



No. 10 of 1955

45951

In the Privy Council.

**ON APPEAL**

*FROM THE COURT OF APPEAL, MALTA.*

MARIA CASSAR AND SALVATORE CASSAR *Appellants*  
(Plaintiffs)

— v —

CARMELA CAMILLERI - *Respondent No. 1*  
(Defendant)

— and —

CARMELA BORG AND GIORGIO BORG - *Respondent No. 2*  
(Co-Defendants)

**CASE FOR RESPONDENT No. 2.**

RECORD

1. This is an appeal from the judgment of the Court of Appeal of Malta dated the 12th January 1953 which reversed the judgment of the Civil Court of Malta (First Hall) of the 30th July 1952.

2. The question raised on this appeal relates to the ownership of ticket No. 108222 which won the first prize of £13,000 in the Malta National Lottery draw of 17th June 1951.

Exhibit  
p. 167.

10 3. According to the evidence given by both Respondents, Respondent No. 1 (Carmela Camilleri, nicknamed "ta Zablek") bought two tickets in the Easter Lottery of 1951, one in partnership with Respondent No. 2 (Carmela Borg, nicknamed "ta Sikkina") each one of them contributing five shillings for the stake. The nom-de-plume to be given to this ticket, as agreed between them, was "Soru Kungettina" (Sister Concettina). The second ticket was bought by Respondent No. 1 in partnership with Plaintiff (Maria Cassar, nicknamed "ta l'Ghagin") under the nom-de-plume "Ejja naghmlu hbieb" (Let us make friends). Both the Appellant and Respondent No. 2 are parties to this action with the concurrence and consent of their respective husbands as required by Maltese law.

RECORD

4. It appears that the counterfoils of both tickets did not reach the Lotto Office until after the closing date fixed by the lottery regulations for the Easter draw and were accordingly replaced by two other tickets for the June draw bearing respectively Nos. 108222 and 108223. It is common ground in this case that Respondent No. 2 kept continuously in her possession the receipt of ticket No. 108222 with the nom-de-plume Soru Kungettina until the day of the draw.

5. According to the Appellant's contention, it was ticket No. 108222 and not ticket No. 108223 with the nom-de-plume Ejja nghanlu hbieb which Respondent No. 1 held in partnership with Appellant. 10

p. 1. 6. Basing herself on this contention, the Appellant issued on the 25th June 1951 a Writ of Summons in the Civil Court (First Hall) against Respondent No. 1, to which Respondent No. 2 was joined as co-defendant on the 3rd October 1951, claiming that she was entitled to a one-half share of the lottery prize of £13,000.

pp. 86-93. 7. By a judgment given on the 30th July 1952, the Civil Court (Caruana Colombo J.) held that Respondent No. 1 had "bought two tickets only, one in partnership with the Appellant and the other in partnership with Respondent No. 2 and that the ticket which secured first prize in the draw was that which Respondent No. 1 held in partnership with the Appellant." The learned Judge accordingly allowed Appellant's claim with costs except the costs of Respondent No. 2 who was ordered to bear her own costs. 20

pp. 93-94. 8. Against this judgment both Respondents entered an appeal to the Court of Appeal on the 6th August 1952.

pp. 104-112. 9. In her petition, dated the 20th August 1952, Respondent No. 2 contended that the evidence had established that it had been agreed between Respondent No. 1 and Respondent No. 2 that they should buy jointly a ticket for the National Lottery draw and that, as happened before, the ticket was to bear the name of "Suor Concettina." A sister of Respondent No. 2 was a nun in St. Catherine's Cloister in Valletta where a saintly nun bearing that name had died recently. Corroborative evidence to prove this partnership was further given by amongst others, Giusappa Saliba who sold the two lottery tickets to Respondent No. 1, Giuseppe Spiteri who was present on that occasion, and by Mrs. Giorgia Gatt who was with both Respondents when the draw was announced. 30

pp. 133-148. 10. The Court of Appeal (Camilleri, President, Montanaro Gauci and Harding JJ.) after examining the documentary evidence and the oral evidence of the witnesses produced before it, reversed with costs on the 12th January 1953, the first Court's judgment and held that the evidence had proved to the satisfaction of the Court that the winning ticket was the property of Respondent No. 1 in partnership with Respondent No. 2. As the Court said, the Appellant "knew *ab initio* and long before the actual draw that her ticket with Respondent No. 1 was that which bore the nom-de-plume of "Ejja nghanlu 40

p. 146.

hbieb." Apart from the evidence of Respondent No. 1, of Sebastiana Cassar and of Giorgia Scerri, the Court holds itself convinced—and its conviction is rooted in, and strengthened by, the Appellant's deportment on the day of the draw. In fact, had the nom-de-plume of the ticket which she held in partnership with Respondent No. 1 been really and truly unknown to her, why did she, on learning that the successful ticket was that named "Soru Kungetina," and that Respondent No. 1 was the winner, fail to do anything to find out whether she herself was jointly the winner with the said Respondent? Why, instead of having done that, did she send her congratulations to Respondent No. 1 and Respondent No. 2? Why had she, on being told that Respondent No. 1 had now become rich, merely according to her own evidence exclaimed: "Thank God. She is an orphan and I know what she has gone through"? That attitude of the Appellant is even more eloquent than her subsequent actions and statements, and the Court cannot but come to the natural and logical conclusions to be drawn therefrom, namely that the Appellant knew that the ticket which she held jointly with Respondent No. 1 was not that bearing the nom-de-plume of "Soru Kungetina," but that bearing the nom-de-plume of "Ejja naghmlu hbieb."

RECORD  
pp. 33-35.  
pp. 122-124.

11. Final leave to appeal to Her Majesty's Privy Council was granted by the Court of Appeal to the Appellant on the 18th February 1955. p. 159.

12. Respondent No. 2 submits that the judgment of the Court of Appeal dated the 12th January 1953 is right and ought to be affirmed with costs for the following among other

### REASONS

- (1) BECAUSE one moiety of the winning ticket No. 108222 which drew the first prize in the National Lottery of Malta on the 17th June 1951 belonged to Respondent No. 2 in partnership with Respondent No. 1.
- (2) BECAUSE the receipt for the said ticket No. 108222 was at all material times in the ownership and lawful possession of Respondent No. 2.
- (3) BECAUSE any mistake in relation to ticket No. 108223 cannot in law alter the rights of Respondent No. 2 in relation to the winning ticket No. 108222.
- (4) BECAUSE the judgment of the Civil Court (First Hall) of Malta was wrong inasmuch as it based its conclusions on the Lottery Act, and against the weight of evidence.
- (5) BECAUSE the judgment of the Court of Appeal was right and ought to be upheld for the reasons therein given and for other good and sufficient reasons.

RICHARD O'SULLIVAN.  
G. M. CAMILLERI.

**In the Privy Council.**

**ON APPEAL**

*FROM THE COURT OF APPEAL, MALTA.*

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MARIA CASSAR  
and another

— --and --

CARMELA CAMILLERI  
and others.

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**Case for Respondent No. 2.**

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