



The Court of Magistrates (Malta) as a Court of Criminal Judicature

THE POLICE (INSPECTOR SARAH MAGRI) V. NARUSEVICIUS MANTVYDAS (KI. 175853A)

MAGISTRATE: DR. VICTOR G. AXIAK

22 March 2022

THE COURT,

having seen the charge preferred against Narusevicius Mantvydas born on 28 July 1990 in Lithuania, residing in Sliema, holder of identity card number 175853A (“the person charged” or “the Defence”),

having seen that together with the summons the Prosecution submitted the sworn affidavit of PS 2323 R. Gauci,

having seen that at the start of the sitting held on 22 March 2022 the Court ordered that proceedings be conducted in the English language given that the defendant is English-speaking in accordance with Article 3(a) of Chapter 189 (Judicial Proceedings (Use Of English Language) Act) of the Laws of Malta,

having heard the witness summoned by the Prosecution during the same sitting,

having seen that the defendant opted not to testify nor to submit any evidence,

having heard the final submissions made:

- for the Prosecution by Inspector Sarah Magri,
- for the Defence, by Adv. Dr. Maurice Meli

gives the following

Judgement

1. The person charged was summoned by the Police to answer the following charge:

“that on the 10/04/2021 at around 22:50 hrs in Triq Dawret Gudja, Gudja...” he “...drove vehicle no. LDJ213 ... caused, suffered or permitted a motor vehicle no. LDJ 213 ... to be driven by Mitulkumar Vasantbhai Patel (ID. 205448A) without a driving license (Sec. 15(1)(b)(3), Ch. 65)”.

2. In the sworn affidavit that was served on the person charged together with the summons **PS 2323 R. Gauci** testified in the Maltese language as follows:

“nhar l-10/04/2021 waqt li kont xoghol gewwa l-Ghassa taz-Zurrieq gejt mghottija awtorizzazzjoni bil-miktub mis-Supretendent J. Mifsud i/c/o 5PD sabiex jitwetqu kontrolli fit-toroq. Kien ghalhekk li bejn 22:45hrs u 23:45hrs jien wettaqt kontrolli fit-toroq ezattament gewwa Dawret il-Gudja, Gudja. Ghal habta ta' 22:50hrs 10/04/2021 gie nnutat mutur bin-numru tar-registrazzjoni LDJ213 ta l-ghamla Peugeot fejn dan il-mutur twaqqaf sabiex tigi ccekjata l-licenzja tax-xufier u jsiru kontrolli ohra. Ix-xufier tal-vettura gie iddentifikat li kien Mitulkumar Vasantbhai Patel ID 205448A mwieled nhar is-17/03/1995 gewwa l-India u residenti 49, Misty Blue, Trig tal-Qroqq, Msida. Meta mistoqsi ghal licenzja tas-sewqan huwa, provda licenzja mahruga mill-Indja. Kien ghalhekk li jiena talbtu ghal-international driving licence u/jew licenzja tas-sewqan maltija izda huwa wiegeb li ma kellhux. Kien ghalhekk li huwa gie mitlub sabiex jmexxi l-mutur mal-genb u jcempel lil xi hadd sabiex jigi ghalih minhabba l-fatt li huwa ma setghax jsuq il-mutur ga la darba huwa ma kellhux licenzja valida. Huwa ikoopera mal-Pulizija u sostna li hu kien diga applika mat-TM sabiex jkun jista jgib il-licenzja tas-sewqan ghal-Malta. Huwa gie nfurmat li kienu se jinhargu l-akkuzi fil-konfront tieghu.

Ix-xufier u cioe Mitulkumar gie mitlub sabiex jikkuntattja lil sid il-vettura jew xi hadd iehor sabiex ikun jista jigi ghalih minhabba li hu ma setax isuq l-ebda vettura minhabba li ma kellhux licenzja. Akkuzi relatati inhargu ukoll fil-konfront ta' sid il-vettura li rrizulta li kien Matyvydas Narusevicius ... talli ppermetta lil Mitulkumar jsuq l-imsemmija vettura meta huwa ma' kellux licenzja tas-sewqan valida”.

3. During the sitting held on 22 March 2022 the Court heard the testimony of **Karen Cremona**, on behalf of Transport Malta, who explained that on the day in question

the motor vehicle with registration number LDJ213 was registered on WFDM Ltd (Contact person name: Marilvydas Narusevicius ID Card number 175853A). The witness submitted official documentation issued by the regulatory authority Transport Malta attesting to this fact.

4. During the same sitting the Prosecution's witness **Mitulkumar Vasantbhai Patel**, who is also being charged separately with a criminal offence resulting from the same facts, exercised the right to remain silent in relation to the criminal offence which he is being accused of having committed and the right not to incriminate himself in accordance with Art. 366E(1) of the Criminal Code.
5. The person charged opted not to testify nor to bring forward any evidence.
6. During the final submissions, counsel for the Defence submitted that the person charged ought to be acquitted as the only testimony linking him to the alleged offence was submitted in the Maltese language. The Prosecution rebutted that the Maltese language is the official language of the Courts and that it was not obliged to furnish the person charged with an affidavit drawn up in the English language.
7. Article 5(3) of the Constitution of Malta provides as follows:

'5. (3) The language of the Courts shall be the Maltese language: Provided that Parliament may make such provision for the use of the English language in such cases and under such conditions as it may prescribe.'
8. Article 516(1) and (2) of the Criminal Code provide as follows:

'516. (1) The Maltese language shall be the language of the courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language.

(2) Where any person charged does not understand the language in which the proceedings are conducted or any evidence is adduced, such proceedings or evidence shall be interpreted to him either by the court or by a sworn interpreter.'
9. Therefore, the Prosecution is only partially correct when stating that the Maltese language is the official language of the Courts as this is subject to the provisions of

the Judicial Proceedings (Use of English Language) Act, Chapter 189 of the Laws of Malta. This provides *inter alia* that:

**'3. In a court of criminal jurisdiction –
(a) where all the persons charged are English-speaking, the court shall order that the proceedings be conducted in the English language ...'**

10. At the commencement of the sitting held on 22 March 2022 the Court was informed that the person charged does not have a sufficient knowledge of the Maltese language to fully to understand and follow the proceedings if conducted in that language but has a sufficient knowledge of the English language fully to understand and follow the proceedings if conducted in that language. The Court therefore ordered that proceedings be conducted in the English language in accordance with the said article of the law.

11. Article 3(d) of Chapter 189 then provides that:

'3 (d) where a court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings, unless the order is revoked by that court or any other court before which the proceedings are pending ...'

12. The sworn affidavit of PS 2323 R. Gauci, drawn up in the Maltese language, was served upon the person charged together with the summons in accordance with Art. 360A(1) of the Criminal Code. Although in practice in summary proceedings of this nature the Court would already have the charges and the affidavits of public officers in the court file **prior** to the commencement of the sittings, for legal purposes these are only considered to have been filed by the Prosecution at the commencement of the trial. Therefore, given that at the start of the sitting the Court ordered that proceedings be conducted in the English language the said affidavit should have been submitted in the English language. Moreover the Prosecution could have reasonably inferred from the accused's personal details that he is not a Maltese-speaking person. The Prosecution however contends that it is not responsible to provide an English translation of the affidavit.

13. Article 5 of the Judicial Proceedings (Use of English Language) Act provides as follows:

- '5.(1) Where any act is to be served on any person whom the registrar has reason to believe to be English-speaking, the registrar shall cause a translation thereof to be made into the English language by an officer of the registry and service shall be effected by delivering a copy of the original and its translation.**
- (2) If, for any cause whatsoever, the translation into English of any such act is not served on an English-speaking person, such person may make in the registry, or forward to the registrar, in any manner, a declaration to the effect that he is an English-speaking person and apply for an English translation of the act served on him.**
- (3) Upon any such application, the registrar shall cause a translation of the act to be made as aforesaid and delivered to the applicant as soon as practicable; and, if in any such case the said application reaches the registry of the court not later than the time established for the closing thereof on the third working day after the date of service of the copy of the original act, any legal or judicial time the running of which is dependent on the service of the original act shall commence to run from the date of delivery of the translation.**
- (4) If it is proved that the said declaration was not made in good faith, the applicant shall be liable to proceedings for contempt of court.**
- (5) A copy in the English language of the provisions of subarticle (1) to (4) shall be reproduced on or annexed to every copy of any act which is to be served on any person.'**
14. The Prosecution's argument conceivably is that it is the Registrar's responsibility to "*cause a translation*" of the affidavit "*to be made into the English language by an officer of the registry*". While this is indeed the case, it is the Prosecution's responsibility to administer the prosecution of a case at the trial. Given that service of all judicial acts filed or issued by the Court of Magistrates as Court of Criminal Judicature are to be carried out by Police officers and also since the accused's name and surname indicate clearly that he is not Maltese-speaking, the Prosecution should have in the first instance annexed to the affidavit or reproduced on the back of the affidavit a copy in the English language of the accused's right to obtain a translation, in line with Art. 5(5) of the Judicial Proceedings (Use of English Language) Act. For some inexplicable reason this was not done. Furthermore, during

the sitting the Prosecution should have either submitted a translated copy of the affidavit or alternatively made a request for a translation to be carried out by the Registrar. Failing to do so means that the affidavit was not drawn up in accordance to law and therefore should not be considered as admissible evidence.

15. In these circumstances the Court agrees with the Defence's submissions that there is no proof linking the person charged to the alleged offence.
16. Furthermore, the Court points out that in any case the said affidavit does not provide any evidence whatsoever in support of the charge that the accused either drove the vehicle in question or else "*caused, suffered or permitted*" Mitulkumar Vasantbhai Patel to drive the vehicle in question. This apart from the fact that the Prosecution appears to have inadvertently charged the accused both with driving and permitting an unlicensed driver to drive the vehicle in question.
17. Moreover the prosecution's witness Karen Cremona testified that the vehicle was registered on the limited liability company WFDM Ltd and that the accused was merely its contact person.
18. Article 2 of the "Registration and Licensing of Motor Vehicles Regulations" (Subsidiary Legislation 368.02) defines "owner" as "***the person, whether as an individual or in representation of a company*** (emphasis made by the Court), ***partnership or cooperative society, in whose name a motor vehicle is registered and licensed***).
19. In accordance with Article 13 of the Interpretation Act (Chapter 249 of the Laws of Malta):

'13. Where any offence under or against any provision contained in any Act, whether passed before or after this Act, is committed by a body or other association of persons, be it corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence'

20. No witness was summoned to prove the role of the person charged in the the company WFDM Ltd. In any case, if the person charged is indeed a legal or judicial representative of the said company, he should only have been charged “as a representative of WFDM Ltd and not in his personal capacity.

Decision

21. For these reasons the Court acquits the person charged of the charge brought against him.

V.G. Axiak
Magistrate

Y. M. Pace
Dep. Registrar