IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum 24 ta' Marzu, 2026

Rikors numru: BCT/20/2026

Membri:

Avukat Philip M. Magri LL.D. M.A. (Fin. Serv.) M.Phil.

Perit Robert Sarsero BE&A(Hons), A&CE

Ing. Anthony Camilleri B.Mech.Eng (Hons), FVCM (Hons) L. (Mus.) V.C.M. (Hons.), A. (Mus.) L.S.M.

Perit Leonard Spiteri

vs

Awtorita' tal-Bini u l-Kostruzzjoni

It-Tribunal,

Ra l-appell li sar permezz ta' ittra datata 23 ta' Frar, 2026 tal-istess appellanti fejn dan ikkontesta d-decizjoni tal-Awtorita` intimata datata 12 ta' Frar, 2026 fejn permezz taghha l-Awtorita` imponiet penali amministrattiva fl-ammont ta' hames mitt euro (€500) u dana peress li "*fis-6 ta' Frar, 2026 kif ukoll fil-granet u fix-xhur ta' qabel, saru xogholijiet ta' skavar li mhux konformi mal-Legislazzjoni Sussidjarja 623.06, senjatament minhabba li nqast mir-responsabbilitajiet tieghek ghall-infurzar tad-dikjarazzjoni tal-metodu.*

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

1. *Illi l-Awtorita` appellata qeghda umilment tissottometti li kwakunkwe decizjoni mehuda kienet in konformita' ma' dak rikjest mil-liġi, u kwindi korretta f'kull aspett;*
2. *Illi qeghdin jkunu anness u immarkat bhala Dok BCA1 Affidavit tal-Ufficjal tal-Awtorita`, liema jigi spjegat kif ma kienx osservat l-Method Statement fejn kopja qeghda tkun annessa u mmarkata bhala Dok 210a*
3. *Ghaldaqstant fuq dak suindikat, l-Awtorita` appellata qieghda umilment titlob lil dan l-Onor. Tribunal sabiex jichad l-appell odjern.*
4. *Salv eccezzjonijiet ulterjuri.*

Ra id-dokumenti annessi mal-istess risposta senjatament l-affidavit tal-ufficjal tal-Awtorita` Christopher Mercieca.

Semghet ix-xhieda tal-Perit Leonard Spiteri waqt is-seduta tal-5 ta' Marzu, 2026.

Ra li waqt is-seduta tal-5 ta' Marzu, 2026 iz-zewg partijiet iddikjaraw li m'ghandhomx aktar provi xi jressqu u l-appell gie differit ghas-sentenza ghal-lum.

Ikkunsidra

Illi kif jirrizulta mill-kontenut tal-appell, l-appellanti jikkontesta l-allegazzjoni li huwa ma segwiex l-istqarrija tal-metudu:

> *Please be advised that no excavation of the 1 metre rock shelf was carried out at any stage. The shared party wall is founded directly on the rock strata, with the rock level situated approximately 0.5 metres below the ground slab level.*
> *In accordance with the approved plans as shown in figure 1, a perpendeical wall is to be constructed to support the proposed staircase, as indicated in the attached drawings. To ensure structural integrity and compliance with proper construction standards, all load-bearing walls must be founded directly on competent rock strata.*

Given that approximately 0.5 metres of loose material was present beneath the existing ground slab, it was necessary to remove this material in order to construct the wall foundations directly onto the rock level, without causing any damage to the shared party wall. This removal included the portion within one metre of the party wall. For the avoidance of doubt, no excavation into the rock itself within this 1 metre shelf indicated on the method statement was undertaken.

Furthermore, a trial pit was excavated at the request of the Building and Construction Authority (BCA) prior to the approval of the method statement, This trial pit was carried out in the central part of the property and confirmed the presence of Upper Coraline Limestone on site. However, it did not indicate the presence of 0.5 metres of loose material adjacent to the party wall. Consequently, only the loose overburden material encountered in that specific area was removed to allow for the proper construction of the wall foundations.

Illi mis-surreferit jirrizulta li l-posizzjoni tal-appellanti hija li huwa ma kisirx dak li jinghad fid-dikjarazzjoni tal-metodu u dana ghaliex kulma tnehha minn mal-hajt divizorju kien madwar nofs metru ta' materjal sfuz sakemm instab il-blat u kwindi seta' jitella' l-hajt propost.

Illi, fil-fatt, waqt ix-xhieda tieghu, il-Perit Leonard Spiteri kompla jikkonferma is-segwenti:

Għall-bini tal-ħitan kellna nagħmlu l-pedamenti, inżilna sal-wiċċ tal-blat, u meta wasalna qrib l-appoġ sibna pero' li hemmhekk kien hemm loose material mhux blat. Ngħid illi skont is-sengħa u l-arti din il-parti tħammlet bl-idejn kif jirriżulta mir-ritratti tal-istess Awtorita' u ovvjament dan it-tħammil sar sabiex l-iżvilupp jilħaq l-ħajt tal-appoġġ u jinbena fuq il-blat.

Malli infetħet dik il-parti li semmejt bl-idejn, il-BCA waqqfet ix-xogħlijiet peress li fil-fehma tagħha ma mxejniex skont il-method statement.

Il-method statement kien jipprovdi li nħallu ż-żewġ piedi u nofs minn mal-appoġġ. Fil-verita` aħna dan żammejna miegħu pero' kellna ta' bilfors inħammlu bl-idejn kif semmejt qabel meta sibna li minflok blat kien hemm loose material.

Jirrizulta allura inkontestat li, skont id-dikjarazzjoni tal-metodu, ma setax isir skavar fid-distanza ta' zewg piedi u nofs minn mal-appogg, kif ammess mill-istess appellanti u kif fuq

kollox mehtieg anke mil-ligi civili Maltija. Madanakollu, l-ufficjal tal-Awtorita` sab li "*a trench has been excavated on the right-hand side where it is listed that no excavation works will be carried out in the one meter perimeter from divisionary wall*".

Jigi nutat ukoll li, ai fini tal-ligi, 'skavar' mhuwix limitat biss ghat-tqattiegh tal-blat imma wkoll *" qtugħ jew tneħħija ta' (...) kull materjal ieħor naturali jew imqiegħed mill-bniedem, li jifforma l-art"* (reg. 3 tal-LS 623.06).

Wiehed jifhem u japprezza li tali skavar sar bil-galbu mehtieg u in vista tan-necessita` li l-istrutturi jittellghu skont l-arti u s-sengha imma dan ma jista' jiggustifika bl-ebda mod il-fatt li l-appellant wettaq att li ma kienx skont id-dikjarazzjoni tal-metodu tieghu stess. F'dan ir-rigward, it-Tribunal isib li l-Awtorita` irnexxielha tipprova l-kaz taghha.

It-Tribunal lanqas ma jemmen li hemm cirkostanzi attenwanti li jistghu iservi sabiex jaffetwaw xort'ohra id-decizjoni appellata u l-penali mahruga. Ghandu jigi kkunsidrat li meta applikant jaghzel li jinjora d-dikjarazzjoni tal-metodu jkun qed iwettaq att li minnu nnifsu huwa intiz li jannulla l-isforz kollu tal-Legizlatur li jizgura li kull aspett tax-xoghol ikun gie sindakat u approvat mill-Awtorita` koncernata. Dan japplika *multo magis* f'dan il-kaz fejn lilhinn mill-intenzjoni tajba, tali xoghol seta' wkoll qed jikser ligijiet ohrajn. Ulterjorment, f'dan il-kaz jirrizulta wkoll li l-ispezzjoni sehhet wara ilment, gustifikat, minn terzi u f'dik ic-cirkostanza wkoll l-ufficjal tal-Awtorita` ordna li jsiru xogholijiet rimedjali.

Decide

Għaldaqstant it-Tribunal, in vista tar-raġunijiet imsemmija hawn fuq qiegħed jichad l-appell u konsegwentement jikkonferma s-sentenza appellata datata 12 ta' Frar, 2026.

Dr Philip M. Magri	**Perit Robert Sarsero**	**Ing. Anthony Camilleri**
Chairperson	Membru	Membru