



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

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

**Case Number: 99/2017**

**Today, 12<sup>th</sup> December, 2017**

**The Police  
(Inspector Kevin Pulis)**

**vs**

**Maxamed Cabdi Xasan  
(ID 118544(A))**

The Court,

After having seen the charges brought against the accused Maxamed Cabdi Xasan, son of Cabdi Xasan and Abdi nee` Hasan Mohammed, born on 14<sup>th</sup> February 1995, in Somalia, residing at 120, Triq il-Hnejja, Sliema, holder of Maltese Identity card number 118544(A);

Charged with having on 10<sup>th</sup> June 2017 and/or on previous days, in the Maltese Islands:

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 under circumstances denoting that it was not intended for his personal use;

2. 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;
3. Had in his possession the drugs (*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 (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for this 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 (GN 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. Had in his possession the drugs (*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 (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was 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 (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
5. 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.

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

Having heard the evidence adduced and having seen the records of the case, including the order of the Attorney General in virtue of sub-section (2) of Section 22 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), for this case to be heard by this Court as a Court of Criminal Judicature;

Having heard the accused plead guilty to the charges brought against him, which plea he confirmed 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 and retract such plea;

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

**Considered that:**

In view of the guilty plea entered by accused to the charges brought against him, the Court cannot but find him guilty of such charges.

As regards the punishment to be inflicted, the Court is taking into consideration that the accused's guilty plea was not entered at an early stage of the proceedings. Indeed, accused pleaded guilty after the Prosecution had already rested its case and after the defence had requested several adjournments in order to produce its evidence. Neither can the accused be deemed to have cooperated with the police during the investigation, as results from the statement released by accused.

The Court also took into consideration the serious nature of the offences of which accused is being found guilty, as well as the amount of drugs found in his possession. Indeed, it results from the evidence adduced that this consisted of 17 bags containing green grass and 7 bags containing white powder. In terms of the report drawn up by expert Scientist Godwin Sammut, cocaine was found in the extracts taken from the white powder, the total weight of the white powder is 2.01 grams and the purity of cocaine in the said powder is circa 18%. Furthermore, *Tetrahydrocannabinol* was found in the extract taken from the green grass, the total weight of said grass is 11.09 grams and the purity of THC is approximately

5%. The bags containing cocaine had the following weight respectively: 0.40 grams, 0.13 grams, 0.21 grams, 0.32 grams, 0.47 grams, 0.22 grams and 0.26 grams. The plastic bags containing cannabis grass had the following weight respectively: two weighing 0.68 grams, three weighing 0.69 grams, three weighing 0.65 grams, one weighing 0.63 grams, one weighing 0.62 grams, two weighing 0.61 grams, one weighing 0.71 grams, one weighing 0.55 grams, two weighing 0.64 grams and one weighing 0.70 grams.

For the purpose of the punishment to be inflicted, the Court is considering the offence in the second charge as comprised in the offence in the first charge and the offence in the fourth charge as comprised in the offence in the third charge. Furthermore, it is applying the provisions of Sections 17(b) and (f) of Chapter 9 of the Laws of Malta in respect of the offences contemplated in the first and third charges and the increase in punishment contemplated in the second proviso of Section 22(2)(b) of Chapter 101 of the Laws of Malta, also in respect of the first and third charges.

The Court notes that on the basis of the report drawn up and exhibited by expert Dr. Martin Bajada, nothing in the mobile phone exhibited as Document KP2, indicates that this was used in connection with drug dealing. Thus, the Court is ordering the release of the said phone in favour of the accused.

## **Conclusion**

For these reasons, the Court after having seen Parts IV and VI, Sections 8(d), 22(1)(a), 22(2)(b)(i) and (ii) and the second proviso of Section 22(2)(b) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Section 17 of Chapter 9 of the Laws of Malta, finds accused guilty of the charges brought against him and condemns him to a term of **sixteen (16) 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 and five hundred Euro (€1,500)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the person sentenced Maxamed Cabdi Xasan to the payment of expenses relating to the appointment of court-appointed experts, namely the expenses in connection with the appointment of Scientist Godwin Sammut, amounting to the sum of one hundred, eighty nine Euro and fifteen cents (€189.15) and the expenses relating to

the appointment of expert Dr. Martin Bajada, amounting to the sum of two hundred and thirty Euro and ten cents (€230.10). Such expenses amount in total to the sum of four hundred and nineteen Euro and twenty five cents (€419.25).

The Court orders the destruction of the substances exhibited as Document KP3, 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.

The Court orders the release of the mobile phone exhibited as Document KP2 in favour of Maxamed Cabdi Xasan.

Natasha Galea Sciberras  
Magistrate