



**MALTA**

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

**MAGISTRATE DR SIMONE GRECH LL.D.**

**Sitting of the 11<sup>th</sup> June 2019**

**The Police**

**vs**

**Isatou Bobb**

**The Court,**

**Having seen that Isatou Bobb of 22 years of age, and holder of Gambian passport bearing number PC579791, was accused that in the morning of the 11<sup>th</sup> December 2018 in Triq il-Vitorja, Qormi, Malta:**

***Accused with refusing to give, or untruthfully give to any public officer or any other person entrusted with a public service in the actual exercise of his duties, his name, surname, address and other particulars (Chap 9, Art. 338g);***

***Accused with disobeying the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever (Chap 9, Art. 338ee);***

*Accused with assaulting or resisting by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority (Chap 9. Art. 96);*

*And without intent to kill or to put the life of any person in manifest jeopardy, accused with causing harm to the body or health of PC1572 Eman Cilia, which bodily harm is of slight nature as certified by Dr. Satya Brata Das MD2141 (Chap 9, Art. 214);*

Having seen the documents exhibited and all acts of the Case;

Having heard the witnesses brought forward by the Prosecution;

Having heard the person charged voluntarily take the witness stand;

Having heard the other witnesses put forward by the defence;

Having heard oral submissions of the prosecution and the defence;

Having seen the decree wherein the case was adjourned for judgement for today.

Having taken into consideration all the evidence submitted before it;

**Having considered;**

### **Evidence**

**WPC 314 Ruth Fenech** testified on the 21st December 2018 where she said that on the 11th December she was duty doing inspections in the south of Malta and they had a detainee whom they needed to verify his documents. He was thus escorted to his place of residence in Qormi. She explained that while they were there, the person in custody at that moment showed them his place of residence so that they could forward there and verify his documents, which were in his house in a particular room. She explained that when they tried to open the door it was

locked from the inside so they proceeded to knock on the door. They identified themselves as police officers and stated that they needed the documents of the said person to verify his identity and do any further checks as necessary.

She stated that at that moment, they heard the door lock even further from the inside. They waited around fifteen minutes until the person decided to open the door. It was obvious that the person inside did not want to open the door so they told that person that force will be used if the door wouldn't be opened. She continued that when this person heard them trying to open the door, the door opened up and they found the said lady naked and shouting at them. When they tried to talk to her, they further identified themselves as police officers, but this lady started throwing all the stuff she had in her room at them and then she proceeded to grab a metal pointed rod and tried to fight them with it.

She continued that the police officers tried to defend themselves and to calm the situation by telling her to get dressed up so that they could proceed with their job but she became very aggressive. The other person they had in custody also started talking to her, trying to calm her down but she was uncontrollable. She explained that this lady started throwing things at them, even pieces of glasses. They tried to close the door to try not to get hurt. After all this commotion, they told her that they were going to take her to the Police General Headquarters and advised her to get dressed. After a further thirty minutes, she explained that she went to handcuff this person and this person became again very aggressive where she didn't want to be handcuffed.

She testified that she had to proceed with the handcuffs and while they were escorting her outside to the RIU vehicle, this lady tried to punch her with both her hands wearing the handcuffs. She said that she managed to walk away but her colleagues had to jump in to help her. While doing this, the lady became even more aggressive where she even bit one of her colleagues in his left hand during all that commotion as they were trying to put her into the vehicle.

PC 1572 Emanuel Cilia gave evidence on the 21st December 2018 where he stated that on the 11<sup>th</sup> day of December 2018, together with his colleague WPC 314, were detailed by roster to perform inspections regarding third country nationals staying in Malta illegally. They started from Marsa and then a call came that there were other people loitering in Victory Street, Qormi. He explained that when these people saw the van, there was a man who began running. They chased him and managed to catch him, whilst asking him for his documents. He continued that he told them that he lives inside a house with no number in Victory Street, just 25 metres from the local council, on the opposite side of the road. He stated that they were informed that this man lived inside a room which at that moment it was locked.

He stated that he and his other colleagues knocked on the door and identified themselves as police officers and inside the room they heard steps coming from somewhere. They knocked again and the person who was inside, which had a female voice, informed them that she didn't want to open. Eventually again, they identified themselves again as police officers and explained that they needed to go inside the room so that this gentleman could give them his documents. But this was to no avail. After about 15 minutes, trying to convince the person inside to open the door, he explained that they managed to open the door as they ordered her that if she didn't open the door, they would have to force open the door. The door was half glass, the upper part was glass and the lower part was wooden but it was with a frame of white aluminum.

He continued that when the person inside, heard them knocking harder, she came out all naked. He explained that his colleagues started to tell her to respect them as there were male officers but she began telling them not to touch her as she is a woman and that she didn't want to give them any documents. He continued that they tried to explain to her to get dressed. They ordered her even by showing her their police officers service ID car. He said that she remained naked for approximately 20 minutes. In those 20 minutes, they also tried, even with the help of RIU officers to try to calm her down, because she began grabbing debris from the floor which were pieces of wood, aluminum and glass, trying to throw them towards police officers and

eventually she grabbed a big piece of wood, and began to scuffle towards us. He explained that at that point he got hit in his elbow of his left hand and this is attested by a medical certificate.

He continued that after seeing this, he insisted with her to calm down and she eventually began to dress herself and went out of the room accompanied by police officers. He continued that he recognizes the accused. He explained that she came out and was calm at that moment whilst telling them that she was a woman who could not be touched and that she did not want to give them any documents and neither was she going to get handcuffed and come to any place with them. He continued that she was spoken to in a common yard inside this apartment by him, his colleague and police officers by the Rapid Intervention Unit. After this, she gave them her documents and the titolo di soggiorno and they told her that they needed to take her to police headquarters so that she will be spoken to by the duty immigration officer.

He stated that as soon as she heard this she again began to get nervous, she even tried to resist arrest and they managed to handcuff her with her hands in front of her chest. Eventually as they were escorting her outside to get inside the police vehicle from the Rapid Intervention Unit, she saw people gathering outside because they saw the policemen and also the Rapid Intervention Unit vehicle. Eventually when she saw people gathering outside, she began alleging that Maltese were all racists and that they wanted to make a show. He stated that she turned on the left hand side because his colleague Ruth WPC 314 was behind her and tried to hit his colleague with the handcuffs in her face, but his colleague noticed what she was doing and stepped two steps backwards so that she couldn't hit her.

He continued that they tried to restrain her and get her inside the police car but in that moment, the accused managed to bite him on the middle finger of his left hand and also bite him on his wrist on the left hand side. They managed to put her inside the police car and was taken to police headquarters and eventually she was spoken to by Inspector Darren Buhagiar. Whilst inside the office when she was

being asked by the inspector, she admitted that she had a scuffle with the officers inside this room in her apartment in Victory Street. He exhibited photos of the injuries that he sustained.

He stated that it was decided that the accused would be escorted to the police lock up while staying over there so that she would be arraigned in court the following day. He did not retire on sick leave but stayed duty. He went to Floriana health centre, where he was medically certified and examined by a doctor. The doctor gave him strict orders to go to Mater Dei Hospital, to take blood tests which results should come out within six months.

In **cross examination**, he stated that he was called on the radio to assist out colleagues because the accused did not want to open the door for them. He explained that he was accompanying a person to his residence in Hal Qormi . This man used to live in the same room with the accused. He stated that he was assisting other officers from RIU who were inside the police vehicle and that there was a van with other arrested people from the immigration. There was also WPC Ruth Fenech, PC Leon Schembri from SB, PC 480 Carmelo Diacono and there was also another police officer who was the driver of the mini van of the police. He confirmed that they were 6 officers in all.

He stated that the person who spoke to accused, was WPC Ruth Fenech. In fact the alleged assault on himself, was done whilst she was being handcuffed by WOC Ruth Fenech. In fact the place was an open common yard and in this yard there were a lot of residences, apartments. The accused did not open the door notwithstanding the knocking. RIU officers gave orders that if she wouldn't open the door, they would have to force the door open. In fact as soon as they began to force the door open she came out fully naked and his colleague WPC Ruth Fenech who was inside at the front of the door, gave her orders to get dressed up. He continued that the accused began to throw at them pieces of glass, of shattered glass and also pieces of wood.

He clarified that inside the yard, there were two police officers and outside there were four. He stated that it was PC Carmelo Diacono and WPC Ruth Fenech who knocked on the door. He stated that they went to the apartment as the male person detained had said that he had his documents there. He stated that when they knocked at the door, they heard her shouting from inside that she was coming but as soon as they gave their identification and asked her for her documents, her attitude changed. He explained that he did not ask this male person to hand over his keys to open the door. He confirmed that the police had to force open the door. He stated that it was not him who tried to calm her down. He stated that only two officers were in police uniform. He insisted that the accused started throwing things from the beginning.

He clarified that the accused was handcuffed by his female colleague WPC Ruth Fenech. She was handcuffed both hands in front of her chest. He stated that the accused used her hands to try and hit his colleague Ruth Fenech outside while they were escorting her to the police vehicle. WPC Ruth Fenech saw her trying to hit her and she moved back so that this person could not hit her with the handcuffs. He stated that they tried again to restrain her. At the moment that they grabbed her from under under her arms, he was the person who was in the front and his hands passed in front of her mouth. He stated that she was moving her head and managed to bite his finger with her hands still handcuffed. He stated that he does not remember where the accused showed them her documents.

**Doctor Sarya Brata Das** presented an affidavit wherein she explained that she issued a medical certificate dated 11th December 2018 at 11am with regards to Emanuele Cilia who had sustained the following injuries whilst trying to arrest an illegal immigrant. He sustained abrasions over left elbow and forearm and a small laceration over left middle finger. The nature of these injuries were slight.

**PC 307 Alessandro Vella** gave evidence on the 31 January 2019 and he stated that he is stationed with the Rapid Intervention Unit. He stated that they were called to assist the district police on the 11<sup>th</sup> December of last year. At about 11am they were doing overtime

patrolling assisting other police officers who were not in uniform, in casual clothes. Their assistance was required as there were multiple persons inside a residence in Hal Qormi, Triq il-Vitorja who wouldn't open the door. He stated that they arrived, after the other officers because they had another person arrested and had to escort him to the depot so the Inspector would speak to him. He explained that there were about four other police officers, one of them Eman and another police woman and there were about two other persons whom he thinks were the same nationality of the lady there and the lady there who was without a shirt. He explained that he saw the officers in front of an open door and the lady inside without the shirt and they were telling her to dress up so they can see her documents. He stated that the door was forced open by the other officers. He stated that they are regularly called to assist these type of issues.

**PC 488 Carmel Diacono** stated that he is a police constable stationed at the airport police station. On the 11th December, he was in Hal Qormi and saw a person running away from them. He told them where he resided. He explained that there was a door which was half of glass and half of aluminium. Behind this door, there was a person. They tried to speak to this person but she did not answer. This person communicated with the person behind the door and the latter answered b' hekk. They forced the door and the person behind the door opened the lock and threw at them a piece of wood. He explained that this person was aggressive.

He explained that they had gone to this residence as the person they had chased had told them that he resided there. He stated that they had asked this person to open the door but they forced it open as there was another person behind the doors who refused to open, even though they ordered her to open. He explained that he was in plain clothes. He stated that the accused was naked. He insisted that she did not communicate with them and they had to force the door open. They searched for documents once inside and found Italian documents which were valid for Italy. He stated that he did not touch the accused. He simply asked her to open the door and she did not open it. He stated that the accused took away the lock, opened with the keys and then started throwing things at the officers. He clarified that they did not



break open the door. The door remained where it was. He added that the accused whilst handcuffed tried to hit a female constable. He did not touch the accused. He also recognized the accused.

**PC 1046 Lyon Xuereb** testified that on the 11<sup>th</sup> December, they were detailed to perform inspections regarding third country nationals and ended up in a residence in Qormi. There were several rooms and at one point they were knocking on a door where someone was inside and he didn't want to open. At some point they forced the door in but he was about four metres away as he was speaking to another person. He saw pieces of wood flying towards him. He was wearing plain clothes. He explained that the others identified themselves as police officers. Two of the officers were wearing a uniform. He was present but he was not involved in forcing the door open. He stated that he knew that there was someone inside and the door was forced open. He cannot say whether there was a reason to force open the door.

**The accused, Isatou Bobb** explained that she had been in Malta for three days before she was arrested. She arrived in December. She was residing in Qormi. She was staying alone but there were more people in the house. She had an Italian document and a Gambian passport. She had no problem to show these documents to the police when she arrived. At the time of the incident, she was naked and applied cream to her body. After the police entered, they attacked her and opened the door. The door broke down and they saw her naked. She told the police why they were doing this. She stated that if it was their younger sister, they would not do this to her. She explained that the female officer told her to fuck off.

She stated that they simply broke the door and did not ask her to open the door. She said that the door is made of glass so she could see who was there but from the outside, they could not see who was there. She said they arrested one boy outside. She insisted that the police forced open the door. She stated that she did not know that the people were police officers. There were 4 people, three man and one woman. Then she stated that there were 2 people in uniform. She stated that these people spoke to her in English but she could not understand what they

were saying. She stated that when they forced open the door, they did not tell her anything but they said that they came to collect documents of another person. She said that once they were in, they asked her for her documents. She gave them her passport, her soggiorno and hrt ID card. She said that after she got dressed, she was handcuffed by the female constable. She denied fighting even though the handcuffs were tight. She denied biting the police officer. She was handcuffed inside the house. She insisted to know what the problem was and the female constable said that this was the rule of Malta, and if they arrest someone, they have to handcuff. He stated that she was not informed why she was being arrested. She stated that she was not shown any arrest warrants and was pushed around like a slave by the officer who alleged that she bit him. She stated that this officer punched her in her face n the right hand side at the lower part of her face.

She alleged that she was hit on the left hand with the door. She stated that she told him that he would pay for what he did to her and seeing her hand, he hit himself and alleged that she had bit him. She was taken to a health center by the police and she had stitches. She insisted that the men saw her naked. She explained that she could not fight because she was handcuffed. She admitted that she was given the opportunity to dress and it was after she was dressed, that she was handcuffed. However, she stated that the men did not identify themselves as police officers. She stated that she did not refuse to open the door but they broke the door with the result that they saw her naked.

### **Having considered**

The Court of Criminal Appeal in the names of "Il-Pulizija vs. Mathew Peter O' Toole" [2.3.06] stated that:

*" il-Qrati ma jistghux jittrattaw kazijiet bhal dawn fejn ikunu mhedda ufficjali tal-Korp tal-Pulizija, waqt li qed jaqdu dmirijiethom - kultant f' sitwazzjonijiet difficili u delikati - b' leggerezza, qisu ma gara xejn, bhallikieku l-Pulizija qieghed hemm biex jigi mzeblah, sfidat, u mhedded."*

In the case "Il-Pulizija vs. George Grech, the Court of Criminal Appeal decided on the 23<sup>rd</sup> June 2005, the Court stated that:

*"Illi l-Qorti terga ttenni f'dak li diga' qalet f'diversi sentenzi li r-reati bhal dawk ammessi mill-appellant fuq membri tal-korp tal-Pulizija waqt il-qadi tad-dmirijiet taghhom ma jistghux jitqiesu leggerment mill-Qrati li ghandhom joffru kull protezzjoni lill-kustodji tal-ordni pubbliku meta jkunu qed jagixxu fiz-zamma tal-ordni taht cirkostanzi mill-aktar difficli u b'riskju kbir ghall-inkolumita' taghhom personali w li ghalhekk f'dawn it-tip ta' reati hija indikata piena karcerarja effettiva kif del resto tidisponi l-ligi."*

In the case "Il-Pulizija vs Anthony Roderick Farrugia" decided by the Court of Criminal Appeal [26.4.2007], it was stated that :-

*"Kif irriteniet din il-Qorti diversi drabi, reati ta' vjolenza attiva fil-konfront tal-Pulizija kull ma jmorru qed jizdiedu w jsiru ferm spissi w l-Qrati ghandhom id-dmir, fejn ikun il-kaz, li jaghtu l-protezzjoni xierqa lill-forzi tal-ordni fejn dawn ikunu qed jagixxu entro il-poteri lilhom moghtija fl-esekuzzjoni tal-ligi w ma jistghux jittrattaw dawn il-kazijiet b' leggerezza w jikkondonaw dak li ma ghandux jigi kondonat b' pieni irrizorji aktar u aktar meta dak li jkun ikun recidiv kif inhu f' dan il-kaz."*

Considers:

### **First Charge-**

The accused is being charged as having refused to give or untruthfully give to any public officer or any other person entrusted with a public service in the actual exercise of his duties, his name, surname, address and other particulars.

This contravention is denoted in Article 338 g of the Criminal Code.

It emerged that although initially the accused did not give to the officers her personal details, subsequently she did give her details and the documentation she possessed.

Thus this Court finds that this charge has not been proven beyond reasonable doubt by the Prosecution.

### **The Third Charge -Article 96 of the Criminal Code**

Article 96 contemplates that: *“Whosoever shall assault or resist by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority, shall, on conviction, be liable –*

*(a) where the assault or resistance is committed by one or two persons, to imprisonment for a term from six months to two years and to a fine (multa) of not less than four thousand euro (4,000) and not more than ten thousand euro (10,000); (b) where the assault or resistance is committed by three or more persons, to imprisonment for a term from nine months to three years and to a fine (multa) of not less than five thousand euro (5,000) and not more than fifteen thousand euro (15,000).”*

The Court of Criminal Appeal in the case *Il-Pulizija vs Sean Sinclair Pace* decided on the 26th May 2016 stated that :

*“L-artikolu 96, imbaghad ghalkemm ukoll ghandu bhala vittma, l-ufficjal pubbliku, jikkontempla tlett elementi essenzjali ghal kostituzzjoni ta’ dana ir-reat:*

*1. Fl-ewwel lok, irid ikun hemm l-attakk jew resistenza. Illi meta ikun hemm biss disubbidjenza tal-ligi jew ta’ ordni moghtija minn xi awtorita’, ma tistax tissussiti r-reat taht din id-disposijoni tal-ligi. Il-Mamo ikompli ighid: “It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of lawful orders of the competent authority that the crime of attack or resistance can arise. The purpose of the agent in this crime, therefore, must be precisely that of obstructing or frustrating the execution of the law or the lawful orders of the competent authority, by opposing the action of those charged therewith.” Inoltra l-attakk jew resistenza trid tkun necessarjament akkompjanta bl-uzu tal-forza, vjolenza jew bil-hebb.*

*2. Fit-tieni lok ir-reat irid jigi komess fil-konfront ta’ufficjal pubbliku jew kif tghid testwalment il-ligi “persuna inkarigata skond il-ligi minn servizz pubbliku”.*

*3. Fl-ahharnett huwa necessarju illi l-attakk jew resistenza kontra l-ufficjal pubbliku irid isir filwaqt illi huwa ikun qieghed jagixxi ghall-*

*esekuzzjoni tal-ligi jew ta' ordni moghtija skond il-ligi minn awtorita' kompetenti. Il-Mamo ikompli ighid: "Therefore, any violence committed after the law or the order has already been executed, even though it may be on account of such execution, would not give rise to this crime."*

*Fis-sentenza Il-Pulizija vs Joseph Zahra deciza mill-Qorti ta'l-Appell Kriminali fid-9 Settembru 2002 gie deciz: "Dana l-artikolu (b'referenza ghall-artikolu 96) jirrikjedi mhux biss li l-vittma tkun persuna inkarigata skond il-ligi minn servizz pubbliku" (l-istess bhalma jirrikjedi l-Artikolu 95(1)), izda wkoll li r-reat ikun sar filwaqt li dik il-persuna hekk inkarigata minn dak is-servizz pubbliku "tkun qed tagixxi ghall-ezekuzzjoni tal-ligi jew ta' xi ordni moghti skond il-ligi minn xi awtorita' kompetenti."*

After having seen and examined the Acts of this case, the Court is convinced that there is proof beyond reasonable doubt that the accused is guilty of the third charge brought against her, that is the charge under article 96. The Court is basing its conclusions on the fact that the incident which took place was witnessed by numerous witnesses who all testified in the course of these proceedings. All witnesses give an identical version of events. From the description given by the officers present, it was clear that it was no easy feat to control the accused. The accused not only disobeyed the orders given to her but behaved aggressively. The incident was not of a "mere verbal resistance" but was also physical.

As pointed out by this Court presided by Magistrate Aaron Bugeja in the case Il-Pulizija vs Jerkin Decelis, decided on the 22nd November 2013:

*"L-imputat kien fid-dmir li, minghajr paroli u xenati zejda, jobdi l-ordnijiet legittimi li kienu gew moghtija lilu mill-Pulizija ...L-ordnijiet legittimi moghtija mill-Pulizija lic-cittadin ma humiex hemmhekk biex jigu konstestati, argumentati, mkasbra jew injorati sommarjament mir-ricevent. Qeghdin hemmhekk biex jigu obduti – dejjem u minghajr dewmien, ghalkemm bla pregudizju ghad-dritt ta' dak li jkun li jirreklama wara l-gustizzja intrinseka ta' dik l-ordni. Altrimenti jkun ifisser li kull persuna jkollha l-jedd tagixxi kif trid u joghgobha minghajr hadd ma jista' jzommha jew irazzanha. Nigu fi stat ta' gungla – l-antitezi tal-ordni mehtiega biex il-hajja socjali tkun tista tezisti farmonija relattiva."*

### **Second Charge – Disobeyance of the Lawful Orders Given**

This contravention is comprised and involved in the third charge, that under article 96. As has been expounded above, it is quite clear that the accused disobeyed the lawful orders of the officers and behaved and acted in such a way so that the orders given would not be executed.

### **Fourth Charge – Slight Injuries**

As regards the fourth charge, this has also been proved beyond reasonable doubt. Evidence was submitted showing that PC 1572 Eman Cilia suffered slight injuries at the instance of the accused. Medical certificates were produced and confirmed by Dr Satya Brata.

In addition these injuries were also confirmed by the various eye-witnesses who gave their testimony.

### **DECIDE:**

Therefore for the reasons explained above and after having seen articles 96(a), 214, 221, 338(g), and 338(dd) of the Criminal Code, the Court is finding the accused not guilty of the first charge and is finding the accused guilty of the second, third and fourth charges brought against her. The Court is condemning the accused to one year (1) imprisonment and a fine of four thousand euros (€4,000) which in the event of non-payment within a week from today, shall be converted to imprisonment in accordance with the relevant Criminal Code provisions. The period of time Isatou Bobb has spent in prison till today should be deducted from the one year imprisonment she has been condemned in terms of this sentence.

After having seen article 383 of Chapter 9 of the Laws of Malta in order to provide for the safety of PC 1572 Eman Cilia orders the offender to enter into her own recognizance in the sum of one thousand euros (€1000) for a period of one year from today.

The Court orders that a copy of this judgement be notified to the Attorney General and to the Registrar of the Criminal Courts and Tribunals.

**Dr Simone Grech**  
**Magistrate**

**Karen Falzon**  
**Deputy Registrar**