Principles of Civil Law

Lecture Title: Ownership, Usufruct and Easements

Diploma in Law (Malta)

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Things regulated by the Civil Code are:

1. movable or
2. immovable property

Examples?

What falls under immovable property?

The things following are immovable by their nature:

- (*a*) lands and buildings;
- (*b*) springs of water;
- (*c*) conduits which serve for the conveyance of water in a tenement;
- (*d*) trees attached to the ground;
- (*e*) fruits of the earth or of trees, so long as they are not separated from the ground or plucked from the trees;
- (*f*) any movable thing annexed to a tenement permanently to remain incorporated therewith.

The things mentioned in paragraphs (*c*), (*d*), (*e*) and (*f*) of the last preceding article become movable as soon as they are separated from the ground, tree, or tenement, although they have not yet been removed elsewhere

- The following are immovables by reason of the object to which they refer:
- (*a*) the *dominium directum* or the right of the dominus on the tenement let out on emphyteusis, and the dominium utile or the right of the emphyteuta on such tenement;
- (*b*) the right of usufruct, or use of immovables and the right of habitation;
- (*c*) praedial easements;
- (*d*) actions for recovering or claiming any immovable thing or any of the rights mentioned in paragraphs (*a*), (*b*) and (*c*) of this article; or for a declaration that an immovable is not subject to any of such rights; or for claiming any inheritance or part thereof, or the reserved portion or any other portion of hereditary property given by law.

What falls under Movable Property?

Things, animate or inanimate, which, without any alteration of their substance, can move themselves or be moved from one place to another are movable by nature, even though such things form a collection or a stock-in-trade.

Other examples:

Ships or other water-craft, baths or other floating structures are also movables.

Materials derived from a building which has been demolished, or gathered for erecting a new building, are movables until they are used in a construction.

Shares or interests in commercial or industrial companies, even if immovable property is owned by such companies

Ownership

How is ownership defined in the Civil Code?

Ownership is the right of enjoying and disposing of things in the most absolute manner, provided no use thereof is made which is prohibited by law.

No person can be compelled to give up his property or to permit any other person to make use of it, except for a public purpose, and upon payment of a fair compensation.

What could be public purpose?

Whosoever has the ownership of the land, has also that of the space above it, and of everything on or over or under the surface; he may make upon his land any construction or plantation, and, under it, any work or excavation, and draw therefrom any products which they may yield

Issue of installing AC units in the airspace of the underlining property.

Can I install AC units in the air space, attached to my wall?

Citazzjoni Numru 742/2008 Alan Vella u martu Doris Vella Grixti -vs- Stephen u Ramona konjuġi Borg deċiża 12 ta' Ottubru 2009

Illi kif jidher ċar miċ-ċitazzjoni din hija kawża ta' spoll. L- atturi qed isostnu illi l-konvenuti kkommettew dan l-ispoll meta installaw fil-bitħa (shaft) tal-atturi stess air conditioner fuq l-arja tagħhom, u dan anke qed iwaqqa' l- ilma ġol-bitħa.

L-attur Alan Vella ppreżenta affidavit a fol. 22 tal-proċess, fejn qal li huwa u martu huma proprjetarji ta' maisonette ground floor, numru 5 Triq Vittorio Cassar, Marsascala u li fost ambjenti oħra fih bitħa nterna. Fuq din il-proprjeta' hemm żewġ appartamenti oħra mibnija, u dawn għandhom it-twieqi jagħtu għal fuq din il-bitħa. Dak ta' fuqu eżatt huwa dak proprjeta' tal-konvenuti u dawn, fis-6 ta' Ġunju 2008 dendlu sistema tal-arja kondizzjonata tagħti għal fuq il-bitħa nterna. Dan mingħajr il-permess tal-atturi. Skond l-attur, dan invada l-arja tal-bitħa tiegħu. B'riżultat ta' dan ukoll iqattar l-ilma li jispiċċa kollu fil-bitħa tiegħu. Dan apparti mill-ħsejjes li jikkawża. Żied jgħid li fil- kuntratt tal-akkwist tal-konvenuti, huma kienu obbligati jagħmlu l-air conditioner fuq il-bejt il-ġdid f'każ li l-bejt eżisenti jiġi żviluppat

Il-konvenut da parti tieghu rribatta li l-bitħa hija proprjeta' tal-kumpanija li biegħet il-flat u li kellu l-permess tagħha biex jinstalla l-air conditioning unit. Għalhekk kellhom kull dritt jagħmlu dan.

Dan il-każ pero' jqajjem punt mhux tas-soltu għaliex ghalkemm ma hemmx dubju li l-atturi jipposjedu l-bitħa, ma huwa xejn ċar jekk dan il-pussess jestendix ukoll għall-punt fejn twaħħal l-air conditioner illi ċertament twaħħal f'livell mal-appartament tal-konvenuti. Il-Qorti ma taqbilx mas-sottomissjoni tal-konvenuti li l-arja ma tistax tkun soġġetta għal spoll – lanqas jista' l-ispoljant jallega li ma kkomettiex spoll għax ... għamel użu mill-arja u l-arja bhala 'res communi's mhux suxxettiva ta' godiment ta' pussess esklussiv ... l-ispazju soprastanti s-superfiċi u dak kollu li jinsab fuq is-superfiċi skond il-prinċipju li l- proprjeta' tas-suol testendi ruħha għall-ispazju sovrastanti u għal kulma jinsab fuq is-superfiċi u taħtha. ("Carlo Galea vs Alfred Anastasi pro et noe" – Prim' Awla 28 ta' Ġunju 1957).

Il-Qorti filwaqt li tiċħad l-eċċezzjonijiet tal-konvenuti, tilqa' t-talbiet tal-atturi u tordna lill- konvenuti ineħħu l-apparat in kwistjoni fi żmien xahar, u fin-nuqqas tawtorizza lill-atturi jagħmlu dan a spejjeż tal-konvenuti taħt is-superviżjoni tal-AIC Valerio Schembri jekk ikun hemm bżonn.

Any construction, plantation, or work, whether on or over or under the land, shall, unless the contrary is proved, be deemed to have been made by the owner at his own expense, and to belong to him, without prejudice, however, to the rights which third parties may have acquired.

Every owner may compel his neighbour to fix, at joint expense, by visible and permanent marks, the boundaries of their adjoining tenements.

Every owner may enclose his tenement, saving any right of easement to which other parties may be entitled.

Vacant property belongs to the Government of Malta.

Usufruct

What is Usufruct?

Usufruct is the real right to enjoy things of which another has the ownership, subject to the obligation of preserving their substance with regard both to matter and to form.

If the usufruct includes things which cannot be used without being consumed, such as money, grain, or liquids, the usufructuary has the right to make use of them subject to the obligation of paying the value thereof according to the valuation made at the commencement of the usufruct; in the absence of such valuation, he has the option either to return things in like quantity and of like quality, or to pay their value at the current price at the end of the usufruct.

How is usufruct created?

Usufruct may be constituted either by law or by the will of man; in the latter case, if the usufruct refers to immovable property, it may not be constituted except by a public deed, and, if constituted by a deed *inter vivos*, it shall not be operative with regard to third parties except from the time when the deed is registered in the Public Registry upon the demand of any of the interested parties or of the notary before whom the deed was executed.

- Usufruct may be constituted even conditionally or for a specified period.
- It may be constituted in favour of one or more particular persons.
- Where the usufruct is granted to several persons to be enjoyed by them successively, it shall be operative only in favour of those persons who are alive at the time when the usufruct devolves upon the first usufructuary.

Rights of the Usufructuary

The usufructuary has the right to take all kinds of fruits, whether natural, industrial, or civil, which the thing subject to his usufruct is capable of producing.

- Natural fruits are those which are the spontaneous produce of the soil. The produce and increase of animals and the produce of stone-quarries or of mines are also natural fruits.
- Industrial fruits of a tenement are those which are obtained by cultivation.
- Civil fruits are the rents of property let, emphyteutical ground-rents, interest on capitals, and annuities.

A usufructuary may assign the enjoyment of his right whether gratuitously or for valuable consideration.

The usufructuary may also sell the fruits that are pending; and in such case, if the usufruct terminates before the fruits are gathered, the sale shall continue to be operative, and the owner is entitled to receive the price of such fruits as have not yet been gathered.

The usufructuary is entitled to enjoy, in the same manner as the owner himself, any right of easement attached to the tenement subject to his usufruct, and generally all the rights which the owner might enjoy.

The usufructuary shall have no right to any treasure-trove which may be found during the usufruct, saving the portion thereof to which he may be entitled, according to law, for having discovered it.

The owner may not by his own act or in any other manner whatsoever prejudice the rights of the usufructuary.

The usufructuary cannot, at the termination of the usufruct, claim any compensation for the improvements of any kind which he may have executed, even though the value of the thing may have been considerably increased thereby.

Any such improvements, however, may be taken into consideration in the assessment of any damages for which the usufructuary may be liable.

It shall be competent to the usufructuary to bring any real action competent by law to the owner.

Obligations of the Usufructurary

The usufructuary takes the things subject to the usufruct in the condition in which they are at the time the usufruct vests in him. At the termination of the usufruct, he shall restore them in the condition in which they are at that time, saving his liability for any deterioration which may have occurred through his negligence.

The usufructuary may not commence to exercise his rights over the things subject to the usufruct before he has made up an inventory of such things, containing a description of the movables together with the value thereof, and of the state of the immovables, unless such inventory is dispensed with in the act creating the usufruct.

It shall likewise be unlawful for the usufructuary, unless he has been exempted by the act creating the usufruct, to commence to exercise his rights over the things subject to the usufruct before he has given security that he will enjoy the things so subject as a *bonus paterfamilias*, that he will restore the movables, refund the values of the things which cannot be used without being consumed, and make good any damage that might happen through his negligence whether to the movables or to the immovables.

The owner may demand the security, where required, either before or within one year after the usufructuary shall have commenced to exercise his rights over the things subject to the usufruct; after the expiration of the said year, it shall not be lawful for the owner to demand the security unless he proves that the condition or the conduct of the usufructuary has so changed that the fulfilment of his obligations is thereby endangered.

Delay in giving security shall in no case deprive the usufructuary of the fruits to which he may be entitled: such fruits are due to him from the time of the vesting of the right to the usufruct.

The usufructuary is only liable for ordinary repairs. Extraordinary repairs shall be at the charge of the owner, unless they have been occasioned by the non-execution of the ordinary repairs, including those that have been required at the commencement of the usufruct, in which case the usufructuary shall be liable therefor.

The repairs to walls and vaults, the replacing of beams, and the entire renewal of the roof, staircase, or pavement of any part of a building, are extraordinary repairs.

The usufructuary is bound to pay the ground-rent and all other annual charges upon the tenement.

The usufructuary is bound, under pain of damages, to notify the owner, without delay, of any encroachment or other act committed by a third party to the prejudice of the rights of the owner.

Where the subject of the usufruct is one or more animals, not forming a herd, and such animals perish without the fault of the usufructuary, he shall only be bound to account to the owner for the skins or their value.

The same rule shall apply where the subject of the usufruct is a herd, and the whole herd perishes without the fault of the usufructuary.

How does usufruct terminate?

- *a*) by the death of the usufructuary;
- (*b*) by the expiration of the time for which it was constituted;
- (*c*) by the merger or reunion in one and the same person of the two capacities of usufructuary and owner;
- (*d*) by non-user of the right during thirty years;
- (*e*) by the total loss of the subject of the usufruct.

Usufruct may also terminate by reason of the wrongful use which the usufructuary makes of his right, either by causing injury to the tenements, or by suffering them to run into ruin for want of ordinary repairs. This involves a court case.

Where the usufruct is constituted in favour of two or more persons conjointly, in terms of articles 738 and 739, it shall only terminate at the death of the person last surviving, and the portion of any predeceased person shall by accretion vest in the persons surviving.

The sale of the thing subject to the usufruct shall not operate so as to alter in any way the right of the usufructuary; and he shall continue in the enjoyment of his usufruct, unless he shall have waived his right thereto.

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Use and Habitation

The rights of use and habitation are acquired and lost in the same manner as the right of usufruct.

The rights of use and habitation may not be created by the owner otherwise than by a public deed, and they shall not be operative as against third parties before the deed is registered in the Public Registry, upon the demand of any of the interested parties, or of the notary before whom the deed was executed. The note for the registration of the deed shall be drawn up as provided in sub- article (2) of article 330.

Definition of Use: Use is the real right of a person of making use of a thing belonging to another, or of taking the fruits thereof, but only to the extent of his own needs and those of his family.

Definitation of Habitation: Habitation is the real right of a person to live with his family in a house belonging to another.

The grantee of a right of use or habitation shall make up an inventory and give security as provided in the case of usufruct

The grantee of a right of use or habitation shall in the enjoyment thereof act as a *bonus paterfamilias*

Easements

- An easement is a right established for the advantage of a tenement over another tenement belonging to another person, for the purpose of making use of such other tenement or of restraining the owner from the free use thereof.
- The tenement subjected to the easement is called the servient tenement; and the tenement in favour of which the easement is created is called the dominant tenement.
- Easements are created either by law or by act of man.

Any Examples?

Examples of Easements

- Right of passage of a farmer
- A window of a property over a yard owned by the adjacent property
- Owning a party wall

Easements arising from the situation of Property

1. Lower and Higher Tenaments

- Tenements at a lower level are subject in regard to tenements at a higher level to receive such waters and materials as flow or fall naturally therefrom without the agency of man.
- It shall not be lawful for the owner of the lower tenement to do anything which may prevent such flow or fall.
- Nor shall it be lawful for the owner of the higher tenement to do anything whereby the easement of the lower tenement is rendered more burdensome.

2. Party Walls

A wall which serves to separate two buildings or a building from a tenement of a different nature must have a thickness of not less than thirty-eight centimetres.

- A party-wall between two courtyards, gardens or fields, may be built of loose stones, but must be -
- (*a*) three and one-half metres high, if it is between two courtyards, or between two gardens in which there are chiefly orange or lemon trees;
- (*b*) two metres and forty centimetres high, if it is between two gardens in which there are chiefly trees other than those mentioned above; and
- (*c*) one and one-half metres high, if it is between two fields.

- (1) In the absence of a mark or other proof to the contrary, a wall which serves to separate two buildings is presumed to be common up to the top, and, where such buildings have not the same height, up to one metre and eighty centimetres from the point at which the difference in height begins.
- (2) The part of the wall above one metre and eighty centimetres from the height of the lower building, is presumed to belong to the owner of the higher building.
- (3) Where there is a building on one side, and a courtyard, garden or field on the other side, the wall is presumed to belong entirely to the owner of the building.

Repairs to Common Wall

The repairs to a common wall or its reconstruction shall be at the charge of all those who have a right thereto in proportion to the right of each.

- (2) Nevertheless, every co-owner of a wall may relieve himself of the obligation of contributing to the expense of the repairs to the said wall or of its reconstruction by waiving his right of co- ownership, provided the common wall does not support a building belonging to him.

Where a common wall supports a building which the owner wishes to demolish, he may not release himself from his liability for the repairs or reconstruction of the wall by waiving his right of co-ownership, unless he carries out for the first time such repairs and works as are necessary so as to avoid causing to the neighbour any damage by the demolition of the building.

Right of Support:

Every co-owner erecting a building may have it lean against the common wall and insert therein beams up to half the thickness of such wall.

Raising the Height

- Every co-owner may raise the height of a common wall, but he shall be liable for the expenses necessary for raising the height of the wall; for keeping in good repair the part raised above the height of the common wall and for carrying out such works as may be necessary for the support of the additional weight resulting from the raising of the wall, so that the stability of the wall will not be impaired

How to become co-owner of an existing wall?

Every owner may also make common, in whole or in part, a wall contiguous to his tenement by reimbursing to the owner of the wall one-half of its total value, or one-half of the value of that portion which he desires to make common, and one-half of the value of the land on which the wall is built, and by carrying out such works as may be necessary to avoid causing damage to his neighbour.

Court of Appeal, 577/2007/1 in the names Neil Bianco vs A. Bonello Limited (decided 30th November 2012)

Ghalhekk din il-Qorti tara li l-interpretazzjoni korretta tal- artikoli rilevanti hija dik illi d-dritt ta' min jappoggja jgib mieghu l-obbligu tal-hlas. Min jappoggja jaf li ghandu jhallas tal-appogg kif tghid il-ligi. Jekk min jappoggja jittrasferixxi l-fond qabel ma jhallas tal-appogg, jaf li l- obbligu tal-hlas ghadu hemm … Dan igib il-konsegwenza illi s-sid tal-hajt komuni ghandu d-dritt ghall-hlas primarjament minghand min ezercita l- appogg u in difett ta' hlas, ghandu d-dritt li jirreklama l-pagament minghand l-aventi kawza tal-istess

Where the common wall is not in a condition to sustain the additional height, the person desiring to raise its height must have it entirely reconstructed at his expense, and the additional thickness must be taken on his own side

In each of the cases mentioned in the last two preceding articles, the party raising the height of the wall is moreover bound to make good to his neighbour any damage which the latter may suffer in consequence of the raising of the wall or the reconstruction.

The neighbour who has not contributed to the raising of the height of a common wall may acquire co-ownership of the additional height by paying one-half of the cost thereof and the value of half the land used for the additional thickness, if any

Prohibited works agaisnt the Common Wall

- It shall not be lawful for one of the neighbours - (*a*) to make, without the consent of the other neighbour any cavity in the body of a common wall;
- (*b*) to cause any new work to be affixed to or to lean against a common wall, without the consent of the other neighbour, or, in case of his refusal, without having first determined by means of experts the necessary measures to be taken in order that the new work shall not injuriously affect the rights of the other neighbour;
- (*c*) to deposit manure or other corrosive or damp substance in such a manner as to be in contact with the common wall;
- (*d*) to heap earth or other matter against a common wall without taking the necessary precautions in order to prevent such heaps from causing, by pressure or otherwise, damage to the other neighbour

Repairs to the Common Wall

Any person may compel his neighbour to contribute to the construction or repair of walls separating courtyards, gardens, or fields, regard being had to the nature and level of the tenement of the defendant.

Where a wall separates two tenements, one of which is at a higher level than the other, the owner of the higher tenement shall bear the whole expense of the construction and repair of the wall up to the level of his own tenement: where as the the portion of the wall which is jointly owned shall be constructed and repaired at joint expense

A neighbour who is is unwilling to contribute to the expense of construction or repair of the wall, he may release himself therefrom by giving up his half of the land on which the party-wall is to be built, and waiving his right of co-ownership of such wall.

Where the several storeys or other parts of a building belong to different owners, the contribution of each of the owners to the expense of the repairs or reconstruction which may be required shall be in proportion to the benefit which the respective part of the building derives from such repairs or reconstruction.

Where a common wall or a house is reconstructed, any active or passive easement shall be maintained also with regard to the new wall or house, provided such easement is not rendered more burdensome, and such reconstruction is made before prescription has been acquired.

It shall not be lawful for one of the neighbours without the consent of the other to make in the party-wall any window or other opening.

Each of the neighbours is bound to carry out in his own tenement such works as may be necessary to prevent any damage which may be caused to the party-wall by the cisterns or sinks existing in his tenement or by any flow of water or filth.

- It shall not be lawful for any person to dig in his own tenement, any well, cistern or sink, or to make any other excavation for any purpose whatsoever at a distance of less than seventy-six centimetres from the party-wall.

3. Right of Way and of Watercourse

Any owner whose tenement has no outlet to the public road, may compel the owners of the neighbouring tenements to allow him the necessary way, subject to the payment of an indemnity proportionate to the damage which such way may cause.

Such right of way shall be exercised over that part where it will be least injurious to the person over whose tenement it is allowed.

Where the right of way granted as aforesaid shall, in consequence of the opening of a new road, or of the incorporation of the tenement with another tenement contiguous to the public road, cease to be necessary, the owner of the servient tenement may demand the discontinuance of such right of way on restitution of the indemnity received or the cessation of the annual payment agreed upon.

- Case Study

Propjeta' mertu konvenju kienet soġġetta għal dritt ta' passaġġ bir-riġel, bil-bhima, bil-karrettun u bit-trukk a favur ta' porzjon diviża ta' art li illum tappartjeni lil terzi

A right of passage means a considerable reduction in the value of the said property.

Solutions?

Right of Watercourse

- Any person who cannot receive water into his own tenement from fountains or other deposits of public water, except through rural tenements belonging to other persons, may compel the owners of such tenements to grant him, in such manner as shall least injuriously affect them, the right of watercourse, subject to the payment of an indemnity proportionate to the damage.
- It shall not be lawful for such person to compel the said owners to allow him to make new channels, if they grant to him watercourse by means of the existing channels; in which case the indemnity shall be determined having regard to the value of such channels, and the expense necessary for their first repair, and the person who makes use of them shall remain bound to contribute to the expense of their upkeep

Easements created by Act of Man

How are they created?

- (*a*) by virtue of a title i.e. a public deed
- (*b*) by prescription, if the tenement over which such easements are exercised may be acquired by prescription i.e. possession for a period of not less than thirty years is necessary.
- (*c*) by the disposition of the owner of two tenements.

Proving acquisitive prescription is not easy:

Citazzjoni Numru: 217/1997/1 Martin u Carmela konjuġi Xuereb vs Peter Paul u Marija konjuġi Camilleri (Deċiża 20 ta' Jannar 2009)

In this case the defendants were claiming that they have a right of passage over the property of the plaintiffs and this because they claimed they have been doing so for thity years:

Hu biss fejn il-fond m'ghandux mezz ta' hrug iehor fuq triq pubblika, li servitu' ta' moghdija tista' tigi akkwistata permezz tal-preskrizzjoni. Il-konvenuti ma bbazawx l-eccezzjoni tal-preskrizzjoni akkwizittiva ta' tletin sena fuq it-tezi li l-proprjeta' taghhom m'ghandhix mezz ta' hrug iehor ghal Triq San Gwann. F'kull kaz fir-realta' d-dar ta' l-atturi ghandha hrug iehor fuq triq pubblika, in kwantu ghandha l-bieb principali fi Triq San Gwann. L-aperturi li ghandhom fil-gemb tal-proprjeta' jaghtu wkoll fuq dik il- parti tal-passagg li m'hemmx kontestazzjoni li ghandhom dritt li jghaddu minnu. Inoltre, id-dar ta' iben il-konvenuti (meta sar l-access fl-20 ta' April 2007 kien ghadu gebel u saqaf) u l-garaxx tal-konvenuti, li hemm fil-parti ta' wara tal-passagg (ara pjanta li hejja l-perit tekniku Joseph Mizzi a fol. 148) ma jirrizultax li ilhom mibnija iktar minn tletin (30) sena.

Rikors Numru 537/2017TA in the names Joan Antida Serracina Inglott et vs Carmela Mifsud Et, decided 6th May 2019

This was a case which plaintiffs instituted to remove respondent's water tanks from their roof. The respondents argued that they had their water tanks so installed for thirty years and therefore could not be ordered to be removed.

- *Fid-dawl ta' din il-prova miġjuba mill-Atturi, din il-Qorti tikkonsidra li x-xhieda ta' Patricia Camilleri flimkien ma' provi oħrajn, il-Konvenuti ma rnexxilhomx jippruvaw b'mod sodisfaċenti għandhomx jedd ta' servitù fuq il-proprjetá tal-Atturi għaż-żmien kollu stabbilit fl-artikolu 462 tal-Kodiċi Ċivili inkwantu jirrigwarda d-dekors ta' tletin (30) sena sabiex setgħu jiksbu s-servitu` inkwistjoni ai termini tal-artiklu 462 tal-Kodiċi Ċivili.*
- *35. Anke li kieku għall-grazzja tal-argument kellu jingħad il-provi ma humiex daqstant ċari u allura jesisti dubbju fattwali fid-dawl tax-xhieda prodotta dwar l-esistenza jew l-estensjoni ta' servitu', fil-kamp ta' servitujiet din il-Qorti hija gwidata mill-ażioma "servitus sic interpretanda est ut quam fieri potest incommodo fundus serviens oneretur." It-tagħlim ġurisprudenzjali huwa fis-sens "Illi bil-liġi, sid il-fond dominanti ma jista' jagħmel xejn li jtaqqal il-piż tal-fond servjenti. Fid-dubbju għandu jiġi deċiż favur il-fond servjenti." (ara Deċiżjoni tal-Appell Ċivili Superjuri tal-4 ta' Mejju 1953 fl-ismijiet Carmelo Vassallo -vs- Nicola Galea). Mela multo magis, kemm huwa aktar applikabbli dan it-tagħlim meta l-kwistjoni tkun mhux dwar l-estensjoni tas-servitu` iżda l-esistenza tiegħu.*

- Appell Ċivili Numru 80/2009/1 in the names Angela u Emanuela konjuġi Micallef vs Maria Antonia Farrugia Et

In this case the plaintiffs requested to the Court to order respondents “biex jingħalqu fetħiet li hemm fil-ħajt li jifred il-proprjetà tal-atturi minn dik tal-konvenuti”

The respondents replied that these openings had been there for thirty years and therefore cannot be ordered to be closed.

The First Court held:

F’din il-kawża l-atturi qegħdin jitolbu li l-konvenuti jiġu kundannati jagħalqu żewġ aperturi li jagħtu għal fuq bitħa/ġardina żgħira li tifforma parti mill-proprjetà tagħhom: bitħa/ġardina li hi aċċessibbli biss mill- proprjetà tal-atturi

The Respondents rebutted to this, amongst others, that:

il-pretensjonijiet tal-atturi konjuġi Micallef huma totalment infondati fid-dritt u fil-fatt stante li l- esponenti akkwistaw id-dritt li jżommu dawn l-aperturi ossia twieqi bis-saħħa tal-preskrizzjoni triġennarja a tenur tal-artikolu 2143 tal- Kodiċi Ċivili, stante li dawn it-twieqi ilhom miftuħin fil-fond tagħhom għal iktar minn tletin (30) sena

Both the First Court and the Court of Appeal refused the arguments of the respondents, including the one that the openings have been there for more than 30 years on the basis that:

The decision of the First Court was as follows:

1. tiddikjara li ż-żewġ toqob li hemm fil-ħajt diviżorju li jifred id-dar tal-konvenuti mill-ġardina/bitħa li hemm fil-proprjetà tal-atturi u li huma meritu ta' din il-kawża ma jikkwalifikawx bħala twieqi u li dawn il-fetħiet qegħdin fil-ħajt diviżorju b'tolleranza;

2. tikkundanna lill-konvenuti sabiex fi żmien disgħin (90) jum mil-lum jagħalqu minn kull naħa u għas-spejjeż tagħhom il-fetħiet taħt id-direzzjoni u superviżjoni ta' Vincent Ciliberti;

3. fin-nuqqas tawtorizza lill-atturi jagħmlu l-istess xogħol għas-spejjeż tal-konvenuti taħt id-direzzjoni u superviżjoni tal-istess perit tekniku

The Court of Appeal upheld the reasoning of the First Court and held:

- *Din il-qorti għalhekk taqbel mal-ewwel qorti illi l-aperturi li dwarhom saret il-kawża ma humiex twieqi li jistgħu jnisslu servitù b'użukapjoni.*
- *Fid-dawl ta' dawn il-konsiderazzjonijiet, l-argumenti l-oħra mressqa mill-atturi biex juru illi l-aperturi ilhom hemm tletin sena jew aktar ma jibqgħux relevanti.*

Għal dawn ir-raġunijiet il-qorti tiċħad l-appell u tikkonferma s-sentenza appellata, b'dan illi ż-żmien mogħti fis-sentenza appellata sabiex isiru x-xogħlijiet meħtieġa għandu jibda jgħaddi millum. L-ispejjeż tal-appell iħallsuhom il-konvenuti appellanti.

21 ACADEMY

Diploma in Law (Malta)

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