



Court of Magistrates (Malta) as a Court of Criminal Judicature

THE POLICE (INSPECTOR NICHOLAS VELLA) V. DIEGO ADAIL GUTIERREZ HERNANDEZ (ID. 187537A)

MAGISTRATE: DR. VICTOR G. AXIAK

24/10/2023

THE COURT,

Having seen the charges issued against the accused:

To. Diego Adail Gutierrez Hernandez

ID. 187537A

Born : Venezuela. 16/09/1981.

Residing : 56 `The Residence` Flt.3, Triq Windsor, Sliema.

As you have been charged that on the 29th December 2022 at about 08.30hrs and before in Triq Ix-Xatt ta`Qui Si Sana, Sliema, and in these Islands,

(1). You drove Vehicle No.XQZ-136 without having a driving licence.(Sec.15(1)(a)(3) Chap.65).

(2).You drove vehicle No.XQZ-136 when you were not covered by a policy of insurance in respect of third partly risks.(Sec.3(1) Chap.104).

Having heard the witnesses summoned before it and having considered the testimony that was produced, that is, the testimony of PS 455 (affidavit), Helen Vassallo, Stephen Cachia on behalf of Transport Malta (affidavit) and of the accused himself;

Having seen all the acts of the case;

Having heard final submissions made by the Prosecution and the Defence;

Is giving the following

Judgement

From the testimony of **Helen Vassallo**, it results that on the date, at the time and in the place indicated on the summons, the accused had been driving a vehicle (Peugeot 108) with registration number XQZ 136.

From the affidavit of **Stephen Cachia** (Transport Malta) it results that on the date in question the vehicle was registered in the name of Christian Borg and the accused had no Maltese driving license.

The accused testified and submitted *animo ritirandi* a valid international driving permit and a driving license issued by the Venezuelan authorities.

In accordance with Art. 5 of Subsidiary Legislation 65.18 (Motor Vehicles (Driving Licenses) Regulations):

‘5. The holder of a driving licence issued by the competent authority in a third country may drive in Malta, for a period not exceeding twelve months from the date of his last entry into Malta, any class or description of vehicle covered by the driving licence issued to him by the competent authority in that third country...’

Given that no proof was submitted that the driver had been in Malta for less than twelve months prior to his last entry, the Court considers that the said driver was not in possession of a driving license in terms of Maltese law. It was for the Defence and not the Prosecution to prove otherwise in accordance with Art. 5 aforementioned.

The first charge has therefore been proven by the Prosecution.

With regard to the second charge, this Court has held on several occasions in line with several other court judgements on this matter (including **Police v. Emanuel Zarb** (App. Nr. 329:2010:MM, 26th March 2015) that the legislator’s intention behind Art. 3(1) of Chapter 104 of the Laws of Malta is to protect third parties and not to penalise drivers who may be in breach of an insurance policy. This Court’s position therefore was that if a valid insurance policy covering the use of the vehicle for the period in question is in force, criminal liability cannot

arise. Very recently however the Court of Appeal (Inferior Jurisdiction) has decided in a number of judgements including **Il-Pulizija v. Mohamad Knaan (Appeal Nr: 479 / 2022 CSH, 7 Feb 2023)** and **Il-Pulizija v. Xemizin McKay (Appell Numru 423/2022 EG, 24 ta' Meju 2023)**, that Chapter 104 Art 3(1) requires that the driver him/herself has to be personally covered under the insurance policy in question and that in case of an occurrence that breaches the terms of the policy (e.g. the driver not being authorised in accordance with the policy or not in possession of a driving license), criminal liability arises under the said article of the law. In light of this string of judgements the Court feels that although it is not bound by precedent it would be in the interest of justice to ensure and maintain the uniformity of case law on this matter by adopting the same position. Given that the driver was not in possession of a valid driving license then it must be considered in accordance with Art. 3(1) of Chap. 104 that there wasn't *"in force in relation to the user of the vehicle by that person ... such a policy of insurance in respect of third-party risks as complies with the requirements of this Ordinance."* In any case the accused failed to discharge the burden imposed on him in terms of law (Art. 3(1A) of Ch. 104) to prove that there was a policy of insurance in force with regard to his use of the vehicle on the day in question The second charge has therefore also been proven by the Prosecution.

Decision

For the abovementioned reasons, having seen the relevant article/s of the law (Chapter 65 Art. 15(1)(a) and Chapter 104 Art. 3(1)) the Court finds the accused guilty of the charges brought against him and fines him the amount of two thousand four hundred euro (€ 2,400).

In addition to the fine, the Court disqualifies the offender from holding or obtaining a driving licence for a period of twelve (12) months and eight (8) days (Ch. 65 Art. 15(3), Chapter 104 Art. 3(2A)).

**V.G. Axiak
Magistrate**

**Y.M. Pace
Dep. Registrar**