



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

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

Case Number: 123/2017

Today, 11th December, 2017

**The Police
(Inspector Trevor Micallef)**

vs

**Abdi Ali Jama
(ID 102614(A))**

The Court,

After having seen the charges brought against the accused Abdi Ali Jama, son of Ali and Fatima nee` Saeed, born on 26th June 1988, residing at Hal Far Open Centre and holder of Maltese Identity card number 102614(A);

Charged with having on 13th September 2017 on these Islands:

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. 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. 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 Section 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
4. On finding any property mislaid or lost by any other person, fails, within three days, to give information thereof to the Executive Police;
5. For being a recidivist in terms of Articles 49 and 50 of Chapter 9 of the Laws of Malta.¹

The Court was also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta as regards the expenses incurred by 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 first, second, third and fifth 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.

Considered that:

In view of the guilty plea entered by accused to the first, second, third and fifth charges brought against him, the Court cannot but find him guilty of such charges. Indeed with respect to the first charge, although the accused did not actually sell any cannabis to Mohammed Oussama Saleme, yet it is clear from Saleme's testimony, that accused had offered him cannabis. In terms of Section 22(1B) of

¹ This charge was added upon a request made by the Prosecution on 26th September 2017, which request was acceded to by the Court by a decree of the same date.

Chapter 101 of the Laws of Malta, even an offer to supply drugs amounts to dealing in drugs and it is irrelevant whether any substance is actually supplied, the offer in itself being sufficient to constitute the offence of dealing in drugs.

Through the fourth charge, accused is being charged in terms of Section 340(c) of Chapter 9 of the Laws of Malta, according to which a person is guilty of a contravention against property, if on finding any property mislaid or lost by any other person, he fails, within three days, to give information thereof to the Executive Police.

From the evidence adduced, it results that accused was arrested on 13th September 2017. A mobile phone of make LeEco Cool 1 was found in his possession. According to PC 736 Martin Buttigieg, upon further investigation on the police system and specifically from the IMEI number of said phone, it resulted that this phone had been reported as lost, some days prior to accused's arrest. PC 906 Elio Joe Gatt confirmed that on 27th August 2017, at around 17:00, a certain Pierpaolo Ferorelli had reported, at St. Julian's Police Station, that he had lost his mobile phone. In terms of this report, which had been drawn up by the witness, Ferorelli suspected that his phone had fallen out of his pocket next to the bus stop in Triq San Gorg and he then realised that his phone was missing, once he was on the bus. Upon returning back, he did not find it. He also confirmed that Ferorelli had provided the phone's IMEI number.

In his statement released to the police on 13th September 2017, upon being questioned as to the manner in which he acquired the mobile phone, accused states that he had bought it from a Libyan for the price of €60, six days before, in Valletta.

In this regard, the Court considers that there is no evidence, to the degree required by law, to suggest that it was the accused who had found the said mobile phone when this was lost and who had consequently failed to report this matter to the Executive Police, within the time prescribed by law. Indeed, there is no other evidence which contradicts his statement. Accordingly, the Court deems that this charge has not been proved to the degree required by law.

As regards the punishment to be inflicted with respect to the first, second, third and fifth charges, 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. The Court is also taking into consideration the criminal record of accused, from which it results that

accused has already been found guilty of the offence of dealing in cannabis resin in December 2016.

Furthermore, the Court took into consideration the serious nature of the offences of which accused is being found guilty and the amount of drugs found in accused's possession, consisting of five sticks of cannabis resin. In terms of the report drawn up by expert Godwin Sammut, *Tetrahydrocannabinol* was found in extracts taken from this substance, the total weight of the brown sticks was 6.20 grams and the purity of THC was circa 6%.

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 in respect of the offences in the first two charges and the increase in punishment contemplated in the second proviso of Section 22(2)(b) of Chapter 101, in respect of the first charge.

Conclusion

For these reasons, the Court after having seen Sections 8(a), 8(b), 22(1)(a), 22(2)(b)(i) and the second proviso of Section 22(2)(b) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of Subsidiary Legislation 101.02 and Sections 17(h), 49 and 50 of Chapter 9 of the Laws of Malta, finds accused not guilty of the fourth charge brought against him and acquits him thereof, but finds him guilty of the first, second, third and fifth 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 one thousand and two hundred Euro (€1,200)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the person sentenced Abdi Ali Jama to the payment of expenses relating to the appointment of court-appointed expert Scientist Godwin Sammut amounting to the sum of one hundred, eighty two Euro and seventeen cents (€182.17)

The Court orders the destruction of the substance exhibited as Document TM7, 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