



**In the Court of Magistrates (Malta)
As a Court of Criminal Judicature**

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

St. Julian's District Sitting

The Police

-vs-

**Adriana Rosalia Eva Elena May Ernst, holder of Dutch Identity Card
number L1JL432CC**

Case No. 8038/2024

Today the 25th February, 2025

The Court,

Having seen the charges brought against the defendant namely for having;

**Between 27th December 2023 and in the days, weeks and months before,
in Triq il-Keffa, Swieqi and/or anywhere else on the Maltese Islands:**

1. Without the intention of stealing or causing unlawful damage, but only to exercise the right she pretend to have, she forced Maria Dolores Baldacchino, Victor Cini, Helen Tonna, Josephine Vella, Carmen Agius Mario Cini, Nazzareno Cini, Louis Cini, Anna Galea, John Cini and Victoria Sultana, through her own authority to pay debt or execute any liability or hindered Maria Doris Baldacchino, Victor Cini, Helen Tonna, Josephine Vella, Carmen

Agius, Mario Cini, Nazzareno Cini, Louis Cini, Anna Galea, John Cini and Victoria Sultana the possession of their items or unlawfully entered into their premises.

Having heard witnesses;

Having seen all the acts and documents exhibited;

Having heard the prosecution and defence counsel make their final submissions;

Considered,

The complainants who testified in these proceedings namely Victor Cini, Maria Dolores Baldacchino and Anna Galea, make great efforts in their attempts to have the Court believe that they are not aware as to the reason the defendant was living in their late brother's house to which they were seeking access after the said defendant changed the barrel pertaining to the door's lock.

Victor Cini claimed that he did not know the reason why the defendant used to be in his late brother's house, since she resided abroad and to his knowledge had no legal right to the premises.¹ He does acknowledge that *"She used to be with my brother.... she might be a relative"*.²

Thus, Victor Cini falls short of his oath! An oath which obliges him to tell "the truth, the whole truth and nothing but the truth"!

Maria Dolores Baldacchino claimed she had access to her late brother's residence after he had given her a set of keys. The witness claims that she had entered the premises on her brother's instructions to find a letter which he had left in a tool box. When trying to do so, she realised the locks had been changed.³ Since the defendant used to live with Paul since she was a child Baldacchino stated that *"she could have been seen as his child.... he never referred to her as his daughter"*.⁴

Given that the offence with which the defendant stands charged is that found in Article 85 of the Criminal Code, the following declaration acquires great significance.

¹ Fol.17

² Fol.18

³ Fol.21

⁴ Fol.22

Baldacchino admits that whenever the defendant was in Malta she stayed with her brother in his house and more importantly, **at the time of her brother's death "she had access to Paul's maisonette at the time he died".**⁵

Baldacchino goes on to state that it was at the Police station that she got to know that CCTV was installed on the front door of the residence in question which incidentally was named "*Elena*"!⁶

Mario Cini explained that Elena had been living in his brother's, Paul, residence and after his demise Elena had removed the main door which was made of glass and changed the lock of the secondary door which Paul used to lock with a padlock for extra security. As to who was in possession of the house upon Paul's death the witness admits "*Elena had only access...*"⁷.

Anna Galea testified that together with her siblings they enjoyed access to her late brother's residence which is named "**Elena**". Her claim that they enjoyed access stemmed from the fact that her brother had given her a set of keys to the maisonette and thus, when Elena changed the lock she deprived them of that access.

Upon questioning by the Court, Galea admits that the reason her brother had given her the keys was to ensure that should he be abroad and one needed to access the premises they could do so, so much so that she admits:

"Magistrat: Pero meta hu tagħhomlok, tagħhomlok biex jekk jinqala' xi haga tkun tista' tohodlu hsieb l-affarijiet jew...

Ms. Galea: U anke f'kaz li ma kienx ikun hawnhekk ghax hu kien isiefer hafna il-Germanja kien imur wiehed jigborlu l-ittri per eżempju, have a look...

*Magistrat: Igifieri **ma kellekx access liberu**, meta jfettilek, illum ha mmur f'it, ghax forsi dan qiegħed bil-malja hemm gew.*

*Ms Galea: **Le, Le, per eżempju jekk jingħalaq barra***

Magistrat: Bhal meta nħallu sett ċwieviet, jekk jinqala xi haga nghidlek jien ingħalaqat gewwa

*Ms Galea: jew nara jekk hux kollox sew, go and have a look. Hekk dak hu l-access."*⁸

⁵ Fol.23

⁶ Fol.25

⁷ Fol.27

⁸ Fol.37

When asked by defendant's lawyer why her brother used to travel to Germany, she denies knowing the reason for such travels.⁹

Adriana Rosalia Eva Elena May Ernst, testified that she was the biological daughter of Paul Cini and started living with him since 2000. Her father visited her often in Germany and she came to Malta when on holidays to be with him. He even named the house for her, "Elena". When her father had his heart attack, an attack which led to his demise, *she was living with him and continued to live there while he was in hospital until his death*. She continues to live in the said house when she comes to Malta as she travels back and forth between Malta and Germany.¹⁰ It was her father who had given her the keys to the residence.¹¹

The reason she changed the locks in June 2023, at the same time of her father's demise, was that she felt threatened by her father's family¹² and goes on to cite how Doris Baldacchino used abusive language when she called her, harassing herself and her mother who another aunt had even cut out of a family photo.¹³ She added that although she was yet legally recognised as Paul Cini's daughter, she was treated as such throughout her life *"his family treated me as his daughter his whole life, the work place, the public, everyone knew that I was his daughter, essentially a formal error or defect in my birth certificate which I'm trying to rectify through the court system and my aunts and uncles are trying everything to prevent me from amending my birth certificate for the past one and a half years"*.¹⁴

Although when asked how she knew Eva, Anna Galea *viva voce* replies *"Għax kienet takkumpanja lil Paul"*¹⁵, from Adriana's testimony it emerges that the same Anna Galea used to visit her in Germany!!

Again, another witness who is very economical with the truth!

The substantive elements of the crime of which the defendant has been charged, were considered by the Court of Magistrates (Malta) in the proceedings in the names **Il-Pulizija vs Emanuel Abela** where the Court held:¹⁶

⁹ Fol.38-39

¹⁰ Fol.40

¹¹ Fol.41

¹² Fol.41-42

¹³ Fol.41-42

¹⁴ Fol.43

¹⁵ Fol.39

¹⁶ 13.10.2014 per Hon. Magistrate Dr. Neville Camilleri; Kump. Nru 866/2011

Fil-kawża fl-ismijiet **Il-Pulizija vs. Georgina Gauci**, deciza fis-7 ta' Jannar 1998, il-Qorti tal-Appell Kriminali (Sede Inferjuri) qalet hekk:

“[F]il-ligi taghna r-reat ta' ragon fattasi mhux meqjus bhala delitt kontra l-proprjeta' izda bhala delitt kontra l-amministrazzjoni tal-gustizzja u amministrazzjonijiet pubblici ohra”.

Illi l-Qorti tinnota li huwa ormai stabbilit li l-elementi kostitutivi tar-reat ta' ragon fattasi, huma erbgha, u cioe:

“(1) att estern li jispolja lil xi hadd iehor minn haga li jkun qiegħed igawdi, liema att ikun eżegwit kontra l-opposizzjoni, espressa jew presunta, ta' dan il-hadd iehor;

(2) il-kredenza li l-att qiegħed isir b'ezercizzju ta' dritt;

(3) il-koxjenza fl-agent li hu qiegħed jagħmel di private braccio dak li jmissu jsir permezz ta' l-awtorita' pubblika (jew, fi kliem il-Crivellari, Il Codice Penale per il Regno d'Italia Interpretato ecc., Torino, 1895, Vol. VI, pagna 749, 'la persuasione di fare da se' cio' che dovrebbe farsi reclamando l'opera del Magistrato'); u

(4) in-nuqqas ta' titolu li jirrendi l-fatt aktar gravi (ara, fost diversi sentenzi, **Il-Pulizija vs. Salvatore Farrugia**, Appell Kriminali 14 ta' Dicembru, 1957, Vol. XLI.iv.1506; **Il-Pulizija vs. Carmel sive Charles Farrugia**, Appell Kriminali 17 ta' Frar, 1995; **Il-Pulizija vs. Carmelo Ciantar**, 18 ta' Settembru, 1996; ara wkoll **Falzon, G.**, Annotazioni alle Leggi Criminali (Malta), 1872, p. 123).

Hu risaput - u dan, del resto, johrog mill-istess definizzjoni tar-reat in dizamina - li l-istess att materjali jista' jagħti lok għar-reat ta' ragon fattasi jew għal reat iehor (hsara volontarja, serq), u jekk ikunx hemm dana r-reat ta' ragon fattasi jew xi reat iehor ikun jiddependi mill-intenzjoni tal-agent. Hu rrelevanti jekk dina l-intenzjoni tikkwalifikax bhala intenzjoni specifika jew intenzjoni generika”.¹⁷

Ovvjament huwa sufficjenti li jikkonkorru l-ewwel tliet elementi. Għall-finijiet tar-reat ta' ragon fattasi huwa bizzejjed xi forma ta' pussess.

The court of Criminal Appeal had this to state in the proceedings in the names **Il-Pulizija vs Denise Caruana**:¹⁸

“..... kwistjonijiet dwar titolu ma jistghux ikollhom effett sabiex tigi stabbilita jew eskluza ir-reita'. Dan għaliex dak li trid tindaga il-Qorti huwa jekk kienx jezisti stat ta' fatt li ġie mibdul unilateralment minn parti wahda tant illi l-vittma ta' dan ir-reat tigi ipprivata mill-uzu jew tgawdija ta' l-oggett li kien **fil-pussess tagħha** qabel dak l-att spoljattiv.....

Illi l-elementi tar-reat in dizamina gew migbura mill-Ewwel Qorti fid-decizjoni tagħha, liema esposizzjoni tad-dritt hija dettaljata tant illi din il-Qorti ma għandha għalfejn izzid xejn iktar fir-rigward. Jigi osservat biss illi:

¹⁷ Criminal Appeal **Il-Pulizija vs. Mario Lungaro**, 18 ta' Novembru, 1996.

¹⁸ Dec. 30.11.2016 per Mdme. Justice Dr. Edwina Grima

“Din il-Qorti tibda biex tghid li r-reat kontemplat fl-Artikolu 85 tal-Kodici Kriminali ma hux intiz biex jissostitwixxi l-azzjonijiet rivendikatorji jew xort’ohra li bihom dak li jkun jikseb ir-rikonoxximent tad-drittijiet tiegħu fi jew fuq proprjeta`, mobbli jew immobbli.

L-Artikolu 85 huwa intiz biex dak li jkun ma jiehux il-ligi b’idejh, u ghalhekk l-iskop wara din id-disposizzjoni – bhad-disposizzjonijiet fil-kamp ċivili dwar l-actio spolii – huwa li tipprotegi l-*istatus quo*.¹⁹....

“Ghall-finijiet tar-reat ta’ ragon fattasi ‘il-pussess materjali, jew detenzjoni, hu sufficjenti għall-avverament tal-ipotesi tal-ligi’ (ara appell kriminali **Il-Pulizija vs George Zahra**, 16 ta’ Lulju 1958 – Vol. XLII.iv.1453). Min ikollu oggett misluf lilu għat-tgawdija tiegħu għandu l-pussess materjali ta’ dak l-oggett. Taht l-artikolu 85 tal-Kodici Kriminali ma hemm ebda bzonn li jigi ippruvat xi element ta’ pussess aktar sostanzjali minn hekk.²⁰[emphasis by the Court]

Reference is also being made to the judgement in the names **Il-Pulizija vs Eileen Said**:²¹

Illi l-appellanti instabet hatja tar-reat ta’ “ragon fattasi” jew dak li jissejjah “the exercise of a pretended right”. Illi din l-azzjoni bazata fuq l-Artikolu 85 tal-Kap.9 tal-Ligijiet ta’ Malta hija speci ta’ zona grigja bejn il-kamp ċivili u dak kriminali, tant li Sir Andrew Jameson meta kien qed jigi abbozzat il-Kodici Penali Malti kien osserva fir-Rapport tiegħu fir-rigward li :-

“It is doubtful whether acts of this kind would not be better left to the operation of the ordinary civil remedies by way of interdict or claim for damages.....” (Ara Prof. Sir Anthony Mamo - Notes on Criminal Law” (Parti Speciali) Vol. II)

Illi l-elementi tar-reat in dizamina gew magisterjalment migbura fid-definizzjoni analitika mogħtija mill-Imhallef W. Harding fis-sentenza ta’ din il-Qorti fil-kawża “ **Il-Pulizija vs. Giuseppe Bonavia et.** “ (App.Krim. 14.10.1944, Vol.XXXII - IV, p.768) u dawn jinkludu :-

- a) att estern li jimpedixxi persuna ohra minn dritt li hija tgawdi, u li jkun sar bid-dissens esplicitu jew implicitu ta’ dik il-persuna .
- b) l-imputat irid jemmen li qed jagixxi bi dritt ;
- c) ix-xjenza tal-imputat li qed jiehu b’idejh dak li suppost jiehu tramite l-process legali ;
- d) li l-att ma jinkwadrax ruhu f’reat aktar gravi .

Illi kif dejjem ġie ritenut element importanti kostitutiv ta’ dar-reat hu dak intenzjonali fis-sens li l-agir ta’ dak li jkun irid ikun magħmul bil-hsieb li hu qed jezercita dritt li jahseb li għandu għad-distinzjoni mir-reati ta’ serq jew danni volontarji fuq proprjeta’ ta’ haddiehor per ezempju . Għalhekk hemm bzonn li issir indagni fuq il-movent li jkun wassal lill-persuna li ikkommettiet dar-reat biex tagħmel dak li għamlet . L-element materjali invece jikkonsisti filli wiehed jippriva persuna ohra minn xi dritt fuq haga li għandu id-dgawdija tagħha.

¹⁹ **Il-Pulizija vs Jane Scicluna** – App. Inf.

²⁰ Criminal Appeal **Il-Pulizija vs Mario Bezzina**; Dec.26/05/2004

²¹ Mr. Justice Dr. Joseph Galea Debono; Dec.19.06.2002; App. Nru.37/2002 JGD.

Ir-reat ma jissussistix meta l-att materjali jikkonsisti fir-retenzjoni ta' pussess li dak li jkun gja ikollu. Hemm bzonn li jkun hemm att pozittiv li **jippriva lit-terz, jew ifixklu fil-pussess** tal-haga ghax kif jghid il-CARRARA (Prog. Parte Speciale Vol.5 para. 2850) :-

“L'atto esterno deve privare altro contro sua voglia di un bene che gode . Chi e' nell'attuale godimento di un bene e continua a goderne a dispetto di chi non voglia ; non delinque perche' la legge protegge lo “stato quo” , il quale non puo' variarsi tranne per consenso degli interessati o per decreto della autorita' giudiziale .

Considered

The evidence in this case shows that the complainants lacked actual possession of the maisonette. They never lived there either. Their testimonies attest to this fact. The only reason they were given a set of keys by Paul Cini was simply to help him out should he ever have needed them to gain access to it and in doing so only in the event that he specifically asked for their assistance.

Thus, when the defendant changed the padlock, she can never have disturbed the complainants' inexistent possession of the residence.

In view of the foregoing the Cort is acquitting the defendant from all charges and punishment.

Finally, in view of the testimonies given by Victor Cini, Anna Galea, Maria Dolores Baldacchino, were *inter alia* they claim not to know the relationship between Paul and the defendant, the Court is ordering that the said testimonies be transmitted to the Commissioner of Police for any action he may deem appropriate after investigating the said individuals for the crimes provided for in Articles 105, 108 and 110(1) of the Criminal Code.

Moreover, the Commissioner of Police is also being requested to investigate the complainants listed in the letter of complaint dated the 9th July 2024,²² for the crime contemplated by Article 101 of the Criminal Code.

Dr. Donatella M. Frendo Dimech
Magistrate

²² Dok.BX a fol.14