



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

THE POLICE (INSPECTOR RACHEL AQUILINA) V. UMAIR ZULFIQAR (ID. 282549A)

MAGISTRATE: DR. VICTOR G. AXIAK

13/02/2024

THE COURT,

Having seen the charges issued against the accused:

As you have been charged that on the 02/02/2022 at about 13:35 Hrs in Triq Mons. Mikiel Azzopardi, Siggiewi, drove vehicle no: DCQ 559;

1. Drove a motor vehicle or any other vehicle without a driving licence **Sec. 15(1)(a)(3), Chap. 65**
2. Used, caused or permitted any other person to use a motor vehicle on a road, to the use of the vehicle by that person or that other person without a policy of insurance in respect of third party risks **Sec. 3(1), Chap. 104**
3. Failed to produce the insurance certificate when required to do so by the Police force **Sec. 8(1), Chap. 104**
4. You failed to produce the driver's license when it was being requested by the Police or any Authority in time as stipulated by law **Sec. 77, L.S. 65.18**

Having heard the witnesses summoned before it and having considered the testimony that was produced, that is, the testimony of PC 923 Anthony Marcel Mikolay (affidavit) and Stephen Cachia on behalf of Transport Malta (by way of affidavit and in cross examination);

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 **PC 923 Anthony Marcel Mikolay** it transpires that on the day, at the time and in the location indicated on the charge sheet the accused was stopped by the said police officer whilst driving a motorbike (scooter) with registration number DCQ 559. Having had his identification verified by the police officer he was asked to produce his driving license. The accused handed over his driving license issued by the Indian authorities wherein it resulted to the said officer that he was not authorised to drive the scooter in Malta as he was only authorised to drive buses according to the said driving license. During the sitting held on 4th April 2023 the Prosecution exhibited a set of black and white photographs showing *inter alia* the driving license produced by the accused as well as his residence permit.

From the affidavit of **Stephen Cachia** (Transport Malta) it results that on the date in question the accused did not have any Maltese driving license.

During the sitting held on 4th April 2023 the defence submitted a copy of the certificate of motor insurance pertaining to the vehicle that was driven by the accused.

First charge

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...’

The accused was indeed in possession of a driving license issued by the Traffic Police of Punjab (India) covering the period 01 October 2018 until 30 September 2023. However, no proof was submitted that the accused had been in Malta for less than twelve months prior to his last entry. In this regard it was for the Defence and not the Prosecution to bring forward this evidence in accordance with Art. 5.

Reference is also made to the definition of “valid driving license” under Subsidiary Legislation 65.18:

"valid driving licence" means a driving licence issued either by the Authority, under the provisions of these regulations, or issued by another country which is recognised by the Authority and provided that the said licence

(a) is neither suspended, withdrawn or cancelled,

(b) covers the category of vehicle being driven, and

(c) is used by its holder in conformity with any conditions included on the driving licence

The said driving license shows that the accused was only authorised to drive buses and not motorcycles. Therefore the Court considers that the said driver was not in possession of a driving license in terms of Maltese law.

The first charge has therefore been proven by the Prosecution.

Second charge

With regard to the second charge, 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)** and **Il-Pulizija v. Xemizin McKay (Appell Numru 423/2022 EG, 24 ta’ Mejjun 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.

Third and fourth charges

No evidence whatsoever has been submitted showing that the accused was required by PC 923 to produce the insurance certificate (much less that he failed to do so) nor that he failed to produce his driving license when requested to do so (indeed, the accused actually complied with this instruction!). Therefore the third and fourth charges have not been proven by the Prosecution.

Decision

For the abovementioned reasons, the Court acquits the accused of the third and fourth charges and having seen the relevant article/s of the law (Chapter 65 Art. 15(1)(a) and Chapter 104 Art. 3(1)) finds him guilty of the first two charges and fines him the amount of two thousand four hundred euro (€ 2,400). The Court accepts the accused's request to pay the fine in twenty-four (24) monthly equal instalments.

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 eight (8) days (Ch. 65 Art. 15(3), Chapter 104 Art. 3(2A)).

**V.G. Axiak
Magistrate**

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