



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

**MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA**

Sitting of the 5 th July, 2012

Number 1140/2011

The Police
(Inspector Maurice Curmi)

vs

Yoseph Tesfaldet Keleta

The Court,

Having seen the charges brought against the accused holder of Identity Card number 41722A for having on these Islands in October 2011 and in the previous weeks and months and committed in pursuance of the same design:

- 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 other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power,

influence or credit, or to create the expectation or apprehension of any chimerical event, made gain exceeding two thousand, three hundred and twenty nine euro and thirty seven cents (2,329.37 Euros – recte Lm) i.e. 6,850 Euros to the detriment of Hassan Abdulalim Mahmud holder of I.D number 53375(A) – in terms of Article 308, 309 and 310 of Chapter 9 Laws of Malta;

- on the same days, time and place, misappropriated, converted to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title which implies an obligation to return such thing or make use thereof for a specific purpose to the detriment of Hassan Abdulalim Mahmud holder of I.D. card number 53375(A) – in terms of articles 293 and 294 Chapter 9 Laws of Malta;

The Court being requested that in pronouncing judgement or in any subsequent order sentence the person convicted to the payment, wholly or in part, to the registrar the costs incurred in connection with the employment in the proceedings of any expert or referee in terms of Article 532A, 532B and 533 of Chapter 9 Laws of Malta.

Having seen the transmittal of the proceedings to this Court by the Attorney General citing the articles of law with which the accused is charged;

Having heard the evidence;

Having seen all the acts and records of the proceedings;

Having heard final submissions;

Considers:

The charges refer to the crime of fraud, i.e. with having obtained money by false pretences; alternatively the accused is charged with misappropriation. Accused refutes the charges insisting that the amount allegedly taken, or more precisely given to him, by the injured party was in refund of a loan which the accused had previously given to same.

From the evidence produced and heard by this Court the charge in so far as it relates to the offence of fraud (i.e. obtaining money by false pretences) does not hold. The evidence to this effect does not, in the Court's opinion, contain and satisfy the constitutive elements that make up the crime. In short, the Court has not, after evaluating the evidence in its totality, perceived any unlawful practice, the use of any fictitious name, the assumption of any false designation or the use of any other deceit, device or pretence leading to the belief of the existence of any fictitious enterprise or of any imaginary power, influence or credit or the creation of any expectation or apprehension of any chimerical event, by which the accused made a gain against the injured party. Nor does the Court see the offence as falling under the so-called innominate crime of fraud as provided in Article 309 of Chapter 9.

It has, on the other hand, the classical ingredients of the crime of misappropriation.

Leaving aside at this stage of the judgement that which is stated by the accused in his defence, the evidence shows that the injured party had effectively transferred to accused's bank account an amount of 6,850 Euros for onward transmission to a specified beneficiary account outside Malta.

From bank statements produced and inserted in these proceedings, there is ample proof that attests to the fact that the injured party effectively transferred the money into accused's bank account. The accused's bank statements subsequently attest to how the money was piecemeal withdrawn by the accused.

This documentary evidence by itself brings to nought accused's assertion that the money was given to him in repayment of a loan which he himself had made to the injured party. In alleging accused had to prove it albeit on a basis of probability. In the Court's view accused has not done so. He has offered not a minimal of proof that he

Informal Copy of Judgement

ever had such monies and neither his bank statements remotely give credence to this.

The evidence brought forward by the prosecution is overwhelmingly against the accused. After having considered all evidence, including accused deposition, the Court is left with not the slightest doubt as to his guilt.

Consequently declares him guilty on the second charge.

Having seen Article 293, 294, 310 (b) of Chapter 9 condemns him to a period of two years imprisonment.

Acquits him of the first charge.

To all intents and purposes condemns accused to the payment of all and any court appointed experts in these proceedings.

< Final Judgement >

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