



# **COURT OF MAGISTRATES (MALTA) AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE  
DR. JOSEPH GATT LL.D.**

**Hearing of Thursday the 20<sup>th</sup> of February, 2025**

**Case Number: 1423/2024**

**The Police  
(Inspector Gabriel Kitcher)**

**VS**

**Joanne Marie Mc Kinley (K.I. 0149682A)**

**The Court;**

Having seen the charges brought against the accused Joanne Marie Mc Kinley, born on the 23rd of February 1967 in Ireland, residing at 55, 'St. Joseph', Oratory Street, Cospicua and holder of identity card 0149682A being:

*Akkuzata talli nhar il-5 ta' Ġunju, 2023 u fil-ġranet u x-xhur ta' qabel :*

*B'diversi atti magħmulin minnha, ukoll jekk fi żminijiet differenti, u li jiksru l-istess dispozizzjoni tal-Liġi, u li ġew magħmula b'riżoluzzjoni waħda, fil-kapaċita tagħha ta' sid jew tal-persuna li tamministra l-fond 55,*

*St. Joseph, Triq l-Oratorju, Bormla, bi ksur tal-Liġijiet u r-regolamenti applikabbli, naqset milli tirreġistra l-kirja tal-imsemmi fond meta krietu lil Santi Campisi (I.D. 0212115A) mal-Awtorita tad-Djar.<sup>1</sup>.*

Having seen the Court's decree of the 1<sup>st</sup> of April 2024<sup>2</sup>.

Having seen the minute of the sitting held on the 27<sup>th</sup> of June 2024<sup>3</sup> whereby the Court ordered that these proceedings continue in the English language. During that sitting, the Court heard the testimony of Inspector Gabriel Kitcher<sup>4</sup>, Chris Casha (Representative of the Housing Authority<sup>5</sup>) and Santi Campisi<sup>6</sup>.

Having seen that the sittings of the 19<sup>th</sup> of September 2024<sup>7</sup> and of the 24<sup>th</sup> of October 2024<sup>8</sup> were adjourned for the defence to prepare their evidence.

Having heard the testimony of the accused held on the 5<sup>th</sup> of December 2024<sup>9</sup>. During the same sitting final submissions were heard<sup>10</sup> and the case was adjourned for judgement for today.

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<sup>1</sup>The charges in the English language were produced by Inspector Gabriel Kitcher during the sitting held on the 27<sup>th</sup> of June 2024 (at fol 21 of the acts of the proceedings) and read as follows: *"By various acts committed by her, even if at different times, constituting violations of the same provision of the law, and committed in pursuance of the same design, in her position as owner or administrator of 55, St. Joseph, Oratory Street, Cospicua in default of the applicable laws and regulations, she failed to register the lease with the Housing Authority of the mentioned premises when she leased it to Santi Campisi (I.D. 0212115A). Articles 3,4, 4(2) and 22(1) of Chapter 604 of the Laws of Malta, and Article 18 of Chapter 9 of the Laws of Malta"*.

<sup>2</sup> At fol 4 of the acts of the proceedings.

<sup>3</sup> At fol 8 of the acts of the proceedings.

<sup>4</sup> This commences at fol 10 of the acts of the proceedings.

<sup>5</sup> This commences at fol 24 of the acts of the proceedings.

<sup>6</sup> This commences at fol 40 of the acts of the proceedings.

<sup>7</sup> Relative minute commences at fol 52 of the acts of the proceedings.

<sup>8</sup> Relative minute commences at fol 54 of the acts of the proceedings.

<sup>9</sup> This commences at fol 58 of the acts of the proceedings.

<sup>10</sup> Duly registered and transcribed as ordered. These commence at fol 94 of the acts of the proceedings.

Having seen all the acts of the case.

## Considers

### 1) Facts

This case concerns the alleged lack of registration of a contract of lease as required by Chapter 604 of the Laws of Malta. It is important to note at the outset that case concerns a violation of the relevant law **as it was** during the time of the alleged offence. Since then, the relevant law has seen numerous amendments which further codified the decisions of this Court (and its appeal)<sup>11</sup>. Naturally the examination of the alleged offence is to be done with regards to the law as it stood at the time.

Whereas **Inspector Gabriel Kitcher** gave evidence on the 27<sup>th</sup> of June 2024<sup>12</sup>. He explains that the Housing Authority had sent communication to commence an investigation regarding an alleged tenancy which was not duly registered. The accused was called in for questioning and she explained that she did not register the lease by mistake. During cross-examination (in so far as this was relevant) he explains that the alleged tenant was not spoken to as he was abroad at the time.

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<sup>11</sup> Reference is made to ACT XX of the year 2024. Reference is also made to the judgement in the names **Il-Pulizija vs Natasha Zammit**, (Case Num: 2/2024), delivered by this Court on the 24th of October 2024.

<sup>12</sup> At fol 10 of the acts of the proceedings.

Whereas **Chris Casha** gave evidence on the 2th of June 2024<sup>13</sup>. After explaining that he works within the enforcement section of the Housing Authority, he presents relative documentation. On the 5<sup>th</sup> of June 2023, the Authority received a report regarding a lease agreement between the accused and Santi Campisi. The agreement was for a period of seven months. The accused had sent electronic correspondence to the lessee to vacate the premises on the 19<sup>th</sup> of March 2023. From the verifications done by the Authority it transpired that the lease was not registered. During cross-examination<sup>14</sup> he confirms that the lessee stated that the accused had not signed the relative contract. The Authority did not speak to the accused.

Whereas **Santi Campisi** gave evidence on the 27<sup>th</sup> of June 2024<sup>15</sup>. He refers to the address of the property in question and confirms that this was rented by the accused, who he recognized in the court room. He recognises the contract and his signature. The lease was meant to be for nine months, but he was evicted in March 2023. The rent was paid in cash or through bank transfer. He states the accused signed some of the relative receipts. During cross-examination<sup>16</sup> he states that the accused had received complaints due to the smell of cigarettes. He paid for his entire stay. The witness explains that he was renting a room with the accused, her son, and sometimes other tenants. Re-examined, he confirms that the accused had asked him to leave, and he left after three days. He confirms that he never received a signed copy of the contract.

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<sup>13</sup> This commences at fol 24 of the acts of the proceedings.

<sup>14</sup> This commences at fol 26 of the acts of the proceedings.

<sup>15</sup> This commences at fol 40 of the acts of the proceedings.

<sup>16</sup> This commences at fol 43 of the acts of the proceedings.

Whereas the **accused** gave evidence on the 5<sup>th</sup> of December 2024<sup>17</sup>. Here she explains that she manages this house for a friend of hers, normally for short holiday lets. She gave Campisi a room ensuite in the basement. There is a shared kitchen in the house. They agreed on a rental contract for six months against payment of €450 per month. She is not the owner of the property, but she has the owner's power of attorney and takes care of all his business. This was not a short-let situation, as the tenant was a friend of her boss. She states that the contract was never signed by the tenant. After having examined the relative contract, she states it was prepared by herself, but she didn't sign it. She doesn't remember him signing the contract. She handled the contract with the tenant. She was never made aware of his signature, although she later states that she can't remember. She confirms her signature on the relative receipts. During cross-examination<sup>18</sup>, she confirms her statement made to the Police when questioned. She confirms that she never registered the lease.

## 2) Merits

Whereas the defence essentially brings forward two main arguments in her favour. In essence, the defence states that the contract was *ab initio* null and void since it was not signed by both parties and secondly the accused did not have the required *mens rea* to commit this alleged act.

Whereas this Court does not share the defence's submission that in this particular case there exists a doubt to warrant the utilisation of the maxim *in dubio pro reo*, given that not all hypotheses are tantamount to the required level of doubt.

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<sup>17</sup> Testimony starts at fol 58 of the acts of these proceedings.

<sup>18</sup> This commences at fol 73 of the acts of the proceedings.

Whereas regarding the fact that the contract was not binding as it was not signed by both parties, the Court states that this is not a civil case<sup>19</sup>. The evidence produced clearly shows that between the parties there existed a rental agreement, mostly admitted by the accused herself and by the production of the accepted receipts. By way of example, should there have simply been a verbal contract (which would have had repercussions within a civil case) this would not mean that the offence can't subsist, because this particular law was promulgated purposely to enforce the obligatory registrations of the relevant lease contracts. Therefore, the matter of the signature or otherwise is irrelevant. Had the Court found some other deficiency in the contract, it would not necessarily result in the accused' acquittal<sup>20</sup>. The offence is a regulatory offence<sup>21</sup> and comes into effect once the time-period for registration lapses<sup>22</sup>.

Whereas with regards to the second argument, regarding the lack of *mens rea*, this court has now held numerous times that this particular offence is one which falls squarely within the definition of a strict liability offence<sup>23</sup>. The Court of Appeal has also confirmed this line of reasoning<sup>24</sup>. In such cases, the formal

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<sup>19</sup> Frankly the Court fails to understand why so much effort was put into the reason for the termination of the lease. This is totally irrelevant in these types of cases.

<sup>20</sup> Reference is made to the judgement in the names **The Police vs Ruth Vella**

<sup>21</sup> For a proper definition of this term, the Court makes reference to the judgement in the names **The Police vs Dylan Grech**, (App Num: 371/2023) delivered by the Court of Criminal Appeal (Inferior Jurisdiction) on the 28th of August 2024.

<sup>22</sup> In this case the law stipulated a term of ten days.

<sup>23</sup> Amongst others, the court refers to the judgement in the names **The Police vs Guzeppi Muscat**, (Case Number: 1427/2024) delivered on the 7th of November 2024 (not appealed).

<sup>24</sup> Ample reference is made to the judgements in the names **The Police vs Manuela Tabone Micallef**, (App Num: 288/2023) delivered by the Court of Criminal Appeal (Inferior Jurisdiction) on the 24th of May 2024 and that in the names **The Police vs Carmel Farrugia et**, (App Num: 20/2022) delivered by the court of Criminal Appeal (Inferior Jurisdiction) on the 30th of October 2024.

requirement of the offence is immaterial<sup>25</sup>. The defence could have brought forward (as the onus is shifted on the accused) evidence to prove (on a balance of probabilities), that she committed the offence due to an inevitable or essential mistake which occurred even though she utilised all caution and diligence so that the crime is not committed<sup>26</sup>. Instead, the accused admitted the lack of registration in both her initial statement (which she confirmed on oath) and in her testimony before this Court.

Whereas finally the contract falls within the temporal parameters of the charge as brought against the accused<sup>27</sup>.

Whereas therefore the Court is finding the accused guilty.

### **3) Punishment**

Whereas the law<sup>28</sup> allows for a margin of discretion in imposing the relevant fine (*multa*), which ranges from two thousand and five hundred Euro (€2,500) up to ten thousand (€10,000). In this case particular case, it was clear from the very outset that the accused had not duly registered this lease, the Court deems it fit not to award a punishment towards the bare minimum. The accused had already

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<sup>25</sup> Reference is made to the judgement in the names **The Police vs Andy Buttigieg**, (App Num: 209/2022) delivered by the Court of Criminal Appeal (Inferior Jurisdiction) on the 26th of January 2023.

<sup>26</sup> Reference is made to the judgement in the names **The Police vs Claydon Mifsud**, (App Num: 8/2023) given by the Court of Criminal Appeal (Inferior Jurisdiction) on the 26th of September 2023.

<sup>27</sup> Reference is made to the judgement given by this Court, presided by then Magistrate Josette Demicoli, in the names **Il-Pulizija vs Sacha Said**, delivered on the 20th of October 2022.

<sup>28</sup> Article 22 of Chapter 604 of the Laws of Malta as it stood during the time of the offence.

recognised her mistake prior to the commencement of this proceedings (which she reiterated before this Court). The Court would have been willing to order the payment of a fine in its minimum in case of an early admission, which, as transpires from the timeline of the same, is not the case today. After all, her arguments in defence have now been established as having been solely baseless. After examining the duration of the lease and the payments received on an illegal contract, the Court deems it fit and appropriate to establish a fine of four thousand Euro (€4,000).

#### **4) Conclusion**

For these reasons, the Court, having seen article 18 of Chapter 9 of the Laws of Malta and articles 3, 4, 4(2) and 22(1) of Chapter 604 of the Laws of Malta, finds the accused guilty of the charges brought against her and condemns her to the payment of a fine (*multa*) of four thousand Euro (€4,000), which fine is to be paid immediately.

**Dr Joseph Gatt LL.D.**  
Magistrate

**Annalise Spiteri**  
Deputy Registrar