



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

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

Case Number: 209/2016

Today, 28th July 2017

**The Police
(Inspector Trevor Micallef)**

vs

**Cisse Ousmane
(ID 9000121(A))**

The Court,

After having seen the charges brought against the accused Cisse Ousmane, 25 years, son of Suleyman and Mariam nee` Mungai, born in Senegal or Niger on 1st January 1991, with no fixed address and holder of Maltese Identity card number 9000121(A) and Police Immigration No 11G-040;

Charged with having on 21st November 2016 at around 03.30 hrs in these Islands, in Paceville, St. Julians:

1. 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;
2. Charged further with having on the same date, time, place and circumstances 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;

3. Charged further with having on the same date, time, place and circumstances had in his possession the drug (cocaine) specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
4. Charged further with having on the same date, time, place and circumstances had in his possession the drug (cocaine) specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
5. Charged further with having on the same date, time, place and circumstances 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;

6. Charged further with having on the same date, time, place and circumstances carried outside any premises or appurtenance thereof, a knife or cutting or pointed instrument of any description without a license or permit from the Commissioner, Article 6 of Chapter 480 of the Laws of Malta.

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 10th July 2017, 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 retract it;

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

Considered that:

The accused filed a guilty plea in respect of all the charges brought against him and in view thereof, the Court is finding him guilty of the first, second, fourth, fifth and sixth charges brought against him. Yet after examining the records of the case, despite such plea, the Court is not finding the accused guilty of the third charge, namely possession of cocaine in circumstances denoting that this was not intended for his personal use, and this for the following reasons:

From the records of the case it transpires that on the date to which the charges refer, whilst police officers were conducting a patrol in the Dragonara Road area, they noticed three males – one of whom was the accused - and two females, a certain Rosanna Praino and Deborah Caputo – and they approached them. Upon conducting a basic search on the accused, the police found a pen knife in his possession. Prior to such search, the accused was noticed placing a packet of cigarettes on the ground, which resulted to contain eleven sticks of a brown substance, suspected to be cannabis resin. Two plastic bags, one of which

contained a white substance, were also found by the said packet of cigarettes. Subsequently the females alleged that they bought cannabis from the accused for the price of €30, which drugs they handed over to the police once at the police station. A statement was released by Praino and Caputo to the Investigating Officer, which statement they subsequently confirmed on oath before the Inquiring Magistrate, indicating the accused as the person who had sold cannabis resin to them for the mentioned price.

From the report exhibited by expert Godwin Sammut, it results that he was given the following documents for his analysis: a brown envelope that contained i) a brown envelope marked as “*TM8 Flick knife*” containing a pen knife; ii) a brown envelope marked as “*DOK TM6 Droga li xtraw Rosario Praino u Deborah Caputo minghand Cisse Ousmane ID 9000121(A)*” which held a bag that in turn contained 2 brown substances; iii) an evidence bag containing a brown envelope that held 2 small transparent plastic bags, one of which contained traces of a white substance; iv) an evidence bag that contained an envelope marked “*Haxixa*” that held a packet of cigarettes containing a tissue which in turn held brown substances and another tissue that also contained brown substances.

Also in terms of the said report, the swab taken from the plastic bag containing traces of a white substance resulted positive for cocaine, whilst extracts taken from the brown substances contained in the above mentioned document resulted positive for *Tetrahydrocannabinol (THC)*. The weight of these substances amounted to 13.34 grams, with a purity of circa 6%. Also in terms of the said report, the substances in Document TM6 weighed 2.32 grams, whilst the remaining substances (in the packet of cigarettes) weighed 11.02 grams.

It thus results from the said report that the cocaine merely consisted in traces thereof contained in one small plastic bag. Considering that the charges refer to a specific date and a specific time, namely the time in which the accused was approached by the police, and that the charge of possession of cocaine in circumstances denoting that this was not intended for the exclusive use of the accused is therefore limited to and refers to the substance found in possession of the accused and analysed by the forensic expert, in other words, traces of cocaine, despite the guilty plea entered by the accused also in respect of this charge, the Court does not deem that the resulting circumstances of the case are such that can lead it to conclude, beyond any reasonable doubt, that the accused is guilty of the third charge brought against him. In relation to the said traces of cocaine, the Court is therefore merely finding the accused guilty of the fourth charge, namely that of simple possession of cocaine.

For the purpose of the punishment to be inflicted, the Court is taking into account the circumstances of the case, the serious nature of the offences contemplated in the first and second charges, the amount of cannabis resin and cocaine in possession of the accused, as above indicated and furthermore, that the guilty plea entered by the accused cannot be deemed to be an early one. The offences contemplated in the first and second charges are also subject to an increase in punishment by one degree, resulting from the aggravating circumstances indicated in the fifth charge.

On the other hand, the Court notes that the accused has a clean criminal record.

For the purpose of the punishment to be inflicted, the Court is applying the provisions of Section 17(h) of Chapter 9 of the Laws of Malta with respect to the offences contemplated in the first and second charges, since these refer to the same date, time and circumstances and the provisions of Section 17(f) of Chapter 9 of the Laws of Malta, with respect to the mandatory fine (*multa*) applicable to the first and sixth charges and the fine (*multa*), which the Court is applying with respect to the fourth charge.

The Court notes that although it is indicated, in the police incident report, that the sum of one hundred forty Euro (€140) was found in possession of the accused, this was not exhibited in the records of these proceedings.

Conclusion

For these reasons, the Court after having seen Parts IV and VI, Sections 8(a), 8(b), 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, Sections 17(f) and (h) of Chapter 9 of the Laws of Malta and Sections 6 and 51(7) of Chapter 480 of the Laws of Malta, finds the accused not guilty of the third charge brought against him and acquits him thereof, but finds him guilty of the first, second, fourth, fifth and sixth charges and condemns him to a term of **fourteen (14) 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 one thousand one hundred Euro (€1,100)**.

The Court orders that the drugs exhibited as Documents TM6 and TM7 and the penknife exhibited as Document TM8 are destroyed, once this judgement becomes final and definitive, 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 533 of Chapter 9 of the Laws of Malta, the Court condemns the accused to the payment of expenses incurred in the appointment of experts during these proceedings, namely the costs incurred in the appointment of expert Dr. Anthony Licari in connection with translations from the Maltese or English language to the Italian language, amounting such costs to the sum of five hundred, fifty one Euro and fifteen cents ($€203.73 + €347.42 = €551.15$) and the costs relating to the appointment of expert Godwin Sammut, amounting to the sum of two hundred, forty seven Euro and eighty cents ($€247.80$), totalling such costs to the sum of seven hundred, ninety eight Euro and ninety five cents ($€798.95$).

Natasha Galea Sciberras
Magistrate