



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

Magistrate Dr. Neville Camilleri B.A., M.A. (Fin. Serv.), LL.D.

**The Police
(Inspector Robert Vella)**

vs.

**Jeff Francis Hull
Eileen Ruth Hull**

Number: 989/2008

Today the 8th. of March 2016

The Court,

Having seen the charges brought against:

Jeff Francis Hull holder of Identity Card Number 40403(A)

and

Eileen Ruth Hull holder of Identity Card Number 40402(A)

charged with having:

1. in these Islands on the 6th August 2008 and previous months, by means of several acts, even if at different times, that constituted

violations of the same provision of the law, and committed in pursuance of the same design, misapplied, converting to their own benefit or to benefit of any other person, furniture and appliances of the value of over two thousand and three hundred and twenty-nine Euros and thirty-seven Euro cents (€2329.37) to the detriment of Ann Marie Saliba, which furniture and appliances had been entrusted or delivered to them under a title which implied an obligation to return such thing or to make use thereof for a specific purpose, and which furniture and appliances had been entrusted or delivered to them by reason of their profession, trade, business, management, office or service or in consequence of a necessary deposit.

Having seen the documents exhibited and all the acts of the proceedings.

Having seen the Articles of Law sent by the Attorney General on the 18th. June 2014 (*a fol. 95*):

- (a) Articles 293, 294 and 310(1)(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (b) Articles 17, 18 and 31 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having seen that, during the sitting of the 19th. June 2014 (*a fol. 96*), the Articles of Law sent by the Attorney General on the 18th. June 2014 (*a fol. 95*) were read out, during which sitting both the accused declared that they do not object for this case to be tried and decided summarily.

Having seen and read the testimonies of the witnesses brought forward by the Prosecution and the injured party.

Having seen and read the testimony of the accused Jeff Francis Hull.

Having seen that the accused Eileen Ruth Hull chose not to testify.

Having seen and read the final submissions tendered by the Prosecution and the defence (*a fol. 119 et seq.*).

Having seen that this case was assigned to this Court as currently presided on the 30th. June 2015 (*a fol. 135 et seq.*).

Having heard, during the sitting of the 6th. October 2015 (*a fol. 139*), the Prosecution and the defence exempting this Court as currently presided from re-hearing once again all the witnesses who had already been heard by this Court as otherwise presided before this case was assigned to this Court as currently presided.

Having considered

That reference will be made to the most salient testimonies heard and documents exhibited during the proceedings.

That, during the sitting of the 29th. of April 2014, **Ann Marie Saliba** testified (*a fol. 45 et seq.*) saying that there was a pending rent owed for the rental of a commercial premises situated at 160, St. Anthony Street, Bugibba. She says that she went to the police station in Qawra to report that things were missing from these premises. She says that the premises were leased to Mr. and Mrs. Hull.

Ann Marie Saliba took the witness stand once again during the sitting of the 14th. of May 2014 (*a fol. 72 et seq.*) saying that on the 21st. June 2007 she had leased her shop to the accused and that on the next due date of payment, i.e. a year later, she started chasing the accused for the next payment and after few weeks of the due date of the next payment she found the keys in the letterbox of her parents. She says that when the premises were vacated, the equipment inside was completely emptied out of the furniture and fittings. She confirmed that missing from the shop were the items listed on Doc. "RV 1" (*a fol. 58*). She also says that a year's rent was also due. She testifies that on the 29th. November 2010 an agreement was signed with the accused where the amount was put down from €20,000 to €14,000 and it was agreed that this ought to be settled by monthly payments of €400. She confirms that the whole amount was received.

During cross-examination, asked to verify whether when she went to the premises it was not completely empty but there were other things that the accused had bought and they had left there, she replies: *"I don't recall"* (a fol. 74). She says that she left the premises fully equipped and she found it empty. She does not recall if the accused left items which were not the originals but which items were bought by them as replacement. She confirms that no inventory was drawn up with the contact.

That, during the sitting of the 14th. of May 2014, Prosecuting Officer **Inspector Robert Vella** testified (a fol. 50 et seq.) saying that on the 6th. August 2008, Ann Marie Saliba reported that she was the owner and licensee of a bar situated in St. Anthony Street in St. Paul's Bay which had been leased to the accused for the year between 2007 and 2008. He says that Saliba told him that on that day she found that the accused left the key of the premises in her letterbox and that neither the electricity bills and other fees nor the rent for the past year were paid. He further testifies regarding the investigations carried out by him regarding Saliba's claims. He says that he spoke to both the accused who both released a statement. He exhibited a number of documents which were marked from Doc. "RV" to "RV 9" (a fol. 56 et seq.).

During cross-examination he says that when both the accused released the statement, they did not take any advice from a lawyer since the amendment in the law in this sense was not yet in force. He confirms that the accused co-operated. To the question: *"Now would you remember that they had explained to you that they had understood the contract to mean that what is called the premium money was actually the price of the furniture?"* (a fol. 54), he replied: *"They explained yes but it was evident even when one sees the contract that the contract stated the furniture was part of the deal as well"* (a fol. 54).

That, during the sitting of the 14th. of May 2014, **Inspector Luke Bonello** also testified (a fol. 78 et seq.) saying that on the 6th. August 2008 he was a police sergeant stationed at the Qawra Police Station on which date Saliba lodged a report with the Police, which report was exhibited and marked as Doc. "LB" (a fol. 81 et seq.).

During cross-examination, asked if he recollects whether he was informed that any furniture was actually still there to be found in the premises, he replies that apparently some minor things were still there but there was a long list of missing items. He says that all the missing items are listed in the report.

That, during the sitting of the 14th of May 2014, **Notary Dr. Rosalyn Aquilina** also testified (*a fol. 87 et seq.*) saying that she drew up a lease agreement between the accused and Saliba of the premises in question. She says that she was not asked to draw an inventory and that no inventory was presented to her. She exhibited a copy of the contract which was marked as Doc. "RA" (*a fol. 91 et seq.*).

During cross-examination, to the question: "*are we [...] in agreement that rent due on the 4th. July 2008 was the Lm13.00 per day for a whole year*" (*a fol. 89*), she replies: "*Yes in 2008 because it's still the first two years*" (*a fol. 89*).

That, during the sitting of the 14th. May 2014 (*a fol. 49*), the defence exempted the Prosecution from summoning Notary Zammit Armeni (for the confirmation of the contract exhibited and marked as Doc. "RV 7" (*a fol. 66 et seq.*)) and WPC 169 who received the PIRS Report (Doc. "LB" - *a fol. 81 et seq.*).

That, during the sitting of the 19th. June 2014 (*a fol. 96*), the Prosecution exhibited two death certificates of Maurice Monaco (*a fol. 97*) and Marianna Monaco (*a fol. 98*).

That, during the sitting of the 4th of February 2015, the accused **Jeff Francis Hull** testified (*a fol. 105 et seq.*) saying that an agreement was reached in 2007 regarding the lease of the bar in question. He says that a premium was paid for the equipment in the bar and the following day they went to amend the agreement and Mr. Monaco stated that the money paid for a premium was not a premium but was for the equipment in the bar. He says that this amounted to Lm4000, that the rent was Lm13.00 per day and that the rent was paid a year in advance. He testifies that the premises were only partly furnished and when the bar was re-opened he refurbished

the complete bar since the equipment which was left in the bar was unworkable. He says that about two weeks after the contract was signed, Ms. Monaco informed him and his wife that they could throw away anything they did not want or was not working, adding that he replaced everything. He says that he bought a new cooker, tables and chairs. He says that it was him (and not his wife) who replaced everything and that his wife had no involvement whatsoever since the premises were under his control for just under one year. He explains that since the bar was not making enough money, before the first year expired, he approach spouses Monaco asking them if he could pay the rent each month instead of paying the whole year in advance in full to which they replied in the negative and hence, in such a circumstance, the only thing he could do was to shut the bar. He says that he is being charged with taking equipment and furniture from the bar but he specifies that when he was asked to go back to amend the contract, Mr. Monaco stated to him that the money was for the equipment so he assumed that the equipment was now his (the accused's). He says that when he shut the bar, he took out the equipment which he had bought and all the equipment which was in the bar which was brand new and which he bought from his own money. He says that he left behind a brand new cooker and fridge which he bought. He confirms that in the pendency of this case an agreement was reached and everything was settled. He testifies that there was no inventory with the agreement signed and that no inventory was ever drawn up.

During cross-examination he says that two contracts were signed and that he does not have a copy of the second contract. He says that he was not given a copy of the second contract and that he cannot recall if the second contract was signed in front of the same notary or whether a notary was present. Later in his testimony he says that a notary was present. He says that he did not inform the owners of the bar that he was taking all the equipment from the establishment because he thought it was his.

During re-examination he confirms that he paid everything that was expected from him to pay. He says that he did not agree to pay the amount agreed because he was of the understanding that he

had bought the equipment in the bar but specifies that he accepted to pay that amount because he was told that it was easier to go like this.

Having considered

That this case concerns an agreement reached between both the accused and the complainant as a consequence of which agreement the accused had agreed to certain conditions. The complainant complained that a year's rent was due by the accused and that when they vacated the premises, the premises were completely emptied out of the furniture and fittings. On his part, the accused Jeff Francis Hull testifies that he was under the impression that a certain amount of money which was paid was not paid as premium but was paid for the equipment in the bar. He says that his wife, Eileen Ruth Hull, had no involvement whatsoever.

That both the accused are being charged with misappropriation under Section 293 of Chapter 9 of the Laws of Malta. The Court will proceed to examine what are the elements of misappropriation. In the case **Il-Pulizija vs. Enrico Petroni u Edwin Petroni** decided on the 9th. of June 1998, the Court listed the elements of misappropriation:

“Dana r-reat isehh meta wiehed (1) jircievi flus jew xi haga ohra minghand xi hadd; (2) bl-obbligu li jrodd dawk il-flus jew dik ix-xi haga lura jew li jaghmel uzu minnhom b'mod specifiku; (3) u minflok ma jaghmel hekk idawwar dawk il-flus jew dak l-oggett bi profitt ghalih jew ghal haddiehor.”

Hence the author of this offence should have the specific intention to convert to his own benefit or to the benefit of any other person an object which was entrusted to him or delivered to him for a specific purpose.

That the author Francesco Antolisei says:

“La vera essenza del reato [di appropriazione indebita] consiste nell'abuso del possessore, il quale dispone della cosa come se ne

fosse proprietario (uti dominus). Egli assume, si arroga poteri che spettano al proprietario e, esercitandoli, ne danneggia il patrimonio” (Manuale di Diritto Penale, Giuffrè (Milano), 1986, Parte Speciale, Vol. 1, p. 276.

That in the judgment **Il-Pulizija vs. Dr. Siegfried Borg Cole** decided on the 23rd. of December 2003, the Court of Criminal Appeal held:

*“[...F]il-kaz ta’ flus li jkunu qed jinzammu minn xi hadd biex dawn eventwalment jigu ritornati lil sidhom, in-non-restituzzjoni taghhom tista’ tammonta ghal approprjazzjoni indebita [...]. Kif jispjega Luigi Majno: **Finalmente, a costituire il delitto di appropriazione indebita è necessario il dolo. Trattandosi di delitto contro la proprietà, a scopo d’indebito profitto per sè o per un terzo, il dolo sarà costituito dalla volontarietà della conversione con scienza della sua illegittimità, e dal fine di lucro: onde colui che si appropria o rifiuta di consegnare, nella ragionevole opinione d’un diritto proprio da far valere, non commette reato per difetto di elemento intenzionale. Per la stessa ragione, e per difetto inoltre di elemento obiettivo, non incorrerà in reato chi nel disporre della cosa altrui abbia avuto il consenso del proprietario o ragionevole opinione del consenso medesimo...Il dolo speciale nel reato di appropriazione indebita è (come nel furto e nella truffa) l’animo di lucro, che deve distinguere appunto il fatto delittuoso, il fatto penale, dal semplice fatto illegittimo, dalla violazione del contratto, dell’inadempimento della obbligazione: osservazione questa non inopportuna di fronte alle esagerazioni della giurisprudenza ed ai deviazioni della pratica giudiziale, che diedero spesse volte l’esempio di contestazioni di indole civile trasportate affatto impropriamente in sede penale. Rettamente pertanto fu giudicato non commettere appropriazione indebita (e neppure il delitto di ragion fattasi, per mancanza di violenza) il creditore che trattiene un oggetto di spettanza del suo debitore a garanzia del credito; l’operaio che avendo ricevuto materia prima da lavorare, si rifiuta, perchè non pagato dal committente, di proseguire***

nel lavoro e di rendere la materia ricevuta; l'incaricato di esigere l'importo di titoli, che non avendo potuto compiere tale esazione, trattiene i titoli a garanzia del dovutogli per le pratiche inutilmente fatte allo scopo di esigere. In generale la giurisprudenza è costante nel richiedere come elemento costitutivo imprescindibile il dole".

Having considered

That the Court notes that the following result from the proceedings:

- The complainant confirmed that, during the pendency of these proceedings, she had been paid in full. She does not recall if, when the premises were vacated, the accused left items which were not the originals but which items were bought by them as replacement.
- No inventory was ever drawn up when the agreement was signed in 2007.
- The issue of the complainant seems to have been the rent due and not the missing furniture and equipment. In fact, the amount which the accused agreed to pay the complainant mostly covered the rent due.
- The Prosecuting Officer Inspector Robert Vella confirmed that when the accused released their statement, they co-operated with the Police. Whilst noting that the defence did not ask the Court to discard the statements (Doc. "RV 5" (*a fol.* 64) and Doc. "RV 6" (*a fol.* 65)) released by the accused (since these statements were released at the time when an arrested person did not have the right to consult a lawyer), and without entering into the merits of whether such request would have been acceded to or not, the Court also notes that the accused were consistent from the moment they released their statements to the moment the accused Jeff Francis Hull testified in these proceedings. The Court heard that the accused were under the impression that they had bought the furniture and the

equipment and that they could throw away any item which was not working.

That the Court notes that if reference is made to the three elements mentioned in the judgment above-referred to **Il-Pulizija vs. Enrico Petroni u Edwin Petroni** it does not result that the accused have in any way whatsoever benefitted of the items that were left in the premises and were eventually thrown away. No *mens rea* on behalf of the accused was proven. Hence, it can safely be said that the charge brought against the accused has not be sufficiently proven and hence both the accused will be acquitted from the charge brought against them.

Consequently, in view of the evidence found in the acts of the case and in view of the above considerations, the Court does not find the accused Jeff Francis Hull and Eileen Ruth Hull guilty of the charge brought against them due to lack of sufficient evidence at law and hence acquits them of the said charge.

Dr. Neville Camilleri
Magistrate

Ms. Alexia Attard
Deputy Registrar