

## Case Details

### Case Details

National ID	Appell Civili Numru 3/2009
Stat Membru	Malta
Common Name	Janice Xerri vs Mrs. Jones
Decision type	Oħrajn
Decision date	23/10/2009
Qorti	Qorti ta' l-Appell
Suġġett	
Rikorrent	
Intimat	
Kliem Principali	

### Directive Articles

Consumer Sales and Guarantees Directive, [Article 3, 3.](#)

### Headnote

The Court noted that articles 74 and 76 of the Consumer Affairs Act provide that the choice of the remedy lies with the consumer – namely whether to seek a replacement, or a partial refund returning the defective goods to the trader.

### Facts

Plaintiff Janice Xerri filed a claim against defendant on the 15th October 2008 before the Consumer Claims Tribunal whereby she asked for €326 in damages being the price of dress which was defective, and for moral damages as a result of the inconvenience she suffered.

Plaintiff submitted that she bought from defendant a dress for a wedding ceremony, during which ceremony she was the bride's witness. Plaintiff said that when she wore the dress before the actual wedding ceremony the green colour of the feathers which were part of the dress lost their colour and stained her skin. Plaintiff said that as a result she was extremely embarrassed during the wedding ceremony more so as was she the bride's witness.

Defendant submitted that on various occasions plaintiff had tried the dress on before she finally bought it. It was only after plaintiff had worn the dress for the wedding that plaintiff approached defendant complaining that the colours of the feathers had stained her skin. Defendant argued that plaintiff had admitted with her that she had used a body lotion before the wedding ceremony – and that according to defendant the use of this lotion may have the cause of the inconvenience suffered by plaintiff. Defendant said that she had offered plaintiff the choice of another dress. Plaintiff however had not accepted this offer.

The Tribunal held that it resulted that the feathers of the dress in question did factually lose colour and consequently stained the skin of plaintiff during the wedding causing plaintiff considerable embarrassment. The Tribunal therefore decided to uphold in part the damages sought awarding €250 in damages plus another €120 for moral damages with costs of the proceedings against defendant and ordering that the dress be returned to defendant once the defendant makes the payments ordered by the Tribunal.

## Legal issue

## Dečizjoni

Defendant contested the Tribunal's decision before the Court of Appeal (inferior jurisdiction) claiming that she was not given adequate opportunity to make her case before the Tribunal.

The Court observed that the Tribunal had decided the case on the evidence submitted. The Court noted that on the basis of the evidence presented it resulted that there was a direct link between the dress and the green stains on plaintiff's skin. No plausible evidence was presented to demonstrate that the body lotion used by plaintiff was the cause of the harm suffered by plaintiff.

The Court noted that articles 74 and 76 of the Consumer Affairs Act provide that the choice of the remedy lies with the consumer – namely whether to seek a replacement, or a partial refund returning the defective goods to the trader.

The Court in the circumstances confirmed the decision of the Tribunal with costs against defendant.

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## Legal Literature

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## Result