



**IN THE COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE**

**Magistrate Dr. Jean Paul Grech B.A., LL.D**  
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

**JUDGEMENT**

Given today, the third (3<sup>rd</sup>) May 2024

Case Number 2985/2024

**The Police**  
(Inspector Rachel Aquilina)

Vs

**Mario Binjaku**

The Court,

Having seen the charge brought against **Mario Binjaku**, born in Albania on the eighth (8<sup>th</sup>) August 1993 and residing at “St. Jo”, Triq is-Sigġiewi, Mqabba, Malta holder of Maltese identity card number 293080(A) for having on the twenty-seventh (27<sup>th</sup>) of January 2024 at about noon (12:00hrs) in Triq il-Konvoj, Santa Maria, Mqabba:

(1) driven vehicle number ZAH 005 without having a driving licence;<sup>1</sup>

(2) driven vehicle number ZAH 005 when he was not covered by a policy of insurance in respect of third party risks;<sup>2</sup>

(3) whilst driving or having charge of vehicle ZAH 005 wilfully or negligently prevented, hindered or interrupted the free passage to any person, vehicle, or horse in the mentioned road;<sup>3</sup>

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

Having seen the sworn declarations and the documents which were filed by the Prosecution;

Having seen the documents filed by the Defence;

Having heard submissions by the parties;

Considers:

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<sup>1</sup> Article 15(1)(a)(3) of Chapter 65

<sup>2</sup> Article 3(1) of Chapter 104

<sup>3</sup> Regulation 77 of Subsidiary Legislation 65.11;

The facts of the case are as follows: on the twenty-seventh (27<sup>th</sup>) of January 2024 PC 64 Tonio Sultana was on patrol in Triq il-Konvoj ta' Santa Marija, Mqabba and he noted a truck bearing registration number plate ZAH 005 which was parked and which was obstructing said street. He was in the process of issuing a contravention when the driver who was identified on the spot as being Mario Binjaku, came out of a shop named "Maypole" and proceeded to board the vehicle.

The Police Officer requested Binjaku to provide him with his driving licence. The driver proceeded to give same to the Police Officer who upon verification of the same informed Binjaku that he could not drive the said vehicle since it was a commercial vehicle and his driving licence only allowed him to drive cars. Binjaku was informed that charges were going to be issued against him.

Considered:

Three charges are being brought against the accused. As regards the first charge, the Prosecution is alleging that the accused was not in possession of a valid driving licence to drive vehicle ZAH 005. From the evidence submitted it is clear that on the twenty-seventh (27<sup>th</sup>) February 2024, the date to which the charge refers, the accused was not in possession of a category "C" licence. The accused applied for a learner's permit for this licence on the 12<sup>th</sup> December 2023. Up to the 26<sup>th</sup> April 2024, Binjaku had still not applied for a practical test for a

Category “C” licence.<sup>4</sup> From the VERA details which were exhibited by Stephen Cachia, precisely from the tonnage of the vehicle in question, it is quite obvious that the accused required a category C licence to be authorised to drive vehicle ZAH 005.

In its submissions the defence raises two (2) arguments:

- (a) that the accused had arrived in Malta on the 5<sup>th</sup> January 2024 and consequently he had not been in Malta for a period exceeding one (1) year. Hence since he had a foreign driving licence, he was authorised to drive in Malta. The defence’s reasoning would have definitely applied in the case of small vehicles falling under category B or B1; however this one-year exemption rule does not extend to commercial vehicles. The proviso to regulation 5 of Subsidiary Legislation 65.18 is quite clear in this respect:

*“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:*

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<sup>4</sup> Vide sworn declaration of Kenneth Pace.

***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 of the Court)

Hence the accused could not rely on his foreign Category C driving licence to drive Category C vehicles in Malta. This means that the accused was driving vehicle ZAH 005 without a valid driving licence.

(b) Secondly the defence raises the issue that the Police Officer did not see the person driving and hence the charge has not been proved. Although it is true that the Police Officer when he saw the vehicle the first time this was parked, from the evidence submitted it is quite clear that Binjaku had been in possession of that same vehicle, he was driving it and he himself had parked it in that way. In fact the Police Officer noted that as soon as Binjaku went out of the confectionery he immediately entered into the driver's seat to drive off. Binjaku was alone at that time and there was no other person with him. Therefore, there could be no doubt that Binjaku himself had driven the vehicle and

parked it in front of the confectionery. The Court notes that circumstantial evidence as long as it points to a single and determinate conclusion which does not leave room for any doubts or other differing conclusions suffices for a finding of guilt. Hence the Court considers that the first (1<sup>st</sup>) charge has been proved beyond reasonable doubt.

As regards the second charge, since the accused was not in possession of a valid driving licence, it cannot be said that he was covered by a valid insurance policy as required by Chapter 104 of the Laws of Malta. This as pointed out in various recent Court of Criminal Appeal judgements, amongst which, **Il-Pulizija vs Mohammed Knann**.<sup>5</sup> As pointed out in these judgements, to exclude criminal responsibility in so far as the charge contemplated under article 3(1) of Chapter 104 is concerned, the accused had to actively prove that the insurance policy would have covered him all the same notwithstanding that he was driving the vehicle without a valid driving licence. From the insurance policy documents submitted, under the heading Liability to Others it is clear that the insurance policy is not covering the policy holder if the vehicle is driven by a person who does not hold a licence to drive that vehicle. The only exception contemplated in the policy is when the driver would have held a licence and would not have been disqualified from holding or

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<sup>5</sup> Decided 7<sup>th</sup> February 2023, Appeal Number 479/2022.

obtaining a licence.<sup>6</sup> Hence this second charge has been proved as well.

With reference to the third charge, this has been proved as well since as explained by PC 64 Tonio Sultana the vehicle was blocking Triq il-Konvoj ta' Santa Marija and it was obstructing the traffic flow. Indeed it was this fact which attracted his attention and led him to carry out verifications vis-à-vis the driver of this vehicle.

- **Decide**

Therefore, for the reasons expounded above the Court after having seen articles 15(1)(a), 15(3) and 55 of Chapter 65, article 3(1) and 3(2A) of Chapter 104 and Regulation 77 of Subsidiary Legislation 65.11 is finding the accused guilty of all charges brought against him and is condemning him to a fine (*multa*) of two thousand and seven hundred euro (Euro 2,700) for the first and second charges and a fifty euro (Euro 50) ammenda for the third charge.

Furthermore, the Court is disqualifying the offender from obtaining or holding a driving licence for a period of twelve (12) months from today.

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<sup>6</sup> Refer to page 4 of Insurance Policy Conditions, Section D, ii.

**Dr. Jean Paul Grech**

**Magistrate**