



MALTA

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR. SIMONE GRECH**

Sitting of the 13th February 2019

The Police

vs

Godwin Kennedy

The Court,

After having seen the charges brought against Godwin Kennedy holder of identity card number 9000940A whereby the said Godwin Kennedy was charged with:

“...having on the 29th November 2016 at about 15:00hrs in Triq il-Granmastri, Marsascala drove vehicle GAU 043:

- 1. Or any other vehicle without a driver’s license;*
- 2. Also drove said vehicle without a policy of insurance or such security in respect of third party risks;*
- 3. Moreover, through imprudence, negligence and unskillfulness in your art or profession, and non-observance of the motor vehicle regulations, collided in vehicle no CBG 494 and caused involuntary damages to the detriment of Rosa Maria Spiteri;*
- 4. Moreover through imprudence, negligence and unskillfulness in your art or profession and non observance of the motor vehicle regulations, collided in vehicle no: EAZ 305 and caused involuntary damages to the detriment of Christopher Borg.*

The Prosecution requests that the mentioned person be disqualified from all his driving licenses.”

Having heard all the evidence;

Having seen all the documents presented;

Having heard final submissions;

Having seen all the acts of this case;

Considers;

First Charge:

The accused is being charged that he had no driver's license. Article 15(1) of Chapter 65 of the Laws of Malta stipulates that

Any person who -(a) drives a motor vehicle or other vehicle without a licence or an unlicensed motor vehicle or other vehicle, or in a reckless, negligent or dangerous manner, provided that no licence shall be required in relation to a bicycle; or(b) causes, suffers or permits his car to be driven by a person not duly licensed to drive a motor vehicle or other vehicle, shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding one thousand and two hundred euro(€1,200) or to imprisonment not exceeding one year.

Article 15 (3) stipulates that:

In the case of any other offence under sub-article (1), the court shall, in addition to the punishment under that sub-article, disqualify the offender for holding or obtaining a driving licence for a period of not less than eight days.

Although the prosecution did not bring evidentiary proof that the accused had no driving license, the accused admits this in his testimony given before this Court. The Court is thus satisfied that this charge has been proven.

Second Charge:

The accused is being charged that he drove the vehicle GAU 0443 without having a policy of insurance or such security in respect of third party risks. Article 3 of Chap 104 of the Laws of Malta stipulates that:

(1)Subject to the provisions of this Ordinance, it shall not be lawful for any person to use or to cause or permit any other person to use a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be,

such a policy of insurance in respect of third-party risks as complies with the requirements of this Ordinance.

(1A) It shall be presumed that there was not a policy of insurance in force in terms of subarticle (1), unless the person charged with an offence under subarticle (1) shall show the contrary through the production of a certificate of insurance issued under article 4(4).

(1B) It shall be a valid defence, in prosecution for an offence under subarticle (1), for the defendant to prove that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2) If a person acts in contravention of this article he shall, on conviction, be liable –

(a) in the case of a first offence, to a fine (multa) of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (€4,658.75) or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment;

(b) in the case of a second offence, to a fine (multa) of not less than four thousand and six hundred and fifty-eight euro and seventy-five cents (€4,658.75) but not exceeding five thousand and eight hundred and twenty-three euro and forty-three cents (€5,823.43) or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment;

(c) in the case of a third or subsequent offence, to a fine(multa) of not less than five thousand and eight hundred and twenty-three euro and forty-three cents(€5,823.43) but not exceeding six thousand and nine hundred and eighty-eight euro and twelve cents(€6,988.12) or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment, and (i) where the offence consists in the use of a motor vehicle on a road by a person who is the owner of the motor vehicle or an employee of, or a member of the family of and living with, the owner of the motor vehicle, when there is not in force a policy of insurance in respect of such vehicle as complies with the requirements of this Ordinance, the court shall, in addition to the punishments laid down in this subparagraph, order the forfeiture of the motor vehicle; (ii) where the offence, as aforesaid, is committed by any other person, the court shall, in addition to the punishments laid down in this subparagraph, impose a further fine (multa) equivalent to the value of the motor vehicle.

(2A) A person convicted of an offence under this article shall(unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of

disqualification) be disqualified from holding or obtaining a driving licence for a period of twelve months from the date of the conviction: Provided that if the execution of the judgment ordering the conviction is stayed in view of the declared intention of the person convicted to enter an appeal against such judgment, the period of disqualification shall commence to run -(a) if it is confirmed or reduced by the judgment of the Court of Criminal Appeal, from the date of such judgment;(b) if an application of appeal is not filed within the time established by law, from the day next following the day on which such time expires; (c) if the appeal is withdrawn by note, from the day when such note is filed in the court or, if the appeal is otherwise abandoned after the filing of the application of appeal, from such day as the Court of Criminal Appeal shall, on application of the Commissioner of Police or of the Authority for Transport in Malta, establish. (

2B) The provisions of article 21 of the Criminal Code and of the Probation Act, shall not apply in respect of any offence against the provisions of this article.

(3) Notwithstanding any enactment prescribing a time within which proceedings may be brought before any court, proceedings for an offence under this article may be brought - (a) within a period of six months from the date of the commission of the alleged offence; or (b) within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecution that the offence had been committed nor one year from the date of the offence, whichever period is the longer.

(4) This article shall not apply - (a) to any motor vehicle owned by the Government of Malta when such vehicle is used and employed exclusively in the service of the Government of Malta;(b) to any specified class of motor vehicles to which or to certain natural or legal persons, whether public or private, to whom the Minister responsible for transport shall by regulation direct that this article shall not apply:

Provided that any loss or injury caused in Malta or in the territory of a designated State by a motor vehicle belonging to a natural or legal person, whether public or private, in respect of whom a derogation is provided under this Ordinance from the application of subarticle (1), shall be compensated according to criteria and procedures to be prescribed by regulations by the Minister responsible for Transport made under this article.

The Court notes that although proceedings were brought by Prosecution before the lapse of 6 months from the date of the commission of the alleged offence, the accused appeared before this Court during the sitting of the 18th January 2018. He was not notified for the sitting of the 10th May 2017 and that of the 22nd

November 2017. Consequently, the case was not notified to the accused prior to the lapse of 6 months from the date of the commission of the alleged offence.

As a result, the Court does not find that the requisite of Article 3(3) of Chap 104 of the Laws of Malta was satisfied.

Third and Fourth Charges

The accused was charged with having through imprudence, negligence and unskillfulness in his art or profession and non observance of the motor vehicle regulations, collided in two vehicles and caused involuntary damages to the said vehicles.

Article 328(d) of Chapter 9 of the Laws of Malta stipulates that:

Whosoever, through imprudence, negligence or unskillfulness in his trade or profession, or through non-observance of any regulation, shall cause any fire or any damage, spoil or injury as mentioned in this sub-title, shall, on conviction, be liable -(d) in any other case, to imprisonment for a term not exceeding three months or to a fine (multa) or to the punishments established for contraventions: Provided that in the cases referred to in paragraph (d), except where damage is caused to public property, other than a motor vehicle, proceedings may be instituted only on the complaint of the injured part”.

From the evidence brought, it resulted that the two vehicles indicated in the charges indeed sustained damages due to the collision which occurred when the accused was driving the vehicle GAU 043.

It also resulted that the owners of the two vehicles were paid for the damages sustained by the owner of the vehicle GAU 043.

Decide

This Court, after having seen the articles 15(1)(a)(3) Chapter 65 of the Laws of Malta; Articles 3(1) and (3) of Chapter 104 of the Laws of Malta and Article 328(d) of Chapter 9 of the Laws of Malta; finds the accused Godwin Kennedy guilty of the first, third and fourth charges brought against him and condemns him to pay a fine (multa) for the amount of three hundred Euro (EUR 300) payable over a period of six (6) months by monthly instalments of fifty Euro (€50) starting from 1st March 2019. Furthermore the Court orders that any driving licence of the accused be suspended for a period of ten (10) days, which period starts running from midnight of the date of this judgement. The Court finds that the proceedings against the accused with regards to the second charge are time-barred in terms of

Article 3(3) of Chapter 104 of the Laws of Malta and consequently refrains from taking further cognizance of the said charge.

Dr Simone Grech LL.D.
Magistrate

Karen Falzon
Deputy Registrar