



MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE

MICHAEL MALLIA

Sitting of the 6th March, 2014

Criminal Appeal Number. 250/2012

Appeal No: 250/2012

The Police

Vs

Celine Lee Bentley

Omissis

Today the 6th March, 2014,

The Court,

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Having seen the charges brought against the accused Celine Lee Bentley, holder of French Passport Number 08AB87944 and *Omissis*, in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having:

In your capacity as director and/or company secretary and/or judicial representative of the company/commercial partnership: 'Market Handle Limited' (C4956), having its registered address at Market Handle Building, GF Agius De Soldanis Road, Birkirkara BKR4850, Malta and/or being the person responsible and appointed by the said company/commercial partnership to pay outstanding wages, you have failed to pay the wages due for the period commencing on the 6th September, 2010 up to the 30th November, 2010, amounting to €1952.05, you have failed to pay the statutory bonus due for the period commencing on the 6th September, 2010 up to the 30th November, 2010, amounting to €43.42, you have failed to pay the vacation leave due for the period commencing on the 6th September, 2010 up to the 30th November, 2010, amounting to €157.80 you have failed to pay the weekly allowance due for the period commencing on the 6th September, 2010 up to the 30th November, 2010, amounting to €39.83, globally amounting to two thousand, one hundred and ninety three euros and ten cents, (€ 2193.10) owed to Stephanie Cutajar, ex-employee of the above cited company/commercial partnership and whose employment was terminated on the 21st December, 2010.

The court was respectfully asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta and with Regulation 22 of Legal Notice 247 of 2003, as amended by Legal Notice 427 of 2007, to order the accused to pay the penalties established by law, and , in accordance with Article 45(2) of Chapter 452 of the Laws of Malta, to order the accused to pay Stephanie Cutajar, the amount of two thousand, one hundred and ninety three euros and ten cents, (€ 2193.10), for the reasons specified above.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature, delivered on the 15th May, 2012, wherein the Court, after having seen the articles, 5, 22, 23, 36, 45, 46, and 47(2) of Chapter 452 of the Laws of Malta, and also Regulations 8(1), 8(4) and 22 of the Legal Notice 247 of 2003 as amended by

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the Legal Notice 427 of 2007, found the accused Celine Lee Bentley guilty as charged and condemned her to pay a fine (multa) of two hundred and fifty euros (€250) and condemned her to pay the sum of two thousand, one hundred and ninety three euros and ten cents, (€ 2193.10) to Stephanie Cutajar within a month.

Having seen the appeal presented by Celine Lee Bentley in the registry of this Court on the 21st May 2012 whereby this Court is requested to cancel and revoke the appealed judgment and consequently release the appellant from any imputation and guilt.

Having seen the acts of the proceedings;

Having seen the updated conducts sheet of the appellant, presented by the prosecution as requested by the Court;

Having seen the grounds for appeal as follows:

1 . The appellant cannot be found guilty of the charges brought against her as the amount advertised as being due wages, as resulted from the testimony of the representative of the Department of Labour and Industrial Relations , Paul Costa , the amount advertised by the employee Stephanie Cutajar these proceedings and the amount that appears on the payslips is different as different systems were used for computation. This is the field of criminal law, where each charge must be proven beyond any reasonable doubt and any doubt should go in favour of the accused. In this case, Paul Costa himself testified in cross-examination, that the amounts indicated in the charge against the appellant did not exactly reflect the amounts indicated in the slips, as different computation systems were used. This is enough to cast a doubt as to whether the charges brought against the appellant is well founded. In this respect, the appellant had be released from any imputation and guilt. Moreover, from the document PC1 exhibited at page 16 of the acts of the proceedings, the advertised salary for the month of October 2010 stated "as per timesheet" has not been justified and has not been proven as no "timesheet" was ever exhibited. The prosecution was required to prove his case beyond reasonable doubt but nonetheless failed to substantiate its claim by presenting a document or rather it

Informal Copy of Judgement

only referred to the alleged "timesheet". In the absence of such a document, the first Honourable Court should have acquitted the appellant, as the charge has not been duly proven to the extent required by law. Furthermore, the amount stated in the charge against the appellant is not correct as Stephanie Cutajar did not declare the days availed of as vacation leave when she was still employed with the Market Handle Company Limited. The defendant Donald Micallef testified before the first Honourable Court and explained that the computation contained in the charge is also wrong since there were days that the employee Stephanie Cutajar had availed of as vacation leave but failed to declare this with the Department of Labour and Industrial Relations. In this respect, the appellant argues that she should be released from any imputation and guilt.

That appellant Celine Lee Bentley is a director of the commercial partnership Market Handle Limited having its registered address at Market Handle Building, G F Agius De Soldanis Road, Birkirkara. The company was doing good business until mid January two thousand and ten (2010) when it received a warrant of seizure where all the movables, furniture and appliances at the offices of the company were seized by a consignee and removed from the premises. The company had employed some twenty (20) people. One of these was Stephanie Cutajar who was employed between the sixth (6th) of September two thousand and ten (2010) and the twenty sixth (26th) of December two thousand and ten (2010). But on her termination she was not paid wages, statutory bonus, vacation leave and weekly allowance to the amount of two thousand one hundred ninety three Euro and ten cents (€ 2193.10c).

By judgement given on the fifteenth (15th) of May two thousand and twelve (2012) the Magistrates' Court found appellant guilty as charged, condemned her to a fine of two hundred and fifty Euro (€ 250) and ordered that the sum of two thousand one hundred ninety three Euro and ten cents (€ 2193.10c) be paid to Stephanie Cutajar within a month. Appellant felt aggrieved by this judgement and filed an appeal claiming in a most generic manner that the amount claimed in the summons is not correct. Therefore the charge is not proved beyond a reasonable doubt and appellant should be discharged.

Considers:

The Court does not agree with this argument. To start with Stephanie Cutajar gave evidence stating that she was employed by the company between the sixth (6th) of September two thousand and ten (2010) to the twenty sixth (26th) of December two thousand and ten (2010). She never requested vacation leave and when she reported the matter to the Labour Office she showed Mr Paul Costa who was dealing with her case all the payslips that she had received from the company between November and September. She confirmed that statement filed in the records of the case at page 16 claiming the amount to be correct. Appellant, however is stating that Stephanie Cutajar is claiming a number of hours that she did not work. She used to come in early and do nothing. But appellant did confirm that Cutajar did not request an leave during her term of employment with the company. Appellant is also claiming that no time sheets were ever produced and the system of computation used by the Department may be different from that of appellant so the computation worked out by the Department was not correct. Paul Costa from the Department of Industrial and Employment Relations whilst confirming that the Department system of computation may be different from that of appellant, confirmed that an adjustment of three Euro cents (€0.03c) could be made to the total amount shown on the document at fol 16.

Considers:

To start with the Court does not feel that it should disturb the amounts shown in the documents above mentioned. If appellant wanted to contest that amount she should have at least provided a document showing the amount as claimed by her. It is enough for the appellant to prove her case on a basis of probability. However she did nothing of the sort and just claimed in a very generic manner that the amounts shown are not correct. Stephanie Cutajar confirmed on oath the amount as correct and this Court does not find any reason why it should vary the amount claimed.

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This Court does not take kindly to generic statements made by the debtor - in this case appellant - that the amounts due are not correct without having at least documentary evidence satisfying this Court on the basis of probability that the amount claimed is not correct. Even if this were so, the Court would only make the necessary adjustment to the amount due to Stephanie Cutajar but would not discharge the appellant from the charge brought against her. In this case the Court feels that the arguments brought by the first Court are reasonably and legally correct in which case the judgement stands.

For these reasons the Court dismisses the appeal and confirms the first judgement.

< Final Judgement >

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