



**COURT OF CRIMINAL APPEAL**

**HON. MR. JUSTICE  
JOSEPH GALEA DEBONO**

Sitting of the 9<sup>th</sup> June, 2005

Criminal Appeal Number. 68/2005

**The Police.**

**(Inspector M. Haber)**

**Vs.**

**Joseph Martin Borg  
Omissis**

**The Court,**

**Having seen the charge brought against the appellant Joseph Martin Borg before the Court of Magistrates (Malta) as a Court of Criminal Judicature for having :**  
**1) on the 10<sup>th</sup> August, 2004, and on the previous dates at The Wing Wah Restaurant, St. Anthony Street, Bugibba, and in the other parts of Malta taken in his employment, or gave work to, any person who was not an exempt person and was not in possession of a**

**licence granted to him for the purpose of such employment or work under the provisions of Chapter 217 of the Laws of Malta;**

**2) in the same circumstances as an employer, who employs another person whole-time, part-time or otherwise under a definite or indefinite contract or on probation, failed to notify the Employment and Training Corporation of such employment as stipulated in Legal Notice 110 of the year 1993 (Art 3A to 10)**

**Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 7<sup>th</sup> March, 2005, whereby the appellant was found guilty as charged and condemned to pay a fine of five hundred Maltese Liri (LM500).**

**Having seen the application of appeal filed by appellant on the 16<sup>th</sup> March, 2005, wherein he requested this Court to declare the above mentioned judgement null and without effect at law since, contrary to that provided for under Section 377 of the Criminal Code, the said judgement was delivered before the hearing of the cause before the Court of First Instance was concluded or alternatively, to vary the said judgement by reversing that part of the judgement in virtue of which the Court of First Instance found the applicant guilty of the charges brought against him and condemned him to pay the sum of five hundred Malta Liri (LM500), and instead acquit the applicant from the charges brought against him by the Prosecution.**

**Having seen the records of the case;**

**Having seen the minute entered into the records of today's sitting whereby the parties agreed that, once the appellant was a Maltese speaking person, the proceedings could be continued in the Maltese Language but that the eventual judgement of this Court should be handed down in the English Language.**

**Having seen the plea raised by Dr. Anthony Barbara for the prosecution whereby he raised the nullity of the application of appeal as, in addition to a request for the judgement to be declared null and void, the appellant had requested the variation of said judgement instead of its revocation as he should have done, considering that appellant was found guilty on all counts by the First Court.**

**Having seen the minute whereby it was agreed that the prosecution's preliminary plea could only be disposed of after this Court had disposed of appellant's first request to have the judgement declared null and without effect at Law.**

**Having heard the submission made by Dr. Gabriella Vella for the appellant that appellant was basing his first request on the fact that, inspite of the fact that he had filed a note of submissions for the First Court's consideration, as evidenced from the Court Registry records, this note of submissions had been mislaid and had therefore not been considered by the First Court, as it clearly appeared from the appealed judgement itself.**

**Having seen that from the Court Registry files it results that a note of submissions had in effect been filed by appellant on the 15<sup>th</sup> February 2005, bearing cash no. 1566.**

**Having seen the minute entered in the records by the prosecution to the effect that it agreed that said note of submissions had actually been filed in the Court Registry and that, this notwithstanding this note had not been taken into consideration by the First Court, as evidenced implicitly from the judgement under appeal.**

**Having considered that the prosecution has also agreed with the first request of appellant to have the**

**judgement declared null and without effect because of the substantial procedural defect above mentioned.**

**Decides to uphold appellant's first request and is hereby declaring the judgement under review null and without effect for the above reasons and is therefore remitting the records of the case to the First Court for the case to be decided again according to law after due consideration is given to appellant's note of submissions and, if this cannot be traced in the Court Registry, it should be substituted by a duly authenticated copy thereof at appellant's Counsel's charge.**

**< Final Judgement >**

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