



The Court of Magistrates (Malta)

As a Court of Court of Criminal Judicature

Magistrate Dr. Nadine Lia

B.A., LL.M(Kent), LL.D; Barrister at Law (England & Wales)

The Police

(Inspector Roderick Agius

Inspector Kevin Pulis)

vs

Ibrahim Farouk Ismail

Today the 6th April 2022

The Court after having seen the charges in respect of Ibrahim Farouk Isamil, 32 years old, son of Ismail and Ramutu nee' Zakkaria, born in Zimbabwe on the 1st of January 1989, without fixed address, holder of Maltese ID: 55745A.

1. Accused that together with other persons on the 26th of November, 2021 at about 1:30hrs at The Convenience Store, at Triq It-Tin , Qormi and on these Islands, he committed theft , aggravated by means, time and value which exceeds two hundred and thirty two euro and ninety three cents (232.93 euro) but not exceeding two thousand three hundred and twenty nine euros and

thirty seven cents. (2.329.37 euro) to the detriment of the Convenience Store and /or other institutions and/or individuals.

2. At the same date, time and place you : willfully committed any spoil, damage, or injury to or upon any movable or immovable property, this damage amounts to more than five hundred euro (500 euro) but less than two thousand and five hundred euro (2500 euro) to the detriment of the Convenience Store and/or other individuals and/or institutions.

3. You are also being accused of having on the 24th of November , 2021 at about 4:00hrs at Jeff's Pastizzeria at Triq San Bartholomew Hal-Qormi and on these Islands , he had committed theft , aggravated by means, time and value which exceeds two hundred and thirty two euro and ninety three cents (232.93 euro) but not exceeding two thousand three hundred and twenty nine euros and thirty seven cents. (2.329.37 euro) to the detriment of the Jeff's Pastizzeria and /or other institutions and/or individuals.

4. At the same date, time and place you : willfully committed any spoil, damage, or injury to or upon any movable or immovable property, this damage amounts to more than five hundred euro (500 euro) but less than two thousand and five hundred euro (2500 euro) to the detriment of the Jeff's Pastizzeria and/or other individuals and/or institutions.

The Court is also being requested to treat Ibrahim Ismail Farouk a to be a recidivist according to Articles 49 and 50 of Chapter 9 of the Laws of Malta after that he was sentenced for an offence by a judgment which has become absolute.

Having seen that during the examination of the defendant in the sitting of the 27th November 2021 done in accordance with article 392(1) of the Criminal Code, the defendant pleaded not guilty to the charges against him.¹

Having seen that the accused subsequently registered a plea of guilt with regard to the first and second charges during the sitting of the 2nd December 2022 and this after the Court repeatedly gave him the opportunity to seek legal advice from his legal counsel and after the Court was authorised to proceed nonetheless;²

Having seen that the accused subsequently registered a plea of guilt with regard to the outstanding charges during the sitting of the 24th February 2022 and this after the Court repeatedly gave him the opportunity to seek legal advice from his legal counsel and after the Court was authorised to proceed nonetheless;³

In view of the defendant's declaration, the Court warned him in the most solemn manner of the consequences arising out of his guilty plea and granted him a reasonable time within which to retract such guilty plea should he so wish. After the Court granted this time to the accused, and after giving him the option to seek advice from his legal counsel, the accused reiterated that he is guilty as charged.

In view of this declaration, duly reiterated, the Court has no option but to find the accused guilty as charged in accordance with article 392A of Chapter 9 of the Laws of Malta and could proceed to deliver judgment against him.

¹ Page 4 act of proceedings

² Page 14 act of proceedings

³ Page 35 act of proceedings

Having seen that there exist no valid reasons in accordance with article 392A(3) of Chapter 9 of the Laws of Malta for the Court to doubt the validity of such plea of admission, or that the accused is not guilty of the crimes with which he is charged. Therefore, the crimes are sufficiently proven.

Having seen the records of the proceedings as well as the documents filed together with the charge sheet and the particular circumstances of this case;

Having heard submissions by the parties on the punishment;

Having seen the case was put off for judgment for today;

Having Considered

The facts of the case

This case concerns aggravated theft and damage to premises that were undertaken by the defendant in a grocery shop and a takeaway shop during the month of November 2021.

Having considered

The punishment

The Court in its deliberations concerning the punishment took note of the following factors:

- The admission of the defendant. Whilst the defendant did not admit in the first sitting, he did so partially in the second sitting and subsequently entirely in the third sitting and therefore nearly at the earliest

opportunity in the proceedings. Therefore, the defendant should benefit from the fact that he registered an admission during the early course of proceedings and this shall serve in his favour in the circumstances of the cases. This is in line with the principles espoused in local case law that by registering an early plea, the Court is saved from entering into unnecessary expenses as well as administratively be able to expedite matters quicker. The Court here makes reference to the cases **Ir-Repubblika ta' Malta vs. Nicholas Azzopardi**⁴, **Il-Pulizija vs. Emmanuel Testa**⁵, as well as legal scholars **ARCHBOLD Sentencing Guidelines 2021**⁶ and **BLACKSTONE'S CRIMINAL PRACTICE**⁷ on this point.

- The accused does not have clean criminal record as established in the criminal record exhibited by the police.⁸ However, it is the first time that he has been charged with offences of this nature.
- The defendant is a recidivist in accordance to article 49 and 50 of the Criminal Code and therefore may be subject to the increases in punishment as established by law.
- The amount of damages sustained to the grocery store Convenience Shop amounted to seven hundred and sixty nine Euros and fifty cents (€769.50) which have not been refunded to date. The amount of damages sustained to the takeaway shop Jeff's Pastizzeria were not duly established.

⁴ Qorti Kriminali deciza 24 ta' Frar 1997

⁵ Qorti tal-Appell Kriminali , [7.7.2002]

⁶ Thomson Reuteurs, S-29

⁷ Blackstone Press Limited – 2006 edition

⁸ Page 8 act of proceedings

- Article 142(1) of the Criminal Justice Act 2003 in England establishes five principles that should be considered when calibrating the appropriate punishment:

(a) the punishment of offenders (b) the reduction of crime (including its reduction by deterrence) (c) the reform and rehabilitation of offenders (d) the protection of the public (e) the making of reparation by offenders to persons affected by their offence.

- The prosecution in its submissions to the Court on the appropriate penalty to be considered, reiterated that it was requesting a term of effective imprisonment of eight (8) months.
- The defence in its final submissions concurred with the prosecution that a term of eight (8) months effective imprisonment would be the most effective form of punishment considering the circumstances of the case.

The Court is not bound to apply the proposed terms of punishment by the prosecution or the defence, even when there is an agreement between the two sides.

The Court however notes that the proposed or suggested punishment is well under the minimum legal punishment for the four charges brought against the accused together with the accusation of recidivist and therefore in any case cannot consider it as a legally sound punishment.

The Court notes that the punishment legally allowable for the first and third accusations, which, albeit referring to different dates, are two separate and distinct aggravated thefts, both characterised by the same

aggravations, is between five (5) months and three (3) years, and which punishment, cannot be given in its minimum.

The second and fourth accusations, on the other hand carry a punishment of eight (8) to fourteen (14) months each, in accordance with article 325 (1) (b) of the Criminal Code.

Furthermore, article 50 of the Criminal Code allows for an increase by one (1) degree.

For these reasons, even by applying the provisions of article 17 of the Criminal Code, the minimum legal punishment is well above that suggested by both prosecution and defence.

Decide

The Court, upon the unconditional guilty plea registered by the accused charged and after having seen articles 261(b)(c)(e)(f), 263, 267, 269, 270, 278, 279, 280, 281, 325(1)(b), 49 and 50 of the Criminal Code of Chapter 9 of the Laws of Malta, finds Ibrahim Ismail Farouk guilty as charged of all the charges brought against him and condemns him to a term of effective imprisonment of **sixteen** (16) months.

Furthermore, the Court after having seen article 15A of the Criminal Code, orders the defendant to pay the Convenience Shop of Triq it-Tin, Hal-Qormi the full amount of seven hundred and sixty nine Euros and fifty cents (€769.50) which should be paid within two years from completion of the last day of imprisonment for the damages sustained on account of the defendants actions. This Order shall constitute an executive title for all intents and purposes of the Code of Organisation and Civil Procedure.

As the amount of damages for the shop Jeff's Pastizzeria were not identified, the Court is not in a position to replicate the same order.

Furthermore, in view of the fact that no experts were appointed in this case, the Court abstains from taking further cognisance of the prosecutions requests in terms of Article 533 of Chapter 9 of the Laws of Malta.

Finally, the Court, after having seen Article 392A of the Criminal Code orders that this judgment together with the records of the proceedings be transmitted to the Attorney General within six working days in terms of law.

Delivered today the 6th April 2022, at the Courts of Justice in Valletta, Malta.

Dr. Nadine Lia
Magistrate

Lorianne Spiteri
Deputy Registrar