Building and Construction Authority ("the Authority") in connection with the site at Eden, Triq il-Pruna, Attard, each imposing an administrative penalty of €1,000 pursuant toRegulations 21 and 22 of Subsidiary Legislation 623.06:*

(a) Notice reference BCA/P06/0021/2026, issued to Mr Simon Mizzi (K.I. 0143986M), Contractor, on the basis that he had failed in his responsibilities for the implementation of the measures set out in the approved method statement; and
(b) Notice reference BCA/P06/0020/2026, issued to Perit Josef Zahra (K.I. 095685M), Site Technical Officer, on the basis that he had failed in his responsibilities for the enforcement of the measures set out in the approved method statement.

Both Notices arise from the same alleged facts, namely that demolition works carried out on 21 July 2026, and in the preceding days, were not compliant with S.L. 623.06.

This letter is submitted jointly on behalf of both Mr Mizzi and Perit Zahra (together, "the Appellants"), and constitutes a formal application for the annulment of both Notices,referenced to and accompanied by copies of the decisions appealed from (AnnexesA and B), the method statement in force at the material time (Annex C), and related correspondence (Annex D).

GROUNDS OF APPEAL

Ground 1 — No breach of the approved Method Statement

Reasons

Although a mechanical excavator was present on the site at the material time, that machine was at no point operated or used in the course of the demolition works carried out on 21 July 2026 or in the days preceding it. The demolition works actually undertaken were carried out without recourse to mechanical means.

The mere physical presence of the excavator, without its use, cannot in itself constitute a breach of the method statement, nor a failure on the part of either Appellant to implement or enforce its measures.

The Appellants are aware that on 22 July 2026 the Site Technical Officer, Perit Josef Zahra, addressed correspondence (Form 204a, Annex D) to the Authority noting that the presence of an excavator on site was not, at that time, covered by the equipment schedule of the originally approved method statement. For the avoidance of doubt, that correspondence concerned solely the fact that this item of plant had not yet been formally added to the approved method statement's equipment schedule, and not that it had been operated or used; the excavator was at all times left unused. That correspondence, if anything, evidences that Perit Zahra was properly discharging, rather than failing, his statutory duty under regulation 10(2) of S.L. 623.06 to notify the Authority of any potential non-conformity as soon as it came to his attention.

Further evidence of the Appellants' good faith and prompt compliance is found in the Authority's own correspondence of 21 July 2026 (Annex E), whereby Mr Dylan Bonnet, on behalf of the Authority's Enforcement and Compliance Team, instructed that the site be fully secured and all access points closed within twenty-four (24) hours, failing which enforcement action, including administrative fines and a Stop Works Order, could follow. The site was duly and fully secured, and all access points closed, within the timeframe specified. Notwithstanding this immediate compliance with the Authority's own instructions, the Notices were issued without any prior warning specific to the matters now complained of, and without any apparent regard being had to the Appellants' demonstrated cooperation with the Authority throughout.

Prompt remedial action notwithstanding

It is emphasised that this was not a matter identified or corrected as a result of any warning, request or intervention by the Authority. Immediately upon the position coming to light, the Site Technical Officer notified the Authority of his own initiative (Annex D), and the undersigned as perit in charge of the project submitted a revised method statement there and then to regularise the equipment schedule — action taken without delay, before the excavator was ever put to use.

Despite this prompt and complete rectification, the Notices were issued regardless to

the fact that the matter had already been fully and voluntarily addressed by the Appellants and the undersigned project perit.

This outcome runs contrary to the scheme of S.L. 623.06 itself: regulation 15(2) expressly provides that where an infringement is remedied within the period allowed by the Director, "the Director may desist from proceeding any further." Whereas here, the position was remedied by the Appellants' own initiative, the Authority's decision to proceed to a fine in any event is manifestly unreasonable and disproportionate, and ought to weigh decisively in favour of the Notices being annulled.

The Notices do not identify any specific instance in which the excavator was in fact operated, nor any other act or omission constituting a departure from the approved method of works.

Relief sought

That the Tribunal annul Administrative Penalty Notices BCA/P06/0021/2026 and BCA/P06/0020/2026 in their entirety, there being no breach of Regulations 21 or 22 of S.L. 623.06 or of the approved method statement, and in any event by reason of the prompt and voluntary remedial action taken by the Appellants prior to, and independently of, any intervention by the Authority.

Ground 2 — The Notices were not issued in accordance with the procedure prescribed by S.L. 623.06

Reasons

Regulation 15 of S.L. 623.06 requires the Director, before proceeding to take a measure which is or includes an administrative fine, to first inform the persons concerned, warning them of the measure that may be taken and the specific reason and to allow a period of not less than seven (7) days within which to remedy the position or make submissions. The situation was remedied immediately. Despite this, the fines were issued without allowing the period f seven days as according to law.

Relief sought

That the Tribunal annul, or in the alternative declare invalid and of no legal effect, Administrative Penalty Notices BCA/P06/0021/2026 and BCA/P06/0020/2026, the same not having been issued and/or served in accordance with the mandatory procedure established under Regulations 15, 16 and 22 of S.L. 623.06.

The Appellants reserve the right to raise further documentation in support of this appeal at the appropriate stage of these proceedings.

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

A. *Eċċezzjonijiet Preliminari – It-Tieni Aggravji tal-Appellant*

1. *Jibda biex jingħad li d-Direttur quo Kap Eżekuttiv ai termini tar-regolament 15 jista' sub-inċiż (1) jista' jqassar iż-żmien indikat fir-regolament għal dak iqsar min seba' (7) t'ijiem. Ir-regolament ma jistipula l-ebda minimu li għandu jkun applikat u allura l-perjodu jista' jkun wieħed verament żgħir.*

2. *Illi tali proċedura ma teskludiex l-impożizzjoni tal-penali amministrattiva, di fatti l-proviso jsemmi dan il-fatt legali.*

3. *Dan jfisser li l-Awtorita' imxiet skont dak provdut fir-regolamenti.*

B. *Eċċezzjonijiet fil-Mertu – L-ewwel Aggravju tal-Appellant*

4. *Illi qiegħed jkun umilment sottomess li ex-admissis permess tal-kontentut tal-appell l-appellant qiegħed jagħti raġun lil Awtorita' stante li mhux jargumenta li ma kienx*

hemm in-nuqqas ravviżat mil-Awtorita' però' li jekk kien hemm dan in-nuqqas tali huwa ineżattezat min naħa tal-appellanti li ġie ikkoreġut kemm jista' jkun malajr.

5. *Illi qiegħed jkun ippreżentat mal-risposta tal-Awtorita' **Dok BCA** liema huwa Affidavit tal-Uffiċjal tal-istess Awtorita' fejn jelenka r-raġuni tal-penali amministrattiva.*

6. *Min Dok BCA jidher ċar li l-kronoloġija imsemmija fl-appell ma hijiex veritjiera. Dan minħabba li kull ratifikazzjoni saret wara li l-Awtorita' kienet diġà għamlet l-ispezzjoni tagħha u sabet dan in-nuqqas serju. Iktar ma huwiex minnu li l-makkinarju kien fis-sit pero' mhux qiegħed jintuża, anzi bil-kontra u kien għalhekk li ġiet sottomessa dikjarazzjoni tal-metodu aġġornata.*

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

8. *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.

Ra n-noti ta' osservazzjonijiet finali preżentati mill-parijiet;

Ra li l-kawża tħalliet għas-senteza għal-llum.

Ikkunsidra

Illi l-appell odjern huwa dwar żewġ avviżi separati maħruġa kontra ż-żewġ appellanti iżda b'mertu li huwa relatat. L-avviż fil-konfront tal-kuntrattur Simon Mizzi huwa bbażat fuq il-premessa li "*Fi 21 ta' Lulju 2026 kif ukoll fil-ġranet ta' qabel, saru xogħlijiet ta' demolizzjoni li mhux konformi mal-Leġislazzjoni Sussidjarja 623.06, senjatament minħabba li nqast mir-responsabbilitajiet tiegħek għall-implimentazzjoni tal-miżuri tad-dikjarazzjoni tal-metodu.*". Mill-banda l-oħra, l-avviż maħruġ fil-konfront ta' Josef Zahra huwa bbażat fuq il-premessa li fl-irwol tiegħu bħala l-uffiċjal tekniku fuq is-sit (Site Technical Officer) naqas mir-responsabbilita' għall-infurzar tad-dikjarazzjoni tal-metodu.

Aggravju ta' natura proċedurali

Illi l-appellanti iqajjmu aggravju ta' natura proċedurali u ċioe li ż-żewġ avviżi ta' Penali Amministrattiva (BCA/P06/0021/2026 u BCA/P06/0020/2026) ma nħarġux b'konformità mal-proċedura mandatorja stabbilita mil-Leġiżlazzjoni Sussidjarja 623.06. B'mod partikolari, jargumentaw li r-Regolament 15(1) jobbliga lid-Direttur (quo Kap Eżekuttiv) li, qabel ma jipproċedi biex jimponi miżura jew penali amministrattiva, għandu l-ewwel jinforma bil-miktub lill-persuni kkonċernati, javżahom bil-ksur speċifiku, u jipprovdilhom terminu ta' mhux inqas minn sebat (7) ijiem sabiex jirrimedjaw il-pożizzjoni jew iressqu s-sottomissjonijiet tagħhom. L-appellanti jżidu li huma ħadu passi immedjati biex jirrimedjaw il-qagħda, u minkejja dan, il-penali amministrattivi nħarġu xorta waħda mingħajr ma ngħata t-terminu statutorju ta' sebat ijiem; u għalhekk jitolbu l-annullament totali tal-istess avviżi.

Illi l-Awtorità tal-Bini u l-Kostruzzjoni kkontestat dan l-aggravju.

Illi dan it-Tribunal eżamina fid-dettall ir-Regolament 15 tal-Leġiżlazzjoni Sussidjarja 623.06 (*Regolamenti dwar l-Evitar ta' Ħsara lil Terzi Persuni*), liema dispożizzjoni tistabbilixxi:

"15. (1) Meta d-Direttur ikollu raġunijiet raġonevoli biex jemmen li xi persuna qiegħda tonqos milli tikkonforma ma' jew naqset milli tikkonforma ma' xi dispożizzjoni ta' dawn ir-regolamenti, id-Direttur jista', qabel ma jipproċedi biex jieħu xi miżura taħt dawn ir-regolamenti, jagħti avviż bil-miktub lill-persuna kkonċernata fejn jispeċifika l-ksur u jeħtieġilha li tirrimedja l-ksur f'perjodu speċifikat fl-avviż, liema perjodu ma għandux ikun inqas minn sebat (7) ijiem:

Iżda meta d-Direttur iqis li l-ksur jagħti lok għal periklu imminenti jew riskju għal persuni jew proprjetà, id-Direttur jista' jispeċifika perjodu iqsar jew jieħu kwalunkwe miżura taħt dawn ir-regolamenti mingħajr avviż minn qabel:

Iżda wkoll illi r-rimedju tal-ksur fi żmien il-perjodu speċifikat ma għandux jipprekludi lid-Direttur milli jimponi penali amministrattiva fir-rigward ta' dak il-ksur..."

Illi minn analiżi oġġettiva ta' dan il-provvediment, it-Tribunal jinnota żewġ prinċipji inekwivoċi li jrendu l-aggravju tal-appellanti infondat. L-ewwel proviso tar-Regolament 15(1) jagħti setgħa espliċita lid-Direttur/Kap Eżekuttiv li jispeċifika terminu iqsar minn sebat ijiem, jew saħansitra li jieħu miżuri minnufih mingħajr ebda avviż minn qabel, kull meta jkun hemm lok ta' riskju għal terzi persuni jew proprjetà. Fil-każ inkwistjoni, kien hemm excavator ta' ċertu piż (mgħammar b'martell pnewmatiku) imtella' fuq saqaf tal-konkos f'sit ta' demolizzjoni. Qagħda bħal din iġġib magħha b'mod oġġettiv riskju strutturali immedjat għall-integrità tal-bini u tal-proprjetajiet terzi konfinanti — li huwa proprju l-iskop li għalih ġiet promulgata l-L.S. 623.06. Għaldaqstant, l-Awtorità kienet perfettament intitolata taġixxi b'mod immedjat (kif fil-fatt għamlet ukoll meta ħarġet l-ordni ta' waqfien tax-xogħol).

Ferm aktar determinanti minn hekk, it-tieni proviso tal-istess Regolament 15(1) jiddisponi b'mod ċar u kategoriku li r-rimedju tal-ksur fit-terminu speċifikat ma jipprekludix l-impożizzjoni tal-penali amministrattiva fir-rigward ta' dak il-ksur. L-azzjoni mħaffa li ħadu l-appellanti biex jemendaw id-dikjarazzjoni tal-metodu (Formola 202a/204a) kienet meħtieġa sabiex ikunu jistgħu jissuktaw bix-xogħol b'mod regolari; madanakollu, ir-rimedju *ex post facto* ma jħassarx u ma jagħtix immunità legali għall-ksur li jkun diġà ġie kkunsmat meta ttella' u tħaddem makkinarju mhux awtorizzat fuq il-post.

Illi kieku kellha tiġi milqugħa t-teżi tal-appellanti — ċjoè li kull min jirrimedja nuqqas wara li jinqabad mill-Awtorità jkun eżentat awtomatikament minn kull penali — il-mekkaniżmu sħiħ ta' dissważjoni u infurzar legali stabbilit taħt il-Kapitolu 623 u r-regolamenti sussidjarji tiegħu jisfaxxa u jsir bla ebda effett prattiku, hekk kif kull operatur ikun imħeġġeġ jikser il-parametri awtorizzati sakemm ma jinqabadx u kif jinqabad jirrimedja kemm jista' jkun malajr sabiex ma jeħilx xi penali. Din ma kinitx l-intenzjoni tal-leġislatur wara dan il-mekkaniżmu.

Għal dawn ir-raġunijiet, it-tieni aggravju tal-appellanti qiegħed jiġi miċħud fl-intier tiegħu.

Aggravju fil-mertu

Illi fil-mertu l-kwistjoni kollha ddur madwar inġenju tat-tip *excavator* li kien ġie misjub fuq is-saqaf tas-sit bl-indirizz 'Eden, Triq il-Pruna, Attard'. Lill-Awtorita' irriżultalha li dan l-inġenju ma kienx inkluż fid-dikjarazzjoni metodu u għaldaqstant għaddiet sabiex għamlet l-ispezzjonijiet u l-infurzar tagħha. Minn eżami tal-atti jirriżulta li huwa fatt inkontestat bejn il-partijiet li kien hemm excavator fuq is-saqaf tas-sit u huwa inkontestat li dan ma kienx in linea mad-dikjarazzjoni metodu. Tant li in segwitu tal-avviż mertu tal-appell, id-dikjarazzjoni tal-metodu għad-demolizzjoni ġiet emendata sabiex tinkludi it-tip ta' excavator li kien jinstab fuq is-saqaf tas-sit.

Illi l-appellant, kemm fl-appell tiegħu kif ukoll fix-xhieda, jargumenta li għalkemm l-excavator itella fuq is-saqaf, dan qatt ma ntuża qabel ma ġiet emendata d-dikjarazzjoni tal-metodu. Madanakollu, it-Tribunal huwa tal-fehma li l-unika raġuni loġika u prattika għalfejn makkinarju ta' din ix-xorta jittella' fuq saqaf fi stadju avvanzat ta' xogħlijiet hija proprju sabiex jintuża fid-demolizzjoni. Il-fatt innifsu li d-dikjarazzjoni kellha tiġi emendata biex takkomoda x-xogħol b' dan il-makkinarju jikkonferma ċar l-iskop li għalih ttella' hemm fuq.

In oltre, fid-dikjarazzjoni iffirmata minn Josef Zahra, datata 22 ta' Lulju 2026, ġie dikjarat *ex admissis* li kien użu mhux awtorizzat tal-*excavator* "*Regarding the ongoing works at the subject site, the undersigned notes that the use of excavator was without official authorization under the originally approved Demolition Method Statement.*

This issue is eventually rectified by the revised document 202a duly submitted by project's architect."

Illi din id-dikjarazzjoni tagħmel referenza ċara għall-użu tal-excavator. Dan ma jħalli ebda dubju li l-apparat in kwistjoni filfatt intuża u dan bi ksur tad-dikjarazzjoni tal-metodu. B'hekk it-Tribunal iqis li l-Awtorita' appellata kienet korretta fid-deċiżjoni tagħha u fl-imposizzjoni tal-penali. L-osservanza tad-dikjarazzjoni tal-metodu huwa punt fundamentali fil-proċess tat-tlett fażijiet ta' proġett. It-Tribunal jinstab konvint li n-nuqqas ta' osservanza ma kienx sforż xi żvista stante li l-ebda inġenju ta' żewġ tunnellati ma jittella fuq saqaf bi żvista. Minkejja dan, it-Tribunal iqis li l-ammont tal-penali fuq iż-żewġ avviżi meħudin flimkien huwa kemmxejn

eċċessiv u jimmerita li jitnaqqas għal seba' mija u ħamsin ewro (€750) kull avviż. Dan anke fid-dawl li l-appellant ħa azzjoni rimedjali malajr wara li rċieva l-avviż, fejn aġġorna d-dikjarazzjoni tal-metodu li mbagħad ġiet approvata mill-Awtorità. Sintendi l-fatt li ttieħdet azzjoni fl-immedjat ma jħassarx u lanqas mhuwa skuża għall-ksur li jkun diġà seħħ meta f'sit jiġu ppożizzjonati inġenji li mhumiex awtorizzati. Id-dmir tal-kuntrattur u l-perit kien li kull inġenju jiġi inkluż u approvat fid-dikjarazzjoni minn qabel. Għaldaqstant fil waqt li t- Tribunal qed jaqbel ma l-Awtorità li mxiet skont il-liġi, qed inaqqas l-penali amminstartttiva.

Decide

Għaldaqstant għal dawn ir-raġunijiet kollha, it-Tribunal qed jaqta' u jiddeċiedi l-appell billi jilqgħu in parte, u filwaqt li jikkonferma l-imposizzjoni taż-żewġ penali amministrattivi, qiegħed ivarja d-deċiżjoni tal-Awtorita' appellata fil-konfront taż-żewġ penali amministrattivi (BCA/P06/0021/2026 u BCA/P06/0020/2026) billi jirriduċihom fl-ammont ta' seba' mija u ħamsin ewro (€750) 'l waħda.

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