



**In the Court of Magistrates (Malta)  
As a Court of Criminal Judicature**

**Magistrate Dr. Yana Micallef Stafrace LL.D.**

Sitting 16<sup>th</sup> of January 2023

Summ Proc number 97/18/YMS

The Police

Superintendent Trevor Micallef

Vs

Branko Radojevic

The Court

Having seen the charges brought against Branko Radojevic of 46 years son of Dragoljub and Mirjana born in Serbia on the 10<sup>th</sup> February 1971 residing at San Gorg Triq is-Siegh Swieqi holder of identity card no 44311(L);

1. Of in his personal capacity and /or as director of Rado Limited and employer for having the 3<sup>rd</sup> of October 2013 at Triq is-Siegh

corner with Triq Ta' L-Ibragg, Swieqi though imprudence carelessness unskillfulness in your art or profession or non-observance of regulations caused the death of Djorde Matijvich in terms of Art 225 of the Criminal Code Cap 9 of the laws of Malta.

2. Having on the same day time and place failed in your duty as employer to ensure the health and safety at all times of all persons who may be affected by the work being carried out for such employer and for having failed to take measures that need to be taken by an employer to prevent physical and psychological occupational ill-health injury or death and failed to control at source those risks which cannot be avoided in terms of Sec 6(1)(2) art 38 of Act 27/2000 Ch 424.
3. Having on the same date place and circumstances as an employer failed to take preventive measures to physically prevent falls from height in particular by means of solid cradles which are sufficiently high and have at least an end-board a main handrail and an intermediate handrail or an equivalent alternative . In principle work at a height must be carried out only with appropriate equipment or using collective protection devices such as cradles, platforms or safety nets. If the use of such equipment is not possible because of the nature of the work, suitable means of access must be provided and safety harnesses or other anchoring safety methods must be used in terms of Reg 5 of Schedule IV (Part B Section II) of S L 424.29.
4. Having on the same date, place and circumstances for having made use of a scaffold that was not properly designed constructed and maintained to ensure that it does not collapse or move accidentally and constructed, dimensioned. protected and used in such a way as to prevent people from falling or being exposed to falling objects in terms of Schedule IV (part B Section II) articles 6.1 6.2 of AL 281/04 (SL 424.29).

5. Having on the same date and /or following days made a false oath before a Judge, Magistrate or any other officer authorized by law to administer oaths (article 108(1) Chapter 9 of the Laws of Malta).

Having seen that in the sitting of The Attorney General authorized that the proceedings be dealt with summarily on the 6<sup>th</sup> February 2018.

Having seen that on the sitting of the 10<sup>th</sup> of April 2018 the Court authorized that the proceedings be conducted in the English Language.

Having seen that on the same date Dr David Saliba associated himself on behalf of the OHSa with the prosecution in terms of art 38 of Chap 424 of the Laws of Malta.

Having seen that on the same date Superintendent Trevor Micallef read the charges on Oath.

Having seen that on the same day the examination of the accused was carried out wherein he declared that he was not guilty.

Having heard the evidence and seen all the records of the case and the documents exhibited.

Having seen Art 225 and Art 108(1) of the Criminal Code Cap 9 of the Laws of Malta, sec 6(1)(2) art 38 Act 27/2000 Ch 424, Reg 5 Schedule IV(Part B Section II )of SL 424.29, Schedule IV (Part B Section II) articles 6.1 and 6.2 of AL 281/04 SL 424.29.

Having heard the submissions of the parties regarding the case.

## **Considerations of this Court**

On the 10<sup>th</sup> of April 2018 Dolores Serpina Sciberras stated that she was given a note by the Attorney General wherein it stated the process verbal has been sent back to the Inquiring Magistrate on the 2<sup>nd</sup> April 2018.

On the same date Shalon Muscat testified that he took photos on the site of the accident on behalf of the OHSa after an accident had occurred on the 3<sup>rd</sup> of October 2013 when he acceded to the site, after the accident had occurred which photos were exhibited as Doc SM internally marked from no 1 to 26. He gave details of what he saw on site. The victim had already been taken to hospital and he met Branko Radojevic, whom recognized in Court in the person of the accused. On the 17<sup>th</sup> October he was informed that the victim lost his life. On site he saw scaffolding and a broken glider and some blood and clothing. It was a construction site, a villa being built. In his opinion there was a danger of falls from height because of irregularities.

Having seen that on the 16<sup>th</sup> October 2018 PL Quentin Tanti exhibited Doc QT on behalf of the Registrar of Companies being an extract of the Registered documents of Rado Limited bearing registration number C512559, registered under the Laws of Malta on the 30<sup>th</sup> December 2010.

Having seen that on the same date Joseph Saliba from Jobsplus exhibited Doc JS a list of employees of Rado Systems from 1<sup>st</sup> February 2013.

Having seen that on the same date EX PS 1245 Klause Mifsud testified that on a date in October 2013 he had acceded onto a site in Swieqi at around 1.15 in the afternoon and that there was an ambulance on site and the personal were attending to a person on

site, Matevic a Serb national He spoke briefly to Branko Radojevic who he recognized as the accused and stated he was the person who logged in the NPS report a fol. 5 et sequitur.

Having seen that on the same date PS 593 Raphael Attard Flores testified that in October 2013 he went on site with PS 1245 in Triq I-lbragg Swieqi and on arrival there was an ambulance on site and an unconscious man, Diorde Mativic ser passport 7649773 born on the 14<sup>th</sup> of January 1982. He spoke to a certain Zoran and Branko Radojevic whom he recognized as the accused.

Having seen that on the 27<sup>th</sup> of October 2020 Stephen Baldacchino testified on behalf of BNF Bank and exhibited Doc SB1 to SB 19. SB1 to SB 16 being screen shots of images of cheques paid to Senza Matiavich in 2013.

Having seen that on the 27<sup>th</sup> of October 2020 Joseph Buhagiar testified project supervisor at the OHSa on behalf of Rado Systems Limited specifically regarding the construction site at Triq is-Siegh Corner Ibragg Swieqi Malta. He was not there on the date of the incident but the company DSL Health and Safety Ltd was carrying out weekly inspections. He exhibited a health and safety plan as Doc JB and representation form Doc JB1.

The Prosecution rested its case on the 25<sup>th</sup> October 2022.

The accused chose not to testify.

### **Conclusion of this Court**

The Court could not find any evidence either in the testimony brought before it or the documentation exhibited that link the

accused to the charges brought against him, definitely not evidence to the standard required in the Criminal Court. The evidence is mainly of persons who acceded to the construction site after the accident and made vague comments regarding responsibility and facts after the accident. The documentation is scarce and also does not in any way link the accused to the charges he is accused of.

## **Conclusion**

For these reasons the Court acquits the accused of all charges.

Magistrate Dr. Yana Micallef Stafrace LL.D.

Doris Serpina Sciberras

Deputy Registrar

