



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

THE POLICE (INSPECTOR NICHOLAS VELLA) V. NEBOJSA SIBINOVIC (ID. 38009A)

MAGISTRATE: DR. VICTOR G. AXIAK

28/03/2023

THE COURT,

Having seen the charges issued against the accused:

Summons Issued By: **POLICE** TO: **NEBOJSA SIBINOVIC (38009A)** Vehicle: **KBP281 PEUGEOT**
You are being charged that on the date, time and at the location, mentioned hereunder
Date and Time: **On the 24/05/2020 around 12:00hrs**

Location: **Triq Ghajn Tuffieha L/O** Locality: **MELLIEHA**

(1) Drove a motor vehicle or any other vehicle in a reckless manner (Chap 65 Section 15 (1 (a), 2))

(2) Drove a motor vehicle or any other vehicle in a negligent manner (Chap 65 Section 15 (1) (a), (3))

Having heard the witnesses summoned before it and having considered the testimony that was produced, that is, the testimony of WPS 224 Susanne Mifsud (affidavit), Tiziana Faenza, Elenia Cauchi, Jason Zammit, Sabrina Cauchi and Nakita Zammit;

Having seen all the acts of the case;

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

Is giving the following

Judgement

The Court had an opportunity to hear the testimony of several civilian witnesses that witnessed the incident in question, that is, Tiziana Faenza, Elenia Cauchi, Jason Zammit, Sabrina Cauchi

and Nakita Zammit. The Court considers that all these witnesses largely concur on a number of key points that is that on the date, at the time and location in question: (i) Elenia Cauchi (who was accompanied by her four year old daughter) was attempting to keep free a vacant parking space so that this could be used by a family member who was trying to park his own vehicle, (ii) Elenia Cauchi was standing together with her daughter next to the vacant spot, (iii) the accused attempted to manoeuvre his vehicle to enter in the same parking place by reversing the vehicle, (iv) Elenia Cauchi and other witnesses shouted out to the driver not to continue reversing given that this had been “reserved” for another vehicle, (v) the driver applied the brakes and stopped the vehicle but continue to reverse once again closely missing Elenia Cauchi and her daughter.

An altercation subsequently ensued between the accused and witness Jason Zammit and the accused alleged that the said witness damaged his windscreen.

With regard to the charges in question, the Court of Criminal Appeal held in the judgement ‘**Il-Pulizija vs Alfred Mifsud**’ given on 6th May 1997 that:

“Sewqan traskurat (negligent driving) hu kwalsiasi forma ta' sewqan li jiddipartixxi minn, jew li ma jilhaqx il-livell ta' sewqan mistenni minn sewwieq ragjonevoli, prudenti, kompetenti u ta' esperjenza. Bhala regola l-ksur ta' regolamenti tat-traffiku kif ukoll in-non-osservanza tad-disposizzjonijiet tal-Highway Code li jincidu fuq il-mod jew il-kwalita' ta' sewqan ta' dak li jkun, jammonta ukoll ghal sewqan traskurat...sewqan bla kont hu sewqan bi traskuragni kbira u tinkludi kazijiet fejn wiehed deliberament jiehu riskji fis-sewqan li m'ghandux jiehu minhabba l-probabilita ta' hsara li tista tirrizulta lil terzi ... sewqan perikoluz jirrekjedi li fil-kaz partikolari s-sewqan kien ta' perikolu ghal terzi.”

In the judgement ‘ **Il-Pulizija v. Jason Scerri**’ (Kump Nr.: 1131/13 RM – decided 01/11/2018) the Court of Magistrates held as follows:

“Jinghad illi l-kuncett ta' sewqan perikoluz u sewqan bla kont ghalkemm mhux imfissra espressament fil-ligi taghna, huwa identifikabbli mal-kuncett ta' recklessness fil-ligi Ingliza fejn jinsab ritenut illi, sabiex jissussisti l-mens rea ta' recklessness, m'hijiex bizzejjed kondotta merament traskurata jew imprudenti izda wahda li timmanifesta non-kuranza totali ghar-riskji li johloq. Fil-kaz Quinn vs. Cunningham, Lord Justice-General Clyde fisser li sabiex tip ta' kondotta jikkwalifika bhala reckless jehrieg li jigi identifikat:- “... an utter disregard of what the consequences of the act in question may be in so far as the public are concerned.”

Il-Blackstone jagħmel referenza għall-CPS Policy for prosecuting cases of bad driving biex ifisser mil-lenti tal-ligi Ingliza, x'tip ta' sewqan jista' jitqies b'success għall-finijiet ta' imputazzjoni ta' sewqan perikoluz:- "... racing or competitive driving; speed which is highly inappropriate for the prevailing road or traffic conditions; aggressive driving, such as sudden lane changes, cutting into a line of vehicles or driving much too close to the vehicle in front; disregard of traffic lights and other road signs, which, on an objective analysis, would appear to be deliberate; disregard of warnings from fellow passengers; overtaking that could not have been carried out safely; driving a vehicle with a load that presents a danger to other road users; where the driver is suffering from impaired ability such as having an arm or leg in plaster, or impaired eyesight; driving when too tired to stay awake; driving a vehicle knowing it has a dangerous defect; or similar, in circumstances where the driver was avoidably and dangerously distracted by that."

Ferm il-konsiderazzjonijiet appena rapportati, huwa evidenti li d-differenza bejn l-addebitu tas-sewqan perikoluz u s-sewqan bla kont hija wahda ta' grad fejn, biex ir-recklessness manifestata fis-sewqan tilhaq il-grad ta' sewqan perikoluz, il-kondotta għandha ggib magħha perikolu għas-sigurtà tal-pubbliku u/jew proprjeta`. Infatti, jigi osservat għall-finijiet ta' piena l-legislatur tagħna poggja s-sewqan bla kont u s-sewqan perikoluz fl-istess keffa."

The Court considers that the accused's conduct was at the very least tantamount to reckless driving as he deliberately acted in plain disregard of the pedestrians' safety which was put in manifest danger due to his aggressive manoeuvre.

Decision

For the abovementioned reasons, having seen the relevant article/s of the law (Chapter 65 Art. 15(1)(a) the Court finds the accused guilty of the first charge brought against him (i.e. reckless driving which charge also comprises the second less serious charge of negligent driving) and fines him the amount of seven hundred and fifty euro (€ 750). In addition to the fine, the Court disqualifies the offender from holding or obtaining a driving licence for a period of three (3) months (Ch. 65 Art. 15(2)).

V.G. Axiak
Magistrate

Y.M. Pace
Dep. Registrar