

~~G 2~~ 6, 1956

No. 10 of 1955.

# In the Privy Council.

ON APPEAL  
FROM THE COURT OF APPEAL, MALTA.

INSTITUTE OF LONDON  
V.M.C. 1.  
19 FEB 1957  
INSTITUTE OF LONDON  
LEGAL STUDIES

45052

BETWEEN

MARIA CASSAR and SALVATORE CASSAR . *Appellants*

AND

CARMELA CAMILLERI and CARMELA BORG  
and GIORGIO BORG . . . . . *Respondents.*

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## Case for the Appellants

RECORD.

1. This is an appeal by the Plaintiffs from the judgment of Her Majesty's Court of Appeal, Malta (L. A. Camilleri, President, Montanaro Gauci, Harding, J.J.) delivered on the 12th January, 1953, which reversed the Judgment of H.M. Civil Court, First Hall (Caruana Colombo, J.) delivered on the 30th July 1952, and ordered Judgment to be entered for the Defendants. Final Leave to Appeal to Her Majesty in Council was given by the Court of Appeal, Malta, on the 18th February 1955.

p. 133 ff.

p. 86 ff.

p. 159.

20 2. The two Appellants are husband and wife. The action was brought by the Appellants as Plaintiffs against the first-named Respondent as Defendant for a declaration that the first-named Appellant was entitled to a half share in a sum of £13,000 being the first prize due in respect of the winning ticket No. 108222 drawn in the National Lottery in Malta for the 17th June 1951.

pp. 2 & 3.

30 3. By her Defence the first-named Defendant alleged that the winning ticket, which was admittedly in the name of the first-named Defendant, was held by her in equal partnership with one Carmela Borg (known in the Maltese language by the cognomen "Ta's Sikkina") and not the first-named Appellant. The Defendant went on to say that she did indeed purchase a ticket in equal partnership with the first-named Appellant for the draw in question, but that the ticket so purchased by her was not the winning ticket.

p. 5.

p. 8, l. 1.  
 p. 15, l. 11.  
 p. 11, l. 15.  
 p. 15, l. 24.

4. In consequence of this plea the second-named Respondent, and, at the instance of the second-named Respondent, the third-named Respondent who is the husband of the second-named Respondent were subsequently added as Defendants to the action. By their pleadings the second Respondent and her husband supported the account of the matter given by the first-named Respondent in her Defence.

5. The law of Malta regarding State Lotteries is contained in an Act of the Legislative Assembly known as the Government Lotteries Act 1948. By the terms of this Act Lotteries are held in Malta from time to time under the auspices of the Minister of Finance acting through an official known as the Collector of Imposts and Lotto (sections 3 and 2). Tickets for the Lotteries are sold through authorised sellers and agents in counterfoil booklets (sections 5 and 7) and such counterfoil booklets and the tickets themselves are identified by serial numbers. On each ticket and counterfoil there are spaces for particulars whereon is written the name and surname of the staker, his address and a motto or other designation referred to as a "nom-de-plum" (sic) (section 8). The motto or nom-de-plume is optional, and need not be inserted. Provision is also made whereby if a ticket is purchased and sent in to the office of the Collector too late to qualify for the draw for which it is purchased the purchaser receives in lieu of the ticket he has purchased a new ticket containing the same particulars as were written on the original ticket free of charge and valid for the next succeeding draw (section 9).

6. By section 8 of the Act it is expressly provided that—

On purchasing a ticket, the staker, or any other person acting for him, shall ascertain that the number on the ticket purchased is identical to the number on the corresponding counterfoil, and shall write on the face of such counterfoil, in ink or in indelible pencil, and in block capital letters the particulars hereinbefore set out.

and by section 16 it is provided that every prize paid shall be paid or remitted to the person only whose name, surname and address are shown on the respective counterfoil drawn, or in accordance with properly authenticated instructions of or assignment by such person with certain provisions for cases where the person presenting or signing the ticket is not the person described on the counterfoil, nor his representative or assign. Apart from the serial number of the ticket the essential particulars are thus seen to be the name and address. The motto or nom-de-plume, often, according to the evidence, the name of a saint or some simple phrase in the Maltese language has not the same significance and may be omitted altogether without impairing the validity or identity of the ticket.

p. 16, l. 23.

7. The first Respondent was for a time employed by the first-named Appellant and during her employment the first-named Appellant and the first-named Respondent agreed together that the first-named Respondent should purchase in equal shares on their joint account a 10s. ticket in the draw for the Government Lottery designed for Easter 1951, and for this purpose the first Appellant paid the first Respondent 5s. for her share.

After this agreement and before the draw which gave rise to the question in dispute the first-named Respondent's employment was determined following a quarrel with the first Appellant's son. The first Respondent had also a similar agreement with the second Respondent for the purchase of a similar ticket in the same Lottery by the first Respondent of a ticket on the joint account of the first and second Respondents in equal shares with one another. p. 35, l. 11.

8. In pursuance of these arrangements at a date not precisely proved the first Respondent in fact purchased two consecutively numbered tickets for the Easter draw at the shop of an authorised seller of Lottery tickets Carmelo Saliba. Carmelo Saliba was not in fact present when the tickets were sold, but the tickets were bought from his wife Guiseppa Saliba. The counterfoils of both tickets so purchased reached the office of the Collector after the closing date and were replaced by other tickets bearing the same particulars for the draw of the 17th June 1951. p. 34, l. 37.  
p. 35, l. 29.  
p. 20, l. 32.

9. The winning ticket in the Lottery for the 17th June 1951 was No. 108222 and the counterfoil bore the name Carmena (*sic*) Camilleri and the address 49 St. Catherine Street, Qormi. This was the correct address and, with a slight error, the correct name of the first Respondent. The winning ticket also carried the motto or nom-de-plume consisting in the words in the Maltese language "Soru Kungetina." This appears to have been the phonetic spelling of the name of a deceased nun, Suor Concettina, whose intercessions, it was alleged, were considered by the purchaser of the ticket likely to prove of assistance in winning a prize.

10. This ticket was in substitution for a ticket No. 115086, bearing exactly the same particulars for the Easter draw, and was one of the two tickets purchased as aforesaid by the first Respondent. The other of the two tickets purchased for the Easter draw by the first Respondent was No. 115087 and the counterfoil bore the name "Carmena (*sic*) Borg and the address 49 St. Catherine Street, Qormi, Malta. As will be observed, this (with the same slight error of spelling in the Christian name) was the correct name of the second Respondent, but represented the first Respondent's address. Ticket 115087 also bore the motto or nom-de-plume "Ejja Naghmlu hbieb" ("Let us be friends"). A second ticket No. 108223 was issued for the June draw in substitution for Ticket No. 115087 and carried the same particulars, but did not win a prize. It was not disputed that the ownership of the half-share in the winning ticket No. 108222 depended upon the ownership of the ticket carrying the same particulars No. 115086.

11. Giuseppa Saliba and the first Respondent are or claim to be illiterate. On entering the shop of Carmelo Saliba with a view to purchasing two tickets the first Respondent entrusted the task of performing her duty under section 8 of the Government Lotteries Act 1948 to a customer of the shop Francis Agius who can write. In pursuance of these instructions Francis Agius made out in his own handwriting the counterfoils of the original tickets 115086 and 115087. The exact instructions given to Francis Agius was the subject of some divergence between the witnesses, p. 36, l. 24.  
p. 43, l. 24.  
p. 36, l. 27.  
p. 33, l. 2.

but it seems clear that the first Respondent informed Agius that one of the two tickets was to be so marked as to be held in conjunction with the first Respondent and the other was to be so marked as to be held in conjunction with the first-named Plaintiff. It is also clear, it is submitted, that the first Respondent conveyed to Agius the true surname and Christian name of the second Respondent and her own address, and also gave particulars of the two mottoes or noms-de-plume to be used. As appears from the tickets themselves, it would seem that Agius appropriated ticket No. 115087 (corresponding to 108223 in the later draw) to the name of Borg, and it is submitted that it follows from this that the remaining ticket, which bore the first Respondent's own name and address, though not that of the first Plaintiff, was appropriated to the partnership with the first-named Plaintiff. It does not appear to have been suggested that the first Respondent did otherwise than leave to the said Agius the discretion as to which partnership was to have which of the numbers, and it would appear to follow from this that the association of the Borg ticket with the losing number, and consequently the association of the winning ticket with the partnership with the first Plaintiff was within the terms of Agius' authority. If so it is submitted that the act of Agius in so appropriating the tickets is really conclusive of the matters in question in this case, and nothing which happened after such appropriation can alter the position.

p. 17, l. 4.  
p. 24, l. 31.  
p. 34, l. 25.  
p. 89, l. 18.

12. Much of the controversy at the trial and the Judgment of the Court of Appeal turned on the selection of the motto or noms-de-plume for the two tickets. There appears to be no doubt that the female Plaintiff had left the selection of a suitable motto to the first Respondent. The first-named Appellant said in evidence, and, although denied by the first Respondent, it was accepted by the Trial Judge, that the first Respondent did in fact suggest the name of Suor Concettina as the name to be employed by the partnership between the first Appellant and the first Respondent. It is submitted that this is not intrinsically improbable, since the first Respondent in fact believed in the efficacy of this name, and was on good terms with the first Appellant at this time. The first Respondent, on the other hand, said that the motto which she had suggested to the first Appellant was "Ejja naghmlu hbieb" and that the name "Suor Concettina" had been agreed between herself and the second Respondent as the name to be employed by that partnership. The Trial Judge appears to have rejected the whole or part of this evidence. The Court of Appeal certainly accepted the latter part, and "inclined" to accept the former part.

pp. 90, 91, 92, 93.  
pp. 146, 147, 148.  
p. 146, l. 15.

13. The first Respondent also stated in her evidence that Agius was expressly told to appropriate the motto Suor Concettina to the Borg partnership, and the other motto to the partnership with the first-named Plaintiff. This was also the effect of the evidence of Guiseppa Saliba. Agius' own evidence on this point was inconclusive. This is obviously a second question of fact distinct from the first. The evidence for the first Respondent was rejected by the Trial Judge. Presumably it was accepted by the Court of Appeal, but the Court of Appeal did not appear to have treated the question as a separate one.

p. 36, l. 30.  
p. 55.  
pp. 90, 91, 92, 93.  
pp. 146-148 &  
p. 144, l. 3.

14. If the above reasoning is correct, however, both controversies, viz., that whether there was any and if so what agreement between the respective partners as to the use of any particular motto, and that as to what instructions relating to the mottoes were given to Agius, and it is submitted strictly speaking irrelevant. Once it is accepted that Francis Agius was entrusted by the second Respondent with the task of appropriating the numbers of the two tickets to the particular partnership, and that he did this by entering the name Borg on the counterfoil of the ticket 115087 the question whether he attached the right or wrong motto  
 10 to the particular ticket does not, it is submitted, affect the true ownership of the tickets appropriated.

15. The action was tried in Her Majesty's Civil Court, First Hall by the Honourable Mr. Justice Caruana Colombo, who on the 30th July 1952, gave judgment for the Appellants. After stating the facts and referring to the provisions of section 16 of the Government Lotteries Act 1948, and pointing out that by section 8 of the Act the *nom-de-plume* is not an essential particular, the learned Judge came to the conclusion that even if, as the Respondents had asserted, a mistake had been made in the ascription of the *noms-de-plume* to the wrong tickets, such a mistake would not be one  
 20 for which anyone but the Respondents were responsible as between themselves and the Plaintiff. In this it is submitted the learned Judge was correct in law.

16. The learned Judge went on to find as a matter of fact that there had been no mistake made by the first-named Respondent in her instructions to Francis Agius, and, after considering the evidence of the witnesses for the first Respondent in detail, he came to the conclusion that the testimony of the first Respondent and other witnesses called on her behalf in this and other matters in controversy was not to be relied upon. One of the reasons which led the learned Judge to this conclusion was that a witness,  
 30 Sebastiana Cassar, in cross-examination had clearly spoken an untruth when she denied the promise by the first Respondent of a reward for giving testimony. But whether or not the Court of Appeal was right in finding that the agreement between the two Respondents was to apply the name Suor Concettina to their own partnership, it is submitted that the rejection by the learned Judge of the oral evidence on behalf of the first Respondent relating to the instructions to Agius ought not to be disturbed by an Appellate Tribunal, since this was clearly a question on which much depended on the demeanour and attitude of the witnesses, and the learned Judge clearly relied upon these matters in arriving at a conclusion.

40 17. From the decision of the Trial Judge the Respondents appealed to the Court of Appeal, Malta, and on the 12th January 1953, the Court of Appeal gave judgment allowing the Appeal and entering judgment in the proceedings dismissing the Appellants' claim.

18. The Court of Appeal attached great importance to the evidence associating the name "Suor Concettina" with the second Respondent, and therefore with the partnership between the two Respondents rather than that between the first Respondent and the first Appellant. This, it is

submitted, is strictly speaking irrelevant, the question being, not what the two Respondents had agreed as to the name of their Lottery ticket, but what instructions the first Respondent gave to Agius when he filled in the particulars. In so far as it places reliance on the evidence of the first Respondent it involves a departure from the findings of fact of the learned Trial Judge which it is submitted is not acceptable. The Court of Appeal also attached great importance to the deportment of the two parties after the results of the draw had been announced, the two Respondents showing the greatest pleasure at the result and the first Appellant, who also heard the result, at first showing no loss of composure, and in fact congratulating the two Respondents. The Respondents' joy, however, if it be accepted, is, it is submitted, not particularly significant in the light of the fact accepted by the first Respondent that the second-named Respondent had in her possession the ticket with the winning number and motto and had at that time no reason to know that the other ticket, if she was aware of its existence, bore her name and in the light of the possibility, accepted by the Trial Judge, that whatever mistake was made was the mistake of the first Respondent in her instructions to Agius and not a mistake of which the second Respondent was aware. These considerations appear to have been overlooked by the Court of Appeal, and it is submitted that, so far as the Court relied upon the evidence given by the first Respondent it placed more weight upon this testimony than, it is submitted, was open to an Appellate Court having regard to the findings of the Trial Judge notwithstanding the fact that upon one particular issue not, it is submitted, material hereto, and to which they do not appear to have attached particular importance, the Judges of the Court of Appeal had heard certain further oral evidence. The first Appellant's earlier indifference to the result can easily be explained by the fact, also overlooked, it is submitted, by the Court of Appeal, that, on the view of the evidence accepted by the Trial Judge, the first Appellant was ignorant of the name of the motto associated with her own ticket until a much later stage, and had certainly not been apprised of the name "Ejja naghmlu hbieb".

p. 145, ll. 1-14.

p. 42, l. 6.

p. 92,  
esp. l. 40.

19. In the submission of the Appellants, therefore, the Judgment of the Court of Appeal ought to be reversed and the Judgment of the Trial Judge restored for the following amongst other

## REASONS

- (i) BECAUSE the Judgment of the Trial Judge was right and the Judgment of the Court of Appeal was wrong.
- (ii) BECAUSE the Court of Appeal failed to appreciate that the true question was not whether either of the two Respondents desired or believed that the ticket appropriated to the partnership between them was named "Suor Concettina" but the nature of the instructions given to Agius when he filled in the particulars on the counterfoil and whether the winning ticket had been appropriated to the partnership of which the first Appellant was a member.

- (iii) BECAUSE in filling in the particulars on the counterfoil Agius had effectively appropriated the number corresponding to the winning number to the partnership between the first Appellant and the first Respondent and the remaining number to the partnership between the second Respondent and the first Respondent.
- (iv) BECAUSE the view of the Court of Appeal involved the rejection of findings by the Trial Judge as to the relative reliability of witnesses which ought not to have been disturbed by an Appellate Tribunal.

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HAILSHAM.

ROLAND BROWN.

**In the Privy Council.**

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**ON APPEAL**  
*from the Court of Appeal, Malta.*

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BETWEEN  
**MARIA CASSAR and**  
**SALVATORE CASSAR** *Appellants*  
AND  
**CARMELA CAMILLERI**  
and **CARMELA BORG**  
and **GIORGIO BORG** - *Respondents.*

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**Case for the Appellants**

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