



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
AUDREY DEMICOLI**

Seduta ta' l-10 ta' Mejju, 2013

Numru. 810/2010

**Police
(Spettur Edmond Cuschieri)**

vs

Michael Olutayo Ajibode

The Court,

Having seen the accused Michael Olutayo Ajibode of 37 years old, son of Oyedele and Oluwaronice Ololade, born on the 19th March 1973 in Nigeria and holder of Maltese id card with number 26114A and Nigerian Passport with number AO1662950 and residing at Pegsasu Flt 4, Triq l-Alka, San Pawl il-Bahar was arraigned before it and charged with having:

On the 3rd August 2010 and on the previous days and months from inside the Jason's Garage of Zhuber Street Mosta, he committed several acts, even if at different

times, but which acts constitute violations of the same provision of the law, and are committed in pursuance of the same design he stole an amount of money which exceeds the sum of €2329.37 to the detriment of Jason Muscat or other persons which theft is aggravated by value and person as per sections 18, 261, 268(b) and 279(b) of chapter 9 of the Laws of Malta.

Having seen all documents and records of the procedures including the note filed by the Attorney General (folio 160) dated 28th February 2011 whereby he transmitted acts and records of the preliminary investigation to be heard and decided as by this Court as a Court of Criminal Judicature and whereby he deemed that from the preliminary investigation there might result an offence or offences under the provisions of:-

- (a) Articles 18, 261(c), 261(d), 267, 268, 279, 280(1), 281(a) of Chapter 9 of the Laws of Malta;
- (b) Articles 31 and 533 of the Laws of Malta.

Having seen that on the 3rd June 2011 (*a folio* 161) the accused declared that he had no objection that his case is heard summarily and decided by this Court as a Court of Criminal Judicature.

Having heard the final submissions made by the Prosecution and the Defence Counsel.

Having considered:

The facts of this case are briefly as follows. The accused was a friend of a certain Jason Muscat. The latter is a mechanic and the owner of a garage called 'Jason's Garage' in Znuber Street, Mosta. The accused used to occasionally go to the said garage and carry out some chores for Jason Muscat. The latter gave evidence on the 10th August 2010 and explained that he kept a black pouch on a shelf whereby he put cash, cheques and other important documents. The witness explained that from the beginning of January 2010 he started realizing that cash was going missing from his pouch. He said that at

first he thought that he was spending a lot of money and subsequently he asked his wife whether she was taking any money from his pouch and when she replied in the negative he decided to install another CCTV camera on the premises and he started counting the money in the pouch before and after the accused came on the premises. Jason Muscat said that he calculated that in all the sum of €6,000 had been taken from the pouch. The said witness said that on the 2nd August 2010 the accused had gone to the garage and Isabelle Muscat, Jason Muscat's wife, had seen him opening the pouch while she was hiding under the stairs. Muscat said that on that occasion the camera pointing at the shelf where the pouch was had not been installed but there was a recording showing the accused going around the car near the shelf. He said that on this occasion he found €130 missing. He also said that the day before he had found another €50 missing. On the 4th August 2010, the day when the report was filed with the Police, Jason Muscat said that he had left no money in the pouch and while he was talking to someone in the doorway the camera caught the accused approaching the shelf and opening the pouch. Jason Muscat said that on that day he had confronted the accused and shown him the recording and the latter had at first accepted to give him back €180 and then he offered to pay back the sum of €700 in instalments of €30 a week.

When the accused was interrogated by the Police on the 5th August 2010 he released a statement whereby after explaining that he had been living in Malta since 2003 and saying that he had been married to a Maltese woman, Lydia Mousu, but was in the process of separating from the said woman and after explaining that he was presently employed with Methode Electronics, denied having ever stolen any money from Jason Muscat's garage. He said that he had known Muscat for around five years and used to go and help him out in the garage. When confronted with the fact that there was a CCTV recording showing him touching the pouch containing the money the accused did not deny touching the pouch but explained that he frequently touched the pouch because Muscat would ask

him to get him some papers or put some papers in it. He also said that on the day whereby there was a recording of him touching the pouch he had touched it to place a paper underneath it while he was in the process of clearing up the desk. The accused however categorically denied having ever taken any money from the pouch. When the accused was asked to explain why he had accepted to pay back Jason Muscat the sum of €800 if he had not taken anything from the pouch he maintained that he had done so because he was afraid because Jason Muscat accompanied by his friend who was a big guy had locked him up in the garage and Muscat had broken his glasses and threatened to kill him so when Jason's friend started shouting and told him to arrange things with Jason he accepted to pay back the sum of €800 suggested to him. When the accused was asked why he had reiterated his offer to pay back the sum of €700 or €800 to Muscat in front of the Police and he had failed to mention anything about threats, the accused replied that he thought he would say these things when the Police interrogated him. The accused chose to give evidence during these proceedings whereby he repeated the same things he had said in the statement but he also alleged that Jason Muscat was making these allegations because he was a friend of his ex wife and the latter wanted to get him into trouble. He explained that his ex wife had in fact phoned up his employers to inform them about these proceedings and he had ended up losing his job. The accused also stated that the CCTV recording given to the Police by Jason Muscat had been edited and the Inspector was well aware of the fact. He also said that he had accepted to pay the €700 for repairs which Muscat had carried out on his car.

In these proceedings the Court is faced with conflicting evidence whereby on the one hand Jason Muscat maintains that the accused stole €6,000 over a period of months from a pouch which he kept on a shelf in his garage whilst on the other hand the accused has always maintained that he never took any money from the pouch. The Court noted that the CCTV recordings produced as evidence by the Prosecution do not show the accused

actually taking anything from the pouch. Moreover Dr. Steven Farrugia Sacco the expert appointed by the Court to examine the CCTV footage clearly indicated in his report exhibited a folio 64 et sequitur of the acts of these proceedings that the recording had been edited and was therefore not in its raw format and he underlined the fact that on the said recording the time and date (stamp) of when the footage was taken does not appear, nor does the camera number. Dr. Steven Farrugia Sacco also indicated that the item that appears on the screen is most probably a result of the editing. In view of these conclusions the Court feels that it cannot give any weight to the CCTV footage. The Court deems that the Prosecution cannot be deemed to have proven to a level of beyond reasonable doubt that the accused stole money from Jason Muscat on the date and times indicated in the charge sheet. He therefore cannot be found guilty of the charges brought against him.

For the abovementioned reasons the Court declares the accused as being not guilty of the charges brought against him and consequently acquits him from the said charges.

< Sentenza Finali >

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