



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

**MAGISTRATE DR.  
EDWINA GRIMA**

Sitting of the 17 th March, 2010

Number. 1127/2008

**The Police  
(Inspector Anthony Portelli)**

**Vs**

**Siddy Sangari of 29 years son of Salif and Salmata  
nee' Samake born at Manrovia Liberia on the  
22.09.1980 and residing at no.6, Gort Street, Paceville,  
St. Julians holder of identity card number 33756A**

The Court,

Having seen the charges brought against the accused Siddy Sangari wherein he was charged with having at St. Paul's Bay on the 9<sup>th</sup> November 2008 committed theft of a laptop computer make HP which theft is aggravated by place, violence and amount which exceeds 232.94 euro, but does not exceed 2329.37 euro to the detriment of Marceline Kone and/or other persons;

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On the same date, time and circumstances caused slight bodily harm on the person of Marceline Kone as certified by Dr. R. Busuttill MD of Mosta Health Centre.

Having seen the documents exhibited.

Having heard the evidence.

Having seen the articles of law sent by the Attorney General of the 14<sup>th</sup> August 2009.

Having heard submissions by both parties.

Considers,

That it transpires from the note of the Attorney General of the 14<sup>th</sup> August 2009, that the accused is being charged mainly with committing two crimes, being the crime of theft and that of causing slight bodily harm both to the detriment of the injured party Marceline Kone.

From the evidence gathered during these proceedings it results that the accused is alleging that he was owed money by Marceline Kone. Although the accused had approached Kone several times and this in order to be paid back the money owing, Kone still refused to do so. Consequently on the day indicated in the charges, the accused decided to take matters in his own hands, called at Kone's apartment in Bugibba and after a verbal confrontation, accused decided to take Kone's laptop and this without the latter's consent. Accused maintains that he took the laptop with the sole intention of keeping it as guarantee until Kone paid him back the money owing. Upon full payment he would return the said laptop to Kone. In the scuffle which took place between the two and this when Kone tried to restrain the accused from taking his laptop, Kone alleges that he was slightly injured by accused who assaulted him with a knife which accused took out from his pocket at that moment. The knife which was allegedly used in this incident was exhibited in these

proceedings by the prosecution<sup>1</sup> and PS 659 Jeffrey Hughes was nominated by this Court to examine the said knife for fingerprints. However from the conclusions reached by the said expert in his report it transpires that no fingerprints could be found on the knife which could be used as evidence in this case since there was only one fingerprint traced on the knife which however was very faint and lacked the characteristics necessary for the purpose of comparison<sup>2</sup>. It must be stated that accused denied all throughout the investigations carried out by the police and also during his testimony before the Court that he had used the said knife in this incident and alleges that he was bitten in the chest and on his finger by Kone during the scuffle. Injured party also confirms that Sangari took his laptop as a guarantee for the money owing, however Kone denies that he in actual fact owed any money to accused.

There is no doubt, therefore, that the accused had no intention of stealing Kone's laptop. This results amply both from the accused's version of events as well as from what was stated by Kone is his testimony and when interrogated by the police. It is clear that the accused wanted some sort of guarantee for repayment of the money he alleges were owing to him by Kone. Although Kone denies owing him money however he confirms that Sangari was accusing him of being in debt towards him for the sum of Lm113 and that he also told him that he was taking his laptop as guarantee.

There is also no doubt from the evidenced tendered that a scuffled ensued between the two when the accused tried to take the laptop and that during this fight both Kone and accused suffered injuries<sup>3</sup>. Accused denies however that he had a knife and that he actually injured Kone with the said knife.

The accused is being mainly charged with theft. It must be stated that our Criminal Code does not give a definition of

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<sup>1</sup> Document IM

<sup>2</sup> Document JH at folio 55 to 60 of the court records.

<sup>3</sup> Vide Document IM2 folio 3 and photographs exhibited as Document AP4 at folio 72.

theft. Carrara gives the following definition: “**Contrectatio dolosa della cosa altrui, fatta invito domino, con animo di farne lucro.**”<sup>4</sup> Professor Mamo in his notes on Criminal Law states:

**“An analysis of this definition discloses no less than five ingredients necessary to constitute the crime of theft namely:-**

- 1. The *contrectatio* of a thing.**
- 2. belonging to others.**
- 3. made fraudulently.**
- 4. without the consent of the owner.**
- 5. *animo lucrandi.*”**

With regard to the first ingredient listed above being the “contrectatio” or the taking of the object, it is clear that the intention of the person taking the object must be a permanent one, meaning that the intention of the thief must be to appropriate himself of an object belonging to another without the intention of returning it to him. In fact our law distinguishes between the crime of theft in terms of Section 261 of the Criminal Code and the so called *furto d’uso* as contemplated in Section 288 of the Criminal Code, which crime carries the punishment established for contraventions. Therefore although there is no doubt that the object of this crime being the laptop was removed fraudulently from the possession of its owner by accused and this without his consent, however there is no evidence in the acts of these proceedings to indicate that the accused had any intention to make a gain or profit out of his actions.

In a judgment delivered on the 30<sup>th</sup> January 2003 by the Court of Criminal Appeal in its inferior jurisdiction<sup>5</sup>, the said Court emphasized the importance of this last ingredient necessary which constitutes the crime of theft, in default of which no guilty verdict may be delivered against the person being accused. In delivering its

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<sup>4</sup> Vide Criminal Appeal The Police vs Mario Tanti 09.12.1944

<sup>5</sup> The Police (Inspector Paul Bond) vs John Galea and Paul Galea

judgment the Court makes a detailed exposition of the opinions given by various jurists including amongst others Carrara, Crivellari and Professor Mamo in his Notes on Criminal Law. Quoting Carrara the Court stated:

***“Il dolo specifico del furto consiste nell’intenzione di procurarsi un godimento o piacere qualunque coll’uso della cosa altrui ... per lucro qui non s’intende un effettivo locupletazione ma qualsiasi vantaggio o soddisfazione procurata a se stesso.”***

Quoting Crivellari the Court further added:

***“l’elemento intenzionale nel furto non si costruisce già col solo animo di prendere ma’ coll’animo di lucrare.”***

Therefore the Court reached the conclusion that the *animus lucrandi* is negated if the thing is taken and carried away in the exercise of a pretended right, in which case one may have in the appropriate circumstances the offence contemplated under Section 85 of the Criminal Code being the arbitrary exercise of a pretended right.

Quoting Maino the Court in the said judgment stated:

***“Se la sottrazione della cosa altrui e’ commessa o per pagarsi di un credito o per compensarsi di un danno, o per esercitare sulla cosa un diritto ancorche controverso, esula del fatto per commune consenso degli scrittori, e pel concetto dell’articolo in esame l’imputabilita’ a titolo di furto. ... Ricorrendo gli altri estremi voluti dall’articolo 235 cod.pen. non sara’ dunque applicabile il titolo di furto, ma quello di raggion fattasi a chi prende una cosa del suo debitore per rivalersi o garantirsi del suo credito ... e’ cio’ perche in tali casi la coscienza del diritto esclude il dolo del furto, sostituendo al proposito di procurarsi un illecito profitto, quello di evitarsi un danno.”***

Considers,

That the Court, after having examined in detail the acts of the case with particular reference to the moment of the *contrectatio* finds that on a balance of probabilities the acts committed by the accused were an exercise of pretended rights as contemplated in Section 85 of the Criminal Code and not the crime of theft as indicted by the Attorney General in his note of the 14<sup>th</sup> August 2009. The intention of the accused was to make good for the loss incurred by him and not to make any gain or profit by the *contrectatio* of the object taken from the possession of injured party. Consequently due to the lack of the *animus lucrandi* in the commission of the crime, the accused cannot be found guilty of theft as contemplated in Section 261 et.seq. of the Criminal Code.

Considers further,

That the accused is also being charged with committing slight bodily harm to Marceline Kone. From the acts of the case it results that a scuffle ensued between accused and injured party after the accused decided to take the laptop belonging to Kone. The accused alleges that he was bitten several times by Kone and in fact the photographs taken during the course of the investigations carried out by the police are evidence of such a fact. Even Kone himself admits to having bitten accused, but this only after being allegedly attacked by accused. In fact it results that Kone suffered slight injuries as results from the medical certificate exhibited during these proceedings as confirmed by Dr. Rudolph Busuttill. There is reasonable doubt whether a knife was actually used by accused during the struggle, and this both due to the conflicting evidence given by Kone and the accused and also due to the fact that no fingerprints could be found on the said knife by the court nominated expert. However there is no doubt that accused actually used physical violence on Kone and this in order to forcibly take the laptop from the latter's possession when he refused to hand it over voluntarily. It therefore results that accused caused injuries of a slight nature on the person of Marceline Kone.

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Consequently the Court after having seen articles 214, 215 and 221 of Chapter 9 of the Laws of Malta, acquits the accused from the first charge brought against him, finds him guilty of the second charge and condemns him to pay a fine of €100.

**< Final Judgement >**

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