



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

**THE POLICE (INSPECTOR RACHEL AQUILINA) V. CARMINE DI LORENZO (ID. 65636A)**

**MAGISTRATE: DR. VICTOR G. AXIAK**

**27/02/2024**

THE COURT,

Having seen the charges issued against the accused:

**As you have been charged that on the 16<sup>th</sup> May 2023 at about 01.30hrs . . . at Triq Manwel Dimech, Sliema,**

(1). Driven vehicle No.BCB-383 (M/Cycle) when it was not licenced by the Authority for Transport in Malta to be used on the road. (Vehicle licence not renewed). (Sec.15(1)(a)(3) Chap.65).

(2). Driven vehicle No.BCB-383 (M/Cycle) when it was not covered by a policy of insurance in respect of third partly risks. (Sec.3(1) Chap.104).

(3). You had vehicle No.BCB-383 (M/Cycle) on the road, whether parked. or in use, without a valid circulation licence or a circulation permit issued by the Authority for Transport in Malta.(Sec.13(2) LS.368.02)

The Prosecution requests that the mentioned person be disqualified from all his driving licences for a period of time of not less than twelve months.

Having heard the witnesses summoned before it and having considered the testimony that was produced, that is, the testimony of PC 186 (affidavit), PC 897 (affidavit) and Stephen Cachia on behalf of Transport Malta (affidavit);

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 897 D. Gauci** and **PS 186 K. Mintoff** it results that on the day, at the time and in the location indicated on the charge sheet the accused was stopped by the said police officers whilst driving a motorcycle with registration number BCB383 since the pillion rider was not wearing the helmet.

From the affidavit of **Stephen Cachia** (Transport Malta) it results that on the date in question the said motorcycle was registered in the name of Nunzio Antignani (ID. 61590A) – having been so registered since 5<sup>th</sup> April 2013 – while the road license had expired on 28<sup>th</sup> February 2023.

#### *First charge*

The first charge has been proven given that sufficient evidence beyond reasonable doubt was submitted that the accused drove the vehicle in question when its license was expired.

#### *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, 26<sup>th</sup> 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. In the past year or so 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 **as far as possible** and 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.

In this case it was proven that the accused was driving the motorcycle when its license was no longer valid (i.e. it had expired on 28<sup>th</sup> February 2023. The Prosecution contended that given the mentioned judgements of the Court of Appeal, the accused had to prove that notwithstanding this fact he was still personally covered under the terms of the insurance policy. The Court agrees and notes that the accused failed to discharge the burden imposed on him in terms of law (Art. 3(1A) of Ch. 104) to prove, first of all, that there was a policy of insurance in force with regard to his use of the motorcycle on the day in question and secondly, that the insurance policy actually covered him notwithstanding that he was driving the motorcycle with an expired road license. Therefore this second charge has also been proven.

#### *Third charge*

With regard to the third charge, the applicable penalty results from Regulation 44(7) of Subsidiary Legislation 368.02. As has been held by the Court of Criminal Appeal on numerous occasions, the penalties under Regulation 44(7) of S.L. 368.02 cannot be applied by Court as the fines established therein are neither classified as *multa* nor as *ammenda*. Therefore the accused cannot be found guilty of this charge.

#### **Decision**

**For the abovementioned reasons, the Court acquits the accused of the third charge 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**