



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.

Case Number: 170/2016

Today, 4th August 2016

**The Police
(Inspectors Gabriel Micallef and
Frank Anthony Tabone)**

vs

**Abdinur Shucayb Mohammed
(ID 54166(A))**

The Court,

After having seen the charges brought against the accused Abdinur Shucayb Mohammed, 29 years, son of Shucayb and Samsam nee` Abdi, born in Somalia on 1st January 1987 and residing at Valley Court, Flat 2, Triq il-Wied tal-Imsida, Msida, holder of Identity Card bearing number 54166A;

Charged with having on 16th July 2016 and in the previous days in these Islands:

- a. Produced, sold or otherwise dealt with the whole or any portion of the plant cannabis in terms of Section 8(e) of Chapter 101 of the Laws of Malta;
- b. Produced, sold or otherwise dealt in the resin obtained from the plant cannabis or any preparation of which such resin formed the base, in terms of Section 8(b) of Chapter 101 of the Laws of Malta;

- c. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
- d. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis, or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
- e. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta;
- f. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis, or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta;
- g. Committed these offences in, or within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people habitually meet in breach of Article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
- h. For being a recidivist after being sentenced for an offence by a judgement issued by the Court of Magistrates (Malta) presided by Mag. Dr. S. Demicoli on 28th April 2010, which judgement has become absolute.

The Court was requested to apply Section 533(1) of Chapter 9 of the Laws of Malta as regards the expenses incurred by court appointed experts.

Having seen the records of the case, including the order of the Attorney General in virtue of subsection two (2) of Section 22 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), for this case to heard by this Court as a Court of Criminal Judicature;

Having heard the accused plead guilty to the charges brought against him during the sitting held on 29th July 2016, which guilty plea he confirmed even after the Court, in terms of Section 453(1) of Chapter 9 of the Laws of Malta, warned him of the legal consequences thereof and allowed him sufficient time to reconsider his reply and retract it;

Having heard the parties' oral submissions regarding the punishment to be inflicted.

Considered that:

In view of the guilty plea filed by the accused as well as the evidence brought by the prosecution, the Court cannot but find him guilty of the charges brought against him.

For the purpose of the punishment to be inflicted, the Court took into consideration the early guilty plea filed by the accused.

The Court also took into consideration the serious nature of the charges brought against the accused and that although the amount of cannabis found was not substantial, yet neither was it negligible and although the charges refer to 16th July 2016 and the previous days – thus not a long period of time - yet from the deposition of PC 760 Christopher Saliba and the report exhibited by him during such deposition, it is evident that during this limited period of time, the accused had dealt in drugs on several occasions and not sporadically and that he formed part of a group of persons, who sold drugs in the same area.

Furthermore, the Court took into account the criminal record of the accused, from which it results that he was convicted to a suspended term of imprisonment in respect of the offences contemplated in Sections 68, 95 and 96 of Chapter 9 of the Laws of Malta, voluntary damage to property and contraventions.

For the purpose of the punishment to be inflicted, the Court applied the provisions of Section 17(h) of Chapter 9 of the Laws of Malta with respect to the offences contemplated in charges (a) and (c) on the one hand, and with respect to the offences contemplated in charges (b) and (d) on the other hand. The Court also deemed the offence of simple possession in charge (e) as being comprised in the offence in charge (c) and the offence of simple possession in charge (f) as being comprised in the offence contemplated in charge (d). Furthermore, the Court applied the provisions of Sections 17(b) and (f) of Chapter 9 and the increase in

punishment contemplated in the second proviso to Section 22(2) of Chapter 101 of the Laws of Malta with respect to the offences in charges (a) and (b).

Conclusion

For these reasons, the Court after having seen Sections 8(a), 8(b), 8(d), 8(e), 22(1)(a), 22(2)(b)(i) and (ii) and the second proviso to Section 22(2) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of Subsidiary Legislation 101.02 and Sections 17(b), (f) and (h), 31 and 49 of Chapter 9 of the Laws of Malta, finds the accused guilty of the charges brought against him and condemns him to a term of **twelve (12) months effective imprisonment** – from which term one must deduct the period of time, prior to this judgement, during which the person sentenced has been kept in preventive custody in connection with the offences in respect of which he is being found guilty by means of this judgement – and **a fine (multa) of nine hundred and fifty Euro (€950)**.

Since no experts were appointed in the course of these proceedings, the Court is not taking any further note of the prosecution's request to condemn the person sentenced in terms of Section 533 of Chapter 9 of the Laws of Malta.

The Court orders that the drugs exhibited as Document FT1 are destroyed, once this judgement becomes final, under the supervision of the Registrar, who shall draw up a proces-verbal documenting the destruction procedure. The said proces-verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Furthermore, in terms of Section 23 of Chapter 9 of the Laws of Malta and Section 22(2)(b) of Chapter 101, the Court orders the forfeiture of the sum of one hundred and fifteen Euro (€115) exhibited as Document FT3 in favour of the Government of Malta and orders the release of the mobile phone exhibited as Document FT2 in favour of Abdinur Shucayb Mohammed.

Natasha Galea Sciberras
Magistrate

