



# THE CRIMINAL COURT

The Hon. Mr. Justice Aaron M. Bugeja M.A. (Law), LL.D. (melit)

**The Republic of Malta  
vs.  
Shaibu MOHAMAD**

**Bill of Indictment No. 4/2020**

Today, 1<sup>st</sup> March 2022

The Court,

Having seen the charges brought against the accused Shaibu MOHAMAD, son of Shaibu and Salamat born in Kano, Nigeria on the 30th July 1997, holder of Italian Identity Card No. AY 4641826 and Nigerian Passport No. A09521318 whereby the Attorney General premised:

## **The First Count**

The facts of the case:

That on the twenty-second (22nd) day of December of the year two thousand and eighteen (2018) and during the previous days Shaibu Mohamad decided to import drugs illegally into the Maltese Islands.

In fact on the above mentioned date, at around half past ten in the morning (10.30am), the Customs officers on duty at the Malta International Airport stopped a male person upon his arrival from Rome and during a search conducted on his luggage three suspected packets were found wrapped within a denim jacket. On such findings said Customs officers contacted the Drug Squad Police officers for their assistance and further investigations and searches.

That duty Magistrate Dr. Simone Grech was informed on such findings whereby a number of experts were nominated to assist and preserve all the evidence accordingly.

That from further analysis carried out by the Court nominated expert, namely forensic Scientist Dr. Godwin Sammut it was established that the substance elevated from the luggage in question pertaining to the accused Shaibu Mohamad contained tetrahydrocannabinol in the form of cannabis buds. The total weight of the cannabis was three kilograms (3kgs) and the purity was circa 22%.

The plant cannabis or any portion thereof is scheduled under part III of the Dangerous Drugs Ordinance;

The consequences:

By committing the abovementioned acts with criminal intent, Shaibu Mohamad rendered himself guilty of importing, or caused to be imported, any dangerous drug (Cannabis) into Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The accusation:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Shaibu Mohamad guilty of having, on the twenty-second (22) day of December of the year two thousand and eighteen (2018), with criminal intent, imported, or caused to be imported any dangerous drug (cannabis) into Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

The punishment demanded:

and demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-Seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 7, 12, 14(1), 15A, 22(1)(a)(1B)(2)(a)(i) (3A)(d), 22A, 24A and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of articles 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

## **The Second Count**

The facts of the case:

That during the period of time mentioned in the preceding count of this bill of indictment, and within the same circumstantial context, that is to say on the twenty second (22nd) day of December of the year two thousand and eighteen (2018) Shaibu Mohamad was knowingly in possession of three kilograms (3kgs) of cannabis buds in the Maltese Islands and thus the amount itself and the circumstances in which it was found denotes that it was not intended for his exclusive personal use. Moreover he was not authorized to be in possession of such drugs in terms of Law.

The consequences:

Consequently by committing the abovementioned acts with criminal intent, Shaibu Mohamad rendered himself guilty of being in possession of the plant cannabis or any portion thereof (cannabis buds) as specified under part II of the Dangerous Drugs Ordinance, Chapter 101

of the Laws of Malta when he was not in possession of an import or an export authorization 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 authorized to manufacture or supply the mentioned drug, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drug, and failed to prove that the mentioned drug 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 (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his exclusive personal use.

The accusation:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Shaibu Mohamad guilty of having, on the twenty second (22nd) day of December of the year two thousand and eighteen (2018) and in the previous days of being in possession of a dangerous drug (cannabis) with criminal intent, as specified in the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization 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 authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were 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 on the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his exclusive personal use;

The punishment demanded:

and demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 2, 8(d), 10(1), 12, 20, 22(1)(a)(2)(a)(i),(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of regulations 2, 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

Having seen that during the sitting of the 17th February 2022 the accused Shaibu MOHAMAD, in reply to the question as to whether he was guilty or not guilty of the charges brought against him under the two counts of the Bill of Indictment, the said accused registered a plea of guilt to all the two charges;

Having then warned the accused in the most solemn manner of the accusations brought against him as well as the legal consequences of such plea and allowed him ample time to retract it in accordance with Article 453 of Chapter 9 of the Laws of Malta;

Having seen that the accused requested to make own submissions in open Court and having heard the said submissions of the accused;

Having seen that the accused, after being granted such time, and after confirming that he had been allowed sufficient time to consider his plea;

that he fully understood the charges brought against him; that he was fully aware of the punishments prescribed by the law for the said charges and that he was fully aware of the consequences thereof and he confirmed that he made this statement voluntarily, and persisted in his statement of admission of guilt;

In consequence whereof, this Court finds and declares Shaibu MOHAMAD guilty of the two counts in the Bill of Indictment, namely:

1. of having, on the twenty-second (22) day of December of the year two thousand and eighteen (2018), with criminal intent, imported, or caused to be imported any dangerous drug (cannabis) into Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

2. of having, on the twenty second (22nd) day of December of the year two thousand and eighteen (2018) and in the previous days of being in possession of a dangerous drug (cannabis) with criminal intent, as specified in the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization 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 authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were 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 on the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his exclusive personal use;

Having seen articles 2, 7, 8(d), 10(1), 12, 14(1), 15A, 20, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22A, 24A and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, and regulations 2, 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;

Having seen that during the course of these proceedings before this Court the accused had requested this Court to authorise him to speak with the Investigating Officers in order for him to give all the relevant information that was available to him in connection with his case, as well that he had requested this permission months ago before the compilation of evidence was concluded against him;

Having seen that after that this Court acceded to the accused's request, it heard the testimony of Police Superintendent Frank A. Tabone wherein it transpires that reference that was made to third parties involved in the drug deal merits of this case still remained unidentified;

Having seen that further analysis was carried out on the accused's seized mobile phone from where further information was retrieved;

Having also noted that from this further information that was extracted more investigations were carried out by the Executive Police;

Having heard the testimony of Inspector Stephen Micallef who explained to the Court what further action was taken by the Executive Police in furtherance to the information tendered to them by the accused. However despite the efforts made by the Executive Police no substantial progress was registered;

Having heard the submissions made by the parties in connection with the punishment that ought to be meted out by the Court and in particular:

The Prosecution stated that while the accused did provide some fresh information to the Police, this did not lead to the capture of the persons who supplied the accused with the drugs. However initially when the accused was spoken to by the Police he always denied that he knew about the drugs he was carrying and did not furnish any information about the drug he was carrying. The Prosecution contended that when

considering the age of the accused, the amount of drugs imported by him and the percentage purity of the active ingredient, that is more than three kilograms of cannabis buds with a purity of twenty two (22%) as determined by Court expert Godwin Sammut, in the circumstances, the punishment had to be at least ten (10) years imprisonment.

Defence countered that accused was only twenty one (21) years old when he committed the offence. He was just released from a refugee camp in Italy and needed the money to support his family. He decided to do this act of importing drugs in Malta for this reason. He admitted his responsibilities and registered a guilty plea.

Defence argued that he was not granted the benefit of Section 29 of the Dangerous Drugs Ordinance mainly because of the failure to extract sufficient data from his mobile phone due to a technical problem. When the extraction took place, a set of photos of the person concerned appeared. Due to the fact that time had passed the accused could not benefit from Section 29 since this person had left Malta. Defence stressed that the accused was a first time offender, who was a young victim of circumstances. The Court's aim ought to have been to help the accused to reform himself and walk back on the right track. The Court had to take into consideration the fact that he was young and was deprived from the benefits of Section 29 by the Prosecution due to a software malfunction.

The Court heard the personal plea of the accused in open Court. The accused showed a high degree of remorse for his actions. He stressed that he committed this mistake only because he wanted to help his frail, dying mother. He insisted that he had never committed any crime in his life. He was still young and wanted a second chance. The accused cried and asked for mercy while remarking that while in custody he never requested bail and spent his time in the cell, every day, thinking about his actions.

The Court analysed case law of these Courts dealing with identical crimes, involving the same type of drug as well as similar percentage purity of active ingredients. The Court assessed past benchmarks established by the said case law, as well as the more modern ones. It



notes that sentencing varied depending on various different factors presented by each case.

The Court noted also that these cases had to be interpreted also in the light of the prevailing circumstances of the time when judgment was reached. Among other things, this Court cannot fail to note that while the acts committed by the accused leading to this case are still deemed to be serious criminal offences, and while the Maltese Legislator still opted to severely punish persons who deal in drugs, including cannabis, on the otherhand over the past few years the same Maltese Legislator adopted a relatively softer approach in relation to the end-use and end-users of the drug cannabis. This way the Legislator introduced a *de facto* and *de iure* penal policy distinction between the use of cannabis within specified statutory limits and parameters and other dangerous drugs.

However, the Court also notes that in this particular case, the accused was involved in the importation and possession of approximately three kilograms (3kg) of cannabis buds with a tetrahydrocannabinol purity of 22%. This was indeed a huge amount of cannabis drug. The punishments meted out in case law on this matter varied, depending on the specific circumstances of the particular case. The nature, weight and percentage purity of the active ingredients of the dangerous drugs merits of the case were important objective criteria to be taken into consideration by the sentencing Court. But they were far from the only criteria on the matter.

Moreover, this Court notes that the accused registered an early guilty plea in these proceedings before this Court. While this does not automatically bring a discount in the punishment, these Courts do take into consideration the fact that by registering a guilty plea, the accused would not only have assumed criminal responsibility for his actions, but would also avoid the State the time and expense of celebrating a trial by jury.

The accused contends that in this case he was entitled to the application of the benefit of a reduced sentence in terms of article 29 of the Dangerous Drugs Ordinance. The Attorney General begged to

differ on account of the fact that the accused failed to act immediately and deliver information to the Investigating Authorities soon after his arrest. In any case the late efforts of the accused led the investigators nowhere.

This Court notes that the accused, albeit late in the day, did try to furnish information to the Investigating Authorities. Clearly this information led nowhere. Yet this Court notes that the accused did try to give information he had in his possession – both verbal as well as digital – in order to assist the investigators to apprehend the persons who were involved in the drug deal, apart from him. It is also worth noting that during the course of the proceedings against the accused, the relevant section, Section 29 of the Dangerous Drugs Ordinance was amended to include scenarios similar to the ones which the accused is now facing.

29.(1) Where in respect of a person found guilty of an offence against this Ordinance, the prosecution declares in the records of the proceedings that such person has helped the Police to apprehend the person or persons who supplied him with the drug, or the person found guilty as aforesaid proves to the satisfaction of the court that he has so helped the Police, the punishment shall be diminished, as regards imprisonment by one or two degrees, and as regards any pecuniary penalty by one-third or one-half.

(2) The punishment shall also be diminished as provided in sub-article (1) where the person found guilty of an offence against this Ordinance has helped the police to apprehend the person or persons involved in a conspiracy to deal in drugs or has assisted the police to apprehend the person or persons for whom the drug was intended for dealing.

(3) Notwithstanding the provisions of sub-articles (1) and (2), where it is proved to the satisfaction of the court that the person found guilty of an offence against this Ordinance had assisted the police but for any reason clearly beyond his control the person or persons who supplied him with the drug or the person or persons involved in a conspiracy to deal in drugs or the person for whom the drug was intended for dealing were not apprehended, the court may, being satisfied of such circumstance, diminish the punishment as regards imprisonment by one degree and as regards any pecuniary penalty by one-third.

(4) A reduction in punishment under this article shall only be given in terms of one of the foregoing sub-articles of this article for the same case.

In this case it was proved to the satisfaction of the Court that the accused had assisted the Police, but for reasons clearly beyond his control, the person or persons who supplied him with the drug or the person or persons involved in a conspiracy to deal in drugs or the person for whom the drug was intended for dealing were not apprehended. He should therefore benefit from the provisions of section 29 of the Dangerous Drugs Ordinance by one degree.

Furthermore it is clear to this Court that the accused expressed remorse and realised the grave mistake he committed.

On the otherhand, the amount of drugs seized and their percentage active ingredient purity were high, and these were objective criteria that militate in favour of a long prison sentence.<sup>1</sup> While the accused wished to help his frail dying mother, he should not have resorted to dealing in drugs, the result of which harms other people's health and lives.

## DECIDE

Consequently the Court therefore condemns the said Shaibu MOHAMED to a term of imprisonment of nine (9) years and the imposition of a fine (multa) of twenty thousand Euros (€20,000) which fine (multa) shall be converted into a further term of imprisonment

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<sup>1</sup> See on these lines **Ir-Repubblika ta' Malta vs. Noaman Emhemmed Ramadan El-Arnauti**, decided by the Court of Criminal Appeal on the 22nd April 2004 where cannabis resin was imported to the tune of 3140.1 grams with a percentage purity of 16% - which was therefore less than in this case where the percentage purity was 22%. El-Arnauti was sentenced to ten years imprisonment and a fine of seventeen thousand Malta Liri (Lm17,000) equivalent to almost forty thousand euro (€40,000) and he did not qualify for the benefit of section 29 of the Dangerous Drugs Ordinance. On the otherhand in the case **Ir-Repubblika ta' Malta vs. Walter John Cassar** decided by the Court of Criminal Appeal on the 4th October 2007, Cassar was sentenced to seven years imprisonment together with a fine of seven thousand euros (€7,000) after he was found guilty of conspiracy, trafficking and possession of cannabis grass to the tune of 3500grams. It was declared in Cassar's case that he benefited from section 29 of Chapter 101 of the Laws of Malta up to two degrees. In **Ir-Repubblika ta' Malta vs. Alex Mallia**, decided by the Court of Criminal Appeal on the 19th June 2008, among other crimes, Mallia was convicted of possession of 2439.3 grams of cannabis resin and without the benefit of section 29 of Chapter 101 of the Laws of Malta he was sentenced to nine (9) years imprisonment together with a fine of twenty four thousand euro (€24,000). In **The Republic of Malta vs. Daniel Alexander Holmes**, decided by the Court of Criminal Appeal on the 31st October 2013, for the accusations of importation and possession of cannabis grass to the tune of 1061.7 grams, Holmes was sentenced to ten years and six months imprisonment together with a fine of twenty three thousand euro (€23,000).

according to Law in default of payment within the time prescribed by law.

Furthermore, condemns the said Shaibu MOHAMED to pay the expenses incurred in the appointment of court experts in this case in terms of Article 533 of Chapter 9 of the Laws of Malta.

Moreover, the Court orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Shaibu MOHAMED.

Furthermore, orders the destruction of all the objects exhibited in these proceedings, consisting of the dangerous drugs and/or objects related to the abuse of drugs, which destruction shall be carried out by the Registrar, Criminal Courts and Tribunals, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days from today declaring that said drugs are required in evidence against third parties.

**Aaron M. Bugeja,  
Judge**