



COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR. SIMONE GRECH B.A., LL.D., Mag. Jur. (EU Law)

Case number 591/2018

The Police

(Inspector Brian Xuereb)

vs

Micheal Wubshet Bekele

Today, the 8th day of May, 2023

The Court;

Having seen the charges brought against **Micheal Wubshet Bekele**, holder of Maltese Alien Passport: 9012349 and Maltese Identity Card number 9000111A, whereby he was charged with :

1. ... *having on the 12th September 2018 and/or the days before at different times from the establishment Genki Asian Café' which is situated in the Spinola Court Complex in Mikiel Ant Borg Street, St. Julian's committed a theft of money (Eur 7992.77) with detriment to Ludwig Debono (ID:225280M) and/or other persons or*

entities such as Genki Asian Café, in which theft is aggravated by amount, time and person;

2. *and also charge him of several acts committed, even if at different times, constitute violations of the same provision of the law or of related provisions of the law, and are committed in pursuance of the same design, such acts shall be deemed to be a single offence, called a continuous offence.*

Having seen all documents exhibited;

Having seen the report filed by the Expert Keith Cutajar;

Having seen the report filed by Accountant Matthew Abela;

Having heard the evidence;

Having read out the note of the Attorney General dated 8th November, 2019, whereby the Attorney General deemed that this Court can find the accused guilty of any and all of the offences prescribed in terms of 18, 261(c)(d)(f), 267, 268(d) 270, 279(b), 280(1), 281(a)(b) & articles 15A, 16, 17, 19, 20, 22, 23, 31, 382a, 384, 385 and 533 of Chapter 9 of the Laws of Malta, and having seen that the accused had no objection that this case be heard and tried summarily;

Having seen that the accused, in reply to the question posed in terms of Article 392(1)(b) of the Criminal Code by the Court, declared that he was not guilty;

Having seen the submissions made by the defence counsel;

Considers:

PS 156, Ivan Attard gave evidence on the 25th September, 2018, whereby he explained that Ludwig Debono went to the Police Station identifying himself as Manager in Genki Asian Café to report money amounting to close to €8,000 that went missing. He testified that Ludwig Debono informed him that he had installed a hidden camera facing a black cash box, and from the footage he recognized Micheal Wubshet Bekele taking the money.

The officer testified that they went to the café, and after informing the accused about his rights, they arrested him and took him to the Police Station, where they informed him that he was suspected of theft. He added that afterwards, they took Micheal Wubshet Bekele to the café to search his locker, but no cash was found. The officer concluded his testimony by saying that from the footage, it was clear that the accused took the envelopes from the cash box, and that after closing it, he cleaned it in order to remove any fingerprints.

Ludwig Debono, in his capacity of Operation Manager of Epicurian Ltd, representing Genki Asian Café and Foodcourt, explained that after noting that monies were going missing from a black safety box, he installed a hidden camera in the stores, claiming that the amount that went missing was that of €7,992.77, and added that at the end of every shift, money was put in envelopes and secured in a black cash box. The witness explained that from the video footage, he recognized the accused, who was employed as Kitchen Helper Cleaner, taking the money from the cash box, adding that he was employed on the 13th August, 2018, and they started to find money missing from the 17th August, 2018, onwards. He told the Court that after seeing the footage, he filed a Police Report at St. Julians Police Station, and gave a copy of the footage to the Inspector.

On the 8th November, 2018, Ludwig Debono took the witness stand again, and explained to the Court that amongst his duties at Genki Asian Café, he is also responsible of the sales and reconciliation of money of the establishment, and added that from August 2018 and September 2018, the sum of approximately €8,000 went missing. He explained that as a result, he decided to have a camera installed on the black cash box situated in the store, where all the monies are held and locked, with its key being kept by the cashier on duty. The witness did explain that the store is accessible to all the staff, and from the footage obtained from the camera installed for this purpose, he noticed that the accused took envelopes containing cash from the black cash box. He explained that the black cash box was not locked well, and the accused took envelopes containing cash from it. He also said that the evidence he produced to the Inspector on USB, was a mobile phone filming that he downloaded on a laptop, and transferred to USB.

Inspector Leeroy Balzan Engerer gave evidence on the 8th November, 2018, and testified that on the 12th September, 2018, he was informed by PS1320 that Micheal Wubshet Bekele, holder of Maltese Identity Card 9000111A, employed at Genki Asian Café was caught on video stealing out of a black cash box, which footage was handed to him by PS1320 on a USB stick.

On the 8th November, 2018, this Court appointed **Keith Cutajar** as an expert, to produce still images of the relevant parts from the CCTV footage exhibited in the acts of the proceedings, and the report was filed on the 8th January, 2019. The expert testified that from an examination of the footage, he could see the accused approaching the safe a couple of times, and on one particular instance, same wore latex gloves and touched the safe and its contents, adding that it was clear that the accused took contents from the safe.

PS1320 Shaun Axiaq took the witness stand on the 21st May, 2019, and explained that on the 12th September, 2018, at around 9.30p.m., Ludwig Debono reported at the St. Julian's Police Station and informed them that monies were going missing from a small black box, held in the kitchen store at Genki Asian Café at Park Towers Supermarket, and this had been going on since the 17th August, 2018. He claimed that initially, they could not suspect of anyone in particular, given that 6 people had access to the store. Thus, he proceeded to install a hidden CCTV, from which it resulted that the accused, who was wearing gloves in his hands, was seen taking some money from the black box and putting them in his pocket. The officer testified that they were informed that the amount which went missing on that day, was that of around €400.

PC824 Cleavon Grima testified that on the 13th September, 2018, he was at St Julians Police Station and took the statement of Micheal Wubshet Bekele, whom he identified in Court and confirmed the report presented to the Court.

Considers:

That the accused is being charged of having on the 12th September, 2018, and/or the days before at different times, (i) committed theft aggravated by amount, time and person of (Eur 7992.77) with detriment to Ludwig Debono (ID:225280M) and/or other persons or entities from the establishment Genki Asian Café, which is situated in the Spinola Court Complex in Mikiel Ant Borg Street, St. Julians, and (ii) of several acts committed, even if at different times, constitute violations of the same provision of the law or of related provisions of the law, and are committed in pursuance of the same design, such acts shall be deemed to be a single offence, called a continuous offence.

That the Court notes that from the evidence brought forward, it transpires that although monies started going missing on the 17th August, 2018, the CCTV camera was installed

on the 12th September, 2018, and it was only then that the aggrieved party could confirm who was stealing the monies. Nonetheless, the Court notes that what could be confirmed with certainty, was that on that particular day, it was the accused who stole the money. Thus, the Court notes that although it has been proved beyond reasonable doubt that it was the accused who stole the monies on the 12th September 2018, the Prosecution failed to prove beyond a reasonable doubt, that the money that went missing prior to the 12th September, 2018, were the accused's doings.

As regards the value of the amount stolen on the 12th September, 2018, it transpires that Debono had testified that the amount missing on that day, was around €400. From the documents presented by the aggrieved party, and from the report prepared by the Court appointed Accountant, it resulted that the missing cash on 12th September, 2018, amounted to €644.49c.

No proof was brought as to the time when the amount of money was stolen, and therefore, the Prosecution did not prove the aggravating circumstance relating to time. On the other hand, the aggravating circumstance relating to the person, namely that outlined in Article 268(d) of Chapter 9 of the Laws of Malta, was also proven by Prosecution.

Thus, the Court examined the evidence brought forward by the Prosecution, finds the accused guilty of the charge of theft aggravated by amount and person.

DECIDE

In view of the above mentioned reasons, the Court, after having seen Articles 261(c), 261(d), 267, 268(d), 279(a) and 280(1) of the Criminal Code, Chapter 9 of the Laws of Malta, finds the accused guilty only of having on the 12th September, 2018, from the establishment Genki Asian Café situated in Spinola Court Complex, Mikiel Ant Borg Street, St Julians, committed theft of monies, which theft is aggravated by amount and person, whilst not finding the accused guilty of the remaining charges, and by application of Article 7 of Chapter 446 of the Laws of Malta, is putting the offender under a Probation Order for a period of three (3) years from today, with the conditions as stipulated in the same Probation Order herewith attached, and which forms an integral part of this

judgement. The Court is also placing the offender under a Treatment Order in terms of Section 412D of Chapter 9 of the Laws of Malta, in order for him to address any problems he may be suffering from, under those terms and conditions set out in the decree attached to this judgement, which decree shall form an integral part of this judgment.

The Court, in terms of Article 7 (7) of Chapter 446 of the Laws of Malta, has warned the offender about the legal consequences if he commits another crime within the prescribed operative period of the Probation Order, and/or if he fails to abide by one of the orders stipulated in the Probation Order, and the offender confirmed his will that he will abide by this Probation Order. The Court also explained to the offender, the consequences provided for in Section 412D (4) of Chapter 9 of the Laws of Malta, should it be proved to the Court's satisfaction, that the offender has failed to comply with any of the requirements or conditions of the Treatment Order.

The Court orders that a copy of this judgement, together with the Probation Order and the Treatment Order, be sent to the Director, Probation Services and Parole, so that he assigns a Probation Officer to be responsible for the supervision of the probationer.

The Court, after taking note of Article 533 of Chapter 9 of the Laws of Malta, orders the accused to pay the sum of €276.04c.

Magistrate Dr. Simone Grech

Janet Calleja
Deputy Registrar