



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

MAGISTRATE DR ELAINE MERCIECA LL.D

POLICE

(Police Inspector Ryan Vella)

against

HENRY ONWAUEABUCHI

Case No.: 177/2021

Today, 11th March 2022

The Court,

After having seen the charges brought against Henry Onwaueabuchi, son of Anthony and Joey nee' not known, born in Nigeria, on the 13th April, 1991, with no fixed residence and holder of Nigerian Passport number AO8134408, accused of having on these islands, on the 23rd December, 2021, and/or in previous days:

1. Had in possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant Cannabis in terms of Article 8(d) of the Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;

2. Had in his possession the drug (cocaine) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101, of the Laws of Malta, when he was not in possession of an import or export authorisation issued by the Chief Government Medical Officer, in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drug Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101, of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
3. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant Cannabis, or any other preparation, of which such resin formed the base, in terms of Article 8(a) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
4. Refused to give or untruthfully gave to a public officer PS 55, I. Cutajar, and Insp. R. Vella, or any other persons entrusted with a public service in the actual exercise of their duties his name, surname, address, and other particulars. Article 338(g) of Chap. 9 Of the Laws of Malta.

The Court was also requested to apply Article 533 of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed Experts.

Having seen the Order of the Attorney General in terms of article 22(2) of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta) for this case to be tried summarily by this Court sitting as a Court of Criminal Judicature¹;

After having seen all the documentary evidence and the full acts of proceedings;

After having heard all the testimonies and submissions made by the parties;

Considers:

Whereas, to substantiate the charges proffered against the accused, the prosecution brought forward the following witnesses: Police Inspector Ryan Vella; PS 55 Eman Cutajar; PC 1274 Juan Hili; PC 909 Christopher Joe Cassar; PS2345 Monique Mangion; Charles Bartolo in representation of Westin

¹ Refer to Fol. 6 and 7 of the acts of proceedings.

Dragonara Hotel and the Court appointed expert (upon the prosecution's request) Godwin Sammut. The defence brought forward as evidence Antonio Sbarrieltos in representation of St. George's hotel.

From the evidence brought forward it results that on 23rd December 2021 at about 09.30am the Mosta Health Centre requested the assistance of the Mosta Police Station given that a foreigner did not have identity documents on him and he claimed that a police woman had taken his passport. This person was physically identified as being the present accused. He was taken to Mosta Police station, wherein from verifications the Police identified the accused as being Henry Onwaueabuchi. The Immigration Department was contacted, who gave instructions to take the accused there. Before being transported to the Immigration Department a frisk search was conducted on the accused and from the same suspected illegal substances were found in his possession. These illegal substances consisted of five sachets of white powder (suspected to be cocaine); two sachets of suspected Cannabis grass and a black coloured substances suspected to be Cannabis resin. The accused was immediately arrested whilst the drugs were seized. The accused was interrogated wherein he stated that he resides alone at 571, Dragonara Hotel, Triq Dragonara, St. Julians with no relatives in Malta. He also stated that he was employed until some months ago but presently he is unemployed. When asked with regards to the possession of the illegal substances, the accused explained that those were his and they were in his possession as he uses drugs. When asked if he sells drugs he replied in the negative. In his statement the accused alleged that he asked the police to take him to his residence so that he will be able to show them the people with whom he was partying but the police refused to go. When asked as to the reason why he did not sign the declaration showing that he refused legal assistance, the accused replied that it is because he was never taken to his apartment. A representative from the Westin Dragonara Resort confirmed that the accused was not resident at the Dragonara Hotel on 23rd December and that the hotel had absolutely no record whatsoever of the accused ever being in that hotel. The Court appointed expert (at the Prosecution's request) analysed the substances and he concluded:

“Extracts taken from the white powder that are in the exhibit labelled as Spt. Ryan Vella vs. Henry Onwaueabuchi resulted positive for Cocaine the Total weight of the white power was 1.14g and the total number of sachets was 3. The purity of the cocaine in the white powder was approximately 28%. Cocaine is controlled under Part I of the First Schedule of Chapter 101 of the Laws of Malta;

Tetrahydrocannabinol was found in the extracts taken from the green buds and the borwn substance that are in the exhibit labelled as Spt. Ryan Vella vs. Henry Onwaueabuchi. The total weight of the green buds is 1.12g and the purity of THC in the green buds was

approximately 15%. The weight of the brown substance is 0.18g and in this case, the amount was too low to analyse for purity of THC. Cannabis is controlled under Part III of Chapter 101 of the Laws of Malta;

Extracts taken from the fine white powder and the yellow/white powder resulted positive for Paracetamol. Although paracetamol is not an illicit substance it should be noted that it may be used as an adulterant in cocaine samples.”²

A representative of St. George’s Hotel confirmed that the accused had been resident thereat from 6th December for one month. This was extended on 5th January for another month. He confirmed that the room number is 571. For the first month he paid the rent of Eur. 450 whilst for the second month the rent paid was that of Eur. 500.

Considers further:

Whereas from the evidence presented it clearly results that the accused was found red-handedly in possession of the illegal substances by PC1274 Juan Hili. In fact, both parties are not contesting the fact that the accused was in possession of the drugs indicated in the report presented by Pharmacist’s Godwin Sammut. What the parties are contesting is whether the possession was one for personal use or otherwise. Consequently, the Court must now determine whether it has been proved, beyond any reasonable doubt, that accused’s possession of the said substances was intended exclusively for his personal use or otherwise.

In its judgement of 12th May 2005 in the names Il-Pulizija vs Marius Magri, the Court of Criminal Appeal held that:

“Illi dawn il-kazijiet mhux l-ewwel darba li jipprezentaw certa diffikolta` biex wiehed jiddetermina jekk id-droga li tkun instabet kienitx intiza ghall-uzu personali jew biex tigi spjaccjata. Il-principju regolatur f`dawn il-kazijiet hu li l-Qorti trid tkun sodisfatta lil hinn minn kull dubbju dettat mir-raguni w a bazi tal-provi li jingabu mill-prosekuzzjoni li l-pussess tad-droga in kwistjoni ma kienx ghall-uzu esklussiv (jigifieri ghall-uzu biss) tal-pussessur. Prova, ossia cirkostanza wahda f`dan irrigward tista`, skond ic-cirkostanzi tal-kaz tkun bizzejjed.” (emphasis of this Court)

In the case Il-Pulizija vs Brian Caruana, decided by the Court of Criminal Appeal on 23rd May 2002, the Court held the following:

“kull kaz hu differenti mill-iehor u jekk jirrizultawx ic-cirkostanzi li jwasslu lill-gudikant ghall-konvinzjoni li droga misjuba ma tkunx ghall-uzu esklussiv tal-akkuzat, fl-ahhar mill-ahhar hija wahda li jrid jaghmilha

² Refer to Fol. 47 of the acts of proceedings.

l-gudikant fuq il-fatti specji li jkollu quddiemu w ma jistax ikun hemm xi "hard and fast rule" x'inhuma dawn ic-cirkostanzi indikattivi. Kollox jiddependi mill-assjem tal-provi w mill-evalwazzjoni tal-fatti li jaghmel il-gudikant u jekk il-konkluzjoni li jkun wasal ghalha il-gudikant tkun perfettament raggungibbli bl-uzu tal-logika w l-buon sens u bazata fuq il-fatti, ma jispettax lil din il-Qorti li tissostitwiha b'ohra anki jekk mhux necessarjament tkun l-unika konkluzzjoni possibbli"

In the case Il-Pulizija vs. Anthony Frendo decided by the Court of Criminal Appeal on 10th April 2008 it was declared:

"...taqbel ukoll mall-Ewwel Qorti li huwa sinifikanti li nstabu tmin boroz li d-daqs taghhom hu kwazi ezatt u li kienu jikkontjenu l-eroina w dan f' post sensitiv hafna w cioe' proprju vicin id-Detox Centre. Din il-Qorti, bhall-Ewwel Qorti tara li ma kienx hemm raguni ghala l-appellant kellu joqghod jigri barra bi tmin sachets proprju qrib id-Detox Centre fejn hu risaput li tant zaghzagh li ghandhom il-vizzju tad-droga jmorru ghallkura. Ghalhekk anki hawn l-Ewwel Qorti kellha kull dritt li tasal ghall-konkluzzjoni li waslet ghalha w cioe' li ccirkostanzi kienu tali li jindikaw li dak il-pussess tad-droga eroina ma kienx ghall-uzu esklussiv tal-appellant. Ghalhekk l-ewwel aggravju qed jigi respint."

In the case Il-Pulizija vs. Glen Busuttil decided on 15th January 2009, the Court of Criminal Appeal declared that:

"Din il-Qorti, wara li rriflettiet fit-tul u qieset ic-cirkostanzi kollha w fil-waqt li, bhall-Ewwel Qorti, ma thossx li hi konvinta ghall-ahhart dwar il-versjoni moghtija millappellant dwar il-provenzzenza tal-flus li gew elevati middar tieghu, mill-banda l-ohra ma thossx li semplicement biss mill-kwantita' tad-droga elevata w esebita w kif iddroga nstabet maqsuma, jista' jintqal bla ebda dubju ragonevoli li dan necessarjament jindika li d-droga misjuba kienet intiza ghall-ispaccar lil terzi. F' dan il-kaz din il-Qorti ghad ghandha dak il-"lurking doubt" li jrid iwassal biex id-dubju dettat mir-raguni jmur favur lappellant. Konsegwentement din il-Qorti qed tilqa' l-aggravju talappellant dwar li ma hemmx provi sufficjenti li jindikaw bla ebda dubju dettat mir-raguni li d-droga ma kienetx ghalluzu esklussiv tal-appellant."

From the evidence presented in this case it results that the accused was in possession of illegal substances during day-time and at the Mosta Health Centre. He was found in possession of different substances – cocaine, cannabis grass and cannabis resin. Having said so the amount of the three substances was not significant to the extent that usually such amounts are associated with personal

use. In fact, he was found in possession of 1.14g cocaine; 1.12 cannabis grass; and 0.18g Cannabis resin. In the statement released to the police, the accused admitted that these substances were his and that they were in his possession. He also stated that he uses drugs and that the drugs found in his possession were intended for him. The said drugs were divided in different sachets: two sachets of cannabis grass (0.63g and 0.49g); one sachet of cannabis resin (0.18g); and three sachets of cocaine (0.38g, 0.33g and 0.43g). The accused was also found in possession of 1.06g Paracetamol which can be used as a cutting agent for cocaine. In his statement to the police the accused also said that presently he is unemployed yet a witness for the defence (representative of St. George's Hotel) confirmed that the accused paid Eur. 450 and Eur. 500 to rent a room on a monthly basis.

On the basis of these circumstances the accused was charged with possession with intent to supply of cannabis grass; cannabis resin and cocaine. With regards to cannabis resin in view of the small amount found, the accused's uncontested declaration that he uses drugs and the circumstances in which they were found (as explained in the previous paragraph) this Court does not believe that the prosecution managed to prove to the level of beyond reasonable doubt that the accused's possession was one with intent to supply. The same applies for the cannabis grass. The amount of cannabis grass is small and although it was divided in two sachets the discrepancy in the amount of each sachet was notable. Hence the Court does not believe that the possession of the cannabis grass was one intended for trafficking. In light of these conclusions and also in light of the newly introduced article 4A of Cap. 537 of the Laws of Malta whereby it doesn't constitute an offence to be in possession of cannabis in an amount less than 7 g in circumstances where it is reasonably deemed that such possession is for the personal use of such person (like in this case), the accused is going to be acquitted of the first and third charges proffered against him.

With regards to the cocaine the amount is also not significant and one which is usually associated with personal use. Having said so this amount was divided in three sachets of similar weight and the accused was also found in possession of paracetamol which is usually used as a cutting agent for cocaine. These two circumstances do raise suspicion that the cocaine found in the accused's possession was intended for trafficking especially in light of the fact that whilst unemployed the accused is paying a substantial amount of rent on a monthly basis. However, this Court does not believe that these circumstances alone prove beyond reasonable doubt that the accused was actually in possession of the said cocaine in circumstances denoting that the said drug was not for his personal use. Hence in view of the above considerations this Court is going to find the accused guilty of simple possession of cocaine.

Finally, the accused was also charged for refusing to give to a public officer his name, surname, address and other particulars in terms of article 338(g) of the Criminal Code. This Court believes that this charge has been sufficiently proven. From the evidence brought forward it clearly results that the accused failed to give his details to the police officers so much so that contact had to be made with the Immigration Department so as to establish his identity.

Decide:

For these reasons the Court, after having seen articles 8(a), 8(d), 22(1)(a), 22(2)(b)(ii) of the Dangerous Drugs Ordinance, Cap. 101 of the Laws of Malta, regulation 9 of Subsidiary Legislation 101.02, article 338g of the Criminal Code; articles 4 and 4A of Cap. 537 of the Laws of Malta, is acquitting the accused **Henry Onwaueabuchi** of the first and third charges brought against him whilst it **finds him guilty of being in possession of cocaine (simple possession) and of the fourth charge brought against him and consequently condemns him to the payment of fine (ammenda) of fifty euros (Eur. 50) and to the penalty of eighty euros (Eur. 80).**

Additionally, in terms of article 533 of Chapter 9 of the Laws of Malta, the Court is ordering the accused to pay the Registrar of this Court the sum of three hundred and eleven Euros and five euro cents (Eur. 311.05) representing expenses incurred in the employment of experts in relation to the charges for which he was found guilty.

Furthermore, the Court is ordering the destruction of the contents of Document RV5, once this judgement becomes final and definitive, under the supervision of the Court Registrar, who shall draw up a process-verbal documenting the destruction procedure. The said proces-verbal shall be inserted in the records of these proceedings not later than fifteen days from said destruction.

MAGISTRATE DR. ELAINE MERCIECA BA. LL.D.

Christine Farrugia
Deputy Registrar