



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE DR SIMONE GRECH LL.D

**THE POLICE
VS
JENS RUEDIGER WIEDEMANN**

TODAY THE 6TH MARCH 2019

The Court,

After having seen the charges brought against Jens Ruediger Wiedemann 43 years, holder of identity card number 187404A whereby the said Jens Ruediger Wiedemann was charged that:

*“...on Monday 24/9/2018 at around 03:00hrs
20.00 hrs fi 108, Camilleri Court, Flt E,
Forga Street, Naxxar*

*Used force without injuring against Claudia
Strauss.”*

Having heard all the evidence;

Having seen all the documents presented;

Having heard final submissions;

Having seen all the acts of this case;

Considers:

First and foremost, the Court notes that in the translated version of the charges brought against the accused, there are laid down two different time periods, i.e “03:00hrs” and “20.00hrs”. In the Maltese version of the charges, there is only one time period laid down which is “20.00hrs”.

Neither the prosecution, complainant nor the accused mentioned this fact during the hearing of this case.

The Court outlines that in the judgement given by the Court of Criminal Appeal in its Inferior Jurisdiction on the 16th December 2016 in the names of **“Il-Pulizija (Spettur Bernard Charles Spiteri) vs Walid Salah Abdel Motaleb Mohamed”**, the Court stated that:

“F’dan ir-rigward għandu jingħad li anqas in kwantu għall-espożizzjoni taċ-ċirkostanzi tal-fatt inkriminat fl-att ta’ akkuza - att ferm aktar formali u solenni minn dak ta’ komparixxi - ma hi meħtieġa dik l-precizjoni assoluta li donnu jippretendi li għandu jkun hemm l-appellant fl-att tal-komparixxi li dejjem gie desritt fil-ġurisprudenza bħala semplice avviso a comparire. Sakemm il-fatti li jirrizultaw ma jkunux tant divergenti miċ-ċirkostanzi kif deskritti fit-taħrika li jibdel fis-sustanza l-fatt inkriminat b’mod li l-imputat ma jkunx jista’ jifhem għal-liema għemil tkun tirreferi l-imputazzjoni u konsengwenzjalment ma jitqiegħedx f’qagħda li jkun jista’ jiddefendi ruħu adegwatement l-imprecizjoni fid-deskrizzjoni tal-fatti li fuqhom tkun tistriħ l-inkriminazzjoni ma twassalx għan-nullità taċ-ċitazzjoni.”

In the judgement given by the Court of Criminal Appeal in its Inferior Jurisdiction on the 30th April 2003 in the names of **“Il-Pulizija (Spettur M. Buttigieg) Vs Martin Brincat”**, it was stated that:

*“Issa skond l-artikolu 360 (2) tal-Kodici Kriminali , c-citazzjoni għandha ssemmi car il-persuna mharrka, w għandu jkun fiha , fil-qosor, il-fatti tal-akkuza , bil-partikolaritajiet ta’ zmien u ta’ lok li jkunu jinhtiegu jew li jkunu jistghu jingħataw . Illi kif gie ritenut minn din il-Qorti diversament preseduta fl-Appell Kriminali **“Il-Pulizija vs. Emmanuel Buttigieg”**[4.11.1994] ;-*

“wara l-introduzzjoni ta’ l-inciz (2) ta’ l-artikolu 360 tal-Kodici Kriminali , li bih ic-citazzjoni ghandu jkun fiha , fil-qosor, il-fatti ta’ l-akkuza , bil-partikolaritajiet opportuni ta’ zmien u l-lok , ic-citazzjoni ghadha mhix hlief avviz lill-imputat biex jidher quddiem il-Qorti tal-Magistrati . Id-dettalji msemmin dwar il-fatti ghandhom jigu ndikati fiha mhux ghall-fini tal-validita’ taghha , jew tal-proceduri , kompriza s-sentenza, li jsegwuha , izda ghall-fini talpraticita’ u ta’ evitar ta’ telf ta’ zmien , u cioe’ biex l-imputat x’hin jidher quddiem il-Qorti, ikun jaf fuq hiex ikun gie mharrek , u hekk dak in-nhar stess li jidher ikun preparat biex jiddefendi ruhu ghall-imputazzjoni dedotta. L-imputazzjoni fil-kawzi sommarji hija dedotta kontra l-imputat proprjament u verament quddiem il-Qorti , u mhux fic-citazzjoni.”

Of similar relevance is the judgement given by the Court of Criminal Appeal on the 6th March 1954 in the names of **“Il-Pulizija vs. Frank Borg”** wherein it was held that:

“Fil-gudizzji sommarji ic-citazzjoni ma hix hlief ordni ta’ komparizzjoni, u l-enuncjazzjoni tal-fatti kontentuti fiha ma hix il-bazi essenzjali u assoluta ta’ l-inkriminazzjoni.”

The Court of Criminal Appeal in its judgement delivered on the 10th April 2014 in the names of **Il-Pulizija (Spettur Pierre Micellef Grimaud) vs Christopher Ryan u Joshua Xerri”** noted :

“Illi din il-linja ta’ hsieb giet adottata u adoperata f’diversi sentenzi mogħtija minn din l-Onorabbli Qorti, liema sentenzi ‘lkoll isostnu li n-nuqqas ta’ referenza għaż-żmien u għall-lok fic-citazzjoni, jew altrimenti referenza għal hin u lok divers minn dak illi jirriżulta mill-provi migjuba fil-mori tal-kawża bl-ebda mod ma jgħib in-nullita taç-

citazzjoni u/jew il-liberazzjoni tal-imputat. Dawn l-istess sentenzi jirritjenu illi dak illi huwa mportanti fl-imsemmija ċirkostanzi huwa li l-imputat ikun a konjizzjoni tal-fatti jew ċirkostanzi li bihom jinsab akkuzat, u dan sabiex l-istess imputat ikun f'pożizzjoni illi jhejji d-difiża tiegħu.

Għaldaqstant jekk bin-nuqqas ta' determinazzjoni tal-ħin jew lok fiċ-ċitazzjoni, jew inkella, b'referenza għall-ħin u lok partikolari fiċ-ċitazzjoni li mbagħad, sussegwentament, jirrizultaw differenti mill-provi miġjuba quddiem il-Qorti l-imputat iħossu żvijat, huwa għandu jitlob u jingħata differiment sabiex ikun jista' jipprepara d-difiża tiegħu b'mod adegwat. Dan japplika mhux biss għall-proceduri sommarji quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali operanti fl-ambitu tal-kompetenza originali tagħha ai termini tal-artikolu 370(1) tal-Kodici Kriminali, izda wkoll gie estiz għall-proceduri quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali ezercenti proceduri fil-kompetenza estiza tagħha ai termini tal-artikoli 370(3)(4) tal-Kodici Kriminali.

Illi fis-sentenza fl-ismijiet **“Il-Pulizija vs Joseph Zahra”**, l-Onor. Prim Imħallef Emeritus Vincent DeGaetano, jirriafferma s-sentenzi mogħtija mill-Qorti tal-Appell Kriminali nhar il-hamsa ta' Awwissu tas-sena 2003, u jispjega illi:

“L-aggravju ta' l-appellant hu ... li huwa ma setax jinstab hati skond l-imputazzjonijiet kif dedotti peress li dawn l-imputazzjonijiet kienu nieqsa mid-dettalji mehtiega dwar il-post, hin u c-ċirkostanzi li fihom sehew l-allegati reati. Dan l-aggravju hu wiehed fieragh.... din il-Qorti kellha l-okkazzjoni li

tosserva diversi drabi, in-nuqqas ta' xi rekwizit imsemmi fis-subartikolu (2) tal-Artikolu 360 ma jwassalx għan-nullita' ta' citazzjoni (jew tal-imputazzjoni jew imputazzjonijiet) u anqas ma jwassal necessarjament għall-liberazzjoni ta' dak li jkun. Jekk, minhabba l-mod kif inhuma redatti l-imputazzjonijiet, l-imputat ma jkunx jista' jiddefendi ruħhu adegwataent huwa jista' jgib dan l-ilment a konjizzjoni tal-qorti biex din tiegħu l-mizuri necessarji. Jista' wkoll, wara li jkun sema' l-provi tal-prosekuzzjoni, jitlob differiment jew postponement biex ikun f'posizzjoni li jagħmel id-difiza tiegħu, minflok ma jgħaddi għad-difiza minnufih wara l-kaz tal-prosekuzzjoni, kif suppost li jsir f'kull kawza (ara, in partikolari, l-artikoli 374, 375 u 377(1) tal-Kodici Kriminali ... l-Artikolu 360(2) jgħid lic-citazzjoni għandha jkollha certi dettalji, u cioe` sabiex l-imputat jigi preparat flewwel jum tas-smigh bid-difiza u bil-provi tiegħu in difeza, u l-kawza tkun tista' tingata' f'dik l-ewwel gurnata tas-smiegh."

Illi permezz ta' din is-sentenza l-Qorti tal-Appell Kriminali estendiet b'mod esplicitu dan il-prinċipju għall-kumpilazzjonijiet, bħal fil-kaz odjern, u dana b'differenza importanti, kif ser jiġi spjegat aktar 'l isfel f'dan l-umli appell. F'dan ir-rigward, u f'dan l-istadju biżżejjed jingħad li din is-sentenza tistipula li f'kaz ta' kumpilazzjoni, il-mankanza għar-referenza għall-ħin u għall-lok fiċ-citazzjoni ta' fejn seħħ ir-reat ma jwassal bl-ebda mod għallliberatorja ta' l-imputat jew addiritura għan-nullità ta' citazzjoni, u dana għall-istess raġunijiet suriferiti.

Madanakollu l-istess sentenza tgħid illi kawza sommarja hija differenti minn

kumpilazzjoni u dana l-għaliex f'kawża sommarja, ai termini tal-artikolu 377 tal-Kodiċi Kriminali, meta jingħalaq is-smiegħ tal-kawża, il-Qorti għandha dakinhar stess tgħaddi minnufih għas-sentenza. Għaldaqstant, f'kawża sommarja, għaladarba l-imputat ikun gie ppreparat bid-difiża tiegħu fl-ewwel dehra quddiem il-Qorti, u l-istess imputat iħossu żvijat b'mankanza ta' indikazzjoni ta' ħin jew lok, jew inkella b'referenza fiċ-ċitazzjoni għal ħin u lok divers minn dak li effettivament jirriżulta mill-provi migjuba quddiem il-Qorti, allura l-imputat għandu jingħata d-differiment sabiex jipprepara b'mod adegwat id-difiża tiegħu."

In "Il-Pulizija (Spt. M. Sammut) (Spt. B. Spiteri) Vs Joseph Storace" decided on the 27th February 2009 the Court of Criminal Appeal stated that:

"Illi din il-Qorti, għalkemm tifhem u tissimpatizza mal-Ewwel Qorti li tista' tkun vessata b' imprecizjonijiet simili da parti tal-prosekuzzjoni fl-abbozzar ta' citazzjonijiet notifikati lill-imputati li jidhru quddiemha, mill-banda l-oħra ma tarax li f' dan il-kaz dan in-nuqqas ta' precizazzjoni kellu jwassal għall-liberazzjoni tal-appellat.

L-ewwel nett bhala fatt ma kien hemm xejn zbaljat fiddicitura tal-lokalita' fejn sehh l-incident ghax hu minnu li dan gara f' post li kien f' Misrah Lourdes, San Gwann, kif indikat fil-komparixxi. Din l-indikazzjoni kellha tkun bizzejjed biex flimkien mad-data li hija korretta w l-hin, inebbhu sew lill-appellat għall-liema incident kienet qed tirriferi l-akkuza dedotta kontra tiegħu. U għalkemm ma kien ikun hemm xejn hazin kieku ssemma ukoll "filkunvent tal-Knisja Parrokkjali", zgur li ma kienx hemm bzonn li jigi indikat ukoll in-numru tal-kamra "10" .

Hekk bhal meta ikun hemm incident go dar privata, ma jkunx hemm bzonn li tigi indikata il-kamra, hux tal-ikel jew tassodda, fejn ikun gara l-incident, biex jigi indentifikat il-lok.

Illi kif gie ritenut minn din il-Qorti fl-Appell Kriminali "IlPulizija vs. Emmanuel Buttigieg" [4.11.1994] ;-

"wara l-introduzzjoni ta' l-inciz (2) ta' l-artikolu 360 tal-Kodici Kriminali, li bih ic-citazzjoni ghandu jkun fiha, filqosor, il-fatti ta' l-akkuza, bil-partikolaritajiet opportuni ta' zmien u l-lok, ic-citazzjoni ghadha mhix hlief avviz lill-imputat biex jidher quddiem il-Qorti tal-Magistrati. Id-dettalji msemmijin dwar il-fatti ghandhom jigu ndikati fiha mhux ghall-fini tal-validita' taghha, jew tal-proceduri, kompriza s-sentenza, li jsegwuha, izda ghall-fini tal-praticita' u ta' evitar ta' telf ta' zmien, u cioe' biex l-imputat x'hin jidher quddiem il-Qorti, ikun jaf fuq hiex ikun gie mharrek, u hekk dak in-nhar stess li jidher ikun preparat biex jiddefendi ruhu ghall-imputazzjoni dedotta. L-imputazzjoni fil-kawzi sommarji hija dedotta kontra imputat proprjament u verament quddiem il-Qorti . "
(ara wkoll : App. Krim. "Il-Pulizija vs Martin Brincat" [3.4.2003] u ohrajn)

Hekk ukoll iddecidiet din il-Qorti preseduta mill-Prim' Imhalled Dr. V. De Gaetano fil-kawza : "Il-Pulizija vs. Joseph Zahra" [5.8.2003] meta rriteniet li anki jekk l-imputazzjonijiet ma jkunux redatti bl-aktar mod felici u r-riferenza ghall-post ...ma tkun xejn cara, dan ma jwassalx ghan-nullita' tac-citazzjoni (jew tal-imputazzjoni jew imputazzjonijiet) u anqas ma jwassal necessarjament ghall-liberazzjoni ta' dak li jkun.

Issa fil-kaz odjern ghar-rigward tal-lok jissemma li l-incident gara go Misrah Lourdes, San Gwann li hija l-pjazza li tiffronteggja l-edificcju fejn gara l-incident. Issa kullhadd jaf li f' dan il-misrah hemm il-knisja w il-kunvenut anness maghha ahseb w ara l-appellat li, bhala membru tal-kor tal-istess knisja, kien jattendi f' dak il-post regolarment. Ghalhekk jidher li bl-uzu tad-dicitura msemmija fic-citazzjoni kien ikun bizzejjed biex l-appellat ikun jaf ta' x'hiex ezatt kien qed jigi akkuzat. Ghalhekk din il-Qorti hi tal-fehma li l-vot tal-ligi dwar ir-rekwiziti taccitazzjoni gie sodisfatt f'dan il-kaz. Lanqas ma hemm xi difett fil-komparixxi ghax ma gietx indikata il-kamra filkunvent fejn gara l-kaz ghax dan mhux rikjest mill-ligi.

Konsegwentement l-Ewwel Qorti - forsi ghax riedet taghti tbezbiza lill-prosekuzzjoni ghal xi nuqqas ripetut fil-kawzi tad-distrett li kienet qed turriskontra – interpretat zbaljatament il-ligi w lliberat meta mill-provi li nstemghu quddiem din il-Qorti - w li prezumibbilment kienu l-istess li nstemghu quddiemha - kellha turrizulta ampjament il-htija tal-appellat ghall-akkuza dedotta kontra tieghu w li hu ma kkontradiex.”

Having taken note of the principles which emerged from the above cited judgements and after having heard both the complainant and the accused testify, the Court sees that the mentioning of two different time periods in the English version of the charges does not render the charges null. The *citazzjoni* served its purpose of informing the accused of the charges brought against him and of the date within which he had to appear before the Court. The accused appeared also in front of this Court and was duly and amply prepared to present his defence. Moreover, the Court postponed the case during the sitting of the 20th February 2019 so that the accused is given ample time to prepare himself.

Considers;

With regards to the merits of the case, the Court was faced with two conflicting versions.

Claudia Strauss stated under oath that she tried to speak to Jens Ruediger Wiedemann in order to convince him to vacate the premises which was leased to her and when she tried to speak to him on the day and time of the alleged incident, he slapped her in her face. It was at this point that she grabbed an object which turned out to be an ornamental piece in the form of shoes and hit Wiedemann. Claudia Strauss did not bring any other proof as to the alleged slap. The Court took note of the physique of both Strauss and Wiedemann, particularly of the latter whom had he truly slapped Strauss would have definitely injured her slightly or at least caused redness or a swelling in Strauss's face.

On the other hand, Wiedemann insisted that he had never laid a finger on Claudia Strauss. Indeed even in the affidavit of PS 1021, PS 1021 stated that Wiedemann denied slapping Strauss on her face. Wiedemann explained that it was Strauss who started harassing him and making a scene. All this started out as he did not want to discuss the issue of vacating the premises with Strauss and she got frustrated to the extent that seeing him calmly ignoring her, grabbed this ornament and started hitting him with it. This is also corroborated by Strauss as she stated in her testimony that she had asked Wiedemann to leave but he was ignoring her and thereby she messaged him asking him to discuss the issue with her on the day of the incident. Strauss also stated in her testimony that at the time of the incident she tried to speak to Wiedemann but he ignored her and turned to go to his room.

Wiedemann also exhibited several photos of the injuries suffered and also photos showing the state in which Claudia Strauss was at the time of the incident. An affidavit of Dr Sean Chetcuti Saydon together with the relevant medical certificate were exhibited whereby it resulted that indeed Wiedemann had suffered from slight injuries.

The Court took note of the contents of the affidavit of Ps 1021. It is to be noted that even though PS 1021 went immediately to the place where the incident occurred, he did not indicate that he saw any injuries or redness on Claudia Strauss's face. He just described her as crying hysterically. On the other hand, he described seeing several scratches on Wiedemann's left arm.

After hearing the evidence brought forth, the Court is not convinced of the version as narrated by Claudia Strauss. The version of events as explained on oath by Wiedemann on the other hand is credible and the Court deems it to be the correct version of how the incident started and finished. The Prosecution did not bring proof beyond reasonable doubt that Wiedemann used force against Strauss.

Decide

Therefore after having seen and considered Section 339(1)(d) of Chapter 9 of the Laws of Malta, the Court finds the accused Jens Reudiger Wiedemann not guilty of the charge brought against him and acquits him thereof.

Dr Simone Grech LL.D.
Magistrate

Karen Falzon
Deputy Registrar