



## COURT OF CRIMINAL APPEAL

**Hon. Mr. Justice Dr. Neville Camilleri**  
**B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.**

**Appeal Number 2985/2024/1**

**The Police**

**vs.**

**Mario Binjaku**

Today 16<sup>th</sup>. of July 2024

The Court,

Having seen the charges brought against the appellant **Mario Binjaku**, holder of Identity Card Number 293080(A), charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the twenty-seventh (27<sup>th</sup>.) of January 2024 at about noon (12:00hrs) in Triq il-Konvoj ta' Santa Maria, Mqabba:

1. driven vehicle number ZAH 005 without having a driving licence;

2. driven vehicle number ZAH 005 when he was not covered by a policy of insurance in respect of third party risks;
3. whilst driving or having charge of vehicle number ZAH 005 he wilfully or negligently prevented, hindered or interrupted the free passage to any person, vehicle, or horse in the mentioned road.

The Prosecution requested that the accused be disqualified from holding or obtaining any driving licences for a period of time that the Court deems fit.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature dated 3<sup>rd</sup>. of May 2024, wherein the Court, after having seen Articles 15(1)(a), 15(3) and 55 of Chapter 65 of the Laws of Malta, Articles 3(1) and 3(2A) of Chapter 104 of the Laws of Malta and Regulation 77 of Subsidiary Legislation 65.11 of the Laws of Malta, found the accused guilty of all the charges brought against him and condemned him to a fine (*multa*) of two thousand and seven hundred Euro (€2,700) for the first and second charges and a fifty Euro (€50) *ammenda* for the third charge. The Court disqualified the accused from obtaining or holding a driving licence for a period of twelve (12) months from the date of the judgment.

Having seen the appeal filed by the appellant on the 17<sup>th</sup>. of May 2024 by which he requested this Court: to “1. *cancel and revoke the judgment of the Court of Magistrates of the third (3) May 2024, in the names Pulizija vs. Mario Binjaku, where it finds the appellant guilty of all charges brought against him and instead acquits the appellant of any accusation, guilt and punishment; 2. In any case, cancel and revoke, the penalties inflicted against the appellant, and inflicts a more suitable penalty.*”

Having seen all the acts and documents.

Having seen the Reply filed by the appellate Attorney General on the 24<sup>th</sup>. of June 2024, which reply was filed as regards the appeal filed by the appellant.

Having seen the updated conviction sheet of the appellant exhibited by the Prosecution as ordered by the Court.

Having heard the final oral submissions.

### **Considers**

That this is a judgment regarding an appeal filed by the accused Mario Binjaku.

That from the acts of the case it results that the facts relate to a traffic infringement in that on the 27<sup>th</sup>. of January 2024, PC 64 T. Sultana was on patrol when he noticed that a truck bearing the registration number ZAH 005 of the make Astra was parked in such a way that it was blocking the road. When PC 64 Sultana was going to issue a ticket, a person entered the truck on the driver's seat whilst allegedly preparing to drive. He was stopped by the Police and he was asked to show his documents. This led to the Police finding out that allegedly the appellant did not have a driving licence valid to drive the truck he was allegedly about to drive.

That before delving into the merits of this case, this Court reminds that it is a Court of revision and it does not replace the discretion of the First Court where it transpires that from the evidence presented the First Court could reach the conclusion it reached. In this respect, reference is made to the judgment delivered on the 13<sup>th</sup>. of January 2016 in the names **Il-Pulizija vs. Matthew Degabriele** (Number 430/2013), where the Court of Criminal Appeal stated that:

“6. L-aggravju ta' l-appellant Avukat Ġenerali jirrikjedi apprezzament mill-ġdid tal-provi. F'dan ir-rigward il-ġurisprudenza in materja ta' din il-Qorti hi ċara u

kostanti fis-sens li din il-Qorti ma tid-disturbax l-apprezzament tal-provi li tkun għamlet l-ewwel Qorti jekk mhux għal raġunijiet gravi, b'mod li din il-Qorti tirrevedi l-apprezzament ta' dik il-Qorti fl-eventwalita' biss li l-ewwel Qorti ma setgħetx raġjonevolment u legalment tasal għall-konkluzjonijiet li waslet għalihom fuq l-iskorta tal-provi prodotti."

That having established the above, this Court will proceed to examine the grievances raised by the appellant.

### **Considers**

That by means of his first grievance the appellant complains that the First Court made an incorrect interpretation of the law and the evidence brought forward. He refers to the first two charges brought against him.

That as far as the first charge (lack of a driving licence) is concerned, the appellant states that the Prosecution failed to prove an essential element, i.e. the element of driving. He refers to the sworn declaration of PC 64 T. Sultana wherein he confirmed that the vehicle was parked. He complains that any evidence relating to the fact that he was driving a truck was extracted from the statement of PC 64 Sultana. He objects that any declaration given to PC 64 Sultana was given without any caution and he was not afforded the right to consult with a lawyer.

That as regards the second charge (the one regarding insurance policy), the appellant states that the essential element of this charge is also missing. He indicates that the elements constituting this charge demand the following:

- that the accused is any person who can be found criminally responsible under the law;
- that a motor vehicle must be used for the offence to be committed;

- that the vehicle must be effectively driven on the road;
- that the person who is using the vehicle is not covered by an insurance policy.

That as regards the second charge, the appellant states that given that there is no evidence relating to the fact that he was driving means that this element has not been proven. Secondly, he argues that as per Doc. "MB 4" (*a fol.* 25) the vehicle in question was insured in respect to third-party risk. He says that at the time he had a valid driving licence and that hence he was covered by the insurance. He also states that he was covered by an insurance policy regardless of the date when he entered Malta or whether a year had passed.

That this Court starts by addressing the grievance whereby the appellant states that the driving element has not been proven. From the facts of the case and without taking into consideration the declarations of the appellant, it is evident that the truck had been parked by the appellant himself. This Court is stating this because the appellant was alone and hence it is physically impossible that someone else parked the truck. For the truck to be parked it needed to be driven to the site where it was parked. Given that there was nobody else with the appellant, the only logical way the truck could be parked in Triq il-Konvoj ta' Santa Marija was that the appellant had parked it there and that it is only logical that it was driven there. In view of these considerations, the grievance highlighted by the appellant regarding the element that there was no proof that he was driving is being rejected.

That regarding the complaint that is tied to the fact that the appellant was not cautioned by the Police officer or that he was not given the right to legal assistance, this Court notes that the affidavit of PC 64 T. Sultana does not contain only the declaration made by the appellant but it also includes a description of the happenings and a description of how the truck was found

blocking the road. Hence, this Court deems that apart from the part where the affidavit mentions the declaration of the appellant, there are other elements that aid this Court to determine the truth.

That this Court also considered with great attention the judgment delivered by the First Court. From the judgment in question, it transpires that the First Court based its decision in respect to the first charge on the affidavit of Kenneth Pace (the representative of Transport Malta - *a fol.* 12a) where it is clearly stated that till the date of the affidavit (i.e. the 26<sup>th</sup>. of April 2024) the appellant had not yet achieved the necessary licence. Hence given that the charge refers to January 2024 it is amply clear that the appellant did not have the necessary certificate at the time of the incident.

That in respect to the second charge, the First Court based its decision on the text of the insurance policy whilst in respect to the third charge it based its decision on the part of the affidavit where PC 64 T. Sultana gave a description on how the truck was blocking the flow of the traffic. Hence, under no circumstances has the First Court based its considerations on what PC 64 Sultana reported in respect to the statement of the appellant.

That considering the acts presented in this case, this Court agrees with the statements made by the Attorney General, namely that in order to determine the guilt or otherwise of the appellant there was no need to base one's decision on his statement.

That the appellant states that he provided the Court with a valid insurance policy. In this respect this Court refers to the text of the policy (Doc. "MB 5" - *a fol.* 26 *et seq.*) and notes that under "Section 1 - Liability to Others" (*a fol.* 32), the said policy establishes the following (*a fol.* 32):

**"What is NOT covered under this Section (see also GENERAL EXCLUSIONS):**

**This Policy** does not provide cover for:

[...]

- ii. any person who does not hold a licence to drive **your vehicle** unless such a person has held and is not disqualified from holding or obtaining such a licence; [...].”

That this Court refers also to the fact that under “General Exclusions” (*a fol. 47*), the said policy establishes the following:

“We shall not be liable in respect of:

- i. Any accident, injury, loss, damage or liability occurring while **your vehicle** insured by this **Policy** is:

[...]

- d. driven by **you** unless **you** hold a licence to drive **your vehicle** or have held and are not disqualified from holding or obtaining such a licence;
- e. driven with **your** permission by any person who to **your** knowledge does not hold a licence to drive **your vehicle** unless such person has held and is not disqualified from holding or obtaining such a licence.”

That despite what is stated by the appellant, this Court agrees with what is stated by the First Court when the latter determined that the appellant was not in possession of a valid licence. Regulation 5 of Subsidiary Legislation 65.18 of the Laws of Malta is very clear when it states the following:

“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:

Provided that a person holding a driving licence issued by the competent authority of a third country may not drive a vehicle in licence categories C1, C1E, C, CE, D1, D1E, D, DE or f unless that person is also in possession of a certificate of professional competence issued in accordance with regulation 29 or unless that person is an exempt driver in accordance with regulation 28.  
[emphasis added]

That from the evidence provided, including the affidavit of Kenneth Pace (Transport Malta representative – *a fol.* 12a.), it is amply clear that the appellant was making use of category C in his driving licence (*a fol.* 20) without being in possession of the certificate of professional competence as requested by law. In this respect, this Court refers to the judgment delivered on the 28<sup>th</sup>. of March 2023 in the names **Il-Pulizija vs. Moira Micallef** (Number 483/2022) where this Court stated the following:

“In vista tas-suespost, din il-Qorti temmen illi mhux biss il-vettura għandha tkun assigurata kif enfasizzat l-Ewwel Qorti, iżda wkoll is-sewwieq li jkun qiegħed isuq il-vettura. Fil-każ odjern, is-sewwieq Ryan Azzopardi, ma kellux liċenzja tas-sewqan u għalhekk dan ma setax ikun kopert bil-polza tal-assigurazzjoni esebita fl-atti.”

That, in addition to the above, in the judgment delivered on the 11<sup>th</sup>. of May 2023 in the names **Il-Pulizija vs. Gilbert Gatt** (Number 23/2023), this Court stated the following:

“F’kull każ, anki kieku l-karozza tkun koperta b’assigurazzjoni, dan ma jfissirx li kull *driver* li jirkeb fiha, jkunx liċenzjat jew le, jkun ukoll kopert b’polza kontra r-riskji tat-terzi persuni għax jistgħu ikun hemm restrizzjonijiet dwar min ikun kopert b’polza partikolari.



[...]

“Għalhekk l-appellat [**recte**: l-appellant] kellux [sic] [**recte**: kellu] raġun meta jgħid li l-Ewwel Qorti kienet żbaljata meta ma sabitx lill-appellat hati tat-tieni akkuża meta fl-istess nifs sabitu hati tal-ewwel u t-tielet akkuża u dan anke fuq ammissjoni tal-istess appellat.”

That taking the above into consideration the appellant is not correct when he states that he was in possession of a valid licence and hence this Court deems that he was not covered by the insurance policy in question.

That having established the above, this Court deems that from the evidence presented the First Court could reasonably reach the conclusion it reached. Hence, the first grievance deserves to be rejected.

### **Considers**

That by means of the second grievance the appellant complains that the punishment meted out by the First Court is too harsh and disproportionate given that this is his first case.

That in respect to this grievance, this Court starts by referring to the judgment delivered on the 20<sup>th</sup>. of December 2022 in the names **Il-Pulizija vs. Wajdi Lazhir Benhamed** (Number 386/2022) where this Court stated the following:

“10. Issa, għal dak li jirrigwarda appelli minn piena, huwa paċifiku li sabiex Qorti tal-Appell tiddel il-piena li tkun erogata l-Ewwel Qorti, irid jirriżultalha li tali piena tkun żbaljata fil-prinċipju jew manifestament eċċessiva.

[...]

11. Mill-banda l-oħra din il-Qorti trid tagħmel l-evalwazzjoni tagħha dwar jekk il-Qorti tal-Maġistrati

(Malta) applikatx piena li kienet manifestament eċċessiva meta wiehed jieh u kont ukoll tal-aspetti retributtivi u preventivi tas-sentenza emessa minnha.”

That the appellant has been condemned to the payment of a fine (*multa*) amounting to two thousand and seven hundred Euro (€2,700) in respect of the first two charges and to the payment of an ammenda of fifty Euro (€50) for the third charge. The First Court also disqualified the appellant from obtaining or holding a driving licence for a period of twelve (12) months from the date of the judgment.

That as regards the disqualification of the driving licence, this Court notes that this in line with what is established under Article 3(2A) of Chapter 104 of the Laws of Malta and consequently this Court sees no reason to amend such a disqualification. As regards the payment of the fine (*multa*), this Court notes that Article 3(2) of Chapter 104 of the Laws of Malta establishes a penalty of a fine (*multa*) of not less than two thousand and three hundred and twenty-nine Euro and thirty-seven cents (€2,329.37) but not exceeding four thousand and six hundred and fifty-eight Euro and seventy-five cents (€4,658.75) (or to the imprisonment for a term not exceeding three months, or both such fine and imprisonment) in the case of a first offence. Hence the fine (*multa*) meted out by the First Court (which fine (*multa*) covers the first two charges) is close to the minimum established by law and consequently this Court sees no reason to amend it.

That as regards the payment of the ammenda of fifty Euro (€50) in respect of the third charge, this Court notes that this in line with what is provided in Article 55 of Chapter 65 of the Laws of Malta.

That, as a consequence of the above, even the second grievance of the appellant is also being rejected.

## **Decide**

Consequently, for all the above-mentioned reasons, this Court rejects the appeal filed by the appellant and confirms the judgment delivered by the First Court in its entirety and specifies that the the disqualification from obtaining or holding a driving licence for a period of twelve (12) months starts from 4pm today.

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**Dr. Neville Camilleri**  
**Hon. Mr. Justice**

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**Alexia Attard**  
**Deputy Registrar**