



MALTA

**COURT OF CRIMINAL APPEAL**

**THE HON. MR. JUSTICE**

**MICHAEL MALLIA**

Sitting of the 6<sup>th</sup> March, 2014

Criminal Appeal Number. 251/2012

Appeal No: 251/2012

The Police

Vs

Celine Lee Bentley

*Omissis*

Today the 6<sup>th</sup> 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 1<sup>st</sup> October, 2010, up to the 1<sup>st</sup> February, 2011, amounting to €2746.79, you have failed to pay the statutory bonus due for the period commencing on the 1<sup>st</sup> October, 2010 up to the 1<sup>st</sup> February, 2011, amounting to €91.76, you have failed to pay the weekly allowance due for the period commencing on the 1<sup>st</sup> October, 2010 up to the 1<sup>st</sup> February, 2011, amounting to €82.02 and you have failed to pay the notice due for the period commencing on the 2<sup>nd</sup> February, 2011 up to the 8<sup>th</sup> February, 2011, amounting to €208.85, globally amounting to three thousand, one hundred and twenty nine Euros and forty two cents, (€ 3129.42) owed to Ruth Busuttil, ex-employee of the above cited company/commercial partnership and whose employment was terminated on the 1<sup>st</sup> February, 2011.

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 Ruth Busuttil, the amount of three thousand, one hundred and twenty nine Euros and forty two cents, (€ 3129.42), for the reasons specified above.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature, delivered on the 15<sup>th</sup> 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 three thousand, one hundred and twenty nine Euros and forty two cents, (€ 3129.42) to Ruth Busuttill within a month.

Having seen the appeal presented by Celine Lee Bentley in the registry of this Court on the 21<sup>st</sup> May 2012 whereby this Court is requested to cancel and revoke the 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 could not be convicted that she failed to pay wages, statutory bonus and Weekly allowance up to the 1<sup>st</sup> February, 2011. Nor could she be convicted that she failed to pay the notice period starting on the 2<sup>nd</sup> February, 2011 and 8<sup>th</sup> February, 2011. This is due to the fact that, as has been amply demonstrated before the first Honourable Court, the company Market Handle Limited, in which the appellant is director, had stopped its operations in mid January, 2011 when a third party executed a precautionary warrant of seizure and elevated all objects that that company had its registered office is inside in Birkirkara. This was the reason why all the employees that were at the time working with the company Market Handle Limited were terminated in mid-January, 2011. This is acknowledged and accepted by the same employee Ruth Busuttill during her cross- examination. In this respect, the charge against the appellant as deduced not only cannot be proven to the extent required by law but was even contradicted by the same employee Ruth Busuttill. The said employee did not remain employed with the company Market Handle Limited until the 1<sup>st</sup> February, 2011. From the document exhibited at fol . 16 of the acts of the proceedings it results that the reason for the termination of the employee Ruth Busuttill was precisely that "business closed down". It resulted before the first Honourable Court that the operation ceased or "closed down" in mid

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January, 2011 and therefore the said employee Ruth Busuttil, was incorrect in asking wages, statutory bonus and weekly allowance up to the 1<sup>st</sup> February , 2011. Therefore, since all the computations contained in the accused were drawn against the appellant based on the assumption that the employee Ruth Busuttil, remained employed with the company Market Handle Limited up to the 1<sup>st</sup> February 2011, the assumption is wrong and consequently all computations are wrong. It results that the employee Ruth Busuttil remained working with the company Market Handle Limited until the warrant of seizure was executed or rather up to mid-January, 2011 and not up to the 1<sup>st</sup> February, 2011. It is therefore erroneous to state that the employee Ruth Busuttil has to be paid up to the 1<sup>st</sup> February, 2011 when it is clear that the employment was terminated before because of the above mentioned circumstances. In this respect, the charges as deduced against the appealed have not been proven and therefore the appellant should be acquitted from any imputation and guilt;

2 . In the alternative and without prejudice to the ground on the merits , the appellant contends that the charge drawn against has not been proven to the extent required by law. It was rather contradicted by evidence whereas, in the Maltese version of the charges, it is stated that the employment of Ruth Busuttil was terminated on the 1<sup>st</sup> February, 2010, while the appellant was accused of not paying wages , bonus and Weekly statutory allowance to on the 1<sup>st</sup> February, 2011;

Considers:

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 in business up to the tenth (10th) January two thousand eleven (2011). On that day it received a warrant of seizure and the consignee removed all the furniture and appliances from the offices of the company so that it could not operate anymore. However, during its term of operation the company employed some twenty (20) people. One of these was Ruth Busuttil who was employed by the company between the twelfth (12th) of October

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two thousand and ten (2010) and the eighth (8th) of February two thousand eleven (2011).

By means of a 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 she pay Ruth Busuttill the sum of three thousand one hundred twenty nine Euro and forty two cents (€ 3129.42c) within a month. Appellant felt aggrieved by this judgement and filed an appeal claiming that she should not be held responsible because after the tenth (10th) of January two thousand eleven (2011) the company could not operate after a Court order and therefore no payments could be affected after that date.

Considers:

Ruth Busuttill gave evidence stating that after the tenth (10th) of January two thousand eleven (2011) there was no place of work left in the premises. She did however report for work until her employment was formally terminated on the eighth (8th) of February two thousand eleven (2011). She confirmed the statement as shown on page 14 in the records of this case claiming the amount of three thousand one hundred twenty nine Euro and forty two cents (€ 3129.42c).

Considers:

That the amounts shown on the statement on page 13 are not really contested by the appellant. She just states that the statement goes beyond the tenth (10th) of January two thousand eleven (2011) when the company ceased to operate and therefore the workings should be adjusted to reflect the difference in the dates. However, this Court does not believe that this argument should be accepted. In spite of the fact that a warrant of seizure was served on the company on the tenth (10th) of January two thousand eleven (2011) the company kept operating and keeping its employees in employment until, in the case of Ruth Busuttill, this was terminated on the eighth

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(8th) February two thousand eleven (2011). Appellant is claiming that the termination date is just an administrative procedure. This Court does not think so, as the termination date has got its importance in determining the exact amount that an employee is due for amounts not paid. If the company was not in a position to affect payments after the tenth (10th) of January two thousand eleven (2011) it should have ceased operations there and then, terminating the employment of all its employees and proceeded accordingly. But the company did not do that. The employees were all given different dates of their termination of employment which means therefore that appellant as a director of the company, should be held responsible up to the date of termination.

Ruth Busuttill confirmed on oath as to the accuracy of the statement at page 13. If appellant feels that this statement is not correct she should have provided evidence at least on a basis of probability that the amounts shown are not correct. However, she did nothing of the sort and relied on generic arguments to try and disprove the claim made by Ruth Busuttill. The Court does not take kindly to generic statements left in midair without being supported at least on a basis of probability by statements and documentation proving that the claim by the Prosecution is not correct. In this case appellant just stated that the Prosecution did not justify the level of proof required for a conviction because the amounts shown on the charge are not correct. This Court does not believe this argument to be correct and the first Court on the basis of the evidence and documents filed before it arrived at a reasonable and legal conclusion in which case its discretion should not be disturbed.

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

**< Final Judgement >**

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