COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE

Magistrate Dr. Neville Camilleri B.A., M.A. (Fin. Serv.), LL.D.

The Police
(Inspector Frank Anthony Tabone)

vs.

OMISSIS

Number: 70/2012

Today the 15th. of November 2017

The Court,

Having seen the charges[1] brought against the accused **OMISSIS**

charged with having:

1. on the 21st. October 2011, in the island of Gozo, at different times, made a false oath before a Judge, Magistrate or any other officer authorised by law to administer oaths (Article 108(1) of Chapter 9);

[1] *A fol.* 2.

2. on the 21st. October 2011, in the island of Gozo, at different times, gave false evidence in civil matters (Article 106(1) of Chapter 9);

3. on the 5th. June 2008, in the island of Gozo, at different times, made a false oath before a Judge, Magistrate or any other officer authorised by law to administer oaths (Article 108(1) of Chapter 9);

4. on the 5th. June 2008, in the island of Gozo, at different times, gave false evidence in civil matters (Article 106(1) of Chapter 9).

Having seen the documents exhibited and all the acts of the proceedings.

Having seen that the Attorney General gave his consent in terms of Section 370(4) of Chapter 9 of Laws of Malta for this case to be dealt with summarily (Doc. "D" and Doc. "FT 3" – *a fol.* 71 and 140).

Having seen that the accused did not object for this case to be dealt with summarily (*a fol.* 72).

Having heard the evidence brought forward by the Prosecution and the injured party.

Having heard the testimony of the accused (*a fol.* 325 *et seq.*).

Having seen the written Note of Submissions filed by the Prosecution on the 10th. of July 2017 (*a fol.* 373 *et seq.*).

Having seen the written Note of Submissions filed by the injured party on the 13th. of July 2017 (*a fol.* 389 *et seq.*).

Having seen the written reply of Submissions filed the defence on the 29th. of September 2017 (*a fol.* 404 *et seq.*).
Having heard, during the sitting of the 4th. of October 2017, final oral submissions on behalf of the injured party and the accused.

Having seen that this case was being heard together with cases bearing the names **The Police vs. OMISSIS** (Case Number OMISSIS) and **The Police vs. OMISSIS** (Case Number OMISSIS).

Having considered

That reference will be made to the most salient testimonies heard and documents exhibited during the proceedings.

That, during the sitting of the 17th. of October 2012 (*a fol.* 3 *et seq.*), the Prosecution exhibited, amongst other, a certified true copy of acts regarding Application Number OMISSIS (Doc. "C" – *a fol.* 10 *et seq.*). A certified true of copy of this was also filed during the sitting of 4th. of June 2013 (Doc. "E" – *a fol.* 148 *et seq.*). During the sitting of the 4th. of June 2013, a certified true copy of Application Number OMISSIS was also exhibited and marked as Doc. "F" (*a fol.* 172 *et seq.*).

That, during the sitting of the 17th. of October 2012, **OMISSIS** gave his testimony (*a fol.* 76 *et seq.*) and started by confirming his complaint marked as Doc. "FT 1" (*a fol.* 73 *et seq.*). He exhibited a number of documents marked as Doc. "OMISSIS" (*a fol.* 88) and as Doc. "OMISSIS 1" to Doc. "OMISSIS 12" (*a fol.* 89 *et seq.*). He explained the contents of these documents.

As regards the <u>charges</u> regarding the 21st. of October 2011, OMISSIS explains that this regards the issue as to when the child had to sleep at his place twice a month regarding which issue he says there had been two decrees by the Court of Appeal. He explains that the decree dated OMISSIS (Doc. "OMISSIS 2" – *a fol.* 91 *et seq.*) specifies that: "*monthly sleepovers have not been changed*" (*a fol.* 92) and that the decree was notified to the accused on the 20th. of October 2011 (*a fol.* 93). He further explains that following this decree, the day after, that is on the 21st. of October 2011, the accused filed a sworn warrant of prohibitory injunction (Doc. "OMISSIS 3" – *a fol.* 95 *et seq.*) and that the accused failed to attach a copy of the decree dated OMISSIS with which she was notified the day before (despite having attached a number of documents). He also specifies that

apart from the warrant of prohibitory injunction, on the 21st. of October 2011, the accused also filed her reply to an application filed by himself, which reply is marked as Doc. "OMISSIS 4" (*a fol.* 104 *et seq.*) in which she states: "*does not know what the exactly is the point of defendant's application*" (*a fol.* 105), arguing that on the 21st. of October 2011 the accused was completely aware of this.

As regards the charges regarding the 5th. of June 2008, he specifies that on this date the accused filed a sworn Application Number OMISSIS (Doc. "OMISSIS 6" – *a fol.* 112 *et seq.*). He makes reference to paragraphs 5 and 8 of the said application which read as follows:

> "5. That the applicant, who is a British national and who used to come to Gozo every now and then to visit her parents who reside here, had decided to keep on living in Gozo when her relationship with the Respondent had become serious, and eventually the minor child was born as above-mentioned.
>
> […]
>
> 8. That moreover, and without prejudice, in view of the fact that the time has now come for the applicant to return to the United Kingdom, now together with her son, so that she could continue working and living her life in her own country, since she has no further scope to remain in Malta now that her relationship with the Respondent has ended…." (*a fol.* 117).

He specifies that his first date with the accused goes back to the 14th. of March 2004 and gives reasons as to why he is so precise about the date (*a fol.* 82). He specifies that the accused had been living in Gozo for around a year and a half, that the accused had a job in Malta, that she had told him that she had quit her job in the United Kingdom, that she had a vehicle in Gozo, and that before moving to Malta she moved temporarily with her sister in the United Kingdom and had no property of her own in the United Kingdom. He says that the accused had even submitted tax returns

regarding her jobs in the Maltese Islands. Asked why the accused made the above declaration, he replies: *"Dik ghamlitha biex tipprova tibni […] kuntest fejn hi giet toqghod Ghawdex minhabba fija biss. Dan m'hu veru xejn u ghamlet dan dak l-attentat biex tizvija lill-Qorti li ghax giet toqghod hawn biss minhabba fija, ghax ir-relazzjoni taghna issa spiccat, tippretendi li issa l-Qorti thalliha titlaq lejn l-Ingilterra bit-tifel"* (*a fol.* 83). He also says that before the accused started dating him, she had another boyfriend (a certain OMISSIS) and says that this even transpires from an affidavit of the accused's mother, copy of which affidavit was marked and exhibited as Doc. "OMISSIS 8" (*a fol.* 123 *et seq.*). He says that from the testimony of Michael Grech (Assistant Principal at the Department of Citizenship and Expatriate Affairs) (copy of which testimony was exhibited and marked as Doc. "OMISSIS 9" (*a fol.* 126 *et seq.*) it transpires that the department's file contains a copy of the accused's visa which dates OMISSIS and that the file also includes an application for the issue of a work permit dated OMISSIS.

He makes reference once again to the sworn Application Number OMISSIS (Doc. "OMISSIS 6" – *a fol.* 112 *et seq.*), precisely paragraphs 2 and 3 of the said application which read as follows:

> "2. That subsequently, when the minor child was just a few days old, the Respondent terminated his relationship with the applicant and, after depriving her of access to their residence, by changing the locks to the doors and physically pushing the applicant out of the said residence, also deprived the minor from having access to the applicant his mother, and this at a time when the minor was being breast-fed by his mother.
>
> 3. That the applicant, in order to see and be able to take care of her child during these initial delicate weeks of his life, had to have recourse to this Honourable Court, and today, in view of the acrimonous relationship between the parties, […]."

He says that it is not true that the accused did not have access to their child before the Court's order. He says that on the 8th. of January 2007, the accused left home and never returned and specifies that from the 9th. of January 2007 till the 18th. of January 2007, the accused used to visit their child everyday, i.e. before any court order was issued, for at least an hour daily or at times even two hours. He also says that he used to phone the accused to visit the child and he even invited the accused's parents, specifying that the accused had not yet allowed her parents to see their child until the 8th. of January 2007. He says that on the 18th. of January 2007 he was notified by an application (Doc. "OMISSIS 10" – *a fol.* 130 *et seq.*), wherein it is stated: *"Illi ftit tal-jiem ilu l-intimat OMISSIS kecca lill-esponenti mid-dar fejn kienet tghix mieghu, bidel is-serraturi u qed jirrifjuta li jhalliha tidhol tara lill-binha minuri hlief ghal ftit minuti kuljum"* (*a fol.* 130). He also refers to another application filed by the accused on the 23rd. of October 2007 (Doc. "OMISSIS 11" – *a fol.* 132) where it is stated: *"Illi ftit jiem wara li twieled it-tifel hija kellha titlaq mid-dar fejn kienet qeghda tghix mal-intimat OMISSIS u dan minhabba diversi problemi li kellha mieghu"* (*a fol.* 132). He notes that: *"Mhix keccejtha. Telqet issa"* (*a fol.* 85). He states that from a copy of the affivadit of the accused's father (Doc. "OMISSIS 12" – *a fol.* 133 *et seq.*) it transpires that the accused's father testified as follows: *"The baby OMISSIS was just 22 days old and required regular breast feeding which was denied, allowing her just 90 minutes each morning with the child. This lasted for sometime until the matter was corrected by a Court order"* (*a fol.* 134). He denies absolutely not having allowed the accused to have access to the child before the Court order. During the sitting of the 4th. of June 2013, OMISSIS exhibited a certified true copy of a number of documents marked as Doc. "OMISSIS 13" (*a fol.* 233 *et seq.*)

During <u>cross-examination</u>, which was held during the sitting of the 6th. of July 2016 (*a fol.* 308 *et seq.*), he says that access to the child was regulated by means of a decree *pendente lite* given during the first Case (OMISSIS). Subsequently, a judgment was given by the Court of Appeal in October 2011. He says: *"sa dik is-sentenza, l-overnight stays kienu fid-decizjoni tal-Ewwel Qorti, tal-Prim'Istanza, imma billi kien hemm l-appelli […] kienu ghadhom ma gewx in effett. Jigifieri, halli*

nirrispondik direttament, l-overnight stays iddahhlu mill-Qorti fl-elfejn u ghaxra (2010), minn ghalija f'Gunju kien, jew Mejju jew Gunju jigifieri fid-decizjoni tal-Ewwel Qorti, ta' Ghawdex […]. Imma billi kien ghad hemm appelli dwar l-access, sad-decizjoni tal-Qorti tal-Appell kien ghad m'hemmx overnight stays, ma kienx hemm provvediment ghal overnight stays" (*a fol.* 309). When asked to confirm that the judgment of the Court of Appeal was not clear so much so that parties agreed for clarification, OMISSIS replies that this is not correct specifying that the access for overnight stays was stipulated by the First Court in May or June of 2010 and that the decree regarding overnight stays was not changed by the judgment delivered by the Court of Appeal in October 2011. He makes reference to the decree delivered by the Court of Appeal on the OMISSIS (Doc. "OMISSIS 2" – *a fol.* 91 *et seq.*). He states that for him the judgment delivered by the Court of Appeal was crystal clear and that he requested clarification because he kept the child for overnight stays and that the accused reported this to the Police three times. He says that a meeting was held with the Judge and that the accused (or her lawyer) failed to appear. When asked if, following this meeting, there had been other problems regarding access to the child, he replies that the accused was causing problems because she was giving a different interpretation. He also says that the accused was also causing problems regarding months which had four/five Fridays. He says that the merit of the accused's report between the 14th. and the 15th. of October 2011 was the overnight stay. He says that it is not true what the accused said during her third phone call when she said that the injured party suffered from a medical condition (making reference to "blackouts") and that it is not true that his family suffers from this condition. He denies suffering from any condition or from blackouts. He says: *""dak tweggaghni""* (*a fol.* 314) and says: *""Li ngurjani li kienet qed timplika li jien m'inhiex qed niehu hsiebu""* (*a fol.* 314). He testifies: *"l-ingurja hi mhux biss ghalija direttament li jien insofri minn xi kondizzjoni, hija ghall-[…] familja"* (*a fol.* 314). He denies ever going to a person referred to as Profs. Mifsud, saying: *"int qed tghidlu professor ma nafx, imma hu xi tip ta' tabib – lili qatt ma ezaminani, lili qatt ma kellimni"* (*a fol.* 315). He explains that during separate proceedings concerning the child, the accused had presented a certificate drawn up by a certain Mifsud and that it was

the first time that he (OMISSIS) had seen this certificate. He says that he never mentioned this Mifsud, adding that he had initiated proceedings in the Medical Council since Mifsud made a statement in this certificate regarding his condition regarding blackouts when he had not examined him.

Asked regarding the alleged false oath of the 5th. of June 2008, he says: "*dak ir-rikors guramentat hlief l-ewwel punt li jghid id-data tat-twelid tat-tifel, kollu gideb u qerq. Issa jiena ghazilt zewg punti minnu biss. U r-raguni li ghazilt dawk iz-zewg punti biss minn kollox hija s-semplici raguni li hu l-element tal-ispergur li jrid ikun relevanti ghall-kawza. Issa, x'cahhadni lili, l-ewwel wahda huma zewg gidbiet li jien sofrejt*" (*a fol.* 318). He says that, for the first few months, the child was both breast and bottle fed. Asked about paragraph 5, he says that there are several factors which prove that the accused was actually living in Gozo, saying: "*Kienet tghix hawnhekk permanenti qabel bdejt ir-relazzjoni maghha jien*" (*a fol.* 320). He says: "*Imma dan is-sentenza nikkontendiha li hi gurament falz ghax tippremessa l-kontra*" (*a fol.* 320). Asked if the accused had ever told him that she had the intention of staying permanently in Gozo or was only *di passaggio*, replies that the accused had informed him that she was already in Gozo permanently. He says that she had been in Gozo for around a year and a half – two years. Asked if she had ever given him the impression that she was in Gozo for a short period, he replies in the negative. He says that the accused's parents had been living in Gozo for around eighteen or twenty years. Asked if the accused used to go to England on a more regular basis, he replies: "*Li nista' naf fuq dak, residenza permanenti l-Ingilterra ma kienx baqghalha. Dak li qaltli*" (*a fol.* 322). He says that before he met the accused, the accused used to work in a beauty salon in Malta, and that she had even told him that she was considering being a driver of OMISSIS since he had his driving licence suspended.

That, during the sitting of the 17th. of October 2012, **Mario Tabone** gave his testimony (*a fol.* 136 *et seq.*) where he said that he works at the Electoral Office (Gozo Section) and during which testimony he confirmed on oath the email marked as Doc. "FT 2" (*a fol.* 75 *et seq.*).

That, during the sitting of the 4th. of June 2013, Court Messenger **Paul Debrincat** gave his testimony (*a fol.* 227 *et seq.*) and when he was shown Doc. "C" (*a fol.* 15) he says that from this document it transpires that on the 20th. of October 2011 the accused was notified by means of an application and a decree.

That, during the sitting of the 4th. of June 2013, **Anthony Mizzi** (Deputy Registrar at the Gozo Courts) gave his testimony (*a fol.* 229 *et seq.*) and after being shown Doc. "OMISSIS 13" (*a fol.* 233 *et seq.*) he says that this is a true copy of the original of a sworn application and document attached from Case Number OMISSIS in the names **OMISSIS vs. OMISSIS** decided by the Court of Appeal on the OMISSIS. He says that it was attested as a true copy of the original by Rose Marie Vella (*a fol.* 234). He confirms his signature and what is written in Maltese *a fol.* 238. Reference was made to the acts of the Warrant of Prohibitory Injunction OMISSIS (*a fol.* 33 *et seq.*) and confirms his signature and what is written in Maltese *a fol.* 35. Asked what needs to be done for the warrant to be valid, he replies that the applicant needs to confirm it on oath. He confirms that this was in the Maltese language. He says: *"It's my practise that I ascertain myself that the person filing the acts would know the contents thereof, I absolutely make it certain"* (*a fol.* 232). Asked whether he translated the said documents to the accused when administering the oath, he replies: *"No. I tell her in a nutshell the contents thereof and when I see that she is quite well aware what she is filing, I go on, I proceed"* (*a fol.* 232).

During <u>cross-examination</u>, which was held during the sitting of the 3rd. of February 2015 (*a fol.* 290 *et seq.*), he says that when the accused confirmed on oath the application in front of him, he made sure that she knew the contents thereof. He says that if he recalls correctly he scribbled this at the end of the act. He was shown document *a fol.* 34 *et seq.* and says that this is a prohibitory injunction where the accused confirmed on oath in his presence the contents thereof upon filing at the Registry. Asked if he does go through the documents filed with the warrant, he replies: *"No, no, not every single document, just the application"* (*a fol.* 292). He says

that he makes sure that the applicant would know the contents and the veracity of it.

That, during the sitting of the 20th. of November 2013, Prosecuting Officer **Inspector Frank Anthony Tabone** testified[2] (*a fol.* 260 *et seq.*) regarding the complaint he had received by the injured party OMISSIS on the 2nd. of December 2011 in which complaint, OMISSIS requested the Police to initiate criminal proceedings against the accused for the reasons mentioned in his complaint. He says that subsequently, i.e. on the 16th. of July 2012, he spoke with the accused who released a written statement marked as Doc. "FT 5" (*a fol.* 142 *et seq.*), which the accused opted not to sign. He exhibited an email sent to him by Mario Tabone (marked as Doc. "FT 6" – *a fol.* 265). He confirms that the when he was speaking to the accused, the accused was mentioning different procedures and asked whether she was referring to the technical word of each procedure, he replies: *"No. When I was – when I speaking to her she told me basically that she was getting confused and she used to pass the papers to her lawyer, and she just followed the instructions which were given to her by her lawyer, which at that time was OMISSIS"* (*a fol.* 262). He says that she kept repeating that she was following her lawyer's instructions.

During cross-examination, which was held during the sitting of the 21st. of October 2014 (*a fol.* 285 *et seq.*), Inspector Tabone said that during interrogation he asked the accused about what happened on the 5th. of June 2008 and on the 21st. of October 2011 and that he asked the accused on two separate counts. He says that the accused seemed calm and that he had asked her questions about the allegations made by the injured party.

That, during the sitting of the 20th. of November 2013, **Saviour Farrugia** (Assistant Principal at Transport Malta) testified[3] (*a fol.* 266 *et seq.*) that vehicle OMISSIS with registration plates OMISSIS had

[2] He had already testified during the sitting of the 5th. of March 2013 (*a fol.* 139) which testimony was not registered (*a fol.* 146).
[3] *Ibid.*

been registered in the name of the accused since OMISSIS. He exhibited document marked as Doc. "SF 1" (*a fol.* 268 *et seq.*).

Saviour Farrugia testified once again on the 26th. of March 2014 (*a fol.* 272) saying that vehicle OMISSIS with registration plates OMISSIS was registered on the OMISSIS in the name of OMISSIS, Passport Number OMISSIS of OMISSIS. He exhibited a copy of the logbook and the history of the vehicle marked as Doc. "SF 2" and Dok. "SF 3" (*a fol.* 273 *et seq.*).

That during the sitting of the 26th. of March 2013, the Prosecution exhibited documents from the Electoral Registrar marked as Doc. "FT 7" and "FT 8" (*a fol.* 276 *et seq.*), wherein it transpires that that the accused with the same identity card number lived in the above-mentioned address.

That, during the sitting of the 9th. of November 2016, the accused **OMISSIS** testified (*a fol.* 325 *et seq.*) saying that she had a relationship with the injured party, that on the OMISSIS they had a child together and that three weeks after the injured party kicked her out of the house. Asked whether the relationship with the injured party was good or bad, she replies that at the time it was not good. Asked what happened after the birth of the child, she replies: *"He changed the locks, kept hold of my baby, and wouldn't let me get back in"* (*a fol.* 326). She says that the injured party got hold of the baby when she was breast-feeding him and that he kept saying that he was going to give him formula. She says that she tried to calm the injured party to see if he would let her back in and says that she walked away so that may be he would calm down and that nobody could calm him down. She says that she went to her lawyer OMISSIS who told her that she needed to make a police report in order to get the Courts to return her baby. She says that she filed the police report and she took actions to take the baby back. Asked if she remembers lodging something in Court, replies: *"No. I don't remember but I've filed lots of papers, lots and lots and lots. I mean, I have boxes and folders and files of papers. I don't know which paper you are referring to"* (*a fol.* 328). She says that after OMISSIS, she went to OMISSIS, to OMISSIS, to OMISSIS and to OMISSIS.

Being informed that the issue is about an oath which she took on a particular document, and when she was asked whether she was told what was written in that document and who prepared it, replies: *"It looks like OMISSIS prepared it. And it looks like a signature of three people, no! Two people"* (*a fol.* 329). Asked how was it prepared, she says that she does not remember. She says: *"I've always told the truth as it is at the time, I mean. Usually you know if I go to a lawyer, if they ever file anything, they explain what it is and then I go and file it and that's it. And sometimes I have to take an oath, sometimes I don't. I couldn't tell you which on which day, because it's nine years, it's a long time"* (*a fol.* 330). Asked about the judgment delivered by the Court of Appeal and as regards overnight stays, she testifies as follows: *"Well that basically as I was, it was explained to me that the overnight stays were to take place during the scholastic year. And then there were papers that, I remember OMISSIS saying that about an injunction, about the overnight stays on a Friday. Because I think the other party filed some papers or something. Look, there was a bit of confusion about what was going on. As I understood it, the overnight stays were not allowed. That was what was explained to me. So that is why OMISSIS filed the papers on the injunction. And then I remember there was a document and OMISSIS asked me where did this document come from and I didn't know and I thought, and then he just threw his hands up in the air and said I can't work under this kind of pressure, and I thought it was because there was something dodgy. You know, I couldn't understand why I was told no he is not to go overnight and then the next minute because papers were filed in Malta he was then allowed after a judgment. I couldn't understand. I thought a judgment was a judgment and that was it. You know, you couldn't change it. So that is why"* (*a fol.* 331).

During cross-examination (*a fol.* 331 *et seq.*), to the question: *"After the judgment which you interpreted that the overnight stays were of a certain manner that you just described, was there any instance that you reported something to the Police about the overnight stays?"* (*a fol.* 332), replies: *"I can't remember, sorry"* (*a fol.* 332). She confirms that there was an instance when she reported to the Police regarding the safety of the child and says that at one point she was worried. She says: *"I was worried because he [the injured party] suffered from blackouts"* (*a fol.* 332). She says that she remembers calling late in the

evening. She says that the Police did nothing and asked what she did tell them, she says: *"I can't remember"* (*a fol.* 334). She says: *"I was worried because of the behaviour of OMISSIS at the time"* (*a fol.* 334). Asked what did she tell the Police, says: *"I'm trying to remember"* (*a fol.* 334). She says: *"I was worried because there were times when he would come to my place, like, there were times when his erratic behaviour, like, things he was doing. He would bang his own head on the brick wall, stuff like that"* (*a fol.* 334). Asked if she did tell the Police that the child was in danger, she replies: *"I can't remember"* (*a fol.* 335) and then: *"I can't remember my exact word from like – "* (*a fol.* 335). Asked again whether she told the Police that their child was in danger, she replies: *"I can't remember for sure"* (*a fol.* 335). She says that she was concerned for the well-being of the child. She confirms that she followed her first call, by other calls. Asked whether she remembers what she told the Police in the subsequent calls, she replies in the negative and says that she remembers being on the phone with the support line *Appogg*. Confronted by the lawyer of the injured party that she is not saying the truth and that she is under oath and that she has to say the truth, she says: *"I am always telling the truth"* (*a fol.* 336). She is not sure whether she followed up the calls by actually going to the Police. Asked again if she actually went to the Police Station, she says: *"Probably"* (*a fol.* 337). She was once again told by the lawyer that she was not saying the truth and she replied that she was saying the truth and that she is the most truthful person. Then she says: *"Because I've tried to move on with my life and to forget"* (*a fol.* 338). She says that before she had her son, she never made police reports. Asked if it is correct to say that she went to the Police accompanied by her lawyer, she replies: *"Quite possibly"* (*a fol.* 338). She says: *"I have trained my brain to forget"* (*a fol.* 338). Asked again whether on the night between the 14th. and the 15th. of October 2011 she went to the Police Station accompanied by her lawyer to make a report regarding the well-being of her child, she replies: *"I can't swear, I can't swear"* (*a fol.* 339). She says: *"From what I saw I had every reason to make a report"* (*a fol.* 339). Asked whether she was present when the Police gave evidence regarding what she is being asked, she replies: *"I don't know, I guess, I don't know"* (*a fol.* 340). Asked how does she know that the injured party suffered from blackouts, she replies by saying that she saw him

when they were on the boat sailing together and when she was asked a context of time, she replies: "*You are asking me to remember something which I am trying to forget. When we were together – "* (*a fol.* 341). Asked about when she met the injured party, she replies by saying that she cannot remember. Asked if she remembers that she met OMISSIS around the year 2004, she replies: "*Right now, no. I can't remember"* (*a fol.* 341). Asked after how many months or years did she start realising that the injured party suffered from blackouts, she replies: "*I can only guess"* (*a fol.* 342) and then says: "*I don't know. I don't want to say the wrong thing. I don't know"* (*a fol.* 342). She testifies: "*What I can remember is that he had like we were on the boat and when we were living together and I asked him about it, you know, I said what happened? Why? And he said he didn't know"* (*a fol.* 342). Asked by the Court how many times did OMISSIS suffer from blackouts in her presence, she replies: "*That I can remember two"* (*a fol.* 342) and says that they happened within the same year. Asked what does she mean by blackout, she replies that the injured party had dropped to the floor and asked if he had drunk, she replies in the negative. Asked if he was taking pills or drugs, she replies: "*Not that I know of, no"* (*a fol.* 343). She says that at the time they were on good terms. She says that, after falling flat on the floor, the injured party did not go to a doctor and that she did not ask the injured party to go to the doctor and she did not even suggest. Asked why, she replies: "*Because I didn't feel that it was my place to tell him what to do"* (*a fol.* 344). She says that even though the injured party was her partner, "*It's not my place to tell him to go to a doctor. It's his decision. He is a grown man"* (*a fol.* 344). She says that she was surprised and shocked about this incident and says that it was not at the beginning of their relationship. Asked when was the second time that the blackout happened, she replies that this happened in the bathroom in OMISSIS when she found him on the floor by the toilet. She says that he was not hurt and was not bruised and there was no blood. She says that he did not drink and to her knowledge, the injured party was not taking drugs or pills. Asked whether this time she suggested that he should go to a doctor or may be take some medication, she replies in the negative and says that the injured party kind of brushed it off. She says that this happened before their child was born. She confirms that she was contesting

access to the child saying that all she wanted was for her son to go back when he was a baby and that she went to Court to ask for her baby back. She says that all she wanted was some time alone to breast-feed and bond with the baby but was not allowed. She confirms that litigation proceedings were about access and says that she did not want to deny access of the child to the injured party.

Asked regarding her oath on the 5th. of June 2008, and asked specifically when she became a resident of Malta, she says: *"I can't remember, to be sure, sorry"* (*a fol.* 349). She confirms that when she came to Malta she worked and she describes it as *"student type"* (*a fol.* 350). She confirms that her first job in Malta was in Ponsonby Street, Gzira. She does not remember when. Asked how long had she been in Malta before she found her first job, she replies: *"I can't remember"* (*a fol.* 350). She confirms that she followed a course when she came to Malta. Asked to confirm whether she already had a residence of Malta ID Card in 2002, she replies: *"I had an ID Card, I can't remember the dates but yes I did have an ID Card"* (*a fol.* 350). Asked to confirm whether all this happened before she met the injured party, she replies: *"Probably"* (*a fol.* 351). She says that after her child was born, it is not correct to say that at no stage she was denied access to the child. She says that she was denied access to the child in the beginning and specifies that this happened for around a week. She says: *"it was a massive trauma, you know, like having a baby taken away"* (*a fol.* 351). She says that at the time the child was about three weeks old and says that she did not have access because the injured party would not let her back to her son. Asked to confirm whether she was still breast-feeding the child during this one week, she replies in the affirmative. Asked how was she breast-feeding the child if she did not have access, she replies: *"He wasn't, there were, you know – "* (*a fol.* 352). Asked if she did it remotely, replies: *"Yes, I did have a pump"* (*a fol.* 352).

Having considered

That in the statement (Doc. "FT 5" – *a fol.* 142 *et seq.*) released by the accused on the 16th. of July 2012, which statement was released after the accused consulted with her lawyer (*a fol.* 142), when she was asked how long had she been residing in the Maltese Islands, she

replies: *"Since I was 18, I used to come to Gozo for four times a year and because of the circumstances I stayed in Gozo"* (*a fol.* 142). She was informed that the Police had received a complaint from OMISSIS where he alleged that on the 21st. of October 2011 she committed the offence of perjury and of false swearing when she confirmed under oath before the Court Registrar an application for a prohibitory injunction no. OMISSIS in the names **OMISSIS vs. OMISSIS** even if she was aware of a decree issued by the Court of Appeal dated OMISSIS in the case app. (OMISSIS) **OMISSIS vs. OMISSIS**. When she was asked what she had to say about this allegation, she replied: *"I filled that application because I was under the impression that he had broken the Court order and my lawyer OMISSIS told me to file that application in the Gozo Courts and also another two application in the Court in Malta. What I remember is that on that circumstance on the 21st. October 2011 when returned from Malta, I went to the Gozo Court to see if they have any documents to give me and I remember being served with some papers by the Court Marshal giving me just one hour to respond. Basically OMISSIS was trying to get the injunction reversed. When I went to my lawyer with the papers he told these exact words "Where did this document dated OMISSIS come from" and I replied that I didn't know. At that point my lawyer told me that he wasn't able to work under this kind of pressure and I left. Then I found another lawyer that I knew and he told me to contact OMISSIS"* (*a fol.* 143). When asked if when filling the application she remembers being notified by a decree issued by the Court of Appeal which decree was served to her by the Court Marshal on the OMISSIS, she replies: *"I don't remember. What I remember is that I filled an application in Gozo and another two in Malta. I was instructed to do so by my lawyer OMISSIS. He prepared all the papers and he told me what do do"* (*a fol.* 143).

She was told that OMISSIS had also requested the Police to initiate criminal proceedings against her since on the 5th. of June 2008 she allegedly committed the offence of perjury and/or false swearing when she confirmed under oath before the Court Registrar the application initiating the civil suit before the Court of Magistrates (Gozo) Family Section, App. OMISSIS in the names **OMISSIS vs. OMISSIS**. In the application she said: *"in order to see and to be able to take care of her child during these initial delicate weeks of his life, had to have recourse to this Honourable Court"*. When she was asked to say if

it is correct to state that during that period she did see her son everyday at OMISSIS's house even before the court order was issued, she replies: *"No. There was a point where he was letting me breastfeed but for half an hour and he let his own father coming when I was breast feeding. There were instances where I didn't see my son for a week and there where other instances where I saw my son for about twenty to thirty minutes according to his exigencies. I am also confirming this statement which I made under oath since it is the truth"* (*a fol.* 143). Then she was asked about the other statement, that is: *"The applicant who is a British national and who used to come to Gozo every now and then to visit her parents who reside here, had decided to keep on living in Gozo when her relationship with the Respondent had become more serious, and eventually the minor child was born as above-mentioned"*. She was asked to state if it is correct to say what OMISSIS alleges that she moved here and became a permanent resident in the Maltese Islands before they had a relationship together and she replies: *"First I used to come here to visit my parents. They have been living here for approximately for twenty years and then I decided to reside in Gozo when I meet OMISSIS and we had a relation together. I wouldn't [have] stayed otherwise"* (*a fol.* 144).

Having considered
Legal Considerations Regarding the Level of Proof Required

That the Prosecution is bound to bring forward evidence so that the Court can find the accused guilty as charged. **Manzini**[4] notes the following:

> *"Il così detto onero della prova, cioé il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osservit".*

In the Criminal field the burden of the Prosecution is to prove the charges beyond reasonable doubt. With regards to the defence, enhanced by the presumption of innocence, the defence can base or prove its case even on a balance of probabilities meaning that one has to take into consideration the probability of that version accounted by the accused as corroborated by any circumstances.

[4] **Diritto Penale** (Vol. III, Chapter IV, page 234, Edition 1890).

This means that the Prosecution has the duty to prove the tort attributable to the accused beyond every reasonable doubt and in the case that the Prosecution being considered as not proving the element of tort the Court has a duty to acquit the accused.

That the following principles, as clearly outlined by the Constitutional Court in its judgment of the 1st. of April 2005 in the case **The Republic of Malta vs. Gregory Robert Eyre et**, must be applied:

> "(i) it is for the Prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the Prosecution, to prove or disprove certain facts, he need only prove or disprove that fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the Prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence."

That **Lord Denning** in the case **Miller vs. Minister of Pension**[5] explained what constitutes "proof beyond a reasonable doubt". He stated:

> "Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong

[5] 1974 - 2 ALL ER 372.

against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing shall of that will suffice".

Having considered

That this case makes reference to the following:

- The accused's warrant of prohibitory injunction (*a fol.* 34 *et seq.* and Doc. "OMISSIS 3" – *a fol.* 95 *et seq.*) filed on the OMISSIS on which date the accused also filed her Reply to an Application filed by the injured party in which Reply she states: *"does not know what the exactly is the point of defendant's application"* (*a fol.* 105). The injured party argues that on the OMISSIS the accused was completely aware of this.

- Sworn Application Number OMISSIS (Doc. "OMISSIS 6" – *a fol.* 116 *et seq.* and *a fol.* 248 *et. seq.* (certified true copy – *a fol.* 234)) filed by the accused on the 5th. of June 2008.

That the accused is being charged under Articles 106 and 108 of Chapter 9 of the Laws of Malta. In the judgment **Il-Pulizija vs. Giovanni Francesco Selvaggi** delivered on the 1st. of February 2017, the Court of Magistrates (Malta) as a Court of Criminal Judicature held that:

"Illi l-imputat qed jigi akkuzat bir-reat tal-ispergur u dana a tenur tal-Artikolu 106 tal-Kapitolu 9 tal-Ligijiet ta' Malta. Fil-Kodici Kriminali taghna nsibu ukoll Artikolu 108. Id-distinzjoni bejn dawn iz-zewg dispozizzjonijiet tal-ligi hija cara. Filwaqt illi l-ewwel wiehed jikkontempla r-reat hekk imsejjah judicial jew legal perjury, it-tieni wiehed jitkellem dwar 'l hekk imsejjah extra-judicial perjury. Ghalhekk l-ewwel reat ipotizzat huwa r-reat tal-gurament falz li jittiehed fil-kors ta' kawza pendenti quddiem Qorti. L-Artikolu 106 jitkellem dwar l-ispergur fil-kawzi civili li huwa distint minn dak li jsehh fil-kawzi kriminali. Id-distinzjoni bejniethom hija biss ghal dak li jirrigwarda l-piena u dana peress

illi l-elementi li jsawru r-reat tal-ispergur huma identici ghaz-zewg istanzi".

Antolisei notes:

> "*L'Autorità gudizziaria per assolvere i suoi compiti, ha bisogno di mezzi di prova e particolarmente di testimonianze, le quali debbono essere veritiere e complete, affinché possano essere emessi provvedimenti giusti, e cioé conformi alla lettera e allo spirito della legge. La testimonianza falsa e reticente può fuorviare l'attività giudizziara e per questa ragione viene sottoposta a pena. […] Oggetto della tutela penale é l'Amministrazione Della Giustizia alla veridicità e completezza di quel mezzo di prova che va sotto il nome di testimonianza*".[6]

In his Notes, Profs. Mamo lists the four elements required for the existence of the crime of judicial perjury:

> "(i) a testimony given in a cause;
> (ii) on oath lawfully administered by the competent authority;
> (iii) falsity of such testimony in a material particular;
> (iv) willfulness of such falsity or criminal intent".

As regards the first element, Mamo notes: "*It must be a cause that is to say contentious proceedings which call for a decision*". Regarding the second element, Manzini reiterates that "*l'affermazione del falso, la negazione del vero o la reticenza*."[7] As regards the last two elements, these are very important for guilt to be proven. Mamo notes:

> "In all cases in order that the crime of false testimony may subsist, it is necessary that the falsity be material to the cause. [T]he law aims at ensuring the integrity of judicial trials and it is in violation of such integrity that the injury caused by the crime subsists. If therefore, the falsity falls upon circumstances which are entirely irrelevant to the

[6] Parte Speciale – Reati Contro l'Amministrazione della Giustizia.
[7] Capitolo XIX Delitti Contro l'Amministrazione della Giustizia.

cause and which, whether true or false, could in no way influence the result, the crime could not arise because no possibility of injury which alone justifies the punishment would exist."

Mamo quotes Maino:

"*Perché sussista la falsa testimonianza […] é necessario che le circostanze falsamente asserite o maliziosamente taciute siano pertinenti alla causa e influenti sulla decisione di questa*." (emphasis by the Court).

Mamo states further:

"If the falsity is material, that is to say could have effected the decision one way or the other, it does not matter that it has not in fact influenced such decision. All the authorities are unanimous that a crime of false testimony is complete so soon as a false deposition is made which is calculated to mislead the Court".

Antolisei notes:

"*Affinché possa farsi luogo alla punizione, per noi é necessario che la falsità sia guridicamente relevante, il che significa che deve contrastare con lo scopo della norma incriminatrice. Siccome questa mira ad impedire che l'attività giudiziaria sia fuorviata, occorre che il fatto che é stato commesso abbia la possibilità di determinare tale risultato. Riteniamo, pertanto che la possibilità di influire sulla decisione giudiziaria sia requisito implicito del delitto in esame, requisito che si desume dalla ratio della norma o se si preferisce dalla oggettività giuridica del delitto medesimo. Ne consegue che debbono considerarsi giuridicamente irrilevanti non solo le falsità che concernano circostanze estranee alla causa (non pertinenti, come si dice nel linguaggio forense) oppure insignificanti, ma anche tutte le altre che per la loro natura o per*

l'oggetto a cui si riferiscono non hanno alcuna possibilità di turbare il corso dell'attivita' giudiziaria".[8]

Finally, it is very important that the person concerned has the required *mens rea*. Mamo states:

> "The falsity must be deliberate and intentional, for, if incurred into from inadvertence or mistake it cannot constitute this crime. […] Consequently in order that the crime in question may subsist it is necessary to prove in addition to the actual falsity and the possible injury to the due administration of justice, the criminal intent, a strong presumption of which arises when some advantage accrues to the deponent from his false deposition or if he was corrupted".

Antolisei notes the following:

> *"Sull'elemento soggettivo di questo reato non sorgono difficoltà. Esso consiste nella coscienza e volontà di affermare il falso, di negare il vero, oppure di tacere, in tutto o in parte ció che si sa. Naturalmente il dolo é escluso dall'errore di fatto, il quale puó essere anche determinato da dimenticanza, come di frequente accade in pratica".*

According to Maino:

> *"L'elemento intenzionale del delitto di falsa testimonianza é la coscienza di mentire o di nascondere la verità. […] Qualunque errore o dimenticanza esclude il dolo in questo reato, e l'apprezzamento di modesto dolo depende dalle circostanze".*[9]

Having considered

That according to the Prosecution and to the injured party, the accused breached Articles 106(1) and 108(1) of Chapter 9 of the

[8] *Ibid.*

[9] Commento al Codice Penale – Dei Delitti Contro l'Amministrazione della Giustizia.

Laws of Malta as regards the OMISSIS mentioned above since there had been two decrees by the Court of Appeal and that the decree dated OMISSIS (Doc. "OMISSIS 2" – *a fol.* 91 *et seq.*) which specifies that: *"monthly sleepovers have not been changed"* (*a fol.* 92) was notified to the accused on the OMISSIS (*a fol.* 93). The injured party also says that apart from the warrant of prohibitory injunction, on the OMISSIS the accused also filed a reply to an application filed by himself, which reply is marked as Doc. "OMISSIS 4" (*a fol.* 104 *et seq.*) in which she states: *"does not know what the exactly is the point of defendant's application"* (*a fol.* 105). The injured party contends that the accused was totally aware of all this since she had been notified by means of the decree dated OMISSIS.

It is crystal clear that judicial proceedings between the injured party and the accused regarding their child had been of a very litigious nature and that each one of them resorted to various legal actions and that various acts had been filed in these proceedings. In its judgment, the Court of Appeal notes the following: "*The evidence produced in this case show that both parties have presented an interminable number of applications/police reports which basically show that the parties cannot agree on anything, not even on minor matters. In fact even where there were no real problems, issues were inflated making it more difficult for the Court to decide the case of the basis of the original demands made in the sworn application" (a fol.* 48 and *a fol.* 197). In a footnote of the mentioned judgment, the Court of Appeal notes that: "*They disagreed on where and how to give birth to the child, his vaccination, access, feeding, medical problems, doctor's choice, christening, child's name and surname, breastfeeding, MMR inoculation, his clothing, visitation rights, attendance to kindergarten. In fact the child, for some time, ended up in two different kindergartens*" (*a fol.* 48 and *a fol.* 197). As an aside, the Court notes that communication between the injured party and the accused practically consisted of agreeing not to agree on anything. This Court hopes that along the passage of time they learnt to communicate better and this for the well-being of their child!

There is no doubt that both parties consulted their respective lawyers. It also results that even though the Court of Appeal delivered its judgment on the OMISSIS (*a fol.* 38 *et seq.* and *a fol.* 177

et seq.), and even though the mentioned Court of Appeal delivered a decree dated OMISSIS (*a fol.* 92), which was notified to the accused on the OMISSIS (*a fol.* 93), the accused resorted to other judicial action. The Court is satisfied that the accused resorted to such latter action only because, according to her or according to the advise she had been given, the judgment was not clear where it concerned the sleepovers of the child. It has not been proven beyond reasonable doubt that the accused made a false oath or of having given false evidence in civil matters as required under Articles 108(1) and 106(1) of Chapter 9 of the Laws of Malta respectively and this as far as the first (1st.) and the second (2nd.) charges brought against the accused are concerned. Hence the Court cannot consider the accused of having made a false oath or of having given false evidence as charged in the first (1st.) and the second (2nd.) charges brought against her and therefore the accused will not be found guilty of the mentioned charges.

As regards the third (3rd.) and fourth (4th.) charges brought against the accused, these refer to what has been said in Application Number OMISSIS (Doc. "OMISSIS 6" – *a fol.* 112 *et seq.* and *a fol.* 248 *et seq.* (certified true copy – *a fol.* 234) filed on the 5th. of June 2008. During his testimony, the injured party makes reference to the mentioned application. The Court notes the following:

- As regards paragraphs 2 and 3 of the mentioned application, these read as follows:

  "2. That subsequently, when the minor child was just a few days old, the Respondent terminated his relationship with the applicant and, after depriving her of access to their residence, by changing the locks to the doors and physically pushing the applicant out of the said residence, also deprived the minor from having access to the applicant his mother, and this at a time when the minor was being breast-fed by his mother.

  3. *That the applicant, in order to see and be able to take care of her child during these initial delicate weeks of his life, had to have recourse to this Honourable Court, and today, in view of the acrimonous relationship between the parties, […]."*

On his part, the injured party explained that what has been stated above by the accused is not true. According to the injured party, the accused left home on the 8th. of January 2007 and never returned. The injured party specifies that from the 9th. of January 2007 till the 18th. of January 2007, the accused used to visit their child everyday, i.e. before any court order was issued, for at least an hour daily or at times even for two hours. The Court notes that the injured party did not deny that he had changed the locks of the doors as stated in Paragraph 2. After considering this, after considering what had been going on between the injured party and the accused following their break up, and after considering the various legal litigious instances between the parties, the Court cannot consider what has been stated in Paragraphs 2 and 3 above as being tantamount to false evidence or false oath. Lack of clarity can not be considered as being tantamount to false evidence or false oath and this is being said most especially because if the injured party had really changed the locks of the door that means that the accused was not really welcome at home!

- As regards paragraph 5 of the mentioned application, this states the following: "*That the applicant, who is a British national and who used to come to Gozo every now and then to visit her parents who reside here, had decided to keep on living in Gozo when her relationship with the Respondent had become serious, and eventually the minor child was born as above-mentioned*".

  It results from the Acts of the Proceedings that before the accused met the injured party she had been living in the Maltese Islands for a number of years. It also results that even her parents had been living in the Maltese Islands. Despite this and even though the accused had been working in Malta, and even though there was an application for the issue of a work permit dated OMISSIS which was pending, yet the accused could choose to go back and live in the United Kingdom. The *mens rea* not to say the truth has not been proven.

- As regards paragraph 8, this reads as follows: "*That moreover, and without prejudice, in view of the fact that the time has now come for the applicant to return to the United Kingdom, now together with her son, so that she could continue working and living her life in her own country, since she has no further scope to remain in Malta now that her relationship with the Respondent has ended….*".

  Whilst making reference to what has been considered above, the Court notes once again that the accused had the right to move back (at least on her own!) to the United Kingdom. Even though the accused had been living in the Maltese Islands before she met the injured party, and even though in its judgment the Court of Appeal concluded that the accused was permanently resident in Gozo before meeting the injured party, it must not be forgotten that the accused was born in the United Kingdom. The accused had every right to state that after her relationship with the injured party had ended she had no further scope to remain in Malta.

After considering all this, as in the case of the first (1st.) and the second (2nd.) charges brought against the accused, it does not result that the accused made a false oath or of having given false evidence in civil matters as required under Articles 108(1) and 106(1) of Chapter 9 of the Laws of Malta respectively as far as the third (3rd.) and fourth (4th.) charges brought against the accused are concerned and hence the accused will not be found guilty of the mentioned charges.

Having considered

That none of the charges brought against the accused have been sufficiently proven and, for the reasons mentioned above, the Court will be acquitting the accused from all the charges brought against her.

Consequently, the Court, due to lack of sufficient evidence at law, does not find the accused OMISSIS guilty of all the charges brought her and hence acquits her from the said charges.

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Dr. Neville Camilleri
Magistrate

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Ms. Mary Jane Attard
Deputy Registrar