



In the Court of Magistrates (Malta)

As Court of Criminal Judicature

Magistrate Dr. Yana Micallef Stafrace LL.D. , Adv. Trib. Ecc. Melit

The Police

Vs

Lindsey Jane Nickless

Today, 15th January 2025

The Court,

Having seen the charges preferred against **Lindsey Jane Nickless** born on 29.04.1961 in the United Kingdom, and residing at 1, Paradise Crt. Fl 2, Triq ir-Roza, Marsascala, Malta holder of Maltese Identity Card number 0045685 A accused as a person registered with the Commissioner for Revenue according to Act XXIII of 1998 and regulations made thereunder, during a surprise inspection carried on the **7th December 2019** at **COXWAIN'S CABIN, MARINA STREET, MARSASCALA, MALTA** you, or employees of yours or any other person acting on your behalf, failed to give or produce a fiscal receipt by means of a fiscal cash register or manual fiscal receipt books as approved by the Commissioner,

which conform with the criteria specified in item 10 of the Thirteenth Schedule found in Act of 1998 on Value Added Tax according to the price paid to you for that provision, and this in breach of items 1, 2, 3 and 10 of the mentioned Schedule and articles 51 and 77(a) and (e) and 81 and 82 of Act No. XXIII of 1998.

Having seen that in the sitting of the 11th of January 2022, the accused declared that she does not understand the Maltese language but understands the English language orders that proceedings are held in the English language.

Having heard the evidence of Ian Gauci and Daniel Muscat produced by the prosecution during the sitting of the 11th of January 2022; the evidence of the accused Lindsey Jane Nickless and Raymond Delia during the sitting of the 11th of January 2022; having heard the evidence of Helen Osbourne during the sitting of the 22nd March 2023 produced by the defence.

Having seen the Commissioner for Revenue letter to prosecute dated 3rd September 2020 and a copy of the Application for Registration of the accused Lindsey Jane Nickless dated 19th May 2010 exhibited in the acts of the case (Doc. A).

Having seen that the prosecution rested its case on the 11th of January 2022.

Having seen that the defence rested its case during the sitting of the 22nd of March 2023.

Having seen the note of submissions filed by the parties.

Having seen item 10 of the Thirteenth Schedule found in Act of 1998 on Value Added Tax, items 1, 2, 3 and 10 of the mentioned Schedule and articles 51 and 77(a) and (e) and 81 and 82 of Act No. XXIII of 1998.

Having seen all the documents, evidence and the acts

Considers,

Ian Gauci, VAT Inspector tendered his evidence on the 11 January 2022. He states that on the 7th of December 2019 together with his colleague Daniel Muscat they were conducting some inspections in Triq ix-Xatt, Marsascale. They went into the establishment named Coxswain Cabin which was open, and they saw a sale of a drink. Money was paid and placed in the cash register's drawer and no receipt was given to the client. They immediately identified themselves to the person manning the bar who identified herself as Lindsey Nickless, the owner. They asked her to issue a receipt and to give them the X-reading.

The owner admitted with them that she did not issue the receipt and gave them a receipt for that sale, which was for two euros. The witness exhibited the receipt and the X-reading.

When cross-examined the witness testified that he did not recognise the accused. He does not recall that there was a fund-raising activity.

On being asked whether there is the obligation to issue a fiscal receipt when there is a fund-raising activity, he replies that when there is an economic activity there is the obligation to issue a receipt.

Daniel Muscat, VAT inspector, tendered his evidence on the 11th of January 2022. He confirms the version of events given by his colleague Ian Gauci.

When cross-examined he states that he does not recognise the accused since a lot of time has passed since the inspection.

On being asked whether he was told that it was a fund raiser he replies that he recalls that it was a gathering for a friend, but he does not recall the details.

Lindsay Jane Nickless, the accused tendered her evidence on the 11th of January 2022. She states that a friend of an English friend had died, and he did not have much money. They tried to raise money to bury him and look after the wife and the daughter. She states, *“We raised a Fund Raiser and we said everything that we make that night would go towards the funeral.”* She exhibited a letter from the deceased’s wife.

She confirms that they did not have a permit to hold a fund raising.

Raymond Delia, tendered his evidence on the 11th of January 2022. He states that on the day in question he was behind the bar. *“What I can say is the bar was in my wife’s name so obvious they asked for the owner, all it was is one of the bar staff she served a bottle of coke she took the money and she didn’t give a receipt.”*

He states that there was a sign on the door outside and inside that it’s a private party to try to raise money for a burial.

They were not using the VAT because all the proceeds were to go to pay for the burial.

He states that in the bar there were only the people of the party.

“Court: So what happened when these inspectors came in did anyone stop them at the door from coming in?”

Wit: Yeah when the wife told them that it’s a private function to try to raise money for the barrier [sic] he said we’re not interested you’re not giving any receipts and they walked out.”

“Court: What was being done with the money, was the money being used in the register how was the money being handled?”

Wit: No the money was being put in the Cash Register to be safe and then we handed it over to pay for the barrier.”

The money was given to the deceased’s wife, Helen Osbourne. She then gave them the receipts incurred for the burial and everything.

The witness was behind the bar with the accused and a girl that used to work for them.

The people present were mostly English people.

He confirms that Dok E, F and G are letters sent by people who attended and from the deceased’s wife.

After the widow left Malta, his wife remained in contact with her.

When cross-examined he confirms that he did not ask for a permit to hold he fund raiser.

Helen Osborne, gave her evidence on the 22nd March 2023. She confirms that she knows the accused, Lindsay Jane Nickless who used to run Coxwain Inn Cabin. Ms. Nickless was a very good friend of her husband and she helped her greatly when he died over three years ago in Malta.

“Adv: So what was the involvement of Mrs. Nickless and her husband with regards to the decease of your husband?”

Wit: Cause Tony died very suddenly he had no we had no insurance it wasn't expected with no savings and Lindsay helped organize a fund raiser to pay for what he wanted to be buried at sea and without Lindsay and her support and doing the fund raiser I would never be out I to be able to bury my husband.”

She was present on the day of the fund raiser. The accused organized the evening to cover her husband's funeral costs.

Adv: So were you present when an official of the value added tax department of Malta was on site?

Wit: No I was not aware that anyone else was there that evening I was just there as a widow, the evening was very much of a blur for me that the whole time following my husband's death.

Her husband died on the 4th December 2019 and the event was held a few days later.

According to the witness the pub was closed to the public.

Considered,

From the acts it results that on the 7th December 2019 whilst the VAT inspectors were conducting some inspections in Triq ix-Xatt Masascala they entered a bar named Coxwain Cabin and witnessed a sale of a drink for two euros (€2) and no receipt was given. They spoke to the owner, the accused, who admitted that a receipt was not issued and issued a VAT receipt for the sale they had witnessed.

The defence argues that the bar was open for a fund-raising activity and that all funds generated on the night were donated to Mrs. Helen Osbourne whose husband died unexpectedly a few days before to help fund his burial and other expenses that were needed. Mrs. Osbourne confirmed that a sum of money was given to her following the event. The defence argues that it was a private event and that there was a notice exhibited at the door. Mr. Raymond Delia, the accused husband, testified on the existence of the notice but the defence failed to produce evidence to that effect. Mrs. Osbourne, who was present, stated that the day was a blur for her. Even though the activity was described as a private event between friends, the VAT inspectors entered the establishment freely and witnessed the sale of the drink. Contrary to what was submitted it was the defence who had to provide evidence that a bar that was open to the general public was in fact closed as a private event.

The accused and her husband in their evidence both confirmed that they did not request a permit to hold the fund-raiser.

The second part of the Fifth Schedule of Chapter 406, in particular item 6(2) stipulates the number of criteria for an organisation to be exempt from its fiscal duties.

- (i) the supply must be carried out by a non-profit making organisation.
- (ii) In the course of an activity designed to raise funds to be used for the provision of goods and services that are exempt in terms of para (2) or (4) of item 11 or of para (1) or (2) of item 12 of the second part of the Fifth Schedule.
- (iii) Must have the Commissioner's approval and recognised as being exclusively designed for the said purpose; and
- (iv) It is not likely to cause distortion of competition.

By her own admission the accused confirmed that she did not comply with these requirements.

The Court therefore finds that the offence has been proved by the prosecution.

With respect to the penalty imposed the court considered the events and that Mrs Helen Osbourne confirmed that she was donated money.

Decide

Therefore, the Court after seeing item 10 of the Thirteenth Schedule of Chapter 406 and items 1, 2, 3 and 10 of the mentioned Schedule and articles 51 and 77(a) and (e) and 81 and 82 of Chapter 406 of the Laws of Malta finds the accused Lindsay Jane Nickless guilty of the accusations and condemns her to a fine (multa) of seven hundred euros (€ 700)

The Court orders that within six (6) working days the Attorney General is given access to a scanned copy of the acts, together with a scanned copy of this judgement.

Magistrate Dr Yana Micallef Stafrace LL.D.

Doris Serpina Sciberras

Deputy Registrar