



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

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

The Police

(Inspector Nikolai Sant)

-vs-

**Michael Wubshet Bekele, holder of a Maltese Identity Card number
9000111A and Residence Permit MT9804427**

Criminal Inquiry No.: 192/2017

Today, the 19th day of November, 2018

The Court,

Having seen the charges brought against the accused **Michael Wubshet Bekele** for having:

On the 21st April, 2017, between 07:45hrs and 09:00hrs in No. 48, 'La Vigne' Court, Flat No. 1, Street il-Kbira, St. Julians:

1. Committed theft of two golden rings described as (white opal ring and another with an inscription with the words sap), which theft is aggravated by value, person and place, and this to the detriment of Monica Anrried Barbier Ramirez Gaston and Jose Reynaldo Arana Gonzales;

2. With the intent to steal a watch and after having manifested such intent by overt acts which were followed by the commencement of the execution of the crime when the crime was not completed in the consequence of some accidental cause independent of the will of the offender and if the theft had occurred the value of the mentioned watch would exceed two hundred and thirty-two euro and ninety-four cents (€232.94) but less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), and this to the detriment of Monica Anrried Barbier Ramirez Gaston and Jose Reynaldo Arana Gonzales;

Having seen the Attorney General's consent so that this case be tried summarily and having heard the accused declare that he has no objection that the case be so tried.

Having heard the accused declare that he does not object to the case being tried summarily by this Court.

Having heard witnesses.

Having seen all the acts and documents exhibited;

Having heard the prosecution and defence counsel make their submissions;

Considers,

Whereas **Monica Barbieri** testified that the accused, was employed by General Cleaners, the agency the services of which she engaged for the cleaning of windows in her residence. The accused had already gone to do this work 5 or 6 times before. On the day in question after the accused had cleaned the kitchen and hall windows, he had proceeded to clean her bedroom. Since she did not allow him to enter her daughter's bedroom, the accused used to clean the windows of her daughter's room by accessing the windows from the balcony of the main bedroom. Witness describes how at one point she was sitting at a desk next to her daughter's room, thereby having the accused in her line of vision, and *"I saw him that he wanted to take it [a gold watch which was in her daughter's room] and I told him "Hey, hey""* adding that she had remained looking at him when she had seen that he had started walking in the direction of

her daughter's room.¹ There had been no reason for him to enter that bedroom since the windows had already been cleaned when the accused had accessed same through the common balcony shared by both bedrooms. When the witness went into her bedroom she realised that a ring she normally kept in a pot on her bedside table had gone missing, as was her husband's ring which was kept on the other bedside table.²

Monica Barbieri goes on to explain that when she stopped the accused from touching the watch "*He was nervous and he wanted to leave...He told me "I didn't took it"*". She then asked him to sign the paper³ which shows that work was carried out by General Cleaners in order to have proof that he was in that apartment. Witness adds that on the said day the accused had appeared worried when on previous occasions he looked happy and cleaned well.⁴ Strangely enough the witness mentions that she insisted that the accused take a yoghurt and biscuits before he left since he didn't want them.⁵ **The witness confirms that the accused was still in the house when she had remarked that the rings had gone missing, and he had denied that he took them and even showed her his shoes to see there was nothing in them.**⁶ This fact gathers relevance when the daughter testimony is examined.

The last time she had seen the ring was that very same morning and it cost around €1,200-€1,300. At no point did she see him touch the rings, only the watch. A report was filed the following day.⁷ Upon cross-examination, the witness points out that the accused was carrying a haversack and although he had taken out his pockets, he never opened the haversack and she certainly never frisked him although he had told her to do so "*I cannot touch him*".⁸ Although her wedding ring was in the same pot on her bedside table that was not touched.⁹ She explains that the gold watch was on a desk in her daughter's room next to the door which was left open. Witness confirms that the form she asked him to

¹ Fol.46-47

² Fol.47-48

³ **Dok. MP1 a fol.42**

⁴ Fol.48

⁵ Fol.49

⁶ Fol.50

⁷ Fol.52

⁸ Fol.53

⁹ Fol.54

sign had been signed on previous occasions too.¹⁰ She also confirms that once he had signed she forced him to take the yoghurt ""Take it", "Take it", "Take it"". Sometime after he had left he returned to her house to say that he never took anything "Mrs I didn't took anything".¹¹

Whereas **Maria Pia Arana Barbier**, daughter of the injured party, testified that she was in the shower when she heard her mother exclaim "*my rings, my rings*".¹² When she came out even the accused was looking for her mum's ring since at that time only one ring was noticed as having gone missing and she thought that maybe she had lost it.¹³ The accused had asked for her mother's signature on the document already mentioned and he appeared nervous and in a hurry to leave.¹⁴ This witness claims that her mother called her father to inform him that the ring had gone missing and he asked her to check whether his ring was still there; that is when they realised the second ring was gone and put two and two together, but by that time, according to this witness, the accused had already left their house.¹⁵

This is precisely where certain inconsistencies and contradictory statements become apparent. The Court notes that in the document the said witness makes mention of is that headed "Satisfactory Job Sheet".¹⁶ Whilst the daughter mentions that the asked for her mother's signature,¹⁷ the mother testifies that it was she that wanted the accused to sign to prove he had been in the house!¹⁸

However, the said document does not merely carry the accused's signature but also that of the client. The court is rather baffled by the fact that if one merely wanted to secure evidence that the accused was present in the apartment - not to underline the fact that her daughter was also home at the time and could easily attest to this - all the injured party had to do was ask the accused to sign the form, which he duly did!

¹⁰ Fol.56

¹¹ Fol.57

¹² Fol.37

¹³ Fol.38

¹⁴ Fol.39

¹⁵ Fol.40

¹⁶ Fol.42

¹⁷ Fol.39

¹⁸ Fol.48

Instead she went as far as signing the form herself clearly indicating her satisfaction with the job done but added the instruction “*Come back May 26 early in the morning*”. Further incomprehension regarding the injured party’s attitude arises given that by her own admission, immediately after she had accused Bekele of stealing from her, she proceeded to force him to take a yoghurt with him when it was time for him to leave the apartment having carried out his job!

Another inconsistency comes to the fore. Whilst the daughter explains that it was only after the accused left that her mother proceeded to check whether her father’s ring had gone missing, thus indicating that whilst Bekele was in the house the issue was only with one ring, throughout her testimony the mother makes mention of rings, in the plural, as having been noticed as missing with this happening whilst the Bekele was still very much in the house -

“Witness: I told him give me back my rings and that nothing would happen, I wouldn’t say nothing just give me my rings back”.¹⁹

Again -

“Prosecution: So am I understanding correctly that the thought “my rings, my rings, my rings” happened after he left?

Witness: No he was there when I said that.....I told Pia..my daughter, I told her “Pia, Pia, my rings” and actually I said it in English. My rings I say in English....

Court: So the accused heard you say those words

Witness: Yes”.²⁰

To this one must add that when the mother was asked by the prosecution whether she had contacted anyone before checking whether her husband’s ring had gone missing she says “No after”.²¹

¹⁹ Fol.50

²⁰ Fol.49

²¹ Fol.48

Nor does the daughter's testimony that suspicion fell upon the accused once he had left the house make much sense, given that the mother clearly states that the accused had offered for her to frisk him and showed her his shoes to protest his innocence. Moreover, he had returned to tell her he didn't steal anything.

Indeed, if the mother truly suspected the accused had put the rings in the haversack, there was nothing impeding her from calling her daughter and they would ask him to empty it. Another ploy to keep the accused in the house until he could have been convinced to do so would have been refusing to sign the form. Instead it was signed by the mother who proceeded to ask him to return the following month and he was sent off with a yogurt and cookies²² even when he refused it!!

Whereas **Jose Reynaldo Arana Gonzales**, was not present on the day these events unfolded in his house. The witness confirms that the last time he had seen the ring was from the night before.²³ It is also of significance to highlight the fact that the accused was still in the house when his wife called him to inform her that her ring was missing and it was right there and then he asked her to check whether his ring was there, so much so he indicates that the call was made between 8 and 9 am. This contradicts outright the daughter's version that her father's ring was noticed as missing after the accused left! The *Satisfaction Job Sheet* indicates that the accused delivered his services between 7:30am and 9:15am;²⁴ this corroborates the father's account.

Whereas the accused released a statement wherein he vehemently denied his involvement in the theft. He then proceeded to give details which find corroboration in the facts as presented to this Court, namely the fact that initially there was no real suspicion in his actions – **would a person suspected of theft be asked to return a month later, be certified as having done a satisfactory job and then be sent off with yogurt and cookies?** The accused states that he had asked the mother to call the police but she refused *"Moreover she stated that she was sorry in blaming me and then she told me that I could go".²⁵*

²² Fol.41

²³ Fol.31

²⁴ Fol.42

²⁵ Fol.10

Having carefully examined the evidence presented before it and the contradictory statements and inconsistencies between the testimonies of the witnesses to which reference has already been made, the Court cannot but acquit the accused of all charges brought against him given that the prosecution failed to prove its case beyond a reasonable doubt.

Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law).
Magistrate