



MALTA

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
MIRIAM HAYMAN**

Sitting of the 21st August, 2014

Number. 44/2009

**The Police
Superintendent Martin Sammut**

VS

**Iliya Rnjak, son of Rnjak and Desanka nee' Cupic, born
on the 26th February, 1959 in Benkovac Croatia, residing
at Flat 1, Seaview Tower, Triq G Borg Olivier, San Giljan,
holder of identity card number 32714A;**

The Court;

Having seen charges brought against the above-mentioned **Iliya Rnjak**, who was charged of having:

1. In St Julian's between the 30th April, 2000 and the 30th April, 2005, with several acts committed at different times, which constitute violations of the same provisions of the Law, and committed in pursuance of the same design, being the person occupying or having the control of the tenement of the place styled as 'Lorenzo Restaurant', St Joseph Street, St Julian's, with artificial means capable of effecting the unlawful use or consumption of electric current, or prevented or altered the measurement or registration on the meter of the quantity used or consumed at the mentioned premises, committed the theft of electric current to the value of more than two thousand three hundred thirty Euros (€2,330) equivalent to one thousand Maltese Liri (Lm1,000.00), to the detriment of the Enemalta Corporation, which theft is aggravated by 'means', 'time', and 'value'.
2. And furthermore, with having during the same date, period, time and place, voluntarily damaged or broke any part of any energy meter, or the seals thereof or any part of any apparatus or cables used for the supply of electricity, or the seals thereof, to the detriment of Enemalta Corporation.

Seen that accused entered a non-guilty plea and that being English speaking Court ordered these proceedings to be conducted in the English language (folio 93).

Seen the Articles of the Law remitted by the Attorney General, according to which guilty could result.

Seen that accused gave his consent for summary proceedings.

Seen the Articles mentioned, being:

- a. Articles 261(b)(c)(f), 263(a), 264, 267, 270, 278, 279(b), and 280(2) of Chapter 9 of the Laws of Malta;
- b. Articles 326(1)(f) of Chapter 9 of the Laws of Malta;
- c. Articles 18, 20, 31, and 533 of Chapter 9 of the Laws of Malta.

Considers:

That this case was triggered by a complaint sent by Enemalta Corporation to the Commissioner of Police, so action be taken against accused following a surprise inspection by two employees of the said Corporation on the site 'Lorenzo Restaurant', St Julian's.

Thus **Alan Chetcuti, Professional Executive** within the mentioned Corporation, exhibited the estimate alleged unregistered consumption of electricity (illegally consumed

according to the Corporation) from the 30th of April, 2000 up to the 30th April, 2005., amounting to seven thousand five hundred seventy-seven Euros ninety cents (€7,577.70) as Dok AC. Dok AC1 was the surprise inspection report conducted by two Enemalta tradesman Mario Cassar and George Farrugia.

Mr Chetcuti later on in the proceedings further testified that the meter in question was issued on the 30th April, 1993 and that he could not access to any records for the year 2005 since there was a change in software, being therefore unable to answer as to whether Mr Rnjak had ever reported any faults to this particular meter.

Thus **Mario Cassar** testified that on the 30th April, 2005 at about 1.30pm, he went to ‘Lorenzo Restaurant’ and there encountered the accused. He confirmed this was a surprise inspection. At the premises they checked the meter of the make Crisic, a three-phase meter bearing serial number 15467050, that read 321, 430 units.

He referred to the inspection report exhibited as Dok AC1, and said that the said meter was inspected in the presence of the accused and two blue seals were found, and the meter cover was tampered with and traces of glue substance found on them. Theon the blue side of the meter was found open. A further investigation resulted in finding the blue phase fuse inside the service box tampered with resulting in the non-rotation of the consumption of lighting and fridges.

He confirmed his own handwriting on Dok AC1.

He further explained that the premises in question were supplied with a three-phase and that under the base cover of the meter there were three shunts, one of these three was open

resulting in the non-registration of all the consumed electricity in the premises.

He confirmed this, shown the photos at folio 29, exhibited by Inspector Martin Sammut.

Answering the Defence Counsel he explained that the seals resulted to be tampered due to the fact that they were fixed with some glue-like substance, therefore not the original seals, insisting that the original seals fitted by the Corporation were never installed by the use of glue.

He further added that the meter was removed from the premises and deposited at Enemalta.

He later exhibited the meter in question as Dok MC, and confirmed its serial number and readings with those noted on the report Dok AC1, a tempo vergine.

He insisted, answering to a challenge by Defence Counsel, that it was the same meter he personally removed from the premises in question in the presence of his colleague George Farrugia and PS 171 from the Forensic team and PS 46 from the Mobile Squad.

He insisted the inspection was conducted in the presence of the accused.

Questioned by Defence Counsel if vibrations occurring over years can cause the screws of the meter to unscrew on this occurring by consumption, he answered in the negative. He conceded that in cases of heavy current this might occur, adding however that there was no heavy current in the premises in question. He answered in the negative when questioned if the use of a jigger could destabilise the screws.

He also informed that the meter once removed and deposited at Enemalta was under the custody of the store-keeper John Caruana.

George Caruana testified in the Maltese language (no objection to this was raised by Defence).

He confirmed that an inspection at the ‘Lorenzo Restaurant’ together with Mario, they found a tampered three-phase meter. He confirmed the contents of Dok AC1 – the surprise inspection report. On being shown the actual meter exhibited, he confirmed the resulting areas that were tampered with. He recognized the accused as the person present during the inspection, as also that the meter as on the vary day of the inspection removed from the restaurant by Mario and himself. The meter was changed and they reported their findings to the police. He confirmed that once a meter is opened, there is a lack of consumption registered. He also explained that the only way the shunt could be accessed was by breaking the seals.

From his part, **John Caruana** testified that he was in charge of the meter stores. He confirmed that the meter bearing the serial number 15467050 was replaced on the 29th April, and entered the stores two days later. He also confirmed that about three weeks before he had given the same meter to Mario Cassar to exhibit the same in Court.

Mary Tanti, Executive Officer at the Electoral Office, exhibited the application by accused with regards to his identity yard.

Anthony Gauci, Manager at ARMS Ltd, stated that in 2005 he was head of Metering Section with Enemalta. On receiving the report of the surprise inspection he proceeded to verify the estimateof the last consumption. He explained that such is worked by referring to the history of past consumption; deduct a daily average there from, considering the applicable rate at the time of consumption.

He confirmed the document at folio 36, 37 and 38, explaining that the meter in question was registering a two-phase instead of three-phase consumption. Under cross-examination he confirmed he had checked the consumption of the changed meter. He also confirmed that there was a report of the actual equipment on the premises.

Asked whether after the meter was changed, if the consumption registered was in fact less, he answered that the consumption after never was below fifty (50) units daily whilst before it was registered at eighteen (18), twenty (20), thirty (30) units daily, this considering that the actual consumption registered before was one hundred and eighty (180) units daily, therefore he argued the potential was there.

PS 409 Anton Buttigieg presented his PIRS report of the incident at folio 59.

PS 157 Brian Mangion also confirmed the PIRS report, and shown the photos exhibited the contents thereof.

PS 171 Karl Glanville on his part also confirmed the photos shown.

The accused voluntarily decided to give evidence on oath. He deposed that two employees from Enemalta went over to his place – ‘Lorenzo Restaurant’, according to him to change the meter. He denied that their presence was there due to a surprise inspection. He testified that for a period during which the restaurant was opened, he had various problems with the main fuses and proceeded because of this to call Enemalta from five to six times. He said that the Enemalta employees accused him of stealing electricity and thus Enemalta took him to Court. He also presented a statement he obtained from Enemalta covering the year 2000 till 2005. According to accused the statement during the stated period of time the electricity reading was normal. He further added that at that time the restaurant was partly “dropped down” (folio 160), as there were construction works on the outside. He described digging in front of the restaurant causing a big hole in the front of the restaurant. He thus exhibited a statement he received from Enemalta and photos of the works in front of his restaurant and a plan thereof, as Dok IR, Dok IR1 and Dok IR2.

He elaborated that in the year 2000 till 2005, there were construction works outside, adding that till 2002 the construction works were outside his restaurant. He said the restaurant was completely dropped down, adding that there was digging for nearly three (3) months even in front of the restaurant leaving a big hole about four (4) to five (5) metres deep. He added that the restaurant was dropped down because there was construction work behind it. He thus closed the restaurant twice - once for a period of two months and the

second time the restaurant was closed for a short time but they were working for short hours. He said this happened in the years 2000 and 2001. He insisted that during the period 2000 till 2005 the restaurant was spending more electricity so they could not have stolen any.

Under cross-examination he deposed that he singularly owned and handled the restaurant from the year 1996.

Asked as to who then tampered with the meter, he replied he had no idea, that he had called Enemalta a couple of times to effect a change of meter, to no avail. He insisted that when Enemalta representatives did go to the restaurant, they went only to change the meter and here encountered a problem with the tampered meter, according to him “*something wrong with the seal*” (folio 163).

He also insisted that when they started with the construction works, he had cracks on the tiles (kitchen). He said he received a letter from Court four (4) years after the inspection in question. He confirmed that the meter was always installed in the same placed. He pointed out on the photos exhibited the damage suffered by the restaurant during the excavation, insisting that the excavations created “*strong, strong, strong vibrations*” (folio 164). He said he saw no one touching the meter or making any alterations in it, adding that in eighteen (18) years he owned the restaurant, they were flooded five (5) to six (6) times. Here they called Enemalta and he said no faults were reported regarding the meter.

Considers:

Article 264 (2) of Chapter 9 of the Laws of Malta reads:

“(2) In the case of breaking of pipes of the public water service or of the gas service, or of the wires or cables of the electricity service, or of the metres thereof, or of any seal of any meter, or in the case of the existence of artificial means capable of effecting the unlawful use or consumption of water, gas or electric current, or capable of preventing or altering the measurement or registration on the meter of the quantity used or consumed, shall, until the contrary is proved, be taken as evidence of the knowledge on the part of the person occupying or having the control of the tenement in which such breaking or artificial means are found, of the said use or consumption of water, gas or electric current, as the case may be.”

Therefore, from a reading of this Section of the Law, the presumption of the knowledge of the fact of tampering and unregistered consumption is shifted entirely on the registered consumer. It is in the word of the Law incumbent on the person occupying or having the control of the tenement in which the alleged tampering is found, to proof the presumption to the contrary. Obviously the shift of the *onus*, burden of proof, in no way exempts the Prosecution from any level of proof. It is still incumbent on the Prosecution to proof that the meter was tampered with, that such tampering resulted in an illegal consumption of electricity and damages, and that the accused was in control of the meter involved. All these factors have in the opinion of the Court been sufficiently proved by the Prosecution, excluding the amount of actual damage or the damage really incurred except for a loose shunt.

On his part, Iliya Rnjak tried to rebut the presumption by what the Court considers to be a very weak defence, certainly not to the level or probability incumbent on him. He makes much of the fact that during the period between 2000 and 2005 construction works were going on about the restaurant, but later claims he still paid a high amount of electricity. Even if Iliya Rnjak was not able to prove, due to the fact that no records were held thereof, that he had registered complaints because of the meter with the Corporation, this in no way refutes the fact that the meter was tampered, not registering on a three-phase, therefore not registering the full load of the operative appliances in the restaurant when this was in his control. At no stage in time did the accused in fact ever complain about the registered consumption. To be noted that the accused had the restaurant in his control for sixteen (16) years.

Thus finds Iliya Rnjak guilty as charged after having seen Articles 18, 216, 263, 267, 270 of Chapter 9 of the Laws of Malta.

Acquits him from the charge of voluntary damage as this has not been sufficiently proven, that is the Prosecution did not prove beyond reasonable doubt that it was actually the accused who damaged the meter.

Considers as regards the penalty to be inflicted, after having seen the accused's conviction sheet, and condemns him to the term of eighteen (18) months imprisonment suspended for

three (3) years in terms of Article 28A of Chapter 9 of the Laws of Malta.

< Final Judgement >

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