IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Today, 3rd August, 2026

Rikors numru: BCT/32/2026

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.

Marzio Filippo Capece Minutolo del Sasso

vs

Awtorita' tal-Bini u l-Kostruzzjoni

The Tribunal,

Having seen that the appellant appealed the Authority's decision BCA/ENF06/0023/2026 whereby he stood charged that on the 19th February, 2026 as well as during the previous days, months and years, construction works were carried out not in conformity with LS 623.06, namely because excavation and building works took place without submission of all documents as required by law and without the Authority's approval in writing.

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 acts and documents filed, including the documents submitted with the appeal, the affidavit by Christopher Mercieca, the affidavit by Jhoan Forero Rincon and by Marzio Filippo Capece Minutolo del Sasso and all relative attachments and that this appeal is connected with appeal 31/2026.

Having seen that the appellant effectively confirmed that the current appeal relates to the above-captioned decision which, according to the same appellant was issued "*in respect of the alleged continuation of works after the stop works instruction and without BCA clearance*". Appellant stated that "(t)*his allegation is respectfully contested, since the works were suspended immediately upon th stop works instruction being issued and were never resumed thereafter*".

Having seen that the appeal was adjourned by decision for today.

Having considered

That this is an appeal lodged againats the Authority's decision against the appellant Marzio Filippo Capece Minutolo del Sasso dated 23rd February, 2026 by which he stands charged that that on the 19th February, 2026 as well as during the previous days, months and years, construction works were carried out not in conformity with LS 623.06, namely because excavation and building works took place without submission of all documents as required by law and without the Authority's approval in writing and was thus fined two thousand euros (€2000).

The Authority's trail of events was duly confirmed under oath via its official's affidavit. There results clearly from the latter that, during an inspection held on the 19th February, 2026, the

officials noted that works had commenced prior to BCA clearance being issued. It is therefore immediately clarified that the penalty was not imposed for works continued after the stop works but for works which commenced without the Authority's prior clearance.

The law, namely reg. 7(12) of LS 623.06 expressly provides as follows:

> *(12) The commencement of any works of excavation, demolition or construction may take effect only after the Building and Construction Authority provides clearance in writing*

The appellant failed to prove the issuing of an authorization by the Building and Construction Authority ahead of his commencement of works also because, in terms of his own affidavit, on the day of inspection "*we were working precisely in the area where the fencing would normally have been installed*" and screenshots of the relative portal indicate that the clearance to carry out works was only issued on the 8th April, 2026. To this effect, it is proven beyond doubt that the Authority's decision is justified insofar as it concerns commencement of works without prior authorization.

On the other hand, whilst also lamenting the fact that the applicant failed to file necessary documentation required ahaed of authorization being granted, the Authority failed to indicate which documents were still required of the applicant and when, if at all, these were filed. The Tribunal notes that whilst the appellant in his affidavit and appeal contends that all the following documents required of him had been filed on the date of the decision "*Atlas Insurance policy activation and certificate, completed responsibility forms designating site supervisors and technical personnel and detailed condition reports documenting the pre-existing status of adjacent third party properties*", the Trail of Events is completely bereft of any information in this regard – particularly with regards to which other documents were required by the Authority in terms of law and deemed missing.

Hence, whilst the affidavit of the Authority's officer as stated, serves well to prove commencement of works without due authorisation, it fails to prove to the extent required by law, the applicant's other failure to file necessary documentation in terms of law, particularly whether any and/or all documents required by law had already been filed on the date of the decision and which documents were required in terms of law and still missing. Whilst it is true

that a number of documents were seemingly submitted on the portal even after the date of decision before the Authority issued its clearance, it is not for the Tribunal to try to determine through the portal screenshots submitted by the appellant which of these documents filed by the appellant, were required by the law or by the Authority before clearance could be issued, failing a clear indication by the Authority itself via its own evidence.

The appellant laments procedural unfairness in 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 in terms of law. From the Authority's trail of events, it transpires that, as states above, the applicant was called from the site by the Authorities'official. It was at this stage that remedial action onsite should and could have been taken but was not although one must also say that, with regards to this particular breach of law, such breach is one which can hardly be remedied if works are proven to have actually commenced without authorization. Hence it was not the 'language' barrier in the appealed decisions which precluded the remedial action but the evident failure by the appellant to follow the express provisions of the law.
In addition, the appellant did not manage to prove any serious procedural prejudice derived from the language of the appealed decision, also because he effectively appealed from the same in the English language. Hence this grievance is being dismissed.

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, 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. Clearance for works was only issued on the 8th April, 2026. 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. In addition, there is also nothing irregular in multiple penalties emerging from one onsite inspection detailing a number of breaches of law. In view of this, the Tribunal finds that even this grievance is not justified.

In the circumstances the Tribunal will proceed to uphold the appeal insofar as it concerns the failure to file documentation as required by law but will reject the appeal insofar as it concerns the applicant's commencement of works without the Authority's authorisation .

Developers are to understand that clearance by the Authority is not only a mere formality required for commencement of works. It is also intended by the legislator to serve as an official guarantee that all legal requirements imposed on the developer prior to commencement of works have been adhered to. The commencement of works without the Authority's prior approval is to be necessarily deemed a serious breach of law in that it indicates severe negligence on the part of the developer which is tantamount to the will to by-pass all legal requirements in place to ensure not only a good standard of workmanship but also the due protection of the public and third party property.

In the circumstances of the case, the Tribunal believes that a penalty of one thousand euros (€1000) suffices and is proportionate in relation to the charge that has been proven.

Decide

For these reasons, the Tribunal is hereby upholding the appeal insofar as it concerns the alleged failure by the applicant to file documentation as required by law whilst otherwise rejecting the appeal insofar as it concerns the applicant's commencement of works without the Authority's authorisation and is thus, to this effect, reducing the penalty imposed to one thousand euros (€1000).

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