



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

**THE POLICE (INSPECTOR NICHOLAS VELLA) V. JOSE MARIA CANO DE ANDRES
(ID. 154115A)**

MAGISTRATE: DR. VICTOR G. AXIAK

21/03/2023

THE COURT,

Having seen the charges issued against the accused:

**As you have been charged that on the 31/10/2020 at about 23.30 hrs
in Triq it-Tlett Ibliet, Bormla drove vehicle no. IBX 506**

1. Caused, suffered or permitted a motor vehicle no. IBX 506 or any other vehicle to be driven by Danys Rogers De Melo Negre (Res. Permit: MT 2080903) without a driving licence **Sec. 15(1)(b)(3), Chap. 65**
2. Used, caused or permitted Danys Rogers De Melo Negre (Res. Permit: MT 2080903) to use a motor vehicle no. IBX 506 on a road without a policy of insurance in respect of third party risks. **Sec. 3(1), Chap. 104**

Having heard the witnesses summoned before it and having considered the testimony that was produced, that is, the testimony of WPS 41 Elaine Cassar (affidavit), Stephen Cachia (affidavit - Transport Malta) and the accused himself;

Having seen all the acts of the case;

Having heard final submissions made by the Prosecution and the Defence;

Is giving the following

Judgement

From the affidavit of **WPS 41 Elaine Cassar** it results that on the date, at the time and in the place indicated on the summons, Danys Rogers De Melo Negre (residence permit MT 2080903) had been driving a vehicle (Mercedes) with registration number IBX506. It also results from said affidavit that the accused was sitting on the passenger seat.

From the affidavit of **Stephen Cachia** (Transport Malta) it results that on the date in question the driver was not in possession of a driving license issued by Transport Malta.

The Court heard the accused testify that he did not know and could not have possibly known that the driver was not in possession of a valid driving license under Malta. This is because the driver had shown him his driving license issued by the Brazilian authorities and he did not know that the accused had to be in possession of a EU driving license (issued by Transport Malta) after twelve months from the date of his last entry into Malta. The accused exhibited a photocopy of this document that was issued on 22 July 2002 and expires on 9 July 2023. In accordance with Art. 5 of Subsidiary Legislation 65.18 (Motor Vehicles (Driving Licenses) Regulations):

‘5. The holder of a driving licence issued by the competent authority in a third country may drive in Malta, for a period not exceeding twelve months from the date of his last entry into Malta, any class or description of vehicle covered by the driving licence issued to him by the competent authority in that third country...’

Given that no proof was submitted that the driver had been in Malta for less than twelve months prior to his last entry, the Court considers that the said driver was not in possession of a driving license in terms of Maltese law.

The Court also considers that for a successful defence under Art. 3(1B) of Chapter 104 of the Laws of Malta, the accused has to prove not only that the offence was committed without his knowledge but also that he had exercised all due diligence to prevent the commission of the offence. It is clear to the Court that while the offence may well have been committed without the accused’s knowledge, it cannot be said however that he exercised all due diligence to prevent it from taking place.

The Court also considers that the presence of the accused in the vehicle together with the driver constitutes proof beyond reasonable doubt that he permitted him to drive the vehicle in question. This is sufficient to prove the general intent required in these types of offences.

The first charge therefore has been proven by the Prosecution.

With regard to the second charge, the accused testified and *inter alia* exhibited a copy of a certificate of motor insurance issued to him as the policyholder by Elmo Insurance. The authorised drivers indicated on the policy were the policyholder and any person aged 25 years and over, driving on his order or permission. This Court has held on several occasions in line with several other court judgements on this matter (including **Police v. Emanuel Zarb** (App. Nr. 329:2010:MM, 26th March 2015) that the legislator's intention behind Art. 3(1) of Chapter 104 of the Laws of Malta is to protect third parties and not to penalise drivers who may be in breach of an insurance policy. This Court's position therefore was that if a valid insurance policy covering the use of the vehicle for the period in question is in force, criminal liability cannot arise. Very recently however the Court of Appeal (Inferior Jurisdiction) has decided in a number of judgements including **Il-Pulizija v. Mohamad Knaan (Appeal Nr: 479 / 2022 CSH, 7 Feb 2023)** that Chapter 104 Art 3(1) requires that the driver him/herself has to be personally covered under the insurance policy in question and that in case of an occurrence that breaches the terms of the policy (e.g. the driver not being authorised in accordance with the policy or not in possession of a driving license), criminal liability arises under the said article of the law. In light of this string of judgements the Court feels that although it is not bound by precedent it would be in the interest of justice to ensure and maintain the uniformity of case law on this matter by adopting the same position. Given that the driver was not in possession of a valid driving license then it must be considered in accordance with Art. 3(1) of Chap. 104 that there wasn't "*in force in relation to the user of the vehicle by that person ... such a policy of insurance in respect of third-party risks as complies with the requirements of this Ordinance.*" The second charge has therefore also been proven by the Prosecution.

Decision

For the abovementioned reasons, having seen the relevant article/s of the law (Chapter 65 Art. 15(1)(b) and Chapter 104 Art. 3(1)) the Court finds the accused guilty of the charges brought against him and fines him the amount of two thousand eight hundred

and fifty euro (€ 2,850). In addition to the fine, the Court disqualifies the offender from holding or obtaining a driving licence for a period of twelve (12) months and sixteen (16) days (Ch. 65 Art. 15(3), Chapter 104 Art. 3(2A)).

**V.G. Axiak
Magistrate**

**Y.M. Pace
Dep. Registrar**