



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

**THE POLICE (INSPECTOR NICHOLAS VELLA) V. NICHOLAS CHARLES MASLEN
(ID. 342121A)**

MAGISTRATE: DR. VICTOR G. AXIAK

06/06/2023

THE COURT,

Having seen the charges issued against the accused:

As you have been charged that on 08/10/2022 the at around 10:07 hrs in Triq Gort, San Giljan, drove vehicle no. T 13 NCM - Seat;

1. You had in your possession or was in charge of a motor vehicle which was not registered with the Authority for Transport in Malta **Sec. 3, L.S. 368.02**
2. Drove a motor vehicle or any other vehicle without a vehicle licence **Sec. 15(1)(a)(3), Chap. 65**

The Prosecution requests that the mentioned person be disqualified from holding any driving licence for a period of time that the Court deems fit.

Having heard the witnesses summoned before it, that is, Enforcement Officers 337, 402 and 404;

Having seen all the acts of the case including the sworn affidavit of Stephen Cachia (Transport Malta);

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

Gives the following

Judgement

1. The Court had an opportunity to hear the testimony of Enforcement Officers 337, 402 and 404, summoned by the Prosecution. EO 337 testified that on the day in question he was conducting a spot check in Triq Gort, San Ġiljan, when he noticed the accused who was driving the vehicle with registration number T13NCM. Summoned once again to the stand following the testimony of EO 104, EO 337 confirmed that the details on Doc X submitted by EO 104 (Occurrence Detail) had been written by him. EO 104 testified that he was present for the same spot check and that he recognised the accused as the driver of the vehicle. He also submitted as Doc X the Occurrence Detail report. EO 402 also testified that he was present and that he recognised the accused as the driver of the said vehicle.
2. In his sworn affidavit, Stephen Cachia on behalf of Transport Malta, declared that from investigations carried out in the records of the Authority it transpired that vehicle make Seat bearing registration number T13NCM was not registered with the Authority on 8th October 2022. It also resulted that the accused had no vehicle of the make Seat registered in his name. Therefore given that vehicles that are not registered in terms of law cannot be licensed by Transport Malta it follows that the vehicle wasn't licensed by the said authority and the second charge is thus proven.
3. With regard to the first charge, the relevant article of the law cited by the Prosecution (Art. 3 of the Registration and Licensing of Motor Vehicles Regulations) states as follows:

'3. No person shall have in his possession or charge any motor vehicle which has not been registered with the Authority unless –

(a) that person is an authorized manufacturer, agent or dealer of motor vehicles and the vehicle in his possession or charge is not being used on the road, or

(b) the vehicle is the subject of an exemption under the Act; or

(c) the vehicle is registered in another country and is used by a person who has his normal residence in Malta for a period of not more than thirty consecutive calendar days which are to be reckoned from the date of arrival of such vehicle in Malta and such vehicle has not been used on the road in Malta during the last three hundred and sixty five days prior to its arrival in Malta'

4. It has been proven that the vehicle in question was under the possession of the accused and that it was not registered with the Authority. No evidence has been brought forward that any one of the exceptions under Art. 3 applies to the case in question. However, the Court notes that S.L. 368.02 does not provide a specific penalty for a violation of this article of the law. The nearest applicable penalty, that established under Art. 44(7)(a) of the same Regulations, applies in the case of driving a motor vehicle that is not covered by a valid vehicle licence¹. However Art. 3 prohibits the act of having in one's possession or charge a motor vehicle that is **not registered** in terms of law. Registration is a one-time event that, save for the relevant exceptions in terms of law, should take place upon the vehicle's entry into Malta, whereas licensing is a recurring annual obligation. A vehicle may be registered and not be licensed but it cannot be licensed and not registered. Art. 44(7)(a) also requires the element of "driving" – which in this case applies – whereas Art. 3 refers to the act of having an unregistered vehicle under one's charge or possession.

5. The Court notes that another penalty which could presumably apply is that established under Article 21(1)(a) of the Motor Vehicles Registration and Licensing Act (Ch. 368 of the Laws of Malta):

'21.(1) Any person who -

¹ Which would otherwise be absorbed in the higher penalty established for the second charge that prohibits the same juridical fact. Furthermore it has been established on numerous occasions by the Court of Criminal Appeal that the fines listed under Art. 44(7) of S.L. 368.02 are unenforceable since the legislator does not specify whether such fines are *multa* or *ammenda*.

(a) without the authorization of the Authority or in violation of any condition under which such authorization may have been granted has in his possession, uses or allows to be used or sells or otherwise transfers or takes out or allows to be taken out of any customs bond or removes or allows to be removed from any place where a motor vehicle has been manufactured any motor vehicle which has not been registered under this Act ... shall be guilty of an offence and on conviction shall be liable to a fine (multa) not exceeding two thousand five hundred euro (€2,500), or twice the amount of the registration tax endangered, whichever is the greater, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.'

6. However, for Art. 21(1) to apply the Court requires evidence of the registration tax which was allegedly endangered, something which is entirely lacking from the acts of this case.

7. Therefore the first charge shall not result.

Decision

For the abovementioned reasons, the Court acquits the accused of the first charge and having seen the relevant article of the law (Chapter 65 Art. 15(1)(a) of the Laws of Malta) finds him guilty of the second charge brought against him. The Court condemns the guilty party to pay a fine of € 450. In addition to the fine, the Court disqualifies the offender from holding or obtaining a driving licence for a period of sixteen days (Ch. 65 Art. 15(3)).

**V.G. Axiak
Magistrate**

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