



Criminal Court of Appeal

Hon. Judge Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appeal Nr: 201 / 2019

The Police

Inspector James Grech

Vs

Vasil Jikurashvili

k/a Ignas Naidzinavicius

Today the, 28th January 2020

The Court,

Having seen the charges brought against **VASIL JIKURASHVILI** holder of Georgian passport number 15AA09122 and Maltese Identification number 109689A, of 38 years, son of Valodia and Irina, born in Tbilisi, Georgia on the 4th of January 1980, residing at The Peak Blk A, Flt. 11, Triq San Massimiljanu Kolbe, San Pawl il-Bahar, also known as **IGNAS NAIDZINAVICIUS**, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

In the Maltese Islands, during these past years, with several acts committed at different times and which constitute violations of the same provision of the law, and committed in pursuance of the same design:

1. With the intent to deceive, made any false statement, or gave any false information, or produced any false document, for any of the purposes of the Identity Card and Other Identity Documents Act, Chapter 258 of the

Laws of Malta, knowing the same to be false and/or forged an identity document or any other document whatsoever required by, or intended for, any of the purposes of the Act;

2. Also with having forged, altered or tampered with any passport, identity card or residence permit, or used or had in his possession any passport, identity card or residence permit which he knew to be forged, altered or tampered with;
3. Also with having, in order to gain any advantage or benefit for himself or others, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information;
4. Also with having committed any other kind of forgery, or knowingly made use of any other forged document;
5. Also with having forged any document or true copy of a document or an entry made in pursuance of the Immigration Act, Chapter 217 of the Laws of Malta;

The Court was requested to treat the accused as being a recidivist in terms of Art. 49 and 50 of Cap. 9 of the Laws of Malta, after being sentenced for an offence by judgement dated 10th December 2013, which has become *res judicata*.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 26th June, 2019 whereby the Court declared the criminal action in respect of the fourth charge, extinguished, and found the accused not guilty of the fifth charge and consequently acquits him from guilt in respect of such charges, abstained from taking cognisance of the third charge and, after having seen Article 17 and 18 of Chapter 9, Article 24(2)(d) of Chapter 258 and Article 5 of Chapter 61 of the Laws of Malta, found VASIL JIKURASHVILI guilty of the first

charge in so far as having with intent to deceive, made false statements, gave false information and produced a false document for the purposes of Chapter 258, knowing the same to be false; also found him guilty of the second charge in so far as having had in his possession a passport which he knew to be forged, altered or tampered with, and also finds him guilty of being a recidivist in terms of Article 49 of Chapter 9 of the Laws of Malta.

In the circumstances, upon application of Article 22 of Chapter 446 of the Laws of Malta, the Court is discharging VASIL JIKURASHVILI subject to the condition that he does not commit another offence within a period of three (3) years from today.

The Court explained in ordinary language to VASIL JIKURASHVILI that if he commits another criminal offence during the period of conditional discharge, he will be liable to be sentenced for the offences of which he was being found guilty.

Having seen the appeal application presented by the Vasil Jikurashvili k/a Ignas Naidzinavicius in the registry of this Court on the 11th July, 2019 whereby this Court was requested to;

- (a) Reverse the appealed judgement and declare it null and void and consequently remand the acts before the Court of Magistrates as a Court of Criminal Judicature so that a judgement is given afresh or;
- (b) Alternatively vary and modify the judgement by confirming the part of the judgement whereby it was declared the fourth charge extinguished, not guilty of the fifth charge and abstained from taking cognisance of the third charge and revokes the finding of guilt with regards to the first and the second charge and declares the appellant not guilty and acquits him from all charges

Having seen the acts of the proceedings;

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

Having seen the grounds for appeal of Vasil Jikurashvili k/a Ignas Naidzinavicius grievances are manifest and clear and consist of the following;

The first grievance - Finding of guilt in terms of Article 24(2) (d) and not 24(2)(b) of Cap. 258

Whereas with regards to the finding of guilt in terms of the first charge, it is held that the first charge was grounded upon sub-article 24(2) (b), evidence of which are the considerations taken by the Court. However notwithstanding such considerations, the Court in the operative part found guiltiness in terms of Article 24(2)(d) Cap. 258 and not (2)(b)

Whereas consequently, this Honourable Court shall either order that the judicial acts be remanded before the Court of first instance so that a judgement be given afresh or else vary the judgement by finding the appellant not guilty of the first charge and this in view of what will be submitted hereunder with regards to the second grievance.

The second grievance; prescription of the first charge

Without prejudice to the above-mentioned, in the first charge the accused was being charged in terms of article 24(2)(b) of Cap. 258

“makes any false statement, or gives any false information, or produces any false document, for any of the purposes of this Act, knowing the same to be false”

And the Court of Magistrates concluded;

“The Court is of the firm belief that the use by the accused Vasil Jikurashvili of this identity card containing false information about the holder of the document, is tantamount to the supply of false information and the making of a false statement on each of the aforementioned occasions, for the purposes of the Identity Card and Other Identity Documents Act (Chapter 258 of the Laws of Malta). After all, the purpose of the Act is to regulate inter alia, not only the issue of identification documents which are intended to serve as a means to identify the holder of the document, but also the use that is to be made of such documents and the circumstances in which the holder is required to produce or deliver such document upon demand to a lawful authority”

Whereas based on the consideration that the last time the identity card was used, was back in 2015, the Court of Magistrates decided, that such charge was not prescribed. The court further considered that if one were to concede that the use of such identity card was not covered by the above-mentioned article, the fact that back in 2010 Ignas Naidzinavicius presented himself before the electoral office in order to change his residential address was enough for prescription to be renewed.

Whereas appellant disagrees with such considerations, for the following reasons.

1) Firstly with regards to the change of the residential address, it is brought to the attention of the Court that the prosecution did not produce any evidence that purports that the furnishing of such address to the relevant authorities was false. Therefore it cannot be considered that the giving of such address renewed the prescriptive period.

2) Secondly, the aims behind the promulgation of Cap. 258 are clear since the act itself provides that

“To make provision for and in respect of identity cards and to provide for matters ancillary to or connected therewith”

Whereas it is further brought to the attention of this Honourable Court that the Act is there to regulate the issue and removal of documents issued by the authorities i.e. identity cards, residence documents and identification documents.

Whereas article 18 of the Act provides that;

“An identity document which has not been tampered with shall, unless its validity expires or is terminated, be evidence of the identity of the holder as shown on the document, and shall be accepted as such by every public officer or authority and by every other person”

Whereas article 24(1)(b) regards the giving of false statements, information and documents for the purposes of the Act, that is the issue of documents and not their use and how one purports himself with regards to third parties by means of such document [in such case this is punishable by means of a different article, by which the appellant was guilty.] Since in terms of the law, the document itself is proof of one's identity.

Whereas it results from the judicial proceedings that the application for the identification document was filed back in 2007, and no changes were made apart from the change in address, to which no evidence was shown that such information was false.

Consequently, such charge is prescribed by the ten-year prescription.

The third grievance - Prescription of the second charge

Whereas in any case with regards to the second charge, this Honourable Court shall realise, that the finding of guilt by the court of first instance was erroneous since the charge is prescribed.

The Court of first instance, in terms of the second part of article 5 of Cap. 61 of the Laws of Malta i.e.

“or used or had in his possession any passport, identity card or residence permit which he knew to be forged, altered or tampered with”

Concluded that appellant was guilty for the following reasoning;

“However, as for the Lithuanian passport, although it does result to be amply proven that the accused did use and have this false document in his possession, he results to have used it last on the 29th March 2007. There is no evidence in the acts of the proceedings that shows that the accused made further use of this passport after he applied for the Maltese identity card in March 2007. Even if one can concede that when, on the 7th April 2007²⁰ the accused, purporting to be Ignas Naidzinavicius, applied for a correction of the identity card in order to reflect the details of the place of birth as indicated on the passport, would have had to produce the passport issued in the name of the said Ignas Naidzinavicius, there is no evidence to prove that this document was actually made use of by the accused thereafter, although it results to have remained in his possession until the issue of his work permit which, from the document exhibited as Dok. A21, was issued on the 24th October 2013.”

Whereas article 5 of Cap. 61 of the Laws of Malta provides;

“5.Any person who forges, alters or tampers with any passport or uses or has in his possession any passport which he knows to be forged, altered or tampered with, shall, on conviction, be liable to imprisonment for a term from six months to two years”

Whereas the prescriptive period in terms of Article 688 of Cap. 9 of the Laws of Malta is of five years.

Whereas the Court erroneously decided that the possession in terms of law remained operative till 2013 that is till the moment the working permit was issued. It is submitted that in terms of the application submitted, at fol 62 of the proceedings, to the relevant authorities for the issue of the identification card, it is declared that the alleged passport was valid till 2010.

Whereas one presumes that such application was approved on the fact that the authorities verified the content of that passport. No further evidence was brought which proves that there existed a different passport or that further changes were made. Therefore even if the Honourable Court were to conclude that the accused remained in possession of the alleged passport, since the passport expired, it did not hold any validity before the relevant authorities.

Therefore such charged is prescribed since the prescriptive period shall start from 2010 and not 2013 as provided by the Court of first instance.

Considers;

That the following are the facts in brief:

1. While the police were investigating a robbery that took place in the home of the accused and his wife, the police made a request to Melita Ltd regarding the mobile number of the accused. Inspector James Grech testified that he was informed by Melita Ltd that this mobile number was not registered on 'Jikurashvili' but in the name of 'Ignaz Naidzin Avicius'¹.
2. The accused Vasil Jikurashvili in his statement released on twenty fifth (25th) July two thousand and eighteen (2018) explained that he is of Georgian nationality who

¹ Testimony of Inspector James Grech given on 8th August, 2018. The letter marked as Dok EA2 at fol 74 provides that mobile number 77021969 is registered on 'Ignas Maidcinavius'.

being a third country national had difficulties in residing and working in Malta for more than a couple of months²;

3. The accused explained that he met a person who offered that he obtains for him a Lithuanian passport against payment;

4. The accused obtained this Lithuanian passport which he knew contained information which did not pertain to him but in the name of 'Ignas Naidzinavicius'. The accused obtained this for the purpose of obtaining a permit to work and reside in Malta with the result that the accused was issued a Maltese Identity Card in the name of Ignas Naidzinavicius but containing the photo of himself Vasil Jikurashvili;

5. It resulted that the accused used the Maltese identity card for several purposes such as entering into an agreement with Melita Ltd as well as for the purpose of transferring vehicles.

That the first ground of appeal of the accused regards the finding of guilt in terms of article 24(2)(d) and not 24(2)(b) of Chapter 258 of the Laws of Malta. The appellant submits that with regards to the finding of guilt in terms of the first charge, it is held that the first charge was grounded upon subarticle 24(2)(b), evidence of which are the considerations taken by the Court. The Court however in the operative part, found guilt in terms of article 24(2)(d) and not (2)(b) of Chapter 258. The appellant therefore requested the Court either to order that the judicial acts be remanded before the Court of First Instance so that a judgment be given afresh or else vary the judgment by finding the appellant not guilty of the first charge and this in view of what is submitted in the second ground of appeal.

The first charge reads as follows:

² The accused in his statement explained that *'when you was working, there was coming police and checking your papers, so you have chance after one (1) months and after two (2) months you go back at home iwth deport..'*

'With the intent to deceive, made any false statement, or gave any false information, or produced any false document, for any of the purposes of the Identity Card and Other Identity Documents Act, Chapter 258 of the Laws of Malta, knowing the same to be false and/or forged an identity document or any other document whatsoever required by, or intended for, any of the purposes of the Act;'

The First Court concluded that:

'For these reasons, while the Court declares the criminal action in respect of the fourth charge, extinguished, and finds the accused not guilty of the fifth charge and consequently acquits him from guilt in respect of such charges, abstains from taking cognisance of the third charge and, after having seen Article 17 and 18 of Chapter 9, Article 24(2)(d) of Chapter 258 and Article 5 of Chapter 61 of the Laws of Malta, finds VASIL JIKURASHVILI guilty of the first charge in so far as having with intent to deceive, made false statements, given false information and produced a false document for the purposes of Chapter 258, knowing the same to be false; also finds him guilty of the second charge in so far as having had in his possession a passport which he knew to be forged, altered or tampered with, and also finds him guilty of being a recidivist in terms of Article 49 of Chapter 9 of the Laws of Malta.

In the circumstances, upon application of Article 22 of Chapter 446 of the Laws of Malta, the Court is discharging VASIL JIKURASHVILI subject to the condition that he does not commit another offence within a period of three (3) years from today.

The Court explained in ordinary language to VASIL JIKURASHVILI that if he commits another criminal offence during the period of conditional discharge, he will be liable to be sentenced for the offences of which he is presently being found guilty.'
(Underlining added by this Court.)

The Court notes that the First Court in its considerations regarding punishment made reference to article 24(2)(d) of Chapter 258 while it is evident that the applicable article was 24(2)(b) of Chapter 258 of the Laws of Malta.

Article 24(2) of Chapter 258 of the Laws of Malta provides that:

'Any person who -

(a) with intent to deceive contravenes any of the provisions of article 21 or of article 22(1); or

(b) makes any false statement, or gives any false information, or produces any false document, for any of the purposes of this Act, knowing the same to be false; or

(c) forges an identity document or any other document whatsoever required by, or intended for, any of the purposes of this Act; or

(d) aids or abets the commission of any offence against the foregoing paragraphs of this subarticle,

shall be liable on conviction to imprisonment for a period of not less than two years and not exceeding five years.'

It is therefore clear that the Court wrongly indicated article 24(2)(d) instead of article 24(2)(b) of Chapter 258 of the Laws of Malta in the concluding part of the judgment. The Court will now consider whether this error brings about the nullity of the appealed judgment.

Article 382 of Chapter 9 of the Laws of Malta provides that:

'The court, in delivering judgment against the accused, shall state the facts of which he has been found guilty, shall award punishment and shall quote the article of this Code or of any other law creating the offence.' (Emphasis and underlining added by this Court)

Reference is made to the judgment in the names **'Il-Pulizija v. John Sultana'**³ where it was considered that:

'L-Artikolu 382 tal- Kodici Kriminali jghid li s-sentenza moghtija kontra l-imputat ghandu jkollha fiha cioe` issemmi, fost affarijiet ohra, l-artikolu tal-Kodici Kriminali jew ta' kull ligi ohra li jkun jikkontempla r-reat li tieghu dak li jkun ikun qed jinstab hati. S'intendi jekk l-artikolu tal-ligi citat fis-sentenza jkun jew inezistenti jew jigi citat artikolu b'iehor, dan ikun daqs li kieku l-artikolu tal-ligi li jikkontempla r-reat ma giex indikat. Hekk jidher li gara f'dan il-kaz; l-Artikolu 338(zz) tal- Kodici Kriminali ma jezistix. L-artikolu tal-ligi li jikkontempla r-reat ipotizzat fl- imputazzjoni huwa l-Artikolu 338(z). Kif gie dejjem ritenut minn din il-Qorti, tali difett jammonta ghal nuqqas ta' formalita` sostanzjali b'mod li jkun applikabbli s-subartikolu (3) ta' l-Artikolu 428 tal-Kodici Kriminali...'

As considered in **'Il-Pulizija (Spettur Kevin Borg) vs Edward Chatlani'**⁴:

'Hawn pero' din il-Qorti tirrileva li b' lapsus evidenti, l- Ewwel Qorti, fis-sentenza appellata, meta kienet qed telenka l-artikoli li tahthom sabet htija, ghamlet riferenza ghall-artikolu 288 (B), li ma jezistix fil-Kodici Kriminali, minnflok ghall-artikolu 298B li kien gie indikat lilha fic-citazzjoni mill-Prosekuzzjoni.

*Dan l-izball jirrendi s-sentenza nulla ghall-inqas f' din il-parti taghha ghaliex, kif dejjem gie ritenut skond l- artikolu 382 tal-Kap. 9 tal-Ligijiet ta' Malta, il-Qorti tal- Magistrati, meta taghti s-sentenza kontra l-imputat, ghandha tghid l-fatti li tagghom dan ikun gie misjub hati, taghti l-piena w ssemmi l-artikolu tal-Kodici Kriminali jew ta' kull ligi ohra li tkun tikkontempla r-reat; (App. Krim. **"Il-Pulizija vs. Daniel Lanzon"**⁵ u ohrajn) (Emphasis added and the date of the cited judgment is found in the footnote)*

³ Decided by the Court of Criminal Appeal on 2nd March, 2001 (Appeal number: 14/2001)

⁴ Decided by the Court of Criminal Appeal on 4th August, 2006 (Criminal Appeal number: 97/2006)

⁵ Decided by the Court of Criminal Appeal on 20th October, 2005

The Court also makes reference to **'Il-Pulizija (Spt. J. Mifsud) (Spt. A. Portelli) vs Christopher Scerri'**⁶ which considered that:

'Illi jikkoncedi x' jikkoncedi l-appellant dwar l-izball li ttiehed mill-Ewwel Qorti meta giet biex ticcita l-artikolu tal-ligi li tahtu kienet qed issib htija, huwa fatt li l-Ewwel Qorti erronjament iccitat artikolu ta' Kapitolu tal-Ligijiet ta' Malta hazin ghax minnflok iccitat il-Kapitolu 9, cioe' l-Kodici Kriminali, ccitat il-Kapitolu 12 u cioe' l-Kodici tal-Organizzazzjoni w Procedura Civili.

Illi dan skond gurisprudena ormai stabilita jgib in-nullita' tas-sentenza appellata w ghalkemm ma hemm ebda aggravju dwar dan fir-rikors tal-appell, din il-Qorti "ex officio" ma tistax thalli dan l-izball ghaddej qiesu ma kien xejn u - tikkonferma, tvarja jew tirrevoka sentenza appellata li tkun nulla ghax ticcita Kapitolu tal-ligi zbaljat bi ksur ta' dak li jiddisponi l-artikolu 382 tal-Kap. 9.'

It is therefore evident that the wrong indication of the law leads to the nullity of the judgment since this error goes against the spirit of article 382 of the Laws of Malta. The Court is therefore upholding the first ground of appeal and is in terms of article 428(3) of Chapter 9 of the Laws of Malta deciding the case on the merits afresh with the grounds of appeal of the appellant considered as submissions in defence.

Considers;

The first charge reads that:

'with the intent to deceive, made any false statement, or gave any false information, or

⁶ Decided by the Court of Criminal Appeal on 1st November, 2007 (Criminal Appeal number: 322/2007)

produced any false document, for any of the purposes of the Identity Card and Other Identity Documents Act, Chapter 258 of the Laws of Malta, knowing the same to be false and/or forged an identity document or any other document whatsoever required by, or intended for, any of the purposes of the Act;

Inspector James Grech who testified on the eight (8th) of August of the year two thousand and eighteen (2018) among other facts testified that *'it was the 13th of August 2017, when the wife of the accused and their son were at home in Saint Pauls Bay, and they were robbed by two unknown persons. We were conducting the investigation, on site, I spoke to the accused as the husband of the victim...'* He explained that *'the police were investigating all the people involved, even the two persons who were accompanying the accused and to get the number of the person who called the accused, I did a request to Melita mobile with the number of the accused which was 77021969'*. He explained that *'This number was given by Mr Vasil Jikurashvili here present as the accused. When I did this request Melita answered back that that mobile number is not of Mr Jikurashvili but it is registered on the name of Ignaz Naidzin Avicius.'* He requested a copy of the contract which had a copy of an identity card attached, the name on the identity card was that of Ignaz Naidzin Avicius with number 39504A. From the photo he recognised the person as the accused Vasil Jikurashvili and so he was questioning his identity. A number of verifications were made and the accused also released a statement which the Court will make reference to later on in this judgment. It is also interesting to note that through verifications made with Interpol according to the testimony of Inspector James Grech, the inspector was informed that Ignaz Naidzin Avicius born on the twenty first (21st) of November of the year nineteen eighty three (1983) and with passport 565134, which is also shown on Dok JS 1 and Dok B was in fact the person in the photo marked as Dok JG10 at fol 147.

Dr Dustan Camilleri who testified on the eight (8th) of August of the year two thousand and eighteen (2018) in the capacity of legal officer at the expatriates

department ID Malta explained that there is a file regarding Vasili Jikurashvili being an employment file, a single permit, a permit for residence and a permit for work. He explained that regarding Ignaz Naidzin Avicius there is no physical file, only on the database. It is an old identity card. A number of documents pertaining to Vasil Jikurashvili as well as Ignas Naidzinavicius were presented by this witness. Dr Dustan Camilleri in cross examination in the sitting dated fifteenth (15th) of January 2019 explained that data is imputed by various departments and even from third party programmes and IT systems such as the Central Database System of the Government and they just process it.confirmed that the information on fol 93 being copies of the identity card in the name of Ignas Naidzinavicius is the same information in fol 38 which is a document from the National Identity Management System.

Josianne Sultana in her capacity as representative of the Electoral Office testified on the eight (8th) of August two thousand and eighteen (2018). She explained that there is data regarding the identity card with number 395004A on 'Ignaz Nidar' who presented himself on the twenty ninth (29th) of March two thousand and seven (2007) to be issued with an ID card and was in fact issued with an ID card bearing number 39504A. He presented a Lithuanian passport. She explained that *'when he came to collect his identity card there was a mistake because the nationality was born in Latvia and therefore nationality was Latvian. They corrected the application form to bear the Lithuanian nationality and the place of birth as Lithuania. This was on 8th April 2007. Furthermore he changed his address on 9th April 2010 from Saturn Flat 2 Triq il-Flotta il-Gzira to Flat 1 Savoy ... Sir Hildebrand Oakes in Gzira as well. From that point onwards we don't have any other records.'* She explained that *'the other name 109698A, Vasil Jukarshim, we only received data from 2013 of any EU national. Our ultimate scope is for all vote registration, non EU not entitled to vote for an election. Therefore from 2013 onwards we don't have any data pertaining to non EU nationals. This, I am assuming it is a non EU because there are no data office'*. She explained that there is no data regarding 109689M. The last data regarding Ignaz Naidzin Avicius who was issued with an old ID card

the 39504A is the ninth (9th) April two thousand and ten (2010), there is no data from that point onwards. A number of documents regarding Ignas Naidzinavicius were filed by this witness. Josianne Sultana who testified in cross examination on fifteenth (15th) of January two thousand and nineteen (2019) confirmed that the applicant signed on fol 62. At that time the applicant had to present his passport and all information is verified through a police officer on the day of the application. Asked whether the information at fol 93 is the same as the information she has in her file regarding Ignas Naidzinavicius, testified that *'the first application, the first ID card one in on the top it may, but in order to proper verifier have to verify the application because the ID card here if it's it tallies with the one in the bottom, it isn't the one which was issued on two thousand and seven (2007) because the date of issue is two thousand and ten (2010). It' an ID card issued.'* The applicant called again on two thousand and ten (2010) to change his identity card address. The details are first verified on application stage. In re-examination she explained that the photo is taken at the office.

Emily Abela testified on the eight (8th) of August of the year two thousand and eighteen (2018) as legal counsel of Melita limited. She presented a contract of Melita with Ignaz Naidzin Avicius with identity card number 0039504A. This agreement was made in two thousand and ten (2010) regarding mobile number 77021969 filed as Doc. EA1.⁷ Other correspondence from Melita Ltd addressed to the Assistant Commissioner Kevin Joseph Farrugia was also filed. The documents filed by this witness confirm that the accused made use of the identity card issued in the name of Ignaz Naidzinavicius when he entered into an agreement with Melita Ltd. Karen Cremona as representative of Transport Malta on eight (8th) August two thousand and eighteen (2018) testified about vehicle with registration number OAS 515, a blue

⁷ The Courts notes that although fol 71 which is a copy of the 'Service Application Form' is in the name of 'IGNAS Naidzinavicius', the last page of the terms and conditions at fol 72 is signed and dated the 4th of October, 2010 but the name, ID card number, account number and other details on this page and the back of fol 73 are missing. The appellant however during his interrogation confirmed that he entered into a contract with Melita and used the document of Ignas Naidzinavicius.

Peugeot 106 registered on 'Ignaz Naidzin Avicius'⁸ with identity card number 35904A since the twenty second (22nd) of June of the year two thousand and nine (2009). The car was scrapped on thirty (30th) March two thousand and seventeen (2017). The other vehicle with registration number VIP 309 being a silver Opel Astra was registered on 'Ignaz Naidzin Avicius'⁹ with identity card number 39504A between the twelfth (12th) of April two thousand and eleven (2011) till the fourth (4th) of November two thousand and fifteen (2015). Documents pertaining to these two vehicles as well as transfer documents with the name of 'Naidzinavicius Ignas' were also presented.

Joseph Saliba as a representative of Jobs Plus who testified on eight (8) August two thousand and eighteen (2018) explained that he only found information about Vasil Jikurashvili and presented the employment history, a copy of their recommendation as to whether the employment licence is issued to ID Malta, a copy of the application form for the issue or extension of an employment licence for a third country national, a copy of his Georgian passport found in their file and other documentation. No information was found regarding Ignaz Naidzin Avicius.

PS 285 Geoffrey Cutajar testified on the (3rd) October two thousand and eighteen (2018) regarding a hit and run accident Ignas Naidzinavicius was involved in which took place in October two thousand and thirteen (2013). The document with PCR person details was filed as well as an affidavit of PS 285 G. Cutajar and the report regarding this accident was presented. The witness also stated that Ignas had shown his identity card. This therefore confirms that the accused had also shown the identity card with false information when being spoken to by the Police.

Inspector James Grech who also testified on (3rd) October two thousand and eighteen (2018) presented a judgment delivered against Ignas Naidzinavicius on the tenth (10th) of December two thousand and thirteen (2013).

⁸ This per KC1 at fol 79 should read 'Ignas Naidziavicius';

⁹ This per fol 96 should read 'Ignas Naidziavicius'.

The Court will now make reference to the statement of the accused, a transcript of which is found at fol 154 et sequitur marked as Dok MM1. This statement was released on twenty fifth (25th) of July two thousand and eighteen (2018). Among other facts, he explained that he was born in Georgia, Tbilisi on the fourth (4th) of January nineteen eighty (1980). He said that his mobile number was 77021969 from the year two thousand and eight (2008) or nine. He explained that his name is Vasil Jikura Shvili, confirmed that he is from Georgia a third country national, not in the European Union. He confirmed that he had a problem to stay for long in Malta because he had to return to his country and he was living in Gzira at the time, he met a person from Lithuania but he does not remember his name. He explained that *'he told me do passport like this one if they're going to check to you and you are working, they don't deport you, you can continue working but if you do something bad, it will be big problem for you. I say no I am here for work and then he told me if you want I can check, I can make passport for you. Lithuanian passport for some money, I don't remember exactly because maybe that was the Lira at the time.'* He got a Lithuanian passport since Lithuania is in the EU and so he could stay in Malta without problems. He does not know from where the other person got the passport but he thinks he got it from Lithuania. He thinks that it took around three (3) weeks. He knew that the details were not his, he wanted to continue to work and he took the Maltsee ID. He applied with the passport and went to Evans Building and presented the Lithuanian passport. He had an ID card twice, probably one in twenty ninth (29th) March two thousand and seven (2007) where he applied with details of Ignas Naidzinavicius. He does not know Ignas Naidzinavicius. He confirmed that the details of Ignas Naidzinavicius were taken from the passport presented. He knew that the passport was not good. Asked if he remembers where he used this id card, he replied *'Like I make contract because to use for some things I needed Maltese ID and I used it.'* He confirmed doing a contract at Melita. He confirmed that until the fourth (4th) of October of the year two thousand and ten (2010) he was still using the document of Ignas Naidzinavicius. He confirmed that the Peugeot 106 'OAS515' was in his name and bought on twenty second (22nd) June two thousand and nine (2009). He

confirmed that for the transfer, he used the document. He used the Maltese ID card. He confirmed that he then had an Opel Astra with registration number 'VIP 309' in his name from April two thousand and eleven (2011) to November two thousand and fifteen (2015). He confirmed that he again used the document of Ignas Naidzinavicius. Asked '*You knew that you were doing wrong, it was not good because it was not your identity.*', replied '*Yes, but I did because you know, to stay here, to work, to do something better, all the time I didn't make anything bad.*' He confirmed that he reported a theft in his flat in Gzira as Vasil Jikura Shivili and then there was another one last August where the Inspector spoke to him as Vasil. Asked what he did with the false passport in the name of Ignas Naidzinavicius, he replied that he threw everything even the ID card. Stating that '*I didn't keep them long time until from this time when I, when I start working in my name normally.*' Asked when he started working in his name, he replied '*When I get work permit and start working with my name, I want to go out from this everything, from this paper, trying to go from that everything, even now maybe after till now, if I go somewhere else, maybe most of people who knows me still calls me Ignas and I'm telling them I am not Ignas, I am Vasil, why you was Ignas and I'm saying it was my nickname.*' A lot of people know him as Ignas. He explained that '*I always from my name always was trying to keep clear, keep clear this one, that's why the Opel was start to transferring because to clear from this name and finish.*' He came to Malta in two thousand and five (2005), when he was twenty five (25) years old. He met his wife in Malta, his son was born in Malta and who is a Maltese citizen. He explained that '*if there is possible to I know I did wrong. I was using this paper but on this situation maybe I can stay and continue work with my name and have family here.*' He explained that he left Georgia because the situation was too bad while explaining how low salaries in Georgia are.

Considers;

Even though the accused discarded all documents issued in the name of Ignas

Naidzinavicius and so it was impossible for the identity card containing false information as well as the forged passport to be presented before the First Court, the statement released voluntarily by the accused leaves no doubt that the accused knew that he was making use of a false passport, through which he applied for a Maltese identity card on the pretence that he was someone else. It is also clear that he made use of a false passport as well as false information based upon the content of this false passport with the intent to obtain a Maltese identity card number to be able to work and reside in Malta. By using a Lithuanian passport he was therefore not considered as a third country national in view that Lithuania forms part of the European Union with the result that he could benefit from residence as well as work in Malta.

This offence falls under article 24(2)(b) of Chapter 258 of the Laws of Malta. It has been sufficiently proven that the accused knowingly made a false statement and gave false information when he provided personal details which were not his and when he also presented the Lithuanian passport which he knew was false, for the purpose of residing and working in Malta. Inspector James Grech on the eight (8) of August, two thousand and eighteen (2018) explained that *'I checked with Interpol to see whether they have information about Ignaz Naidzin Avicius and in fact they informed me on the 31st of August 2017 that Mr Ignaz Naidzin Avicius born on the 21st November 1983 and with passport 565134, which is also shown on dok Js 1 and dok B already presented was in fact the person in the photo I am presenting here attached to the reply from Georgia.'* Therefore it is clear that the accused was using someone else's identity with the intent to deceive, that is pretending to be a Lithuanian in order to be issued with a Maltese Identity card and be in a position to work and reside in Malta.

As considered in **'Il-Pulizija (Spettur Joseph Hersey) Vs Carmen Spiteri Coleiro ta' 54 sena, bint Joseph u Rita xebba Coleiro, imwielda Tas-Sliema fl-24 ta' Jannar 1959, detentur tal-karta ta'l-identita' numru 809259(M) u toqghod 62, Tropaze, Triq**

Patri Guze' Delia, Balzan.¹⁰:

'Illi l-artikolu 24(2)(b) jistipula:

“Kull persuna li tagħmel xi dikjarazzjoni falza, jew tagħti xi tagħrif falz, jew tipproduci xi dokument falz, għal xi wieħed mill-għanijiet ta' dan l-Att, meta tkun taf li dan huwa falz tehel meta tinsab hatja ”

Il-ligi għalhekk timponi bhala rekwizit l-element tax-xjenza da parti tal-awtur tad-dikjarazzjoni jew tal-persuna li tkun qed tagħti it-tagħrif falz. Illi għalhekk il-persuna irid ikollha l-intenzjoni li tqarra għaliex tkun qed tagħti informazzjoni falza, meta taf illi dak li tkun qed tghid huwa falz. Jekk din l-intenzjoni hija nieqsa allura ir-reat ma jissussistix għaliex ikun jitratta ta' zball u xejn iktar. Id-difiza allura tikkontendi illi l-prosekuzzjoni naqqset mili tressaq provi sufficjenti fil-kamp penali li jistghu iwasslu ghar-reita ta' l-imputata billi ma giex ippruvat l-element tal-qerq.

Illi mill-provi akkwiziti jidher illi l-imputata marret volontarjament tagħmel karta ta' l-identita gdida u dana wara rapport li hija għamlet illi l-karta ta' l-identita tagħha kienet intilfet. Kienet hi u hadd iktar illi għaddiet l- informazzjoni mehtiega lil kuntistabbi 153 sabiex tkun tista' tinhargilha karta ta' l-identita gdida. Dana huwa ikkonfermat fix-xhieda tal-kuntistabbi 153 stess li għarrfet lill-imputata bhala l-istess persuna li kienet ipprezentat ruhha l-10 ta' Marzu 2010 gewwa l-Ufficcju Elettorali. Illi meta l-imputata għalhekk għaddiet l-informazzjoni ta' bintha, minflok tagħha, u wara dahhlet tiehu ir-ritratt sabiex dana jitwahhal fuq il-karta ta' l-identita gdida, hija kienet taf ben tajjeb illi id-dettalji li kienet tat ma kenux tagħha. Inoltre jidher illi l-imputata għamlet 'il fuq minn sena b'dina il-karta ta' l-identita f'idejha u kwindi kieku stess il-Qorti kellha temmen illi l-imputata għamlet zball certament kellha zmien bizzejjed biex tinduna illi l- particulars li kien hemm fuq il-karta ta' l-identita gdida li inhargitilha ma kenux tagħha! Il-Qorti għalhekk hija tal- fehma illi l-imputata intenzjonalment tat tagħrif falz meta tallbet li tinhargilha karta ta' l-identita gdida wara rapport li għamlet illi dina l-karta ta' l-identita kienet intilfet.'

¹⁰ Decided by the Court of Magistrates (Malta) as a Court of Criminal Judicature on 29th May, 2013 (Number: 528/2011)

Before concluding that the first charge has been sufficiently proven by the prosecution, the Court will be considering the plea of prescription also raised by the defence in the second ground of appeal. The appellant submitted that based on the consideration that the last time the identity card was used, was back in two thousand and fifteen (2015), the Court of Magistrates decided that the charge was not in the words of the appellant '*prescribed*', that is time barred. The appellant submitted that the Court considered that the fact that in two thousand and ten (2010) Ignas Naidzinavicius presented himself before the electoral office in order to change his residential address was enough for prescription to be renewed. The accused disagreed with this on the basis that with regards to the change of residential address, the prosecution did not produce any evidence that purports that the furnishing of such address to the relevant authorities was false and that it therefore cannot be considered that the giving of such address renewed the prescriptive period. The appellant also submits that the aims behind the promulgation of Chapter 258 are clear since the acts provides that '*To make provision for and in respect of identity cards and to provide for matters ancillary to or connected therewith.*' According to the accused, the aim of this Act is to regulate the issue and removal of documents issued by the authorities, therefore identity cards, residence documents and identification documents. The accused also makes reference to article 28 of the Act which provides that:

'An identity document which has not been tampered with shall, unless its validity expires or is terminated, be evidence of the identity of the holder as shown on the document, and shall be accepted as such by every public officer or authority and by every other person.'

The accused submits that article 24(1)(b) regards the giving of false statements, information and documents for the purposes of the Act, that is the issue of documents and not their use and how one purports himself with regards to third parties by means of such document which in such case according to the appellant is punishable under a different article. In terms of the law, the document is proof of one's identity. The appellant therefore submits that it results from the judicial

proceedings that the application for the identification document was filed back in 2007, and no changes were made apart from the change in address, to which no evidence was brought to show that such information was false. Therefore according to the appellant, this charge is time barred by the ten year prescription.

Considers;

This offence is punishable to imprisonment for a period of not less than two (2) years and not exceeding five (5) years. Article 688 of Chapter 9 of the Laws of Malta provides that a criminal action is barred '*(c) by the lapse of ten years in respect of crimes liable to imprisonment for a term of less than nine but not less than four years;*' The applicable prescriptive period is therefore that of ten (10) years.

The Court will first consider the charge in relation to the Lithuanian passport and will then consider the identity card issued on the basis of information contained in the Lithuanian passport. The accused was arraigned in Court under arrest on the twenty sixth (26th) of July two thousand and eighteen (2018). Dok JS2 at fol 62 is an application form for a Maltese Identity card. The date of presentation of the document is dated twenty ninth (29th) March two thousand and seven (2007), being the date the Court is understanding when the Lithuanian passport was presented and when this application for a Maltese Identity Card was filed. It appears that on the seventh (7th) of April two thousand and seven (2007) a change in the place of birth was effected, it is however not clear whether the Lithuanian false passport was also presented on the day. There is therefore no evidence confirming without a reasonable doubt that the accused made use of this false Lithuanian passport after April two thousand and seven (2007) which therefore confirms that the first charge limited to the use of the Lithuanian passport is time barred by the lapse of ten (10) years.

The Court will now consider whether the first charge in relation to making a false statement, giving false information or producing a false document, that is an identity card with false information is also time barred. Josianne Sultana in her capacity as a representative of the Electoral Office on eight (8th) August of the year two thousand and eighteen (2018) testified regarding 'Ignaz Nidar' which the Court is understanding should read 'Ignas Naidzinavicius' that '*he was an EU national, we had data regarding the id card 39504A, Mr Nadariz presented himself on 29th March 2007 to be issued with an ID card. He was in fact issued an ID card bearing the number 39504A.*' He presented a Lithuanian passport. She explained that '*when he came to collect his identity card there was a mistake because the nationality was born in Latvia and therefore nationality was Latvian. They corrected the application form to bear the Lithuanian nationality and the place of birth as Lithuania. This was changed on 7th April 2007. Furthermore he changed his address on 9th April 2010 from Saturn Flat 2 Triq il-Flotta il-Gzira to Flat 1 Savoy ... Sir Hildebrand Oakes in Gzira as well. From that point onwards we don't have any other records.*' Dok JS1 at fol 60 confirms that there was a change in address on ninth (9th) April two thousand and ten (2010). Therefore it results that the accused applied for a Maltese identity card by presenting the false passport as well as false information such as name, surname, date of birth and place of birth on the twenty ninth (29th) of March, two thousand and seven (2007). It also results that a change in nationality on the identity card was effected on seventh (7th) April of the year two thousand and seven (2007) where the accused presented himself as Naidzinavicius Ignas and a subsequent change in the Maltese identity card was made on the ninth (9th) of April of the year two thousand and ten (2010) where the accused requested a change in address. From the acts it appears that at least two identity cards were issued in the name of Ignas Naidzinavicius, a copy of one issued on seventh (7th) April of the year two thousand and seven (2007) which expired on the thirty first (31st) of August of the year two thousand and eight (2008) is found at fol 88 and another identity card issued on the ninth (9th) of April of the year two thousand and ten (2010) and valid till the thirty first (31st) of August of the year two thousand and fourteen (2014), a copy of which is found at fol 93. Even though these copies are not certified true copies but are attached with transfer documents of

vehicles, the accused in his statement confirmed that he made use of the Maltese identity card for the transfer of vehicles.

It also results from the testimony of Emily Abela in representation of Melita Ltd that an agreement was entered into by Ignaz Naidzin Avicius. Dok EA1 at fol 71 confirms that this agreement was entered into on 4th October 2010¹¹ whereby the identity card with false information was attached to this agreement as found at fol 73.

From the documentation filed by Karen Cremona as representative of Transport Malta, it results that not only were vehicles registered in the name of Ignas Naidzinavicius but also that this identity card with false information was made use of in order for the transfer of these vehicles to take place. Ownership by the accused of Peugeot 106 started on twenty second (22nd) June two thousand and nine (2009) while in the case of the Opel Astra, the accused owned this vehicle from the twelfth (12th) of April two thousand and eleven (2011) and ended on fourth (4th) November two thousand and fifteen (2015).

The accused when releasing his statement confirmed that in the agreement with Melita on fourth (4th) October two thousand and ten (2010) he was still using the document of Ignas Naidzinavicius and also for the transfer of the vehicles mentioned. Asked when he started working with his name he replied that *'When I get work permit and start working with my name, I want to go out from this everything, from this paper, trying to go from that everything, even now maybe after till now, if I go somewhere else, maybe most of people who knows me still calls me Ignas and I'm telling them I am not Ignas, I am Vasil, why you was Ignas and I'm saying it was my nickname.'*

¹¹ The Courts notes that although fol 71 which is a copy of the 'Service Application Form' is in the name of IGNAS Naidzinavicius', the last page of the terms and conditions at fol 72 is signed and dated the 4th of October, 2010 but the name, ID card number and account number account number and other details on this page and the back of fol 73 are missing. The appellant however during his interrogation confirmed that he entered into a contract with Melita and used the document of Ignas Naidzinavicius.

Considers;

The offence under article 24(2)(b) of Chapter 258 of the Laws of Malta refers to when a person *'makes any false statement, or gives any false information, or produces any false document, for any of the purposes of this Act, knowing the same to be false'*.

Article 18 of Chapter 258 of the Laws of Malta provides that:

'An identity document which has not been tampered with shall, unless its validity expires or is terminated, be evidence of the identity of the holder as shown on the document, and shall be accepted as such by every public officer or authority and by every other person.'

The purpose of an identity document is that of evidence of the identity of the holder and therefore the Court opines that making use of an identity card as evidence of the identity of the holder with the knowledge that it contains false information is an offence covered under article 24(2)(b) of the aforementioned chapter. The purpose of the Act is not only the issuance of documentation such as identity cards and residence cards but also the regulation of the use and contents of such identification documents which is therefore ancillary to and connected with identity cards. The use of an identity card with false information as a means of proof of the identity of the holder in cases such as the transfer of vehicles or as a party to an agreement is tantamount to an offence under article 24(2)(b) of Chapter 258 of the Laws of Malta in view that the rasion d'être of presenting an identification document is that of proving identity.

Furthermore, the Court considers that not only has the continuous nature of this offence been proven in view of the accused using this identity card on different occasions, but also that it has been sufficiently proven that the accused presented himself at the Electoral Office on ninth (9th) of April of the year two thousand and

ten (2010) in order to change the address indicated on the identity card, with the result that a new identity card had to be issued with the address of the new place of residence. The appellant in his appeal submitted that there is no evidence that the new address provided was false. The Court disagrees with this argument in view that the issue is not whether the new address was false, there was in fact no contestation as to the validity or otherwise of the address, the fact at issue is that the accused once again made use of false information, that is a false name and surname and other personal details such as place of birth and so presented himself to be someone else, when he requested a change in address shown on the identity card containing false information, irrespective of whether the new address was correct or otherwise. This is also confirmed from Dok JS4 at fol 65 which the Court considers as a declaration by the accused that he is Naidzinavicius Ignas while declaring that he is living in another address.

It has therefore been sufficiently proven that the accused is guilty of the first charge limitedly to the offence of with the intent to deceive, made false statements and gave false information and produced a false document namely the identity card issued in the name of Ignas Naidzinavicius. This is therefore not time barred. The Court is however not finding guilt of the last part of the first charge which reads '*forged an identity document or any other document whatsoever required by, or intended for, any of the purposes of the Act*' and this in view that the Lithuanian passport was forged by a third party while the Maltese identity card while containing false information, was issued by the Maltese authorities so cannot be considered as forged.

Considers;

The third charge reads '*Also with having, in order to gain any advantage or benefit for himself or others, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information;*'.

It is evident that this charge was issued as an alternative to the first charge and so the Court will abstain from taking cognisance of this third charge and will apply the offence carrying the graver punishment, that is of the first charge.

The second charge reads:

'Also with having forged, altered or tampered with any passport, identity card or residence permit, or used or had in his possession any passport, identity card or residence permit which he knew to be forged, altered or tampered with;'

From the acts it was sufficiently proven that the accused had in his possession a passport which he knew to be forged, altered or tampered with. It was however not proven that it was the accused who forged, altered or tampered with a passport, identity card or residence permit.

Article 5 of Chapter 61 of the Laws of Malta provides that:

'Any person who forges, alters or tampers with any passport or uses or has in his possession any passport which he knows to be forged, altered or tampered with, shall, on conviction, be liable to imprisonment for a term from six months to two years.'

In terms of article 688(d) of Chapter 9, this offence is barred by the lapse of five years. In fact this provides that criminal action is barred:

'by the lapse of five years in respect of crimes liable to imprisonment for a term of less than four years but not less than one year'

The appellant submitted that the Court erroneously decided that the possession in terms of law remained operative till two thousand and thirteen (2013) that is, till the moment the working permit was issued. The appellant also submitted that in terms of the application at fol 62 of the proceedings submitted to the relevant authorities for the issue of the identification card, it is declared that the alleged passport was valid till two thousand and ten (2010). He submits that whereas one presumes that such application was approved on the fact that the authorities verified the content of that passport, no further evidence was brought which proves that there existed a different passport or that further changes were made. The accused submitted that even if the Honourable Court were to conclude that the accused remained in possession of the alleged passport, since the passport expired, it did not hold any validity before the relevant authorities and so submitted that the charge is time barred since the prescriptive period shall start from two thousand and ten (2010) and not two thousand and thirteen (2013) as provided by the First Court.

This Court will not be considering what the First Court decided in view that the judgment has been declared as null earlier on in this judgment. It will however consider whether this second charge is time barred.

Reference is made to fol 62 marked as Dok JS2 where details of the Lithuanian passport was inserted. The Date of expiry is '2010.07.20'. The accused in his statement when asked what he did with the false passport, replied that he threw it away. He said that '*I didn't keep them long time until from this time when I, when I start working in my name normally.*' According to Dok. A at fol 37 Vasil Jikurashvili's residence application for the purpose of employment was approved on twenty fourth (24th) October two thousand and thirteen (2013). The Court however cannot consider that this was the date when the accused was the last time in possession of the forged passport. In view of the fact that according to fol 62, the passport's date of expiry is the twentieth (20th) of July two thousand and ten (2010), and so irrespective as to whether the accused was in possession of this passport any time after its expiration, the effect of the passport ceases to exist with its expiration and so this

criminal action had to be taken not later than five (5) years from the date of expiration of the passport.

Since the accused was arraigned and charged on the twenty sixth (26th) of July two thousand and eighteen (2018), the Court is therefore upholding this ground of appeal and declaring the criminal action under the second charge as time barred and therefore extinguished.

Considers;

The fourth charge reads:

'Also with having committed any other kind of forgery, or knowingly made use of any other forged document;'

This charge is limited to making use of the forged Lithuanian passport in view that the identity card though containing false information was issued by the Maltese authorities and so is not a forged document.

Article 189 of Chapter 9 of the Laws of Malta provides that:

'Whosoever shall commit any other kind of forgery, or shall knowingly make use of any other forged document, not provided for in the preceding articles of this Title, shall be liable to imprisonment for a term not exceeding six months, and if he is a public officer or servant acting with abuse of his office or employment, he shall be punishable with imprisonment for a term from seven months to one year.'

This offence is therefore barred by the lapse of two years in terms of article 688(e) which provides that the criminal action is barred:

'by the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (multa) or to the punishments established for contraventions;'

It has been proven that the Lithuanian passport was created prior to the twenty ninth (29th) of March two thousand and seven (2007) since it was on this date that this passport was presented in order for the accused to apply for the Maltese identity card. The passport might also have been used following a correction of the place of birth on the seventh (7th) of April two thousand and seven (2007) though it was not sufficiently proven that the passport was required for the purpose of this correction. There is however no evidence that this forged passport was used in other occasions. In view of this, the Court is declaring the criminal action under this fourth charge as time barred and therefore extinguished.

Considers;

That the fifth charge reads:

'Also with having forged any document or true copy of a document or an entry made in pursuance of the Immigration Act, Chapter 217 of the Laws of Malta;'

No evidence was presented before the Court proving that a document or true copy of a document or an entry made in pursuance of the Immigration Act was forged by the accused. Evidence confirms that while the Lithuanian passport was forged by a third party and made use of by the accused for the purpose of obtaining a Maltese identity card, it results that the Maltese identity card though containing false information was not forged but was issued by the Maltese authorities. This charge therefore does not result.

Considers;

The prosecution requested that the Court treats the accused as a recidivist in terms of article 49 and 50 of Chapter 9 of the Laws of Malta. Inspector James Grech on the third (3rd) of October of the year two thousand and eighteen (2018) filed a copy of the charge sheet at fol 182 marked as Dok JG14 together with a judgment in the names 'Il-Pulizija (Spettur Mario Stella Attard) vs Naidzinavicius Ignas' delivered on the tenth (10th) of December of the year two thousand and thirteen (2013) against 'Naidzinavicius Ignas' who was found guilty and fined a multa and also had his driving licence suspended for six (6) months. From the note filed by the Commissioner of Police at fol 196 and dated the fourteenth (14th) of February of the year two thousand and nineteen (2019), it was apart from other submissions, submitted that *'the defence requested the prosecution to summon the police Sergeant who had issued the charges referred to in the judgment delivered to the accused by Magistrate Dr. Francesco depasquale LL.D. during a traffic Sitting on 10th December 2013, which sentence was presented by the prosecution for the purpose of recidivism;*

That the defence informed the exponent that the witness needs to be counter examined and asked about the method of service of the citation in that case, whether the accused was, at the time, served upon the citation personally or simply had the judicial act published in the Gazette or in a daily newspaper...' The Commissioner of Police submitted that the method of service of the citation does not fall under the competence of the Sergeant issuing the charges and so submitted that no representative from the Principle Citation Office will be summoned. The defence at no stage of the proceedings exempted the prosecution from summoning the prosecuting officer and neither exempted the prosecution from proving the identity of the accused in the exhibited judgment. The Court emphasises that for the purpose of this charge of recidivism, it was crucial for the Prosecution to summon the prosecuting officer Inspector Maria Stella Attard for the purpose of identifying the accused. This is being said in view of the fact that the judgment filed at fol 183 does not contain details of 'Naidzinavicius Ignas'. Even though a charge sheet with details of 'Naidzinavicius Ignas' was filed and a conviction

sheet in the name of 'Naidzinovicus Ignas' is found at fol 11 marked as Dok JG1 indicating the conviction, this is not sufficient for the purpose of proving the identity of an accused. It is also not sufficient that Inspector James Grech on the third (3rd) of October of the year two thousand and eighteen (2018) testified about the details on the judgment, when these details do not appear on the judgment but are found in the charge sheet. The Court is therefore not finding the accused guilty of the charge of recidivism.

Considers;

The Court is therefore pronouncing guilt only in relation to the first charge in so far as having with intent to deceive, made false statements, given false information and produced a false document, that is a Maltese identity card for the purposes of Chapter 258 of the Laws of Malta, knowing the same to be false. The punishment prescribed under article 24(2)(b) of Chapter 258 of the Laws of Malta is that of imprisonment for a term of not less than two (2) years and not more than five (5) years.

The Court emphasises the gravity of the offence of giving false information and producing a false document knowing the same to be false. Identification documentation are considered as evidence of the identity of the holder and therefore the offence the accused is being found guilty is considered to be nothing less than a direct attack on the trust which society gives and expects from the presentation of official documents such as identity cards.

The Court is taking into account the conviction sheet of the accused both in his name which appears to be clean as well as that in the fictitious name Naidzinavicius Ignas where it appears that the accused was found guilty of driving-related offences. It is also taking into consideration the fact that the accused co-operated with the police as evidenced in the statement released

together with the fact that the accused ever since twenty fourth (24th) October two thousand and thirteen (2013) was issued with an employment licence in his proper name Vasil Jikurashvili. From the statement of the accused, it is clear that the accused has established family life in Malta. Furthermore the fact that the accused is in stable employment was confirmed through the testimony of Johann Camilleri dated the twenty sixth (26th) of July two thousand and fifteen (2015) who testified for the purposes of bail.

The Court in view of these considerations deems that it is in the circumstances appropriate to discharge the accused and therefore not inflict punishment on the accused on condition that the accused does not commit another offence within a period of three (3) years from today, by means of article 22 of chapter 446 of the Laws of Malta.

For these reasons, the Court declares the appealed judgment as null and after considering the case afresh, finds the accused not guilty of the fifth charge and not guilty of recidivism, declares the criminal action in respect of the second and fourth charge as extinguished, abstains from taking further cognisance of the third charge and after having seen article 18 of Chapter 9 and article 24(2)(b) of Chapter 258 of the Laws of Malta, finds the accused guilty of the first charge in so far as having with intent to deceive, made false statements, given false information and produced a false document for any of the purposes of Chapter 258 of the Laws of Malta, knowing the same to be false.

In the circumstances, upon application of Article 22 of Chapter 446 of the Laws of Malta, the Court is discharging the accused Vasil Jikurashvili subject to the condition that he does not commit another offence within a period of three (3) years from today.

The Court declares that it has explained in ordinary language to the accused

Vasil Jikurashvili the significance and importance of this judgement namely that if he commits another criminal offence during the period of conditional discharge, he will be sentenced for the offence of which he is presently being found guilty of.

(ft) Consuelo Scerri Herrera

Judge

True Copy

Franklin Calleja

Deputy Registrar