



**COURT OF CRIMINAL APPEAL**

**JUDGE**

**THE HON. DR. DAVID SCICLUNA LL.D.**

**Sitting of Wednesday 29th November 2017**

**Appeal no. 122 / 2013**

**The Police**

**v.**

**Myriam Suzanne Arnett**

**The Court:**

**1.** Having seen the charges brought by the Executive Police against Myriam Suzanne Arnett, holder of Maltese Identity Card No. 571781(M), before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having:

(1) inside the place known as Funny Farm found in Bidnija, l/o Mosta, on the 28th July, 2009 and previous days and 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, have caused animals (dogs) under her care unnecessary pain, suffering of distress, and left the said animals abandoned without adequate food and water and did not give the said animals health care when this was so required (Art 8(2) of Chapter 439 of the Laws of Malta);

(2) on the same date, time, place and circumstances, as a person who keeps any animal or who agrees to look after animals, was not responsible enough for their health and welfare (Art 8(3) of Chapter 439 of the Laws of Malta). *omissis* alone:

2. Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 28th February 2013 whereby that Court found the said Myriam Suzanne Arnett guilty as charged and, after having seen articles 8 and 45 of Chapter 439 of the Laws of Malta, condemned her to the payment of a fine of €2,000;

3. Having seen the appeal application presented by the said Myriam Suzanne Arnett on the 12th March 2013 whereby this Court was requested to reverse the appealed judgement or vary it in the light of the punishment awarded and/or provide any other sentence which this Court may deem suitable and opportune;

4. Having seen the records of the case; having seen appellant's updated conviction sheet presented by the prosecution as requested by this Court; having heard submissions; having considered:

5. Appellant's first grievance is that the first Court did not make a correct appreciation of the facts as resulted from the proof provided. Appellant says that the first Court failed to examine her version as corroborated by the witnesses produced by the defence and also by the prosecution. Nor did the Court take into consideration that the dogs taken away were seriously ill through no fault of hers. In her application of appeal, appellant outlines the following:

"1. Whereas the version of the accused is not only credible but yet if one examines all the proof produced including the witnessing of prosecutor and Inspector Edmond Cuschieri on the 4th November 2009, the same inspector provided under oath that 'In my inspection which was carried out on the 26th September, **I did not see anything that can be described as cruelty or ill treating** .... They were kept in what you can describe as a clean environment. They were not clean as in here but they were clean.'

2. Whereas it would be good to point out that such inspection conducted by the prosecuting Inspector was a surprise visit to the Funny Farm.

3. Whereas the version provided under oath by Liliana Vassallo on the 14th June 2012, a volunteer who actually worked on the farm for four entire years provided that **'We keep our dogs there, we feed them every day, go there every day as well and we take care of them ourselves.... All the dogs were very well kept there.... Yes they were sick and they were being treated, in fact there were two which I know about are Ices and Angel Rottweiler's.... Yes they had sandfly, they were bitten by sandfly and at first they were obviously very bad**

**but then they started playing and coming around so I saw their progress while I was there, we used to go near them almost every day.'**

“4. Whereas despite the progress of the Rottweiler puppies, the Animal Welfare Association decided to put down the puppies, after they were assisted medically and taken well care of. Whereas rather than treating the Rottweiler puppies medically, the Animal Social Welfare decided to put them down. Now at this point one may ask the question: Now who is responsible here for animal cruelty?

“5. Whereas in corroboration to the Inspector’s version of facts Liliana Vassallo provided that **‘they were always clean and there was food and water, there were lots of volunteers there.’**

“6. Whereas the symptoms of the disease known as Sand-fly are hard to diagnose at first. It is hard to diagnose at first. Dogs usually become apathetic and lose weight. Other symptoms are claw lengthening, dandruff, nosebleeds, enlargement of lymph nodes, ocular problems, and loss of hair or skin ulcers. In the last stages of the disease, dogs develop renal problems that often result in the death of the animals (Cornell University, College of Veterinary Medicine, Baker Institute for Animal Health).

“7. Whereas as witnessed by Dr Patrick Caruana who was part of an animal welfare inspection performed on the 28<sup>th</sup> July 2009, the witness provided that five dogs which were confiscated were not in good welfare condition.

“8. Whereas the same witness confirmed that the dogs were receiving the correct medication. He also confirmed that the horses were in a good condition. Now why would one cater for the welfare of horses which require much more work and abandon the welfare of the dogs; such conduct would not make sense in the first place.

“9. Whereas Emmanuel Buhagiar in his witnessing on the 28<sup>th</sup> October 2011 provided that all dogs **get in the kennel.**

“10. Whereas all is based on anonymous letters and phone calls, which are far from anything close to the truth of the actual situation.

“11. Whereas Wendy Monk’s witnessing on the 5<sup>th</sup> March 2010 is in complete contrast with the same witnessing provided by her on the 9<sup>th</sup> May 2012. Whereas on the former date she provided that Sue Arnette visited the farm twice a day. Whereas on the latter date Miss Monk provided that throughout the week she never saw Mrs Arnette.

“12. Whereas in the first part of her witnessing, on the 9<sup>th</sup> May 2012, Mrs Monk provided that the horses were her responsibility when just a few minutes later she provided that *The Horses ultimately were not my responsibility.* In the same witnessing she provided that the dogs had a fairly large room as opposed to her first version of events on the 5<sup>th</sup> March 2010 where she provided that few of them had proper shelter from the sun.

“13. Whereas that with a period of a 12 hour stay four days a week as claimed by Mrs Monk , one would expect to know the entire Farm inside out when in accordance to Mrs Monk, she did not even know if there were empty rooms or not.

“14. Whereas it is very obvious that Mrs Monk’s version of events is based on a series of lies due to the fact that she wanted to get back to the appellant and vindicate the appellant due to the terrible clash between them. It is well known that a ship can only have one captain however Mrs Monk was not so keen about not being captain herself.

“15. Whereas it would be absolutely absurd for the Court to choose to believe the version of events of Mrs Monk, the same of which are based upon pure vindictive lies.

“16. Whereas the version provided by Jacqueline Laferla on the 29<sup>th</sup> October 2011 is totally contrasting, the same version of which is not only based on serious allegations and lies, but the same version contradicts itself in its entirety. At first Mrs Laferla provides that she took care of the dogs at the Funny Farm and within seconds she provided that she never took care of them and then within seconds later she said she used to take them out.

“17. Whereas in contrast to Mrs Monk’s witnessing, Laferla answered with a straight yes to the question that volunteers to clean pans and fill the water.

“18. Whereas the witnessing provided by Colin Kelly on the 5<sup>th</sup> March 2010 is totally inconceivable, the same witness first provided that such inspection was done in the presence of the police and then provided that he was not sure if there was a policeman or not. Apart from all this, he also provided in contrast to other witnesses that the kennels were big enough for the dogs.

“19. Whereas in accordance to the witnessing on the 16<sup>th</sup> March 2010, Dr Duncan Chetcuti Ganado provided that on the 8<sup>th</sup> June 2009, upon a surprise visit to the farm, **the dogs seemed to be kept in a correct manner since most were kept in a space large enough having an inside and outside area.** Therefore upon such inspection, it is being provided unlike in other versions that the dogs were kept in a proper state of welfare. Dr Duncan Chetcuti Ganado a profession under oath provided that **the allegations that were made regarding the animal welfare were not founded no action should be taken since in my professional opinion all dogs and horses were kept and looked after appropriately.**

“20. At this point a question might be asked; how can a welfare officer provide that the dogs were not in a good state because they were not given enough food when the dogs were actually suffering from sandfly?

“21. Whereas the Magazine which goes by the name Skylife, a very prominent Magazine, provided in 2008 in an article that the farm had many volunteers and the animals were used for rehabilitation. Now at this point if any of the animals were maltreated or left in a bad situation, there would have definitely been some form of report.

“22. Whereas it was also St Patrick’s Craft Centre, **in 2009** had taken children to work with animals. It had never been point out that any of the animals were maltreated on one way or another.

“23. Whereas the prosecution did not prove its case beyond reasonable doubt but rather the court seemed to rely on a couple of photos which happened to be taken at the wrong moments just for the sake of proving a case which is not an actual reflection of reality.

“24. Whereas the grade of proof provided by the appellant is sufficient for the appellant to be released from every accusation against her; whenever there is a reasonable, lurking doubt, such doubt should go in favour of the accused.”

**6.** This first grievance requires a reappraisal of the evidence produced before the first Court. In this respect our Courts have consistently held that it will not disturb the appraisal made by the first Court if not for serious reasons, such that it will review the first Court’s decision if said Court could not have reasonably and legally reached the conclusion it did.

**7.** This Court has examined the evidence tendered wherefrom it results that the running of Funny Farm was or is dependent on input by volunteers. Unless there is a sufficient number of volunteers and a roster established where each and every volunteer knows his or her responsibilities, things cannot run smoothly. It would appear that appellant started off her Farm with the objective of caring for unwanted horses. Abandoned dogs then started to be taken in, including dogs that were sick. Some dog owners even started boarding their dogs at the Farm for certain periods of time as well as dog owners who used to board them there and look after them themselves.

**8.** There are conflicting versions as to the situation at the Farm. A number of deficiencies and failings were identified by two former volunteers, Jacqueline Laferla and Wendy Monk. On the other hand, Liliana Vassallo who boards two dogs at the Farm and, together with her boyfriend, volunteers at the Farm, found nothing untoward at the Farm, even stating that the condition of the two Rottweilers that were taken away by the animal welfare officials had been improving. There is no doubt that veterinarians were from time to time called to the farm, viz. Dr Luke Sultana who was treating the Rottweilers. Interestingly, two inspections were carried out by animal welfare officials, one on the 8th June 2009 and another on the 28th July 2009.

**9.** As to the inspection carried out on the 8th June 2009, Veterinary Officer Dr Duncan Chetcuti Ganado reported:

“All animals were seen on the premises to be well kept. Overall there were about 22 horses and 19 dogs. The horses which were seen all had correctly trimmed hooves, correct body condition score, were well groomed and all seemed to be in a good state of health. All the horses had straw, water and enough shade area, together with a paddock area. Horses had been seen by various private veterinarians and given necessary treatment when required.

“The dogs were also seen to be kept in a correct manner, since most were kept in a space large enough, having an inside and outside area. There were a few dogs which had been seen to have a poor body condition score, excoriations on the face or on the ears, and one dog was lame, which were diagnosed by warranted veterinarians (according to Ms. Arnett) and treated with medication which is correct for the type of pathology diagnosed. The dogs which she said had been diagnosed with sand fly (leishmaniasis) were in a poor looking condition but are under medication and were not poor enough that they had to be euthanized.

“According to my evaluation of the situation on these premises in Bidnija, the allegations that were made regarding poor animal welfare are not founded and no action should be taken since in my professional opinion all dogs and horses are well kept and looked after appropriately.”

**10.** Another inspection was carried out on the 28th July 2009. On that occasion five dogs were removed from the Farm as, according to veterinary officer Dr Patrick Caruana, they were not in good welfare condition. Two which had sand fly, and in respect of which Dr Caruana gave appellant the option whether to continue treating or not, were taken away at appellant’s behest. These two dogs were put down. The others were starved and picked up when housed elsewhere. Dr Caruana stated that none of these dogs had any food when the inspection was carried out and there were faeces in the pens where they were held which led him to conclude that the pens had not been cleaned even in the second half of the previous day. As to the condition of the other dogs, Dr Caruana stated that they were not being fed well.

**11.** In her evidence appellant disagreed that the dogs were underfed. She also stated that the 28th July 2009 was her first day back at the Farm after a holiday. In fact when the animal welfare officials arrived she was seeing to the horses and was going to clean the dog pens in the afternoon as she normally does. She said that probably they were not cleaned by the volunteers as they would have relied on the fact that she was returning the next day. During her absence from Malta, the dogs were fed and given water by her father, Hugh Arnett. Her father confirmed that he had performed this task even on the day of the inspection,

going to the Farm at about 6.00 a.m. and leaving before 8.00 a.m., stating also that the dogs were fed twice a day.

**12.** There is no doubt that some of the dogs which appellant took in were sick or simply abandoned. However, in order to be able to cater for the number of animals' needs she had to rely on volunteers. Clearly she did not have enough volunteers and this resulted in the lack of a well-organised regime to cater for the general needs and in some cases the particular needs of individual dogs. The fact that she had been abroad just before the second inspection was carried out does not absolve her from the responsibility she had to look after the dogs which were in her care. It was certainly not enough to entrust her father with providing food and water. Who was entrusted with exercising the dogs? Who was entrusted with providing the medication? Why was the cleaning not done regularly and meticulously? Moreover, if there were dog owners who were boarding their dogs at the Farm against payment, appellant could not expect the necessary chores to be performed by volunteers.

**13.** This Court cannot however fail to note also Inspector Edmond Cuschieri's evidence wherein he stated that he inspected the Farm on the 26th September 2009. He said: "I did not see anything that can be described as cruelty or ill-treating, but I am not a vet and maybe they saw something else which I did not see. But all the dogs had food in their bowls. They were kept in what you can describe as a clean environment."

**14.** Taking everything into consideration it would therefore appear that there were instances when deficiencies and failings did occur, and this was due to a lack of proper organisation, meaning that there would be some dogs which unfortunately would suffer.

**15.** Consequently appellant's first grievance is dismissed.

**16.** Appellant's second grievance is in respect of the punishment inflicted. Appellant says:

"25. Whereas it is not the function of this Court as a Court of appellate jurisdiction to disturb the discretion of the first Court as regards the *quantum* of punishment unless such discretion has been exercised outside the limits laid down by the law or in special circumstances where a revision of the punishment meted out is manifestly warranted.

"26. Whereas in the event that this Honourable Court decides to adhere to the sentence of the first Court and imposes a fine of €2,000 upon the appellant, it can be stated clearly that the appellant will no longer afford to be able to take care of

the Funny Farm, and there would be a greater problem as to where to allocate 25 horses.”

**17.** There is no doubt that the punishment awarded falls within the parameters provided by the law as it stood at the time.<sup>1</sup> However, when taking into consideration the circumstances outlined above, and considering that this case has brought her under the authorities’ spotlight, this Court feels that it is more opportune to give appellant, who has a clean conduct record, the chance to show that she truly cares for the animals housed within her Farm and consequently apply a different method of treatment.

**18.** For these reasons the Court reforms the appealed judgement, revokes it insofar as it condemned her to the payment of a fine of €2,000, and instead discharges her conditionally in terms of article 22 of Chapter 446 of the Laws of Malta on condition that she does not commit another offence for a period of one year from today. The court explained to appellant in ordinary language that if she commits another offence during the period of conditional discharge, she will be liable to be sentenced for the original offence. The remainder of the appealed judgement is confirmed.

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<sup>1</sup> “a fine (multa) of not less than two hundred and thirty-two euros and ninety-four cents (232.94) but not exceeding forty-six thousand and five hundred and eighty-seven euros and forty-seven cents (46,587.47) or to a term of imprisonment for a period not exceeding one year, or to both such fine and imprisonment.”