

Court of Magistrates (Malta)

as a Court of Court of Criminal Judicature

Magistrate Dr Aaron M. Bugeja M.A. Law, LL.D. (melit)

The Police

(Inspectors Silvio Magro and Trevor Micallef)

vs

Hassan Smaila Mohammed

The 13th June 2016

The Court after seeing the charges in respect of **Hassan Smaila Mohammed**, Niger National, born on the 1st January 1990 in Niger, son of Smaila and Fatima Al Xatu, residing at "Erotia' Flat 38, Msida Circus Msida, holder of Maltese ID 46727 A who was charged as follows :-

- *On the date 09/08/2015 at about 1am at St Georges bay St Julians, committed theft of one mobile phone make Samsung Note 3, for the total amount of more than two hundred and thirty two euros and ninety four cents but under two thousand, three hundred and twenty nine euros and thirty seven cents (Chapter 9 Art 270 279(a) of the Laws of Malta)*

Got in his possession a stolen property (Samsung Note 3) or property misapplied or obtained by means of any offence, fails to give notice thereof to the Executive Police within a week of becoming so aware (Chap 9 Art 334A of the Laws of Malta).

- *Also, on the 25/08/2015 and previous dates, in these islands forged, altered or tampered with a Passport, ID card and Residence Permit Card or used or had in his possession a Passport, ID card and Residence Permit Card which he knew to be forged, altered or tampered with, in the name of Hassan Smaila Mohammed bearing numbers 404645, AR9680100 and SRM 7302590 respectively (Chap 61, Sec 5 of the Laws of Malta)*
- *And charge him also with having on same date, time and circumstances committed any other kind of forgery, or have knowingly made use of any other forged document, in the mentioned documents (Chap 9, Sec 189 of the Laws of Malta) I*
- *And charge him also with having on same date, time and circumstances forged any document or true copy of a document or an entry made in pursuance of this act (Cap 217, Sec 32 (1d) of the Laws of Malta)*
- *Also, failed to observe any of the conditions imposed by the court Dr C. Stafrace Zammit, in its decree granting bail dated 5/08/2015(Chap 9 Art 579(1)(2) of the Laws of Malta)*

Having seen that during the sitting of the 26th August 2015 this Court ordered that proceedings be carried out in the English language after that it ascertained that the accused is English speaking in terms of law;

Having seen that on the same date the Prosecuting Officers confirmed the charges on oath and during the examination of the accused in terms of Article 392(1)(b) of the Criminal Code the accused declared that he was not guilty;

Having seen that during the examination of the accused in terms of Article 392 and 370(4) of the Criminal Code the accused declared that he found no objection to his case being dealt with summarily;

Having also seen that the Attorney General declared by means of a note exhibited at fol 9 that he granted his consent to this case being dealt with summarily;

Having seen that the accused, in reply to the question posed in terms of Article 392(1)(b) of the Criminal Code by the Court declared that he was not guilty;

Having seen the documents supplied and having heard the testimony of the witnesses produced;

Having seen the records of the proceedings as well as the criminal record sheet of the accused;

Having heard the final oral submissions of the Prosecuting Officer and of the Legal Counsel to the accused in the sense that they were resting on the evidence produced;

Considers the following : -

The first two charges

The Prosecution failed to declare whether the first two charges were being proffered as alternative charges; however the Court understood that this was the intention of the Prosecution in this case. The Prosecution produced the testimony of Adam Sadiq Abubaker in support of these two charges. However the Court considers that it cannot find the accused guilty solely on the basis of this testimony. The Prosecution failed to prove beyond a reasonable doubt the elements of the crime of theft or of the crime of failure to inform of stolen property. The fact that the mobile phone in question was allegedly sold for one hundred and fifty euro, when its asking price

was for one hundred and seventy euros does not automatically give rise to the crimes in question. Furthermore the Prosecution failed to bring evidence in the records of the proceedings showing the value of the mobile phone in question and whether there was any discrepancy between the second hand retail value of this mobile phone and the price requested and eventually agreed that could give rise to the presumption of knowledge about the unlawful origins of the mobile phone in question. The Court is therefore going to acquit the accused from the first two two charges.

The remaining charges

However the Prosecution did manage to prove beyond a reasonable doubt that in point of fact on the dates mentioned in the third charge the accused was apprehended with a forged document while he was trying to travel to Sicily using the said forged document. Moreover the Prosecution also proved that on the said dates the accused was subject to bail conditions issued on the 4th August 2015 by this Court as differently presided. In point of fact the accused too admitted these facts in the statement that he released to Inspector Silvio Magro on the 25th August 2015. The Prosecution therefore managed to prove beyond a reasonable doubt the third, fourth and sixth charges proffered. However the Court finds that the evidence produced fails to convince this Court beyond a reasonable doubt that the

accused forged these documents. In his statement he states that he purchased the documents from Prince Xgħajra for three hundred euros. Therefore this Court cannot find the accused guilty of the fifth charge.

Decide

Consequently, this Court, finds the accused not guilty of the first, second and fifth charges proffered against the accused and consequently it acquits him from the said charges.

However after having seen Article 5 of Chapter 61 of the Laws of Malta as well as Articles 17(b)(h), 189 and 579(1)(2) of the Criminal Code the Court finds the accused guilty of the third, fourth and sixth charges and condemns him to the term of **eighteen (18) months imprisonment**.

Furthermore in terms of Article 579(2) of the Criminal Code, the Court orders that the sum stated in the bail bond (five thousand five hundred euro) be foreited in favour of the Government of Malta. The Court however notes that in this case the Prosecution did not request the Court to order the revocation of bail and the re-arrest of the accused person in terms of Article 579(3) of the Criminal Code. However given that the Prosecution requested the Court to apply the provisions of Article 579(1) of the Criminal

Code, the Court orders that the accused be arrested in terms of the provisions of this same Article of the Law.

The Court orders also the forfeiture of the corpus delicti.

**Delivered today the 13th June 2016 at the Courts of Justice in Valletta,
Malta.**

Aaron M. Bugeja.