



COURT OF CRIMINAL APPEAL

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

Appeal Number 6570/2022/1

The Police

vs.

Roman Zabokrytskyi

Today 24th. of April 2025

The Court,

Having seen the charge brought against **Roman Zabokrytskyi**, holder of Identity Card Number 157190(A), charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having:

1. for the months from November 2021, December 2021, January 2022, February 2022, March 2022, April 2022 and May 2022 on these islands, where the several acts committed by the offender, even if at different times, constitute violations of the same provision of the law and are committed in pursuance of

the same design, when ordered so by a court or so bound by contract failed to give to Mariya Tomenchuk and/or to his children the sum fixed by that contract or laid down in the contract as maintenance for her and/or his children, within fifteen days from the day on which according to such order or contract, such sum should be paid.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature dated 3rd. of February 2025 where the Court found the accused not guilty of the charge brought against him and consequently acquitted him from the said charge.

Having seen the appeal filed by the appellant Attorney General on the 5th. of March 2025 by which, after referring to the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 3rd. of February 2025, he requested this Court to: *“to annul and quash the said judgement, and instead find the accused guilty of the charges brought against him.”*

Having seen all the acts and documents.

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

Having seen what had been minuted during the sitting held in front of this Court on the 3rd. of April 2025, during which sitting the Court adjourned the appeal for judgment.

Considers

That this is a judgment regarding an appeal filed by the appellant Attorney General.

That the facts of the case are relatively simple. From the acts of the case it transpires that by means of a Court decree forming part of the minutes of a sitting held in the Family Court on the 5th. of June 2019 (Doc. “A” – *a fol. 19 et seq.*), the defendant Roman

Zabokrytskyi had been ordered to pay the *parte civile* Mariya Tomenchuk the sum of three hundred Euro (€300) monthly as maintenance for his children. Allegedly, the defendant was not in a position to pay such sum and had in fact paid a lesser amount.

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 13th. 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-konklużjonijiet li waslet għalihom fuq l-iskorta tal-provi prodotti.”

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

Considers

That by means of his grievance the appellant complains about the judgment delivered by the First Court where the mentioned Court acquitted the defendant on the basis that the *parte civile* filed only a true copy of the original of the minutes of the sitting held in the Family Court as certified by Dr. Josette Sultana which make reference to the order of the payment of alimony without summoning the Registrar of the Courts to attest the veracity or authenticity of the same document. The appellant argues that

based on the evidence presented, the First Court could not have reasonably and legally reached the conclusion it reached. In this respect, the appellant makes three arguments.

That in his first argument entitled “Declaration of the accused himself”, the appellant refers to the declarations made by the defendant whereby with reference to his testimony of the 10th. of June 2024 he admitted that he had not paid maintenance. In addition, the appellant refers also to the final submissions by the defendant’s lawyer whereby it has been stated that he could not afford to make such a payment. The appellant argues that the defendant thus admitted that he had not paid dues as per Court order of the 5th. of June 2019.

That the appellant refers to the appealed judgment and contends that it is the First Court itself that recognised that the defendant admitted that he did not have enough money to pay for his children but had spent the money elsewhere, whilst also admitting that he was employed despite not having a steady income. The appellant states that this is the best proof since it is an admission by the same defendant and in this respect reference is made to Article 658 of the Chapter 9 of the Laws of Malta.

That by means of his second argument entitled “The defence of the impossibility of the accused to honour his obligation”, the appellant argues that the defendant’s defence is that he is not working regularly and is trying to change the decree meted out by the Family Court. The appellant mentions that no evidence is brought by the defendant that he is trying to request such a change in the obligations. Apart from this, the appellant states that the position of the defendant cannot be considered as a legitimate defence.

That with reference to local jurisprudence on the matter mentioned in the previous paragraph, the appellant states that the First Court could not have acquitted the defendant. In respect to the alleged intention of the defendant to request the reduction of maintenance, the appellant states that this remedy does exist

because the logic of the law is the logic of reason, and it is not reasonable to demand what is absurd or impossible, yet the appellant states further that this must be applicable within reason and must in no way be abused of. The appellant complains that the defendant not only did not seek the remedy afforded by law but waited till the last moment to think of seeking such remedy.

That by means of his third argument entitled “True copy of the document presented by Mariya Tomenchuk”, the appellant refers to the reasoning of the First Court whereby it deemed that the whole case was based upon the Family Court minutes’ whilst citing jurisprudence of the Maltese Courts. In this respect the appellant states that the cases quoted referred to unauthenticated documents. The appellant highlights that in this case the documents were identified as true copies of the original. Furthermore, the appellant highlights that the First Court could not simply acquit the defendant on this basis when there is other evidence on the matter. The appellant refers to jurisprudence wherein it is stated that a true copy of the decree ordering payment is sufficient as opposed to what is stated by the First Court.

That having established the above this Court respectfully considers that the First Court was not correct when it determined that the true copy of the original of the minutes of the sitting of the 5th. of June 2019 (Doc. “A” – *a fol. 19 et seq.*) were not sufficient. In this respect reference is made to Article 627 of Chapter 12 of the Laws of Malta which article is applicable to the courts of criminal justice in terms of Article 520(1)(e) of Chapter 9 of the Laws of Malta. Article 627 of Chapter 12 of the Laws of Malta states the following:

“The following documents shall be admissible in evidence without the necessity of any proof of their authenticity other than that which appears on the face of them, and shall, until the contrary is proved, be evidence of their contents:

[...]

- (e) the acts and registers of the courts of justice and of the ecclesiastical courts, in Malta.”

That in respect to this same article, this Court refers to the judgment delivered on the 3rd. of October 2024 in the names **Mary Rita Mifsud vs. Michael Mifsud** (Number 637/24/1) where the Court of Appeal stated the following:

“15. Dwar l-ewwel mistoqsija, din il-Qorti tqis li l-appellant ma jistax jistrieħ fuq l-**Artikolu 627(e) tal-Kodiċi ta’ Organizzazzjoni u Proċedura Ċivili**, bħal kif jgħid fir-rikors tal-appell tiegħu. Huwa minnu li skont dan l-artikolu tal-liġi, l-atti u r-registri tal-qrati tal-gustizzja huma ammissibbli bi prova bla ma tkun meħtieġa ebda prova oħra tal-awtenticità tagħhom, hliet dik li tidher minnhom infushom. Huwa minnu wkoll li dawn l-atti jippruvaw dak li jkun fihom, sakemm ma jiġix ippruvat il-kuntrarju.

16. Madankollu huwa evidenti li l-kopja tat-traskrizzjoni tax-xhieda li tressqet fl-atti ta’ din it-tilwima, la hija dik originali u lanqas ittiehdet fuq l-originali għaliex fuq il-kopja m’hemmx il-firma tat-traskrittriċi li hejjietha. Għalhekk, fil-fehma ta’ din il-Qorti, il-kopja tat-traskrizzjoni msemmija ma tistax tikkwalifika bħala dokument li jaqa’ fit-tifsira tal-artikolu tal-liġi hawn fuq imsemmi.

17. Fl-istess waqt, però, l-Ewwel Qorti ma kienitx siewja meta ppretendiet li l-appellant kellu jippreżenta vera kopja awtentikata tal-imsemmija xhieda; għalkemm ma hemmx dubju li huwa kien jagħmel hajjet il-Qorti ferm aktar faċli li kieku huwa għamel dan. Tasew, ġie miżmum diversi drabi fil-ġurisprudenza li parti m’għandhiex htiġa li ggħib prova ta’ atti li jinsabu fir-Registru tal-Qorti sakemm hija tkun tat biżżejjed dettalji

b'tali mod li dawn ikunu jistghu jinstabu u jigu vverifikati faċilment (ara *Anthony Micallef et v. Paul Balzan pro et noe* maqtugħa mill-Qorti tal-Appell fl-24 ta' Novembru, 2017, *Joseph Farrugia et v. Joseph Attard et* deċiża mill-Qorti tal-Appell fl-24 ta' Novembru, 2017, *Eucharist sive Chris Cassar v. Savio Spiteri* mogħtija mill-Qorti tal-Appell fit-2 ta' Marzu, 2018 u *John Borg et v. Welcome Auto Dealer Limited et* maqtugħa mill-Qorti tal-Appell fil-31 ta' Mejju, 2023).

18. Fil-każ tagħna, matul is-smiġħ tar-rikors imressaq minnu, l-appellant mhux biss provda d-data u n-numru tal-kawża li fihom ingħatat ix-xhieda inkwistjoni iżda wkoll ippreżenta kopja informali tagħha. Għalhekk kien fid-dmir tal-Ewwel Qorti li tikseb kopja tat-traskrizzjoni originali mill-atti tal-kawża bin-numru 291/2019 u tiegħu qies tagħha (*Michelle Briffa v. Mohamed Elbarghathi* deċiża mill-Qorti tal-Appell fil-15 ta' Ġunju, 2023)."

That given the above this Court notes that none of the parties have in any way doubted the truthfulness of the minutes of the sitting of the 5th. of June 2019 (Doc. "A" – *a fol. 19 et seq.*) filed in the acts of the case. Nor can this Court find any fault with the document in question. Thus, this Court finds no reason to doubt the authenticity of this document.

That in addition to what has been stated above, this Court is also in agreement with what is stated by the appellant Attorney General when he contends that the defendant actually admitted the charge brought against him when in his testimony given in front of the First Court on the 10th. of June 2024 (*a fol. 58 et seq.*) he testified that he paid only part of the maintenance due the *parte civile*. This Court also notes that the defendant was asked specifically regarding the sum of three hundred Euro (€300) monthly as maintenance for his children.

That this Court notes further that from the bank account statements presented by the *parte civile* (Doc. "B" – *a fol. 21 et seq.*)

it transpires that the defendant has regularly paid at least part of the maintenance. During most of the year 2021 the defendant paid it in full whilst in the year 2022 he mainly paid only part of it. This Court also notes that the charge against the defendant had been issued on the 18th. of August 2022 whilst it is not clear when the said charge had been notified to the defendant. Given that the first sitting in front of the First Court took place on the 24th. of October 2022 (*a fol.* 3) and that the defendant was present for that sitting it follows that by that date he was notified with the charge. However, there is no evidence in the acts of the proceedings when the said charge had been notified to the defendant. This Court is stating the above since in terms of Article 338(z) of Chapter 9 of the Laws of Malta this proceeding is time-barred with the lapse of six months. Hence given that there is no evidence as to when the defendant had been notified with the charge, this Court shall deem that he had been notified on the 24th. of October 2022 and consequently for the purpose of these proceedings this Court shall consider the lack of payments starting from the 24th. of April 2022. Hence given that the charge proffered against the defendant cover the period up to May 2022, this Court shall limit its review up to these two months i.e. April 2022 and May 2022. From the bank statement submitted and marked as Doc. "B" (*a fol.* 21 *et seq.*) it is clear that the defendant only paid part of the maintenance due for these two months. It results that on the 11th. of April 2022 the sum of two hundred Euro (€200) was paid and that on the 10th. May 2022 the sum of two hundred Euro (€200) was also paid. Hence it results that the defendant failed to pay the balance of one hundred Euro (€100) for the month of April 2022 and also the same amount of one hundred Euro (€100) for the month of May 2022.

That for the above-mentioned reasons the grievance of the Attorney General deserves to be partially upheld and this with reference to the periods between April 2022 and May 2022 since any wrongdoing for previous periods indicated in the charge-sheet is time-barred. As regards to the punishment to be meted out against the defendant, this Court will be taking into consideration various factors: namely the updated conviction of the defendant as exhibited in front of this Court, what the

defendant has been found guilty of by this Court, and the amount of maintenance he failed to pay for the above-mentioned months (i.e. April 2022 and May 2022).

Decide

Consequently, for all the above-mentioned reasons, this Court accedes *in parte* to the appeal filed by the appellant Attorney General and hence proceeds to reform the appealed judgment by:

- confirming that part of the appealed judgment where the defendant Roman Zabokrytskyi was acquitted for failing to pay maintenance for the months of November 2021, December 2021, January 2022, February 2022 and March 2022 since the proceedings for the mentioned months is time-barred by the lapse of six (6) months;
- cancels and revokes that part of the same judgment where the defendant Roman Zabokrytskyi was acquitted for failing to pay maintenance for the months of April 2022 and May 2022 and instead this Court, after having seen Articles 18 and 338(z) of Chapter 9 of the Laws of Malta, finds the defendant Roman Zabokrytskyi guilty of failing to pay the maintenance for the months of April 2022 and May 2022 and in terms of Article 22(1) of Chapter 446 of the Laws of Malta the Court is conditionally discharging the defendant Roman Zabokrytskyi subject to the condition that he does not commit another offence within a period of one (1) year from the date of this judgment and in terms of Article 24(1) of Chapter 446 of the Laws of Malta orders the defendant Roman Zabokrytskyi to pay the amount of two hundred Euros (€200) to the *parte civile* Mariya Tomenchuk within a period of two (2) months from today.

The Court explained to the defendant Roman Zabokrytskyi in ordinary language that if he commits another offence during the period of conditional discharge, he will be liable to be sentenced

for the original offence and the Court also informed him what are the consequences should he fail to pay the amount of two hundred Euros (€200) to the *parte civile* Mariya Tomenchuk within a period of two (2) months from today.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar