



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

Magistrate Dr Monica Vella LL.D., M.Jur.

Police

**(Inspector Leeroy Balzan
Engerer)**

vs

Omar Ismail Abdimalik

Today, 24th July 2019

The Court;

Having seen that the Prosecution arraigned under arrest:

“Omar Ismail Abdimalik, holder of Maltese resident Permit number: 0110433A

And charge him with having:

On the 15th August 2018 at around 14.00hrs in Paceville, St Julians wilfully committed any spoil, damage or injury to or upon any movable or immovable property to the detriment of the St Julian’s

Local Council in the Spinola Gardens situated in St George's Road, St Julians which amount exceeds two thousand and five hundred euro (Art. 325(1)(a) of Chapter 9 of the Laws of Malta).”

Having heard the witnesses brought before it;

Having seen all documents exhibited by the Prosecution;

Having seen the records of the case;

Having heard the submissions of the parties;

Having considered all the evidence brought before it;

Having seen that the case was put off for judgement for today.

Having seen:

The Charge

That in this case the accused is charged with wilful damage to property in an amount that exceeds €2,500 and this under Article 325 (1) (a) of the Criminal Code, Chapter 9 of the Laws of Malta.

The Evidence

The **accused** a tempo vergine in the statement¹ he gave to the Police denied that he committed the acts with which he is charged.

¹ Folio 7

The accused has been here in Malta since 19th June 2013 and has a clean conduct sheet².

Paul Spiteri, Executive Secretary of the St. Julian's Local Council testified³ that the Council received a call from the Police that damage had been committed in the public garden of Spinola and an estimate was requested. Thus this witness did not witness the incident whereby the accused allegedly broke the lamp posts. Spiteri also exhibited a quotation PS1 a folio 32, an estimate of the damage drawn up by himself PS2 a folio 55, another quotation PS3 a folio 56-57 and a copy of another quotation a folio 58 of the records of the case. These documents were again exhibited by the same witness a folio 74-77.

PS 790 Nathan Zerafa testified a folio 59-62, **PC 485 Matthew Borg** testified a folio 78-80, **PS 1074 Luke Stivala** testified a folio 117-119. These Police officers stated that they did not witness the incident and when they arrived all was calm. So the accused was not seen doing anything let alone breaking the lamp posts.

PC 1113 Ramses Tonna testified a folio 120-123. This witness also confirmed that on arriving at the garden all was calm and the incident was over. However, "one of the guys pointed at the accused and stated that he did the damages that were around the garden."⁴. This witness also said that the accused admitted to committing the said damages⁵, however later on in counter-examination the same witness stated that he

² Folio 9

³ Folio 28 - 32

⁴ Folio 121 first paragraph

⁵ Folio 121 fifth paragraph

did not speak with the accused and that “To the Sergeant he was speaking not to me”⁶.

Abdikarim Ismail Omar, the main witness of the Prosecution testified a folio 151 – 156. This witness is the person, who according to the Police Officers who went on site, stated that it was the accused who committed the damages. However, upon testifying in court, the said witness stated that “.... *before we fought I saw him fall down on one lamp and the it broke.....I saw him falling down he was very drunk...*”⁷. A folio 153, the said witness also confirmed that there were other lamps broken in the garden.

Considers:

With reference to the testimony of Mr Paul Spiteri, it is to be emphasized that the quotation of the damage exhibited a folio 55, by the said witness cannot be taken as evidence in the criminal field since the estimate of the damages was drawn up by the said Executive Secretary himself, who cannot be said to be a competent person to draw up such estimate since no proof has been brought to prove he is a competent person to estimate such damages. As to the documents exhibited as PS3 and PS4 folio 56-58, and again a folio 74 – 77, these are not signed, authenticated or confirmed in any manner by their author, however, the Defence, on the 22nd May 2019, a folio 106, exempted the Prosecution from producing a representative of the company Calleja Ltd to confirm the said invoices.

⁶ Penultimate line a folio 122

⁷ Folio 152

As to the police officers who gave evidence, it results that they were called on site after a report was lodged and that neither of them witnessed the incident.

With regard to the testimony of PC 1113 Ramses Tonna, the Court cannot give any weight to the same witness's declaration that the accused admitted committing the damages, since the said witness confirmed that he did not speak with the accused and that it was the Sergeant who spoke with the accused and the Sergeant who testified a folio 117 to 119 did not make any such declaration and did not confirm that the accused admitted with him that he committed the damages. On the contrary, upon being cross-examined by the defence: "*Did I understand you correctly that someone else told you that he was doing the damage?*", the Sergeant replied "*Yes because the person his name I don't know it by heart...*"⁸.

The main witness of the Prosecution Abdikarim Ismail Omar declared that the accused fell on the lamp post and it broke. Falling down cannot be taken as a voluntary act.

For these reasons, the Court finds that the Prosecution evidence does not reach the degree requested by law in the criminal field to prove that the accused committed the said damages and that therefore, the Prosecution has not proved its case against the accused beyond reasonable doubt.

Therefore;

⁸ Folio 118-119

Upon considering all the evidence brought before it, and the charge attributed to the accused, the Court cannot find the accused guilty, thus acquits him of the charge brought against him and orders the immediate release of the accused from custody.

Magistrate Dr. Monica Vella LL.D., M. Jur.

Angelo Buttigieg

Deputy Registrar