IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Today, 3rd August, 2026

Rikors numru: BCT/31/2026

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.

Jhoan Manuel Forero Rincon and Marzio Filippo Capece Minutolo del Sasso

vs

Awtorita' tal-Bini u l-Kostruzzjoni

The Tribunal,

Having seen that the appellants, upon a request for clarification by the Tribunal, declared that via this appeal they are appealing:

i. the Authority's decision BCA/P08/0028/2026 being an administrative penalty of eur 500
and
ii. BCA/P08/0027/2026 bejng the administrative penalty of €150 relating to the site notice/signage.

This appeal decision will therefore be limited to the above.

Having seen the reply filed by the Authority by which it pleaded:

1. The Authority submits that the its decision was in confomity with the law and correct in all respects;

2. In furtherance of the administrative penalty, there was attached the affidavit by the Authority's official
3. That the appellant is bound to prove what he is alleging in his application.
3. Therefore, based on the foregoing, the appellant Authority humbly requests this Honourable Tribunal to reject the present appeal.

4. Without prejudice to other pleas.

Having seen that the Authority is relying on this reply even following the clarification requested by the Tribunal of the appellants during the sitting of the 15th July, 2026 when the case was adjourned for judgment.

Having seen all the acts filed by both parties, including affidavits by Jhoan Manuel Forero Rincon and Marzio Filippo Capece Minutolo del Sasso and having also seen that this appeal is connected with the one numbered 32/2026 which concerns the same property and the same inspection.

Having seen that the appeal was adjourned for delivery of decision for today.

Having considered

That this is an appeal lodged againats the Authority's decisions as listed above, namely:

BCA/P08/0028/2026 against Jhoan Manuel Forero Rincon – Lake of gates or gates which were not locked with open access to the public including children (*Nuqqas ta' Xtiebi jew xtiebi mhux msakkra báccess miftuh ghall-pubbliku inkluz it-tfal*) on the 23rd February, 2026 in breach of LS 623.08

BCA/P08/0027/2026 also against Jhoan Manuel Forero Rincon – Lack of Signage (*Nuqqas ta' Tabelli tal-Avvizi*) on the 23rd February, 2026 also in breach of LS 623.08

The Tribunal notes, preliminarily, that to the extent that the current appeal was lodged by Marzio Filippo Capece Minutolo del Sasso in his own personal capacity, it is being

immediately rejected as the said appellant is non-suited in this appeal. As clarified by the appellants themselves, the appealed decisions refer exclusively to the Jhoan Manuel Forero Rincon and therefore the Tribunal has no option but to reject appeals by non-suited third parties, in this case by Marzio Filippo Capece Minutolo del Sasso, whilst continuing to decide the appeal insofar as it was lodged by the party effectively addressed and therefore aggrieved by the above decisions, that is, Jhoan Manuel Forero Rincon.

With regards to the merits of the case, the Authority filed an affidavit by its official Christopher Mercieca which includes a Trail of Events which indicates that, on the 23rd February, 2026 the appealed penalties were issued for "*lack of site notice displayed on site and non-compliant barricades and gates*". A few days before, in fact on the 19th February, 2026 the same official noted a number of infringements including site notice missing and site not properly secured. On that occasion, the applicant was also duly informed.

In this regard the official took two photos, the first of which (Photo 1) indicates the construction site whilst the second of which (Photo 2) indicates a gate which presumably grants access to the same site. The Tribunal notes that the second photo indicates that the gate installed was evidently not secured from the sides in order to disallow access to the public, particularly children. The photo indicates pieces of pallets and wood placed as a barrier to the site but without being fixed and secured to effectively block access as expressly required by law.

The Authority's findings are also further supported by Photo 4 taken after the appealed decision was issued when the the official rightly reports that the site had still not been duly sealed.

None of the photos indicate the signage required by law as cited below.

In this regard the Second Schedule expresly requires:

> *The client shall erect timber or metal barricades or bricks or similar material barricades, bound together by cement based mortar when surrounding an excavated site in such a way to block the entrance and prevent access to unauthorised persons and that:*

(a) the barricades shall be constructed to withstand any external impact and of a height of not less than two (2) metres between the site and the public passage or block completely the open sides of a construction site and this to safeguard the public and third party moveable or immovable property;
(b) the barricades shall have smooth surfaces on the sides facing the public passage and shall be without openings, except those required for authorised access;
(c) access openings through the barricades shall be kept closed at all times with gates, and closed and locked withgates when there is no one on site, and shall be maintained in place until completion of the works to the satisfaction of the Authority. Such gates shall be designed in such a manner that prevents public access, especially children.

With regards to onsite signage, the First Schedule of LS623.08 requires:

Three (3) weeks before any work commences which will take longer than four (4) weeks to complete, the client shall ensure that there shall be erected on the street boundary of the site a permanent A2 sized notice board, as specified below, on which shall be affixed, and suitably protected from the weather, the development permit number, the particulars of the client, site manager and responsible Perit and the contractor or contractors including their telephone numbers. A template of such notice may be downloaded from the Authority's web site. The details on the notice board shall be legible from the road level with a minimum font size of 100 point. Such notice board shall be maintained in good condition at all times until all works on site are completed or until such time as deemed appropriate by the Authority.

In his defence the appellant raises a number of defences which shall also be considered below:

i. Procedural unfairness – language accessibility

The appellant laments that the absence of an English translation of the penalty notice hindered immediate comprehension and remedial action.

The Tribunal considers this grievance not to be justified. From the Authority's trail of events, it transpires that, as stated above, the applicant was called from the site by the Authorities'official and informed to secure the site and affix required signage. It was at this

stage that remedial action should and could have been taken but was not. Notwithstanding this, no remedial action was taken to the extent that even after the penalties were issued the breaches of law remained unaddressed. Hence it was not the 'language' barrier in the appealed decisions which precluded the remedial action but the evident failure by the appellant to act promptly even after having been allerted via phone call of the site irregularities.
In addition, the appellant did not manage to prove any serious procedural prejudice derived from the language of the appealed decision, also because, according to the Authority's trail of events document, a meeting was held on the 23rd March, 2026 in which all aspects of the case were duly explained to him. Moreover, he effectively appealed from the same in the English language with no translations being required. Hence this grievance is being dismissed.

ii Site notice non-complaince – PA Administrative delay – procedural impossibility
In this regard the appellant states that compliance was prevented by the Planning Authority as the permit issued still referenced the previous developer and the previous architect in charge. He argues that, as according to him, updated site notices were not released by Planning Authority the developer could not legally display site notices with outdated information.
The Tribunal notes that, in terms of law as above cited, the oligation to affix notices for publically accessible information lies exclusively on the applicant who, therefore, cannot blame third parties for his failure to abide with the express provisions of the law. This applies *multo magis* with regards to the Planning Authority which, saving for the issuing of the planning permit, has no involvement whatsoever in the affixing of the site notices as required of the applicant by law.

iii Storm Henry Force Majeure
In this regard the appellant pleads that the extreme weather event (Storm Henry of the 20th January, 2026) physically destroyed the affixed site signage, removing it entirely from the site.
The Tribunal notes immediately that this plea is in diametric opposition to, and effectively contradicts, the previous one just decided. Either the appellant was precluded from affixing signage in view of administrative delays or these notices were effectively fixed only to be destroyed by the extremely metereological conditions. The Tribunal finds this latter allegation not to be credible in the absence of supporting evidence of the previously affixed notices or official reports detailing the damage. Moreover, it is to be noted that the breaches of law were noted a month after the metereological emergency when the appellant had every opportunity to remedy the breaches noted on site. Once again, the Tribunal notes that the appellant failed

to rectify this aspect even after the Authority's official called him and brought the breaches to his attention.

iv.Absence of prior warning or opportunity to cure – proportionality of violation

The appellant is also factually incorrect when stating the that the penalty was imposed immediately without prior warning or reasonable opportunity following the effects of the storm. As noted above, not only was the penalty issued a good month after the metereological emergency but the Authority's official contacted the applicant to inform him of the remedial action required of him. The Trail fo Events filed by the Authority and confirmed under oath by its official, was never contested or questioned by the appellant. It transpires clearly from the same that, following the call of the 19th February, 2026 and the decisions of the 23rd February, 2026, it was only on the 2nd April, 2026 that case could be closed with compliance by the applicant. In addition, it must be noted that, as previously decided by this Tribunal, there is no obligation imposed on the Authority to warn the applicant of onsite breaches. Neither is the ignorance of the law an excuse for non-compliance. Morever, in this case, it results that applicant took months in order to address evident breaches onsite even after the penalties were issued. There is also nothing irregular in multiple penalties emerging from one onsite inspection detailing a number of breaches of law. Moreover, given the circumstances of the case, the penalties as imposed are deemed propertionate to relative proven breaches. In view of this, the Tribunal finds that even this grievance is not justified.

Decide

For these reasons, the Tribunal is hereby rejecting the appeal thus confirming the appealed decisions in their entirety.

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