



MALTA

**COURT OF MAGISTRATES (MALTA)**  
**AS A COURT OF CRIMINAL JUDICATURE**  
**MAGISTRATE DR.**  
**CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 9<sup>th</sup> June, 2014

Number. 247/2006

**Sections 18, 49, 50, 293, 294, 310(1)(a) of Chapter 9 of the Laws of  
Malta**

**Magistrate**

**Dr. Consuelo Scerri Herrera LL.D. DIP. MATR. (Can)**

**The Police**

**(Inspector Angelo Gafa')**

**vs**

**OMISSIS**

**JOSEPH FARRUGIA**

**BILJANA VLAHOVIC NEE' KERIC**

**The Court,**

Having seen that omissis and the accused **JOSEPH FARRUGIA**, 39 years old, born in Birguma on 28<sup>th</sup> February 1967, son of Saviour and Josephine nee' Sciortino, residing at 'Ilwien', Wied Anglu Street, Birguma, and holder of identity card number 186467(M), and

The accused **BILJANA VLAHOVIC nee' KERIC**, 44 years old, born in Jugoslavia on 7<sup>th</sup> January 1962, daughter of Branko and Mirjana nee' Babic, residing at Block C, Flat 3, Tas-Sigra Complex, 259, Swieqi Road, Swieqi and holder of identity card number 12582(A), were charged:

That in these Islands, in April 2003, and preceding months, by means of several acts, even if at different times, that constituted violations of the same provision of the law, and committed in pursuance of the

same design, their capacity as directors of JBC Trading Ltd (C16463), misapplied, converting to their own benefit or to the benefit of any other person, the sum of sixteen thousand, eight hundred and five Maltese Liri and seventy nine cents (Lm 16,805.79) to the prejudice of Active Travel Ltd (C14862), which sum had been entrusted or delivered to them under a title which implied an obligation to return such thing or to make use thereof for a specific purpose, and which sum of money had been entrusted or delivered to them by reason of their profession, trade, business, management, office or service or in consequence of a necessary deposit.

Joseph Farrugia alone, for having thus become a recidivist in terms of Article 49 *et sequitur* of the Criminal Code with a Court judgement delivered by the Magistrates' Court dated 27<sup>th</sup> March, 2003, which judgement has become absolute.

Having seen all the evidence and documents exhibited in the acts of these proceedings by the Prosecution including the birth certificate of the accused Joseph Farrugia marked as documents AG 2 and a copy of the Identity Card of Biliana Vlahovic marked as dokument AG 3 and the conviction sheets of both accused marked as documents AG 4 and AG 5.

**Inspector Angelo Gafa'** on the 22<sup>nd</sup> of June, 2007 gave evidence under oath and stated that the investigations started following a

letter of complaint dated 10<sup>th</sup> October, 2003 signed by Dr. Reuben Micallef. At that time the investigations were conducted by Former Police Inspector Helga Debono but since then the said Inspector has left the Police. Inspector Gafa' stated that when he resumed responsibility of this case, he had started the investigation from scratch. Dr. Reuben Micallef on behalf of Active Travel Limited alleged that the same company had been defrauded of the sum of around sixteen thousand eight hundred and five Maltese Liri and seventy nine cents (Lm16,805.79c) by J B C Trading Limited. Stephen Fenech explained that an agreement was reached between Active Travel Limited and Travel of Travel Agency which was then managed by J B C Trading Limited which entailed that Active Travel Limited which was an A T A Licensed Agency supplies Air tickets to Travelogue of Travel Agency. On its part Travel of Travel Agency non ATA Travel Agency agreed to sell these tickets to its clients and following a deduction of six percent commission the revenue earned will be forwarded to Active travel.

It appeared that everything functioned well but between the 17<sup>th</sup> of February and the 17<sup>th</sup> of April, 2003 Travelogue was delaying payments so much so that the sum of sixteen thousand eight hundred and five Maltese Liri and seventy nine cents (Lm16,805.79c) was incurred as that owing to Active Travel Limited. A statement history of Active Travel Limited was found which showed this sum and when all attempts to reach an agreement between the

companies proved futile Active Travel had then seized its supply of Air tickets to Travelogue.

At the time of this alleged misappropriation of funds there were three directors of JBC Trading Limited, the company which operated Travelogue of Travel Agency namely the two accused and Colin Portelli ID Card 607462(M), Travelogue's daily business man, which was confirmed by Mario Borg, director of Active Travel, Joseph Farrugia ID 186467(M) and Biljana Vlahovic nee' Keric ID 12582(A).

It was noted that Joseph Farrugia had submitted a Form K to MFSA on the 18<sup>th</sup> July 2003 notifying them about his back dated resignation from company directory with effect from the 15<sup>th</sup> January, 2003. Similarly Biljana Vlahovic had presented another form K to MFSA on the 4<sup>th</sup> April, 2003 claiming to have resigned from company Director with effect from the 27<sup>th</sup> August, 1999. In the letter of the 4<sup>th</sup> of April 2003, Vlahovic explained that she was never notified about her appointment as Director of JBC Trading Limited and had never acted in such capacity.

The witness stated that despite the last two back dated resignations from company directors by both Joseph Farrugia and Biljana Vlahovic, he deemed it appropriate that the three company directors are spoken to under caution in connection with allegation vis a vis JBC Trading Limited. On the 6<sup>th</sup> of January, 2006, Colin Portelli in the

presence of PC824 Arthur Mercieca explained that his directorship of JBC Trading Limited which operated Travelogue of Travel Agency up to April 2003 when then the company had closed doors to the lack of funds, until then the company was being supplied with Air tickets from Active Travel Limited. Colin Portelli had confessed that JBC Trading Limited owed Active Travel Limited the sum of sixteen thousand eight hundred and five Maltese Liri and seventy nine cents (LM16,805.79c) which amount represented funds earned from the sales of Air tickets which revenue was never forwarded to Active Travel contrary to the arrangement between the two companies.

The witness stated that the interview determined that the tickets in question were all sold by Travelogue of Travel Agency and the revenue emanating from their sales was profited by JBC Trading Limited. Colin Portelli was asked why the money was not advanced and he stated that apart from Active Travel his company dealt with various other suppliers and he had used these funds due to Active Travel to finance the various suppliers according to the necessity. The witness declared that it was discovered that between February and April, 2003 the company's business went in truancy ending up without any liquidity. It was for this reason that Active Travel Agency was never compensated for the alleged misappropriated sum. Colin Portelli showed his willingness to pay forty per cent of the sum which he explained was his share in the company.

On the same day Joseph Farrugia, was interrogated and had stated that he had acted as Director of JBC Trading Limited till the 15<sup>th</sup> January 2003. The witness stated that when Farrugia was asked the reason for his back dated resignation from JBC Trading Limited Farrugia stressed that he was unaware of the fact that he had to submit a form K to MFSA and was for that reason that he had delayed the submission of his form K. The reason why he resigned from the company director was due to the lack of information and stated that Colin Portelli and Biljana Vlahovic were the ones responsible for the daily running of Travelogue Travel Agency. When questioned about the report he replied that he knew nothing about these tickets and was unaware that tickets were allegedly sold by Travelogue.

The witness declared that Biljana Vlahovic was interrogated on the 6<sup>th</sup> of January, 2006 and confirmed she was employed by JBC Company Limited between 1999 and 2003 as Sales and Marketing manager but established that she only got to know that she was a company Director in March, 2003 from Active Travel Limited personnel who queered with her about payments due to them. She explained she was surprised about this matter and held a meeting with the other Directors and company Auditor Saviour Cauchi, Cauchi confirmed that following his resignation from company director in 1999 he had appointed her as Director instead of him without her knowledge and she too confirmed that the tickets referred to by Active Travel Limited in their complaint were actually sold by Travelogue.

The witness interrogated Saviour Cauchi an Accountant by profession and Managing Director of CAC Fiduciary Limited and established that he had resigned from JBC Trading Limited as he wasn't ready to provide any personal guarantees in order to acquire banking facilities for the company. Furthermore he was involved in the company daily running. The witness stated that Cauchi confirmed the signature in the Form F dated 27<sup>th</sup> August, 1991 by which Biljana Vlahovic was appointed Company Director of JBC Trading Limited and insisted that Biljana Vlahovic was fully aware of her appointment in this because she was ready to provide personal guarantees which he was not ready to bestow. He was aware that JBC Trading Limited owed a substantial sum of money to Active Travel Limited he wasn't in a position to determine the exact figure because JBC Trading failed to furnish him the relevant documents.

The witness consulted with the Senior Counsel to the Republic Dr. Stephen Tonna Lowell regarding this case and he directed him to initiate criminal proceedings against the three accused in terms of Article 18, 293, 294 and Article 310 I Sub Section A of Chapter 9 of the Laws of Malta.

The witness exhibited Dok AG7, namely the letter of complaint dated 10<sup>th</sup> October, 2003 signed by Dr Reuben Micallef on behalf of Active Travel Limited, Dok AG9, namely Joseph Farrugia's statement which

was released on the 6<sup>th</sup> of January 2006 consisting of two pages which was released voluntarily following the usual caution and the witness recognised his signature and of PS824 Arthur Mercieca and Dok AG10, namely the statement released voluntarily by Vlahovic on the 6<sup>th</sup> of January, 2006 following the usual caution and the witness recognised his signature and that of WPC 249 Marouska Debattista and also of Biljana Vlahovic.

The witness also exhibited Document AG 14 being a judgement delivered by the Court of Magistrate as a Court of Criminal Judicature presided over by Magistrate Dr. Saviour Demicoli in the case **Police vs Joseph Farrugia** dated 27<sup>th</sup> March, 2003. Dok AG 15 being the statement history of Active Travel Limited from 16<sup>th</sup> January, 2003 till 17<sup>th</sup> April, 2003 regarding funds owing by JBC Trading Limited for the sum of sixteen thousand eight hundred and five Maltese liri and seventy nine cents (Lm16,805.79c). Dok AG 16 being the memorandum and articles of the companies JBC Trading Limited registration number C22096 registered on the 7<sup>th</sup> November, 1997.

The witness recognised both accused in Court.

**Dr. Reuben Micallef** testified on the 22<sup>nd</sup> of June, 2007 and confirmed that document AG7 as being the document which he sent to the Malta Police on behalf of Active Travel Limited. He recognised his signature on the document and confirmed its contents.

In cross examination, the witness declared that he sent this document on the 10<sup>th</sup> October, 2003. He declared that this information was given to him by his client and that he spoke to Mario Borg and Stephen Fenech to gather further information. The witness declared that the complaint was specifically against Colin Portelli. Also he confirmed that there was a civil case on the matter and he does know the nature of the civil claim. Asked when was it that he first heard the name of Biljana Vlahovic, he said it was possible that he had heard of this name before he filed the complaint. He confirmed that the complaint was filed only against Colin Portelli and not against Biljana Vlahovic.

On re examination he declared that in relation to his complaint which was exhibited as DOK AG 7, his complaint was lodged against Colin Portelli on his own behalf and on behalf of JBC Trading Limited.

**WPC249 Marouska Debattista** testified on the 22<sup>nd</sup> June, 2007 and confirmed that DOKAG 10 is a statement of accused Biljana Vlahovic nee' Keric dated 6<sup>th</sup> January, 2006, and she confirmed that she was present when this statement was taken. The accused was recognised in court and the witness confirmed that the accused was given the due caution under law and also that Vlahovic released the statement voluntarily. She recognised her signature, that of inspector Angelo

Gafa' and also of the accused Biljana Vlahovic who accepted to sign the statement.

**Mario Borg** Director of Active Travel Limited gave evidence under oath on the 1<sup>st</sup> August, 2007, and declared that the company was founded in the year 1992 and that he was Director of the company since its inception. He stated that Active Travel Limited is an AITA Travel Licence Company meaning that it can issue tickets to any passengers who can travel. In the end of March, beginning of April, 2002 his Manager in Active Travel Limited was Joe Caruana and was approached by Colin Portelli whom he recognized as the accused in the the Court room. The witness stated that since Colin Portelli had Travel Agency by the name of Travelogue, Portelli wanted to buy travel tickets from Active Travel Limited since his company was not an AITA licensed company. They agreed to issue tickets on their behalf, namely on behalf of Travelogue Limited. At that time they had eight or nine per cent commission and they had agreed to give Colin Portelli seven per cent commission which actually meant that Active Travel Limited would have remained with one per cent commission. The tickets were issued and payments were made regularly from Travelogue Limited. The witness stated that one of the conditions of the agreement was that payments were to be made monthly, since Active Travel Limited had to pay the airlines on the 15<sup>th</sup> of each month. After almost a year of doing business, Active Travel Limited noted that payments were not being made by Travelogue Limited despite the fact that Travelogue Limited was still selling the tickets, thus at the end of March, 2003, Active Travel

Limited noted that Travelogue Limited owed it the sum of sixteen thousand eight hundred and five Maltese Liri.

The witness states that Active Travel Limited approached Colin Portelli requesting payment, since the contact person was always Colin Portelli and they realised that the sum of sixteen thousand eight hundred and five Maltese Liri was not going to be paid. The witness stated that at this point Portelli mentioned another company, namely JBC Trading where there were two other Directors. The other Directors of JBC Limited were at the time Joseph Farrugia and Biljana Vlahovic. At one stage Saviour Cauchi, who acted as their Accountant, was also listed as Director. The witness stated that Colin Portelli said that he had problems to pay the company the sum of sixteen thousand five hundred and five Maltese Liri, and that he was trying to make arrangements with Bank of Valletta Branch Naxxar to effect payment, however he could not do so since there were two other Directors in the company and there was disagreement between them, even with regards to the payment to the Active Travel Limited.

The witness stated that Portelli said that the other two Directors of Travelogue were Joseph Farrugia and Biljana Vlahovic. He stated that Joseph Farrugia, whom he recognised as one of the accused present in the court room had informed him that Portelli was using money of Travelogue Company Limited and therefore he was not responsible

for the payment due to Active Travel Limited. He stated once again that Active Travel Limited dealt with Colin Portelli only, it was only after he checked who the Directors of the company were, that he tried to contact the other two Directors. He did not contact Biljana Vlahovic because he did not have her contact number or address. He phoned Saviour Cauchi who was a Director of JBC Company Limited, however Cauchi refused to meet him; however he contacted Cauchi again and said that he wanted to set up a new company, as he thought it would be the only way to obtain an appointment with Cauchi, and Cauchi immediately gave him an appointment. When he met Cauchi, he introduced himself and Cauchi stated that he was the accountant of Travelogue Company Limited and of JBC Company Limited, he also stated that he was a Director of JBC Company Limited. He asked about the possibility of recuperating the money, and that he was ready to accept payment over a one year period. He asked Cauchi to set a meeting between him, Cauchi, Portelli and Farrugia, and Cauchi said that he would try but informed the witness that there were problems between them, however he did not give him further information. He then stated that he contacted Cauchi again, however Cauchi informed him that he did not manage to set the appointment. He claims that he felt that he was being taken for a ride, and following that he asked for legal advice. A letter was sent on his behalf by his lawyer, however there were not any developments. He iterated that with regards to the sum of sixteen thousand eight hundred and five Maltese Liri (LM 16,805), all the company was going to earn was one per cent commission, the balance was all due to the airline. So much so, the airline was paid the sum of sixteen thousand

eight hundred and five Maltese liri (LM 16, 805) less one per cent commission. The company's lawyer was Dr. Reuben Micallef, and he had instituted proceedings on behalf of the company for the sum of sixteen thousand eight hundred and five Maltese Liri (LM 16,805). He concluded that Travelogue was not a company but just an agency, run by JBC Trading Limited. The sum that was claimed covered tickets that were issued for the period of March and April, 2003 by Active Travel Limited on behalf of Travelogue Agency. He stated that the travel tickets that were issued during this period were actually utilised.

He also stated that the payment arrangements were made by Joseph Caruana and Colin Portelli, and he explained that the payments to cover the sales of a particular month should have been made by not later than the twelfth day of the following month.

Under cross examination, the witness confirmed that the initial agreement with Colin Portelli was that Active Travel Limited gives the tickets to Portelli on credit. He stated that Active Travel limited accepted this credit since Travelogue Agency had a good name, good rating and their manager Joseph Caruana knew Colin Portelli. It was Portelli who suggested that he is given credit. He stated that the agreement to receive payment by not later than the twelfth day of the following month was *in vigore* from the beginning, this method of payment was respected for the first ten months. When asked what

assurances were given by Portelli or any of the other directors, the witness stated that these assurances were found to be false by the witness in the last three months and that he always dealt with Portelli. Due to this the witness stated his company ended up having a debt of sixteen thousand eight hundred and five Maltese Liri owed to AITA.

He stated that in order to solve this problem he had instructed Joseph Caruana to set an appointment with Colin Portelli in order to come to an agreement as to how the amount due will be paid even if over a period of twelve months. Following this he contacted Portelli himself since no payment was effected nor arrangements for payments were made by end of April 2003. In April 2003 Active Travel limited decided not to sell any more tickets to Travelogue. He stated that he informed Portelli that Active Travel limited decided to stop selling travel tickets to Travelogue some time in 2003, and he had told Portelli that no further tickets will be issued unless payment is made.

He explained that the procedure was that whenever Travelogue Agency had a client, the agency would take the particulars of the client and send the information to Active Travel limited, Active Travel limited would issue the ticket and send the ticket physically to Travelogue Agency. The clients were Travelogue Agency clients and not Active Travel clients, so much so, Active Travel did not have any contact with these clients. For Active Travel limited the client was

Colin Portelli of Travelogue. He stated, after being shown document AG15, that the last ticket issued was on the third of April, 2003.

On further cross examination, the witness emphasized that for Active Travel limited, once the ticket is issued, the ticket was deemed to be sold since its client was Colin Portelli. He explained that since the arrangement was with Travelogue Agency, once the ticket was printed and the ticket is sent to Travelogue, the sale was complete for Active Travel limited. The witness confirmed that the transaction was a sale of ticket between Active Travel limited and Travelogue Agency and therefore they were not involved as to whether the third party did actually collect the ticket or not. The witness stated that the agreement was a verbal agreement however in March, 2003 when they noted that there were problems with payments, they asked for a written agreement.

He stated that although there was not a written agreement, there was written correspondence between the Active Travel Limited and Travelogue Agency. He stated that to his knowledge, no blank travel tickets were not sent to Travelogue Agency. When referred to doc AG15 the witness stated that the document is a statement issued to JBC Trading limited showing the unpaid tickets issued on behalf of Travelogue Agency. The witness indicated that the order for tickets was issued in the name of Colin Portelli, however the names of the accused were not seen in the statement as one does not indicate the

names of the Directors in a statement. The witness stated that when he spoke to Portelli about the payments, he told him that he was not the only responsible person.

Active Travel Limited got to know JBC Limited when they were facing problems with payments and made their research. The witness explained that the statement at fol. 54 was issued on the third November, 2003 and therefore civil proceedings against JBC Trading were already instituted. The witness stated that it was Dr. Reuben Micallef who had suggested that a police report is filed. The witness also stated that this was not the first time that the client did not pay his dues, however in all these instances there was an agreement for payment similar to the one that was offered to Portelli.

He clarified that the period of time were payments were not received covered the months from February to the beginning of April and that the amount due of LM16,805 related even to tickets issued from mid January, 2003 till the third of April, 2003. He stated that the company's wishes was to collect its dues and if possible there will be an agreement for further business with Travelogue Agency, that is why he decision was to continue selling tickets until third April, 2003. He stated that they stopped selling tickets to Travelogue in April, 2003 and not before because Portelli had made some part payments and the amount being claimed was the balance of the payment that is still due. In fact the witness stated that Portelli paid Lm3,000 on

the first of April, 2003 and that another payment was made on the eight of April, 2003. He further concluded by saying that Portelli used to say that he accepted the statement and that he was trying to pay the sum requested. once again he stated that the tickets were sold to the Travelogue Agency as per information they provided Active Travel Limited, however Active Travel Limited was not concerned whether Travelogue actually handed over the tickets to their clients or not.

Under re-examination, he stated that it was Stephen Fenech, Active Travel Limited's Accountant, who compiled document AG15.

**Inspector Arthur Mercieca**, gave witness on oath on the 16<sup>th</sup> March, 2009 and when shown Doc. AG9, he stated that this was Joseph Farrugia's statement, and recognised the accused in the Court Room. The witness confirmed that the statement is dated 5<sup>th</sup> January, 2006, and that he was present when the statement was given, and that he was PS824 at the time. He confirmed that the accused was given due caution, and that the statement was released voluntarily. The witness also recognised his signature, that of Inspector Angelo Gafa', and noted that Farrugia did not sign the statement.

**Ivan Camilleri**, gave witness on oath on the 16<sup>th</sup> March, 2009, and stated that he is the representative of MFSA, and was asked to furnish the following information: namely the names of the Directors

of JBC Trading Limited, during the period April, 2003, and he stated that there was only one Director during the period, namely Colin Portelli (ID607462M). According to records held by MFSA, the Directors prior to Colin Portelli were Saviour Cauchi and Joseph Farrugia. The witness stated that JBC Trading Limited was formed on the 7<sup>th</sup> November, 1997 and the first Director was Saviour Cauchi (ID72560M) until he resigned on the 27<sup>th</sup> August, 1999. On that same day Biljana Vlahovic (ID12582A) was appointed Director, she resigned from the post on the same day, however the notice of resignation was received by MFSA on the 7<sup>th</sup> April, 2003. The witness stated that together with the note of resignation, Vlahovic presented an affidavit explaining the circumstances for the back-dated resignation, with the main reason being that she was never asked to act as Director of the said company and never acted in such a capacity. The witness stated that the note of appointment was delivered to MFSA by Saviour Cauchi and it is dated 30<sup>th</sup> August, 1999, however the appointment was dated as commencing on the 27<sup>th</sup> August, 1999. When asked about Joseph Farrugia's appointment, the witness stated that Joseph Farrugia (ID186467M) was appointed Director as from the incorporation of JBC Trading Limited, that is as from November, 1997 until he resigned on the 15<sup>th</sup> January, 2003. The letter of resignation was presented to MFSA by Joseph Farrugia on the 18<sup>th</sup> July, 2003. The witness clarified that it is the duty of the companies that file notes, that are to indicate the dates of the resignations, otherwise MFSA would not in a position to know these details. The witness exhibited Doc MFCA1, namely the registered documents the MFSA

has in its file regarding JBC Trading Limited include the articles and memorandum of association of the said company.

Under cross-examination, the witness stated that the company secretary of the company JBC Trading Ltd during the period of the first months of the year 2003, was Colin Portelli (ID607462M). The witness also stated that it is one of the duties of the company secretary to present notices regarding the appointment or the resignation of Directors.

**Saviour Cauchi**, gave witness on oath on the 16<sup>th</sup> March, 2009, and stated that he is a certified Public Accountant, and that at the time he was Director of a number of companies, however he was not Director of JBC Trading Ltd. He was Director of the company until August, 1999, and he had resigned because at the time he was asked by Mid Med Bank as the Directors of the company, namely Colin Portelli and Joseph Farrugia, whom he recognised as the accused in the Court room, were seeking banking facilities, to issue a personal bank guarantee, and he was not ready to accept. The witness stated that the daily running of JBC Trading Limited was in the hands of Colin Portelli and of Biljana Vlahovic, who was recognised in the court room. The witness was replaced as Director of JBC Trading Limited, by Vlahovic, who at the time was willing to issue a personal guarantee in favour of Mid Med Bank. The witness stated that Vlahovic knew that she was replacing him as Director of the

company, so much so that she signed the bank guarantee with Mid Med Bank, in her capacity of Director of JBC Trading Limited.

The witness exhibited Doc SCP1, namely a copy of the bank guarantee form signed by Vlahovic. When shown two Form Ks dated 27<sup>th</sup> August, 1999 forming part of doc MFCA1, and confirmed that the signatures are his. He referred to the letter of resignation from JBC Trading Limited and the appointment of Vlahovic as company Director. He stated that Vlahovic and the other Directors were aware of these documents. He informed the Directors that he was going to resign from the post of Director when there was the request for the personal guarantee, and he was consequently replaced by Vlahovic. He had informed Portelli and Vlahovic by phone, and he informed Farrugia also by phone but separately from the other two. Following his resignation from the post of Director, he still rendered his services as accountant to the company. The witness stated that he became aware of the claims made by Active Travel in relation to JBC Trading Limited after he had resigned from the post of Director, and he was informed by Mr Borg of Active Travel Limited, as Borg had attended the witness' office to claim the sum due. The witness stated that Mr Borg, who he did not know before, had phoned him saying that he needed his services, however when Mr Borg called at his offices he informed him that he did not need his services but that he wanted payment from JBC Trading Limited.

Under cross-examination, when asked whether he presented the note of appointment of Vlahovic as director of JBC Trading Limited, and whether he knew that there was no share holder resolution on this appointment, the witness stated that there was no written share holder resolution as to the appointment, however everybody had agreed to this appointment. When asked, why was there the need that Vlahovic needed to be appointed since there were other Directors, the witness explained that since she was willing to give a personal bank guarantee, it was in her interest to form part of the management. It was Mid Med Bank who asked for a personal bank guarantee, from all three Directors. The witness stated that Colin Portelli and Biljana Vlahovic actually ran the company, Joseph Farrugia ran other businesses. The shareholders of JBC Trading Limited were Colin Portelli, CAC Fiduciary Limited and Joseph Farrugia. CAC Fiduciary Limited had one-fifth of the shares of JBC Trading Limited, however it never received any dividends from JBC Trading Limited.

**Joseph Caruana**, gave witness on oath on the 28<sup>th</sup> April, 2010, and stated that during the period of April, 2003, he was manager of Active Travel Limited, and he issued travel tickets on behalf of Travelogue, since it was a non AITA Agency, it could not issue a travel ticket, and thus Active Travel Limited issued on its behalf a travel ticket. Caruana stated that he used to liaise with Colin Portelli and Blijana Vlahovic, whom he recognised as the accused present in the court room. The tickets would be issued against payment of a

commission. Active Travel gave credit to Travelogue every month, however they still extended the time in order to effect payment, and thus the amount due increased, and Active Travel decided to stop this arrangement. This decision was a management decision. The witness stated that the amount was in the region of Lm16,000, the amount due as commission from Travelogue to Active Travel Limited. The witness stated that he never saw document AG15, when he was shown the said document.

Under cross-examination, the witness stated that he is no longer employed with Active Travel Limited, and his employment was terminated in June or July, 2003, thus he was still in employment when the agreement with Travelogue was terminated. These arrangements had started at the beginning of the year 2002, therefore they lasted for more than one year. The sum of over Lm16,000 is an accrual of the amount due to Active Travel Limited by Travelogue over the period of more than one year. Although the witness stated that sales per month of the tickets amounted to around Lm16,000, he was not sure of the amount, yet the amount was always a substantial amount per month.

The witness stated that he issued a number of invoices every month and payment should have been made by Travelogue to Active Travel by the 15<sup>th</sup> of the following month, however Travelogue did not

always pay the full amount. The receipts were issued by the Accounts Department of Active Travel and not by the witness.

On further cross-examination, the witness stated that Travelogue's contact person was Colin Portelli. Vlahovic contacted the witness with regards to the booking and issuing of travel tickets. Portelli spoke to the witness with regards to the agreement as he stated that he was representing Travelogue. He stated that this was a verbal agreement, and that he knew Portelli before, and trusted him that he will effect payment of all sums due. The witness stated that he did not personally know the accused Vlahovic, prior to the agreement, however he heard of her before.

Having seen that on the 28<sup>th</sup> April, 2010 the prosecution declared that it was not going to bring forward any witnesses to confirm the identity of the four judgments that were exhibited in these proceedings and marked as documents AG 11 to AG 14 respectively.

**Stephen Fenech**, confirmed on oath on the 12<sup>th</sup> October, 2012, that in April, 2003 and before he was the Financial Controller of Active Travel. The witness started working with the company in January, 2002, and in February, 2002, he was informed by the manager of Active Travel, that the company will issue tickets on behalf of Colin Portelli, who was running a shop in Naxxar. The witness stated that Portelli had promised that he will pay all bills immediately, since the

company had to pay the AITA tickets immediately. The agreement was that Active Travel keeps 1% commission and Colin Portelli keeps 6%. As the months started to go by, payment was being delayed, and during a Board Meeting in December, 2002, the witness had brought this matter to the attention of the Board, and the Board had instructed him to set an agreement with Portelli for settlement of payments that were due, and reach an agreement for the future. When the witness presented the written agreement to Portelli, Portelli's reply was that the amounts are not due by him personally, but by the company named JBC Trading. Portelli also said that he was going to receive financing from Bank of Valletta to settle old debts, and start a payment plan, however this agreement never materialised. The witness stated that in March or April of the following year, Active Travel decided to stop business with Travelogue and they never received further payments leaving them with Lm16,000 pending. Active Travel started talking with the shareholders and then with the Directors of the company when all of a sudden they started resigning retroactively, and Portelli was left on his own. The witness said that the Directors and shareholders were Farrugia and Vlahovic, whom he recognised in the court room, and he also referred to an accountant.

The witness explained that when issuing tickets, AIATA insists that payment for all tickets is made by the fifteenth day of the following month, so Active Travel Ltd could not give any credit, they had to receive payment immediately so that in turn they can pay the tickets.

The witness emphasized that they were just making 1% profit. He said that the payments received from Portelli were always received as a deposit into the company's bank account, as cash, he never went to their offices and gave them a cheque.

When the prosecution referred to document AG15, he stated that he had issued the document himself in December, 2003, and it shows the balance due as at end of business which was April, 2003 being LM16,805.97. The witness also confirmed that the information indicated on fol. 58 was also compiled by himself, and shows the sales of the last 3 to 4 months and the payments that were received by the 15<sup>th</sup> day of the following month.

The Court read out the articles sent by the Attorney General on the 23<sup>rd</sup> July, 2007 and the accused declared that they do not have any objection with regards to their case being dealt with summarily.

Having seen the decree dated 29<sup>th</sup> October, 2013, whereby the Court upheld the request that Biljana Vlahovic's case is treated summarily, and that there is the separation of judgement.

Having understood that Dr. Pullicino put forward his pleadings on behalf of his client the accused Biljana Vlahovic nee Keric and such pleadings were transcribed in the acts of the proceedings. (fol. 163).

**This case together with many others were assigned to this Court as above presided by decree of the Chief Justice dated 21<sup>st</sup> April, 2014 and therefore this case was appointed for hearing for the first time before her on the 5<sup>th</sup> May, 2014.**

Having seen that on the 16<sup>th</sup> May, 2014 there appeared the accused Joseph Farrugia assisted by Dr. Victor Bugeja who asked for an adjournment to bring forward his evidence.

On the 29<sup>th</sup> May, 2014 there appeared the accused Joseph Farugia who gave evidence in the presence of his lawyer Dr. Victor Bugeja, and the accused Biljana Vlahovic nee' Keric duly assisted by Dr. Paul Pullicino who made reference to his oral pleadings as registered in these proceedings at fol. 163. Both lawyers exempted the Court from the necessity of hearing afresh all the witnesses that have already been produced in this case.

On the 29<sup>th</sup> May, 2014 the accused Joseph Farrugia gave evidence. He stated that he was a shareholder of JBC Trading Limited. The other shareholders with him were the co-accused Biljana Vlahovic and a certain Colin Portelli. He explained that this was a travelling agency selling airline tickets. The Managing Director was Colin

Portelli. The witness stated that he was also a Director in this same company for a period of time. However he resigned in the year two thousand and three (2003) from occupying the post of Director of this same company. He was asking Colin Portelli who was also a Director to furnish him with the relevant accounts of this company and start organising board meetings so that he could see what the situation of the company was but this information never came. He declared that he was never involved actively with the management of this company and he never received any dividends from the company.

He continued to give evidence in Cross Examination and stated that however it is true what is being alleged that he resigned on the fifteenth (15<sup>th</sup>) of January, two thousand and three (2003) as per declaration given on the fifth (5<sup>th</sup>) of January to Inspector Gafa'. Asked if he had signed the relevant form K upon his resignation, he answered that he did, however he submitted it to the MFSA at a later date. In fact he had submitted it after three (3) or (4) months that he had signed it. In fact he had about thirty-two percent (32%) shareholding and the rest were equally divided between the two (2) co-accused. He said that he remained the Director of this company for about two (2) to three (3) years. Asked if he had accounts for the two (2) or three (3) years when he was Director he said no, and neither did he hold any regular management meetings even though he had asked to do so. They also did not hold any shareholders meetings. When he said to Inspector Gafa' that he had resigned

because of lack of information, he explained that this lack of information pertained that he did not have a copy of the accounts or anything to do with the debtors or creditors of the same company. This is correct that the company had bank accounts. However he was not one of the signatories for the bank accounts. Asked who were the signatories of the company, he said that if he remembers correctly it was Colin Portelli.

Thus today, one month after this case was assigned to this Court the case is put off for judgement.

**With regards to the accused Biljana Vlahovic.**

The defence lawyer primarily raised the legal plea that the Court could not find the accused Biljana Vlahovic guilty of the offences in question because in the acts of the proceedings there is no kwerela presented against her and the the kwerela presented in Court by Dr. Reuben Micallef only applies to the accused Colin Portelli and consequently he believes that the Court surely cannot find the accused guilty of the offence as envisaged in Article 293 of Chapter 9 of the Laws of Malta. With rears to the offence as envisaged in Article 294 the defence believes that that the prosecution can still proceed without the kwerela and thus ex officio provided the

money deposited with the accused was in line with her profession or trade. He thus asks the Court to take note of what Mario Borg Director of Active Travel said in this regard in that he always thought that he was dealing with Colin Portelli in the name of the company Travelogue. He also argues that the accused Biljana Vlahovic lacked the *mens rea* for this offence which had to be proved together with the *actus reus*. Dr. Pullicino also iterates that the business that was carried out with Colin Portelli was carried out on behalf of the company Travelogue from a building in Naxxar and not on behalf of the company JBC Trading Ltd.

With regards to the question of the *kwerela* the Court feels that it is her duty to delve further into the legality or otherwise of the necessity of such a *kwerela*.

The Court here makes reference to a judgment given in the names **II- Pulizija Vs Camilleri Francis** delivered on the 25th June, 2011 but the Criminal Court of Appeal (Inferior Jurisdiction application number 247/2000 VDG) whereby it was held that :-

*“Huwa veru li r-reat ta’ approprijazzjoni indebita (Art. 293) huwa normalment prosegwibbli biss fuq il-kwerela tal-parti, pero` fil-kaz in dizamina qed jigi ipotizzat ukoll l-aggravju kontemplat fl-Artikolu 294 tal-Kodici Kriminali li jirrendi dak ir-reat prosegwibbli ex officio”*

It was also held in the judgment delivered by the Criminal Court of Appeal on the 6<sup>th</sup> March, 1954 in the names **Il-Pulizija Vs Salvo Depares** that:-

*“F’kaz ta’ akkuza dwar approprjazzjoni indebita, il-kwerela tal-parti leza hija prezunta, jekk l-imputat ma jkunx talabha u l-Qorti ma tkunx ordnat il-produzzjoni taghha.”*

With regards to what constitutes the aggravation at law according to Article 294 in the sense of the aggravation due to the trade or profession of the accused the Court makes reference to the judgment given in the names **Il-Pulizija Vs Maria Bezzina** delivered on the 19th April, 1958 by the Criminal Court of Appeal wherein it was held that:-

*“L-appropriazzjoni ndebita ssir aggravata, jew kwalifikata, jekk l-oggett ikun gie fdat lil min approprja ruhu minnu in raguni tas-servizz tieghu; u ma hemmx bzonn li dan is-servizz ikun jikkonsisti fl-impjeg regolari bi hlas, imma hu bizzejjed li dan is-servizz kien jinaghata kulltant, u anki b’kumpensi ohra li ma humiex flus. Meta l-appropriazzjoni ndebita hi aggravata, mhix mehtiega l-kwerela, imma r-reat hu persegwibbli “ex officio”.”*

**Carminiani** in his book entitled **Elementi Iuris Criminali** -(page 1020) defines this crime and explains that:-

*“il fatto de quo liu, che avendo ricevuto dal proprietario mediante contratto non transiattivo di dominio, una cosa immobile, questa contro i patti e contro la volonta del proprietario stesso e converta in uzo proprio con animo di appropriarsela o la distrugge e a proprio lucro e commodo.”*

**Carrara** in his book **Diritto Penale** entitled *Esposizione dei delitti inspecie* (vol 4. para 284) gives a more synthetic definition to this crime under review and states that:-

*“la dolosa appropriazione di una cosa altrui che si e’ ricevuto del proprietario per una convenzione non translattiva di domino e da uzo determinato.”*

Essentially thus the crime of misappropriation is nothing more than an abuse of trust that on as a result of such abuse such person makes a profit for himself by changing the use of the thing entrusted to him for a specific purpose even though such thing would have been entrusted to such person freely (vide **Il-Pulizija v Joseph Mifsud** decided on the 2<sup>nd</sup> December, 1992 by the Criminal Court of Appeal; **Il-Pulizija v Joseph Richmond et** decided on the 14<sup>th</sup> January , 1993; **Il-Pulizija v Capt. Albert Mallia** decided on the 25<sup>th</sup> April, 1949 and **Il-Pulizija v Emanuel Cassar** decided on the 20<sup>th</sup> October, 1997.)

Thus the Court makes it clear that there must be a conversion and this conversion happens inter alia when the guilty person who would have received the thing for a specific purpose changes its destination to a different use and takes advantage of such use or disposes of such thing contrary to what had been stipulated by the parties in buona fede.

**Luigi Maino** in his book *Commento al Codice Penale Italiano Vol. V* pg. 347 states:

*“L’appropriazione indebita si consuma col disporre delle cose contro la legge del patto stipulato a buona fede.”*

The defence believes that in this case the accused Biljana Vlahovic primarily never had any intention to take advantage of the money she received and use them for a different purpose than what they were designated for. She states that she was not in control of the company and in fact she was under the impression that she was employed as a Sales and Marketing Manager between 1999 and 2003 and when she was asked whether she was also a Director by Inspector Angelo Gafa’ during investigation when she was releasing her statement she replied in the negative. She explained that in March, 2003 someone had walked into the office where she used to work and someone entered the office and told her that she was a Director. When she confronted Joseph Farrugia and Colin Portelli about this they told her that Saviour Cauchi was a Director even

though he was the company's Auditor and when he resigned they appointed her as Director without her knowledge and then she resigned. In fact she was also confronted with the allegation made by the company Active Travel Ltd that JBC Trading was not paying it for the tickets it sold on its behalf and to this she was not able to reply she said that with regards to the finances it was Colin Portelli and Saviour Cauchi who knew what was happening. She confirmed that she had never signed any documentation to become Director and more so she said she even resigned from her work because she was not even getting paid her salary of LM 300 monthly.

Dr. Reuben Micallef who had presented the original kwerela on behalf of Active Travel Limited stated that he wanted the police to take action against Colin Portelli it was the first time that he was hearing of the name Biljana Vlahovic.

Mario Borg Director of Active Travel Limited explained that he had reached an agreement with Colin Portelli on behalf of the company Travelogue Agency that his company Active Travel Limited would be selling tickets for the company of Colin Portelli Travelogue and his company would keep a commission of one per cent provided that payment would be sent to them monthly. He confirmed that the tickets were issued and payments were made started to be made regularly from Travelogue Agency. It transpires that after some time the company Travelogue Agency stopped paying Active Travel

Limited and when he approached Colin Portelli he admitted with him that he had no liquidity and was trying to reach an agreement with two other Directors of another company of his by the name JBC Limited to make good for the outstanding debt. He concluded that Travelogue was not a company but just an agency, run by JBC Trading Limited. He concluded that the outstanding debt was in the region of Lm16,805.790. It is true however that the witness stated that he never negotiated or met the accused Biljana Vlahovic. He confirmed that assurances with regards to payment were always forthcoming from Colin Portelli and further more he found out that they were all untrue. He also iterated that he only dealt with Colin Portelli and never with the accused Biljana Vlahovic.

Saviour Cauchi the auditor and accountant of the company JBC Travel Limited stated that the accused Biljana Vlahovic knew all the way that she was replacing him as Director of the company and stated that he had explained to her that he was not going to remain a Director because he did not want to give a personal guarantee for the company. He stated that she had signed a personal guarantee with mid Med Bank on behalf of the company in her position as Director and exhibited a copy marked as document SCP 1 fol. 114.

Joseph Caruana manager of Active Travel stated that he had made the agreement on behalf of Active Travel with Colin Portelli on behalf of the Agency Travelogue. He said that he used to deal with the

accused Biljana Vlahovic in her capacity to issue travel tickets and travel documents however he confirms that all negotiations with regards to the business were carried out with Colin Portelli.

Stephen Fenech also confirms in his capacity of Financial Controller of Active Travel Limited that all the dealings of his company used to be made with Colin Portelli and no one else.

Thus in the light of the above evidence the Court rejects the defence of the accused in that there was a formality lacking at law in that there was no *kwere* presented against the accused Biljana Vlahovic and consequently the charge should have taken and this due to the fact that the accused here was accused in her capacity as Director on behalf of JBC Travel Limited and thus under Section 294 of the criminal code which incorporates Section 293 within it but upholds the defence of the accused that the prosecution failed to prove the *mens rea* to commit the crime under examination and thus the Court will acquit her accordingly later on in this judgement.

**With regards to the accused Joseph Farrugia.**

The Court heard the accused given judgment as indicated above and from the above it transpires that he was not in control of the management of the company JBC Travel Limited even though he was

a Director and also it transpires from his evidence which was not contradicted that Colin Portelli was the only signatory to the company JBC Travel Ltd. He also stated that he never had a copy of the management accounts, Colin Portelli never wanted to have managerial meetings and thus he had lost control of the running of the company. On this same basis his lawyer Dr. Victor Bugeja believes that the Court should not find him guilty of the offence under examination.

The defence of the accused Joseph Farrugia believes that the accused Farrugia did not have the required dolo to commit this crime. The Court here makes reference to another Court Judgment delivered on the 17<sup>th</sup> April, 1998 in the names **'Il-Pulizija vs Raymond Falzon'** and makes reference to a quotation therein mentioned:-

*'Il dolo speciale nel reato di appropriazione indebita e' (come nel furto e nella truffa) l'animo di lucro, che deve distinguere appunto il fatto delittuoso, il fatto penale, dal esmplic fatto illegittimo, dalla violazione del contratto, dell'inadempimento della obbligazione: osservazione questa non inopportuna di fronte alle esagerazioni della giurisprudenza ed ai devianti della pratica giuudiziale, che diedero spesse volte l'esempio di contestazioni di indole civile trasportate affatto impropriamente in sede penale.'*

The Court analysed all the evidence of the process and it transpires clearly that the mastermind of this misappropriation of money undoubtedly was Colin Portelli as all witnesses indicated him in their transactions and more some witnesses excluded the co accused simultaneously. It appears that this accused Joseph Farrugia too was not involved in the day to day running of this company JBC Travel Ltd and that everything was left in the hand of Colin Portelli so much so that when the Director of Active Travel wanted to discuss this situation they met up with Colin Portelli who seemed to take them for a ride promising the world and delivering nothing. Thus here to the Court finds the accused Joseph Portelli not guilty of such offence.

The Court thus saw all the relevant Sections at Law in particular **Sections 18, 49, 50, 293, 294, 310(1)(a) of Chapter 9 of the Laws of Malta and decides to find the accused JOSEPH FARRUGIA and BILJANA VLAHOVIC NEE' KERIC not guilty of the offences and acquits them accordingly of all charges.**

**< Partial Sentence >**

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