



**Court of Magistrates (Malta)
As a Court of Criminal Judicature**

Magistrate Dr. Doreen Clarke LL.D.

Today, 14th December, 2016

**The Police
(Inspector Matthew Spagnol)**

vs

Kiflom Habtoum

The Court,

Having seen the charges against Kiflom Habtoum, bearer of Maltese Identity Card number 40245A.

Charged with having on the 12th October 2016, at 22:30hrs and/or other times, from inside hotel room number 810, Le Meridien Hotel, Triq il-Kbira St Julians committed a theft of luggage bag, clothing, laptop and other electronics and electronic devices, to the detriment of Kalyan Pawsandeeep Singh, which theft is aggravated by amount and value.

Charged also with having in the month of October 2016 and previous months:

- Not having been in possession of property of any kind, and having no other means of subsistence, and failed to show that he has habitually

endeavoured to engage in or exercise some art, trade or other occupation; and

- Led an idle and vagrant life.

Charged also with having rendered himself recidivist from a judgement of Magistrate Dr Galea Sciberras given on the 9th April 2014.

Having seen that the consent of the Attorney General for this case to be tried summarily and that the accused had no objection to the case being so tried.

Having heard the evidence of the parties.

Having seen the acts of the proceedings.

Having considered

The facts of this case refer primarily to a theft reported at Le Meridien Hotel on the 12th October 2016. On that day a guest at the hotel, Kalyan Pawsandee Singh, reported that on going back to his room he realised that his luggage and various other items were missing; amongst these were a Lenovo laptop (actually property of Easy Jet), various chargers, and items of clothing.

Inspector Matthew Spagnol, who conducted the investigation, testified that on the 12th October 2016 a report was received that a theft had taken place at Le Meridien Hotel and that on the 13th October the police were informed that the person suspected of having committed this theft was stopped by employees of the hotel; the person stopped was in fact the accused. The accused was interrogated and he admitted having been in the hotel and that he took a grey luggage; however he claimed that that luggage belonged to a friend of his, a certain David from Jamaica. When asked about the luggage he said that he had taken it to the place where he sleeps; the accused has no residence and sleeps in public places. The accused was accompanied to the place he indicated and the grey luggage was found there. This luggage was taken to the police station and opened in the presence of the accused. In it there were various items of designer clothing, various electronic devices including a Lenovo Laptop. This was switched and a warning screen indicating that the laptop is property of Easy Jet appeared on the monitor.

Stephen Bezzina head of security at the Hotel Le Meridien testified and explained that immediately on being informed of the incident he went to speak to the guest; Bezzina said that the lock of that room was faulty. He also explained that whilst he was speaking to that guest he was informed by security personnel that a person who was not a guest at the hotel had just entered the hotel and he was refusing to leave. This same person had been observed two days before at 03.00hrs in the hotel; Bezzina convinced the man to leave the hotel. Later Bezzina was seeing the CCTV footage from the hotel's security system in order to try to get information regarding the theft. On seeing the footage he saw the same person whom he had sent away from the hotel; this man was observed pulling luggage towards the lift in the same floor as the room from where items had been stolen. The police were informed and searches made but the man was not found. The guest who had suffered the theft was shown the footage and he recognised his luggage. Bezzina also explained that the following day an employee of the hotel was driving in Sliema and he saw a person whom he recognised as the man that had been observed in the CCTV footage. Bezzina immediately went to there and he saw the man he had seen the day before; a citizen's arrest was effected and the police informed. Bezzina also confirmed on oath that from the 10th to the 12th October there were only two guests with the name of David; one was Maltese and the other Italian; neither of them had a room on the floor where the accused was seen carrying the luggage.

The accused chose to give evidence. Whilst he does not deny having gone into the hotel and taking the grey luggage and all the items that were eventually found in it, he claims that those things belong to his friend David, a Jamaican, who was staying at the hotel.

The accused is being charged with three offences: theft aggravated by value, not having endeavoured to engage in some occupation, and of leading an idle and vagrant life.

From the evidence brought forward there is no doubt that a theft took place, and that the items stolen were found in the possession of

The first charge brought against the accused is that of theft aggravated by amount.

The injured party, Kalyan Singh, did not testify before this Court however the Court is satisfied that the theft took place. It is established in jurisprudence that the injured party need not necessarily give evidence in order for the Courts to find that a theft did in fact take place, provided there is other sufficient evidence in this regard¹. In this present case evidence was brought of the report filed with the police by Kalyan Singh, which report led to the launching of a Magisterial Inquiry.

One of the items reported stolen by Singh was a grey luggage. The accused was seen in the hotel, on the same floor where Singh had his room, pulling a grey luggage identical to that described by Singh. Moreover when that luggage was retrieved from the accused it contained the items reported stolen by Kalyan Singh. This is sufficient proof that the theft was committed by the accused. His allegation that the things belonged to a friend of his, a Jamaican called David, who was staying at the hotel was disproved since at the hotel there were only two persons called David: one was Maltese and the other was Italian; neither of them was staying on the floor where the theft took place and where the accused was seen with the grey luggage.

In these circumstances the Court is satisfied that it was the accused who stole the items belonging to Kalyan Singh and that he should be found guilty of theft. As to the value of the things stolen, no evidence was brought however after having seen the items (which items were exhibited in the acts of the proceedings) the Court has no doubt that their total value is more than hundred and thirty-two euro and ninety-four cents (€232.94) but it cannot be said that this value exceeds the sum of two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37). The first charge is consequently sufficiently proved.

By the second and third charges brought against him the accused is being accused of not endeavouring to engage in some art trade or profession [section 338(i)], and of leading an idle and vagrant life [section 338(w)].

Whilst from the evidence tendered it results that the accused has no place of residence and that he lives on the streets, no evidence was brought

¹ Ref II-Pulizija vs Janis Caruana Criminal Appeal 11.05.2012.

forward to show whether he has tried to engage in some occupation. Consequently only the third charge is sufficiently proved.

The final charge brought against accused is that of being recidivist. In support of this charge a judgement dated 9th April 2014 was presented. In terms of this judgement the accused was found guilty of the crime therein indicated and condemned three months imprisonment. The offences of which is being found guilty in terms of this present judgment were committed on the 12th October 2016 and consequently within the five year period stipulated in section 50 of Chapter 9 of the Laws of Malta. This fourth charge is therefore also sufficiently proved.

With regards to the penalty to be meted out the Court took into consideration the nature of the offences of which the accused is being found guilty and his conviction sheet; the Court is also taking into consideration the personal circumstances of the accused.

Wherefore the Court whilst not finding the accused guilty of the second charge brought against him and discharges him therefrom, after having seen sections 49, 50, 261(c), 267 and 338(w) of Chapter 9 of the Laws of Malta finds the accused guilty the first, the third and the fourth charges brought against him and condemns him to five months imprisonment. Furthermore and by application of section 533 of Chapter 9 of the Laws of Malta, the accused is being ordered to pay to the Registrar of this Court the sum of one thousand and one Euro and sixty one cents (€1,001.61), payment is to be effected within a month.

DR. DOREEN CLARKE
MAGISTRAT