



## **Criminal Court of Appeal**

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

**Appeal Number: 290 / 2020**

**The Police  
(Inspector Sarah Magri)**

**vs**

**Craig Gerone Williams SR**

Today the, 9<sup>th</sup> March 2021

The Court,

Having seen the charges brought against **Craig Gerone Williams SR** holder of Maltese ID card number 50872 A, accused before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

For the month of October, 2019, in the Maltese Islands;

By several acts committed by you, even if at different times, which constituted violations of the same provisions of the law, and were committed in pursuance of the

same design, are deemed to be a single offence, called a continuous offence (Chapter 9, Article 18).

(1) he failed to give Janicke Monick Attard, the sum 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 contract, such sum should have been paid (Chapter 9, Article 338 (z))

Having seen the judgement meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 7<sup>th</sup> December, 2020, whereby the Court, after having seen Articles 7, 8, 18, 31 (g) and 338 (z) of Chapter 9 of the Laws of Malta found the accused guilty of all charges brought against him and condemned him to 2 months effective imprisonment.

Having seen the appeal application presented by Craig Gerone Williams SR in the registry of this Court on the 21<sup>st</sup> December, 2020, whilst reserving his right to bring further evidence and witnesses in defense of his case during the appeal hearing itself, humbly requests that the Honourable Court of Appeal confirms the merits of the cited judgement and reforms the punishment awarded to reflect better the particular circumstances of the case and this under those terms and conditions that this Honourable Court deems fit and appropriate.

Having seen the acts of the proceedings;

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

Having seen the grounds for appeal of Craig Gerone Williams SR.

**Whereas the appellant's grievance is clear and manifest and consists in the following :**

That the punishment awarded against the appellant is clearly unjust and excessive and makes no justice to the case at hand and this for several reasons which shall all be duly explained and expounded upon in the course of oral pleadings before this Honourable Court in relation to this present appeal and which include but are not limited to the following :

- a. That the First Court failed to give due consideration to the fact that if the appellant is given an effective prison sentence, the imposition of the prison sentence would inflict further hardship on the appellant's son and Janicke Monike Attard since the appellant from prison would not be able to continue paying maintenance or settle the maintenance due and would most probably subsequently lose his current full time employment.

In the decision given by the Court of Appeal, presided by Mr. Justice J. Galea Debono on the 27<sup>th</sup> July, 2006 in The Criminal Appeal ref. 84/2006 in the names of "**Il-Pulizija vs. Joseph Micallef**", reference was made to the criminal appeal judgement "**Il-Pulizija vs Publius Said**" decided on the 25<sup>th</sup> September, 2003, wherein the Court held that "*l-ghan ewlieni tal-legislatur meta ntroduca din il-kontravenzjoni xi ftit tas-snin ilu kien li jgib pressjoni fuq persuni li jkunu riluttanti li jhallsu manteniment lid-dipendenti taghhom biex effettivament ihallsu u mhux biss li jippunixxi ghall-ksur tal-ordinjiet tal-Qrati, li, kif intqal, ghandhom dejjem jigu obduti u osservati skrupolozamant. F'dan il-kaz dan il-ghan issa ntlahaq bil-hlas fuq imsemmi*"

During the proceedings in front of the First Court, the appellant had proposed to settle the outstanding amount in maintenance in monthly

payments of one hundred euro (€100). However this was not favourably considered by the *parte civile* who seemed very eager to extract her pound of flesh. As stated earlier, the appellant has already, settled five hundred euro (€500) from the outstanding amount due and his intention is to settle said amount as early as possible but possibly before the hearing of this appeal.

- b. It is true that Article 338(z) explains that the appellant cannot bring forward any grievance with regards to his guilt. In fact in the judgement of the Criminal Court of Appeal, "**Il-Pulizija vs. Alfred Camilleri** decided on the 18<sup>th</sup> September, 2002, wherein it cited another judgement of that same Court (Appell Kriminali **Pulizija vs. Anthony Saliba** decided on the 15<sup>th</sup> July, 1998), which clearly explained that : *"il-fatt li persuna tisfa bla xoghol ma jiskuzahix mill-obbligu taghha li twettaq id-Digriet tas-Sekond'Awla tal-Qorti Civili, obbligu sancit bir-reat tan-natura kontravenzjonali li tahtu hu akkuzat l-appellant. Ir-rimedju li ghandu u li kellu l-appellant kien li jadixxi tempestivament u fi zmien utili lill-Qorti Civili kompetenti biex din, wara li tiehu konjizzjoni tal-provi, tipprovi billi se mai timmodifika l-ordni dwar il-manteniment. U biss wara li jottjeni tali modifika, li jkun jista' jhallas inqas jekk ikun il-kaz. Sakemm dan isir, jibqa' marbut bl-obbligu tal-hlas skont l-ewwel digriet."*

However, with all due respect, it is also true that the first Court failed to take into consideration the appellant's statement when he was giving evidence that at the time that he was unemployed he was not aware that he could apply to the Court to vary the amount of maintenance but that in any case at the time he did not have the means to hire the services of a lawyer in order to file such an application.

Having seen that during the sitting of the 2<sup>nd</sup> March 2021 the accused appellant present in court in the presence of his lawyer Dr Caruana presented a bank draft of 500 euro to be passed on to Janicke Monicke Attard and declared that

her client had ordered a bank draft for the balance of 1600 euro which should be passed to the same complainant.

Having seen that the complainant Janicke Monicke Attard, present in court declared that she received the bank draft for 500 euro as part payment.

The appellant asked for an adjournment of the proceedings so that he may effect payment and the court noted that the Attorney General did not object to this adjournment and thus went on to uphold the request.

Having seen that during the sitting of 9<sup>th</sup> March 2021 the appellant made a further payment to the accused for the sum of €1600 and this in full and final settlement of all the pretences due to the complainant with regards to this appeal and appeal nr. 291/2020.

Considers further

The court notes that once a court order issued for the payment of maintenance that person is obliged to pay the amount fixed in the court order and this for whole period until the contents of the court decree is revoked or amended. The person condemned to pay maintenance cannot decided arbitrarily to stop paying maintenance and not honour his obligation until a contrary decree is issued by the court.

The Court makes reference in this regard to the court judgment in the names **il-Pulizija vs Publius Said**<sup>1</sup> which made reference to the judgment delivered by this same court in the names **Il-Pulizija vs. Raymond Cutajar**<sup>2</sup> which provided the following :-

*" ..... "Din il-Qorti wara li rat is-sentenzi (Pol. vs. Lawrence Cutajar <sup>37</sup> u Pul. vs.*

*Carmelo Farrugia<sup>4</sup> ) u wara li rat l-argumenti kollha migjuba mill-appellant fir-rikors tieghu hi tal-fehma li ma tistax taqbel mall-appellant . Ordni għall-hlas ta' manteniment kontenut*

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<sup>1</sup> Decided by the Criminal Court of Appeal on the 9<sup>th</sup> July, 2003

<sup>2</sup> Decided by the Criminal Court of Appeal on the 2nd September, 1999

<sup>3</sup> Decided by the Criminal Court of Appeal on the 10<sup>th</sup> March 195

<sup>4</sup> Decided by the Criminal Court of Appeal on the 23rd' January, 1998

*f' Digriet moghti mis-Sekond' Awla jibqa' validu ghall-fini w effetti kollha talart. 338(z) .....*

*kemm il-darba ma jkunx irrizulta li dak id-Digriet gie espressament revokat jew*

*altrimenti mibdul mill-istess Sekond' Awla u salv il-prova tar-rikonciljazzjoni jew ta' dikjarazzjoni ta' Qorti ohra kompetenti li dak id-Digriet jew dak l-ordni kien null .*

*Ghall-finijiet tal-imsemmi art. 338(z) hu bizzejjed li l-Prosekuzzjoni tipprova :-*

*1. li nghata ordni minn Qorti ghall-hlas ta' manteniment (billi ggib kopja legali tad-Digriet bhal ma sar f'dan il-kaz, jew kieku si tratta ta' ordni kontenut f'sentenza, kopja legali tas-sentenza relattiva.)*

*2. li dak il-manteniment ma thallasx fi zmien hmistax (15) il-jum minn dak il-jum li fih skond l-ordni , kellha tithallas is-somma ."*

Therefore as confirmed in **Il-Pulizja -v- Raymond Cutajar**<sup>5</sup>, the order to pay maintenance can only be avoided once there is another court expressly revoking the previous decree ordering that maintenance is due. It is enough for the prosecution to prove that the maintenance order exists and the maintenance was not paid after 15 days from that order.

So much so that in the case **Il-Pulizja -v- John Debono**<sup>6</sup>, the court went a step further and held that the fact that a person condemned to pay maintenance is unemployed, such fact does not exonerate him from the obligation to pay maintenance, but in such eventuality such person should take the necessary steps before the competent court to have that maintenance revoked or reduced.

In this case however, the Court took note of the fact that during the hearing of this appeal the maintenance was paid and the complainant was satisfied with the money she received from the appellant.

Thus, in this situation the court does not think that the punishment of imprisonment is a suitable punishment since the appellant has regularised his position at law and therefore warrants that the punishment awarded should be changed. The court is only changing the punishment awarded by the fiurst

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<sup>5</sup> Decided on 2nd September 1999 by the Criminal Court of Appeal

<sup>6</sup> Decided on 1 June 2011, by the courts of Magistrates as a Court of Criminal Judicature

court due to the change in circumstances of the facts, namely that the appellant has honoured his obligation of paying the maintenance that was due.

The Court thus confirms the judgment given by the first court with regards to its merits but revokes the same judgment with regards to the punishment awarded and instead of the two months effective imprisonment this court is ordering the accused to pay an ammenda of €56

(ft) Consuelo Scerri Herrera

Judge

VERA KOPJA

Franklin Calleja

Deputy Registrar