



## **Court of Criminal Appeal**

Hon. Justice Dr. Giovanni M. Grixti LL.M., LL.D.

Appeal: 317/2021

**The Police**

**(Inspector Sarah Magri)**

**Vs**

**Israel Beenhene**

Sitting of the 4th April, 2022

The Court,

Having seen the charges brought against Israel Beenhene holder of identity card number 1086316 F before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having on the 10th December 2019 at around 20:41hrs ;

1. Used, caused or permitted another person to use or caused or permitted any other person to use a motor vehicle on a road, without policy of insurance being in force in relation to the user of the vehicle by that person or that other person, as the case may be, in respect of third party risks.

2. Driven or permitted whilst being on the road or whilst being parked, without the circulation license issued by the competent Authority.

The prosecution requested that the said person be disqualified from holding a driving license for a period of time that the Court deems appropriate.

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 7th September 2021, by which it found the accused guilty of both charges and condemned him to pay of a fine of €2430 payable in 12 monthly installments over a period of 12 months, disqualified him from holding or obtaining a driving licence for a period of 12 months 8 days and imposed 6 penalty points (LN 65.18 Art.36 B (1), 6th Sch).

Having seen the application of appeal of Israel Beenhene presented in the registry of this Court on the 23<sup>rd</sup> September 2021 where by applicant requested this Court to **revoke** the appealed judgement and consequently, acquit the appellant from all charges brought against him and also from any punishment and guilt according to law; and alternatively, requested this Court to **vary** the said judgment by reducing the punishment meted out and applying a lesser and more appropriate punishment in light of the circumstances and the nature of the case;

Having seen the application of appeal;

Having seen the update conduct sheet of appellant exhibited by the prosecution by order of this Court;

Having heard oral submissions by learned counsel;

Having see the records of the case;

Having considered:

1. That the facts of this case concern the alleged use of a motor vehicle by the accused when such vehicle was not duly covered by an insurance policy and by a road license which latter alleged shortcomings were discovered by the authorities when they requested the accused to present the proper documentation following a road collision;

2. That appellant felt aggrieved by the judgement of the first Court and is critical of the decision on the ground that the first Court should have declared his statement and verbal declaration as inadmissible and that there was no evidence by which the first Court could have concluded that applicant was in fact driving the car as alleged;

3. That prior to any further considerations, this Court is duty bound *ex officio* to raise the possible nullity of the judgement of the first Court for the following reason. The decision of the first Court signed by both the deciding Magistrate and the Deputy Registrar is that found on folio 28a of the records of the proceedings. Now according to article 328 of the Criminal Code:

**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.**

4. That from a reading of the judgement merits of appeal it is immediately evident that same does not contain statement of the

facts of which the accused has been found guilty. The said judgement contains the following wording:

**THE COURT,**

**Having seen the charges issued overleaf against the person charged.**

The overleaf, however, is completely blank and judgements of this Court have invariably held that a reproduction of the charges is considered to be sufficient for the purposes of the requirement laid down in article 382 of the Criminal Code namely that of stating the facts of the case and this where pleas of nullity were not acceded to or upheld in that regard. Reference is made to the judgements Il-Pulizija vs Albert Caruana – Crim App 120/2015 – 30.1.2017; Il-Pulizija vs Peter Abdilla –Crim App 28.7.2010; Il-Pulizija vs Mariella Caruana -Crim App15.12.2010; Il-Pulizija vs John Tanti Crim App 24.1.2013; Il-Pulizija vs Carmel Polidano Crim App 11.12.2013 and Il-Pulizija vs Thomas Camilleri – Crim App 315/2018 – 29.3.2021;

5. The Court, therefore, is duty bound to raise such a defect being a matter of public interest given that the requirement of the law has the particular purpose of demonstrating the reasons for which an accused has been found guilty. In the case at hand, there is clearly a lack of observance, in part, of article 382 and this Court has no other option but to declare the appealed judgement null and void due to the non observance of an essential formality;

6. Considered further, and *obiter*, that in examining the records of the proceedings, whereas the judgment on folio 28a and on which the Court and the parties have relied on state that the

accused was found guilty “based on affidavit of WPS 256 and testimony of Stephen Cachia”, the minute of the sitting of the 7th September 2021 before the first Court states:

*The Court finds the accused guilty of both charges against him since it [is] more [recte: deledenda] morally convicted [recte: convinced] beyond reasonable doubt that the [person driving the vehicle was the accused, therefore fines him the total amount of €2430 payable .....*

As this minute will no doubt be dictated by the presiding Magistrate, the judgment should mirror that which had been pronounced in open Court.

7. For the above reasons, the Court declares the judgement of the first Court merits of this appeal null and void.

8. The Court orders that the records be transmitted back to the first Court in order to decide the case anew according to law.