



MALTA

**COURT OF CRIMINAL APPEAL**

**THE HON. MR. JUSTICE**

**MICHAEL MALLIA**

Sitting of the 6 th March, 2014

Criminal Appeal Number. 436/2011

Appeal No: 436/2011

The Police

(Sg. Mj. John Engerer)

Vs

Celine Lee Bentley

*Omissis*

Today the 6th March, 2014,

The Court,

Having seen the charges brought against Celine Lee Bentley, holder of French Passport number 08AB87944 and *omissis*, of having:

In their capacity as directors and/or company secretary and/or judicial representatives of the company/commercial partnership 'Market Handle Limited' (C49546), having its registred address at Market Handle Building, GF Agius De Soldanis Road, Birkirkara BKR 4820, Malta and/or being the person/s responsible

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and appointed by the said company/commercial partnership to pay outstanding wages, you have failed to pay the wages due for the period commencing on the 1st September, 2010 and ending on the 8th November, 2010, amounting to €1973.30, you have failed to pay the statutory bonus due for the period commencing on the 1st July, 2010 and ending on the 8th November, 2010 amounting to €96.94, you have failed to pay the vacation leave due for the period commencing on the 1st July, 2010 and ending on the 8th November, 2010, amounting to €263.40, you have failed to pay the overtime for the period commencing on the 1st August, 2010 and ending on the 31st October, 2010 amounting to €1661.78 and you have failed to pay the weekly allowances for the period commencing on the 1st October, 2010 and ending on the 8th November 2010 amounting to €25.16, globally amounting to four thousand and twenty Euros and fifty eight cents (€ 4020.58) owed to Gilbert Mifsud, ex-employee of the above cited company/commercial partnership and whose employment was terminated on the 8th November, 2010.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta and with Regulation 22 of Legal Notice 247 of 2003, as amended by Legal Notice 427 of 2007, to order the accused to pay the penalties established by law, and in accordance with Article 45(2) of Chapter 452 of the Laws of Malta, to order the accused to pay Gilbert Mifsud the amount of four thousand and twenty Euros and fifty eight cents (€4020.58) for the reasons specified above.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature, delivered on the 25th October, 2011, whereby the Court after seeing articles 5, 22, 23, 36, 45, 46 and 47(2) of Chapter 452 of the Laws of Malta and also Regulations 8(1), 8(4) and 22 of the Legal Notice 247/2003 as amended by Legal Notice 427/2007, found Celine Lee Bentley guilty of the charges brought against her and condemned her to a fine of two hundred thirty two euro (€232) and ordered the guilty to pay the sum of four thousand, twenty euros and fifty eight cents to Gilbert Mifsud within a month.

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Having seen the appeal application presented by Celine Lee Bentley in the registry of this Court on the 31st October, 2011, whereby this Court was requested to revoke the appealed judgement and consequently acquit the appellant from all charges.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court.

Having seen the grounds for appeal:

1. In the first circumstance, it clearly results that in front of the first Court the computations prepared by the Department of Labour and Industrial Relations with reference to the alleged amount owed to an employee of the company Market Handle Limited, Gilbert Mifsud, after a report filed by the same Gilbert Mifsud are erroneous. This is due to the fact that whilst the Department of Employment and Industrial Relations worked the relative computations on the basis that the said Gilbert Mifsud availed of sixteen (16) hours of vacation leave only ( as shown by Paul Costa, representative of the Department and as result of the documents exhibited by him), in truth (as resulted from cross examination of Gilbert Mifsud) the said Gilbert Mifsud consumed at least five full days as vacation leave and especially, as he himself admitted two (2) days in March to go to Gozo for a weekend break with his girlfriend and three (3) days to go to the Mellieha village feast. He also testified that his working day was between 8.30 am and 5.00 pm with half an hour break and therefore had to work eight (8) hours per day.

Thus in reality, and contrary to what was reported by the said Gilbert Mifsud, the same Gilbert Mifsud consumed at least forty (40) hours vacation leave.

This brings all computations that were made and are reflected in the charges brought against the appellant are incorrect, do not reflect the truth and

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therefore the guilt of the appellant on the charge as deduced has certainly not been proven to the extent required by law.

For this reason alone, the appellant had to be released from any imputation and guilt.

2. Secondly , the amount of € 4,020.58 mentioned in the charge issued against the appellant does not result as due because the amounts mentioned in the charge are those of € 1973.30 (salaries) , € 96.94 (bonus) , € 263.40 (vacation leave) and € 25.16 (weekly allowance) totaling to € 2,358.80 not the amount of € 4,020.58 and therefore the charges deduced can never be proven except that they do not make sense;
  
3. Thirdly but alternatively, before the First Court it resulted that, contrary to the charges as brought against the appellant, the Gilbert Mifsud's employment had not been terminated by the company Market Handle Limited on 8 November 2010 as stated by him to the Department of Employment and Industrial Relations and as consequently shown in the charges issued against the appellant. As seen from the letter sent by the same Gilbert Mifsud to the appellant on 9th November, 2010, a copy of which is being annexed hereto and marked as document CLB1 had himself terminated his employment with effect from Wednesday 12 November 2010. Therefore the charges issued against the appellant do not reflect the truth. Consequently, all computations that were made on the part of the Department of Employment and Industrial Relations are erroneous and this because, as already stated, the employment of Gilbert Mifsud was not terminated on the 8<sup>th</sup> November 2010, but was terminated unilaterally with effect from the 12<sup>th</sup> November, 2010. Therefore imputations as inferred against the appellant certainly did not reflect the truth and have not been proven to the extent required by law.

Considers:

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It results from the evidence that appellant Celine Lee Bentley is a director of Market Handle Limited having its registered address at Market Handle Building, G F Agius De Soldanis Road, Birkirkara. This company employed some twenty (20) people and was doing good business until mid-January two thousand and nine (2009) when another company Alpha Limited applied and obtained a warrant of seizure on the premises and the property of the aforementioned company. The consignee physically removed all the furniture and appliances of the company which made continued operation difficult. One of the employees was Gilbert Mifsud who was employed between the first (1st) of July two thousand and ten (2010) and the eighth (8th) November two thousand and ten (2010). On termination, he was not paid his full entitlement and therefore reported to the Labour Office outstanding payment for wages, statutory bonus, vacation leave, overtime and weekly allowances. Christine Borg from the Employment and Training Corporation testified that Gilbert Mifsud was in fact employed by Market Handle Limited. And Paul Costa from the Labour Office testified that Gilbert Mifsud had come to talk to him and provided information on outstanding dues by the company. Mr Costa says that Gilbert Mifsud told him that he only took sixteen (16) hours of vacation leave. On the other hand Gilbert Mifsud testified that he only took three (3) days vacation leave amounting to twenty four (24) hours.

Considers:

That the defence is claiming that the amounts mentioned in the summons are not correct because vacation leave was worked out on sixteen (16) hours consumed when according to Gilbert Mifsud he had consumed twenty four (24). This makes the charge, therefore, not correct and not proved, which should lead to the discharge of the appellant.

Considers:

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That the Court does not agree with this argument. If the computation made in the summons is not correct the Court can, always at the request of the appellant make the necessary adjustments in its final judgement. If such request was made, it does not result from the records of the case where the Court, on the twenty fifth (25th) of October two thousand eleven (2011) passed judgement against appellant condemning her to a fine two hundred and thirty two Euro (€ 232) and approving the computation made on fol 8 by Paul Costa, condemned her to pay Gilbert Mifsud the amount of four thousand and twenty Euro and fifty eight cents (€ 4,020.58c).

By means of a previous judgement given by this Court against the appellant on the third (3rd) of October two thousand and thirteen (2013) this Court stated that even if there is a mistake in the first judgement this does not mean that the first judgement should be revoked. Appellant should have requested a correction and the amounts claimed so that this Court could accede to the request if justified. In this case the concluding paragraph of the application for appeal states that appellant should be discharged from the charges without requesting any correction in the amounts claimed by Gilbert Mifsud.

However, this Court feels that a slight adjustment should be made to the amount claimed to reflect the real amount of hours that Gilbert Mifsud took as vacation leave. The computation on page 8 is basically correct, bar for a slight difference of forty Euro (€ 40) to reflect twenty four (24) hours consumed vacation leave instead of sixteen which should make the total due to three thousand nine hundred and eighty Euro and fifty eight cents (€ 3,980.58). This Court finds no reason to disturb the judgement given by the first Court bar for the slight adjustment in the amount due to Gilbert Mifsud.

This Court, therefore, dismisses the appeal, confirms the judgement given by the first Court on the twenty fifth (25th) of October two thousand eleven (2011) subject to a slight adjustment of the amounts due which should read three thousand nine

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hundred and eighty Euro and fifty eight cents (€ 3,980.58) due to Gilbert Mifsud which should be paid within a month starting from today.

**< Final Judgement >**

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