



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL INQUIRY**

**MAGISTRATE DR.
MIRIAM HAYMAN**

Sitting of the 25th January, 2006

Number 541/2000

**The Police
(Inspector Mario Bonello)**

VS

Brian Patrick Mawdsley of 23 years son of Gavin and Gillian nee` Greenwood born at Zimbabwe on the 24-9-76 and residing at 7, St. Anne Flats, Flat 1, Triq il-Gwielaq, Swieqi holder of passport number Z A443382 issued in Marshall Town, South Africa.

Today 25th January, 2006

The Court.

Having seen the charges against the accused in that he in these Islands on 28th July 2000 and during the previous months committed theft from the Novanet Ltd., of Naxxar Road, Balzan. Such theft was aggravated by person and amount which exceeds the sum of one thousand

(LM1000) Liri Maltin to the detriment of the Directors of the Novanet Ltd., of Naxxar Road, Balzan.

With having during the same date, time, place and circumstances knowingly received or purchased computers, computer accessories and other items which had been stolen misapplied or obtained by means of an offence or knowingly took part in any manner whatsoever in the sale or disposal of same to the detriment of the Directors of the Novanet Ltd., of Naxxar Road, Balzan.

With having during the same date, time, place and circumstances misapplied, converting to his own benefit or to the benefit of any other person, computers, computer parts and other articles, which had been entrusted or delivered to him under a title which implies an obligation to return such things or to make use for a specific purpose to the detriment of the Directors of the Novanet Ltd of Naxxar Road, Balzan.

With having during the same date, time, place and circumstances by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation or by means of any deceit, device or practice calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or create the expectation or apprehension of any chimerical event, made gain to the prejudice of the Directors Novanet Ltd., Naxxar Road, Balzan.

With having during the same date, time, place and circumstances infringed an implied condition of the leave granted to him under paragraph (b) of sub section (1) of Sec 6 of Chapter 217 of the Laws of Malta by exercising a profession or occupation or held an appointment or was employed by any other person without a licence from the Minister responsible for immigration.

With having on the 28th July 2000 at Swieqi kept a pointed and cutting instrument without a licence from the Commissioner of Police.

Primarily the court deems fit to summarise the main evidence heard by it, enabling it thus to establish whether the prosecution has proved its case beyond reasonable doubt.

Prior to this however it must be pointed out regardless of the charges brought by the prosecution, the Attorney General in his note saw fit to charge Brian Patrick Mawdsley with the crimes contemplated under sections 261(c) (d), 276, 268, 279, 280, 281, 334, 308, 309, 310, 17(b), 20, 23, and 533 of the Criminal Code and section 6(1)(b) of chapter 217 of the laws of Malta.

It is in regard to these sections of the law that accused gave his consent to be judged by this Court as one of Criminal Judicature. (vide fol 147)

Thus one of the main witnesses of the prosecution is a certain Mario Micallef the main shareholder of the Novanet Company thus the person most financially injured by the alleged crimes. Micallef also happens to be the person most in contact with the day to day running of the mentioned business.

He in fact gave evidence of how he had suspected that the accused was taking computer pieces out of the shop where he was employed and upon such suspicion also made a secret search in accused's bag in which he had found computer components. It was upon this discovery that a search was effected at the accused's home by the police, with the results mentioned in the Magisterial Inquiry. In fact Micallef first testified in the inquiry and at this stage he valued the stolen objects to the amount of two thousand Maltese Liri. Later on however in Court he raised or rather altered this value to the tune of seven thousand Maltese liri.(Lm7000). Be it also noted that the list which Micallef exhibited to Dr.R. Sladden varies in quantity to that the witness exhibited in Court.

Tendering evidence again Micallef excepted two propositions put forward to him by defence counsel, firstly

that he had given permission to his employees, in particular to the accused to take components at home on which he could work, though he reiterated that it was never to the extent of equipment found at Mawdsleys' and secondly that the company Novanet, though not frequently, did barter goods for credit. He also confirmed that although even a piece of bartered equipment had to be noted in the stock lists yet he had not verified if any of the missing stock had been actually bartered. Micallef however insisted that the computer components found at accused's residence were part of the stock Novanet company had imported a month previously from Turkey.

Witness also testified about a situation that had accidentally come to his knowledge wherein a certain Mr S.Florian had upgraded his system with Novanet and had paid for his service the accused. Accused had not issued a proper receipt and the monies received by him had never been recorded within the company. (vide dok MM2)

This transaction was in fact confirmed by the client Mr Florian who also confirmed that he had in fact paid accused for services rendered by Novanet to the amount of two hundred and forty Maltese liri.(Lm240). The receipt issued by accused in this regard was not one of a legal nature.

Another director of Novanet testified this time a certain John Zammit who gave evidence that regardless of the fact that he had been informed by accused that they had no sales and regardless of the fact that the company had just imported fresh stock from Turkey yet, no sales considered they had found themselves in a situation that still stock was missing. He also deposed that though he had been informed by the accused about the drop in sales yet strangely enough both accused and another employee Attard used to keep late hours at the shop. Zammit also stated that some of the equipment found at accused were either part of the missing stock imported by Novanett or empty boxes thereof.

On the other hand however it need be said that Mario Micallef throughout his testimony placed high faith in Kieth Attard mentioned in this instance by his partner Zammit as one of the employees keeping late hours at the shop regardless of the drop in sales.

Anna Zammit testified that financial problems at the shop initiated when accused started his employment there. She recalled a situation where thirty pounds went missing from the cash registrar, Mawsdley claiming a right to them due to lack of a previous payment still outstanding in his regard.

Ex employee Daniel Borg Olivier stated that part of the equipment found at the accused belonged to him since he shared a home with accused and that accused used to take components from work to home for assembly, in which witness used to help. He recalls that the other employer, Kieth Attard used to phone to collect the assembled components to be taken back to Novanet. Questioned in defence he stated that it was a practise of the three employees, accused, Attard and witness himself, to assemble and repair computers at their respective homes and this occurred with the knowledge of Mario Micallef himself. He testified that Micallef also authorised barter, an event according to witness that was frequently practised at novanet

Kieth Attard the apparently most favoured employee at novanet testified that he was the one who had effected the stock taking and concluded that items from stock had gone missing. Categorically Mr Attard concluded without any other option that these items went missing. According to his evidence at this point in time the only salesman within the company was only the accused. He however conceded that within novanet it was a practise to effect sales without Vat registration, a practise popular with accused and Mario Micallef. He also confirmed that Micallef did effect sales by barter.

Evidence was also tendered by police officials, Inspector Bonello, as to the effect that accused had no licence to keep the knife found within his possession (vide a fol 51 and 133).

Considers

First and foremost it is necessary to point out that defence did at no stage in time contest the fact that computer or computer parts or empty boxes thereof were found at the accused's residence. Defence however does motivate the presence of the said equipment due to work related requirements of the accused whose intent has always been, as defence contends for the return of the equipment to its original owners that is Novanett company, once work was done on it.

A remark that the Court feels it should make in this regard is that neither the prosecution, on whom rests the onus of proofing that alleged nor the defence seem to have realised that equipment found at Mawdsley was never actually made available to the Court. Certainly much mention has been made of this equipment as with the divers valuation attributed to it by the same source witness Mario Micallef, co-owner of the aggrieved company. Defence in fact was right in pointing out in its note of submissions that Micallef had either originally devalued his own property or boosted the value thereof at the end, since a considerable discrepancy of circa five thousand maltese lira results between one valuation and another(vide dok MM and dok MM1)

However valuation apart, said equipment does not even seem to have been the subject of seizure in the Magisterial Inquiry by the S.O.C.O, in fact no mention of it was made neither in their report but for the fact that they were shown same computer equipment by the Inspector which was duly photographed. Thus the Court, but for a list drawn up by the Court Expert Dr.R.Sladden is denied any drawn list of the equipment found that could truly

guarantee an expert valuation.. This point is being raised more specifically because as aforementioned the list that Mr Micallef exhibited with the Court expert in the Inquiry does not tally with that exhibited by the same Micallef in Court.

Obviously it needs to be pointed out that the list drawn up by Dr.Sladden was only of some equipment inclusive of empty boxes found at Mawdsley's. In fact the list drawn up by the expert is a far cry in contents from the two drawn up by Micallef himself.

Mr Micallef himself instigates Further preoccupation in that he alleged that the missing components went so missing within a month, quite a short time considering the list he presented of the missing items.

Another point that preoccupies the Court and one that has been picked on by the defence, is the fact that it is not clear to what extent the employees were allowed to carry on repairs and assembly of computer components away from there place of work, therefore outside novanet premises. Mario Micallef who seems to have had more contact with the day to day running of the company conceded in one of his many interventions that he did give such a permission on a single occasion for such an occurrence. This however is in contrast to evidence tendered by Borg Olivier at least , that Attard still a novanet employee was in collusion with accused in this regard in that he used to call for and transport any works carried out by Mawdsley at home to novanet.

Another point that has remained very unclear to the Court is what stock actually went missing since it does not clearly transpire what was bartered. In actual fact it does not seem clear what was sold in view of the fact that the stock found at Mawsdely does not completely tally with that that allegedly went missing from novanet. More worrying is the fact that Mr Zammit, the company accountant was not in a position to furnish the Court with the information required as to whether any of the bartered items were infact included in the missing stock list. It

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would have been truly ideal had evidence been tendered as to what items were actually sold by novanet whether against cash or bartered

Considers

That Mawdsley has originally been accused with the crimes of aggravated theft, receiving stolen goods, misappropriation, fraud under chapter 9 of the Laws of Malta and also with infringement of immigration laws under chapter 217 of the Laws of Malta and lastly with the possession of a pointed instrument without proper licence infringing thus chapter 66 of the Laws of Malta.

As premised the Attorney General only saw fit to charge Mawdsley with the following crimes, as seen in the note wherein he sent the relative articles of the law, these being aggravated theft, receiving stolen goods, fraud and breach of immigration laws. No mention was made in the Attorney General's note of the crime of misappropriation or of illegal possession of a pointed instrument thus the Court will not consider these in examination of guilt.

Considers

That from the evidence tendered the Court is certainly not convinced that the crime of theft, aggravated or otherwise, has been proven. Though under Maltese law no proper definition of this crime is found in our criminal code yet the definition mostly adhered to is that of the jurist Carrara, one whose elements are certainly not reflected in accused actions. Whereas it is certain that some sort of improper conduct with regards to the company's property is imputable to the accused (about this the Court will comment later) as it is certain that a considerable amount of equipment was found at accused, however the presence of such equipment can on a probability be justified by works carried for Novanet. So though it is certain that accused had possession of the company's equipment, the Court fails to see that the prosecution proved the mens rea necessary to proof theft.

Moreso the element of lucro (gain/profit), necessary to proof theft, has not been sufficiently proven as evidence has been brought forward that the assembled equipment was at times taken back to the company.

It is the opinion of the court that not enough evidence has been brought forward to proof the crime of theft, suffice it to say that although accused might have been in possession of same equipment, yet reasonable doubts have been raised in favour of there return within the company. Be it also reiterated that even the fact that no determined value was properly established as premised does inflict substantial doubt in the mind of the Court.

Mawdsley has also been charged with the alternative crime to theft that of receiving and or disposing of stolen property, however as premised no evidence was tendered in this regard.

Neither in the opinion of the Court is the accused guilty of the crime fraud. In fact no such situation was in anyway hinted at in the evidence tendered. Accused actions in no way met the requisites of the crimes postulated in articles 308, 309, 310 of chapter nine of the laws of Malta.

When discussing theft the Court did pass a comment that Mawdsley 's conduct was in relation of the company's property doubtful, had the Attorney General included in his list of crimes that of misappropriation, as originally charged, then because of the incident that occurred with Mr Florian accused position would have been compromised in this regard.

The only crime left to be discussed with regards to accused is that under the Immigration Act, that is Chapter 217 of the Laws of Malta. It does transpire from the actual statement released by the accused that he had been in our islands for a number of years before his arraignment. However it transpires from Inspector's Zarb evidence that today or rather on his arraignment his position in Malta

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was regularised to the extent that his position is no longer illegal in Malta.

Thus considering all the above premised the Court acquits Brian Patrick Mawdsley of all the crimes as brought against him in the Attorney General's note.

< Final Judgement >

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