

## THE FINANCIAL SERVICES TRIBUNAL

Pierre Lofaro LL.D. – Chairman  
Joseph Azzopardi FCCA, FIA, CPA, MBA (Warwick) – Member  
Ivan Sammut Dip. Bus. Law & Acc., Adv. Trib. Eccl (Melit.), M.A. (Fin. Serv), LL D - Member

FST 06/2019


E&S Consultancy Limited (C  
50332)


vs.

The Malta Financial Services  
Authority

Today, Wednesday, the fourth (4<sup>th</sup>) day of March of the year two thousand and twenty (2020)

The Tribunal,

Having seen the minuted request made by the Malta Financial Services Authority ('the MFSA') during the first hearing in this appeal on the 29<sup>th</sup> January 2020 that the present appeal be heard simultaneously with appeal No. 03/09 in the same names in regard to the 'minded letter' sent by the MFSA to E&S Consultancy Limited ('the Appellant') dated 16<sup>th</sup> May 2019, since the facts in the two proceedings are identical or alternatively the present proceedings are continued after the Honourable First Hall of the Civil Court would have decided the preliminary plea raised in regard to its competence in sworn application number 759/2019 in the same names, which lawsuit is also in regard to the MFSA's 'minded letter' dated 16<sup>th</sup> May 2019. 

 Having seen the Appellant's minuted reply made during the same hearing of the 29<sup>th</sup> of January 2020, whereby it contended that the present appeal is distinct from appeal No. 03/09 and consequently requested this Tribunal to proceed with the hearing of this appeal.

 Having seen all the relevant acts of the proceedings. 

Considered that although in the present appeal No. 06/09 the Appellant is requesting this Tribunal "to overturn the decision taken by the appellate Authority as outlined in its

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decision dated 18<sup>th</sup> November 2019 [to cancel, in terms of article 6(1)(a), (b) and (e) of the CSP Act<sup>1</sup>, the Company's registration granted to it under article 5 of the CSP Act]" and in appeal No. 03/09 the Appellant is requesting this Tribunal "to overturn the decision taken by the appellate Authority as outlined in its decision dated 16<sup>th</sup> May 2019 [that the MFSA (i) is minded to cancel, in terms of article 6(1)(a), (b) and (e) of the CSP Act, the Company's registration granted to it under article 5 of the CSP Act; and (ii) directed the Appellant to: (a) Refrain from accepting new clients; (b) Refrain from offering its existing clients any service ...; and (c) Ensure that the company's records ... be kept safe and not destroyed, erased or disposed of in any manner and be retained ...]", it is this Tribunal's view that the subject-matter of the MFSA's 'minded letter' dated 16<sup>th</sup> May 2019 and of its decision dated 18<sup>th</sup> November 2019 is substantially similar, if not identical. Both the 'minded letter' and the decision have the same sub-headings, even though cosmetically numbered differently, and the contents are largely identical.

R.O.  
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Considered:

Subarticle (1) of article 793 of the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta) states that:

*"If two or more actions brought before one and the same court are connected in respect of the subject-matter thereof, or if the decision on one of the actions might affect the decision on the other action or actions, it shall be lawful for the court to order that the several actions be tried simultaneously."*

It has been held by the Court of Appeal in its superior jurisdiction in Maria Debono et vs Avukat Dr. Paolo Mercieca et noe, 30<sup>th</sup> January 2004 that:

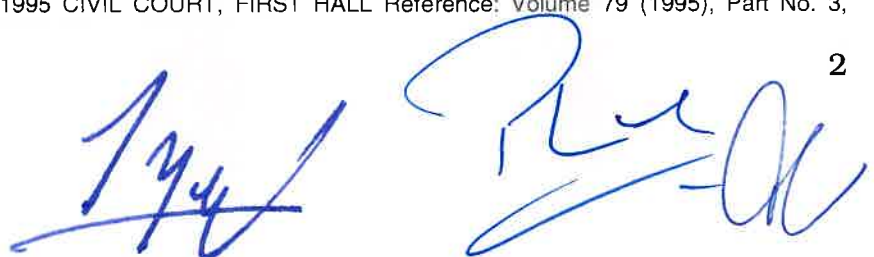
*"Il-provvedimenti tal-ligi tal-procedura dwar kawzi konnessi huma ta' natura fakoltattiva u intizi biex il-gudikant, fl-arbitriju l-izjed prudenti tieghu, ikun jista' jirregola dawk il-kazi li jkollu quddiemu u dan, kif inghad fid-decizjoni ta' din il-Qorti fil-kawza fl-ismijiet: "Guiseppea Caruana -vs- Andrea Caruana tas-27 ta' Ottubru, 1964, "konsistentement mal-principju ta' l-ekonomija u tal-logika li huma fundamentali tant ghall-procedura civili in generali kemm ghall-istitut tal-konnessita` (sic) in partikolari".*

This is the general rule. If a particular lawsuit needs to be heard with urgency, the court may decide not to hear the causes simultaneously<sup>2</sup>.

However, in this particular case the Tribunal is of the opinion that it should apply the general principle. There is no fundamental valid reason why in this case the Tribunal should set aside the expediency and practicability of the general rule in order to determine this case separately from the other one.

<sup>1</sup> The Company Service Providers Act, 2013 (Chapter 529 of the Laws of Malta).

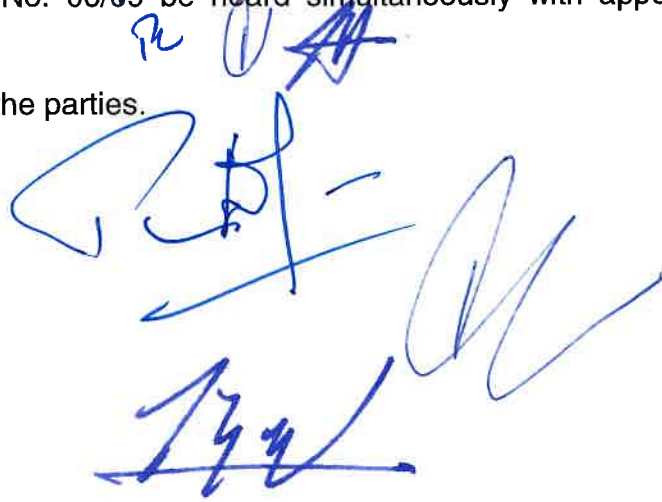
<sup>2</sup> *Vide* TR PRO ET vs TD, 14/12/1995 CIVIL COURT, FIRST HALL Reference: Volume 79 (1995), Part No. 3, Section, Page 1323



Furthermore, the Tribunal detects no reason why it should, at this stage, stay these proceedings until a decision is taken by the ordinary courts.

For the aforementioned reasons, the Tribunal accedes to the MFSA's request and orders that the present appeal No. 06/09 be heard simultaneously with appeal No. 03/09.

Costs are to be shared between the parties.

The image contains several handwritten signatures in blue ink. There are two smaller signatures at the top, one on the left and one on the right, both appearing to be initials or short names. Below these is a large, complex signature that spans across the width of the text area. At the bottom of this large signature, there is another distinct signature, possibly a name, written in a cursive style.