

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

**MAGISTRATE DR. JOSETTE DEMICOLI LL.D**

**The Police**

**(Superintendent Maurice Curmi)**

**Vs**

**Daniel Paul Micallef**

Case No: 459/2011

Today 8<sup>th</sup> July 2019

The Court,

Having seen the charges brought against Daniel Paul Micallef, 33 years, son of Paul and Eva nee Nevarskis, born in UK on the 10<sup>th</sup> July 1976, and residing at Block 19, Flt 3, Dingli Street, Sliema, holder of ID card number 21704L:

Charged with having in March 2011 and the previous months, in Malta committed several acts, even if at different times, constitute violations of the same provision of the law, and were committed in pursuance of the same design – misappropriated, converted to your own benefit or to the benefit of any other person, anything which has been entrusted or delivered to you under a title which implies an obligation to return such thing or make use thereof for a specific purpose, i.e the sum of over two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) to the detriment of Pokeridol Limited according to articles 18, 293 and 294 of Chapter 9 of the Laws of Malta.

Furthermore, this honourable Court is humbly requested that if the accused is found guilty, apart from the punishment prescribed by law, orders the person convicted to the payment of the cost incurred in connection with the employment in the proceedings of any expert or referee, according to article 533 Chapter 9 of the Criminal Code.

Having seen the note of renvoi sent by the Attorney General for the case to be tried by this Court and the articles of law under which there might result an offence, and having heard the accused declare that he has no objection that his case be tried summarily.

Having heard witnesses.

Having seen all the acts and documents of this case.

### **Considers**

The accused is being charged with having committed misappropriation.

From the acts and evidence brought forward<sup>1</sup>, it transpires that on the 18<sup>th</sup> March 2011, a certain Rolf Inge Kvanvik on behalf of Pokeridol Limited, an online gaming company, reported to the Police that he had recently discovered that his operational manager namely Daniel Paul Micallef had reactivated a number of unused players accounts by changing the passwords thus gaining access to the them. With his own access to the Ogame Admin Tool, which is the access tool for the gaming network which supplied Pokeridol Limited with the poker software and a player backend, the accused was able to create tournament tickets on these player accounts. Those tickets have a certain value in US Dollar and are eligible to actual real money. He used those tickets to play in these accounts and his own. Furthermore, the accused transferred these funds made out of the tickets to his own poker account and tried to withdraw the money. He used the computer which the company provided him with. There were only small winnings made by the accused which in turn he was trying to gamble and he lost. The company claimed that the accused had undercut the total amount of \$34,000.

In these proceedings Dr Martin Bajada was nominated as an expert to hear the injured party on oath and the said witness had to explain to the Court expert in the presence of the prosecuting officer and the accused the workings of the alleged misappropriation. However, this appointment was revoked because all the parties involved agreed that this should be so in order to avoid expenses.

---

<sup>1</sup> Superintendent's Testimony on the 6<sup>th</sup> July 2011 and Rolfe Inge Kvanvik's testimonies on the 6<sup>th</sup> July 2011 and 25<sup>th</sup> June 2012

In fact, it is to be pointed out that on the 23<sup>rd</sup> November 2015 the accused's lawyer exhibited a true copy of a settlement agreement<sup>2</sup> entered into by the accused, who was duly assisted by his lawyer at the time, and the *parte civile*. The parties premised the following:

*The debtor<sup>3</sup> had misappropriated the sum of 34,000US Dollars equivalent to 27,500 Euro from the assets of the Creditor<sup>4</sup> and would like to refund the same to the Creditor subject to a payment plan.*

Then there was a set-off due to the accused and the parties agreed that the amount which was certain, liquid and due is €26,200. On the day, the agreement was signed the debtor paid the amount of €5,500 and the rest had to be paid by installments.

With regards to this agreement which has been exhibited by the defence, the Court deems that it is an admissible document. Reference is hereby being made to the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature in the names of **Il-Pulizija vs Brian Buttigieg et<sup>5</sup>**

Tali dikjarazzjoni tammonta ghal dik maghrufa bhala 'extra judicial confession' li tigi spjegata kif gej mill-Prof. Anthony J.Mamo:139

*“Extrajudicial Confessions are those where the defendant either expressly confesses his guilt or makes admission of facts from which his guilt may be implied, under any circumstances other than those described in respect of judicial confessions. They may be in writing or oral. So that a confession may be received in evidence against the person who made it the law (sec.654) requires that it shall appear that such confession was made voluntarily and was not extorted or obtained by means of threats or intimidation, or of any promise or suggestion of favour. There is no presumption in law that a confession not free and voluntary is false; it is excluded on the ground that improper threats or promises may influence an accused or suspected person to say what is not true, and therefore a confession made in such circumstances cannot be safely acted upon.*

*It is obviously right that a person knowing his guilt should, if he so wishes, confess at the earliest opportunity, and there is no reason why he should be discouraged from so doing. But the law requires that the confession shall have been made voluntarily and, in the practice of our courts, the prosecution must*

---

<sup>2</sup> Dok JSF at fol 104 of the acts

<sup>3</sup> With reference to the accused

<sup>4</sup> Pokeridol Limited

<sup>5</sup> Decided on the 14<sup>th</sup> June 2017

*give affirmative 'prima facie' evidence that it was so made. The law says 'voluntarily' and not 'spontaneously'.....”*

Thus, on the basis of this agreement together with the evidence and proof brought forward, the Court concludes that the prosecution has proven beyond reasonable doubt the charge brought against the accused.

### **Considers Further**

With regards to the punishment to be meted out, the Court is taking into consideration the nature of the offence, the clean criminal record and the fact that the person charged has recognized his mistake and has started to pay what is due to the parte civile. It has transpired that he has not always been consistent with the payment plan but the injured party can proceed at law on the basis of the agreement entered into for the outstanding balance which has not clearly emerged in the acts. The amount was not negligible and hence the Court deems it proper to impose a suspended sentence.

### **Decide**

For the above-mentioned reasons the Court after having seen articles 18, 293, 294 and 310(1)(a) of Chapter 9 of the Laws of Malta finds Daniel Paul Micallef guilty of the charge brought against him and condemns him to a period of two years imprisonment which by application of Article 28A of Chapter 9 of the Laws of Malta is being suspended for a period of three years.

The Court has explained to the accused the consequences at law if he commits another crime within the operative period of this judgment.

**Dr Josette Demicoli LL.D**  
**Magistrate**