



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 11th July, 2013

Criminal Appeal Number. 241/2011

Appeal Number: 241/2011
The Police
[Inspector Yvonne Farrugia]
Vs
Gemma Cassar
Johannes Dahlback

Today the 11th July 2013

The Court,
Having seen the charges brought against the appellant Gemma Cassar [holder of identity card no. 73186 (M)] and Johannes Dahlback [holder of Swedish Passport Number 45580320] in the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:
For having in these islands, during the year 2008 and 2009, with several acts committed, even if at different times and which constitute violations of the same provisions of the law, and are committed in pursuance of the same design;

1. Misapplied, converting to their own benefit or to the benefit of any other person, anything which has been entrusted or delivered to them under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, that is, the sum of money exceeding two thousand and three hundred and twenty – nine Euro and thirty – seven cents (€2,329.37) to the prejudice of Norse Management International (Malta) Limited (C44791), and which funds were entrusted or delivered to them by reason of their profession, trade, business, management, office or service or in consequence of a necessary deposit

2. On the same dates, location 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 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 of more than the sum of over two thousand, three hundred and twenty nine Euros and twenty seven Euro cents (€2,329.27) to the prejudice of Norse management International (Malta) limited (C44791).

The Court was also requested that in case of a finding of guilt of both accused, apart from inflicting the punishment prescribed at law, to order the forfeiture of all the objects exhibited in these proceedings.

The Court was requested to apply mutatis mutandis the provisions of Article 5 of the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, as stipulated in article 23A(2) of Chapter 9 of the Laws of Malta.

The Court was also requested that, in pronouncing judgment or in any subsequent order, sentence the person convicted, jointly or severally, to the payment wholly or in part, to the Registrar, of the costs incurred in connection with the employment in the proceedings of any

expert or referee, within such person and in such amount as shall be determined in the judgment or order, as per Section 533 of Chapter 9 of the Laws of Malta.

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 23rd June, 2010 in which the Court after having seen sections 18, 293, 294, 308, 309, 310(1)(a) of Chapter 9 of the Laws of Malta, on their admission found the defendants guilty of the charges brought against them and condemned them each to two years imprisonment which by application of section 28A of Chapter 9 of the Laws of Malta were suspended for a period of four years. Furthermore the Court, by application of section 28H of the said Chapter 9 of the Laws of Malta, ordered the defendants in solidum to pay the injured party Norse Management International (Malta) Limited the sum of three hundred and eight thousand Euros (€308,000) within six months. The Court explained to the defendants in ordinary language the consequences they would face should they commit another offence within the period of four years and should they fail to comply with the order of payment.

Having seen the decree of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 20th May, 2011 whereby that Court after seeing sections 28A and 28H of Chapter 9 of the Laws of Malta ordered that the judgment given on the 23rd June, 2010 in respect of the respondents Gemma Cassar and Johannes Dahlback be brought into effect.

Having seen the appeal application of the appellants Gemma Cassar and Johannes Dahlback presented in the registry of this Court on the 30th May, 2011, whereby the applicants requested this Court to reform the decision of the Court of Magistrates in the sense that whilst confirming that applicants failed to pay the amount of three hundred and eight thousand Euros (€308,000) to Norse Management International (Malta) Limited, substitute the judgment of the Court of Magistrates of effective two (2) years imprisonment, to two (2) years imprisonment suspended for four (4) years according to section 28A and 28H to applicants an extension of the period of thirty (30) days for the effective payment of the

amount indicated in terms of section 28H (5) of Chapter 9 of the Laws of Malta.

Having seen the acts of the proceedings;

Having seen the updated conviction sheet of both appellants, exhibited by the prosecution by order of this Court;

Having seen the grounds for the appeal presented by the Gemma Cassar and Johannes Dahlback which are the following:

1. That the Court did not consider the fact that once the transfer of funds to the amount of three hundred and eight thousand Euros (€308,000) is not a small sum that can be speedily settled, had to consider the bureaucratic and burdensome procedure that had to be followed to seek the necessary funds from abroad for the eventual payment of the totality of the amount to the complainant company Norse Management International (Malta) Limited;

2. That applicants presented the letter from the Capital Oil Limited dated days before the very hearing of this case, showing clear evidence that they were actually adhering to the procedure indicated above, and are now even in possession of the draft contract and other related documents between the parties which are now being exhibited during the hearing of this case and hence, in the circumstances the least the Court of Magistrates could have done, having seen that applicants were in fact following strictly the financial procedure to pay, applied article 28H(5) of Chapter 9 of the Laws of Malta to extend the payment for another period of thirty (30) days.

3. Save other aggravations;

Considers:

According to the judgement of the 23rd of June 2010, the Magistrates' Court condemned appellants to two (2) years imprisonment suspended for four (4) years subject to the order that they were to pay the sum of three hundred and eight thousand Euro (€ 308,000) to Norse Management International (Malta) Limited. According to the said judgement settlement was to be affected within six (6) months from the date of the judgement. Appellants claim they tried hard to settle this amount but did not manage to do so within the time period allotted to them.

They were then brought again before the Magistrates' Courts requesting that the Court judgement of the 23rd of June 2010 be brought into effect. The Court having seen that eleven (11) months had passed since the date of the judgement and payment had not been forthcoming, considered that it had no option but to bring the judgement given on the 23rd of June 2010 into effect.

Appellants felt aggrieved by this judgement claiming that three hundred and eight thousand Euro (€ 308,000) is not a small sum that can speedily be settled and had to consider the bureaucratic and burdensome procedure that had to be followed to seek the necessary funds from abroad for eventual payment to the complainant company Norse Management International (Malta) Limited.

Considers:

When this case came before the Court of Appeal during the first sitting of the fourteenth (14th) of June two thousand and twelve (2012) appellants demanded more time to be able to raise the necessary funds to pay the complainant company. The Court acceded to this request and adjourned the case various times for more information but still no payment had been effected, until at last on the fourteenth (14th) of June two thousand and thirteen (2013) a note verbal was entered by the appellants claiming that in spite of all their efforts they had not been able to pay. This Court feels therefore that this appeal was filed for the sole reason to gain more time knowing full well that appellants did not have the

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necessary clout or financial backing to be able to settle the amount due to the complainant company. This Court does not feel that the appellants should benefit from any more extensions for effective payment considering that they had more than the statutory thirty (30) days to do so and still did not come up with payment.

This Court, therefore, like the first Court feels it has no option but to confirm the judgement given on the 20th of May 2011 which brought into effect the previous judgement of the 23rd of June 2010.

< Final Judgement >

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