Award in Civil Procedure

Lecture Title: Judicial Procedure

Diploma in Law (Malta)

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Inter Partes

- Decisions of the court are only effective and enforceable between the parties to the proceedings – Inter Partes

- If you have made a claim against 'A' and acquire a successful judgment against 'A'. You cannot later enforce that claim against 'B'.

- If you have only filed against 'A' before final judgment 'B' may, however, be called into the suit or intervene
- Must have Juridical Interest

Juridical Interest

- Lack of Specific Legal Provision
- Court of Appeal, Micallef Goggi vs Mifsud, 11 April 1930 (Vol.XXVII.i.495)

*it was nevertheless always considered in local jurisprudence, despite the lack of a precise provision of the law on the matter, ... **that the basis and measure of every judicial action is the interest of those who institute it and of those who contest it**; because if interest is a sine qua non condition for the simple intervention and for the appeal, it is all the more reason to be able to initiate a cause.*

Juridical Interest

As a general principle it is, without a doubt, undisputed that the inclusion of a defendant in a judgment must, necessarily, be born from **a legal relationship**, whether this emanates from a contract, a tort arising from a criminal or civil action, succession or from structurally common situations (for example, in a condominium or the creation of certain servitudes). Which means, as a consequence, that a case will not be able to achieve its purpose if it is not against the one with whom the plaintiff, for any of the mentioned connections, has a legal relationship **Court of Appeal (Inferior), Appeal 125/2014, decided 26th January 2018**

Court of Appeal, Application 621/2001/1, decided 28 November 2003

- "(i) the (juridical) interest required must be a **direct, legitimate, as well as actual**;
- "(ii) the current state of violation of a right consists of a positive or negative condition **that weakens or neutralizes a right** that belongs to the holder or to the one who is entitled to it;
- "(iii) the legal interest in the end is that which the **defendant refuses to recognize the right** of the same plaintiff and this because every person has the right to request that and injustice against him be made right or be repaired injustice
- "(iv) the **juridical interest must lead to a result of utility and advantage** for those who want to exercise that right. If the action cannot lead to such a result for the one who initiates it, that action cannot take place;
- "(v) the juridical interest must continue to **exist throughout the life of the action** and not only at its beginning. If the interest ends, the immediate consequence will be that the defendant is freed;

Court of Appeal, Application 621/2001/1, decided 28 November 2003

- "(vi) The **plaintiff's interest must be evident from the application itself**. Although the motive of the interest does not need to be mentioned in the application, this should result from the **evidence**;
- "(vii) in judicial practice, **one can promote a cause to obtain a preordained statement for a definitive and final action, even though this has not been included in the ascertainment action.** However, in a case like this, the court must be satisfied that there is the necessary interest, even predetermined for the other cause, and that the declaration thus obtained forms the basis of the other cause that can be done further;
- "(viii) the interest is not necessarily one that is quantified in a determined sum of money or property, **but it can be based to protect or give knowledge to a moral or subjective right**, as long as the invoked right is not a hypothetical one ;
- "(ix) if an action, although it is based on the right of the plaintiff, is intended only to inflict damage on the defendant without any useful advantage to the plaintiff, such action is considered as an illegal one - an action known in the doctrine as one acta ad aemulationem - and **it is considered that the required juridical interest is lacking;**

First Hall Civil Court (Constitutional Jurisdiction), Application 12/2009, decided 28 June 2010

- It is a foundational principle of law that who proposes a claim, must have an interest. This must be:
- (a) **juridical**: i.e. the demand must contain a **presumption of the existence of a right and its violation**;
- (b) **direct and personal**: in the sense that it is direct when it exists in the contestation or in its consequences, and it is personal in the sense that it relates to the application, except for the actio popolaris (which is not the case today);
- (c) **actual**: in the sense that it must come out of a **current state of violation of a right**, i.e. the current violation of the law must consist of a positive or negative condition contrary to the enjoyment of a right legally belonging to or due to the holder. (Muscat vs. Buttigieg: Vol LXXIV II 481)

No one doubts that the court are accessible to everyone. Just as undoubted is the fact that he who applies to the Court must show that he has a right that has been violated, or that be re established if violated by the defendant, and thereby that through the action he could acquire a result which is both advantageous and useful.

First Hall Civil Court, Application 2760/1997/1, 28 January 2004,

Intervention

960. Any person who shows to the satisfaction of the court that he is **interested** in any suit **already pending between other parties**, may, on an **application**, be admitted in statu et terminis, as a party to the suit at any stage thereof, whether in first or in second instance; but such admission shall not suspend the proceedings of the suit

Court of Appeal (Inferior), Application 18/1999/1, decided 10 January 2007

In accordance with our procedural system according to Article 960 of Chapter 12 it appears that a necessary condition for a third party to be brought into the case is that he is the holder of a subjective right that he wants to **support or defend**. From this condition it follows that if it is found that his request to intervene has a connection with that of the other parties on the same substantial object of the case, this justifies what is known from practice as " simultaneus processus"'

Court of Appeal 1251/94, Decided 5 October 2018

- Quoting from: Alex Azzopardi vs Anna Ellul et (PA 29/10/2010):
- 'Therefore, in brief, the position of the intervener in the case, and differently from the joinder, is that he is **neither a plaintiff nor a defendant**. He can neither ask for the payment of his costs nor can he be ordered to pay the costs of the proceedings. The intervener cannot be convicted or acquitted, in the sense that a **sentence can never be executed by the intervener in the case and vice versa and usually a sentence cannot be executed against him.** The intervener is considered not to be a party to the case. The intervener in the case must have a juridical interest and not simply an interest in the outcome. He can ask to intervene, and he must be admitted to intervene, to protect his interests in that particular case and not in another case or cases that may sometimes be tabled. He does not have the right to present pleas that have already been decided. (...) The Court has the obligation to consider the submissions of the intervener in the case and therefore decide the points he raises. The intervener can present documents in the case and take an active part in the discussion.'

- That the Court recognizes that the institution of intervention in the case is built on the need for speed and the removal of multiplicity of judgments, where it must be shown that in a judicial matter between two or more parties , a third party shows that it has a substantial and non-derivative interest to be allowed to take part, to establish with all legal and licit means certain facts and rights it has in that interest. **Therefore, that intervention can occur not only in the interest of one party (ad adiuvandum) or another in the case, but even against the interest of each of them (ad excludendum).** This is one of the aspects where the voluntary intervention contrasts with the forced intervention (joinder) where the party so called is for the purposes a full party in the case as if summoned by the plaintiff party from the beginning.

That a person who intervenes "ad adiuvandum" of the party sued in a case and at the appropriate time of its progress, can also bring forward his pleas. In this regard, the Court considers that even where the party sued in a case has become contumacious, the party that entered the case "in statu et terminis" had the right not only to bring the acts judicial appropriate and compatible with the state in which the case has reached when that intervention is made, but "to bring forward its arguments and reasons, pure value in a note of pleas, as well as to produce the evidence in support of what you are submitting";

- Party allowed to intervene in the case is given all the rights that the other parties would have at that stage of the proceedings. This provided that the intervention cannot lead to a halting of proceedings.
- The intervenor rights are thereby depending on the stage in which the proceedings are.
- Even the evidentiary stage has closed the intervenor cannot present evidence either.

Court of Appeal, Application 535/10, decided 27 January 2017

Now dealing with the grievance brought forward by the appellant that, as an intervener, he was not allowed to submit a note with pleas, **this Court reiterates that an intervener is not a party to the case, and, therefore, has no right to submit a note with pleas**. The intervener actually, is not "disputing" the cause but only presenting his position. He is able to do this by presenting the relevant evidence. It is true that there are cases where the court allows the intervener to submit a note of pleas or a sworn answer, but this is a **discretionary matter** for the court to be exercised according to the circumstances of the case, particularly the procedural stage in which the intervener is allowed.

Civil Court First Hall, Application 1077/2009, decided 29 October 2010 - Case relating to traffic accident. The insurance requested to intervene presenting pleas when its insured had already been declared contumacious but evidence had not started being heard.

Civil Court First Hall, Application 557/2008, decided 23 October 2013 – Intervenor presented pleas which where decided upon by the court

Joinder

- 961. A third party may also, by decree of the court, at any stage of the proceedings before the judgment, **be joined in any suit pending between other parties in a court of first instance**, whether **upon the demand** of either of such parties, **or without** any such demand

962. The third party joined in the suit shall be **served with the application**, whether sworn or not, and shall for all purposes **be considered as a defendant**; and as such he shall be **entitled to file any written pleading**, raise any plea and avail himself of any other benefit which the law allows to a defendant; and the claim may, according to circumstances, be allowed or disallowed in his regard, **as if he were an original defendant**.

Court of Appeal, Avukat Dr Henry Mamo nomine vs Angelo Xuereb nomine, 27 July, 1993

"The procedure of joinder is of undoubted procedural utility. There was a time when the jurisprudence was tending to circumscribe joinder by holding necessary the condition that the party sued in a case must be liable to conviction in the **precise terms** of the citation as formulated by the plaintiff, but the cases that were created as a result of the automotive collisions showed that that element was not in fact necessary - as said, for example, the judgment of this Court of Appeal in the case decided on May 29, 1967, in the names Camilleri vs. Robb - and this Court has on several occasions exposed the need for a joinder called into the suit, and ordered accordingly - as recently, for example, in the judgment of May 4, 1993, in - names Enriquez et vs Attorney Farrugia".

Court of Appeal, Application 1217/09 decided 28 April 2017

Regarding this, the Court starts with the observation of a juridical nature that, although the institution of joinder is now firmly established in our juridical system, with this being recognized by our courts as **fundamental in order to avoid multiple and possibly conflicting judgments** about the same dispute, **as well as to safeguard the interests of both the parties and of a third party who may have an interest in the merits of the proceedings in question**, at the same time, if "it results from the evidence that the plaintiff could never obtain the judicial conviction of the joinder in the case because he has no juridical relationship with it, and it is then established that this was not his legitimate opponent, **even if it results that he could have been on the same merit the legitimate opponent of the defendant, this Court does not see how the action against him can be successful".** [A.C. Carmelo Mamo v. Brian Abela nomine deciza 4 February 2000 cited in the judgment PA Maltacom plc v. CPL Developments Limited et deciza 26 April 2001].

Direttur Generali ta' l-Avjazzjonji Civili vs Panta Contracting Limited et, decided 18 November 1998

- Delineated several principles and circumstances in which joinder was successfully admitted in a case between other parties:-

(1) "Traditionally so that there is **completeness of the judgment**, in such a way that the presence of such a third person is indispensable for the completeness of the procedures.

(2) Recently, there have been several cases where a joinder has been ordered even if the judgment was 'complete', and **this in order to safeguard the rights of those who are directly interested in the first judicial action and who later bring an action against others**, as a consequence thereof (Joseph Riolo pro. et noe vs Carmel Muscat et - App. Civ. 15 November 1991)."

- • The same judgment observed that the institute of joinder was used by the Maltese Courts to include circumstances where or in order to:
- • (a) a multiplicity of cases and judgments are avoided: "Alfred Zammit Cutajar vs. Joseph Formosa" (App.Civ. 26 June 1961);
- • (b) avoiding the possibility of conflicting judgments and appeals - "A.J.C. Barboro vs. Camelo Mallia" (App. Civ. 26 October 1956);
- • (c) the defendant's interest vis-à-vis a third party is protected - "Joseph Calleja vs. Av. Joseph Micallef et noe" (First Chamber. 11 March 1952);
- • (d) it is in the interest of a third person and the plaintiff, so that the judgment is properly observed - "Anthony Cini vs Joseph Demanuele" (App.Civ. 8 February 1946)".

Civil Court First Hall, 10 May 2017, 100/2016

That the concept of joinder has been developed so much, dictated by the practice of avoiding duplicate cases, that when the need for joinder is recognized by the Court, it becomes the duty of the same Court to order it **not only at the request of the parties but also ex officio**. The Court, however, must ensure that such a motion in a case is not requested in order to unnecessarily prolong the procedures or to denature the plaintiff's action, (vide sentence George Cutajar vs. Edward Vincenti Kind pro et nomine - First Chamber decided on March 15, 1953) otherwise, an institute created for effectiveness, loses its practicality completely, and becomes instead a means of frustration of the best Administration of Justice.

- The jurisprudence of our Courts recognizes in many decisions that the institute of joinder serves several procedural functions. Not least, the integrity of the judgment where there are **several defendants or respondents who have to be prosecuted and some of them are left out.** See with illustration "Joseph Riolo proprio et nomine -vs- Carmel Muscat", Appeal, March 15, 1991 and "Anthony Azzopardi et nomine -vs- Calcedonio Attard et", Appeal, January 27, 1997, and s - sentences in these listed. "This is not simply as a measure of economy of judgment but also for the Court to ensure that everyone who is interested in the merit and everyone who could then be affected, adverse or not, with the result of the case, is **given the opportunity to defend himself adequately**" ("Romeo Schembri nomine -vs- John Galea et", Appeal, February 9, 2001);

'Maria mart Paolo Pace et -vs- Avukat Doctor Giovanni Sammut et', (Vol. XLB, I, 322), Court of Appeal

'In the opinion of this Court the **defect of lack of presence** in the case of those persons could have, in the present case, and **should have been remedied by their joinder**. The plaintiff did not request this and neither did the defendant, however, on a principle recently affirmed by this Court in the Civil appeal "Lawyer Dr. A. Caruana vs. dr. Edgar Buhagiar noe et" 4/3/63, once again the first Honorable Court recognized the necessity of that presence and in its own discretion the order for joinder became a duty. There was **therefore no room for the defendant's acquittal 'ab observantia' but only for the trial in the case by the Court 'ex officio'.'**

- in the case in the names Agent Accountant General vs. George Xuereb noe, the usefulness of the presence in the case of the **sub-contractor** (as it was in that case) was well studied and we find that such presence is useful "because the evidence essentially relates to the operation of the sub-contractor who executed the work, and why the latter is not, in the future, able to complain to the defendant that he did not advance a valid and efficient defense against the plaintiffs and thus came to suffer himself...".

- But in that sentence, that Court continued to elaborate as follows, "Above all, however, the request for the joinder **could in no way mean that the defendant company would ever be freed, due to the joinder**, from its contractual responsibility, as this is established by the tender contract. See also the judgments in the names Joseph Riolo pro et noe vs. Carmel Muscat (Civil Appeal, 15.03.1991) and Maltacom p.l.c. vs. Raymond Mallia (27.02.2003, Court of Appeal (Superior)).

Integrita tal Gudizzju /Completeness

First Hall, Civil Court, Application 542/11, decided 6 April 2017

- That this plea is built on three (3) considerations: and that is (a) that for the best judgment of the Court, it is appropriate **that all those who have an interest in a contestaion should be in the case**; (b) that the entry of everyone who has an interest makes the judgment **more effective**, because those who are not in the judgment are not bound by it; and (c) **reduces the need to give a number of judgments on the same case**. In addition to this, it remains always key in the considerations of the Courts that the plea of the lack of completeness of the judgment does not lead to the nullity of the proceedings if the case has been opened against a person who was a legitimate opponent of the plaintiff, but it is not the only one, and that judgment is sustainable and when that completeness can be reached by resorting to the procedural ways that are allowed by law;

- That, in such a case, the Court can only apply any of the mentioned procedural ways, but not to release the sued party from staying longer in the case, once that person has been properly sued

Court of Appeal, Application 557/2008, decided 29 October 2018

35. The decision must necessarily be that the judgment is not complete. This does not mean that the claims of the plaintiffs should be rejected but for the sake of completeness of the judgment it is necessary that the owner of the other share be called in the case, either personally or through curators if he is not known. **Joinder in the case cannot be made at the appeal stage and therefore the court, after considering the other appeals for completeness, will send the documents back to the first court so that the proceedings can take place again after the necessary joinder is made in the case.**

[…]

47. The arguments put forward by the plaintiffs regarding costs are based on the considerations and conclusions of the appealed judgment. The plaintiffs, however, cannot rely on those arguments since, for the reasons given above, the court will cancel that sentence and send the acts back to the first court to be heard again after they are joined in the case the owners of the one seventy-seventh share (1/77) or curators for them if they are not known.

48. This means that it is possible that much of what has been done so far before the first court has been done in vain. This could have been easily avoided if the plaintiffs had thought from the beginning that the judgment would be complete. It is therefore appropriate that the costs up to now of the first instance - except those of the intervenors, who must pay their own costs - are paid by the plaintiffs.

Litis Konsorzjo

- In such a case, the litis consortium is necessary and the lack of participation in the case of some of the interested parties, either as plaintiffs or as defendants, can be replaced by the sure proof of the acceptance/enforcement of those interested to the request made by some of them, and no less than that;
- Civil Appeal, Scicluna vs Azzopardi noe (Kollez. Vol: XLVIII.i.233,) 3.4.1964

Desertion

- 963.(1) Saving the provisions of sub-article (3) and of articles 416 and 420, the written pleadings in any cause shall be closed, in **first instance, within the peremptory time of six months, and, in second instance, within the peremptory time of one year**.
- (2) The time shall commence to run, in first instance, from the day on which the sworn application is filed, and, in second instance, from the date of the application of appeal for the reversal or variation of the judgment appealed from.
- (3) If, even where the peremptory times referred to in sub-article (1) shall have lapsed, it is found that the written pleadings in any cause are not closed, **the court shall once only give such orders which it may deem fit so that such pleadings may be closed as soon as possible in order to avoid that such cause be deserted by reason of some failure to notify or by reason of the failure of performance of a procedure or formality.**
- (3A) The desertion of a cause shall be declared by means of a decree delivered in open court if, after the orders referred to in sub-article (3) shall have been given, the written pleadings are not closed.
- (4) Notwithstanding the provisions of sub-article (3), **the pleadings shall be deemed to be closed if the party not served with the pleading necessary for the close of the record, appears at the trial and does not raise the question that the pleadings are not closed and proceeds or knowingly allows others to proceed to further acts without raising such question.**

- (5) Saving the provisions of article 732(2), the causes the written pleadings whereof are not closed, in spite of the orders given by the Court in accordance with sub-article (3), within the said time shall:
- (a) where the cause is before a court of first instance be deemed to be a cause which has been set down for hearing and subsequently by order of the court, adjourned to an unspecified date, and the provisions of articles 964 to 967 shall apply thereto;
- And
- (b) where the cause is before a court of second instance, be deemed to be deserted.

(6) **The desertion of any cause in first instance shall operate as an abandonment of the proceedings, but shall not bar the right of action.** In second instance, the desertion shall operate as an abandonment of the appeal and the judgment appealed from becomes **res judicata.**

- 964.(1) Any cause in any court of civil jurisdiction which, after having been set down for hearing, is subsequently by order of the court adjourned to an unspecified date or otherwise suspended, shall be deemed to be **deserted unless it is re-appointed for hearing by the court within the peremptory time of three (3) months of it having been so adjourned or suspended or an application for its re-appointment has**, within such period, been filed in court:
- Provided that where the cause has been suspended until judgment is pronounced in another cause, the said time shall commence to run from the date when such judgment is delivered.
- (2) **Re-appointment shall be made either by the court on its own motion or following the application of any of the parties**

967. Where desertion takes place under the provisions of articles 963 and 964, it shall be deemed to take place on the day on which the time therein prescribed expires; and the registrar may from that day demand the fees payable to the registry, in accordance with Tariff A in Schedule A annexed to this Code.

Court of Appeal, 5 October, 2018, Application number 162/17 in the acts of sworn application 973/03LSO:

15. That, in the first place, the institute of desertion is intended to **penalize** that party in a case (or appellant) who is not managing responsibly the procedure initiated by it, although it is **not intended either to tie the hands of the Court in the appointment of cases nor to beat the same party (or appellant, depending on the case) due to administrative needs of the Court;**

16. That in this regard, the law makes it clear that the time intended for the desertion of the cases is a peremptory one and therefore prolonging of this time is not allowed unless in the express circumstances intended by the law itself. In the case of cases at an appeal level, the time is one year that begins to pass from the day of the filing of the appeal application for the cancellation or change of the appealed judgment. Up to one year from then, the appealing party must see that the appealed party has accepted the notification of the application. It is also clear that, for the purposes of desertion at an appeal stage, all that is relevant is the date on which the Appeal Claim is brought and the day on which the notification of that act has been made to the other party or parties in the case;

Payment of Security – Current law as amended in 2021

- 249.Unless otherwise provided in any other law, in the case of a principal or incidental appeal from judgments or decrees given in a cause initiated by sworn application, **security for costs of the appeal shall be produced and deposited in court within three (3)months from when the appellant receives the notice for payment.** If the appellant is not served with the said notice, the registrar shall, within **ten (10) days, inform in writing the advocate of such party that the notice has not been served, and the advocate shall sign a copy of the receipt of such communication:**
- Provided that no action shall lie against the advocate for failure to inform any such party.

- (2) Such security shall be in an amount determined by the registrar and is to be made either by a **deposit of ready money or by a guarantee of a bank** licensed in terms of the Banking Act in accordance with Schedule C to this Code.
- (3) **The deposit shall not be subject to the claims of the creditors of the party making such deposit, so long as it remains to meet the costs of the suit.**
- (4) The Government of Malta, public corporations, the Central Bank of Malta and banks licensed under the Banking Act are exempt from giving the said security.
- (5) The Minister responsible for justice may by regulations exempt any other category of persons or bodies from providing the said security.
- (6) The provisions of articles 893 to 905 where inconsistent with this article shall not apply to the security given under this article.

- 207. (6) Security for costs related to appeals shall be produced and deposited as provided in article 249, and in case of default, the court may declare the appeal as abandoned

Non - Appearance

- 209. If, the court sets an appeal for oral hearing, and after that the cause is called on three (3) times, neither one of the parties nor their advocates appear, or if only the respondent or his advocate appears, **the court may declare the appeal abandoned**:
- Provided that on an application by the appellant, that shall be filed within eight (8) days from such day that the appeal is declared abandoned, the court shall order that the cause be again put on the list for hearing and determination, provided the appellant shall have deposited, within the said time, the amount of **costs occasioned by his non-appearance.**

Before 2021 Amendments

- 249.(1) Saving the provisions of the proviso to article 209(1) and unless otherwise provided in any other law, in the case of an appeal from judgments or decrees given in a cause initiated by sworn application, **security for costs is to be produced and deposited in court within twelve months from the date of the notification of the amount to be deposited or, if the appeal is to be heard earlier than twelve months from the notification herein mentioned, not later than two days before the date set for the hearing of such appeal.**
- (2) Such security shall be in an amount determined by the registrar and is to be made either by a deposit of **ready money or by a guarantee** of a bank licensed in terms of the Banking Act in accordance with Schedule C to this Code.
- (3) **The deposit shall not be subject to the claims of the creditors of the party making such deposit, so long as it remains to meet the costs of the suit.**
- (4) The Government of Malta, public corporations, the Central Bank of Malta and banks licensed under the Banking Act are exempt from giving the said security.
- (5) The Minister responsible for justice may by regulations exempt any other category of persons or bodies from providing the said security.
- (6) The provisions of articles 893 to 905 where inconsistent with this article shall not apply to the security given under this article.

Before 2021 Amendments

- 209. (1) In the Court of Appeal, **if, when the cause is called, itis found that security for the costs of the suit is not produced as provided in article 249, the court shall forthwith proceed to declare the appeal abandoned:**
- Provided that the court may grant the appellant a short time to produce security for costs if the appeal is one which is to be heard with urgency, or if the registrar has not:
- (a) fixed the amount for such security; and
- (b) notified the appellant accordingly indicating in such notice the consequences of his default, **at least ten days** prior to the hearing.
- (2) If, when a cause is called on three times, neither of the parties nor their advocates appear, or if only the respondent or his advocate appears, the court **may declare the appeal abandoned**. Nevertheless, on an application by the appellant, filed within eight days from such declaration, the court shall order that the cause be again put on the list for hearing and determination, provided the appellant shall have deposited, within the said time, the amount of costs occasioned by his non-appearance.

Juratory Caution

- 904.(1) It shall be lawful to admit the plaintiff or appellant to juratory caution, if he shows prima facie a probabilis causa litigandi and swears that he was unable to raise such security as is required by law.
- (2) It shall be lawful for the court at the hearing of the application for the juratory caution, to proceed to hear the merits in so far as the same might bear on the issue as to the juratory caution

- Appeal, 146/1989/3, decided 13 July 2015
- Appeal, 428/2013/1 decided 16 March 2023

21 ACADEMY

Diploma in Law (Malta)

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