



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

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

Case Number: 205/2016

Today, 18th January, 2017

**The Police
(Inspector Jonathan Cassar)**

vs

**Habib Salif Saidu
(Maltese ID 41211(A))**

The Court,

After having seen the charges brought against the accused Habib Salif Saidu, 32 years of age, son of Salif and Maimona, born in Somalia on 1st January 1984, homeless and holder of Maltese ID card number 41211(A);

Charged with having on 6th November 2016 and the previous days, on these Islands¹:

¹ The words ‘on these Islands’ were added by means of a correction requested by the Prosecution and authorised by the Court by a decree dated 23rd November 2016.

1. 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 in circumstances denoting that it was not for his personal use;
2. 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 in circumstances denoting that it was not intended for his personal use;
3. 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;

Furthermore, with having on these islands on 6th November 2016 and the previous two years:

4. 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;
5. 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;
6. 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.

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

Having heard the evidence and 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 Prosecution withdraw that part of the first charge which refers to the possession of cannabis plant in circumstances denoting that it was not for the accused's personal use, so that the first charge, after such correction, refers merely to the possession of the whole or any portion of the plant cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta (simple possession);

Having heard the accused plead guilty to the charges brought against him, during the sitting held on 9th January 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 plea and to retract it;

Having heard final oral submissions by the parties about the punishment to be inflicted.

Considered that:

In view of the guilty plea filed by the accused, 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 serious nature of the second charge brought against the accused and that from the evidence adduced by the Prosecution, it results that the accused was found in possession of circa 36.91 grams of cannabis resin and 1.44 grams of cannabis grass. It also took into account that the offence contemplated in the second charge is subject to an increase in punishment by one degree due to the aggravating circumstances indicated in the third charge, in terms of the second proviso of Section 22(2) of Chapter 101 of the Laws of Malta.

For the purposes of the fourth charge, the Court took into consideration that this falls within the parameters of trafficking by sharing as contemplated in the proviso to Section 22(9) of Chapter 101 of the Laws of Malta. This results both from the statement released by the accused and the deposition of Inspector Jonathan Cassar.

For the purpose of the punishment to be inflicted the Court is inflicting one punishment in respect of the first and fifth charges, since as regards the period of time to which both charges refer, the first charge is comprised in the fifth charge. The Court is also applying the provisions of Section 17(h) of Chapter 9 of the Laws of Malta with respect to the fourth and sixth charges, in so far as these refer

to the two years prior to 6th November 2016 and the provisions of the said article of law with respect to the second and sixth charges in so far as these refer to 6th November 2016. The Court is also applying the provisions of Section 17(f) of Chapter 9 with respect to the fine (*multa*) which it is applying in respect of the second, fourth and fifth charges.

The Court notes that the criminal record of the accused has not been exhibited in the course of these proceedings.

Conclusion

For these reasons, the Court after having seen Sections 8(a), 8(b), 8(d), 22(1)(a), 22(2)(b)(i) and (ii) and the second proviso of Section 22(2) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of Subsidiary Legislation 101.02 and Sections 17(b), 17(f), 17(h) and 31 of Chapter 9 of the Laws of Malta, upon his guilty plea, finds the accused guilty of all the charges brought against him and condemns him to **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 held in preventive custody in connection with the offences of which he is being found guilty by means of this judgement – and **a fine (multa) of one thousand and five hundred Euro (€1,500)**.

With respect to the fourth charge, in terms of the proviso of Section 22(9) of Chapter 101 of the Laws of Malta and Section 22 of Chapter 446 of the Laws of Malta, the Court is **discharging the accused upon condition that he does not commit any other offence within a period of three (3) years from today** and condemns him to **a fine (multa) of five hundred Euro (€500)**.

With respect to the first charge, since the Prosecution has withdrawn the part of this charge which refers to the aggravating circumstances of the possession of the whole or any portion of the plant cannabis, the Court is not taking any further note of this part of the said charge.

The Court explained in simple terms the consequences of this judgement to the person sentenced, should he commit any other offence within the operative period of the conditional discharge.

The Court is not applying the provisions of Section 533 of Chapter 9 of the Laws of Malta, since the experts appointed by the Court had not yet carried out the tasks entrusted to them.

The Court orders the destruction of Document JC2, once this judgement becomes final and definitive, under the supervision of the Registrar, who shall draw up a process verbal documenting the destruction procedure. The said process verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Natasha Galea Sciberras
Magistrate