



MALTA

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE
DR. GABRIELLA VELLA B.A., LL.D.**

Case No. 649/18

**The Police
(Inspector Matthew Spagnol)**

Vs

Jeremiah Ani

Today, 19th September 2019

The Court,

After having considered the charges brought against Jeremiah Ani, son of George Ani and Loyce Ani, born in Nigeria on the 12th February 1985, residing at 195, Marteson, Vjal il-Ħelsien, Żebbuġ, and holder of Identity Card Number 0368412L, of having during the month of October and previous months, in these Islands, by several acts committed by him, even if at different times, which constitute violations of the same provision of the Law or of related provisions of the Law, and were committed in pursuance of the sam design:

1. Used violence, including moral and, or, psychological violence, and, or, coercion, in order to compel his ex-wife Luana Ani to suffer or omit anything or to diminish her abilities or to isolate that person or to restrict access to money, education or employment, in violation of Section 251(1) of Chapter 9 of the Laws of Malta;
2. Caused his ex-wife Luana Ani fear that violence will be used against her or her property or against the person or property, when he knew or ought to have known that his course of conduct will cause the other so to fear, in violation of Section 251B(1) of Chapter 9 of the Laws of Malta;
3. Without reasonable excuse, contravened any prohibition or restriction imposed upon him by a Protection Order issued by Magistrate Dr. A. Vella LL.D., on the 21st March 2016, in violation of Section 412C(11) of Chapter 9 of the Laws of Malta;
4. Uttered insults or threats against his ex-wife Luana Ani, in violation of Section 339(e) of Chapter 9 of the Laws of Malta;

After having considered that the accused pleaded that he is not guilty of the charges brought against him¹;

¹ Folio 7 of the records of the proceedings.

After having considered the documents submitted by the Prosecution during the arraignment of the accused on the 12th October 2018 at folios 8 to 17 of the records of the proceedings;

After having heard the testimony by PS 790 Nathan Zerafa² and by Luana Ani³ given during the sitting held on the 23rd October 2018 and after having considered documents submitted by Luana Ani marked Doc. “LA” at folios 50 to 61 of the records of the proceedings, after having heard the testimony by Inspector Matthew Spagnol given during the sitting held on the 31st October 2018⁴ and by Emily Abela on behalf of Melita p.l.c. given during the sitting held on the 20th December 2018⁵ and after considering the documents submitted by Emily Abela marked as Doc. “GV1” at folios 91 to 106 of the records of the proceedings, after having heard the testimony by the accused given during the sittings held on the 1st April 2019⁶ and on the 20th May 2019⁷ and after having considered documents submitted by the accused marked as Doc. “JA” at folios 114 to 205 of the records of the proceedings;

After having considered the Note by the Attorney General dated 18th February 2019⁸ by virtue of which he sent the accused to be tried by this Court, subject to no objection being made by the accused in terms of Section 370(3)(b),(c),(e) of the Criminal Code, Chapter 9 of the Laws of Malta, for an offence or offences under the provisions of:

- Sections 17, 31 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 251(1) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 251B(1) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 412C(11) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 339(e) of the Criminal Code, Chapter 9 of the Laws of Malta;

After having heard the Prosecution declare that it has no further evidence to submit in these proceedings and after having heard the accused declare that he has no objection to his case being dealt with summarily, the Court proceeded to read out the Articles put forth by the Attorney General in his Note dated 18th February 2019⁹;

After having heard oral submissions by the Prosecution, *Parte Civile* and Defence Counsel;

Considers:

The accused is being charged of having during the month of October and previous months, in these Islands, by several acts committed by him, even if at different times, which constitute violations of the same provision of the Law or of related provisions of the Law, and were committed in pursuance of the same design: (i) used violence, including moral and, or, psychological violence, and, or, coercion, in order to compel his ex-wife Luana Ani to suffer or omit anything or to diminish her abilities or to isolate her or to restrict access to money, education or employment, in violation of Section 251(1) of Chapter 9 of the Laws of Malta; (ii) caused his ex-wife Luana Ani fear that violence will be used against her or her property or against the person or property, when he knew or ought to have known that his course of conduct will cause the other so to fear, in violation of Section 251B(1) of Chapter 9 of the Laws of Malta; (iii) without reasonable excuse, contravened any prohibition or

² Folios 34 to 36 of the records of the proceedings.

³ Folios 37 to 49 of the records of the proceedings.

⁴ Folios 76 and 77 of the records of the proceedings.

⁵ Folios 89 and 90 of the records of the proceedings.

⁶ Folios 206 to 212 of the records of the proceedings.

⁷ Folios 215 to 224 of the records of the proceedings.

⁸ Folio 111 of the records of the proceedings.

⁹ Folio 112 of the records of the proceedings.

restriction imposed upon him by a Protection Order issued by Magistrate Dr. A. Vella LL.D., on the 21st March 2016, in violation of Section 412C(11) of Chapter 9 of the Laws of Malta; and (iv) uttered insults or threats against his ex-wife Luana Ani, in violation of Section 339(e) of Chapter 9 of the Laws of Malta.

From evidence put forth during the hearing of these proceedings it results that the incident which ultimately led to these proceedings being taken against the accused occurred on the 7th October 2018 when, as reported to the Police by Luana Ani, the accused's ex-wife, he allegedly threatened her that he was going to kill her. From the Police Incident Report exhibited at folios 8 to 10 of the records of these proceedings, which Report has been confirmed by PS 790 Nathan Zerafa¹⁰ and Luana Ani¹¹, it transpires that on the 11th October 2018 Luana Ani filed the following complaint against the accused with the Police: *complainant reported today at St. Julian's Police Station and stated that her husband listed as person related to this report has been threatening her for the past two and a half years. However last Sunday during a phone call he threatened her that he is going to kill her. Complainant added that this was not the first time and that she is constantly living in fear. The phone calls are happening every time that they disagree about the access of their children either or regarding payment of the monthly alimony. It is to be also noted that complainant has a court protection order against her husband issued by Dr. Anthony Vella dated 21/08/2016 for the period of three years. When complainant was asked the reason why she failed to report this earlier she stated that he was threatening her that if she goes to the Police he would kill her and that the Police are his friends and thus would not take action against him. Furthermore she stated that any Police whom will be involved between them will also lose their jobs. Complainant explained that there is a past of domestic violence not only psychological but also physical when she filed a slight bodily harm and said court protection order was issued.*

On being asked what led to the above-mentioned report being lodged with the Police against the accused, Luana Ani¹² declared: *the children were with him on Sunday 7th October, I had to pick them up at seven o'clock in the evening like it says on our contract, at 4:30p.m. he sent me a message and told me to be there at five. I told him that I couldn't make it because I thought I had to pick them up at seven and he told me to be there at 5:30p.m. and I said that I won't make it and he told me "then I will keep them more, go somewhere with them and then you can pick them up after ten o'clock in the evening". I told him "no because the contract says till seven and if the children are not there at seven I will go to the Police". He told me "you can go no problem", this is because the Police are his friends, he told me that they know him and if I had to go and make a report they will end up without a job because he is in service. The children called me from his mobile, crying, my second daughter called me and she told me "please mummy come here now because the Police are coming". I heard him shouting in the background saying "look what your mother is doing she wants to get the Police for you" and the children were crying. I went immediately for them and as soon as I arrived the children came running and the little daughter whispered in my ears "daddy said that you are a witch, that you are a devil and that he is going to kill you and if Nanna and Nannu stop him from seeing us he will kill them as well." The children were terrified, my second daughter kept on wetting the bed every day since then at night and they are all the time worried and crying that something is going to happen to me. From then on, on Monday I called my lawyer and on Thursday I went to make a report. That is not the first incident that he was threatening to kill me. On the 30th September 2018 he told me to take*

¹⁰ Vide testimony given by PS 790 Nathan Zerafa during the sitting held on the 23rd October 2018, folios 34 to 36 of the records of the proceedings.

¹¹ Vide testimony given by Luana Ani during the sitting held on the 23rd October 2018, folios 37 to 49 of the records of the proceedings.

¹² *Ibid.*

the kids late on Sunday evening and I told him that I couldn't, he told me that I should be ashamed as a mother and I told him "I am not ashamed because I look after my kids well, you are the one who should be ashamed because you don't even pay child support". He told me "if you report me to the Police regarding child support, I will kill you and straight away I hung up". The threatening has been happening since Summer 2016. I never ever filed a report he always threatened that he will do something even worse. In June 2016, the first time he threatened me again after we separated, I called the Police because he threatened to break into my house and come for me on Saturday at ten o'clock in the evening, I called the Police Station of St. Julian's. The Police came outside my house. On the phone they told me to come and make a report there and I said that I couldn't because I had three kids sleeping, they came outside my house and showed them the Protection Order and all they did was call him and obviously he didn't answer the phone so I was always very scared that he will do something worse if they just call but once he got the kids involved in it I couldn't take it anymore and this time I decided to make a report. ... A few months ago he also told me that he has many many contacts that he can easily make a phone call and blow me up with a bomb and the reason he won't do it is because of the kids. These are threatening phone calls I was having many many times and this resulted because either he doesn't want to keep the time of access of the kids or I mentioned child support and he doesn't want to pay; he only paid three months out of nearly three years, or because he wants us to get back together and I refuse.

Under cross-examination¹³ on being asked what triggered her into taking action against the accused, Luana Ani declared: *on the 8th September which was a public holiday I sent him a message to see if he would like me to take the kids early so that on Sunday I pick them up earlier. He told me "yes, no problem". Asked specifically this instance sort of triggered you? Luana Ani replied no it was from a long time but on that day on the 9th September, we were arguing all the time. ... he told me shouting and swearing on the phone "you do as I say, not as you say". The following day I did listen to what he said and I went to pick up the kids so that the kids don't keep listening to him shouting and swearing, I did pick them up the time which he said, on Monday morning I called my lawyer and told him that this has been going on and he told me "no, you need to tell him to stick to the time of access". On Monday morning 10th September I sent him a message and I told him "from today onwards read the contract again and we have to follow the time because I am not your slave and I do not do as you say regarding the time of the kids". When he was playing for Marsaxlokk and he had games on Sunday, you can ask him, I was more than understanding, I understood that he couldn't take the kids during the weekend. I even took the kids myself to watch him play a game so that he can see the kids and the kids can see him. That is how understanding I am. The contract doesn't tell me that I should be calling him every single day but I give the phone to my kids and every single day around five or six o'clock when he finishes work, I tell them to call him... then after that message he told me "I will not follow the contract I don't give a ... about the contract, now if you don't want me to see the kids no problem, I can go on for three years without seeing them you told me. You can have the kids, when they grow up they can come looking for me". I said "is this how much you love your kids" and then we kept on arguing. On that week, on Friday the day which he was supposed to take them from four till six I said "I can understand that you can't take them because you finish work at five but in the weekend you need to keep to the time". Saturday morning of that week, I sent him a message and I said "remember, today you have to pick up the kids at two o'clock", he did not reply. I said "If you're running late let me know" he did not reply, I got no answer, nothing and he kept like that for nearly three weeks without seeing the kids. Then on the 30th September when the kids called him 22nd*

¹³ Vide testimony given by Luana Ani during the sitting held on the 23rd October 2018, folios 37 to 49 of the records of the proceedings.

September was my eldest daughter's birthday and he didn't even call to say happy birthday, nothing. How much not seeing his kids and that's how dear they are to him. On the 30th September, it was Sunday evening that is when he told me "if you mention child support again I will kill you". On being asked by the Court: then what was the determining factor which after all this period of time you had been toing and froing regarding the children that actually made you go to file the report? Luana Ani replied: the fact that he told the kids "I am going to kill your mother" when I say the way it affected the kids because whenever he was threatening me I never told the kids obviously, sometimes they did hear because I used to lock myself in the bedroom to talk but the fact that he told them directly and saw the affect it had on them, telling me to give them the password because they were terrified because he is actually going to kill me. The little one telling me "can he really kill you if he doesn't have a gun? He needs a gun to kill you eh?" A four year old. All the time touching me holding my hand at night "mummy we love you, mummy we love you, something will happen to you?" My second daughter has mild epilepsy, the fits had completely stopped in May, that day he told her that, from the following day the fits started again. That's how it affected the children.

In support of her claims against the accused Luana Ani exhibited sms exchanges between her and the accused from which the following messages from the accused to Luana Ani are of particular relevance: **message dated 24th February 2018** - at least I work for one of the powerful men in Malta and I have power in making many decisions so if you think you wanna go bitchy with me think twice as you don't know what can be next for you. Never underestimate the power of the innocent. I can make many thing happen so be very careful in your threats towards me¹⁴; **message dated 21st April 2018** - do not start what you cannot repair and the biggest thing you have to be very careful is our kids don't let them suffer if you decide to be bitchy and I start mine you know all will affect them so be careful pick my call now don't make me come looking for you or involve your parents and other people. Are kids are innocent be careful¹⁵; **message dated 7th October 2018** - my kids are my priority to me when u stopped me from seeing them did I complain? No. I stayed quiet not to do something that will affect them the devil in u is really trying my patience and I won't be stopped from reacting in my own way¹⁶. ... You think you can threaten me with police like u did in the past? Sorry the police will advice you to be careful this time around go confirm and speak to me. You wanna be an evil mother to your kids? You will ruin your life by yourself. By playing evil towards me and trust me I'll go all the way if u push me. ... Go to the police pls don't even come cos I won't be there try and see am already prepared for it if that's the way u wanna go. Just to remind u any police man or woman who happens to be in service if he or she is your friend or relative and you try to use them against me and my kids listen be rest assured they will loose their job for playing a part now I'll show u what I am. lets see who will regret your father can be ready to spend money for in court as I will use all my power to show U that am black and am connected¹⁷.

In the light of the above the accused is being charged with the offence of private violence in terms of Section 251(1) of Chapter 9 of the Laws of Malta, with the offence of causing others to fear that violence will be used against them in terms of Section 251B(1) of Chapter 9 of the Laws of Malta, with the breach of the provisions of a Protection Order issued against the accused in terms of Section 412C(11) of Chapter 9 of the Laws of Malta and with the contravention against the person in terms of Section 339(e) of Chapter 9 of the Laws of Malta.

¹⁴ Folios 51 and 52 of the records of the proceedings.

¹⁵ Folios 52 and 53 of the records of the proceedings.

¹⁶ Folios 55 and 56 of the records of the proceedings.

¹⁷ Folios 59 to 61 of the records of the proceedings.

Section 251(1) of Chapter 9 of the Laws of Malta provides that: *whosoever shall use violence, including moral and, or, psychological violence, and, or coercion, in order to compel another person to do, suffer or omit anything or to diminish such other person's abilities or to isolate that person, or to restrict access to money, education or employment shall, on conviction, be liable to the punishment laid down in sub-article (1) of the last preceding article.*

In terms of local jurisprudence this particular provision of the law is interpreted and consequently applied as follows: *dwar dan ir-reat l-Antolisei jgħid: A. "L'elemento oggettivo è costituito da una violenza o da una minaccia che abbiano l'effetto di costringere taluna a fare, tollerare od omettere qualche cosa. B. L'avvenuto costringimento costituisce requisito essenziale del reato. Esso, quindi, ne segna la consumazione. C. Il fatto deve essere illegittimo. L'illegittimità è esclusa soltanto quando ricorra una specifica causa di giustificazione, in forza della quale l'agente abbia la facoltà giuridica di imporre una determinata condotta al paziente, come nel caso che si tratti di impedire la esecuzione o la permanenza di un reato. Fra i casi di liceità rientra anche l'uso della violenza o minaccia per impedire il suicidio di una persona. D. L'elemento psicologico consiste nella coscienza e volontà di usare violenza o minaccia, prevedendo - quale conseguenza della propria azione - che altri farà tollerare od omettere qualche cosa'. B'din l-interpretazzjoni jidher li **biex isir dan ir-reat wieħed irid jikkostringi lil xi ħadd jagħmel xi ħaġa ħażina jew iħalli ssir xi ħaġa ħażina jew jonqos milli jagħmel xi ħaġa u meta jkun qed jonqos milli jagħmel xi ħaġa tkun tirrizulta xi ħaġa ħażina. Ma' dan wieħed irid iżid l-intenzjoni li din ix-xi ħaġa ħażina ssir jew thalliha ssir jew tonqos milli tagħmel xi ħaġa biex tirrizulta xi ħaġa ħażina**¹⁸.*

In the judgement in the names **Police v. Victor Ward, Case No. 569/04** delivered by the Court of Magistrates (Malta) As a Court of Criminal Judicature on the 12th December 2005, the Court in addressing the charges brought against the accused in those proceedings - amongst which, charges in terms of Section 86 of Chapter 9 of the Laws of Malta and Section 251(1) of Chapter 9 of the Laws of Malta - and in particular in addressing the charge in terms of Section 251(1) of Chapter 9 of the Laws of Malta, observed that: *it-tieni imputazzjoni tal-Prosekuzzjoni taqa' taħt l-artikolu 251 tal-Kap.9 li jgħid: 'kull min juża l-vjolenza sabiex igiegħel lil xi ħadd jagħmel, iħalli jsir jew jonqos milli jagħmel xi ħaġa, jeħel meta jinstab ħati l-piena imsemmija fis-sub-artikolu (1) ta' l-artikolu ta' qabel dan ... Fil-fehma tal-Qorti l-każ odjern huwa aktar wieħed ta' sekwestru tal-persuna milli wieħed fejn persuna qed tkun sfurzata tagħmel xi ħaġa jew li ma tagħmilx xi ħaġa. S'intendi l-vittma ma thallix toħroġ mill-karozza iżda **l-iskop wara l-artikolu 251 huwa differenti u jrid jolqot sitwazzjonijiet oħrajn. Per eżempju, igiegħel lil xi ħadd jaqbeż ġo dar biex jisraq jew bil-vjolenza ma thallix li jsir auditing ta' kumpannija kif suppost**¹⁹. Għaldaqstant il-Qorti tillibera lill-imputat mit-tieni imputazzjoni.*

When the facts of this case and in particular the messages exchanged between the accused and Luana Ani exhibited at folios 51, 52, 53, 55, 56, 59, 60 and 61 of the records of the proceedings are considered in the light of the above-quoted judicial principles, it clearly results that the elements constituting the offence provided for under Section 251(1) of Chapter 9 of the Laws of Malta do not subsist. In fact, from testimony given - even by Luana Ani herself - and documents submitted it does not in any way result that the accused forced, by using violence, including moral and/or psychological violence, or coerced Luana Ani **to do something illegal** or to desist from doing or to omit to do something **which**

¹⁸ Pulizzija v. Omissis, Case No. 1373/07 - Court of Magistrates (Gozo) As a Court of Criminal Judicature, 5th March 2008. Emphasis by this Court.

¹⁹ Emphasis by this Court.

desistance or omission gives rise to something illegal. Even though Luana Ani claims that the accused repeatedly threatened her that he would kill her if she reported him to the Police, thus leading her not to file a report against him, it cannot be in any way considered that in not reporting the accused to the Police Luana Ani was actually doing something illegal. The issues between the accused and Luana Ani are of a totally different nature and whilst their seriousness cannot be ignored or minimised, they can in no way be considered to fall under this particular provision of the Law.

In the light of the above, the Court deems that the accused cannot be found guilty of the first charge brought against him.

As already pointed out above the accused is also being charged with the offence of causing others to fear that violence will be used against them in terms of Section 251B(1) of Chapter 9 of the Laws of Malta. The said provision of the Law provides that: *a person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in article 222(1) shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions, and shall be liable to the punishment of imprisonment for a term from three to six months or to a fine (multa) of not less than four thousand and six hundred and fifty eight euro and seventy five cents (4658.75) and not more than eleven thousand and six hundred and forty six euro and eighty seven cents (11,646.87), or to both such fine and imprisonment.*

This provision of the Law has been consistently interpreted as follows: *dan ir-reat gie evidentement ispirat mill-Artikolu 4(1) tal-Protection from Harassment Act, 1997 ta' l-Ingilterra, liema artikolu jipprovidi testwalment hekk: "A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions." L-Artikolu 251B tagħna - u hawn il-Qorti ser tuża t-test Inġliż proprju biex wieħed ikun jista' jara x-xebħ u fejn saru it-tibdiliet - jipprovidi, fis-subartikolu (1) tiegħu hekk: "A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in sub-article (1) of article 222 shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions..." Il-kliem "on each of those occasions" huma indikattivi li l-att materjali ma jistax iseħħ f'okkazzjoni waħda iżda jrid ikun hemm għall-anqas żewġ okkazzjonijiet - proprju kif jinġhad fil-matrici Inġliża, "on at least two occasions". Għal xi raġuni - fil-fehma ta' din il-Qorti kompletament illoġika - il-kliem 'on at least two occasions' thallew barra. Fi kliem l-edituri ta' Blackstone's Criminal Practice, 2008: "How separate the two occasions must be remains to be seen. The nature of stalking, the activity which primarily created the need for the new offences, might mean that the occasions are likely to be on separate days, although it may be possible to differentiate activities on one day where they can be viewed as not being continuous. The further apart the incidents, the less likely it is that they will be regarded as a course of conduct. ... It was recognised, however, that circumstances can be conceived "where incidents, as far apart as a year, could constitute a course of conduct". The type of incidents would be those intended to occur on an annual event such as a religious festival or a birthday..." Din il-Qorti mhix se tipprova tagħti definizzjoni eżawrienti ta' x'jammonta għal "course of conduct" għall-fini ta' l-imsemmi Artikolu 251B(1) - u anqas ma hi se tipprova telenka kazijiet, anke jekk biss bħala forma ta' eżempju, li jammontaw jew ma jammontawx għal tali 'imġieba", ħaġa li trid tiġi deċiża minn każ għal każ skond iċ-ċirkostanzi u bl-applikazzjoni ta' doża qawwija ta' saġġezza min-naħa tal-ġudikant. Dak li qed jiġi deċiż f'din il-kawża hu biss li iċ-ċirku wieħed (u per*

di più ta' minuti) ma jammontax għal 'course of conduct' għall-finijiet ta' l-Artikolu 251B(1). Inoltre huwa evidenti li l-vjolenza kontemplata fl-imsemmi artikolu hija dik li talvolta tista' tiġi perpetrata fil-futur u mhix dik li effettivament tkun giet kommessa. Il-vjolenza effettivament kommessa tiġi punita taħt disposizzjonijiet oħra tal-Liġi²⁰.

In the judgement in the names **Police v. Giuseppe Camilleri et**, delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 16th January 2019²¹, the Court further observed that: *dwar dan l-Att (Protection of Harassment Act 1997) l-Archbold jgħid dan li ġej: "The Act describes itself as one 'to make provision for protecting persons from harassment and similar conduct". It was passed for the purpose of dealing with the phenomenon of 'stalking'. There is, however, no attempt at a definition of harassment, although Section 7(2) provides that references to harassing a person include alarming the person or causing the person distress. In 'Tuppen and anor v. Microsoft Corporation Limited and anor, The Times' November 15 2000, QBD, Douglas Brown J held that there being no definition of 'harassment' in the Act, it was legitimate to have recourse in the proceedings in Parliament as an aid to construction because the wide potential and far-reaching meaning that might be attributed to the word; such reference made clear that the behaviour sought to be controlled was conduct such as stalking, anti-social behaviour by neighbours and racial harassment. But in 'Thomas vs News Group Newspaper Ltd and anor, The Times, July 25th 2001, CA (Civ. Div) it was held that the Act is concerned with conduct targeted at an individual which was calculated to produce alarm or distress and which was oppressive and unreasonable. Two incidents can constitute a 'course of conduct' but the fewer the incidents and the greater their separation in time, the less likely it is that they could be described as 'a course of conduct': Lau vs DPP (2000) 1 F.L.R. 799 DC. IN 'Pratt vs DPP' 165 J.P. 800 DC, it was said that the concern which the 1997 Act had been intended to meet was that persons should not be put in a state of alarm or distress by the behaviour of others; and that purpose had to be borne in mind when deciding whether to prosecute when there was only a small number of incidents relied upon. On the facts it was held that two incidents, three months apart, in the first of which the defendant threw a beaker of water at his wife, and in the second of which he chased round the house, swearing and repeatedly questioning her were close to the line, but the conviction could be sustained where the incidents took place against a background of an undertaking having been given in civil proceedings by the defendant not to sue or threaten violence against his wife nor to harass or pester her. The test under section 1(2) is entirely objective; the reasonable man is not to be imbued with the peculiar characteristics of the offender'. (Archbold: 2003 pages 1688-1689 paragraphs 19-277a; 19-277b).*

From the above-mentioned judicial principles it clearly results that for the offence in terms of Section 251B(1) of Chapter 9 of the Laws of Malta to subsist there must result the central and pivotal element of "a course of conduct" on the part of the accused, an element which in the Court's opinion the Prosecution did not manage to satisfactorily prove in this particular case.

Even though the accused has been charged with committing the offence contemplated under Section 251B(1) of Chapter 9 of the Laws of Malta during the month of October 2018 and previous months, and although Luana Ani alleges that the accused has been threatening her and making her fearful that violence is going to be used by him against her or other members of her family ever since their separation in 2016, the Prosecution brought **tangible** proof of

²⁰ Police v. Raymond Parnis, Case No. 337/08 - Court of Criminal Appeal - 24th April 2009; Republic of Malta v. Carmelo Camilleri, Case No. 19/08 - Court of Criminal Appeal - 12th October 2009; Police v. André Attard, Case No. 334/18 - Court of Magistrates (Malta) as a Court of Criminal Judicature - 12th March 2019;

²¹ The judgement is currently subject to appeal however the Court deems that the principles cited in the said judgement are still pertinent to these proceedings.

only **three instances over a period of two and a half years** when the accused can be considered to have been threatening towards his wife, these being the three sms messages exhibited by Luana Ani and dated 24th February 2018, 21st April 2018 and 7th October 2018. Even though during the year 2018 there were these three particular instances - the import of which cannot be denied or underestimated - the Court still deems that there doesn't result a course of conduct on the part of the accused as required under Section 251B(1) of Chapter 9 of the Laws of Malta, and this for the reason set out hereunder.

From documents exhibited by Emily Abela on behalf of Melita p.l.c. marked as Doc. "A" and Doc. "B" at folios 92 to 108 of the records of the proceedings, it clearly results that during the **year 2018** the accused and Luana Ani exchanged numerous phone calls and sms messages, indeed **no less than 700** phone calls and messages from the accused to Luana Ani and vice versa, and yet from these **700** and more phone calls and messages only **three** sms messages from the accused to Luana Ani can be considered to be threatening. The Court is of the opinion that evidence put forth by the Prosecution in this regard is surely not enough to prove and establish with regard to the accused a course of conduct as required by Law for the offence in terms of Section 251B of Chapter 9 of the Laws of Malta to subsist.

In the light of the above the Court deems that the accused cannot be found guilty of the second charge brought against him.

In spite of all that observed with regard to the first and second charges brought against the accused, the Court cannot ignore or underestimate the import and meaning behind the three sms messages sent by the accused to Luana Ani on the 24th February 2018, 21st April 2018 and 7th October 2018, which messages are, in the Court's opinion, clearly threatening, especially due to the use of expressions such as ***"so if you think you wanna go bitchy with me think twice as you don't know what can be next for you... I can make many things happen so be very careful in your threats towards me..."***²² ***"if you decide to be bitchy and I start mine you know all will affect them so be careful pick my call now don't make me come looking for you or involve your parents and other people. Are kids are innocent be careful"***²³ ***"the devil in u is really trying my patience and I won't be stopped from reacting in my own way ... You wanna be an evil mother to your kids? You will ruin your life by your own self. By playing evil towards me and trust me I'll go all the way if u push me. ... now I'll show you who I am. lets see who will regret your father can be ready to spend money in court as I will use all my power to show U that am black and am connected"***²⁴. Even though the accused, particularly under cross-examination²⁵, tried to justify his sms messages to Luana Ani, the Court is not at all convinced by his justifications and stands by its view and opinion that the above-mentioned messages and in particular the emphasised expressions are clearly threatening towards Luana Ani.

The Court is thus of the opinion that the circumstances of this case fall squarely within the parameters of the contravention against the person in terms of Section 339(1)(e) of Chapter 9 of the Laws of Malta which is indeed the fourth charge brought against the accused and is also one of the Sections of the Law quoted by the Attorney General in his Note dated 18th February 2019 by means of which he sent the accused to be tried by this Court.

²² Folios 51 and 52 of the records of the proceedings. Emphasis by the Court.

²³ Folio 53 of the records of the proceedings. Emphasis by the Court.

²⁴ Folios 56, 59 and 61 of the records of the proceedings. Emphasis by the Court.

²⁵ Cross-examination held during the sitting dated 20th May 2019, folios 215 to 224 of the records of the proceedings.

Section 339(1)(e) of Chapter 9 of the Laws of Malta provides that: *Every person is guilty of a contravention against the person who - (e) utters insults or threats not otherwise provided for in this Code, or being provoked, carries his insult beyond the limit warranted by the provocation.* With reference to the interpretation of this particular provision of the Law local jurisprudence provides: *bħala kunsiderazzjoni legali in konnessjoni ma' din il-kontravvenzjoni, din il-Qorti taġħmel riferenza għas-sentenza fl-ismijiet Il-Pulizija v. Mario Camilleri deciza minn din il-Qorti diversament preseduta nhar it-30 ta' Settembru 2009: "Skond il-gurisprudenza Il-Pulizija versus Joseph Frendo 'it-tħeddid ifisser li agent ikun qed jipprospetta lil persuna oħra ħsara ingusta". "Il-Qorti hi sodisfatta li bid-diskors li qal l-appellant lil John Casa ... u speċjalment bil-mod kif intqal dan id-diskors u bil-ġesti li akkumpanjaw l-istess diskors, l-appellant kien qiegħed effettivament jħedded lill-imsemmi Casa. Fil-kuntest ta' l-artikolu 339(1)(e) tal-Kap.9, tħeddid ifisser li l-agent jipprospetta lil persuna oħra ħsara ingusta fil-futur (ħsara li però ma tkunx tammonta għal reat ieħor ikkontemplat band' oħra fil-Kodiċi e.ż. l-artikolu 249) liema ħsara tkun ukoll ipprospettata li tiddependi mill-volontà ta' l-istess agent". Fis-sentenza fl-ismijiet Karmenu Cutajar versus Pawlu Cassar ingħad li: "Meta bniedem, wara kwistjoni li kellu ma ieħor, jieħu atteġġjament li jħalli fl-istanti l-impressjoni li hu qiegħed ilesti ruħu għall-għied, dak l-atteġġjament jammonta għal minaccja reali u verbali". Tħeddida lanqas ma titlef mis-serjetà taġħha jekk tkun kundizzjonata. Ingħad ukoll li minaccja ma titlifx mis-serjetà taġħha billi tkun kundizzjonijiet. Antolisei jishaq li: "**è sufficiente che la minaccia sia tale da turbare la tranquillità delle persone a cui è rivolta, come nel caso che taluno dica ad un altro 'ti farò vedere di che cosa sono capace**"²⁶.*

When the sms exchanges quoted above, in particular the extracts emphasised above, are considered in the light of the above-mentioned judicial principles it clearly results that the same cannot but be considered as threats by the accused towards Luana Ani thus making the accused guilty of the fourth charge brought against him in terms of Section 339(1)(e) of Chapter 9 of the Laws of Malta.

The accused is also being charged of having without reasonable excuse contravened any prohibition or restriction imposed upon him by a Protection Order issued by Magistrate A. Vella LL.D. on the 21st March 2016, in violation of Section 412C(11) of Chapter 9 of the Laws of Malta - a Section of the Law also quoted by the Attorney General in his Note dated 18th February 2019.

By virtue of the said Protection Order issued on the 21st March 2016 - exhibited at folio 17 of the records of the proceedings - the accused was prohibited from following the movements of Luana Ani, from accessing premises in which Luana Ani lives, works or frequents even if he has a legal interest in the said premises, except where authorised by the separation agreement for scope of access of his minor children, and from molesting Luana Ani for a period of three (3) years from the date of the said Protection Order.

In the Court's view and opinion the threats directed by the accused against Luana Ani in the sms messages quoted above constitute a direct act of molestation by the said accused against Luana Ani and therefore are tantamount to a breach of the conditions set out in the Protection Order dated 21st March 2016 thus making the accused guilty of the third charge brought against him.

In the light of all the above it therefore results that whilst the accused cannot be found guilty of the first and second charges brought against him and must thus be acquitted of the same,

²⁶ Police v. Salvatore La Rocca, Case No. 50/17 - Court of Magistrates (Malta) as a Court of Criminal Judicature - 7th February 2019. Emphasis by this Court.

he is guilty of the third and fourth charges brought against him and must be duly punished for the same.

In so far as concerns punishment the Court, apart from taking into account the circumstances of the case and nature of the third and fourth charges brought against the accused and also the submission put forth by the *Parte Civile* during Oral Submissions, that since the occurrence incidents forming the merits of these proceedings the relationship with the accused has improved and is more stable, it also taking into consideration the following:

- (i) Even though the accused was threatening towards Luana Ani on separate occasions, each of these occasions is not to be considered as a separate offence but as a single continuous offence in terms of Section 18 of Chapter 9 of the Laws of Malta, which Section provides that: *where the several acts committed by the offender, even if at different times, constitute violations of the same provision of the law or of related provisions of the law, and are committed in pursuance of the same design, such acts shall be deemed to be a single offence, called a continuous offence, but the punishment may be increased by one or two degrees.*

For all intents and purposes the Court points out that even though Section 18 of Chapter 9 of the Laws of Malta is not specifically mentioned in the Note of the Attorney General dated 18th February 2019 by means of which he sent the accused to be tried by this Court, It is not precluded from applying the said Section of the Law in this case since it does not in itself constitute an additional or aggravated offence but is more pertinent and relevant to the punishment to be inflicted on the accused and in any case in the charges issued against the accused he has been specifically charged with having *during the month of October and previous months, in these Islands, by several acts committed by him, even if at different times, which constitute violations of the same provision of the law or of related provisions of the law, and were committed in pursuance of the same design...*

These observations are supported by that observed by the Court of Criminal Appeal in the judgements in the names: (i) **Police v. Lawrence sive Lorry Cuschieri**, delivered on the 30th October 2001, wherein with reference to the interpretation of a continuous offence the Court observed that - *ir-reat kontinwat huwa finzjoni legali krejata essenzjalment għall-benefiċċju ta' l-akkużat b'piena indeterminata li tiġi kominata biss bħala miżura esklussivament diskrezzjonali wara li jiġu ppruvati bħala punibbli oltre kull dubju raġonevoli r-reati individwali komponenti tiegħu kif ukoll ippruvata l-eżistenza ta' riżoluzzjoni kriminuża waħda li tinkatena dawk ir-reati ma' xulxin. Fir-reat kontinwat innifsu ma jikkonkorru dawk l-elementi essenzjali sabiex jiġi jingħad li huwa reat b'eżistenza awtonoma. Invece huwa ċar li ir-reat kontinwat, bħala finzjoni legali, huwa biss ċirkostanza ta' fatt illi, meta tiġi stabbilita, tinduci eċċezzjoni għall-konkorrenza tar-reati u l-kumulu ta' pieni relattivi;* (ii) **Police v. Fatiha Khallouf, Appeal No. 118/01** delivered on the 25th September 2001, wherein - once again with reference to the interpretation and meaning of a continuous offence - the Court observed the following: *hu fatt li meta si tratta ta' reat kontinwat, dan ma jkunx każ ta' reat originali miżjuda miegħu ċirkostanzi aggravanti, bħal, per eżempju, ir-reat ta' serq aggravat bil-ħin, valur u/jew mezz, liema ċirkostanzi aggravanti jirrenduh aktar gravi. Meta si tratta ta' reat kontinwat, il-Liġi penali tagħna tibqa' tikkunsidrah bħala reat wieħed u waħdu "a single offence". Il-Professur Mamo hekk isejjahlu w qatt ma jiddeskrivih bħala xi reat akkompanjat b'ċirkostanzi aggravanti. Kif tgħid il-Liġi, sabiex reat ikun wieħed kontinwat, jeħtieġ li jikkonkorru tlett rekwiżiti, cioè (1) diversi azzjonijiet li jivvolaw l-istess disposizzjoni tal-Liġi; (2) li ġew magħmula f'okkazzjonijiet differenti; u (3) li ġew magħmula dejjem bl-istess risoluzzjoni jew intenzjoni kriminuża biex tinkiser dik l-istess disposizzjoni tal-liġi. Dan*

ifisser li anke jekk hemm azzjonijiet (actions u mhux acts) ripetuti li dejjem saru bl-istess ħsieb kriminuz li tinkser l-istess disposizzjoni tal-Liġi, anke jekk dawk l-azzjonijiet saru fi żminijiet differenti, spazjati minn xulxin, meta hemm għandek reat wieħed biss, dak kontinwat. Għalhekk, dan mhux xi reat aggravat kif qed tikkontendi l-appellanti. Jibqa' dejjem reat wieħed, originali, iżda kontinwat għaliex ikunu ġew sodisfatti l-imsemmija tlett rekwiżiti. Għal dik li hija l-piena, hu veru li l-liġi tgħid li fkaż ta' reat kontinwat il-Qorti tista' żżid il-piena bi grad jew tnejn. Cioè hija fid-diskrezzjoni tal-Qorti jekk f'dan il-każ tapplikax il-piena kif normalment applikabbli għall-istess reat mhux kontinwat, jew tapplikax piena miżjuda bi grad jew tnejn. Minkejja din il-fakoltà jew diskrezzjoni, iżda, xorta jibqa' l-fatt li r-reat kontinwat hu soggett jew punibbli (punishable fit-test Inġliż) għal dik il-piena miżjuda bi grad jew tnejn. Xorta jibqa' l-fatt, mela, li dak ir-reat kontinwat igorr miegħu dik il-piena hekk miżjuda; and (iii) **Police v. Omissis, Appeal No. 178/14** delivered on the 26th October 2017, wherein with reference to the Note by the Attorney General by virtue of which he sends an accused to be tried by the Court of Magistrates as a Court of Criminal Judicature in terms of Section 370(3) of Chapter 9 of the Laws of Malta, the Court observed that: *ir-rinviju għall-ġudizzju jsir skond is-subartikolu (3) ta' l-Artikolu 370 (u allura wieħed qed jitkellem fuq għall-anqas reat wieħed, fost dawk imputati, li huwa ta' kompetenza tal-Qorti Kriminali), in-nota ta' rinviju għall-ġudizzju tassumi rwol simili għal dak ta' l-att ta' akkuza quddiem il-Qorti Kriminali. Fin-nota ta' rinviju għall-ġudizzju skond l-Artikolu 370(3) ma jistgħux jiżdiedu reati li dwarhom ma tkunx saret il-kumpilazzjoni; l-Avukat Ġenerali, naturalment, jista' jnaqqas reat jew reati w anke jżid skużanti...". Illi bħal kif jagħmel meta jiġi biex jirredigi l-att ta' l-akkuza, l-Avukat Ġenerali wara li jifli l-atti tal-kumpilazzjoni jrid jara liema huma dawk ir-reati li jistgħu jiġu imputati lill-persuna akkużata fejn allura huwa jista' jnaqqas reat jew reati minn dawk li kienu qed jiġu investigati tul l-atti kumpilatorji. Issa għalkemm l-Avukat Ġenerali għar-reat maħsub fl-artikolu 198 tal-Kodiċi Kriminali cioè dak ta' l-istupru, kif ukoll dak maħsub fl-artikolu 203, ma jindikax iċ-ċirkostanza aggravanti imsemmija għall-ewwel reat fl-artikolu 202(b) u għat-tieni reat imfisser fis-subinċiż (1)(c) għall-istess artikolu tal-Liġi u cioè l-fatt illi r-reati ġew kommessi fuq il-persuna ta' dixxendenti taħt l-età ta' tmintax-il sena, l-Ewwel Qorti għaddiet biex sabet ħtija għal dawn ir-reati biċ-ċirkostanzi aggravanti. L-appellanti jilmenta allura ili b'hekk ir-reat ġie reż iktar gravi minn dak indikat fin-nota ta' rinviju għal ġudizzju. Jinsisti in oltre illi din iċ-ċirkostanza aggravanti kellha toħroġ mill-provi kkumpilati, ħaġa li fil-fehma tiegħu ma tirriżultax ippruvata u ġialadarba l-Avukat Ġenerali ma ħassx il-ħtieġa li jindika dan l-aggravju allura kellu jkun evidenti għall-Ewwel Qorti illi din il-prova ma saritx. Illi l-artikolu 589 tal-Kodiċi Kriminali jitkellem dwar dak li għandu jkun fiha l-att ta' l-akkuza meta fis-sub-inċiż (b) li jikkontempla l-parti narrattiva ta' l-att ta' l-akkuza hemm dispost illi l-Avukat Ġenerali 'għandu jfisser il-fatt li jikkostitwixxi ir-reat, bil-partikularitajiet li jkun jistgħu jingħataw dwar iż-żmien u l-lok li fihom ikun sar il-fatt u dwar il-persuna li kontra tagħha r-reat ikun sar, flimkien maċ-ċirkostanzi kollha li, skond il-Liġi u fil-fehma ta' l-Avukat Ġenerali, jistgħu jkabbru jew inaqqsu l-piena." Ikompli s-subinċiż (ċ) hekk meta jitkellem fuq il-parti akkużatorja ta' l-att ta' l-akkuza meta hemm dispost illi din tikkostitwixxi: "gabra fil-qosor li fiha l-imputat jiġi akkużat tar-reat kif miġjub jew imfisser fil-Liġi u bit-talba sabiex jitmexxa kontra l-akkużat skond il-liġi, u sabiex l-istess akkużat jiġi ikkundannat għall-piena stabbilita mill-liġi (hawn jingħad l-artikolu tal-liġi li jikkontempla r-reat) jew għal kull piena oħra li skond il-Liġi tista' tingħata skond kif jiġi ddikjarat ħati l-akkużat". Mela allura għalkemm fil-parti narrattiva ta' l-att ta' l-akkuza l-Avukat Ġenerali għandu jindika iċ-ċirkostanzi kollha ta' fatt li jistgħu jkabbru jew inaqqsu l-piena w allura jirrendu r-reat iktar gravi, madanakollu imbagħad fil-parti akkużatorja huwa biżżejjed illi jiġi indikat l-artikoli tal-Liġi li jikkontempla r-reat. Dan x'aktarx għaliex huwa rimess għal ġudizzju tal-ġurija popolari biex*

jiddeċiedu jekk il-fatti esposti mill-Avukat Ġenerali jirriżultaw xippruwati mill-evidenza li tingieb waqt il-ġuri, fejn imbagħad il-kwistjoni dwar il-piena li għandha tiġi erogata f'każ ta' sejbien ta' ħtija għal fatti kif deċiżi mill-ġurati tiġi mħollija fidejn l-Imħallef togat. Ekwiparata n-nota ta' rinviġu għal ġudizzju ma' l-att ta' l-akkuża allura huwa bilwisq evidenti li huwa biżżejjed illi l-Avukat Ġenerali jindika l-artikoli tal-ligi li jikkontempla r-reat u dan kif hemm indikat b'mod speċifiku fl-artikolu tal-ligi su-iċċitat. Issa huwa minnu illi n-nota ta' rinviġu għal ġudizzju ma' fjiex dik il-parti narrattiva bħalma fiha l-att ta' l-akkuża, iżda l-indikazzjoni tal-fatti tal-każ joħorġu mill-imputazzjonijiet kif oriġinarjament imfassla kontra l-imputat. Illi fis-sentenza fl-ismijiet "Il-Pulizija v. Francesco sive Godwin Scerri" deċiża fit-18 ta' April 2012 minn din il-Qorti kif diversament ippresjeduta ġie deċiż illi: "Fin-nuqqas ta' indikazzjoni differenti mill-Avukat Ġenerali, l-artikoli ċitati mill-Avukat Ġenerali u l-akkuża oriġinali jridu jiġu eżaminati flimkien għal dak li jirrigwarda l-fattispeċji partikolari tal-każ." Dan għaliex, kif ingħad, għalkemm in-nota ta' rinviġu għal ġudizzju hija imqabbla ma' l-att ta' l-akkuża, madanakollu fiha hija mankanti dik il-parti narrattiva bħalma hemm fl-att ta' l-akkuża li titkellem dwar il-fattispeċje tal-każ li abbażi tagħhom huma imsejsa r-reati li jiġu hemmhekk imputati. Xejn ma kien josta lill-Ewwel Qorti allura stabbilit ir-reat, illi teroga dik il-piena li fil-fehma tagħha kienet tapplika għaċ-ċirkostanzi partikolari tal-każ kif imfissra fl-imputazzjonijiet. Għalhekk stabbilit illi l-appellanti kien qed jiġi akkużat bir-reati ta' l-istupru vjolenti u l-korruzzjoni tal-minorenni, kien jispetta lill-Ewwel Qorti sabiex misjuba l-ħtija għal dawn ir-reati, meta tiġi tqis il-piena li għandha tiġi erogata, tara jekk mill-fattispeċje din kellhiex tiżdied minħabba xi ċirkostanza aggravanti.

The Court further points out that once the offences committed by the accused - that is the offence in terms of Section 339(1)(e) and Section 412C(11) of Chapter 9 of the Laws of Malta - are continuous offences the punishment to be applied in his regard **with specific reference to the breach of the Probation Order** is the punishment set out in the Law on the day when the last breach of the said Probation Order occurred, that is on the 7th October 2018. This therefore means that in this case the punishment to be considered and applied by the Court is that set out in Section 412C(11) of Chapter 9 of the Laws of Malta as amended by Act XIII of 2018 which came into force on the 14th May 2018 by virtue of Legal Notice 154 of 2018 - *if without reasonable excuse the accused contravenes any prohibition or restriction imposed upon him by an order under this article, he shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) of seven thousand euro (€7,000) or to imprisonment not exceeding two years or to both such fine and imprisonment.*

- (ii) The fourth charge is absorbed in the third charge and thus in terms of Section 17(h) of Chapter 9 of the Laws of Malta: *when several offences, which taken together do not constitute an aggravated crime, are designed for the commission of another offence, whether aggravated or simple, the punishment for the graver offence shall be applied.*

Therefore, for all the above-mentioned reasons the Court whilst reiterating that it is not finding the accused guilty of the first and second charges brought against him and thus acquits him from the same, after considering Sections 17(h), 18, 339(1)(e) and 412C(11) of Chapter 9 of the Laws of Malta, reiterates that it is finding the accused guilty of the third and fourth charges brought against him and condemns him to one (1) year imprisonment, however since the Court deems that in this case there are sufficient reasons which warrant the suspension of the term of imprisonment hereby imposed on the accused, and this particularly being the declaration by the *Parte Civile* that the relationship with the accused has since the dates of incidents forming

the merits of this case improved and is now more stable, in terms of Section 28A of Chapter 9 of the Laws of Malta it is suspending the said term of one (1) year imprisonment for a period of two (2) years from today.

In terms of Section 28A(4) of Chapter 9 of the Laws of Malta the Court explained to the accused in ordinary language his liability under Section 28B of Chapter 9 of the Laws of Malta if during the operational period of this suspended sentence he commits an offence punishable with imprisonment.

In terms of Section 382A of Chapter 9 of the Laws of Malta the Court is further issuing a Restraining Order against the accused with regard to Luana Ani for a period of two (2) years from date of this judgement and this under the terms and conditions out in a Decree issued today, which Decree is being attached to and forms an integral part of this judgement.

The Court explained to the accused in ordinary language that in terms of subsection (3) of Section 382A of Chapter 9 of the Laws of Malta, if without reasonable excuse he contravenes any prohibition or restriction imposed upon him by the Restraining Order issued against him, he shall be guilty of an offence and shall, on conviction be liable to a fine (multa) of seven thousand Euro (7,000) or to imprisonment not exceeding two (2) years or to both such fine and imprisonment.

The Court abstains from considering the request by the Attorney General to condemn the accused to the payment of costs incurred in the employment of experts in terms of Section 533 of Chapter 9 of the Laws of Malta since in this particular case no experts were employed and/or engaged.

MAGISTRATE

DEPUTY REGISTRAR