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

MAGISTRATE
DR. RACHEL MONTEBELLO

Case No. 677/2018

THE POLICE
Inspector Rennie Stivala
Inspector Colin Sheldon

-Vs-

TOBIAS STUVEL

Today, 21st March 2022

The Court,

Having seen that **TOBIAL STUVEL,** 28 years of age, son of I/Geruin and Linda nee' Imming born in Nordhorn, Germany, on the 12th September 1990, and residing at 19, Flat 2, Cuschieri Street, Gżira, holder of German Passport C2HMLYHTX was arraigned and charged with having, on these Islands, between the month of May 2018 and the 23rd October 2018, committed several acts constitute violations of the same provision of the law or of related provisions of the law, and

were
committed in pursuance of the same design;

1. For having misapplied, converted to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, something which was entrusted or delivered to him by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit, to the detriment of Extra Mile Services;

2. Furthermore, for having by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, tried to made a gain of more than five thousand Euro (€5,000) to the detriment of Extra Mile Services;

3. Furthermore, for having converted or transferred property, knowing or suspecting that such property was derived directly or indirectly from, or the proceeds of criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or a assisting any person or persons involved or concerned in criminal activity;

4. Furthermore for having concealed or disguised the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

5. Furthermore, for having acquired, possessed and/or used property, knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

6. Furthermore, for having kept without reasonable excuse, property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

The Court is also hereby kindly requested that, in pronouncing judgment or in any subsequent order, sentence the person/s convicted, jointly or severally, to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, within such period and in such amount as shall be determined in the judgment or order, as per Section 533 of Chapter 9 of the Laws of Malta.

Having seen that the proceedings were ordered to be conducted in the English language after the accused declared that he does not speak or understand the Maltese language but understands the English language;

Having heard the Prosecuting Officer read out the charges under oath during the hearing of the 28th October 2018;

Having heard the accused during the examination carried out for the purposes of Article 392A of the Criminal Code, plead not guilty to the charges;

Having seen that on the 17th September 2019, the Attorney General by virtue of Article 3(2A)(a) of the Money Laundering Act, ordered that the accused is to be

brought before the Criminal Court to answer for the charges proffered against him for the breach of the provisions of the said Act[1].

Having seen that the Attorney General on the 28th October 2021 counter-ordered that for the purposes of Article 3(2A)(b)(c) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta), the accused person is brought before this Court as a Court of Criminal Judicature regarding the charges brought against him for the breach of the provisions of that Act;

Having seen and read out the same note filed by the Attorney General on the 28th October 2021 by means of which the accused was sent for trial before this Court as a Court of Criminal Judicature so that if he does not object to his case being tried summarily in terms of Article 370(1)(3)(a) of the Criminal Code, he shall be tried on any and all of the crimes prescribed in terms of:-

1. Articles 18; 293, 294, and 310(1)(a) of Chapter 9 of the Laws of Malta;
2. Articles 18; 308, 309, and 310(1)(a) of Chapter 9 of the Laws of Malta;
3. Articles 15A; 17; 18; 23; 23B; 31; 532A; 532B; and 533 of Chapter 9 of the Laws of Malta;

Having head the accused declare during the hearing of the 28th October 2021 that he does not object to the case being tried summarily by this Court as a Court of Criminal Judicature;

Having heard the testimony of the witnesses produced by the Prosecution;

Having seen all the evidence and the documents produced;

Having heard the accused testify during the hearing of the 16th December 2021 and having seen the documents he exhibited;

[1] Fol. 477.

Having seen the social inquiry report filed by the Probation Officer upon the request of the defence, and having heard his testimony during the hearing of the 21st February 2022;

Having heard the final oral submissions of the Prosecution and the defence during the hearing of the 3rd March 2022;

Having seen that the cause was adjourned for today for delivery of judgement;

Having considered;

The facts of this case are as follows. The accused was employed with the company Extra Mile Services Limited as a customer service agent, on 4th December 2017. This company, which provides customer verification services, filed a complaint to the Police in October 2018 where it was alleged that the accused, during the course of his employment with the company, misappropriated funds to the tune of €40,000 pertaining to various clients of the company over a period of several months between May and October 2018.

Jorn Klister, managing director of Extra Mile Services Limited, explained in his testimony that one of the company's clients was a UK-based company called JAXX UK Limited which offers lottery and other gaming products through its website JAXX.com. He testified that occasionally, customers who would book draws and place bets on that website, would also apply for withdrawals of their winnings with JAXX and these withdrawals would be handled by Extra Mile Services Limited ("the company"). He went on to explain that each time a withdrawal is requested by a customer of JAXX.com, a withdrawal list is created by JAXX ("the client") and uploaded on the company's server, and a verification process would then be carried out by the company on behalf of its client. Jorn Klister stated that essentially, requests for withdrawals which exceed €300 would pass through a customer-verification

process after which, the file would be uploaded to the payment provider system (KontoCloud) which would, in turn, confirm that the bank data is correct. This file would then be sent on to the bank for confirmation before the withdrawal funds are finally transferred to the customer's bank account.

In his testimony, Jorn Klister also explained that four of his company's employees would carry out these verification processes where they work in pairs on each withdrawal. Person A would download the withdrawal from the server and make all the necessary checks and after any necessary amendments would have been made, the amended and verified file is uploaded to the server. From thereon, Person B would himself check the withdrawal file and upload the file to the payment provider's system (KontoCloud)[2] at which point Person A would again check the upload and enable the transfer of the file to the bank. He explained that for the purposes of this process, the accused's role was of Person A, so he would be involved both in the first stage and also in the final stage of the process where the money would be transferred to the payee[3].

Jorn Klister and William Schmidt[4], an employee at Extra Mile Services Limited, both testified that from the investigations that were carried out after a customer of JAXX reported that he did not receive the funds which he had requested to be withdrawn[5], it resulted that the accused had devised a scheme, using mostly customers' inactive player accounts, whereby he would request a withdrawal of winnings, modify the amounts on the withdrawal lists to higher amounts during the final stage of the verification process. In some cases, the accused also changed the customer/player name and or other data, but in all cases he finally altered the customer's bank data in the KontoCloud system in order to divert the payment into his bank accounts instead of the customers'[6]. Jorn Klister also specifically confirmed that that the accused

[2] Paymentworld Europe Limited.
[3] This process was also explained by Monique Vella in her testimony, 11th December 2018.
[4] Testimony of William Schmidt, 6th November 2018.
[5] See also Andre Debattista's testimony, 11th February 2020.
[6] See overview and documents containing a description of the activity processed by the accused in each individual player account: Dok. JK4 until Dok. JK32. See for example, fol. 125, 127, 130, 132, 138, 143 etc.

would also, upon receiving withdrawal lists from the company's client, adopt a similar procedure where he would modify the amounts on the withdrawal lists to higher amounts during the final stage of the verification process and substitute the clients bank data with his own bank data and as a result, these funds would be diverted instead into the accused's own bank account[7].

Having considered;

The Court after having heard the testimony of the witnesses produced by the Prosecution and after having examined the document exhibited, understands that this activity had gone unnoticed for several months, having commenced in May 2018 until the company realised what had been happening, on the 22nd October 2018. It also results that in all, the accused diverted to either one of two bank accounts which he used, the total sum of €39,015.39 pertaining to twenty nine different customers. It is also established from the evidence that initially, the accused was using a bank account in Germany in the name of his girlfriend Laura Friedrichs (IBAN DE78515500350002379204)[8] into which his salary from the company was also paid, but he had subsequently instructed the company to transfer his salary into a Maltese bank account which he had opened since and began diverting the withdrawal funds into this bank account (IBAN MT75VALL22013000000040025132913)[9]. Analysis of the relevant documents shows that total amount of customer withdrawal funds which the accused diverted into Laura Friedrichs bank account was of circa €5,000 while the remainder, circa €34,000 was transferred into his Maltese bank account[10]. These funds would ultimately constitute a loss for the company's client, JAXX UK Limited however Jorn Klister confirmed in his testimony that same client is seeking compensation for that loss from Extra Mile Services Limited.

[7] That these modifications were carried out by the accused in his name or in the name of his work colleagues, results from Dok. MF1, fol. 555 *et seq*.
[8] See Dok. JK34.
[9] See Dok. JK35
[10] Dok. JK1, fol. 47, 48.

It emerges from the evidence adduced by the Prosecution that the system operated by the payment service provider (KontoCloud), documents all instances of access to the system as well as the modifications of customer names and bank account data that would be carried out throughout the verification processes. Indeed, a transaction list (Dok. JK1) extracted from the KontoCloud system provided by Paymentworld Europe Limited[11], shows all the transactions relating to the bank data provided to the company by the accused, including information on dates and iban numbers. Andre Debattista[12] testified that the same iban kept cropping up in a series of changes to the customer iban numbers within the system during the withdrawal process and this caught his attention when he was asked by Jorn Klister to investigate a number of suspicious transactions[13].

Jorn Klister also confirmed in his testimony that no employee other than the accused was working on each and all of the dates indicated in the transaction list relating to his banking data and that from the investigations that he ordered to be carried out, it also results that the accused would not only use his own computer in order to carry out amendments to the withdrawal file, but would also on occasion make these changes by obtaining access from the computers of other employees of the company, including Marcus Katzenschlager[14] and Monique Vella[15], when the devices were left unattended during their lunch break. He also prepared a report containing a summary of all the activities in which Tobias Stuvel was involved (Dok. JK2).

Having considered;

The Court observes at the outset that the Prosecution's case was facilitated no end by the accused's own admission, during his interrogation[16] that he did indeed operate in

[11] See also Dok. AD1, fol.499, exhibited by Andre Debattista.
[12] Risk and Fund Manager at Paymentworld Europe Limited, 11th February 2020.
[13] See Dok. AD2, fol. 501, 502 and 503.
[14] It was confirmed by Marcus Katzenschlager in his testimony 11th December 2018 that the transactions made from his computer were not carried out by him.
[15] See Monique Vella's testimony, 11th December 2018.
[16] Statement released by the accused to the Police during interrogation on 23rd October 2018, Dok. RS5, fol. 15, 16, 17.

the manner outlined by Jorn Klister in his testimony and he did indeed divert, between the months of May and October 2018, the clients' funds into his own bank account or another bank account instead of to the customer/payee's approved bank account. Specifically, he confirmed that he would generate withdrawal requests which were then approved by another team member and that in the third and final phase of the process, he would change the payee name and substitute the customer's bank data with his own or previously, that of Laura Friedrich who at the time was his girlfriend. This he did because the withdrawal funds could only be paid to a bank account and since he did not at the time possess a bank account, he transferred these to his girlfriend's bank account, explaining to her that the funds were casino winnings.

The Court considers that the accused's intervention in generating activity on the inactive player accounts as well as the modifications that he carried out to these withdrawal files and the withdrawal files of customers who had acutally requested a withdrawal[17], constitute collectively and individually, the unlawful practices and false pretences envisaged by Article 308 of the Criminal Code which constitute one of the essential elements of fraud. The method employed by the accused, who would carry out the modifications to the file - specifically the bank data of the payee - **after** the file would have been verified by his colleague and authorised by the payment service provider, was **specifically designed to by-pass the company's verification process and effectively deceive the system into authorising transactions and payments purporting to be requested by the legitimate customers of the company's client**. Undoubtedly, this was a *mis-en-scene par excellence* where the accused employed devices, manoeverings and pretences specifically designed to cheat the system by creating the belief that the transactions were legitimate and duly approved by the security systems employed by the company, but thereby deriving for himself an illegal profit to the ultimate prejudice of the company.

[17] These modifications were made to the customer name and the amount of the withdrawal and in all cases, involved the substitution of the customer's bank data with his own bank data.

The Court is convinced that from this perspective, the Prosecution has proven all the essential elements of the crime of fraud as envisaged in Article 308 of the Criminal Code.

Then, in so far as the accused would, as part of this scheme, ultimately divert the withdrawal funds due to the customers into his own bank account or that of his girlfriend Laura Friedrichs, instead of the customer's own bank account, the Court is of the view that this diversion of funds in itself consitutes the crime of misappropriation. The Court is convinced that the Prosecution succeeded in proving beyond reasonable doubt that by putting into effect and operating this illegal process, the accused did not in fact make use of the customer withdrawal files which he was entrusted with in the course of his employment, in accordance with the instructions given by the client JAXX UK Limited and naturally, by his employer. After all, the crime of misappropriation is based on the abuse of trust given to the agent, which abuse results in the consequent mishandling of any object by making use of the same for personal gain or profit whether financial or otherwise. Relevant case-law on the matter makes it clear that this crime is consummated at the very moment when the possession of the movable object is converted by the perpetrator of the crime for his own use as owner. This very action in itself constitutes also the formal element of the crime where the perpetrator manifests an intention to keep or use *animo domini* the object entrusted to him just as though it belonged to him.

In the judgement in the names **The Police vs Enrico Petroni and Edwin Petroni**[18] the Court held:-

"Consequently for the prosecution of the crime to be successful, the author of it must have the specific intention to make use of the object entrusted to him for a specific purpose, as if he were the owner and therefore make use thereof or disposing of the same, at a resultant profit for himself or for others. The jurist Francesco Antolisei explains:

[18] Decided on the 9th June 1998.

"La vera essenza del reato [di appropriazione indebita] consiste nell'abuso del possessore, il quale dispone della cosa come se ne fosse proprietario (uti dominus). Egli assume, si arroga poteri che spettano al proprietario e, esercitandoli, ne danneggia il patrimonio" (Manuale di Diritto Penale, Giuffre` (Milano), 1986, Parte Speciale, Vol. 1, p. 276)

The key phrases in the law lie in the words "under a title which implies an obligation" and "to make use thereof for a specific purpose" – a purpose specified by the person delivering the object to the agent or agents, which person has the right to impose an obligation on the agent regarding the use to be made of the object entrusted to his care. If the agent proves that he has made use of such object according to the instructions given to him, then he cannot be found guilty of the commission of this offence. Finally the mens rea or the intention of the agent must be proven beyond reasonable doubt – the intention to make a gain or profit from the misappropriation of the object entrusted to him ..."

Bearing all this in mind, the Court is of the firm opinion that the Prosecution has proven that the accused committed the crime of misappropriation in all its constitutive elements and consequently the accused must also be found guilty of this charge.

Having considered;

That the accused is charged also with the crime of money laundering in terms of Article 3 of Chapter 373 of the Laws of Malta. While he unreservedly admitted his guilt in respect of the crimes of fraud and misappropriation, the accused persistently denied committing acts of money laundering[19].

Moreover the defence during final oral submissions, submitted that the Attorney General failed to charge the accused with any crimes in terms of the Money

[19] See also Dok. TS1.

Laundering Act. The defence contends that while it is true that the counter-order issued by the Attorney General in terms of Article 3(2A)(b)(c) of the Money Laundering Act[20] ("the Act") does specify that the accused is to be brought before this Court as a Court of Criminal Judicature to answer for the breach of the provisions of that Act, that order was given solely for the purpose of establishing the competence of this Court, as opposed to the Criminal Court, to try the accused for the crime of money laundering under the Act. The defence insists that the Attorney General's failure when sending the accused for trial before this Court by virtue of the note filed in terms of Article 370(3)(a) of the Criminal Code, to indicate those provisions of the Money Laundering Act in terms of which the accused may be tried and found guilty of the charge of committing acts of money laundering, must mean that this Court cannot try the accused and find guilt under that Act.

However the Court cannot agree with this argument.

Article 3(2A)(a) of Chapter 373 stipulates that "*every person charged with an offence of money laundering under this Act shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct*." Now, in this case the Attorney General by virtue of the order issued on the 28th October 2021, has ultimately and expressly directed that the accused shall be tried before this Court and not before the Criminal Court as previously ordered[21] "*regarding the charges brought against him for the breach of the Money Laundering Act*". The same provision of Chapter 373, in paragraph (b), further stipulates that upon such direction having been given by the Attorney General, as in this present case, the Court of Magistrates as a court of criminal judicature shall become competent to try that person.

It is therefore evident, in the Court's view, that the necessary order has been given as required by Law, for the accused to be tried for the crime of money laundering as

[20] Chapter 373 of the Laws of Malta.
[21] Order dated 17th September 2019, fol. 477.

proferred in the third, fourth, fifth and sixth charges in the summons and that no further indication by the Attorney General was required in order that the accused may be so tried and convicted of this crime. However, the defence's argument is further and specifically shot down by the provisions of paragraph (c) of Article 3(2A) of the Act because this provision expressly resolves the matter raised by the defence, making it a non-issue:-

"***Notwithstanding the provisions of article 370 of the Criminal Code*** *and without prejudice to the provisions of sub-article (2), the Court of Magistrates shall be competent to try offences of money laundering under this Act as directed by the Attorney General in accordance with the provisions of this sub-article*." (emphasis by the Court)

Now, Article 370(3)(a) of the Criminal Code confers on the Attorney General the discretion to send for trial by this court any person charged with a crime punishable with imprisonment for a term exceeding two years but not exceeding twelve years if there is no objection on the part of such person. When this legal provision is read together with paragraph (c) of Article 3(2A) of the Act, it is immediately evident that the scope underlying the latter provision was to do away with the strict requirement that the Attorney General also specifically sends for trial by this Court the person charged with the crime of money laundering, so long as he has proceeded to give the order envisaged by Article 3(2A) of the Act. This order, as we have seen, has been duly given in the case at hand. It is the Court's view that nothing further was required from the Attorney General's end other than the order given in terms of Article 3(2A) of the Act, sending the accused for trial before this court "*regarding the charges brought against him for the breach of the provisions of this Act*". **In fact, the provisions of the Money Laundering Act which the accused is charged with having breached, are those provisions which envisage the crimes with which the accused has been charged in the third till the sixth charge proferred in the summons, that is, the provisions of paragraphs (i)(ii)(iii) and (iv), respectively, of Article 2 of the Act**.

It is therefore clear that the order given by the Attorney General in terms of Article 3(2A) of the Money Laundering Act operates irrespectively of the provisions of Article 370 invoked by the defence in its submissions. The Court would add that had the Attorney General also indicated in the second part of the order dated 28th October 2021, the provisions of the Money Laundering Act with which the accused is being charged with having breached, in addition to the direction given in the first part of the said order, this would have been totally superfluous in view of the provisions of paragraph (c) of Article 3(2A) of the Act.

It would be pertitent to make reference in this regard to the decision of the Court of Criminal Appeal in the judgement in the names **Il-Pulizija v. Doris (Maria Dolores) Borg**, where it was held:-

*"Illi, din il-Qorti tibda' billi tgħid li l-ordni maħruġ mill-Avukat Ġenerali għandu skop speċifiku. Hekk kif ritenut mill-Qorti tal-Appell Superjuri fis-sentenza fl-ismijiet "**The Republic of Malta v. Eduardo Navas Rios**" u dan b'analoġija mal-Ordni maħruġ fit-termini tal-Kapitolu 101 tal-Liġijiet*: Two important principles emerge from these judgments. The first is that the commencement of the compilation of evidence does not depend on the 'order' issued by the Attorney General but on all the other provisions found in the Criminal Code. Such an order is only required for the purposes of determining which Court is to try the case. (Vide: Criminal Appeal : "**Ir-Repubblika ta' Malta vs. George Mifsud**" [5.2.1996]). The same principle was re-affirmed by the Court of Criminal Appeal in its superior jurisdiction in the judgment: "**Ir-Repubblika ta' Malta vs. Joseph Mifsud**" [29.5.2008] …

...

Procedural rules have to be applied in a practical and sensible way and not in such a way as to get criminal proceedings tied up in knots and obstructed from taking their natural legal course in the true administration of justice. The Court of Criminal Appeal in its superior jurisdiction in re "**Ir-Republika ta' Malta vs. Kevin Attard**." [20.11.2008] aptly commented that in such matters:- '*Il-procedura hija intiza biex*

tgħin u tippromwovi l-amministrazzjoni tal-ġustizzja, mhux biex wieħed jinqeda biha biex jipprova jagħti gambetti; u fejn il-liġi ma tikkominax in-nullita` espressament, il-Qorti għandha tkun kawta ħafna qabel ma tiddikjara xi att jew xi proċedura nulla.' "In any case, this would certainly be a case where one should apply the legal maxims:- '*interpretatio fienda est ut res magis valeat quam pereat' and 'benedicta est expositio quando res redimitur a destructione…*' (vide Criminal Appeal "**Il-Pulizija vs. Russell Bugeja**" (per V. De Gaetano C. J. [29.2.008]). »

Having therefore established that contrary to the defence's assesrtions, the Attorney General did indeed proceed in an adequate manner and in accordance with the relative legal requirements in order that the accused may be tried and found guilty of a breach of the provisions of the Money Laundering Act, the Court shall proceed to examine whether the Prosecution brought sufficient evidence for the accused to be found guilty of the crimes envisaged in the third, fourth, fifth and sixth charge in the summons.

Having considered;

That the acts with which the accused is being accused of having committed in breach of the provisions of the Money Laundering Act, are those envisaged in paragraphs (i)(ii)(iii) and (iv) of Article 2 of Act. Naturally, the accused might not be found guilty of all these acts, but one does not necessarily exclude the other. As already established, the Attorney General, exercising his discretion under Chapter 373, sent this case for a summary judgement, therefore inviting this Court to examine the facts against the requisites of Section 2(2) of the said Chapter 373.

In its judgement in the names **The Police vs Omissis and Vladimir Omar Fernandez Delgado**,[22] this Court, differently presided, made an in-depth analysis of the legal requisites of the crime of money laundering as envisaged in Article 3 of Chapter 373 where the accused's activity must fall within the definition of one or more of the circumstances described in paragraphs (i) until (vi) of Article 2 of that Act:-

[22] Judgement dated 29th April, 2015 (457/2013).

"*Our Money Laundering Act, though a copious piece of legislation, does not give us a concise definition of the crime under issue. It does pronounce a number of instances which would constitute this crime, its attempt or complicity.*

Reference is made to Archbold 2012 where one finds that this offence is described and defined as:

"The explanatory notes to the PCA (Proceeds of Crime Act 2002) define money laundering as "the process by which the proceeds of crime are converted into assets which appear to have legitimate origins, so that they can be retained permanently or recycled into further criminal enterprises." (Archbold: Criminal Pleading, Evidence and Practice, 2012, page 2475).

The Law Society Anti-Money Laundering Practice Notes October 2013 (Supporting Solicitors) defines this crime as follows:

"Money laundering is generally defined as the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source. Under POCA the definition is broader and more subtle. Money laundering can arise from small profits and savings from relatively minor crimes, such as regulatory breaches, minor tax evasions or benefit fraud. A deliberate attempt to obscure the ownership of illegitimate funds is not necessary."

Adds:

"There are three acknowledged phases to money laundering placement, layering and integration. However, the broader definition of money laundering offences in POCA includes even passive possession of criminal property as money laundering." (page 9)

In examining this offence, our Courts have also established that the three elements – placement, layering and integration, are not per se sine qua non elements necessary for the crime to exist, establishing that these stages were but a general description of the crime in question, for better understanding of the lay person sitting in a Trial by Jury. The Criminal Court reiterated further that thus the Prosecution need not, according to Law, prove the intention in each and one of these stages.

*This short summary reflects the main points raised by the Court of Appeal in the judgment "**Police (Insp Angelo Gafa') vs Carlos Frias Mateo**", dated 19th January, 2012, wherein the Court is here cited to have said this:*

"Kif ben qalet tajjeb l-Ewwel Qorti diversi awturi jaqsmu l-process tal-hasil ta' flus fit-tlett stadji imsejha "placement", "layering" u "integration". Dawn l-istadji gew imfissra b'mod konciz mill-Qorti tal-Magistrati. Pero` mill-bidunett ta' min jipprecisa, li dawn l-istadji huma biss deskrizzjoni generali tal-process tal-hasil tal-flus. Hija skola ta' taghlim li nholqot sabiex gurija tkun f'posizzjoni aktar feliċi sabiex tifhem l-intricci u l-kumplikazzjonijiet li jinvolvu dawn it-tip ta' reati. Ghalhekk il-qasma tal-process tal-hasil ta' flus f'dawn it-tlett stadji hija wahda generali u bl-ebda mod dogmatika. Fil-fatt awturi ohrajn jikkritikaw din il-klassifikazzjoni minhabba li tissemplifika wisq is-sitwazzjoni u f'hafna kazijiet ma hiex riflessjoni veritjiera ta' dak li realment ikun qed jigri. Ghalhekk dawn l-istadji ghandhom jittiehdu biss bhala punto di partenza u bhala deskrizzjoni generali tal-process tal-"money laundering" b'mod flessibbli tant li ma hux rikjest li l-prosekuzzjoni trid tipprova l-intenzjoni f'kull wiehed u wahda minn dawn l-istadji. Dan qieghed jinghad fid-dawl ta'd-definizzjoni ta' "money laundering" li nsibu fit-tieni artikolu tal-Kap. 373 kif ukoll ir-reati kkontemplati fl-artikolu 327, 328 u 329 tal-Att tal-Parlament Ingliz "Proceeds of Crime Act 2002" fejn analizi taghhom ma tirrikjediex li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti "placement", "layering" u "intergration" bil-propjeta`."

*Furthermore, as justly pointed out by Defence Counsel in the note of submissions, our Courts have advised caution in dealing and assessing this case, as well explained in another judgment handed down by the Criminal Court in the case "**Republic of Malta vs John Vella**" decided on the 9th November, 2007:*

"L-Avukat Generali jista' jakkuza persuna bir-reat ta' money laundering minghajr ma jkollu sentenza ta' kundanna ta' dak li jkun qed jigi allegat li huwa l-attivita' kriminali sottostanti. Certament pero, ikun x'ikun il-kaz, jekk l-Avukat Generali jiddeciedi li jakkuza lil xi hadd b'money laudering irid jindika n-ness bejn l-attivita' kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverzjoni ta' trasferiment ta' proprjeta', mhux kull habi jew wiri ta' proprjeta' necessarjament jammonta ghal money laundering.

Din hi Ligi straordinarja li tintroduci kuncett radikali fis-sistema nostrana u li tirrikjedi applikazzjoni bl-akbar skuplu u attenzjoni biex ma tigix reza fi strument ta' ingustizzja, iktar reminixxenti taz-zminijiet tal-inkluzjoni minn dawk tal-era moderna tad-drittijiet tal-bniedem."

Further considers, that as said our Law does not give a comprehensive definition of this crime, opting instead to delineate various instances which would constitute the crime of Money Laundering or its attempt or complicity. Section 2(1)(i) of the said Chapter defines the crime of money laundering as being constituted in any one or more of the instances as reflected in the charge sheet.

Whilst the actus reus of this crime should present no problems to comprehend, it is immediately obvious that the mental formal elements involved range from the actual knowledge that the proceeds laundered had a criminal provenance, to even the suspicion thereof. The Law as amended uses the words "knowing" or "suspecting". [(Section 2(1)(i)]. The element of knowledge should present no difficulties to proof in a Court of Law, knowledge is what it is. It clearly means that one has a good understanding, knowhow, command, and comprehension of a situation. The term

suspicion on the other hand can present and lend itself to a myriad of difficulties and is deserving of more exploration."

In his statement, the accused expressly confessed that the money which he misappropriated and acquired illegaly to the detriment of the company and its clients, was indeed withdrawn from his bank accounts and was used in order to gamble at various casinos in Malta and to pay everyday expenses such as taxis, food and drinks. The accused admitted to having a gambling addiction which took control over his life and led him to commit these crimes.

When he testified before the Court, he again reiterated his admission of guilt for the crimes of fraud and misappropriation but insisted that he did not commit the crime of money laundering since he never had any intention of laundering the money obtained from the commission of the said crimes.

However, the Court after having considered the matter at length, is of the firm view that the accused must be found guilty of this crime: in so far as the formal element of the crime is concerned, it is obvious from the evidence that he was well aware of the illicit source of the funds that he misappropriated and acquired fraudulently from the company's client and as already pointed out, he confessed to this unreservedly.

As for the *actus reus* of the crime, also duly proven, this lies in the application and use by the accused of these illicity-acquired funds in order to make the purchases and pay for the services that he admitted to in his statement and which in any event, are evidenced by the transaction activity in his bank account statement. Besides, there is no doubt whatsoever in this case regarding the underlying criminal activity - the accused having confessed and is being found contemporaneously guilty of the crimes of fraud and misappropriation which sourced the illegal funds subsequently used by him.

Defence counsel argued that the mere expenditure of the illegally-sourced funds cannot constitute in itself, the crime of money laundering as there was no attempt by the accused to conceal or disguise the proceeds of his crimes or their origin or location or movement and he did not convert or transfer these proceeds in order to conceal or disguise their true nature.

However, while this might be true and the Court in fact finds no evidence that the accused committed the acts envisaged in paragraph (ii) of the Act, and therefore must be acquitted of the corresponding charge brought against him, it is evident that the accused acquired and came into possession of the funds and also used these same funds, knowing full well that the same was derived or originated directly from the commission on his part of the crimes of fraud and misappropriation, and while it is true that it does not appear that the accused attempted to conceal the source of the funds, as would result from relevant case-law, cited above, a deliberate attempt to obscure the ownership of illegitimate funds is not necessary. Moreover, the payment from these funds deriving from his criminal activity, of expenses and for purchases, amounts to a conversion or transfer of such funds for the purposes of paragraph (i) of Article 2 of the Act. This is so because through the payment for legimitate purchases and other expenses, such as rent, made by the accused with the monies deriving directly from his other crimes, such monies were integrated and circulated into the economic system, thus obscuring their illegal provenance.

At this juncture, the Court would point out that the statement provided by Bank of Valletta plc relating to the accused's bank account held with the same bank, shows that between the 17th May 2018 and 14th June 2018 this bank account was credited with direct payments from Laura Friedrich, in a total amount of 3,435.00. This amount is somewhat less than the total sum representing withdrawal funds which - from an examination of Dok. JK1 - were diverted into Laura Friedrich's German bank account IBAN DE78515500350002379204. However most of the individual transfers that were received into the accused's bank account from Laura Friedrich, correspond to the amounts that had been diverted by the accused to her German bank account and

in any event, these transfers were mostly made only a day or two later. The Court has no doubt that the amounts transferred by Laura Friedrich into the accused's bank account were refunds of the monies diverted into her bank account by the accused as a result of the commission on his part of the crimes of fraud and misappropriation. This would mean that such amounts were also used for the payment of other expenses by the accused from his bank account.

Upon examining the statement of the accused's bank account held with Bank of Valletta plc, it would result that as at the 17th May 2018, that is the date of the first refund to the accused of the monies paid into Laura Friedrich's German bank account, his account balance was of €1.19. Indeed, it results that after each transfer of the illegally-derived funds into his account, both from Laura Friedrich and from Paymentworld Europe, the accused, apart from frequently making cash withdrawals from his bank account, would also make several purchases for products as well as services[23], and also effect direct payments to third parties for rent. Evidently, most expenditure was made at Electraworks Limited, an online casino, at times of hundreds and eventually, thousands of Euros daily. The Court also notes that although it is true that his monthly salary of circa €1,500 was also paid by Extra Mile Services Limited into the same bank account, it is evident that the accused was making continuous purchases and payments to third parties from his bank account and spent the illegally-derived funds quite so soon as they were recieved into his bank accounts, such that by the time his salary would be due, the accused would have already withdrawn or spent most of the illegally-derived funds paid into his account by Laura Friedrichs and later on by Paymentworld. This means that the purchases and payments made directly from the accused's bank account were mostly effected with the misappropriated funds which well exceed the total salary he received during the period between May and October 2018. In fact, despite the large sums of misappropriated funds that were received into his account during the five-month period in which the accused carried

[23] Taxify Limited, Electraworks Limited, Vodafone, Airmalta, Ecabs Operators, Videostripe.com. filesfetcher.com, various restaurants and hotels in Germany amongst others.

out the crimes, on the 23rd October 2018, the date when the accused was taken into custody, the bank account balance stood at a mere €192.98.

This would also mean that it does not result, in this case, that the accused retained without reasonable excuse, property knowing or suspecting that the same was derived from criminal activity: on the contrary, the accused splurged the proceeds of his crimes which, as has been established, also constitutes in itself, an act of money laundering. However, he cannot be found guilty of the sixth charge brought in terms of paragraph (iv) of Article 2 of the Act.

The Court observes that the accused never denied making use of the illegally-derived funds: his contention in this regard is that the purchase of goods and services with such funds does not constitute the conversion that the legislator had in mind as the material element of the crime of money laundering. However, this is not correct. **It is evident from the wording of paragraph (iii) of Article 2 of the Act that this crime is committed even by the mere use of the funds, without limitation as to the nature or form of such use**. As already established the accused admitted that he used the funds mostly to maintain his gambling addiction and, as would result from an examination of the bank account statement, also in order to effect payments of rent and other expenses such as taxi services and overseas travel/accommodation expenses. **Such use or expenditure is not expressly excluded from the scope of paragraph (iii) of Article 2 of the Act and consequently, must be deemed to fall within the scope of "use" for the purposes of said paragraph (iii)**. Moreover, it must also be observed that although the accused's salary was also deposited into the same bank account as the proceeds of his crimes, at no point did he dispute that the purchases made at casinos and the other purchases and payments indicated in his bank account statement, were paid out from the proceeds of his crimes and in any event, the total purchases and expenses paid from his bank account in this regard, far exceeds the total of his salary during the period under examination.

Consequently it has been proved that the accused breached Article 2(i) and (iii) of the Money Laundering Act and he therefore must be found guilty of the third and fifth charges but not also of the fourth and sixth charges.

Having considered;

For purposes of establishing the appropriate punishment to be inflicted upon the finding of guilt for the crimes or fraud, misappropriation and money-laundering, the Court must take into account several factors. Primarily, the accused's completely clean conviction sheet and the fact that he co-operated fully with the Prosecution, as evidenced by the statement he released during interrogation, confirmed by the Prosecuting Officer in his testimony and reaffirmed during final oral submissions. This co-operation is also amply validated by testimony volunteered by the accused himself during the hearing of the 16th December 2021, where he explained the reasons which led him to commit the crimes he is charged with having committed to the detriment of his previous employer and how he felt relieved when he was arrested as he knew that this would put an end to his criminal behaviour as he had until then, failed to seek help in order to regain control of his life.

However at the same time, the Court cannot fail to take into account the enormous loss sustained by Extra Mile Services Limited which, as confirmed by its managing director, is being asked by its client JAXX UK Limited to reimburse the sum of almost €40,000 that were misappropriated by the accused to its detriment. Also the fact that the crimes were committed repeatedly over a period of no less than five months by means of several acts constituting violations of the same provisions of the law, in pursuance of the same design. This means that although these acts constitute a single continuous offence in terms of Article 18 of the Criminal Code, yet for purposes of punishment, in view of the circumstances of the accused, that is, his clean criminal conviction sheet, positive background and motivations, and mostly his committment to reimbursing the injured party, the Court is not of the view that it

should apply its discretion to increase the punishment by one or two degrees. The accused's stated desire to return to his native country Germany is also relevant for the purposes of the punishment to be inflicted[24].

However, due to the substantial illicit gain made by the accused and the fact that the crimes were committed over a considerable period of time, a punishment of effective imprisonment is in order. Here it must be pointed out that the accused, save at his arraignment in October 2018, never requested to be released on bail despite the provisions of Article 575(5)(6)(a) of the Criminal Code and despite the fact that he was sent for trial before this Court only on the 21st October 2021.

In conclusion, the Court must also point out that the accused has spent no less than three years and five months in prison pending the trial, which is indisputably much more time – in excess of one year - than the term of imprisonment which the Court considers that he should be sentenced to. As already stated, from the very outset the accused co-operated fully with the police and admitted his guilt to having defrauded third parties and misappropriated their funds, without any reservation whatsoever. Most notably, the Court cannot but take full account of the fact that the accused also apologised profusely to his employer and emphatically expressed his remorse at committing the crimes while affirming his commitment to reimbursing the victim by seeking employment at the earliest opportunity. In fact his testimony was dedicated almost exculsively to making an apology and to emphasise his undertaking to make good for the commission of his crimes. He also claims to have overcome his gambling addiction during the three years and more that he has been held in preventive custody and has resolved never to relapse[25]. Indeed, the Court cannot fail to take into account the fact that the funds derived from the accused's crimes were largely used to sustain this pathetic addiction over which naturally, he had no control it does not appear that these funds were laundered for any other reason. For all these reasons combined, the Court is convinced that a punishment of imprisonment and an

[24] See social inquiry report, Dok. MFS1.
[25] See social inquiry report, Dok. MSF1.

order for the reimbursement to his employer of the misappropriated funds, is a sufficient, adequate and just punishment.

Thus the Court, while finding the accused not guilty of the fourth and sixth charge and acquitting him thereof, after having seen the relevant provisions of Law, that is Articles 17, 18, 21, 31, 293, 294, 308 and 310(1)(a) of Chapter 9 of the Laws of Malta and Article 2(1)(i)(iii), 3(1)(2A)(a)(ii) of Chapter 373 of the Laws of Malta, finds TOBIAS STUVEL guilty of the first, second, third and fifth charges brought against him and condemns him to twenty eight (28) months effective imprisonment.

For the purposes and upon application of Article 22 of the Criminal Code, any time prior to conviction and sentence during which the offender has been in prison for the offences which he has been presently convicted and sentenced, shall count as part of the term of imprisonment under this sentence.

For the purposes of Article 5(a) of Chapter 373 of the Laws of Malta and Article 23B of the Criminal Code, orders the forfeiture in favour of the Government of Malta of the proceeds or of such property the value of which corresponds to the value of such proceeds which have been received by the person found guilty, that is, forty thousand Euro (€40,000).

For the purposes and upon application of Article 15A and 532A of the Criminal Code and in addition to the punishment to which he has been sentenced, orders that TOBIAS STUVEL pays unto the injured party Extra Mile Services Limited, within eighteen (18) months, the sum of forty thousand Euro (€40,000), that is, the sum of the proceeds derived from the commission of the crimes of which he has been presently found guilty and sentenced. This order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure and is being made expressly for the purpose and in order to enable

Extra Mile Services Limited to reimburse the actual ultimate victims of these crimes.

DR. RACHEL MONTEBELLO
MAGISTRATE.