



Court of Criminal Appeal

Hon. Mr. Justice Giovanni M. Grixti LL.M., LL.D.

Appeal Nr: 529/2017

The Police

vs

Gervais Cishahayo

Sitting of the 26th April, 2018.

The Court,

Having seen the charges brought against Gervais Cishahayo, holder of Maltese identification card number 218199A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having for the months between January till May 2017, on the Maltese Islands failed to give Melissa Joan Bagley, the sum of six hundred Euro, fixed by the Court or as laid down in the contract, as maintenance, for his child(ren) and/or wife, within fifteen days from the day on which according to such order or contact, such sum should have been paid;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 4th December, 2017, whereby the Court found appellant guilty as charged and condemned him to a term of imprisonment of two months;

Having seen the appeal application presented by Gervais Cishahayo in the registry of this Court on the 11th of December, 2017 through which he requested this Court to vary the decision of the Magistrates Court in terms of the punishment inflicted and to impose a more appropriate and just punishment;

Having seen the grounds of appeal as presented by the appellant Gervais Cishahayo;

Having heard complainant under oath;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court;

Having seen the records of the case;

Considered:

1. That as already pointed out during the hearing of the 12th February 2018, the proceeding before the first Court were conducted in the English language and judgment delivered in the same language. Appellant, however, opted to lay out his appeal in the Maltese

language and this Court will deliver judgement in the language known to appellant and complainant, namely the English language;

2. This appeal is with regards to the punishment meted out by the first Court as appellant is not contesting the finding of guilt on the facts. Appellant, however, felt aggrieved by the sanction imposed by the first Court for the following reasons, namely that it did not take into consideration his clean conduct sheet; that he had been working in Malta for a number of years and has been in search of works for a number of months; that no consideration was made to the fact that he has no wage through which he could pay maintenance; that his detention will bring about the impossibility for him to pay maintenance and also the likelihood of not finding employment; that his detention in prison will bring about a situation where he will not be able to find employment and the resulting inability to pay maintenance; that he has worked in Malta for a number of years;

3. Prior to any further consideration, it must be stated that it is now an established principle that this Court, as a Court of Criminal Appeal, does not normally alter the punishment meted out by the first Court unless it results that the punishment meted out was not within the parameters of the law and that it is not for this Court to substitute the discretion of the first Court in dispensing the punishment which it deems appropriate and fitting for the case. Now, the arguments brought forward by appellant, two of which are mere repetitions, do not hold enough weight to counter both the above principle and the other principle that the order of the Court, in this case the Civil Court (Family Section) must be observed without fail;

4. It is for appellant to understand that his failure to abide by the decision of the Civil Court in granting maintenance allowance to complainant for the needs of his two minor children will have drastic and serious consequences on those same offspring. It was within the rights of appellant to ask the Civil Court to vary, postpone or

otherwise reconsider the order to pay maintenance in the circumstance where he is now not in gainful occupation and not let his inability to pay maintenance lead to these proceedings;

5. Appellant cites local case law in his defence but those judgements only weigh against his arguments. In the case *Pulizija vs Alfred Camilleri* (Crt of Appeal 18.9.2002), the Court of Criminal Appeal decided that unless appellant requested the appropriate Court, that is the Civil Court, to vary the decree granting maintenance allowance, the present decree stands and must be honoured as this Court is not a court of appeal from decrees or judgement of the Civil Court. Appellant then cites the judgement *Il-Pulizija vs Joseph Micallef* (Crt of Appeal 27.7.2006) whereby the Court of Appeal decided by substituting a prison sentence with a fine. This Court, however, notes that the same principles were declared in that judgement together with homage to the principle that since the object of this particular law is not only to punish the accused but also to put pressure on the accused to pay maintenance to his dependents, the goal of the legislator had been achieved since the accused had paid the maintenance due following appeal proceedings and that it was no longer necessary to confirm the prison sentence meted out by the first court and therefore whilst confirm the judgement with regard to the finding of guilt, revoked the one month prison sentence and imposed, instead, a fine (ammenda) of twenty five maltese liri;

6. The Court observes that this case was instituted against appellant in December 2017 with regard to maintenance allowance due for the months of January till May 2017. The Court heard complainant under oath on the 26th of February 2018 stating that she has not been paid since. Appellant was also given the benefit of a postponement of the case on the 12 of February 2018 as he was not assisted by his lawyer on the day and this notwithstanding, payment was not forthcoming. The Court also created another opportunity for appellant to come to

terms with his obligations by postponing the judgment to today, two months after hearing the appeal and the situation remains unchanged. This Court, therefore, finds no reason why it should in any way vary the decision of the first Court and does not therefore uphold the appeal;

7. This appeal is therefore not upheld.