

IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum l-24 ta' April, 2025

Rikors numru: BCT/19/2025 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.

Ing. Johan A. Psaila B. Eng. (Hons.), Pg. Dipl. (Brunel)

Claudio Calleja

vs

Awtorita' tal-Bini u l-Kostruzzjoni

It-Tribunal,

Ra r-rikors tal-appell ipprezentat mill-Perit Michael Anastasi fejn permezz tiegħu huwa ppremetta u talab is-segwent:

Dear Director,

I am writing in my capacity as the Architect and Civil Engineer engaged by the developer, Mr. Claudio Calleja, to formally contest the fines imposed on 18th February 2025 concerning alleged unauthorised excavation and construction activities at 403, Mirage, Triq il-President Anton Butigieg, Żejtun. The fines, totaling €2,000, were issued under Subsidiary Legislation 623.06, specifically Regulations 21 and 22, citing the absence of necessary clearances for the said works.

Grounds for Objection:

1. Completion of Works Without Third-Party Issues

o The excavation and construction works have been concluded successfully without any significant issues or complaints from third parties, demonstrating that all necessary precautions were taken.

2. Insurance and Bank Guarantees in Place

o Prior to the commencement of works, all necessary insurance policies and bank guarantees were in place as required by the Avoidance of Damage to Third Party Property Regulations, 2019 (Legal Notice 136 of 2019). These safeguards ensured financial coverage for any potential damages, reinforcing that the works were carried out responsibly.

3. Genuine Oversight Due to 'Clearance Reactivated' Notice

o The only missing document was a block plan indicating third-party properties affected by the excavation. However, at the time, we had received a 'Clearance Reactivated' notice under Doc 173a of PA5298/22, which led to the genuine belief that all necessary clearances had been secured.

o Given that the most crucial documentation had already been submitted, this was an unintentional administrative oversight rather than a deliberate failure to comply.

4. Unjust Withholding of Building Works Clearance

o It is also unclear why the clearance for building works was withheld due to the absence of a block plan related to excavation works. There is no direct regulatory basis for linking the two clearances in such a manner.

o Excavation and building works are distinct phases of construction, each subject to its own review process. The decision to delay building works clearance solely on the basis of a missing excavation-related document appears to lack proper justification.

5. Uncertainty and Conflicting Directives from Authorities

o At the time when clearance was being sought, there was widespread

uncertainty among periti regarding documentation requirements due to the introduction of new regulatory processes.

o In fact, the Kamra tal-Periti (KTP) was at the time issuing numerous directives to ignore certain requests from the BCA, and this may have led to the reason why this was mistakenly omitted.

o It is therefore unjust to penalize the developer months after the project's completion for such a minor administrative matter, especially when this occurred in the context of regulatory uncertainty.

6. Disproportionate Penalty

o While we fully respect and adhere to regulatory requirements, the imposed fines are disproportionate given that:

The missing document was a minor, unintentional omission.

All essential safeguards, including insurance and bank guarantees, were in place before works commenced.

The works were carried out safely and concluded without any issues affecting third parties.

Request for Revocation of Fines

In light of the above, we respectfully request the revocation of the fines issued. We trust that this objection clarifies the situation and makes it evident that the penalty is unjust and should therefore be revoked.

Yours sincerely,

Perit Michael Anastasi

B.E&A.(Hons), M.Sc.(Lond), D.I.C.

Ra r-risposta tal-Awtorita' li permezz tagħha wiegħbet u eċċepiet is-segwent:

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 aspekt;*
2. *Illi qiegħed jkun anness u mmarkat Dok A – Trail of Event u Dok B – Ritratti;*
3. *Illi mil-annessi, kif ukoll mix-xhieda tal-isperturi involuti ser kun ipprovat dak li ndikat l-Awtorità' u cioe' li x-xogħol sar mingħajr lawtorizzazzjoni neċessarja;*
4. *Għaldaqstant fuq dak suindikat, l-Awtorità' appellata qiegħda umilment titlob lil dan l-Onor. Tribunal sabiex tiċhad l-appell odjern;*
5. *Salv eċċezzjonijiet ulterjuri.*

Ra l-atti u d-dokumenti kollha.

Ra l-verbali tas-seduti kollha li seħhew 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-kawża thalliet għal-llum għas-sentenza.

Ikkunsidra

L-appell odjern jittratta xogħlijiet li seħhew mingħajr ma ġew ġew sottomessi d-dokumentazzjoni kollha rikjesti u mingħajr ma kien hemm l-approvazzjoni tal-Awtorità' intimata sabiex isiru x-xogħlijiet. In segwitu ta' dan l-Awtorità' intimata imponiet żewġ penali amministrattivi fl-ammont ta' elf ewro (€1,000) 'l waħda u kif ukoll waqfet ix-xogħlijiet in kwistjoni. Jirriżulta li l-Awtorità' imponiet penali kawża ta' xogħlijiet ta' skavar mingħajr l-awtorizzazzjoni meħtieġa u kif ukoll penali amministrattiva oħra kawża ta' xogħlijiet ta' bini mingħajr l-awtorizzazzjoni meħtieġa.

Mill-provi prodotti jirriżulta b'mod evidenti li kemm ix-xogħol ta' skavar u kif ukoll ix-xogħol ta' bini seħhew. L-appellant ma huwiex jikkontesta dan. Lanqas ma huwa jgħid li kellu l-awtorizzazzjoni neċessarja sabiex jagħmel dan jew li din l-awtorizzazzjoni ma kinitx

meħtieġa. F'dan is-sens it-Tribunal jagħmel referenza għal sub-Regolament 7(12) tal-Avviż Legali 136 tal-2019 li jgħid:

(12) Il-bidu ta' kwalunkwe xogħol ta' skavar, demolizzjoni jew kostruzzjoni jistgħu jidhlu fis-seħħ biss wara li l-Awtorità tal-Bini u l-Kostruzzjoni tagħti approvazzjoni bil-miktub.

In sostenn tal-appell tiegħu xehed il-Perit Michael Anastasi li huwa inkarigat mill-proġett in kwistjoni fejn huwa kkonferma li din il-kwistjoni hija riżultat ta' żball. Dan peress li filwaqt li d-dokumenti kollha meħtieġa kienu ġew sottomessi, kien baqa' biss il-block plan x'tigi sottomessa. Id-dokumenti l-oħra kollha kienu ġew sottomessi. In fatti il-proġett tlesta u saħansitra intbagħat 'Final Completion Certificate'. Dan kollu ma ġiex ikkontestat mill-Awtorità appellata.

It-Tribunal jinnota li fis-sekwenza tal-fatti preżentata mill-Awtorità appellata mar-risposta tagħha jirriżulta li l-awtorizzazzjoni għall-iskavar kienet inħarġet soġġetta għal block plan u dikjarazzjoni li turi ż-zona affettwata. Il-Perit Michael Anastasi, fiż-xhieda tiegħu ammetta li dan l-avviż ġie interpretat bħala awtorizzazzjoni sabiex ikunu jistgħu isiru x-xogħlijiet u kien biss meta irċevew l-avviżi bil-penali amministrattivi in kwistjoni li rrealizzaw dan l-iżball. Il-Perit Anastasi qal ukoll li l-proġett tlesta mingħajr ma kien hemm ebda kwistjonijiet ma terzi. In vista' ta' dan huwa lmentha li ż-żewġ penali fl-ammont ta' elfejn ewro huwa piena eċċessiva u sproporzjonata.

Il-liġi hija ċara li t-tali awtorizzazzjoni kienet meħtieġa sabiex ix-xogħlijiet in kwistjoni setgħu isiru. In fatti l-liġi ma tippermetti ebda eċċezzjoni fil-preżentata tal-imsemmija dokumenti. F'dan il-każ partikolari it-Tribunal jifhem dak li qal il-Perit Anastasi u ċioe li dan seħħ kawża ta' żball ġenwin u mhux b'xi forma ta' reżistenza kontra dak li tirrikjedi l-Awtorità. It-Tribunal ħa in konsiderazzjoni l-fatt li ħafna mid-dokumenti kienu ġew preżentati u kien baqa' biss il-block plan u d-dikjarazzjoni taż-zona affettwata x'jiġu sottomessi. It-Tribunal ħa in konsiderazzjoni ukoll l-fatt li l-Awtorità ħarġet avviż soġġett għal dokumenti u li dan wassal sabiex kien hemm misinterpretazzjoni tal-istess avviż. In vista' ta' dan kollu it-Tribunal iqis li l-ammont taż-żewġ penali amministrattivi magħdudin flimkien huwa eċċessiv u wara li semgħa x-xhieda tal-Perit Michael Anastasi iqis li penali amministrattiva fl-ammont ta' ħames mitt euro (€500) għal kull nuqqas tkun tirrifletti aħjar il-fatti speċie tal-każ.

Għaldaqstant, it-Tirbunal ser jgħaddi sabiex filwaqt li jikkonferma l-imposizzjoni tal-penali amministrattiv imposti, jirriduċi l-ammont taż-żewġ penali għal ħames mitt ewro (€500) 'l waħda sabiex jiriflettu aħjar iċ-ċirkostanzi u l-fatti speċie tal-każ.

Decide

Dan it-Tribunal għar-raġunijiet fuq imsemmija qiegħed jaqta' u jiddeċiedi l-appell billi jilqgħu in parti, u filwaqt li jikkonferma l-imposizzjoni taż-żewġ penali amministrattivi, qiegħed iwarja l-ammont tal-penali imposta billi jirriduċihom għall-ammont ta' ħames mitt ewro (€500) għall-avviż b'numru ta' referenza BCA/ENF06/0022/2025 u ħames mitt ewro (€500) għall-avviż b' numru ta' referenza BCA/ENF06/0023/2025.

*****KOPJA VERA TAL-ORIGINAL*****

Dr Christopher L. Vella
Chairperson

Perit Samuel Formosa
Membru

Inġ. Johan Psaila
Membru