

Maria Cassar and another - - - - - Appellants

v.

Carmela Camilleri and others - - - - - Respondents

FROM

THE COURT OF APPEAL MALTA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 20TH FEBRUARY, 1956

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*Present at the Hearing:*

LORD OAKSEY  
LORD MORTON OF HENRYTON  
LORD RADCLIFFE  
LORD COHEN  
MR. L. M. D. DE SILVA

[*Delivered by* LORD COHEN]

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The second appellant and the third respondent are parties to this appeal only because under Maltese Law the joinder of a husband with his wife as plaintiff or defendant as the case may be is necessary in the class of suit with which the Board is concerned. The husbands took no part in the transactions which gave rise to the suit. Their Lordships will therefore refer hereafter to the appellant Maria Cassar as "the appellant" to the respondent Carmela Camilleri as "the first respondent" and to the respondent Carmela Borg as the "second respondent".

The issue which their Lordships have to decide is whether the appellant is, as by her writ she claims to be, jointly entitled with the first respondent to a ticket in the Maltese National Lottery No. 108222 and therefore to half of the prize of £13,000 which that ticket won as the result of the draw made on the 17th June, 1951. The second respondent was not originally joined as a defendant, but she was added at the instance of the first respondent because the defence of the first respondent was that the ticket No. 108222 was the property of herself and the second respondent.

Before setting out the facts which gave rise to the dispute, it will be convenient to refer briefly to the terms of the Government Lotteries Act, 1948, of Malta under which the Lottery was conducted. By section 3 the Lottery is to be conducted by the Collector of Imposts and Lotto who is by section 5 to select sellers and appoint agents in respect of each lottery. By section 7 it is provided that tickets in counterfoil booklets should be issued to sellers and agents by the Collector in respect of each lottery. Section 8 provides *inter alia* that on purchasing a ticket the "staker" (which under the definition section (section 2) means the purchaser of a ticket) shall write on the face of the counterfoil (a) the name and surname of the staker (b) his address and (c) his "nom-de-plum" if any.

Under section 9 if the counterfoils are to be valid for any draw, they must reach the Collector by the day and hour notified by the Collector: but the section goes on to provide that if any counterfoil reaches the

Collector out of time for a particular draw but not later than 40 days before the date fixed for the next following draw, new tickets equal in number to the deposited counterfoils shall be issued free of charge to the stakers concerned.

Section 11 provides for the issue of receipts to each staker in respect of each counterfoil which is valid for the draw under section 9. The receipts contain the same particulars as appear on the counterfoil. Section 16 provides that every prize 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 or assignment by such person.

It will be noted that the insertion of a nom-de-plum on a counterfoil is optional and that it is the name and not the nom-de-plum which governs the payment by the Collector of the prize.

Their Lordships turn to the facts. The first respondent was a friend of the second respondent. For a time she was in the employment of the appellant but that employment terminated on the 14th May, 1951, when she quarrelled with a son of the appellant. At any rate until then the first respondent seems to have been on friendly terms with the appellant.

The first respondent was given to speculation. She had joint ventures with the second respondent both in the public lotteries and in the Public Lotto. The exact nature of the latter form of speculation does not appear from the evidence.

To make these joint ventures intelligible their Lordships must refer to Suor Concettina. That lady was a nun reputed to be of a very saintly character. She was an occupant of the Cloister of St. Catherine in Valetta in which a sister of the second respondent was also a nun. Suor Concettina died on the 25th May, 1950.

The first and second respondents conceived the idea that it would bring them luck in their speculations if these speculations could be associated in some way with the deceased nun. Accordingly in the public Lotto they selected numbers corresponding to the day and time of the death of Suor Concettina and they had a certain measure of success. They also adopted as their nom-de-plum in two public lotteries prior to that now in question "Suor Concettina" but on neither of these occasions were they successful. According to their evidence on both occasions the name and address of the first respondent was inserted on the counterfoil. They also swore that they agreed to adopt the same nom-de-plum for the Easter 1951 draw. Up to this point their evidence was not seriously challenged by Lord Hailsham for the appellant.

The evidence as to the nature of the arrangement between the appellant and the first respondent is not quite so plain, but it seems clear that they had two joint ventures in the lottery before the Easter draw and that on neither occasion had the name "Suor Concettina" been adopted as the nom-de-plum. According to the appellant they agreed to share a ticket for the Easter draw and the appellant left it to the first respondent to choose the nom-de-plum. The appellant says however that the first respondent did indicate that she would probably choose "Suor Concettina" as the nom-de-plum. The first respondent denies this and says that she suggested to the appellant "Ejja naghmlu hbieb".

The appellant and the second respondent each gave the first respondent 5s. for their respective half-shares of a ticket and left it to the first respondent to take the tickets. For this purpose she went to the wine shop of Carmelo Saliba who was an authorised agent or seller of tickets. Carmelo Saliba was not in the shop but his wife Giuseppa Saliba was in charge.

Unfortunately the first respondent was illiterate and so she had to get some literate person to fill in the counterfoil for her. For this purpose

she procured one Francis Agius who was a customer in the shop. He was a sailor and had been abroad. He had no previous knowledge of any of the parties to the transaction.

As much turns on what happened in the wine shop their Lordships must deal at some length with the evidence on that point.

The first respondent says that she told Agius "one ticket Suor Concettina in partnership with Ta Sikkina" (that was the second respondent's nickname) "and the other in partnership with Maria Cassar". She denies that she told him to put the name of Carmela Borg on either ticket and she even maintained that she did not even know the proper name of the second respondent.

Agius was called but his evidence was not of much assistance. He seems to have remembered little about the transaction. One or two of his answers may however be of importance. In the first place he says that he did not invent or put down any pseudonyms (noms-de-plum) of his own accord. Secondly he said in effect that he would not have inserted the name Carmela Borg on a ticket unless he had been given that name.

The only other witnesses called who had been present in the wine shop were Giuseppa Saliba and Giuseppe Spicri. The latter's evidence was unsatisfactory and affords little or no assistance. It was not relied on by the trial Judge and in the Court of Appeal was only relied on as supporting the view that country people often know and speak of each other by nick-name without knowing the surname of the person concerned.

Giuseppa Saliba's evidence is however important on this point. She said:

"It was always Carmela Camilleri who came to buy the tickets. I did not fill in the particulars of the tickets bought by Carmela Camilleri. There was someone else who was writing them out—a man named Francis Agius, who lives at St. Catherine Street, Qormi. I do not know his nick-name, nor his street-door number. I am illiterate. But I was present when she bought the tickets. Carmela Camilleri told me she wanted two tickets, which, as usual, she always asked for together, and always in successive numbers. Previously, too, she had taken more than one ticket. She said to Francis Agius: 'I want one to be named "Suor Concettina" and the other "Ejja naghmlu hbieb"'—that is to say, the ticket between Carmela Camilleri and Carmela Borg, 'Suor Concettina,' and that between Carmela Camilleri and Maria Cassar, 'Ejja naghmlu hbieb.' I am quite certain she told him: 'That one with Carmela Borg and the other with Maria Cassar.'"

The counterfoils filled in by Agius bore the numbers 115086 and 115087. On 115086 he inserted name and address "Carmela Camilleri, 49, St. Catherine Street, Qormi", and nom-de-plum "Soru Kungettina" which it is agreed was intended to be "Suor Concettina". The address given was the correct address of the first respondent.

On 115087 he inserted the name and address "Carmela Borg, 49, St. Catherine Street, Qormi", and nom-de-plum "Ejja naghmlu hbieb". The address was the address of the first respondent not the second respondent, though it is agreed that it was the name of the second respondent that was inserted.

The counterfoils were deposited with the Collector but did not reach him by the appointed date. They were however deposited more than 40 days before the date of the next draw. Accordingly he issued tickets for that draw in place of the deposited counterfoils, 108222 taking the place of 115086 and 108223 taking the place of 115087. He sent the tickets by registered post to the names and addresses appearing on the counterfoils of the original tickets. 108222 was received by the first respondent but the other ticket was returned to the Collector as the

postman was unable to get a receipt from the second respondent at the first respondent's address. It remained with the Collector until the hearing of the suit.

In due course the Collector sent by ordinary post receipts in accordance with section 11 of the Act. Both receipts were received by the first respondent as her address was on both counterfoils. According to her she received first the counterfoil for 108222. According to her evidence in cross-examination (which does not agree with her evidence in chief but is confirmed by the second respondent) she took it to the second respondent to read and being told by her that it contained the nom-de-plum "Suor Concettina" she told the second respondent to keep it, which the second respondent did.

When she got the other receipt she took it round to the appellant who told her to keep it. The appellant never saw it as it remained the whole time in the first respondent's pocket.

The draw took place on the 17th June, 1951, and the result was broadcast, only the numbers of the winning tickets and the noms-de-plum being given over the air. According to the appellant's evidence she did not listen to the result but was told on the way to Mass next morning that the first respondent had won. The appellant expressed her pleasure saying "Thank God she is an orphan and I know what she has been through". She then sent for Giuseppa Saliba who told her, *inter alia*, that the first respondent had taken two tickets, one with her and one with the second respondent, the former named "Id-f-id" or "Ejja naghmlu hbieb" and the latter "Suor Concettina". She then sent her son to the first respondent to get the receipt relating to her ticket and when she got it, she saw thereon the name of the second respondent. She naturally then thought that this must relate to the partnership between the first and second respondents and that the winning ticket was the one in which she herself was interested. She refused to return this receipt to the first respondent when she asked for it and soon afterwards she commenced these proceedings. The trial Judge decided in her favour. He based his judgment mainly on the fact that the name of the second respondent appeared on ticket No. 108223. He accepted the appellant's evidence and rejected the evidence of the first respondent. He referred to section 16 (1) of the Act and said that had the winning ticket been 108223 the money would have been *paid* to the second respondent and refused to attribute any significance to the agreement between the first and second respondents to attach the nom-de-plum "Suor Concettina" to their ticket. He said that if any mistake had been made in filling in the tickets in the wine shop (and he held there had been none) the blame was on the first respondent. He rejected the first respondent's evidence that at that time she did not know the surname of the second respondent and attributed importance to the attempt of the first respondent to recover the receipt for ticket 108223 from the appellant and to her unsatisfactory reason for seeking to do so. He pointed out a number of other points in the first respondent's evidence which he could not accept as true and finally said:—

"The foregoing goes to show that, in connection with the Draw of the National Lottery above mentioned, Defendant bought two tickets only, one in partnership with Plaintiff, and the other in partnership with Co-defendant; and that the ticket which in that Draw secured First Prize was that which Defendant held in partnership with Plaintiff."

The respondents appealed. The Court of Appeal heard further evidence and on a consideration of that evidence and the evidence given before the trial Judge allowed the appeal and dismissed the appellant's claim.

The new evidence called included that of Giorgia Scerri who alleged that some ten days after the draw the appellant had told her that she the appellant had named her ticket "Ejja naghmlu hbieb". This, said the witness, was after the present action had been instituted. The appellant

admitted that she had a conversation with Scerri but said that the gist of it was:—

“ She asked me what had happened about the Lottery. She said: ‘ So it is you who won the Lottery together with Carmela Camilleri?’ I replied: ‘ See what happened—she and I won the Lottery together with the ticket named Suor Concettina and she insists that it was the ticket Ejja naghmlu hbieb that I shared with her’.”

Only one judgment was delivered by the Court of Appeal. They summed up the evidence in ten paragraphs. Their Lordships agree that the evidence is correctly summarised in those paragraphs save that

(1) they doubt whether it was established by the evidence that the appellant had heard the announcement of the draw on rediffusion:

(2) they would not be prepared to assume that Mr. Falzon, the appellant's brother had made his sensible suggestion for a compromise solution with the appellant's authority, but they attach no importance to this point as a compromise would undoubtedly have been in the interests of all parties and the fact, if it is a fact, that the suggestion was made with the appellant's authority cannot affect her rights when the suggested compromise was rejected.

Having summarised the evidence the Court of Appeal dismissed the claim. They appear to have based their conclusion on the following points:

(1) the appellant's observations after she heard the result of the draw; and

(2) their conclusion that the name of Carmela Borg had been put on ticket 108223 in error but that the error did not vitiate the appropriation of ticket 108222 to the partnership between the first and second respondents since it had been filled in exactly in accordance with the agreement between the parties.

Their Lordships would not be prepared to accept the whole of the reasoning of the Court of Appeal. In particular they would not be prepared to agree with the Court of Appeal's comment on the appellant's evidence or to dissent from the finding of the trial Judge that she was on the whole telling the truth. They see no reason to doubt the correctness of that finding. It was only natural that her suspicions should be aroused when she saw the name of the second respondent on the receipt for ticket No. 108223. None the less they agree with the conclusion of the Court of Appeal that the appellant had not proved her case. In their Lordships' opinion the evidence establishes the following points:—

(1) the tickets on the previous occasion of partnership between the first and second respondents had been taken out in the name of the first respondent;

(2) there was no evidence (apart from the form of the counterfoil 115087) that any change in this respect was intended in the case of the Easter draw;

(3) the tickets on the previous occasions of partnership between the appellant and the first respondent had been taken out in the name of the first respondent;

(4) on previous occasions the partnerships between the first and second respondents had used the nom-de-plum “ Suor Concettina ” whereas the partnership between the appellant and the first respondent had used some other nom-de-plum;

(5) the first and second respondents had agreed between themselves to use the nom-de-plum “ Suor Concettina ” for the Easter draw;

(6) the appellant had agreed to leave the choice of pseudonym for the partnership between herself and the first respondent to the first respondent;

(7) the true name of the second respondent (Carmela Borg) had been mentioned by the first respondent to Agius. They are not however satisfied that it was mentioned as a direction to Agius to insert it in the ticket. They accept on this point the evidence of Giuseppa Saliba which they have already quoted.

These points being established what is the proper inference as to the nature of the mistake made in the wine shop: for mistake there must have been.

Their Lordships see no reason why the parties should have intended to depart from the practice adopted in the case of all previous partnerships in which the first respondent was involved of placing all tickets in the name of the first respondent leaving the attribution of a ticket to a particular partnership to depend on the motto or as it is called *nom-de-plum*.

On this view it is plain that the winning ticket was properly filled in in accordance with the arrangement between the first and second respondents and that the error made by Agius was in inserting the name of the second respondent instead of that of the first respondent on counterfoil No. 115087.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellants must pay the costs of the appeal.



In the Privy Council

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MARIA CASSAR AND ANOTHER

v.

CARMEIA CAMILLERI AND OTHERS

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DELIVERED BY LORD COHEN

Printed by Her Majesty's Stationery Office Press,  
DRURY LANE, W.C.2.  
1956