



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

Magistrate Dr. Kevan Azzopardi B.A. LL.D

The Police
(Inspector Eman Hayman)

--vs--

Anastasia Germanova

Today, 13th June 2024

The Court:

Having seen that Anastasiia Germanova, daughter of Yuriy Germanov and Viktoria Germanova, having no fixed address, holder of Russian Passport with number 66 1133772, born in St. Petersburg, Russia on the 17th August 1998 was arraigned under arrest and accused of having on the 30th of November, 2023 and, or the preceding months at Identita'' Agency situated at Valley Road, Msida:

1. In order to gain any advantage or benefit for himself or others, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information;
2. Committed any other kind of forgery, or knowingly made use of any other forged document not mentioned within the Criminal Code;
3. In relation to any information to be given under or for purposes of this Act (Immigration Act), made or caused to be made any false return, false statement or false representation.

Whilst exhibiting a copy of the passport of the accused, the prosecution requested that this case be dealt with according to law.

Having seen that on the 1st of December 2023 after the prosecuting officer read and confirmed the charges on oath, the accused pleaded not guilty.

Having heard the evidence tendered by the prosecution, and that on the 9th of January 2024 the prosecution declared that it did not have any further evidence to produce.

Having heard the defence declare on the 11th of March 2024 that it did not have any evidence to produce.

Having seen the acts of the proceeding.

Having heard the prosecuting officer's and the defence counsel's final oral submissions.

Considerations:

The prosecution produced the following proof in sustention of the charges brought against the accused:

1. Statement released by the accused on the 30th November 2023 (folio 8, 9)
2. Police report with reference number 7/POL/7787/2023 (folio 10 – 12)
3. Copy of a Long Private Residential Lease Agreement between the accused and a third person (folio 16 – 20)
4. Copy of an application form titled “Change Employer Following Termination” (folio 21 – 25)
5. Daniel Dimech Unit Coordinator at Identita' formerly known as Identity Malta gave evidence on oath and stated that on the 30th November 2023 the accused reported at the offices of Identita' in Valley Road Msida, and they were informed that the accused possibly had false documents, that is a false lease agreement and change employer form C. The accused was seeking to renew her single work permit in relation to her work with Care Bare ES limited. Witness stated that his colleague sent an e-mail to the landlord, Ms Mary Pace, and also called her by phone, and she informed them that she did not know the accused and did not lease and property to her. Witness was shown document folio 16 to 19 of the acts of the preceding which he recognised as being the lease agreement presented by the accused. The agreement stated that Ms Mary Pace is leasing property with address 126, Triq Luqa Briffa, Flt 2, Gzira to the accused. He recognised documents folio 21 to 25 of the acts of the preceding as being form C4, 'change employer following termination application form'.

Under cross examination witness stated that the police had sent a list of persons in relation to which they were requested to make enquires, therefore we marked them 'on vetting in process'. Subsequently when these persons presented themselves at the front office we would inquire with these persons. The police had informed them that there could be forged documents. The name of the accused was on this list. Witness stated that the accused and her boyfriend had informed them that the documents were provided to her by Carebear who is the employer.

Upon being asked whether in a single work permit application the documents are first submitted by the employer, the witness stated that the employer had submitted the documents on the 25th September 2023. He further added that the accused verified/ validated the documents, that is they checked and confirmed.

Upon being shown document folio 14 of the acts of the proceedings and asked what he had to say about the fact that this document portrays the name of Saso Stoykovski as being the person who submitted the application at the Housing Authority, witness stated that he does not know the named person. Witness confirmed that they acted on the information they received from the police. Witness confirmed that they never spoke to Mary Pace face to face, but only by e-mail and by phone. Witness confirmed that they did not ask her who Saso Stoykovski is. Witness confirmed that in order to present a single permit application first you need to apply with the Housing Authority. Upon being asked whether they had verified if Ms Mary Pace had signed a sublease agreement, witness said that she told them that this was not hers, and she cannot rent it out. Witness stated that as representative of Identity Malta he is not in a position to verify whether the document is false or otherwise.

Re examined by the prosecuting officer the witness stated that Ms Pace alleged that the property was not hers, so she did not rent it out and she did not know the accused. Witness confirmed that the information given by Ms Pace on the phone and through e-mail tallied. He confirmed that the e-mail used was the one assigned to her e-ID.

The defence, apart from cross examining the witnesses brought by the prosecution, did not produce any evidence in defence. The defence, in exercise of its rights at law, did not produce the accused to testify in this case.

Considerations:

The first two charges against the accused fall under Sub-Title II – ‘Of Forgery Of Other Public Or Private Writings’, whilst the third charge is based on the Immigration Act.

Degree of Proof

The Court considers the legal principle that one witness if believed, will be sufficient for the Court to establish its moral conviction that the case has been proven to the degree established at law, that is beyond reasonable doubt in the case of criminal proceedings. It is an established principle that in criminal procedures, the level of conviction in the adjudicator is not to be based on a balance of probabilities as in the case of civil proceedings, but it must be higher than that and beyond any doubt dictated by reason, however one witness may be enough, if such witness is credible and therefore convinces the Court with his testimony. In a case decided by the Court of Criminal Appeal on the 28th September 2006, in the names **Il-Pulizija vs. Marco Bugeja**, it was held that:

“Issa, ix-xiehda ta' xhud wiehed biss, jekk emmnut, hija biżżejjed biex tikkostitwixxi prova sħiħa u kompluta minn kollox, daqs kemm kieku lfatt ikun ġie pruvat minn żewġ xhieda jew aktar. U kif ġie ritenut minn din il-Qorti diversament presjeduta fis-sentenza fl-ismijiet Il-Pulizija vs. Joseph Thorne tad-9 ta' Lulju 2003, "mhux kull konflitt fil-provi għandu awtomatikament iwassal għal-liberazzjoni tal-persuna akkużata. Imma l-Qorti, f'każ ta' konflitt fil-provi, trid tevalwa l-provi skont il-kriterji enunċjati fl-artikolu 637 tal-Kodici Kriminali u tasal għall-konklużjoni dwar lil min trid temmen u f'hiex ser temmnu jew ma temmnux”.

As to the degree of proof beyond reasonable doubt the Court cites the explanation given by Lord Denning in the case *Miller vs. Minister of Pension - 1974 - 2 ALL ER 372*:

“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing shall of that will suffice”.

In relation to the concept of “proof beyond a reasonable doubt”, the Court cites the explanation given by Lord Denning in the case *Miller vs. Minister of Pension* - 1974 - 2 ALL ER 372:

“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing shall of that will suffice”.

Material alteration, or ideological falsity.

The first charge against the accused, “1. *In order to gain any advantage or benefit for himself or others, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information;*” is based on article 188(1) which reads as follows:

“188. (1) Whosoever, in order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information, shall, on conviction, be liable to the punishment of imprisonment for a term not exceeding two years or to a fine (multa):

Provided that nothing in this article shall affect the applicability of any other law providing for a higher punishment....”

The second charge against the accused, “2. *Committed any other kind of forgery, or knowingly made use of any other forged document”*, is based on article 189:

“189. Whosoever shall commit any other kind of forgery, or shall knowingly make use of any other forged document, not provided for in the preceding articles of this Title, shall be liable to imprisonment for a term not exceeding six months, and if he is a public officer or servant acting with abuse of his office or employment, he shall be punishable with imprisonment for a term from seven months to one year.”

At the outset, the Court points out that these two articles of the law, 188 and 189, cover two different situations. Whilst article 189 essentially involves what is referred to as a material alteration of a document, article 188 covers situations relating to an ideological falsity. This was confirmed in the case **Il-Pulizija vs Michael Carter** decided by the Criminal Court of Appeal on the 7th December 2001 where it was held that:

“l-Artikolu 188 jikkontempla kaz ta’ falz ideologiku u mhux falz materjal kif jikkontempla 181 u 182”

In the judgment delivered by the Court of Criminal Appeal on the 17th October 1997 in the case **“Il-Pulizija vs Paul Galea”**, Chief Justice Vincent de Gaetano stated that:

“...filwaqt li fil-kaz tal-falz materjali d-dokument jiġi ffalsifikat fl-essenza materjali tiegħu, fil-falz ideologiku d-dokument ikun iffalsifikat biss fis-sustanza u cioè` fil-kontenut ideali tiegħu (ara Antolisei, F., Manuale di Diritto Penale – Parte Speciale II (Giuffrè, Milano, 1986) p. 604). Fi kliem Manzini (Trattato, v. VI, n. 2296, p.829) ikun hemm falsità` materjali meta d-dokument ikun wieħed mhux ġenwin (jiġifieri jew meta l-awtur apparenti ma jkunx l-awtur reali tad-dokument jew meta d-dokument ikun issubixxa alterazzjonijiet wara l-formazzjoni definittiva tiegħu), mentri fil-falz ideologiku, għalkemm id-dokument ikun ġenwin ‘non e` veridico, perche` colui che lo ha formato gli fa dire cose contrarie al vero’. Għall-finijiet tad-dottrina in tema ta’ falsità` ikun hemm dokument kull fejn hemm kitba, attribwibbli għal persuna identifikabbli, liema kitba tkun tikkontjeni esposizzjoni ta’ fatti jew dikjarazzjoni ta’ volonta` (Antolisei, F., op. cit., p. 594). S’intendi, b’kitba wieħed ma jifhimx biss is-sinjali alfabetiċi, iżda tinkludi dawk numeriċi, stenografici u anke kriptografici, basta li dik il-kitba tesprimi hsieb li jkun jiftiehem minn kulhadd jew minn ċertu numru ta’ nies. Ilkitba f’dan is-sens tista’ ssir kemm bl-id kif ukoll b’mezzi mekkaniċi, b’mezz indelibbli jew li jista’ jithassar, u fuq kwalsiasi mezz li jista’ jieħu, imqar temporaneament, il-messaġġ – karta, parċmina, injam, ġebel, ħadid, plastik, ecc.”

A breach of article 188 of Chapter 9 of the Laws of Malta, would occur when a person makes a false declaration or statement, or give false information in any document intended for a public authority with the intention of making a gain or benefit. An analysis of the previous articles of the law on forgery reveals that this offence is not one which involves a material alteration of a document, but is a case of an ideological falsity. The offence under this article requires that the document remains genuine, even when this material conduct has been committed. Here this article does not contemplate a false document. The document continues to tell the truth about itself, but the actor who could be found in breach knowingly makes false declarations, or false statements, or gives false information in a document. The document would continue to tell the truth about itself, but it contains lies, false declarations, statements or information. It reproduces the declaration, statement, or information even though it is false, in the sense that the person making it is not declaring, or stating the truth, or giving true information. In other words it is a true reproduction of false declarations, statements or information.

Now in this case the Court has before it two documents, the first being what seems to be a copy of a “Long Private Residential Lease Agreement” between the accused and a third person (folio 16 – 20), and the second what seems to be a copy of an application form titled “Change Employer Following Termination” (folio 21 – 25). The prosecution brought charges against the accused in relation to these two documents without indication as to which of the charges apply to these two documents, and therefore leaves it to the Court to decide what to make with the charges. The Court would have expected the prosecution, at least during final submissions, to point out what is being alleged and which charges should apply to the respective documents.

The Court points out at the outset that the prosecution failed to produce any information or proof as to whether these documents are copies or originals.

As to the first document, that is the “Long Private Residential Lease Agreement” the prosecution through its line of questioning, and the replies of its only witness – the representative of Identita’ – indicates, though not in the manner and degree expected in criminal proceedings, that one of the parties to the agreement who appears as signing the document a certain Mary Pace, did not have the authority to rent out the property mentioned in the lease agreement and did not know the other party signatory to the agreement. This is indicative that she was not a party to that agreement, although this has not been proven. Therefore, the prosecution point to the possibility that this document contains a material falsity as one of the apparent authors is possibly not the real author of the document.

In the instance of article 188 the document trustfully reproduces what the document falsely declares. The crime contemplated under article 188 therefore is not one concerning a material falsity, but relates to an ideological falsity.

In the case of the “Long Private Residential Lease Agreement”, the Court is presented with a material alteration and not an ideological falsity, therefore article 188 does not apply.

With regards to the second document which is an application form titled “Change Employer Following Termination” (folio 21 – 25), which is an authentic document, and therefore any false information given therein would constitute an ideological falsity, the prosecution had to prove beyond reasonable doubt *inter alia* that the application contained such false information. It is being alleged that the address declared therein is incorrect. The Court agrees with the apt defence council that the prosecution could have easily proven this fact through the testimony on oath of Mary Pace. However, the prosecution failed to produce such evidence which was readily available, and instead rested on the evidence of the representative of Identita’, who stated that his office made contact with her through email and by phone. This merely constitutes hearsay evidence and will not be considered by the Court.

For the above reasons the Court will not find the accused guilty in terms of article 188, and therefore in relation of the first charge.

Forgery

Having ruled out the applicability in article 188 in relation to the first document, that is the “Long Private Residential Lease Agreement”, the Court will now consider the second charge which is based on article 189 of Chapter 9.

The marginal note to this article indicates this article as “Other kinds of forgery and use of forged documents”. It is obvious, that this article contains two separate acts, being (1) the forgery, and (2) making use of such forged document. The said two instances are blanket provisions, in the sense that they cover instances which are not listed in the other preceding articles of the Maltese Criminal Code on forgery.

In reality what distinguishes one offence of forgery from another in the case of forgery is the nature of the document. Therefore, a correct interpretation of article 189 which makes reference to ‘*any other kind of forgery*’, would not be that of a different type of forgery. The law is not

really referring to other different means of committing forgery in general. It is merely referring to forgery of documents, which are not already covered in the previous articles of the law – a blanket provision intended to capture those forgeries which escape the previous provisions of the law. Therefore, the general principles relating to forgery apply.

However, the Court has already ruled out above that the Prosecution has failed to produce proof that the document was forged, and this through its failure to produce as witness Mary Pace whose name and signature appear on the aforementioned agreement. The prosecution could have also made use of expert advice through ex-parte experts or through the appointment of Court experts, in order to establish whether the signature on the said agreement was forged or otherwise. **Therefore, the Court will not find the accused guilty in terms of the first part of article 189.**

Once the prosecution failed to prove that the documents were forged, the accused cannot be found guilty of making use of forged documents, even if the Court finds that the aforementioned two documents were in fact used by the accused. It is therefore obvious that the second part of article 189 cannot be successfully pinned to the accused.

Therefore, for these reasons **the Court considers that the prosecution failed to prove beyond reasonable doubt the second charge brought against the accused.**

The third charge against the accused, “3. *In relation to any information to be given under or for purposes of this Act (Immigration Act), made or caused to be made any false return, false statement or false representation.*”, is based on article 32(1)(c) of Chapter 217, the Immigration Act, which states:

“32.(1) Any person who –

... (c) in relation to any information to be given under or for purposes of this Act, makes or causes to be made any false return, false statement or false representation; or

...

shall be guilty of an offence and shall be liable, on conviction by the Court of Magistrates, to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents(11,646.87) or to imprisonment for a term

not exceeding two years or to both such fine and imprisonment, unless a greater punishment is established for such offence by another law: ...”

As has already been established above, the prosecution failed to prove that the documents were forged, and therefore the accused cannot be found guilty of making a false return, false statement or false representation even if the Court finds that the aforementioned two documents were in fact used by the accused.

Therefore, for these reasons **the Court considers that the prosecution failed to prove beyond reasonable doubt the third charge brought against the accused.**

Decision:

For these reasons, the Court does not find the accused Anastasiia Germanova, holder of Russian Passport with number 66 1133772 guilty of the charges brought against her and orders her acquittal therefrom.

Dr Kevan Azzopardi B.A. LL.D
Magistrate

Josanne Gauci
Deputy Registrar

< Final Judgement >

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