TRIBUNAL INDUSTRIJALI
Dec.Nru 2985

KAZ NRU: 4159/JB

Fil-Kwistjoni tax-Xoghol

Bejn

Mohazin Nellikkavil Maliyakkal
(Permess ta' Residenza nru. MT0158699)

Vs

Let's Sell More

Illum: 19 ta' April ,2024

dwar tkeccija mill-impjieg allegata li hi ngusta (constructive dismissal)

Chairman : Is-Sur John Bencini B.A.(Hons)Lic.Phil., M.O.M

INTRODUZZJONI:

It -Tribunal ra r-rikors promotur ossia d-Dikjarazzjoni tal-Fatti tar-rikorrenti Let's Sell More, ipprezentat fil-25 ta' Jannar, 2023 fil-**Każ Numru 4133/JB** fejn r-rikorrenti qed jitlob lit-Tribunal Industrijali jiddikjara illi l-intimat Mohazin Nellikavil Malijakkal, detentur tal-Permess tar-residenza Nru: MT0158699 abbanduna l-impieg definit tiegħu mar-rikorrenti qabel id-data miftiehma mingħajr raġuni valida u konsegwentement tordna il-ħlas tas-somma dovuta in rigward;

Ra r-Rikors promotur ta' Mohazin Nellikavil Malijakkal detentur tal-Permess tar-residenza Nru: MT0158699 ippreżentat fis-17 ta' Marzu 2023 fil-**Każ Numru 4159/JB** fejn talab lit-Tribunal Industrijali jiddikjara illi l-aġir ta' Let's Sell More wassal għat-terminazzjoni tal-impieg tiegħu u konsegwentement jillikwida kumpens xieraq u jordna l-ħlas tal-istess;

Sema' d-difensuri tal-partijiet fiż-żewġ każijiet;

Digriet tat-Tribunal:

Illi jirriżulta illi z-żewġ kazijiet huma konnessi u relatati stante illi jikkonċernaw l-istess oggett, l-istess partijiet u l-istess merti.

Fit-tieni seduta li nżammet fit-28 ta' April, 2023, il-partijiet qablu li ż-żewġ każijiet ser jinstemgħu flimkien. It-Tribunal laqa' t-talba. U il-każ ġie differit ghas-26 ta' Mejju 2023.

Għaldaqstant, it-Tribunal Industrijali għat-tenur u t-termini ta' Art 77 tal-kap 452 u bl-applikazzjoni ta' l-Art 793 tal-Kap 12 tal-liġijiet ta' Malta:
Jordna illi z-żewġ każijiet, cioe' il-każ Nru: 4133/JB u 4159/JB jinstemghu flimkien b' dan illi pero', jinghataw deċiżjonijiet separati ai termini tal-istess Art 793 tal-Kap 12 tal-liġijiet ta' Malta.

FATTI FIL-QOSOR:

Dikjarazzjoni tal-każ tal-azjenda Let's Sell More: (Każ: 4133/JB):Tramite l-Avv. Kenneth Xuereb fil-25 ta' Jannar, 2023.

Illi Mohazin Maliyakkal beda jaħdem mal- ażjenda rikorrenti għall-perijodu definit, liema perijodu jiskadi fl-14 ta' Diċembru, 2023 u dan ai termini tal-kuntratt datat 20 ta' Ġunju, 2022. L-intimat irriżenja mill-impieg tiegħu u ittermina l-impieg tiegħu mingħajr ebda raġuni valida skont il-liġi fit-23 ta' Novembru, 2022 u cioe' 12 il-xahar qabel id-data tat-terminazzjoni kif kien miftiehem bejn il-partijiet permezz ta' kuntratt.

L-intimat abbanduna l-impieg u għalhekk żgur ma teżistix raġuni valida skont il-liġi li tiġġustifika l-abbandun qabel iż-żmien tal-impieg mas-socjeta' rikorrenti. A bażi tal-kuntratt su-referit, jekk l-impieg jiġi terminat qabel iż-żmien definit mill-impjegat, l-impjegat għandu jħallas lir-rikorrenti somma li tammonta għal nofs s-salarju li l-impjegat kien intitolat għalih kieku baqa' fl-impieg għal perijodu definit u miftiehem fil-kuntratt, u dan anki in linea mal-artiklu 36(12) tal-Kap 452 tal-liġijiet ta' Malta.

Ir-rikorrent Let's Sell More interpellat lill-intimat biex iħallas is-somma dovuta lilha u cioe' is-somma ta' sebat elef, mija u sebgħa u tmenin ewro (7,187), permezz ta' ittra legali, iżda l-intimat baqa' inadempjenti.

L-Avukat. Colin Deguara għan-nom tal-intimat Mohazin Maliyakkal jiddikjara dan li ġej:

"That primarily, the contradictions in the claimant's application/declaration must be revealed, where while the claimant entity is asking this Honourable Tribunal to 'declare that the respondent abondoned his employment", in its application, the plaintiff company confirms that "the respondent resigned from his employment". Contrary to what is being alleged by the plaintiff, the respondent had a good and sufficient cause according to law to terminate his employment and this because:

a. He received different treatment and was subjected to different working conditions than those of his colleagues.
b. He was subjected to intimidatory behaviour and was threatened by his superiors.
c. The claimant was aware of all this and never acted to safeguard and protect the respondent as its employee.

In addition to this, the claimant entity ordered him to stop attending work at the establishment at which he was assigned without any valid reason. That in a strategic, unilateral and abusive manner, the claimant entity assigned the respondent to work in a winery and to do work which goes beyond that agreed to in the contract of employment. And this, when the claimant entity was conscious of the fact that the respondent's religious beliefs prohibited him from working in a winery. That therefore, the respondent had no other option but to formally resign on the 23rd November 2022 and informed the respondent of his resignation with an email in which he gave reasons leading to his resignation.

That, in light of the above and as will be amply proven throughout these procedures, the respondent had a good and sufficient cause to terminate his contract of employment in terms of article 36(14) of Chapter 452 of the Laws of Malta. That therefore, no sum is due to the claimant entity. In any case, and without prejudice to the foregoing, the sum claimed by the claimant entity is excessive.

Therefore, because of the reasons mentioned above, and which will be amply proven to this Honorable Tribunal, the claims made by the claimant company should be rejected in their entirety with costs to be borne by the claimant."

Risposta ta' Let's Sell More tramite l-Av. Kenneth Xuereb:

"Contrary to what is being claimed by the claimant in his original application, the respondent was not treated differently from his colleagues. Indeed, it was the respondent who expected preferential treatment at his assigned workplace ' Pavi Supermarket' by demanding he takes his break before colleagues who were scheduled to take their break before him. That as explained in an e-mail to respondent Let Sell More by the Cash Manager at Pavi Supermarket, it was the claimant who exhibited a bad attitude which was aimed at the cash supervisor who was his immediate superior.

The respondent categorically denies the allegations by the claimant that he was subjected to intimidatory behaviour, threats and racially motivated comments. The respondent acted in accordance with the provisions of the law that regulated disciplinary action and issue a first warning against the respondent. As evidenced by the above mentioned email and contrary to what is being alleged by the claimant in his original application, it was the management of the supermarket where he was assigned and not the respondent, that no longer wanted him to work there for the reasons mentioned by the same supermarket in that email.

Contrary to what is being alleged by the claimant, the respondent never assigned to claimant to work in a winery. Following the end of his assigned job with Pavi for the above mentioned reasons, the respondent assigned to a new workplace, specifically, the 'Atrium' complex in Giovanni Felice Street, Central Business District, Birkirkara. It was the claimant who arbitrarily, without a valid reason and in breach of the contract between the parties abandoned the employment when he did not report for work at the 'Atrium' complex and it was only later in the day of the 23rd of November, 2022 that the claimant communicated his resignation.

Consequently, for the reasons mentioned above which will be proven before this Tribunal, the demands made by the claimant in his original application are to be rejected in their entirety with costs against the claimant."

XHIEDA u AFFIDAVITS

Xehdu fost ohrajn: Ir-rikorrenti Mohazin Nellikkavil Maliyakkal, Tiziana Farrugia, Cash Manager (Pavi Supermarket, Qormi), Daniel Coppini

(Propretarju Let's Sell More), Bhavik Chaudari (Human Resources Manager of Let's Sell More)

SINTESI TAT-TRATTAZZJONIJIET

L-Avv. Margo Zammit Fiorentino: Qabel xejn ha nittratta brevement fuq Każ: 4133, li huwa l-każ li bdiet is-socjeta' rikorrenti Let's Sell More, u dan sar fuq allegat ksur ta' kuntratt. Aħna qed ngħidu li s-Sur Maliyakkal kellu kuntratt definit, beda minn 20 ta' Ġunju, 2022 u kien għall-perjodu ta' tmintax il-xahar. Umbagħad is-sur Maliyakkal, mhux kontestat li ttermina l-impieg tiegħu fit-23 ta' Novembru, 2022. Hawnhekk s'issa, il-fatti m'humiex kontestati, jiġifieri kellna kuntratt tal-impieg definit u ġie tterminat b'mod prematur. S' hemmhekk huwa l-każ tagħna u allura aħna qed ninsistu li għandu jħallasna nofs il-paga li kienet tkun dovuta. Issa is-sur Maliyakkal, fejn hemm din il-kontestazzjoni u fejn hemm ukoll il-każ li irrisponda għalih (Każ: 4159), is-sur Maliyakkal qed jgħid li hu telaq għal raġuni tajba u qed jgħid li hu imkeċċi b'mod furzat. Kellu jittermina l-impieg tiegħu b'mod furzat u t-teżi tiegħu hija li l-kumpanija ma ħallietlu l-ebda għażla.

Issa xtaqt nidħol f'dak li tgħallimna t-tribunal stess fuq il-prinċipju ta' '*constructive dismissal*, għaliex kif jaf ben tajjeb it-tribunal, il-constructive dismissal mhux definit fil-ligijiet tagħna. La gie trattat diversi drabi anke fil-qorti tal-appell. Dan jkun riżultat meta min iħaddem ikun raġonevolment poġġa lil ħaddiem daru mal-ħajt, sal-punt li dan ma kellux triq oħra ħlief dik li jitlaq. Ma jkunux kwistjonijiet frivoli, iżda serji sew, enfasi fuq serji sew. Il-ġurisprudenza tagħna ukoll tgħallimna li għandhom jirriżultaw tlett elementi sabiex wieħed ikun sodisfatt verament li sehh constructive dismissal, u dawn ġew elenkati wkoll mit-Tribunal fil-każ ta' Christopher Bonello kontra OZO Service li ġie deċiż fit-28 ta' Settembru, 2023. Irid jkun hemm ksur ċar, kemm jekk espress, kif ukoll implicitu, da parti tal-prinċipal tal-kuntratt tal-impieg. Dan meta ikun hemm riżenja mix-xogħol ħafna żmien wara li sehh l-aġir. Il-qrati tagħna u it-Tribunal jenfasizzaw li huwa min qed jallega l-*constructive dismissal* li għandu jressaq il-provi.

Jekk wieħed jagħsar dak li qed jgħid is-sur Maliyakkal li kien ġie *placed* il-Pavi darba minnhom ċempel għal break, għat-tieni break għax kien diġà ha l-break qabel u dan it-tieni break gie rifuż mill-Pavi u mhux mis-socjeta' rikorrenti u dan għaliex kien hemm nies oħra li kellhom jieħdu il-break qabel, għal din is-sempliċi raġuni. Is-sur Maliyakkal, ir-reazzjoni tiegħu kienet li

jsabbat it-telephone. Reġgħu ċemplulu u reġa' sabbat it-telephone u għajjat. U dan kif xehdet Tizjana Farrugia rappreżentanta tal-Pavi.

Fil-15 ta' Novembru, 2022 sar meeting u gie msejjaħ is-sur Malijakkal, laqgħa li ġiet irrekordjata mill-istess rikorrenti. F'din il-laqgħa intqal lilu li ma kienx aċċettabbli l-attitudni tieghu il-Pavi. Hawnhekk ngħata l-ewwel *written warning*. Ftiehmu li ser isibulu xoghol iehor ma Delicata winery. Ir-rikorrent qal ma setax jahdem ma Delicata minhabba it-twemmin religjuz tieghu. Allura gie offrut li jahdem l-Atrium. Pero' imbaghad qabad u ittermina l-impieg tieghu. Waqt dan il-meeting ir-rikorrenti allega li ma tħallix jitkellem. Ta' min jghid li dan ir-recording ittiehed minghajr kunsens. Iżda waqt dan ir-recording ir-rikorrenti nstema jitkellem diversi drabi fejn, fost affarijiet oħra, jinstema jghid, *"yes, I shouted at her because I was frustrated"*. Ir-rikorrenti jinstema ukoll jghid *"I am not afraid of anything. I come from a wealthy family, I don't have intention to stay in Malta, I can leave anywhere"*. Ir-rikorrenti ngħata tlett ghazliet, tlett opportunitajiet fejn jista jmur. Riedu jibgħatuh il-Merlin iżda ma riedx imur għax qal li kien *under qualified*.

Il-punt hu li lis-sur Maliyakkal ma ġabuh daharu mal-hajt, ma kien hemm l-ebda tkeċċija forzata u li kieku ma qabadx u ittermina l-kuntratt, is-sur Maliyakkat illum l-ġurnata kien ikun qieghed x'imkien ieħor mal-kumpanija Let's Sell More. Aħna qed insostnu li dan ma kienx każ ta' Constructive Dismissal.

Avv. Colin Deguara: Quddiem dan it-Tribunal rajna żewġ verżjonijiet. Għandek l-azjenda Let's Sell More ,li tajjeb jew ħażin qed tgħid isma, kien hemm kuntratt definit, dan il-ħaddiem irriżenja u allura qed nitolbu nofs il-pagament fuq dak il-kuntratt. Umbagħad għandek lis-sur Malliyakal, li qed jgħid isma', bl-aġir ta' min kien qed iħaddimni spiċċajt m'għandix għażla oħra, anke jekk naf li ha nbaghti serjament għax ġejt f'sitwazzjoni li ma nistax nibqa' nirrapporta fuq dak il-post tax-xogħol, dik li hija, kif qalet tajjeb il-kollega, '*constructive dismissal.*Nagħmel referenza għas-sentenza tal-*employment tribunal* ingliz fejn propju tgħid hekk*," if there has been conduct by the employer likely to destroy or seriously damage the trust and confidence relationship, this will mean inevitably that there has been a fundamental breach going through the route of the contract, and entitling the employee to resign and claim 'constructive dismissal'.*

Ħaddiem li ġie Malta biex isib post tax-xogħol dinjituz. Beda fuq il-post tax-xogħol li kien assenjat fih, mill-azjenda Let's Sell More, induna li kien

qiegħed jiġi trattat b'mod differenti minn ħaddiema oħra Maltin. Ikkonferma bil-ġurament hu wkoll, li kellem kemm il-darba li għandu problema fuq dan il-post tax-xogħol, din qatt ma ġiet indirizzata, wara nsiru nafu għala. Għaliex l-azjenda jidher li kellha l-istess fehma bħal post tax-xogħol li kien qed jaħdem fih, u is-sur Maliyakkal spiċċa f'sitwazzjoni fejn irid, jekk mhux ha jipproteġi lilu nnifsu hu, m'hemm qadd min jipproteġih, lanqas min iħaddmu. Pero', meta imbagħad tkellem għalih innifsu, sab baraxx mill-azjenda, li kienet propju qiegħda tħaddmu u mhux sapport.

F'dan il-każ għandna 'recording' ċar li juri meeting li skont is-Sur Coppini, it was another day in the office, one of many meetings he has, u qed naraw x'gara waqt dak il-meeting. Waqt dan ir-recording, rajna lis-Sur Coppini jghidilna li prova jitfghalu l-kliem f'halqu. Kien recording li ihammarlek wiccek, fejn intuza kliem diskriminatorju u degradanti bhal 'don't ask these silly questions. Instema wkoll diskors bhal li is-sur Maliyakkal *'hero', 'cowboy'* u naħseb l-agħar waħda fosthom 'just a little Indian with a work permit'. Tisma' umbaghad lis-sinjura Rita Jenkasfoku tghid,'inti hawnhekk m'intiex Malti, baxxi rasek hawnhekk, ma tistax tkun trattat bħal Maltin'.

Ta' min isemmi li Let's Sell More kienu konsapevoli li r-rikorrenti għandu problema biex jaħdem ma Delicata minħabba r-reliġjon tiegħu. Pero' imbagħad bagħtuh opportunità oħra, bagħtuh *interview* għal *job* relatat mal-*accounts*, meta kienu jafu li r-rikorrenti m'għandu l-ebda esperjenza fuq *accounts*. Umbagħad kellna t-tielet *placement tramite Messenger* fejn kważi hemm ċertezza li l-anqas biss jilħaq jarah. Umbagħad għandna lis-sur Maliyakkal, kien dahru mal-ħajt, u jaf biċ-ċert li fuq il-post tax-xogħol ma jistax jirrapporta u kellu jirriżenja, meta din id-deċiżjoni kienet tfisser diffikultajiet finanzjarji u soċjali.

Imnalla kellu s-sapport ta' ħbieb oħra hawn Malta, li selfuh il-flus biex ikun jista' imantni lilu nnifsu u li jrid jrodd lura il-flus li issellef. Ikollok imbagħad lis-sur Coppini li jibgħat *invoice* ta' 8,480 euros meta dan kien konsapevoli tal-fatt kif kien trattah. F'dawn il-proceduri, rajna lis-Sur Maliyakkal konsistenti għall-inhar tul il-proċeduri kollha.

Avv. Margo Zammit Fiorentino: L-ewwelnett niċhad li kien hemm żguidar ta' dan it-tribunal minn naħa tagħna. Ma jippruvawx nagħtu stampa ta' *pity* issa li qed nagħżlu trattazzjoni tas-sur Maliyakkal. F'din il-famuża recording, is-sur Maliyakkal jghid," I am not afraid of anything. I am coming from a wealthy family. I don't have the intention to stay in Malta". Ma nippruvawx inpittru

stampa li gie, li qed naghmluh dahru mal-hajt, li qed imantni l-familtu...... Jerga' jghid " I didn't come here to work, I came here to study......... Ma nistghux nigu llum il-gurnata nghidu ghax bata.

Il-*Constructive Dismissal,* ir-raġuni primarja tiġi ibbażata fuq id-diskriminażżjoni meta persuna tiġi trattata b'mod divers minn comparable employee. Dawk tal- Pavi, li kienu ha jieħdu break qablu u l-impjegati kollha ta' Let's Sell More huma barranin.

Avv. Colin Deguara: Meta tara l-provi kollha, ma nistgħux niġu hawnhekk illum daqs li kieku x-xhieda tas-sur Maliyakkal m'għandhiex b'xi mod, tiġi ivvalutata meta ma rajna ebda diskrepanza tul dawn il-proċeduri kollha, għad-differenza bir-rispett kollu ta' dak li jmexxi l-azjenda li kienet qed tħaddmu.

Avv. Margo Zammit Fiorentino: Ir-relevanza tal-argument tiegħi, huwa u qed nagħmel referenza għax-xhieda li tressqet biss ix-xhieda tas-Sur Maliyakkal, sempliċiment għaliex f'kaz ta' *Constructive Dismissal,* kien tenut is-sur Maliyakkal li prova li kien verament dahru mal-ħajt u ma ngħatax *placements* oħra mill-kumpanija, full-stop.

KUNSIDERAZZJONIJIET:

It-Tribunal analizza sew il-fatti kif joħorġu mill-provi. Xtarr bir-reqqa d-dokumentazzjoni u x-xhieda kollha kif prodotta kif ukoll is-sottomissjonijiet u trattazzjonijiet tal-partijiet.

Fil-każ odjern, Is-soċjetà rikorrenti Let's Sell More qed titlob lit-Tribunal jiddikjara illi Mohazin Nellikavid Malijakkal kiser il-kuntratt tal-impjieg definit u għaldaqstant għandu jiġi ordnat iħallas nofs is-salarju għal perijodu li kien jonqos għad-data tat-terminazzjoni tal-kuntratt.

Mill-banda l-oħra, l-intimat sostna illi huwa ma kienx kiser il-kuntratt tal-impjieg definit tiegħu imma kuntrarjament għal dak sostnut mir-rikorrenti kienu ir-rikorrenti stess li kisru l-kuntratt tal-impjieg u poġġewh f' sitwazzjoni fejn ma kellu ebda triq oħra ħlief li jirrizenja qabel iż-żmien. Fil-fatt l-intimat fil-każ odjern intavola rikors promotorju f'dan is-sens, każ Nru.

Għaldaqstant hawnhekk għandna quddiemna żewġ każijiet konnessi u relatati fejn fl-ewwel każ l-employer qiegħed jagħmel talba sabiex it-Tribunal

isib li l-impjegat kiser kuntratt ta' xogħol definit billi abbanduna l-impjieg u mill-banda l-oħra fit-tieni każ għandna l-impjegat illi qed isostni illi t-terminazzjoni tiegħu kienet furzata inkwantu tammonta għal-*constructive dismissal*.

Kien għalhekk illi t-Tribunal ordna illi dawn iż-żewġ kazijiet jinstemgħu flikmien sabiex tiġi evitata ċirkostanza li jingħataw żewġ deċiżjonijiet kontradittorji stante illi t-talbiet taż-żewġ każijiet huma "*mutually exclusive*".

It-Tribunal analizza bir-reqqa l-*employer-employee relationship* bejn iż-żewġ partijiet, il-perkors *ossia* l-*iter* kollu ta' din ir-relazzjoni biex jasal jifhem iċ-ċirkostanzi kollha tal-każ u allura jkun jista' jiddetermina jekk kienx hemm ksur tal-kuntratt tal-impjieg min naħa tal-ħaddiem jew inkella kienx hemm *constructive dismissal* u allura ksur tal-kuntratt tal-impjieg min naħa tal-employer.

F'dan ir-rigward, it-Tribunal jagħmel referenza għas-sentenza mgħotija mill-Qorti tal-Appell (Rik. nr 83/2019) fl-ismijiet Roderick Azzopardi kontra Malta Public Transport Services (Operations) Ltd fejn dik l-Onorabbli Qorti tiddeskrivi *'constructive dismissal'* bħala sitwazzjoni fejn il-haddiem jiġi mġiegħel jew kostrett li jirriżenja mill-impieg kontra r-rieda tiegħu.

Għalhekk sabiex jasal għal tali konklużjoni it-Tribunal irid iħares lejn diversi ċirkostanzi biex:

a. Jara x'kienu r-raġunijiet li wasslu għar-riżenja,
b. Jara jekk ir-riżenja kienitx direttament marbuta mar-raġunijiet li għamlu Il-bajja tal-ħaddiem fuq il-post tax-xogħol insapportabbli.
c. Jevalwa jekk dawn ir-raġunijiet kienux serji biżżejjed li nkiser parti fundamentali tal-kuntratt tax-xogħol.
d. Jevalwa jekk kienx hemm proċess fejn il-ħaddiem pogga l-ilmenti tiegħu quddiem is-superjuri tiegħu biex ikunu riżolti l-istess ilmenti.
e. Jevalwa jekk il-Management ħadux l-ilmenti bis-serjeta' u jekk għamlux ħilithom biex ikunu riżolti b'mod ġust.
f. Jittawwal lejn iż-żmien li għadda bejn meta l-ilment ġie għad-deher tal-Management u l-azzjoni tar-riżenja, jiġifieri kemm l-effett tar-riżenja kien Konsegwenza tal-kawża ta' l-ilment mhux mismuh.
g. Jissendika l-ittra tar-riżenja u jara l-konsistenza jew in-nuqqas tagħha bejn dak li hu miktub u r-raġunijiet miġjuba ghar-rizenja.

Meta wieħed janalizza l-kondotta lavorativa ta' Mohazin Nellikavil Malijakkal ma' Let's Sell More isib illi dan mal-ewwel beda fuq sieq ħażina. L-ewwel xogħol li ġie assenjat fuqu kien mal-Pavi u minn hawn kellu jitneħħa għaliex il-Pavi ma kienux kuntenti bl-operat tiegħu. Skont l- affidavit ta' Tiziana Farrugia (Cash Manager Pavi Supermarket (Qormi), fost affarijiet oħra tgħid:

" The cashiers are allowed two breaks during their work shift and the breaks are taħkem during different times and in the order according to the duty rosters. On the 13th of November, 2022, a supervisor brought to my attention the behaviour and attitude of Mr. Maliyakkal."...... on the 14th of November, I emailed the Agency, stating that this behaviour is unacceptable that we no longer wanted the respondent to work in our Supermarket and that the following day, the 15th of November, 2022, would be his last year at Pavi.

Tiziana Farrugia tikkonkludi fl-Affidavit taghha b'dan il-mod -*" I must state that due to widely diverse background of our employees, we are very aware of their different cultures and beliefs and we take particular care not to make our employees perform tasks or duties which might be contrary to their culture or beliefs".*

Wara dan l-episodju, l-aġenzija Let's Sell More offriet lir-rikorrent post ma Delicata Winery, iżda ir-rikorrent irrifjuta li jaħdem hemm minħabba li t-twemmin reliġjuż tiegħu ma jippermettilux jagħmel dak it-tip ta' xogħol. Hawnhekk l-Aġenzija irrispettat it-talba tar-rikorrent imbagħad offrietlu li jaħdem mal-Merlin Ltd iżda din ta' l-ahhar iddeċidiet li is-Sur Mariyakkal ma kienx persuna ikkwalifikata għal dak ix-xogħol.

Sussegwentement, l-aġenzija offriet lis-sur Mariyakkal xogħol ma l-Atrium. Huwa ġie infurmat, skont ix-xhieda tas-sur Daniel Coppini (propjetarju Let's Sell More), meta qal, *"We sent him to the Atrium in writing on the 23rd at 9.37. We told him,' look, you have another job waiting. Possibly, he did not read it or he read it, I don't know... it was a good job, by the time he resigned."*

Is- sur Daniel Coppini ikompli hekk fix-xhieda tiegħu - *"as soon as the resignation came in, after all we went through, we simply said, 'no', this case is not going to go away.. away with nothing, there's no way. The man has a definite contract, it goes till November, there's eleven months left, there's thousands of Euros in the balance, we have to come into an agreement. He was not interested, so I took him to court."*

Min naħa tiegħu Mohazin Nellikavil Malijakkal ipoġġi bħala raġuni prinċipali għar-riżenja tiegħu s-segwenti raġunijiet- hekk skont affidavit tiegħu (Dokument MM1):

"I was subsequently told to attend a meeting on the 15/11/2022 at "Let's Sell More' offices with Mr. Daniel Coppini and Ms. Rita Jenkas Fokum.."I was unjustly exposed to degrading treatment from both Mr. Coppini and Ms. Jenkas Fokum during the meeting.....Mr. Coppini adopted a very hostile, aggressive, and condescending tone throughout. He told me that he had heard things' about me. He accused me of causing trouble and trying to be a 'hero'..... he told me that I should have informed "Let's Sell More' of the problems I was having on the workplace. .... After the meeting, I was forced to sign a formal written warning.

.... It was clear to me that the behaviour of Let's Sell More was incredibly unprofessional, offensive, and clearly a serious breach on their part, It was obvious that I could no longer work for "Let's Sell More", at all because their behaviour towards me made it impossible for me to do so. For this reason, I sent my formal resignation to Mr. Coppini on the 23/11/22.....

The entity "Let's Sell More" then issued an invoice against me for 8480 euros and 66 cents, which they claimed I was liable to pay to them for breaching my contract by resigning before the lapse of the contract."

Wara dak kollu li gara, jidher ċar li Mohazin Nellikavil Malijakkal kien diġà iddeċieda illi jirriżenja qabel il-meeting li sar mas-Sur Coppini. Huwa minnu illi waqt dan il-meeting intqal diskors mhux denju lis-Sur Malijakkal u li kieku ma kienx hemm iċ-ċirkostanzi l-oħra tal-każ setgħu jimmillitaw favur it-teżi tiegħu ta' *constructive dismissal*. Madanakollu, meta wieħed jikkonsidra ċ-ċirkostanzi kollha tal-każ wieħed jifhem illi Let's Sell More bħala Employer ippruvat tagħmel ħilitha sabiex toffri xogħol adattat għas-Sur Malijakkal. Tant hu hekk, illi wara illi l-Pavi ma rieduhx jaħdem hemm, Let's Sell More ippruvat issiblu impjiegi oħra. Filwaqt illi s-Sur Malijakkal kien sfortunat illi ma setgħax jaħdem ma' Delicata Winery minħabba t-twemmin tiegħu u ma' Merlin Ltd minħabba li skont dik is-soċjeta' ma kienx kwalifikat, ma kien hemm xejn xi jżommu milli jibda jaħdem mal-Atrium kieku ta ċ-ċans li jsir dan.

Fid-dawl ta' dawn iċ-ċirkostanzi kollha, dan it-Tribunal huwa konvint illi s-soċjetà Let's Sell More ippruvat minn kollox sabiex tagħti xogħol adegwat lis-Sur Malijakkal. Min naħa l-oħra, jidher evidenti illi s-Sur Mohazin Nellikavil Malijakkal ma tantx kellu xi ħeġġa biex jippresta x-xogħol tiegħu kif fuq kollox kien intrabat li jagħmel bil-kuntratt definit ta' xogħol li iffirma ma' Let's Sell More.

Il-ġurisprudenza kemm tat-Tribunal Industrijali u wisq aktar tal-Qrati Superjuri tgħallimna illi sabiex jissussisti *Constructive Dismissal*, l-impjegat irid ikun ġie imġiegħel jew inkella kostrett minn ċirkostanzi serji attribwibbli lill-*employer* sabiex jirriżenja mill-impjieg. Dan ma garax fil-każ tas-Sur Mohazin Nellikavil Malijakkal. Anzi, jidher biċ-ċar illi s-Sur Malijakkal ma apprezzax l-isforzi tal-*employer* tiegħu sabiex jagħtih xogħol adegwat u fil-fatt qabad u irriżenja meta l-employer tiegħu kienet diġà' qed jagħmel arranġamenti biex tibgħatu jaghmel xogħol ieħor fl-Atrium.

It-Tribunal ma għandu l-ebda dubju illi meta wieħed jiżen il-fatti kollha tal-każ, joħroġ biċ-ċar illi filwaqt illi kemm l-*employer* u l-ħaddiem kellhom xi nuqqasijiet, id-dispożizzjoni għax-xogħol tas-Sur Mohazin Nellikavil Malijakkal kienet nieqsa għal kollox u dan minkejja l-isforzi li għamel l-employer tiegħu, is-soċjeta' Let's Sell More, biex tipprovdilu xogħol addattat. Iffaċċjat b'dawn iċ-ċirkostanzi t-Tribunal jista' jiddetermina illi filwaqt illi l-employer kien flessibli u ipprova minn kollox sabiex isib xogħlijiet addattati għas-Sur Malijakkal, dan mal-ewwel beda b'ċertu attitudni żbaljata u kompla jippersisti fiha sakemm sab ix-xoqqa f'moxtha biex jipprova jinħall mill-kuntratt ta' xogħol definit li kien daħal għalih.

DECIDE:
Għaldaqstant it-Tribunal Industrijali fir-rigward tal-**Każ: 4159, fil-Kwistjoni tax-xogħol bejn Mohazin Nellikkavil Maliyakkal u Let's Sell More** qed jaqta' u jiddeċiedi li dan ma kienx każ ta' tkeċċija nġusta ossia każ ta' *constructive dismissal* u għaldaqstant jiċħad it-talba tar-rikkorrent Mohazin Nellikavid Malijakkal.

B'hekk tintemm din il-kwistjoni tax-xogħol.

(Iffirmat)

John Bencini
(Chairman)