



# **THE CRIMINAL COURT**

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

**Bill of Indictment number 6/2022**

**The Republic of Malta  
vs.  
Daniel MUKA**

**Today the eighteenth (18) day of October 2022**

**The Court,**

1. Having seen the bill of indictment filed against Daniel MUKA, 27 years old son of Xhemel and Vjolica born in Tirana in Albania on the 25<sup>th</sup> January 1995, currently residing at Corradino Correctional Facility and holder of Albanian Passport Number BD8707291 who was accused of:

## **THE FIRST COUNT**

**Wilful homicide of Christian Pandolfino and Ivor Piotr Maciejowski**

### **The Facts:**

Whereas on the eighteenth (18th) of August of the year two thousand and twenty (2020) at about half past ten in the evening (22:30 hrs), the Homicide Squad within the Malta Police Headquarters was informed through the Police Control Room that a shooting incident had occurred at the address

'22, Locker Street, Sliema'. At that point in time, the information was that three (3) male persons had allegedly been seen entering the aforementioned residence and, subsequently to that fact, gunshots were heard inside the concerned residence. Immediately after these gunshots were heard, the three (3) male persons were allegedly seen leaving the area in a white vehicle, with a license plate 'JET 082';

Whereas officers from various branches of the Malta Police Force reported immediately at the address, whereby from a preliminary stage of the investigation it resulted that the tenants of the residence, Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI, shot dead inside same residence. Christian PANDOLFINO was found lying on the floor, at the entrance of said residence, whilst Ivor Piotr MACIEJOWSKI was found lying dead near the stairs between the ground floor and the first floor level of the residence. Further investigations revealed that the main door of the residence had visible marks of a recent break-in, suggesting that the perpetrators had gained access to the residence by forcing the door open. Preliminary evidence indicated that once inside, the perpetrators must have somehow immediately encountered Christian PANDOLFINO near the entrance, who was then shot five (5) times. It appeared that the perpetrators then proceeded upstairs shot MACIEJOWSKI dead with a single (1) shot close to the forehead.

Whereas a criminal inquiry was immediately opened and various experts were appointed for the preservation of evidence. Having received permission from the inquiring magistrate, the investigators spoke to the court appointed expert concerning CCTV footage whereby the investigators were informed that the footage showed Christian PANDOLFINO returning home on his quadbike. The suspect white vehicle was then observed on the CCTV footage scouting the area and stopping at upper Locker Street. A tall male person, followed by a shorter and stocky male wearing distinguishable clothing, proceeded from the white suspect vehicle and entered the targeted residence. After a while the stocky person with the distinguishable clothing was observed coming out and walking towards the suspect vehicle and proceeding to the targeted residence again together with the third (3rd) perpetrator. Then all three (3) suspects were recorded leaving together, one of them holding a small bag and fleeing in the said white suspect vehicle towards Tigne Street;

Whereas on the twentieth (20th) day of August of the same year two thousand and twenty (2020) a white Volkswagen Tiguan in the parking area situated in Pieta (in the vicinity of St. Luke's Hospital), was located by a CID patrol. At the time of this discovery, this Volkswagen Tignan (that looked closely identical to the suspect white vehicle) had license plates 'CCB 042'. According to the available information at that time, these particular licence plates had also been reported as stolen. A forensic team was called on site where the Volkswagen Tiguan was discovered and a search was executed on said vehicle. From this search, a brown handbag was discovered, containing, amongst others, several items connected with Paula PANDOLFINO, who happens to be the sister of the aforementioned victim

Christian PANDOLFINO, as well as other items similar to items which were noticed in the residence where the homicidal incident occurred;

Whereas most significantly, the licence plates 'JET 082' which were used during the commission of the homicidal incident were found folded in said vehicle, further confirming that this was the same Volkswagen Tiguan that was used in the homicide. Furthermore, several items were found inside the back storage of the vehicle. These items consisted of wigs, clothes, masks, gloves and realistic firearm imitations.

Consequently, all these above mentioned items were preserved and the vehicle was taken into custody for further forensic examination;

Whereas from examination of further CCTV footages obtained from the parking area where the abovementioned Volkswagen Tiguan was found by the Police, three (3) persons fitting the description as those seen on the CCTV in the area where the homicidal robbery occurred were observed leaving said parking area. These three (3) persons were captured on CCTV walking through Triq I-Orsolini, down Gwardamangia Hill. A trail of CCTV footage from different cameras was examined, where the same three (3) persons were practically followed via CCTV footage up to the bus stop in Marina Street, Msida. Eventually, these three (3) persons were observed via CCTV footage stopping at the bus stop in said Marina Street. At that stage, it was closely observed that one (1) of these three (3) persons had an elbow support sleeve;

Whereas further enquiries lead to police intelligence that a certain Daniel MUKA, who fitted closely the physical description of the tall person that was observed in the CCTV footage, was observed two (2) days before the incident wearing an elbow support sleeve and driving a Peugeot 106 identical to the one ascertained in data provided to the investigators by other governmental authorities. This gave the investigators a strong hypothesis that Daniel MUKA must be further closely investigated. Further enquiries lead to the pinpointing of the aforementioned Daniel MUKA's cell phone in the area where the homicide occurred, on that same night when such incident occurred. Further intelligence revealed that Daniel MUKA missed a regular appointment with the Maltese authorities one (1) day after the homicide, which caught the investigators' attention;

Whereas on the basis of all the above and further facts established in the course of the investigation, the investigators obtained a warrant for arrest of Daniel MUKA, who was eventually cornered and arrested in a residence in Floriana on the twenty fifth (25th) of August of the same year two thousand and twenty (2020). This happened to be of a different address than that he was declaring to the concerned authorities. During the raid, arresting officers also managed to seize a semi-automatic pistol of the make Glock loaded with eleven (11) live bullets. Whilst a search was conducted in that residence and on Daniel MUKA's person, jewellery belonging to one of the victims of the homicidal robbery was found, and it

was notably visible that the sole of Daniel MUKA's shoes had previously yet recently stepped on blood;

Whereas on the twenty sixth (26th) of August of the same year two thousand and twenty (2020), Daniel MUKA released three statements in successive order. Faced with the corpus of evidence indicated (and where possible shown) to Daniel MUKA during the interrogation, Daniel MUKA at first resisted all claims of his involvement brought forward by the interrogating officers Supt. James Grech and Insp. Colin Sheldon. Daniel MUKA was duly legally assisted by a lawyer of his choice at all times during the investigation from the point when he was arrested. After the first interrogation, Daniel MUKA opted to cooperate with the investigators;

Whereas firstly Daniel MUKA admitted that he was present at '22, Locker Street, Sliema' during the homicide, stating that he rang the bell, one of the victims opened and he ended up in a scuffle with the said victim. During the scuffle, his co-perpetrator (the second man wearing distinguishable clothing), proceeded inside and shot the first (1st) victim who struggled with the two (2) perpetrators near the targeted residence's entrance. He claimed that this same co-perpetrator proceeded up the stairs and shot the second (2nd) victim as well. He also admitted having lifted jewellery from the bodies of the victims and also confirmed that the necklace he was wearing during his arrest actually belonged to one of the victims. When asked about the firearm seized during his arrest, precisely the loaded Glock found in his possession during his arrest, Daniel MUKA confirmed it was the weapon used during the incident;

Whereas during the interrogation Daniel MUKA identified himself on a still photo shown to him extracted from the CCTV footage under investigation, and confirmed with the investigators that he was the tall figure in the CCTV footage that entered the targeted residence first. Daniel MUKA also admitted having stolen the number plate 'JET 082' from St. Julian's together with the stocky fellow perpetrator, referred by him as the 'Barrel' (due to his physical stature at the time of crimes), indicating also that he is of Scandinavian origins. During the third and final statement, Daniel MUKA was shown photos of different persons, whereby he clearly indicated one of the co-perpetrators and indicated this person's location as last known to him;

Whereas based on all the above information, and also further revelations which resulted in the course of the investigations, it became manifestly clear to the authorities that Daniel MUKA, with his own actions, entered the house where Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI resided, armed and accompanied by a co-perpetrator, and from that point onwards lead and participated in a fatal scuffle that involved the use of deadly weaponry, finally resulting in the homicide of the two aforementioned persons Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI, and therefore, with his actions, Daniel MUKA is guilty of wilful homicide, precisely that on the eighteenth (18) of August of the year twenty-twenty (2020), in Sliema, Malta, maliciously, with intent to kill or to put the lives of

Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI in manifest jeopardy, caused the death, of the same Christian PANDOLFINO and Ivor Piotr PANDOLFINO;

**The Consequences:**

Therefore, with his own actions, the accused **Daniel MUKA** can be found guilty of wilful homicide, meaning that on the eighteenth (18) of August of the year twenty-twenty (2020), in Sliema, Malta, maliciously, with intent to kill or to put the lives of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI in manifest jeopardy, caused the death, of the same Christian PANDOLFINO and Ivor Piotr PANDOLFINO;

**The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned Daniel **MUKA**, guilty of wilful homicide, on the eighteenth (18) of August of the year twenty-twenty (2020), in Sliema, Malta, maliciously, with intent to kill or to put the lives of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI in manifest jeopardy, caused the death, of the same Christian Pandolfino and Ivor Piotr Maciejowski;

**The Requested Punishment :**

As a consequence of the above, the Attorney General is requesting that the aforementioned **Daniel MUKA** is, according to the law, **sentenced to life imprisonment** in accordance with the content of articles **17, 31, 211 and 533 of the Criminal Code**, Chapter **9** of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

**THE SECOND COUNT**

Theft accompanied by Wilful Homicide, aggravated by 'Violence', 'Means', 'Amount', 'Place' and 'Time'

**The Facts:**

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First (I) Count of this Bill of Indictment, it clearly resulted that Daniel MUKA lead and participated in a homicidal armed robbery at the targeted residence in the address '22, Locker Street, Sliema', and made off with an amount of jewellery together with the other co-perpetrators. Some of this jewellery was even found in Daniel MUKA's effective possession at the time of his arrest in Floriana

Whereas in the course of investigations, Daniel MUKA admitted to his participation in the theft of the concerned jewellery which involved the external breaking into a dwelling place whilst accompanied by two (2) other persons, doing so whilst being armed and making use of a disguise of garment and/or appearance and of masks, and such theft eventually leading to the homicide of two (2) other persons. Daniel MUKA also confirmed with the investigators that the jewellery that was found on his very person during the time of his arrest originated from the aforementioned theft. The total value of the amount of jewellery stolen from the targeted residence when the homicidal robbery took place was confirmed at a subsequent stage of the investigation that it exceeded the amount of two thousand and three hundred and twenty-nine euros and thirty-seven cents ( 2,329.37). This theft took place at a time after ten o' clock in the evening (22:00 hrs) during August in Malta, therefore occurring at night, that is to say between sunset and sunrise;

Whereas based on all the above information, and basing also on further revelations which resulted in the course of the investigations, it became manifestly clear to the authorities that Daniel MUKA, with his own actions, lead and conducted an armed robbery at night that resulted in the fatal shooting of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI, and also resulted in the theft of jewellery which amounts to more than the value of two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37), and this to the detriment of the mentioned Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI;

#### **The Consequences:**

Therefore, with this own actions, **Daniel MUKA** is guilty for having, on the same date, during the same time, at the same place, and in the same circumstances as those explained in the previous First (I) Count and this Count, committed theft of jewellery and/or other items, which theft was accompanied with willful homicide hence therefore aggravated by 'Violence', and also aggravated by 'Means', by 'Amount' that exceeds the amount of two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37), by 'Place' and by 'Time' to the detriment of Christian PANDOLFINO, Ivor Piotr MACIEJOWSKI and/or other persons and/or entity or entities.

#### **The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned Daniel MUKA, guilty of for having on the eighteenth (18) of August of the year twenty-twenty (2020), in Sliema, Malta, committed theft of jewellery and/or other items, which theft was accompanied with willful homicide hence therefore aggravated by 'Violence', and also aggravated by 'Means', by 'Amount' that exceeds the amount of two thousand and three hundred and twenty-nine euros and thirty-seven cents ( 2,329.37), by 'Place' and by

'Time' to the detriment of Christian PANDOLFINO, Ivor Piotr MACIEJOWSKI and/or other persons and/or entity or entities

**The Requested Punishment:**

As a consequence of the above, the Attorney General is requesting that the aforementioned **Daniel MUKA** is, according to the law, **sentenced to life imprisonment**, in accordance with Articles **17, 31, 211, 261(a)(b)(c) (d)(e)(f), 262(l)(a)(b), 263(a)(b), 264(1), 267, 269(g), 270, 272, 272A, 275, 276, 277, 278, 279(a), 280, 280(a)(b) and 533 of the Criminal Code**, Chapter **9** of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

**THE THIRD COUNT**

Unlawful detention and confinement of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI against their will whilst subjected to bodily harm with the object of extortion of money or effects

**The Facts:**

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First (I) Count of this Bill of Indictment and subsequent Counts to that, it clearly resulted that Daniel MUKA, whilst leading and participating in the homicidal armed robbery at the targeted residence in the address '22, Locker Street, Sliema', in the process of such robbery he came face to face with one of the victims, Christian PANDOLFINO, in the hallway immediately after breaking into the targeted residence;

Whereas in view of the facts as established by the whole investigation, it became abundantly clear that Daniel MUKA participated in the unlawful and unauthorised detention and confinement, even if instantaneous, of Christian PANDOLFINO against his will and in his own residence, before proceeding to the slaying of the latter. The same could be said with respect to the other victim Ivor Piotr MACIEJOWSKI. In order to have successfully executed this, Daniel MUKA, alongside with the other perpetrator present with him in the targeted residence during the confrontation, detained and/or confined the abovementioned victims;

Whereas it became abundantly clear from all the circumstances and evidence that the investigators encountered in this case, that such detention and confinement of the above mentioned victims Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI was made by Daniel MUKA principally for the purpose of extorting money or effects, and also, during such detention and/or confinement, these victims were mercilessly

subjected to bodily harm of deadly proportions. All this was confirmed by Daniel MUKA himself as the perpetrator leading the armed robbery that necessitated the detention and confinement of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI. Therefore, in those circumstances, Daniel MUKA was responsible for having without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined Christian PANDOLFINO and/or Ivor Piotr MACIEJOWSKI against their will, during which arrest, detention or confinement, Christian PANDOLFINO and/or Ivor Piotr MACIEJOWSKI was/were subjected to bodily harm, or threatened with death and/or with the object of extorting money or effects, or of compelling them to agree to any transfer of property belonging to such person/s;

### **The Consequences:**

Therefore, with this own actions, the accused Daniel MUKA is guilty of having, without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined Christian PANDOLFINO and/or Ivor Piotr MACIEJOWSKI against their will, during which arrest, detention or confinement, Christian PANDOLFINO and/or Ivor Piotr MACIEJOWSKI was/were subjected to bodily harm , or threatened with death and/or with the object of extorting money or effects, or of compelling them to agree to any transfer of property belonging to such person/s;

### **The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned Daniel MUKA , of having, without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined Christian PANDOLFINO and/or Ivor Piotr MACIEJOWSKI against their will, during which arrest, detention or confinement, Christian PANDOLFINO and/or Ivor Piotr MACIEJOWSKI was/were subjected to bodily harm, or threatened with death and/or with the object of extorting money or effects, or of compelling them to agree to any transfer of property belonging to such person/s;

### **The Requested Punishment:**

As a consequence of the above, the Attorney General is requesting that the aforementioned Daniel MUKA is, according to the law, sentenced to a term of imprisonment from **thirteen (13) months to six (6) years**, in accordance with the content of articles 17, 31, **86, 87(l)(c)(e), 88 and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.



## THE FOURTH COUNT

### Possession of a firearm during the commission of an offence

#### The Facts:

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First (1) and subsequent Counts of this Bill of Indictment, it clearly resulted that Daniel MUKA, whilst leading and participating in the homicidal armed robbery at the targeted residence in the address '22, Locker Street, Sliema', carried a loaded firearm, later established to be a semi-automatic pistol of the make Glock that shoots ammunition of the nine millimetre (9mm) calibre, so much so that in due course of the investigation it was ascertained that moments before the targeted residence was breached, Daniel MUKA was warned to exercise caution with the firearm that was in his effective possession;

Whereas in the course of the investigation, it was suspected that it was Daniel MUKA who had effective possession of the firearm, which later clearly resulted that it was loaded with live ammunition. Having said this, the result was far from caution, as the armed robbery ended up including the homicide of the two (2) residents of the targeted residence. It resulted abundantly clear from the version Daniel MUKA gave to the investigators that this firearm was somehow used to great effect during the commission of the crime or crimes in question;

Whereas moreover, in the course of the investigation it clearly resulted that in the white Volkswagen Tiguan that was used in the commission of the homicidal armed robbery and abandoned in Pieta after the crime, and therefore as a vehicle it was driven to the location of the armed robbery by **Daniel MUKA**. This vehicle was later to be found abandoned in Pieta by the investigators, and in this vehicle there were stored at least two (2) firearm replicas or imitations, one of the AK-47 Kalashnikov assault rifle, and the other of the Thompson sub-machine gun. From such circumstances, it appeared clearly that these items were intended by the perpetrators to provide some form of backup or serve as extra equipment specifically for the purposes of executing the armed robbery that resulted in the double homicide;

Whereas it became abundantly clear from all the circumstances and evidence available, that Daniel MUKA was responsible of carrying (and therefore possessing) a firearm at the time when he was committing a crime against the person and of theft, that is the concerned homicidal armed robbery in Sliema. Furthermore, at a time when he was being arrested, the same Daniel MUKA was found to be in effective possession of a firearm, the same firearm that was used for the aforementioned crimes committed in Sliema.

#### **The Consequences:**

Therefore, with this own actions, the accused Daniel MUKA is guilty of having, at the time of committing crimes against the person and of theft, and even at the time of his arrest in Floriana for the aforementioned crimes, had on his person a firearm;

#### **The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this Bill of Indictment, accuses the mentioned Daniel **MUKA**, of having, on the eighteenth (18th) of August of the year two thousand and twenty (2020), in Sliema, whilst committing crimes against the person and of theft, and on the twenty sixth (26th) of August of the year two thousand and twenty (2020), in Floriana, whilst he was being arrested for a crime, had on his person an arms proper and/or ammunition and/or any imitation thereof, and this without otherwise proving that he was carrying the firerarm or arms proper for a lawful purpose;

#### **The Requested Punishment:**

As a consequence of the above, the Attorney General is requesting that the aforementioned Daniel MUKA is, according to the law, **sentenced to a term of imprisonment not exceeding four (4) years**, and this in accordance with the content of **Articles 17, 31 64 and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, and also in accordance with the contents of **Articles 2 and 55, 56, 57 and 60 of the Arms Act**, Chapter **480** of the Laws of Malta, or for any other sentence according to law that can **be** given to the aformentioned accused.

### **THE FIFTH COUNT**

Use of an identification number other than that allotted by the police or by an Authority in relation to a particular motor vehicle

#### **The Facts:**

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First (I) and subsequent Counts of this Bill of Indictment, it resulted that Daniel MUKA was using a stolen vehicle registration plate, 'JET 082', that was reportedly stolen from a Seat Cordoba whilst parked in St. Julian's on on the third (3rd) of August of the same year two thousand and twenty (2020). These registration plates, which were registered on that particular Seat Cordoba from which they were lifted and stolen, somehow ended up on the white Volkswagen Tiguan that was driven by Daniel MUKA and used by himself and the other perpetrators not only to arrive on the scene of the homicidal armed robbery, but also to flee from the area once the deed was done. This was amply confirmed by eyewitness accounts and CCTV footage examined by the investigators;

Whereas these vehicle registration number plates were eventually found bent and discarded in the back storage of the same aforementioned white Volkswagen Tiguan, thus validating the observations of eyewitness accounts in this regard. Furthermore, even from Daniel MUKA's own admissions to the investigators, and facts established through further investigations subsequently to Daniel MUKA's arrest, there was little doubt that Daniel MUKA, on the night of the homicidal armed robbery, drove the white Volkswagen Tiguan whilst it was making use of the stolen registration number plates 'JET 082';

Whereas therefore Daniel MUKA, whilst driving the Volkswagen Tiguan on the night of the homicidal armed robbery, said vehicle was presenting and making of an identification number 'JET 082', which is a different number, a number other than that allotted by the relevant authorities in relation to that particular Volkswagen Tiguan. This is more so since according to the relevant authorities the vehicle registration number plate 'JET 082' only the used by the vehicle registered to it, which was exclusively the mentioned Seat Cordoba from which they were reportedly stolen from in St. Julian's;

Whereas from further enquiries with the relevant Maltese authorities after the day of the homicidal armed robbery, it transpired that the aforementioned registration number plates 'JET 082' were also captured on camera being irregularly used on a Peugeot 106 on the fourteenth (14th) of August of the same year two thousand and twenty (2020). Furthermore, at that stage the relevant Maltese authorities re-affirmed with the investigators that the registration number plates 'JET 082' could only be lawfully used only on that vehicle from which they were stolen from, that is the aforementioned Seat Cordoba;

Whereas it became abundantly clear from all the circumstances and evidence that the investigators encountered in this case, that Daniel MUKA was responsible for using an identification number other than that allotted by the police or by an Authority in relation to a particular motor vehicle, and this occurred: when he drove the Volkswagen Tiguan whilst bearing the

vehicle registration number plate 'JET 082', and this when it could only bear the vehicle registration number plate 'CRS 240' as an identification;

- i. when he replaced said vehicle registration number plate 'JET 082' with vehicle registration number plate 'CCB 042' in order to 'disguise' the Volkswagen Tiguan before disposing of it, and this when it could only bear the vehicle registration number plate 'CRS 240' as an identification;
- ii. when the Peugeot 106 that was in effective control of Daniel MUKA was captured in camera footage belonging to the Maltese authorities whilst bearing the vehicle registration number plate 'JET 082', and this when such vehicle registration number plate could only be used on the Seat Cordoba as an identification, from which such vehicle this vehicle registration number plate was stolen;

### **The Consequences:**

Therefore, with this own actions, the accused Daniel MUKA is guilty of having made use of an identification number, specifically 'JET 082', other than that allotted by the police or by an Authority in relation to a particular motor vehicle, specifically both the Volkswagen Tiguan and the Peugeot 106 which were registered with the relevant authorities with different vehicle registration numbers;

### **The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this Bill of Indictment, accuses the mentioned **Daniel MUKA**, of having, made use of an identification number ('JET 082') other than that allotted by the police or by an Authority in relation to a particular motor vehicle, and therefore on the eighteenth (18th) of August of the year two thousand and twenty (2020), at a time around quarter past ten (22:15) and half past ten (22:30) in the evening, in Sliema, and in the preceding days, made use of an identification number other than that allotted by the police or by an Authority in relation to a particular motor vehicle;

### **The Requested Punishment:**

As a consequence of the above, the Attorney General is requesting that the aforementioned Daniel MUKA is, according to the law, **sentenced to a term of imprisonment not exceeding six (6) months or to a fine (multa) not exceeding one thousand and two hundred euros (€1,200), or to both such term not exceeding six (6) months and fine (multa) not exceeding one thousand and two hundred euros (€1,200)**, and this in accordance with the content of **Articles 14, 17, 31, and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, and in accordance with the contents of **Articles 2 and 15(1A) of the Traffic Regulation**

**Ordinance** , Chapter 65 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

## **THE SIXTH COUNT**

Possession and carriage of a firearm and/or ammunition without a licence

### **The Facts:**

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First (I) and subsequent Counts of this Bill of Indictment, it became manifestly clear that Daniel MUKA was in effective possession of an arms proper, specifically a semi-automatic pistol of the make Glock, in the following instances:

- i. before the commission of the crimes in question, and this based on information obtained by the investigators revealing that as soon as Daniel MUKA exited the Volkswagen Tiguan and began to head for the targeted residence, Daniel MUKA was in fact armed with this particular firearm, and because of this, at that moment in time, Daniel MUKA was allegedly even warned by one of the other perpetrators to be careful with said firearm and not to use it in vain;
- ii. immediately after the commission of the crimes in question, and this as admitted by Daniel MUKA himself whilst giving his version of events to the investigators, whereby he explained that one of the other co-perpetrators allegedly was going to discard the Glock firearm after it was used as corpus delicti and Daniel MUKA took away the same firearm for himself instead of having it thrown away;
- iii. days after the commission of the crimes in question, as the officers who arrested Daniel MUKA, during the time of such arrest, found the exact same firearm, still loaded with live ammunition, in Daniel MUKA's possession, having Daniel MUKA later confirm that the Glock firearm was the murder weapon;

Whereas after due enquiries, it resulted that Daniel MUKA does not have (and, for all intents and purposes, never had) any licence whatsoever to possess and/or carry any type of firearm within the territory of the Republic of Malta;

### **The Consequences:**

Therefore, with this own actions, Daniel MUKA is guilty for having kept in any premises or in his possession, under his control or carried outside any premises or appurtenances, any firearm or ammunition falling within Schedule II of the Aims Act (Chapter 480 of the Laws of Malta) without a licence from the Commissioner of Police.;

#### **The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned Daniel MUKA, guilty for having, kept in any premises or in his possession, under his control or carried outside any premises or appurtenances, any firearm or ammunition without a licence from the Commissioner of Police, and therefore for having, on the twenty-sixth (26th) of August of the year two thousand and twenty (2020) and in the past days and/or weeks, in the Maltese islands, with several acts committed at different times and which constitute violations of the same provision of the law, and committed in pursuance of the same design kept in any premises or had in his possession, under his control or carried outside any premises or appurtenances a firearm and/or ammunition listed in Schedule II of Chapter 480 of the Laws of Malta, without a licence under the same Chapter 480 of the Laws of Malta;

#### **The Requested Punishment:**

As a consequence of the above, the Attorney General is requesting that the aforementioned Daniel MUKA is, according to the law, **sentenced to a term of imprisonment of not less than three (3) months and not exceeding five (5) years**, and this in accordance with the content of **Articles 17, 31 64 and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, and also in accordance with the contents of **Articles 2, 5, 51(2), 56, 57, 60 and 61 of the Arms Act**, Chapter 480 of the Laws of Malta, **or** for any other sentence according to law that can be given to the aforementioned accused.

#### **THE SEVENTH COUNT**

Knowingly received or purchased property which has been stolen, misapplied or obtained by means of an offence committed in Malta, or has knowingly taken part, in any manner whatsoever, in the sale or disposal of same property

#### **The Facts:**

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in both preceding and subsequent days afterwards, as indicated in the First Count of this Bill of Indictment (I) and subsequent Counts of this Bill of Indictment, it became manifestly clear during the investigation that Daniel MUKA had knowingly received a property which has been stolen or obtained by means of any offence, specifically the white Volkswagen Tiguan that was used by the perpetrators to reach Locker Street in Sliema where the targeted residence was situated;

Whereas this is being stated even in view of the vast amount of evidence the investigators accumulated which shows that Daniel MUKA had effective possession and control over this Volkswagen Tiguan during the commission of the crimes in question (and this includes forensic evidence and Daniel MUKA's own version of events), it is an irrefutable fact that the concerned Volkswagen Tiguan was the same one as that which had been reported stolen by Malcolm Fava. On the fourteenth (14th) of September of the year two thousand and eighteen (2018), Malcolm Fava had attended at the Sliema Police Station to report that his vehicle to be stolen, that essentially the same Volkswagen Tiguan which at that time displayed the vehicle registration number plates 'CRS 240', whereby the investigation at that time proved to be fruitless and no progress was made in the tracing back of said vehicle Volkswagen Tiguan.

Whereas furthermore, it has also resulted during the investigation that it was Daniel MUKA who disposed of the stolen Volkswagen Tiguan by taking it to the designated parking area in Pieta' where the vehicle was practically abandoned by the three (3) perpetrators, including Daniel MUKA ;

#### **The Consequences:**

Therefore, with this own actions, Daniel MUKA is guilty for knowingly receiving or purchasing a property which has been stolen, misapplied or obtained by means of any offence, hence the vehicle of the make Volkswagen Tiguan, and has knowingly taken part, in any manner whatsoever, in the disposal of the same vehicle aforementioned, and this when such property had been obtained by theft or by means of any of the various offences relative to unlawful acquisition and possession of property;

#### **The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned Daniel MUKA, of knowingly receiving or purchasing a property which has been stolen, misapplied or obtained by means of any offence, specifically the vehicle of the make Volkswagen Tiguan, or has knowingly taken part, in any manner whatsoever, in the sale or disposal of the same aforementioned vehicle, and therefore for having, on the eighteenth (18th)

of August of the year two thousand and twenty (2020) and in the past days and/or weeks, in the Maltese islands, with several acts committed at different times and which constitute violations of the same provision of the law, and committed in pursuance of the same design, knowingly received or purchased property, that is a vehicle of make Volkswagen Tiguan, which had been stolen, or obtained by means of any offence, whether committed in Malta or abroad, or, knowingly took part, in any manner whatsoever, in the sale or disposal of the same vehicle of make Volkswagen Tiguan.

**The Requested Punishment:**

As a consequence of the above, the Attorney General is requesting that the aforementioned **Daniel MUKA** is, according to the law, **sentenced to a term of imprisonment from thirteen (13) months to ten (10) years, and this** in accordance with the content of Articles 17, 18, 31, 261(c), 267, 279(b), 334 **and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

**THE EIGHTH COUNT**

Theft, aggravated by 'Nature of the Thing Stolen' and 'Time' at the detriment of Aaron Agius

**The Facts:**

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First Count of this Bill of Indictment (I) and subsequent Counts of this Bill of Indictment, it became manifestly clear during the investigation that Daniel MUKA had stolen a set of vehicle registration number plates 'JET 082' from a vehicle of the make Seat Cordoba, whilst it was parked in St. Julian's, which vehicle belonged to a certain Aaron Agius;

It resulted from further investigations and intelligence that these vehicle registration number plates were then used on other vehicles, namely on a Volkswagen Tiguan and a Peugeot 106. All this occurred to the detriment of said Aaron Agius who is the sole legal possessor of such vehicle registration number plates, and such theft divested him from their effective possession;

Whereas as aforementioned, these vehicle registration number plates had been reported stolen on the third (3rd) of September of the year two thousand and twenty (2020), by Aaron Agius who was the lawful possessor of such vehicle registration number same plates. No progress in the investigation was made until the Volkswagen Tiguan that was used and driven by Daniel MUKA for the purposes of the mentioned homicidal armed



robbery was eventually discovered by the investigators with the concerned vehicle registration number plates found bent in the same vehicle, thus leaving very little to no reasonable doubt that it was Daniel MUKA who stole the mentioned vehicle registration number plates 'JET 082';

#### **The Consequences:**

Therefore, with this own actions, Daniel MUKA is guilty for committing theft, aggravated by the 'nature of the thing stolen', and this to the detriment of Aaron Agius.

#### **The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned Daniel MUKA, guilty of having on the third (3rd) of August of the year two thousand and twenty (2020) in St. Julian's, committed theft of number plates with registration number 'JET 082', which theft is aggravated by the 'Nature of the Thing Stolen', and this to the detriment of Aaron Agius.

#### **The Requested Punishment:**

As a consequence of the above, the Attorney General is requesting that the aforementioned Daniel MUKA is, according to the law, **sentenced to a term of imprisonment of not less than seven (7) months and not more than four (4) years, and this** in accordance with the content of Articles **17, 18, 31, 261(g), 270, 271(g), 281(a)(b) and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

### **THE NINTH COUNT**

Theft, aggravated by 'Nature of the Thing Stolen' at the detriment of Brian Cutajar and/or Regina Auto Dealer and/or any other persons or entities that may qualify

#### **The Facts:**

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First Count of this Bill of Indictment (I) and subsequent Counts of this Bill of Indictment, it became manifestly clear during the investigation that Daniel MUKA had in fact committed theft of vehicle registration number plates with registration number 'CCB 042' from a vehicle which belonged to a certain Brian Cutajar who runs the company Regina Auto Dealer,

Whereas in the course of the investigations following the homicidal armed robbery, it was established that a white crossover vehicle of the make Volkswagen was an object of interest related to the homicide investigation at hand, and subsequently a white Volkswagen Tiguan was located by a CID patrol assisting in the case in the area which the investigators had pinpointed for searching. This vehicle was found on the twentieth (20th) day of August of the same year two thousand and twenty (2020), a few days after the homicidal armed robbery had occurred;

Whereas when this vehicle was found, it was found parked in an area in the locality of Pieta whilst carrying vehicle registration number plates 'CCB 042'. However, notwithstanding this fact, this particular Volkswagen Tiguan continued to raise further suspicion because as a vehicle it had specific markings and features similar to those which had been observed on the white getaway vehicle from CCTV footage studied by the investigators.

Whereas after a due search in the parked vehicle that has just been discovered by the CID patrol, the vehicle registration number plates which had been observed on the investigated CCTV footage was found bent in the back storage of said Volkswagen Tiguan, thus explaining how come at that particular moment in time it was fixed with vehicle registration numberplates 'CCB 042';

Whereas after further enquiries, investigators confirmed that the vehicle registration number plates 'CCB 042' had been in due course officially reported stolen by Brian Cutajar as the representative of the business Regina Auto Dealer, whereby said vehicle registration number plates were allegedly lifted off from a vehicle of the make Skoda Felicia Combi that was property of said Brian Cutajar. After arresting Daniel MUKA, subsequent enquiries (including the relevant interrogation) made it abundantly clear that Daniel MUKA was the person responsible for the theft of the vehicle registration number plates 'CCB 042';

#### **The Consequences:**

Therefore, with this own actions, the accused Daniel MUKA is guilty of theft aggravated by the 'Nature of the Thing Stolen', and this to the detriment of Brian Cutajar and/or Regina Auto Dealer and/or any other persons or entities that may qualify.

#### **The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned Daniel MUKA of committing theft of number plates with registration number 'CCB 042', which theft is aggravated by the 'nature of the thing stolen', and this to the detriment of Brian Cutajar and/or Regina Auto Dealer and/or any other persons or entities that may qualify, and therefore for having in the past two (2) months prior the eighteenth (18th) August of the year two

thousand and twenty (2020), committed theft of number plates with registration number 'CCB 042' which theft is aggravated by the 'Nature of the Thing Stolen', to the detriment of Brian Cutajar, Regina Auto Dealer and/or other persons and/or entity or entities that may qualify.

### **The Requested Punishment:**

As a consequence of the above, the Attorney General is requesting that the aforementioned Daniel MUKA is, according to the law, **sentenced to a term of imprisonment of not less than seven (7) months and not more than four (4) years**, and this in accordance with the content of Articles **17, 18, 31, 261(g), 271(g), 281(a) and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

## **THE TENTH AND FINAL COUNT**

### **Breach of Bail Conditions**

#### **The Facts:**

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the preceding days before and the subsequent days afterwards, as indicated in the First Count of this Bill of Indictment (I) and subsequent Counts of this Bill of Indictment, it is unquestionable that as a result of all the criminal activity Daniel MUKA had engaged himself in within the facts of this particular case, consequentially in various instances he breached bail conditions that had been imposed on him for a previous pending case. These bail conditions had been specifically imposed on Daniel MUKA so he could be released from preventive custody that had been imposed upon him as a result of him being arrested and charged for a separate and distinct case involving crimes against the person and property that have been commissioned back in the year two thousand and seventeen (2017);

Whereas these bail conditions were imposed by virtue of a decree of the Criminal Court dated on the twenty fourth (24th) of July of the year two thousand and nineteen (2019), whereby amongst the various conditions imposed on Daniel MUKA, there were the following:

- i. that he does not change his address once given by him to the Criminal Court, as changing it would require prior approval by the same Criminal Court, a condition which he broke after the homicidal robbery by squatting in Floriana to evade the authorities, where he was eventually arrested on the twenty fifth (25th) of August of the year two thousand and twenty (2020);
- ii. that he signs at the police station in the locality of his residence every day, a condition which he broke consistently after the eighteenth (18th) of August of the year two thousand and twenty (2020), as his failure to show

up at the concerned Police station after that date to sign the bail book was even a point of interest to the investigators in this particular case, a point that lead to further enquiries;

iii. that he returns home every day by latest half past eight in the evening (20:30 hrs / 08:30pm), a condition he clearly and blatantly broke on that very night between the eighteenth (18th) and nineteenth (19th) of August of the year two thousand and twenty (2020), when on the eighteenth (18th) at various times after ten o' clock in the evening (22:00hrs / 10pm) onwards he was captured on multiple CCTV footages participating in crime and basically still out in the street, and this in violation of the curfew imposed by the Criminal Court;

iv. Furthermore, the very fact that Daniel MUKA committed all those crimes whilst on bail on the night of the eighteenth (18th) of August of the year two thousand and twenty (2020), all crimes which are not of an involuntary nature, means that he has violated both the law and the concerned bail conditions and has therefore committed an offence;

#### **The Consequences:**

Therefore, with this own actions, the accused Daniel MUKA is guilty of failing to observe conditions imposed by the Criminal Court in its decree granting bail and is also guilty of committing a crime not being one of an involuntary nature whilst on bail;

#### **The Accusation:**

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned Daniel MUKA for having, on the twenty fifth (25th) of August of the year two thousand and twenty (2020) and in the preceeding days, failed to observe conditions imposed by the Criminal Court in its decree by Hon. Madame Justice Dr. Consuelo Scerri Herrera LL.D. dated on the twenty fourth (24th) of July of the year two thousand and nineteen (2019) granting bail and also for having committed a crime not of an involuntary nature whilst on bail;

#### **The Requested Punishment:**

As a consequence of the above, the Attorney General is requesting that the aforementioned Daniel MUKA is, according to **the law, sentenced to a term of imprisonment from four (4) months to two (2) years, and a fine (multa), and order the sum of ten thousand euros ( 10,000) stated in the bail bond be forfeited in full or in part to the Government of Malta** in accordance with the content of Articles **14, 17, 18, 31, 575, 579(2), and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

2. Having seen the note of preliminary pleas submitted by the accused MUKA on the 18<sup>th</sup> May 2022 wherein he raised the following pleas:

1. The nullity of the acts of the proceedings as from the 8th of April, 2021 onwards. On this date, the Attorney General filed a request before this Honourable Court requesting an extension of the term of one month for the filing of the indictment in accordance with article 432 of the Criminal Code, however, contrasting with all other requests of a similar nature filed during the pendency of these proceedings, in the acts of the case there is no record that such request was acceded to by the Criminal Court. Consequently, this constitutes a defect in the acts of the proceedings.

2. The inadmissibility of those parts in the testimony of Inspector James Grech of the 3<sup>rd</sup> of September, 2020 wherein the witness makes reference to several CCTV footages collected in order to ascertain the route taken by the getaway car and this in light of the fact that the owners of the properties from where such CCTV footages were collected were not produced as witnesses and consequently all references in the acts of the case to such footages constitutes documentary hearsay evidence.

3. The inadmissibility of those parts in the testimony of PS512 Josef Gerada of the 3<sup>rd</sup> of September, 2020 wherein the witness makes reference to several CCTV footages collected in order to ascertain the route taken by the getaway car and this in light of the fact that the owners of the properties from where such CCTV footages were collected were not produced as witnesses and consequently all references in the acts of the case to such footages constitutes documentary hearsay evidence.

4. The inadmissibility of those parts in the testimony of Inspector Colin Sheldon of the 8th of October, 2020 wherein the witness makes reference to several CCTV footages collected in order to ascertain the route taken by the getaway car and this in light of the fact that the owners of the properties from where such CCTV footages were collected were not produced as witnesses and consequently all references in the acts of the case to such footages constitutes documentary hearsay evidence.

5. The inadmissibility of those parts in the testimony of PC605 Lino Parascandalo of the 8th of October, 2020 wherein the witness makes reference to several CCTV footages collected in order to ascertain the route taken by the getaway car and this in light of the fact that the owners of the properties from where such CCTV footages were collected were not produced as witnesses and consequently all references in the acts of the case to such footages constitutes documentary hearsay evidence.

6. The inadmissibility of those parts in the testimony of PS1147 Anton Fenech and WPC140 Cristi Cremona of the 28th of January, 2021 wherein the witnesses make reference to several CCTV footages collected in order to ascertain the route taken by the getaway car as well as reports marked as DOK AFCC1 and Dok AFCC2 and this in light of the fact that the owners of the properties from where such CCTV footages were collected were not

produced as witnesses and consequently all references in the acts of the case to such footages constitutes documentary hearsay evidence.

7. The inadmissibility of those parts in the testimony of PC432 Sandra Mamo of the 21<sup>st</sup> of May, 2021 wherein the witness makes reference to several CCTV footages collected in order to ascertain the route taken by the getaway car as well reports marked as Dok SMI and Dok SM4 and this in light of the fact that the owners of the properties from where such CCTV footages were collected were not produced as witnesses and consequently all references in the acts of the case to such footages constitutes documentary hearsay evidence.

8. The inadmissibility of the report marked as Dok RG produced by PC415 Randle Gill and filed in the acts of the 'in genere' and exhibited a fol. 505 et seq, of the acts of the proceedings. These proceedings are being conducted in the English language in accordance with Chapter 189 of the Laws of Malta and this in light of the fact that the accused has a fundamental right to understand the criminal proceedings he is undertaking in a language which he comprehends. Nonetheless DOK RG is in the Maltese language, a language which the accused does not understand and the Prosecution has failed to request the court to order a translation of this document Moreover, applicant has never exempted Prosecution from making such translation.

9. The inadmissibility of the report marked as Dok NM1 produced by Nicholas Mallia during the sitting of the 19th of November, 2020 and exhibited a fol. 550 et seq, of the acts of the proceedings. These proceedings are being conducted in the English language in accordance with Chapter 189 of the Laws of Malta and this in light of the fact that the accused has a fundamental right to understand the criminal proceedings he is undertaking in a language which he comprehends. Nonetheless DOK NM1 is in the Maltese language, a language which the accused does not understand and the Prosecution has failed to request the court to order a translation of this document. Moreover, applicant has never exempted Prosecution from making such translation.

10. The admissibility of documents marked as Doc AB1, AB2 and AB3 produced on the 24th of June, 2021 during the testimony of Angelo Bucolo and this on the basis of article 627 and 629 of the Code of Organisation and Civil Procedure Chapter 12 of the Laws of Malta applicable to these criminal proceedings through article 520 of Chapter 9 of the Laws of Malta. As evident from the transcript of Angelo Bucolo's testimony, said documents, albeit testified upon by the witness, were not produced by said witness but were produced during his testimony by parte-civile lawyer Dr Joe Giglio. Thus the authenticity of said documents was not ascertained and consequently should not be admissible.

11. The inadmissibility of the testimony of PC156 Ian Farrugia of the 28th of January, 2021 as well as the report produced by said witness on the same sitting and marked as Dok IPPF1 since it does not result from the acts

of the proceedings that PCI56 Ian Farrugia was appointed as a scene of crime officer and / or ballistic expert and consequently PC156 Ian Farrugia must be deemed as an ordinary witness and precluded from testifying on his opinions or findings with respect to ballistics.

12. The inadmissibility of the testimony of PS 169 Jurgen Schembri of the 28th of January, 2021 as well as the report produced by said witness on the same sitting and marked as Dok JS1 since it does not result from the acts of the proceedings that PS169 Jurgen Schembri was appointed as a fingerprint expert and consequently PS169 Jurgen Schembri must be deemed as an ordinary witness who forms part of the Police Force and precluded from testifying on his opinions or findings with respect to fingerprints.

13. The inadmissibility of certain parts in the testimony and report marked as Dok JM1 filed by court expert Joe Mallia on the 7th of October, 2021 as said expert based his work and results on the work performed by PS169 Jurgen Schembri who was never appointed as a fingerprint expert but who must be deemed as an ordinary witness forming part of the police force.

14. The admissibility of the testimony of Mr Francesco Zampa tendered on the 21st of May, 2021 and on the 7th of October, 2021 as well as all reports produced by such witness, namely Dok FZ1 and Dok FZ2 since Mr Zampa conducted his expert examination prior to his appointment as an expert by the Court of Magistrates as a Court of Criminal Enquiry in the proceedings against the accused and thus at the time of examination he was merely an ordinary witness and thus could not give any opinions in this regard.

15. The inadmissibility of those parts in the testimony of Inspector James Grech of the 3<sup>rd</sup> of September 2020 and of the 7th of October, 2021 wherein the witness makes reference to the accused's past and to any other pending criminal cases involving the accused.

3. Having heard the oral submissions of the parties with regards to these preliminary pleas raised by the accused MUKA

**Considered as follows:**

4. In his first preliminary plea the accused argued that the records of the proceedings did not contain evidence that the request filed by the Attorney General in terms of Article 432(1) of the Criminal Code on the 8th April 2021, was acceded to by the Criminal Court. He argued that this defect constituted a ground for nullity of the proceedings as from the 8<sup>th</sup> April 2021 onwards, thus implying that

this also brought about the nullity of the bill of indictment issued against the accused.

5. On the other hand, the Attorney General insisted that a copy of the application containing the request made in terms of Article 432(1) of the Criminal Code dated 8th April 2021 - found at folio 1796 of the acts of the proceedings - was timely filed in the acts of the proceedings. This application was also acceded to by the Criminal Court on the same date. The Attorney General however conceded that the decree of the Criminal Court whereby the request dated 8<sup>th</sup> April 2021 was acceded to was not included in the acts of these proceedings. This, however, according to the Attorney General did not bring about the nullity of the proceedings from the 8<sup>th</sup> April 2021 onwards as claimed by the accused.
6. Article 431(1) of the Criminal Code provided that the functions of the Attorney General commenced on the day that he received the record of the inquiry from the Court of Magistrates as a Court of Criminal Inquiry. Article 401(1) of the Criminal Code said that this inquiry must be concluded by the Court of Magistrates as a Court of Criminal Inquiry within one month (which term is extendable upon good cause being shown and upon request being made in writing to the President of Malta).<sup>1</sup> In all cases, upon conclusion of the inquiry, the Court of Magistrates as a Court of Criminal Inquiry sent the records of the inquiry to the Attorney General within three working days.
7. The Attorney General therefore commenced his prosecutorial duties from the date of the receipt of the record of the inquiry. Article 432(1) of the Criminal Code granted the Attorney General one month from the date of the receipt of the records of the inquiry<sup>2</sup> to file the bill of indictment against the accused. If for any reason, the Attorney General could not adhere to this time limit, article 432(1) of the Criminal Code granted him the right to lodge a request to the Criminal for an additional period of fifteen days. **The Law did not allow any discretion to the Criminal Court in this case:**<sup>3</sup>

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<sup>1</sup> During that time frame, the Court of Magistrates as a Court of Criminal Inquiry must decide whether there are sufficient grounds on the basis of which to commit the accused for trial on indictment. If it finds in favour of such grounds then that Court sends the accused for trial on indictment before the Criminal Court. If not, the Court of Magistrates orders his discharge.

<sup>2</sup> as mentioned in Article 401(3) of the Criminal Code.

<sup>3</sup> This contrasts the case where the Court of Magistrates as a Court of Criminal Inquiry would require an extension of time for the conclusion of the inquiry under article 401(2) of the Criminal Code. In the latter case, the Court of Magistrates requests the extension to the President of Malta who may, upon good cause being shown, extend such time for further periods each of one month following a demand



The said term **shall**, on the demand of the Attorney General, be extended by the court to an additional period of fifteen days, and, on the expiration of this other period, by the President of Malta to a further additional period of fifteen days, and, where the matter is such that the determination of the true nature of the offence necessarily depends upon the lapse of a longer period of time, to such longer period: Provided, however, that where such longer period extends beyond forty days, the accused shall have the right to be released on bail.

8. During the term mentioned by article 432(1) of the Criminal Code, the Attorney General was however not obliged to immediately file the bill of indictment. The Attorney General could - after receiving the records of the inquiry in terms of Article 401(3) of the Criminal Code - re-hear a witness that had already testified or brought further evidence if he considered it necessary to do so. Article 405 of the Criminal Code allowed the Attorney General to make any such request after that the Court of Magistrates as a Court of Criminal Inquiry committed the accused for trial on indictment.<sup>4</sup> In the ruling given by the Criminal Court in the case **Il-Pulizija (Spettur Norbert Ciappara) vs. Joseph Lebrun** delivered on the 18<sup>th</sup> January 2006 it was stated:

Issa, jekk wiehed jara l-istruttura u l-kontenut tad-diversi disposizzjonijiet tal-ligi li b'xi mod jaghtu setgha jew setghat lill-Avukat Generali – u speċjalment jekk wiehed jara l-Artikoli 402(5), **405<sup>5</sup>**, 431(2), 432 u 433 tal-Kodici Kriminali – huwa evidenti li l-Avukat Generali, bhala l-prosekutur quddiem din il-Qorti u ghalhekk bhala l-persuna li fuqu taqa' r-responsabbilta` li jassigura li l-attijiet tal-kumpilazzjoni jkuni istruwiti minn kollox (sa fejn hu desiderabbli u umanament possibbli) qabel ma jiehu d-decizjoni finali biex jigi quddiem din il-Qorti b'att ta' akkuza, **ma hux marbut** li, meta jkun ipproceda skond l-Artikolu 433(3), **huwa bilfors irid jghaddi dritt ghall-att ta' akkuza.**

L-obbligu ta' l-Avukat Generali li jistruwixxi l-process huwa obbligu li necessarjament **jipprecedi** l-att ta' akkuza, proprju biex huwa jkollu dejjem l-istampa cara u kompleta qabel ma jiddeciedi li jipprocedi b'wiehed mill-modi msemmija fil-paragrafu precedenti.

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in writing made by the Court of Magistrates. Strictly speaking, therefore the President of Malta enjoys a prerogative as to whether to concede this extension or otherwise as he is given discretion to decide whether to accede or not to the Court of Magistrates' written request. But this is not the case for the Attorney General's requests for extensions of the time limit set in article 432 of the Criminal Code.

<sup>4</sup> before the Criminal Court and before the filing of the bill of indictment by the Attorney General.

<sup>5</sup> Emphasis of this Court.

9. The Attorney General had various legal courses of action open to him once that he received the records of the inquiry from the Court of Magistrates as a Court of Criminal Inquiry. He could also avail himself of these options even after the expiration of the term of one month: provided however that the Attorney General requested an extension:
- (a) first to the Criminal Court for an additional fifteen days and then, if need be
  - (b) to the President of Malta for further fifteen days and then for such longer period as may be required.<sup>6</sup>
10. To avail himself of the extension of the original time limits, the Attorney General was obliged to lodge the said demand; but once that demand was lodged, then it was bound to be acceded to by operation of Law. The Law granted no discretion to the Criminal Court or to the President of Malta to reject this request. The sine qua non requirement was the timely demand that had to be lodged by the Attorney General for the extension of the time frames imposed by law.
11. Once the demand is lodged to the Criminal Court before the lapse of the time frames stipulated by law - and evidence thereof is found in the records of the proceedings - then this Court need dig no further and deeper into the issue as that demand is to be upheld by the Criminal Court. And once the demand was upheld by this Court, the request and the decree upholding the request did not need to be proven as they are deemed to form part of the records of the proceedings. There was no need for the demand to be made accessible to the Court of Magistrates, provided that both demand and corresponding decree acceding to it resulted from the records of the Criminal Court. This was the line of reasoning adopted in the appeal proceedings **II-Pulizija vs. Victor Magro** decided on the 11th March 1993 where the Court of Criminal Appeal, presided by Mr. Justice C. A. Agius.
12. In this case there was no contestation about the fact that the request for the extension (“talba għal proroga”, or “proroga”, in brief as distinguished from the decree of the Criminal Court acceding to it) was lodged by the Attorney General, and that this was lodged on time. Case Law required the demand for extension to be timely lodged by the Attorney General, there being no explicit necessity for

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<sup>6</sup> Vide the appeal proceedings : **II-Pulizija vs. Edward Cassar et** decided on the 26th June 1986.

evidence of it to be found in the records of the Court of Magistrates, albeit found in the records of the Criminal Court. Had there been contestation about whether the request for extension was timely lodged, then the matter would have required further analysis by the competent court. This was part of the decisum in the appeal **II-Pulizija vs. Edward Cassar et** decided on the 26th June 1986 which held:

Illi konsiderazzjoni ohra ta' importanza u rilevanza li l-Ewwel Qorti ghamlet fis-sentenza appellata kienet li la gie allegat mill-Prosekuzzjoni wara l-verbal tad-difiza (fol. 34) u wisq anqas ma saret il-prova li l-estensjoni taz-zmien giet effettivament mitluba u moghtija ai termini tal-artikolu 444(1) tal-Kap. 12 u li ghalhekk dik il-Qorti ma setghetx tassumi dak li fl-atti ma kienx jirrizulta skond il-ligi.

Illi effettivament din il-Qorti ma tistax taqbel ma dan ir-ragjonament u dana ghaliex jekk kien hemm talba ghal proroga u digriet relattiv dawn anki jekk inghataw mill-Qorti Kriminali jiformaw parti mill-atti ta' din il-kawza u jehtiegux provi. Jekk kien hemm, kif kien hemm, quddiem l-Ewwel Qorti il-kwistjoni ta' jekk ir-rinviju de quo sarx tempestivament jew le, l-ezistenza o meno tal-proroga kienet fundamentali, speċjalment f'dan il-kaz. Infatti filwaqt li l-Ewwel Qorti qalet fis-sentenza appellata li f'kaz ta' proroga ir-rinviju kien tardiv l-istess l-Avukat Generali qed isostni l-oppost u cioe' li rinviju sar in tempo billi t-talba ghal proroga saret fit-12 ta' Lulju, 1985.

13. In this particular case, the request was made by the Attorney General, and Defence did not contest that it was lodged on time. In any case, this Court was entitled to resort to judicial notice with inquiry in relation to the demand once that if lodged and found in the records of the Criminal Court, the said Case Law still considered those records as part of the records of the case and hence requiring no further proof.
14. To determine this issue in a definitive manner, this Court verified the records of its own Registry and confirmed that this Court had taken cognisance of the demand of the Attorney General for an extension and acceded to it on the same day it was lodged: the 8th April 2021. The undersigned judge happened to be the judge on duty on the day and presided this Court when it acceded to the demand of the Attorney General for an extension of the original time limits. This Court had no doubt that the demand was made timely, but also that it was acceded to.
15. But for the sake of completeness, even if one were to concede **gratia argomenti** that the Attorney General had failed to show that

the request was made, or was not made on time or that there was no evidence of this request being acceded to, the consequence of any such shortcoming would still not lead to the nullity of the bill of indictment or the compilation proceedings as Defence contended. Article 597(4) of the Criminal Code states:

The indictment cannot be impugned on the ground of any defect in the record of inquiry, nor can the accused demand that, on the ground of any such defect, the trial on the said indictment be not proceeded with, unless such defect consists in the total absence of the charges being read or of the examination of the accused or **of the order committing the accused for trial**,<sup>7</sup> or in the refusal of the court of criminal inquiry, without just cause, to hear the evidence produced by the accused; saving always the right of the accused and the Attorney General to oppose the production, at the trial, of any act tendered in evidence which is not according to law.

16. The records show that after that the Attorney General filed the demand in terms of Article 432(1) of the Criminal Code on the 8<sup>th</sup> April 2021, a further request in terms of Article 405(1) of the Criminal Code was made on the 15<sup>th</sup> April, 2021 (that is, within the term of two weeks mentioned by Article 432(1) of the same Code). However, on the 15<sup>th</sup> April 2021, this request was not acceded to by the Court of Magistrates as a Court of Criminal Inquiry as can be seen at folio 1801 of the acts of the proceedings and this because of Covid-19 pandemic restrictions. The case was then called on the 21<sup>st</sup> May 2021 whereby the Court acceded to the request put forth by the Attorney General on the 15<sup>th</sup> April 2021 in terms of Article 405(1) of the Criminal Code. The case continued until the bill of indictment was filed by the Attorney General on the 22<sup>nd</sup> April 2022.

17. The long-standing legal position adopted by the Maltese Courts of Criminal Justice in this regard Article 597(4) of the Criminal Code to be read and construed together with the provisions of Article 432(1) and Article 602 of the Criminal Code. Article 602 reads:

Where the indictment is not filed within the prescribed time, the court may, at the request of the accused, and after hearing the Attorney General, order the discharge of the accused, and the provisions of article 434 shall, mutatis mutandis, apply:

Provided that this provision shall not apply if at the time the request is made the indictment shall have been filed

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<sup>7</sup> Emphasis of this Court

18. This meant that the filing of the bill of indictment **after** the prescribed time of one month (when not extended) in terms of Article 431(1) and 432(1) of the Criminal Code **did not bring about the nullity of the records of the inquiry** but it gave the accused an opportunity to make a request for discharge (subject to the provisions of Article 434 of the Code). In a ruling given in **Ir-Repubblika ta' Malta vs. Carmelo Muscat** on the 7<sup>th</sup> June 1996 the Court of Criminal Appeal (Superior Jurisdiction) it was held:

L-effetti tan-nuqqas tal-prezentata ta' l-Att ta' l-Akkuza fiz-zmien illi huwa previst u impost mil-ligi, ggib bhala konsegwenza, mhix li l-Avukat Generali jkun prekluz ghal dejjem milli jipprezenta l-Att ta' l-Akkuza, izda li l-Qorti tista' tordna li l-imputat jigi lliberat, jigifieri mehlus mill-istat ta' arrest - fit-test Ingliz "order the discharge of the accused". Jista' jizdied ukoll illi dak li riedet tirragguni l-ligi jemergi evidenti ukoll mill-proviso ta' l-artikolu 602 li jipprovdi li jekk l-Att ta' l-Akkuza ma jkunx gie pprezentata fiz-zmien il-possibilita' li l-imputat jigi lliberat, cjoe' mehlus mill-arrest, ma tibqax tezisti, jekk sadanittant l-Att ta' l-Akkuza jkun gie pprezentat. Indikazzjoni cara tal-ligi li ma kien qatt intenzjonat u previst illi d-dritt ta' l-Avukat Generali li jipprezenta l-Att ta' l-Akkuza jintilef. F'Kaz li l-Att ta' l-Akkuza ma jigix pprezenta tfit-terminu, il-Qorti mhux obligata li tirrilaxxa lill-akkuzat mill-arrest, anzi f'certi kazi ma helsitux.

19. The same principle was laid out by the Court of Criminal Appeal (Superior Jurisdiction) in the ruling given on the 2<sup>nd</sup> March 1998 in the names of **Ir-Repubblika ta' Malta vs. Lawrence Asciasive Axiak u Francis sive Frankie Axiak** wherein it was held:

**Il-fatt illi l-Avukat Generali ma jkunx ipprezenta l-att ta' l-akkuza fiz-zmien ix-xahar stipulat mil-ligi, u fl-assenza ta' proroga biex jipprezentah ulterjorment, ma jgibx bhala konsegwenza illi jekk dak l-istess att ta' akkuza jigi pprezentat sussegwentement u ghalhekk oltre l-perijodu ta' xahar imsemmi, dak l-istess att ikun null fit-termini tal-ligi.**<sup>8</sup> Il-konsegwenzi tan-nuqqas ta' l-Avukat Generali illi jipprezenta l-att ta' l-akkuza fiz-zmien stabbilit mil-ligi jew permess lilu mill-Qorti permezz ta' proroga jistghu ikunu diversi fosthom jistghu anke jwasslu ghal-liberazzjoni mill-arrest ta' l-imputat, pero' mhux ikkontemplat mil-ligi bhala wahda mill-konsegwenzi li l-Avukat Generali huwa prekluz milli jipprezenta l-att ta' l-akkuza xorta wahda avolja jkun skadielu t-terminu f'liema kaz **mhux talli l-ligi ma tikkontemplax in-nullita' ta' dak l-istess att ta' akkuza**, anzi fit-termini ta' l-artikolu 602 tal-Kodici Kriminali tipprovdi illi dik l-istess prezentata tardiva tista' tinnewtralizza certi effetti ohra illi jista' talvolta jkun hemm kieku l-att ta' l-akkuza ma jkunx gie prezentat fiz-zmien stabbilit, il-possibilita' li l-imputat jigi liberat cjoe' mehlus mill-arrest, ma tibqax tezisti jekk sadanittant l-att ta' l-akkuza jkun gie pprezentat anke jekk tardivament. Din hija indikazzjoni cara li l-ligi ma kienet qatt intenzjonata li ttellef id-dritt

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<sup>8</sup> Emphasis of this Court.

ta' l-Avukat Generali li jipprezenta l-att ta' l-akkuza allavolja jkun skadielu t-terminu anzi mhux hekk biss, billi certi drittijiet ta' l-akkuzat illi jkunu in limbo bhal ma huwa dak li jitlob li jigi lliberat mill-arrest jintilfu appena l-att ta' l-akkuza jigi pprezentat sakemm dik it-talba tkun ghada ma saritx.

20. In the ruling of the Criminal Court dated 18<sup>th</sup> January 2006 in **Il-Pulizija vs. Joseph Lebrun**, the Court referred to an older ruling in **Il-Maesta' Tiegħu Ir-Re vs. Manwel Bonello** and said the following:

Dik l-istess Qorti in segwitu kienet iddeċidiet, fit-13 ta' April 1950 fil-kawża fl-ismijiet **Il-Maesta' Tiegħu Ir-Re' v. Manwel Bonello**, Kollez. Deċ. XXXIV.iv921, li jekk it-talba għal-liberazzjoni taħt l-Artikolu 602 tkun giet miċhuda, l-att ta' akkuza li jkun gie sussegwentement preżentata ma jkunx jista' jigi invalidat minħabba l-istess raġuni, cioe' li ma kienx ipprezentat fit-terminu stabbilt fl-imsemmi Artikolu 602; u għalhekk wara dik id-deċiżjoni ma hemmx lok għall-eċċezzjoni tan-nullita' ta' l-att ta' akkuza fuq ir-raġuni taż-żmien. Ara wkoll l-Artikolu 597(4) tal-Kodiċi Kriminali.

21. Article 602 was interpreted to confer discretion to the Court whether to accede to the accused's request for discharge in these circumstances. This legal issue was also explored in **Lebrun**, wherein the Criminal Court said:

Jibda biex jigi osservat li, kif anke gie ritenut minn din il-Qorti4 fis-sentenza tagħha tat-13 ta' Marzu 1950 fl-ismijiet **Il-Pulizija v. Manwel Bonello**, l-Artikolu 602 tal-Kodiċi Kriminali juza l-kelma "tista" u mhux "għandha". Dan ifisser li din il-Qorti għandha diskrezzjoni jekk, skadut it-terminu ta' xahar, tordnax il-liberazzjoni o meno. Fi kliem dik is-sentenza: "Illi ghalkemm huwa veru li kultant il-kelma 'tista' ('may') uzata fil-ligi għandha tigi interpretata bhal ma kieku kienet giet uzata l-kelma 'għandha' ('shall'), izda għal dik l-interpretazzjoni għandu jigi kunsidrat il-kontest; u l-kontest juri, fil-kaz prezenti, illi ghalkemm, naturalment it-talba għandha tigi milqugħa meta ma jkunx hemm raġunijiet biex tigi negata – izda hija fil-fakolta' tal-Qorti li tilqagħha jew tichadha, skond ic-cirkustanzi partikolari tal-kaz. Dan jurih, fost cirkustanzi ohra, anke dak li l-ligi trid li d-deċiżjoni tal-Qorti tingħata wara li jkun instema' l-Attorney General.

22. This line of reasoning was confirmed by the Court of Criminal Appeal in **Ir-Repubblika ta' Malta vs. John Polidano, Vincent sive Censu Spiteri, Christopher Agius u Silvio Saviour Pace** dated 19<sup>th</sup> April 2001:

L-imsemmi appell fl-Att ta' Akkuza 3/1995 (Ir-Repubblika ta' Malta vs Carmelo Muscat) irrabadixxa ukoll il-principju l-iehor li hareg mis-sentenza ta' l-istess Qorti ta' l-Appell Kriminali mogħtija fit-13 ta' Marzu, 1950, in re : 'Sua Maesta' il Re –vs- M. Bonello', u dik tad-9 ta' Awwissu, 1950, in re:

‘Sua Maesta’ il Re-vs- M. Mercieca,’ fejn gie rilevat li f’kaz li Att ta’ Akkuza ma jigieix prezentat fit-terminu stabbilit mill-ligi, il-Qorti mhiex obbligata bilfors li tirrilaxxa lill-akkuzat mill-arrest, anzi f’certi kazijiet fil-fatt ma helsitux. Dan il-principju huwa pacifiku. Il-Qorti tista’ biss tordna dan ir-rilaxx jew liberazzjoni, fid-diskrezzjoni taghha, wara li l-akkuzat jaghmel talba ghar-rilaxx tieghu ghaliex l-Att ta’ l-Akkuza gie prezentat tardivament, u wara li tkun semghet ukoll lill-Avukat Generali.

23. Discharge in terms of Article 602 of the Criminal Code was more likely when the Attorney General would have committed a serious infringement of the law of criminal procedure; but the late filing of the bill of indictment per se could not necessarily be considered as a serious infringement of criminal procedure. In **Lebrun** it was held:

Pronunzjament iehor simili huwa dak ta’ din il-Qorti tat-3 ta’ Awissu 1950 fl-ismijiet Il-Pulizija v. Manwel Mercieca. Fil-fehma ta’ din il-Qorti il-liberazzjoni taht l-Artikolu 602 ghandha tigi akkordata meta jkun hemm nuqqas gravi f’dak li huwa l-prosegwiment tal-proceduri fil-konfront tal-persuna li tkun, **u mhux semplicement meta, per ezempju, jkun skada xi terminu b’gurnata jew tnejn.** Tali interpretazzjoni hi konformi sia mal-proviso ta’ l-imsemmi Artikolu 602 kif ukoll ma’ dak li jipprovdi l-proviso tas-subartikolu (1) ta’ l-Artikolu 432, **u cioe` li meta l-att ta’ akkuza ma jkunx gie prezentat** (wara li l-attijiet tal-kumpilazzjoni jkunu ntbaghtu mill-Qorti Istrutturja lill-Avukat Generali u hu ma jkunx ipproceda skond xi disposizzjoni ohra tal-ligi) **wara l-proroga taz-zmien ghal darba darbtejn** permezz ta’ din il-Qorti u tal-President ta’ Malta, jekk jghaddu erbghin jum ohra fuq dik it-tieni proroga, l-imputat li jkun taht arrest ikollu “l-jedd li jigi mehklus mill-arrest taht garanzija” (“...the accused shall have the right to be released on bail”). Addiruttura f’din l-ahhar ipotesi – meta allura jkunu ghaddew xahar, hmistax u hmistax, u erbghin jum ohra – il-ligi anqas titkellem dwar il-“liberazzjoni” (“discharge”) **izda semplicement helsien mill-arrest – indikazzjoni cara li l-liberazzjoni taht l-Artikolu 602 hija intiza primarjament ghal meta jkun hemm, fost affarijiet ohra, inattività totali (u ghalhekk abuziva) da parti ta’ l-Avukat Generali.**<sup>9</sup>

24. Therefore the argument that the bill of indictment was null in terms of Article 597(4) of the Criminal Code could not be upheld : first because in this case the bill of indictment could not be impugned; secondly because the records of the inquiry dated 8th April 2021 onwards could not be declared to be null.

25. **Consequently, this Court rejected the first preliminary plea.**

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<sup>9</sup> Emphasis of this Court.

### **Considered further:**

26. Preliminary pleas numbered 2 to 7 will be considered together since they are based on the same point of law. The accused attacked the admissibility of parts of the testimonies of Inspector James Grech, Inspector Colin Sheldon, PS512, PC605, as well as PS1147 and WPC140 (as well as reports marked as DOK AFCC1 and Dok AFCC2) wherein these witnesses made reference to several CCTV footages collected in order to ascertain the route taken by the getaway car and this in light of the fact that the owners of the properties from where such CCTV footages were collected were not produced as witnesses. The accused contended that all references in the acts of the case to such footages constituted documentary hearsay evidence, and hence inadmissible by way of evidence.
27. Specifically the accused sought judgment declaring the inadmissibility of the testimony of:
- i) Inspector James Grech and PS 512 Josef Gerada given in the sitting dated 3rd September 2020;
  - ii) Inspector Colin Sheldon and PC 605 Lino Parascandolo given in the sitting dated 8th October 2020;
  - iii) PS 1147 Anton Fenech given on the 28th January 2021;
  - iv) PC 432 Sandra Mamo given on the 21st May 2021.
28. PS 512 Josef Gerada identified the CCTV footages (mentioned by the accused in preliminary pleas number 2 to 7) which were downloaded by the Forensic Team of Police Officers that was set up specifically for this purpose. This team was composed of PS 512, PC 605, PC 432 together with WPC140.
29. It resulted that WPC140 - although a police officer in service - was also appointed by the Inquiring Magistrate as an expert, and therefore duty bound to report directly to him. This transpired from fol 5 of the proces-verbal found at fol 398 of the record of the proceedings, and further reiterated at fol 997 - the joint report filed by WPC140 together with PS1147.
30. At folio 112 of the acts of the proceedings, PS 512 Josef Gerada listed the location from where the CCTV cameras were taken and downloaded:



- i) 22 Locker Street Sliema
- ii) Malta Union Club Tigne
- iii) Remax Tower Road Sliema
- iv) 72 High Street Sliema
- v) 42 St. Mary's Street Sliema
- vi) Hairdresser St. Mary's Street Sliema
- vii) 68 Manuel Dimech Street Sliema
- viii) MUY Rudolph Street Sliema
- ix) Brothers Confectionary Rue D'Argens Sliema
- x) Kappara Service Station Mikiel Anton Vassalli Street Gżira
- xi) Imsida Skate Park with a rotating dome from Transport Malta
- xii) Lautier Tower Road Imsida
- xiii) Transport Malta Regional Road towards Kappillan Mifsud Street
- xiv) Golden Fried Chicken Parish Priest Mifsud Street Santa Venera
- xv) The Convenience Shop Oscar Zammit Street Imsida
- xvi) Eat Well Oscar Zammit Street Imsida
- xvii) Junkie Clothing Quarry Street Imsida corner with Clarence Street Imsida
- xviii) 200 Orsoloni Street Pieta'.

31. **These same CCTV footages (together with others as mentioned in their report at folio 1000)** were also gathered, analysed and examined by court appointed experts<sup>10</sup> PS 1147 Anton Fenech and WPC 140 Christi Cremona. This resulted from their depositions given on the 28th January 2021 at folio 992 of the acts of the proceedings. At folio 1000 – page number 3 of their report – experts PS 1147 and WPC 140 – claim the following:

The appointed experts carried out several inspections for the relevant footages in order to establish the route taken by the suspects and the vehicle covering the timeframe from 22:20 HRS and the route ended at 23:00 HRS of the 18th August 2020. The mentioned timeframe covered the suspected Volkswagon Tiguan White SUV driven from Tigne Road to the direction of Tower Road Sliema at 22:23 HRS till, the last whereabouts of Three male suspects using mobile phones and waiting for a pick up in Marina Road, Msida, in front of Dolce Sicilia at 23:00 HRS.

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<sup>10</sup> See decree of appointment by Inquiring Magistrate Dr Ian Farrugia at folio 5 of the acts of the proceedings.

32. As far as the hearsay evidence exclusionary rule was concerned, Article 645 of the Criminal Code rendered the provisions of Articles 598 and 599 of Chapter 12 of the Laws of Malta applicable to criminal procedure, and stated:

598(1) As a rule, the court shall not consider any testimony respecting facts the knowledge of which the witness states to have obtained from the relation or information of third persons who can be produced to give evidence of such facts.

(2) The court may, either ex officio or upon the objection of any party, rule out or disallow any question tending to elicit any such testimony.

(3) Nevertheless the court may require the witness to mention the person from whom he obtained knowledge of the facts to which any such question refers

599. The court may, according to circumstances, allow and take into consideration any testimony on the relation of third persons, where such relation has of itself a material bearing on the subject-matter in issue or forms part thereof; or where such third persons cannot be produced to give evidence and the facts are such as cannot otherwise be fully proved, especially in cases relating to births, marriages, deaths, absence, easements, boundaries, possession, usage, public historical facts, reputation or character, words or deeds of persons who are dead or absent and who had no interest to say or write a falsehood, and to other facts of general or public interest or of public notoriety

33. This exclusionary rule was also addressed by the Criminal Court in **Ir-Repubblika ta' Malta vs. George Degiorgio, Alfred Degiorgio u Vincent Muscat** in a judgment dated 30th October 2020 where reference was also made to a previous ruling in **Ir-Repubblika ta' Malta vs. Mario Azzopardi** handed down on the 24th October 2011:

Il-każ li mhux l-ewwel darba li ġie citat b'approvazzjoni dwar il-hearsay rule f'kawżi ta' natura kriminali huwa **Subramaniam v. Public Prosecutor** fejn insibu dan il-kliem:

“Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.’

Jekk wieħed jeżamina l-ewwel sentenza tal-artikolu 599 tal-Kap 12, wieħed jista' jikkonkludi li l-hearsay rule fil-Liġi tagħna mhix daqshekk assoluta. U fil-fatt hekk qalet il-Qorti Kostituzzjonali hija u tiddeċiedi il-każ '**Joseph Mary Vella et versus Il-Kummissarju tal-Pulizija**' (13 ta' Jannar 1988) fejn il-Qorti kkonfermat digriet tal-Prim'Awla biex jitħalla jixhed Prokuratur Legali li kien marbut bis-sigriet professjonali. Dan tħalla jixhed mingħajr ma kellu jikxef isem it-terza persuna li kienet qaltlu biex il-fatti li fuqhom kellhom jixhed il-Prokuratur Legali.

Peress li d-depożizzjoni, li tista' tkun hearsay, tista' tkun prova diretta li ntqal xi ħaġa, ma tistax tiġi eskluża fl-istadju tal-eċċezzjonijiet preliminari. (sottolinjar tal-Qorti)

F'dak li huma deċiżjonijiet kriminali, il-Qrati tagħna issa ilhom sew isegwu l-prattika dwar il-hearsay rule. (Ara dwar dan il-punt: Ir-Repubblika versus Meinrad Calleja<sup>9</sup>). Reċentement il-Qorti tal-Appell Kriminali diversament preseduta qalet hekk: 9 Appell Kriminali Ir-Repubblika ta' Malta v. Meinrad Calleja, 26 ta' Mejju 2005:

"Kwantu ghax-xiehda ta' Clarissa Cachia l-ewwel Qorti kienet ċara meta spjegat li l-kontenut ta' dak li qalet lill-Pulizija, fl-assenza tax-xiehda diretta tagħha, ma kienx jagħmel prova la kontra u lanqas favur lakkużat. Mill-banda l-oħra spjegat korrettement li ċ-ċirkostanza li qalet ċertu diskors setgħet tittieħed bhala ċirkostanza li tikkorrobora dak li seta' qal ħaddieħor."

Fil-limiti tal-użu li għamlet l-ewwel Qorti tal-okkorrenza msemija, ma hemm xejn irregolari. Hu ben stabbilit li waqt li prova hearsay ma hix prova tal-kontenut ta' dak li jiġi rapportat li ntqal, hi prova li dak rapportat li ntqal fil-fatt intqal fiċ-ċirkostanzi, data, post u ħin li ntqal u in kwantu tali hi ċirkostanza li meħuda ma' provi u ċirkostanza oħra tista' wkoll tikkontribwixxi għall-apprezzament li tagħmel il-Qorti.' (1 ta' April 2011 'Il-Pulizija versus Fabio Schembri' preseduta mis-S.T.O. il-Prim Imħallef Dr Silvio Camilleri)."

Fis-sentenza tagħha tal-5 ta' Lulju 2012 fl-istess ismijiet, mbagħad, il-Qorti tal-Appell kienet ikkummentat hekk:

"18. ... Ilu ben stabbilit minn din il-Qorti, kif anki rilevat mill-ewwel Qorti fis-sentenza tagħha, li mhux kull relazzjoni ta' x'qal ħaddieħor tikkostitwixxi hearsay evidence iżda jekk dak rapportat hux hearsay evidence jew le jiddependi mill-użu li wieħed jippretendi li jsir minn dak rakkontat. Jekk dak rakkontat jiġi preżentat bhala prova tal-kontenut tiegħu allura dak ikun hearsay evidence u bhala tali inammissibbli iżda jekk dak rakkontat jiġi preżentat mhux bhala prova tal-kontenut tiegħu iżda bhala prova li dak li ntqal verament intqal fiċ-ċirkostanzi ta' data, post u ħin li fihom intqal allura dan ma jkunx hearsay evidence u huwa ammissibbli għal ċerti għanijiet legali legittimi bħal sabiex tiġi kontrollata x-xiehda diretta tax-xhud li l-kliem tiegħu ikun qiegħed jiġi rapportat jew, fiċ-ċirkostanzi idoneji, anki sabiex tiġi korrobolata xiehda diretta oħra. Huma għal dawn ir-raġunijiet, kif tajjeb spjegat l-ewwel Qorti, li din it-tip ta' xiehda ma tistax tiġi eskluża a priori iżda

d-deċiżjoni dwar l-opportunita` o meno li titħalla tingħata dik ix-xiehda u titqiegħed quddiem il-ġurija trid neċessarjament tiġi rimessa lill-Imħallef toġat li jippresjedi l-ġuri li jkun tenut jagħti d-deċiżjoni tiegħu skont iċ-cirkostanzi li fihom jiżvolġi l-ġuri u skont l-esiġenzi evidenzjarji u proċedurali tal-proċess. .... (sottolinjar tal-Qorti)

21. Iżda huwa proprju għalhekk li l-proċess tal-ġuri huwa presedut mill-Imħallef toġat sabiex dan jassigura li tali abbuż ma jsirx. L-abbuż hu possibbli għar-rigward ta' kull regola legali tal-evidenza iżda dan ma jfissirx li minħabba tali possibilita` ta' abbuż dik ir-regola għandha tiġi skartata. Ir-rimedju hu dak li pprovdiet il-liġi u cioè` li l-Imħallef li jkun jippresjedi l-ġuri ma jħallix l-abbuż jiġri suġġett dejjem għas-salvagward aħħari tad-dritt tal-appell tal-akkużat fl-eventwalita` li l-Imħallef jonqos milli jeżerċita sew is-setgħat tiegħu skont il-liġi.

34. In this ruling, the Criminal Court like in the case at hand, was faced with a number of preliminary pleas where the evidence given by the investigating officer Inspector Keith Arnaud was attacked as inadmissible as being hearsay evidence and this seeing that he testified on documents or information which was not extracted or analysed by him (preliminary pleas numbered 4 to 25 and number 104). Here the Court saw how the evidence given by Inspector Keith Arnaud consisted of an exposition of facts that he acquired throughout the course of the investigations, including information such as information relative to cell phone contents and localisation data which were referred to him by experts appointed by the Inquiring Magistrate to that effect.

35. Based on the ruling in **Mario Azzopardi**<sup>11</sup> this evidence could not be declared to be hearsay at a point in time where the evidence including the experts mentioned in Inspector Arnaud's testimony, would still need to give their depositions in the trial by jury. Moreover, the Criminal Court noted how the evidence which Inspector Arnaud made reference to was all evidence which was extracted and analysed by the experts appointed as part of the Magisterial Inquiry.

36. The ruling given by the Criminal Court in **Ir-Repubblika ta' Malta vs. George Degiorgio, Alfred Degiorgio, Vincent Muscat** was confirmed by the Court of Criminal Appeal (Superior Jurisdiction) in its judgment of the 22nd September 2021 wherein it was held as follows:

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<sup>11</sup> Which judgment was also confirmed by the Court of Criminal Appeal, collegially composed.

Illli r-regola dwar il-hearsay evidence jehtieg li tkun ukoll, jekk mhux qabel kollox, vista mill-ottika ta' dak li jigri fil-prattika u fl-assjem tal-process kriminali kollu. Meta xhud jirrakkonta l-verzjoni tieghu u jesprimi haga li qallu haddiehor hemm l-impressjoni zbaljata li jew il-gudikant jew il-magistrat fil-vesti kumpilatorja jaqbzu fuqu u jiddikjaraw l-inammissibilita' ta' dak li jkun qal. **Dak li jigri fir-rejalta' hu, bhal fil-kaz odjern, li l-ufficjal prosekutur qua xhud, spjega kif gabar l-informazzjoni kollha minghand l-esperti u s-subalterni tieghu u ta stampa tal-investigazzjoni sabiex, bhalma invariabilment jigri fi processi ta' din in-natura, dak li jkun jista' jaqbad art u jifhem il-komplessita' tal-kaz. Issa meta jixhed viva voce quddiem il-guri, xhud mhux necessarjament, anzi difficli, jirrakkonta kelma b'kelma u bl-istess sekwenza dak li jkun iddepona quddiem l-Istrutturja. Allura mhux inaspettat li jghid ukoll hwejjeg li jistghu jammontaw ghall-hearsay.**<sup>12</sup> U hafna drabi ukoll ma tqumx il-kwistjoni sakemm in kontro-ezami l-persuna fuq il-pedana tkun mistoqsija kif saret taf jew ma tafx dak li qalet hi stess jew jekk qalitx hekk ghaliex semghatu minghand terz jew terzi. Xjigri, f'dak il-kaz, iqum chaos shih waqt il-guri?; jkun xolt il-guri?; tintalab sottomissjoni u decizjoni dwar punt ta' ligi fl-assenza tal-gurati? – xejn minn dan. Dak l-“incident” ikun rimess ghall-gudizzju tal-gurati fil-hin tad-deliberazzjoni taghhom wara li l-Imhallef, kif obligat, jkun spjega lill-gurati r-regola tal-hearsay evidence u dik dwar il-valur probatorju sabiex jiddeciedu huma jekk dak li ntqal u li kien maghruf tramite terzi kienx segwit b'xhieda li jikkonfermaw il-kontenut ta' dak li jkun ddepona x-xhud.

37. That the depositions given by Inspector James Grech, PS 521 Josef Gerada, Inspector Colin Sheldon, PC 605 Lino Parascandolo and PC 432 Sandra Mamo respectively, consisted of an overall account of their role in the investigations that followed the findings of the dead bodies of Christian Pandolfino and Ivor Piotr Maciejowski in their Sliema residence numbered 22, Locker Street, on the night of the 18th August 2020. But more importantly, these CCTV footages that relate to the movements made by the getaway car, a Volkswagen Tiguan, were analysed by the experts appointed by the Inquiring Magistrate Dr Ian Farrugia, that is PS 1147 Antoine Fenech and WPC 140 Cristi Cremona. During his testimony at fol 992 et seq, PS1147 (and WPC140) confirmed that all the CCTV footages were downloaded by them, except for the CCTV footage referred to in their report at fol 1015 (which was handed over to them by the owner himself – Chris of Chris Hair Concept and the footage found at fol 1025 and 1028 which was given to the investigating officer by CCTV owner Transport Malta.

38. In the case of Chris Hair Concept footage, PS1147 and WPC140 confirmed that they analysed the footage found at the

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<sup>12</sup> Emphasis of this Court.

location of this salon on Manuel Dimech Street, Sliema. They first assessed the footage from the owner's mobile phone since the DVR was not reachable. But after viewing the same, the said experts lodged a request to the said owner so that he forwarded to same footage to the investigating officer, who in turn gave the downloaded footage to the experts. After re-analysing the said downloaded footage, the experts confirmed that the CCTV footage downloaded and handed over to them covered their formal request.

39. As for the Transport Malta footage the experts confirmed that they analysed the actual footage that was taken from the Transport Malta Traffic Surveillance System installed at Skate Park, Msida and S. Philip Roundabout, St. Venera. The experts declared who forwarded them the footage (the Investigating Officer) and who delivered that footage to him (Transport Malta). They also analysed the same and found that footage met their requirements.
40. The experts declared under oath and in their official capacity as experts to the inquiring magistrate how they came about the respective footage, what they did in the performance of their functions, and what they were looking for. The expert witnesses, as delegated by the inquiring magistrate, had to power to verify the respective provenance of the said footage given that they needed to accede to the hardware capturing and storing it, analyse it, and where appropriate download it or request the owner to give them the relative footage that they needed to work on or report.
41. As part of their task, these experts confirmed how they established the provenance of the CCTV footages analysed by them mainly by accessing the hardware itself and downloading the relevant footage (except for two instances of Chris Hair Concept and Transport Malta). They also indicated the date, place, time and ownership of these footages and also explained whether they downloaded the actual footage themselves or whether they received the respective footage from the actual owners themselves. The experts ascertained this provenance themselves and declared this in their report. This created a, *iuris tantum* presumption in favour of the authenticity, genuineness, correctness and truthfulness of their declarations, work as well as the said footage, which was at the basis of their reports.
42. These reports were filed during the proceedings before the Court of Magistrates (Malta) as a Court of Criminal Inquiry. If

Defence had any doubts relating to the declared provenance of the footage, or the authenticity of the same, they had the opportunity to question it at that stage. Yet it did not result that any such questions or issues were raised at that compilation of evidence stage.

43. While it was true that Maltese Law of Criminal Procedure made it incumbent on the Prosecution to prove its case beyond a reasonable doubt, and that Defence was not obliged to prove anything in a criminal trial, on the otherhand, Maltese Law of Criminal Procedure provided a compilation of evidence stage which served an instructory function in relation to that same evidence. This function envisaged all parties to the criminal proceedings having the possibility to engage actively in that process. The accused had the right - and power - to summon any person or witness he deemed fit to prove any point in his favour, or to confute any issue, document or witness, or challenge the same - using the means available to the State, and at the expense of the State, in terms of article 405(5) of the Criminal Code. If the accused thought that a piece of evidence was not properly brought in the case by the Prosecution, or had doubts as to its authenticity, the accused had the right to act immediately at source and challenge that piece of evidence through the means available to him so that he could also produce that challenging evidence later on during the trial.
44. If Defence had any doubts about the correct provenance or authenticity of the said footage - despite what was mentioned by the experts in their report - Defence had all the opportunity open to it to raise that point and contest the said provenance by summoning the actual owners of the footages as their witnesses through the means provided to them during the said inquiry proceedings in terms of article 405(5) of the Criminal Code or even in their note filed in terms of article 438 of the Criminal Code. Yet no such course of action was taken by the accused at that stage and Defence did not summon any such witness in their article 438 note. From what transpired in the record of the proceedings there was nothing that showed the experts obtained the footage by resorting to illegal means.
45. In any case, the Police Officers as well as the expert witnesses referred to above, were also summoned as part of the list of witnesses of the Prosecution who will testify during the trial by jury. Defence Counsel will have every opportunity to cross-examine them

in relation to all the work carried out by them, including the report drawn up by the expert witnesses involving the said CCTV footage.

46. **In the light of the above considerations, this Court rejected the preliminary pleas numbered 2 to 7.**

**Considered further:**

47. That preliminary pleas numbered 8 and 9 were identical in substance and were going to be decided together. The accused attacked the admissibility as evidence of Dok RG produced by PC 415 Randle Gili and exhibited at folio 505 et seq of the acts of the proceedings, as well as Dok NM1 produced by Nicholas Mallia during the sitting of the 19th November 2020 and exhibited at folio 550 et seq on the grounds that these documents are written in the Maltese language in a case where the language of the proceedings as understood by the accused was the English language. The accused argued that the Attorney General failed to request a translation of these documents into the English language and that the accused never exempted the Prosecution/Attorney General from translating the same.

48. Article 534AD of the Criminal Code which was added to the Criminal Code by Act IV of 2014 read:

(1)Where the suspect or the accused does not understand the language of the criminal proceedings concerned, he shall, within a reasonable period of time, be provided with a written translation of all documents which are essential to ensure that he is able to exercise their right of defence and to safeguard the fairness of the proceedings.

(2)The decision determining what constitutes an essential document shall be taken by the Executive Police or by the Court, as the case may be, and the suspect or the accused or his legal counsel may submit a reasoned request to that effect:

Provided that essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment:

Provided further that it shall not be required to translate passages of essential documents which are not relevant for the purposes of enabling the suspect or the accused to have knowledge of the case against him.

(3) Nothing in this article shall be construed as precluding the suspect or the accused to demand that any decision finding, at any stage of the



criminal proceedings, that there is no need for the translation of documents or passages thereof be reviewed and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

(4) Notwithstanding the preceding provisions of this article, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

(5) Where the suspect or the accused waives the right to translation of documents referred to in this article such waiver shall be recorded in writing and only after the Executive Police or the Court, as the case may be, is satisfied that the suspect or accused has received prior legal advice or has otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

(6) Translation provided under this article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

49. Article 3 (d) (e) of Chapter 189 of the Laws of Malta, Judicial Proceedings (Use of English Language) Act stated:

(d) where a court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings, unless the order is revoked by that court or any other court before which the proceedings are pending;

(e) where the evidence of witnesses is to be taken down, it shall be taken down in Maltese, except where it is given in English, in which case it shall be taken down in English:

Provided that where the evidence is taken down in English in proceedings which are conducted in the Maltese language or in Maltese in proceedings which are conducted in the English language, a translation of such evidence into the language in which the proceedings are being conducted shall be inserted by the registrar in the record of the proceedings as soon as practicable.

50. These laws showed that the accused did not have a right to have every single document in the records of the proceedings to be translated into the English language. It extended only to “essential documents” which were those documents that the Court or the Executive Police leading the Prosecution deemed to be essential to guarantee the fairness of the proceedings and to allow the accused to prepare adequately for his defence. The accused was given a right, however, to make reasoned submissions in relation to a

document which he deemed to be essential for the fair conduct of the proceedings against him. Also, the Legislator was not exhaustive in the list of documents which were deemed to be essential such that required to be translated, as well as in the list contemplated in the proviso to Article 534AD(2) of the Criminal Code. Neither was it required to translate passages from any document which although deemed essential, was not fundamental for the accused to have knowledge of the case.

51. Moreover, according to Article 3 of Chapter 189 of the Laws of Malta, the requirement for the proceedings to be recorded in the English language, for those proceedings taking place in the English language, only extended to the depositions given by the witnesses and not to any other document forming part of the records of the proceedings. Nevertheless, the law did not prescribe nullity in the event that the translated copy was not inserted in the records of the proceedings by the Registrar.

52. It therefore followed that failure to translate all the records of the proceedings into the English language in proceedings taking place in the English language in terms Chapter 189 of the Laws of Malta did not necessarily translate into the breach of the accused to a fair trial as secured under Article 6 of the European Convention on Human Rights.<sup>13</sup> This was also explored by the European Commission decision **X vs. Austria** when assessing the admissibility of an application filed for breach of the right to a fair trial dated 29th May 1975 wherein the Commission also emphasised the role of Defence Counsel in securing an adequate defence as opposed to a situation where the accused was not adequately represented:

The applicant complains that he did not get a full translation of the Court files.

.../....

In the Commission's opinion, one cannot derive from this provision a general right for the accused to have the court files translated.

53. This position was also upheld by the Maltese Courts. In the **Degiorgio and Muscat case** mentioned above, the Criminal Court made reference to the ruling of the Court of Criminal Appeal dated 10th September 2009 in the names **Il-Pulizija vs. Andriy Petrovych Pashkov**, where it was held as follows:

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<sup>13</sup> Article 5(3) of the Constitution of Malta.

..... din il-Qorti taghmel referenza ghal dak li jinghad mill-awtur Karen Reid fit-tieni edizzjoni tal-ktieb taghha. A Practitioner's Guide to the European Convention on Human Rights:

“The ability to comprehend the proceedings in a criminal trial, guaranteed in Art. 6, para. 3(e), may be seen as another aspect of the importance for an accused to participate effectively in the proceedings. For the right to be effective, the obligation of the authorities is not limited to the provision of an interpreter, but may also extend to a degree of control over the adequacy of the interpretation provided. Issues as to the standard of the interpretation could arise if it could be established as damaging to the accused's effective participation in the proceedings. Although a failure to complain at the time may be fatal to claims before the Court as generally domestic courts must be given an opportunity to remedy any inadequacy, the onus is nonetheless on the trial judge to treat an accused's interest with 'scrupulous care' and take steps to ensure his ability to participate where 85 problems are drawn to his attention...The requirement for interpretation must, however, be genuine and necessary to the fair conduct of the proceedings. Where an applicant has sufficient understanding of the language of the proceedings, he cannot claim a cultural or political preference for another. Once it is apparent that the applicant requires interpretation assistance, it is unlikely that informal and unprofessional assistance will be sufficient. Article 6, para. 3(e) has been held to cover documentary material and pre-trial matters, but it does not extend to requiring translations of all documents in the proceedings. It is sufficient if the applicant is assisted by interpreters, translations and the help of his lawyers so that he has knowledge of the case which enables him to defend himself, in particular by being able to put forward his version of events. If this standard is reached, a failure to provide all the translations an applicant might have wanted is not a problem. An applicant would presumably have to indicate that the untranslated documents were material to his ability to defend himself and that he was refused or not permitted the necessary facilities.

54. That, once again, no such request for these documents to be translated was ever raised before the Court of Magistrates as a Court of Criminal Inquiry when the process verbal containing the report as drafted by PC 415 Randle Gili<sup>14</sup> was exhibited by Deputy Registrar Margaret Debattista. Neither was a translation requested when expert witness Nicholas Mallia testified on oath (in the English language) at the sitting dated 19th November 2020 and when he

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<sup>14</sup> This Court notes how the witness PC 415 Randle Gili was not called to testify during the compulsory stage of the proceedings but that he had given his testimony on oath on the 10<sup>th</sup> September 2020 when he presented his report in the records of the process-verbal as can be seen at folio 504 of the acts of the proceedings. Here the Court notes how the Attorney General did not include the witness PC 415 Randle Gili in the list of witnesses presented but listed to be included as part of the evidence to be heard at trial 'The testimony of all the witnesses found in the said records of the Inquiry and compilation proceedings should the need arise for such testimony to be produced according to law'. Here the Court also refers to the provisions of Article 550 of the Criminal Code.

exhibited his report. In the latter case, the Defence requested a copy of the report. There was no indication that Defence Counsel or the accused did not understand the content of the reports or that this lack of translation served as an obstacle to the accused or Defence in preparing for an adequate defence, thereby prejudicing the accused's right to fair proceedings.

55. But more importantly, as a matter of substance, the reports which these two expert witnesses were tasked to prepare were:  
(a) video-recording of the autopsies of both victims; and  
(b) preparation of plans of the premises where the crimes were allegedly committed, respectively.

56. In both cases the actual report content was visual and the language issue did not really feature much.

57. As for PC415 Randle Gili's report, the content of his report was the video-footage depicting the autopsies and/or the relative stills. The explanation of the autopsies was not part of the remit of this task and was to be carried out by other Court experts, if need be, during the course of the trial, which, all things being equal, will take place in English.

58. As for the report drawn up by Architect Nicholas Mallia, it resulted that apart from some pictures showing the rooms in this house, the plans forming part of the report – which is the main task in this case – were drawn up in English.

59. Additionally, these experts were indicated by the Attorney General as witnesses of the Prosecution during the trial by jury.<sup>15</sup> This meant that Defence still had the right to question these witnesses with regard to the content of their reports once these reports would have been exhibited on oath by their respective authors during the trial.

60. **Having made these considerations, this Court therefore did not consider the reports listed as Dok. RG and Dok NM1 respectively as having been drawn up in breach of the applicable provisions at law or that the fairness of the proceedings against the accused had been prejudiced and therefore rejected preliminary pleas numbered 8 and 9.**

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<sup>15</sup> Gili indirectly while Mallia directly.

**However, to set the accused's mind at rest and ensure that he clearly understands the content of all documents, including the ones mentioned by him, the Court orders the Registrar to produce a translation of the documents mentioned by Defence in this plea in the English language and to ensure that the said translations be served on the accused and duly inserted in the records of the proceedings.**

**Considered further:**

61. That the tenth preliminary plea raised by the accused attacked the admissibility as evidence of Doc AB1, AB2 and AB3 found at folio 1944 of the acts of these proceedings which documents were exhibited by Dr. Joseph Giglio acting on behalf of the parte civile in these proceedings during the evidence tendered by Angelo Bucolo before the Court of Magistrates as a Court of Criminal Inquiry. The accused argued that these documents were not produced by the witness testifying thereon and as a consequence should be declared inadmissible seeing that the authenticity of this documentation could not have been ascertained.
62. Doc AB1, AB2 and AB3 consist of still images captured from a CCTV footage taken from the shop named "Dolce Sicilia", in Msida. This same CCTV footage also featured in the evidence given by Inspector James Grech, PS 512 Josef Gerada, Inspector Colin Sheldon, PC 605 Lino Parascandolo, PC 432 Sandra Mamo and in that given by expert witnesses WPC 140 Christi Cremona and PS 1147 Anton Fenech.
63. These pictures were presented to the witness during the examination of this witness by the parte civile lawyer. The accused did not raise any issues in relation to the fact that these pictures were being presented by parte civile lawyer. Nor did any issue relating to the questions being posed by the parte civile lawyer on the basis of those same pictures were raised during that stage.
64. On the otherhand, after being shown these pictures, the witness, who declared that he worked in the coffee shop Dolce Sicilia in Msida on the day of the alleged crimes, not only recognised himself wearing spectacles in the picture AB1 and recognised his own blue bag, but also recognised that the place where this footage was taken from was his then work place - the Dolce Sicilia coffee.

He even replied that there were CCTV cameras “in the helmets or in the wall”. The witness recalled that he was already shown that picture before (AB1) and that he recalled that there was a person knocking on his door and asked him for the wifi password of the shop. But this was written on a paper in the shop display so everyone could see it. He recalled that this person was wearing a red t-shirt as shown in the picture that was shown to him as the person who asked for the wifi password.

65. Although the witness did not present those pictures himself, he was in a position to recognise where these pictures were taken from, the date and time when they were taken and also confirmed what happened in the shop when those pictures were taken. The testimony of Angelo Bucolo could not be regarded in isolation but it formed part of the bigger picture created by the body of evidence which the Prosecution/Attorney General intended to present at the trial by jury. The documentary evidence marked as Doc AB1, AB2 and AB3 could not a priori be declared to be inadmissible before all the evidence was heard at the trial by jury and after the presiding judge would have directed the jurors to regard those issues relevant to the duties conferred upon them at law.

66. In the **Degiorgio and Muscat** case, the Criminal Court was called upon to decide a similar preliminary plea consisting in declaring the evidence – oral and documentary – of a witness (Sandro Muscat) who testified with regards to two contraventions issued by two local LESA wardens who did not testify on oath. Here the Court maintained the following:

**Esposti dawn il-fatti li jemergu mill-atti kumpilatorji, l-Qorti tosserva, kif diga' inghad, illi ma tistax a priori tqies din ix-xiehda ta' Muscat bhala wahda inammissibbli u dan qabel ma jinstemghu l-provi kollha fil-kors tal-guri, ghaliex huwa mill-assjem tal-provi illi l-gurija tista' tasal sabiex tiddetermina l-veracita' o meno tal-fatti migjuba quddiemha.**<sup>16</sup> Dan jista' isir, kif inghad, kemm minn provi diretti kif ukoll dawk indiretti jew sekondarji. Ghandu piz ukoll fuq id-determinazzjoni tal-fatti lkorroborazzjoni tal-evidenza fost affarijiet ohra, liema regoli talprocedura penali kollha ser jigu spjegati mill-Imhalled togat lil gurati qabel huma jasslu ghal verdett finali. Illi allura jista' jaghti l-kaz illi bil-fatt illi l-gwardjan lokali li hareg l-avviz ta' kontravvenzjoni ma jitressaqx biex jixhed mill-Prosekuzzjoni, jirrendi tali prova bhala wahda fjakka, izda minn naha l-ohra jekk dik il-prova tikkorrobora evidenza ohra allura, ix-xiehda tkun wahda li ma tistax tigi skartata, izda ghandha tittiehed bhala prova indiretta

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<sup>16</sup> Emphasis of this Court.

li tikorrobora evidenza ohra diretta ghalkemm fiha innifisha ma tkunx tikkostitwixxi prova diretta illi l-fatt imsemmi f'dik l-evidenza sehh. Illi l-Professor Mamo ighid hekk dwar l-evidenza li tista' tingieb 'il quddiem fil-process penali: " ... the facts which may be given in evidence are confined to the facts in issue, facts relevant to the issue, and any facts, whether relevant to the issue or not, which affect the weight or importance of the evidence offered, or its admissibility.<sup>74</sup> " Illi allura din l-eccezzjoni ma jisthoqqilhiex akkoljiment billi f'dan l-istadju preliminari ta' dan il-process penali l-Qorti ma tistax tiskarta evidenza li tista' tkun rilevanti ghal facts in issue, u dan ghalkemm wahedha ma tkunx bizzzejjed b'sahhitha biex tistabilixxi, kif inghad, illi l-fatt hemmhekk riportat sehh.

67. The decision of the Criminal Court as aforesaid was appealed from and again the Court of Criminal Appeal (Superior Jurisdiction) rejected the appeal while confirming the decision of the Criminal Court in this regard:

213. Issa l-konferma ta' dan kollu, l-process ta' kif originaw dawn l-avvizi, jekk kinux in segwitu ta' operazzjoni li fiha twaqqfet il-vettura jew inqabditx minn speed camera u kwistjonijiet ohra **huma kollha rimessi ghall-gudizzju ahhari tal-gurati u kif tajjeb osservat l-ewwel Qorti, f'dan l-istadju preliminari ma jistax ikun deciz ai priori li dawk id-dokumenti huma inammissibbli ghaliex jispetta l-verdett taghhom waqt ic-celebrazzjoni tal-guri wara d-debita indirizz mill-Imhallel togat. Ghal dawn ir-ragunijiet, dan l-aggravju qed ikun michud<sup>17</sup>.**

68. **In view of the above considerations, this Court rejected the tenth preliminary plea.**

#### **Considered further:**

69. Preliminary pleas eleven, twelve and thirteen were going to be decided together.

70. In his eleventh preliminary plea the accused contested the admissibility of the deposition given by PC 156 Ian Farrugia as well as his report because it did not appear from the acts of the proceedings that this witness was appointed as a ballistics expert. Defence contended that consequently, this witness had to be considered as an ordinary witness and was to be precluded from giving opinions on matters relating to ballistics.

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<sup>17</sup> Emphasis of this Court.

71. The accused also raised this same plea of inadmissibility of the deposition given by PS 169 Jurgen Schembri and the report produced by the same marked as Dok JS1 which report referred to fingerprint findings.
72. The thirteenth preliminary plea was then based on the evidence and report that the accused attacked in the eleventh preliminary plea since the fingerprint comparison made by court appointed expert Joseph Mallia was based on the workings of PS 169 Jurgen Schembri.
73. **Now with regards to PC 156 Ian Farrugia**, at folio 1052 of the records of the proceedings it resulted that PC 156 Ian Farrugia was involved in forensic work relating to ballistics together with PC 1525 Patrick Farrugia, the latter having been appointed by the Inquiring Magistrate Dr. Ian Farrugia as a ballistics expert on the scene of the crime. The accused was correct in pointing out that PC 156 Ian Farrugia was not one of those experts appointed in the Magisterial Inquiry. Yet he still tendered evidence on the 28<sup>th</sup> January 2021.
74. Article 548 of the Criminal Code must be read and construed in conjunction with the provisions of Articles 650 and 653 of the Code. Where for the examination of any person or thing, special knowledge or skill is required, the Inquiring Magistrate had the power to appoint the necessary experts. The Inquiring Magistrate gave the experts such directions as he/she deemed expedient, and the experts were to be allowed a period of time within which to submit their reports. Any such expert was then to be allowed to give opinions on his findings both during the compilation of evidence stage as well as during the trial. This distinguished an expert witness from an ordinary witness. The ordinary witness could only testify in relation to that which he captured using his/her senses without giving his lay opinion on the matter. On the contrary, an expert witness was expected to give an expert opinion on the matter with which he would have been tasked.
75. This Court therefore agreed only in part with the argument of the accused. The Court could not consider PC 156 Ian Farrugia as an expert witness and therefore he could not give his opinion in this case. But the Court cannot deem his testimony as being completely inadmissible. That part of his deposition which related to his factual findings connected to his role in the investigation could not be



regarded as inadmissible. The findings documented by PC 156 Ian Farrugia were documented. But these same findings were also analysed by the appointed expert PC 1525 Patrick Farrugia who was stationed at the Ballistics Unit of the Forensic Science Laboratory of the Executive Police.

76. **PS 169 Jurgen Schembri too was not appointed as an expert witness by the inquiring magistrate.** In fact his report marked Dok JS1 at fol 1510 leaves no doubt given that this Officer clearly stated that his report was the product of police work carried out by him in connection with this case. PS 169 Jurgen Schembri was tasked – as a police officer stationed at the Forensic Science Laboratory to carry out the work that is mentioned in his report. He carried out a visual examination of the documents mentioned in his report for the possibility of seeing or developing any finger marks. PS 169 Jurgen Schembri identified five finger markings using Crime Lite ML technology which he then photographed and passed on to another section for fingerprint comparison. While it was true that PS169 carried out technical assessments in relation to the documents passed on to him for analysis, his task was, strictly speaking factual – that is to determine whether any fingerprints could be traced on any one of the documents that were passed on to him for his assessment. He was not the person tasked with the specific analysis of those prints and any eventual comparative analysis. **The comparative analysis was then carried out by Court appointed expert Joseph Mallia.**

77. In the ruling made by the Court of Criminal Appeal (Superior Jurisdiction) in **Ir-Repubblika ta' Malta vs. John Spiteri** dated 13<sup>th</sup> October 2005, reference was made to another landmark ruling that was made on the subject by the Criminal Court in **Ir-Repubblika ta' Malta vs. Carmelo Spiteri** dated 31<sup>st</sup> August 1998,<sup>18</sup> it was held:

“Kif inhu risaput, fil-Kodici Kriminali persuna tigi mahtura espert meta l-Qorti tkun tal-fehma li għall-ezami ta' persuna jew ta' haga tkun mehtiega hila jew sengha specjali (Art. 650 (1)). Dak li jikkarakterizza u jiddistingwi xxhud espert minn xhud li ma jkunx gie nominat espert hu li dak ta' l-ewwel jista' jesprimi l-opinjoni ossia l-fehma tieghu (Art. 656) a rigward ta' l-ezami li jkun ikkonduca, mentri x-xhud li ma jkunx gie hekk nominat irrid bhala regola (u għalhekk salv certi eccezzjonijiet, bhal, per ezempju, fil-kaz tal-identifikazzjoni ta' oggett jew ta' persuna, il-velocita` li jkun ra vettura għaddejja biha) jillimita ruhhu għall-dawk l-affarijiet li jkunu gew a konjizzjoni tieghu permezz ta' wiehed mill-hames sensi.

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<sup>18</sup> confirmed on appeal on the 19<sup>th</sup> April 2001.

“The general rule is that witnesses may only give evidence of facts personally perceived and not evidence of opinion, i.e., evidence of inferences drawn from such facts” (Blackstone's Criminal Practice, 1991, p. 1840, para. F10.1)

“Fil-Kodici Kriminali taghna propjament ma hemm xejn li jimpedixxi lil Qorti milli tinnomina bhala espert membru tal-Korp tal-Pulizija. Fl-intendiment tal-legislatur penali l-indipendenza tal-persuna hekk nominata u l-ekwidistanza tieghu mill-partijiet fil-kawza tigi garantita propju bil-fatt li tkun giet nominata mill-Qorti u ma tkunx ingiebet bhala xhud ex parte. Izda f'dawn l-ahhar snin kemm il-Prim Awla tal-Qorti Civili fil-gurisdizzjoni kostituzzjonali taghha, kif ukoll il-Qorti Kostituzzjonali, stabbilew certi principji intizi biex filwaqt li jassiguraw il-protezzjoni shiha tad-drittijiet fundamentali tal-akkuzat jigi assigurat ukoll li l-Qrati ma jinfatmux mir-realtajiet tas-socjeta` li fiha joperaw, b'mod li "jinholoq bilanc gust bejn l-interess suprem tal-Gustizzja u l-interess tas-Socjeta` li tiprotegi ruhha kontra reati ta' certa gravita`" (Nicholas Ellul v. Kummissarju tal-Pulizija, Q.Kost., 22/5/91, Vol. LXXV.i.240, 263). Il-Qorti ezaminat bir-reqqa s-segwenti sentenzi: Nicholas Ellul v. Kummissarju tal-Pulizija, supra; Il-Pulizija v. Longinu Aquilina, Q.Kost., 23/1/92; Il-Pulizija v. Carmel Camilleri u Therese sive Tessie Agius, Q.Kost., 30/4/93; u Il-Pulizija v. Joseph Harrington u Thomas sive Tommy Baldacchino, Q.Kost., 31/7/96. Minn qari akkurat ta' dawn is-sentenzi johorgu zewg principji li fil-prattika gew segwiti kostantement mill-Qrati ta' Gustizzja Kriminali taghna f'dawn l-ahhar snin, u cioe`:

“(i) li membri tal-Korp tal-Pulizija (i.e. kuntistabblijiet, surgenti u fizzjali) m'ghandhomx jinhatru periti fis-sens ta' l-Art. 650 tal-Kap. 9, **u li jekk dawn xorta' wahda hekk jinhatru, huma jkunu ammissibbli biss bhala xhieda ordinarji, cioe' biex jiddeponu biss fuq il-konstatazzjonijiet ta' fatt minnhom maghmula izda mhux biex jesprimu opinjonijiet qua esperti**<sup>19</sup>; u

“(ii) li Dott. Anthony Abela Medici u, semble, pajzana ohra (li ma humiex membri tal-Korp tal-Korp tal-Pulizija), ghalkemm jahdmu fil-Forensic Science Laboratory<sup>20</sup> li jinsab fil-Kwartieri Generali tal-Pulizija, kif ukoll membri tal-Forzi Armati ta' Malta, jistghu jigu nominati bhala periti u jiddeponu bhala tali kemm-il darba ma jkunx jirrisulta fil-kaz konkret li huma jkunu, qabel in-nomina taghhom, jew esprimew ruhhom dwar il-htija tal-imputat jew akkuzat li jkun, jew altrimenti, fil-kors ta' xi xoghol li jkunu gew imqabbdha jaghmlu minn awtorita' mhux gudizzjarja in konnessjoni mal-in genere, ikunu iffurmaw "pre-gudizzju" kontra l-insemmi imputat jew akkuzat.

“**Din il-Qorti ma tarax li ghandha b'xi mod tiddipartixxi minn dawn iz-zewg principji**<sup>21</sup>, li, kif inghad, gew fil-prattika segwiti kostantement mill-Qrati ta' Gustizzja Kriminali taghna f'dawn l-ahhar snin (kif jirrisulta mill-fatt,

<sup>19</sup> Emphasis of this Court.

<sup>20</sup> This applies in relation to the appointment of PC 1525 Patrick Farrugia as an expert and the work carried out by PS 169 Jurgen Schembri as a member of the police force stationed at the FSL.

<sup>21</sup> Emphasis of this Court.

per ezempju, li Dott. Anthony Abela Medici u Christopher Farrugia xehdu bhala esperti f'ghexieren jekk mhux f'mijiet ta' kawzi minghajr qatt ma kien hemm l-icken dubbju dwar ir-regolarita` tan-nomina taghhom). Il-fatt li dawn i-pajzana jahdmu fil-F.S.L. jew ghandhom "konnessjonijiet" ma' dan il-laboratorju peress li jigu imqabbda ta' spiss mill-magistrati inkwirenti u/jew mill-Qorti Istruttoria, ma jfissirx li dawn ma humiex imparzjali jew indipendenti ghall-finijiet tal-kwistjoni in ezami. Anzi, wiehed jista' jghid li propju ghax jigu appuntati hekk ta' spiss bhala esperti huma ghandhom dik l-esperjenza mehtiega, apparti facilitajiet ta' laboratorju, biex ikunu jistghu iwettqu bl-ahjar mod il-kompitu lilhom assenjat. Kieku kien mod iehor ebda magistrat ma jista' jiggudika f'kawza peress li, bhala magistrat inkwirenti -- fil-kors tal-inkjesti dwar l-in genere - - hu ghandu konnessjonijiet mill-qrib hafna mal-Pulizija Ezekuttiva u prattikament ikun qieghed jagixxi ta' investigatur mal-pulizija jew, xi mindaqqiet, minflokhom.

78. Also, in **Degiorgio, Degiorgio and Muscat**, on addressing a preliminary plea attacking the forensic work done by PS 1152 Manwel Saliba - who was not an appointed expert - the Criminal Court decided as follows:

Illi spjanati dawn il-fatti kumpilatorji huwa evidenti illi dak li jaghmel ixxhud fix-xiehda tieghu huwa li jispjega il-kors li hadet l-invetsigazzjoni u x-xoghol minnu kondott u ghalhekk il-Qorti tqies illi ma hemm xejn li jista' jitqies inammissibbli fil-kontenut tax-xiehda tieghu u d-dokumenti minnu esebieti fejn jaghti dehra vizwali tax-xoghol illi sar minnu. Illi firrigward tat-tqabbil li sehh bejn id-dghajsa li tidher fil-filmati tas-16 ta' Ottubru 2017 u dawk tat-23 ta' Novembru 2017, u dan bil-ghan li jigi stabbilit jekk id-dghajsa Maya li tappartjeni lill-akkuzat George Degiorgio setatx kienet l-istess wahda li tidher fil-filmati tas-16 ta' Ottubru 2017, dan l-ezercizzju sar mill-esperti nominati mill-Inkwirenti (Keith Cutajar u l-Kaptan Reuben Lanfranco) u allura huma dawn ix-xhieda li jistghu jikkonfermaw o meno dan il-fatt allegat u li kien qed jemergi mill-investigazzjonijiet, b'dan ghalhekk illi fil-kors ta' celebrazzjoni tal-guri, l-Imhalled togat ghandu jaghti dik id-direzzjoni opportuna lil gurati meta jigu biex iqiesu x'piz ghandha tinghata dina l-prova li qed issir permezz tax-xiehda tal-PS1152 Manwel Saliba.

79. This ruling was also confirmed by the Court of Criminal Appeal in that case, who also pointed out how the work undertaken by a non-expert, including comparisons between findings, was also then conducted by an expert appointed as part of the Magisterial Inquiry:

Illi l-ezercizzju maghmul minn PS1152 u minnu dokumentat jiswa bhala spjega tal-parti tieghu fl-investigazzjoni. **Kif gustament osservat mill-ewwel Qorti, dak l-istess xoghol sar sussegwentement mill-esperti nominati.**<sup>22</sup> Mkien ma hu suggerit fl-atti kompilatorji illi ir-rizultanzi ta' PS1152 huma xi forma ta' prova hlief sabiex juri x'wassal lill-prosekuzzjoni, pass wara l-iehor, **sabiex ikunu eventwalment mahtura l-esperti f'dak il-**

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<sup>22</sup> Emphasis of this Court.

**kamp li ghaddew biex jespletaw l-inkarigu taghhom fuq il-filmati awtentici.** Illi ghalhekk l-ewwel Qorti kellha ragun tichad din l-eccezzjoni u konsegwentement l-aggravju qed ikun michud fl-intier tieghu kwantu jolqot l-eccezzjonijiet 26, 27 u 28;

80. There was therefore no legal impediment for PS169 to carry out his police work in trying to determine whether certain items passed on to him contained any fingerprints. The process to determine whether certain items contained or developed fingerprints on them indeed required a certain degree of expertise. But this task was part and parcel of the fact-finding mission which was also part and parcel of police investigations in similar cases. The facts established by PS169 - that is the alleged observation of fingermarks on some of the items analysed by him – were the results of his investigations on those same items. He did not express any opinion in relation thereto – and nor he could do so. As for the opinion whether those marks were really fingerprints, and if affirmative, who did those fingerprints belong to, the involvement of an expert witness was required.

81. The expert witness that was appointed, Joseph Mallia, then carried out the comparative analysis of the fingerprints taken from the accused with, inter alia, the papillary marks developed by means of chemical treatment on items which were found in the car, Volkswagen Tiguan and which were carried out by PS169. In any case as can be seen from a comparison between these documents and the fingerprint forms DM1 and DM2 and palm prints DM3 they gave negative results.

**82. That in view of the above considerations, this Court hereby rejected the preliminary pleas numbered eleven, twelve and thirteen.**

**Considered further:**

83. That in this fourteenth preliminary plea, the accused attacked the admissibility of the testimony of Francesco Zampa tendered on the 21<sup>st</sup> May 2021 and on the 7<sup>th</sup> October 2021 as well all the reports produced by such witness namely Dok FZ1 and Dok FZ2 since according to the accused, Zampa conducted his expert examination prior to his appointment as an expert by the Court of Magistrates as a Court of Criminal Inquiry in the proceedings against the accused.

84. The first deposition given by Francesco Zampa before the Court of Magistrates as a Court of Criminal Inquiry took place on the 21st May 2021. During that sitting the witness testified how he was a court appointed expert in the proceedings **The Police vs. Victor Dragomanski** as presided by Magistrate Dr. Joseph Mifsud. The witness explained how the task entrusted to him by the Court - in those proceedings - was that of evaluating the gold items that were found in the possession of the accused MUKA and the other two suspects Dragomanski and Christiansen, who were also separately charged in connection with the murder of Pandolfino and Macieovski.

85. The deposition tendered by Zampa on the 21<sup>st</sup> May 2021 at fol 1838 before the Court of Magistrates specifically addressed this issue. The witness was requested to give details regarding his appointment and the task he was appointed to perform. The witness replied that he had been appointed by Magistrate Dr. Joseph Mifsud, 'last week' (that is the week before he was called to tender his deposition in the case against the accused on the 21<sup>st</sup> May 2021). Then the Court of Magistrates – at folio 1839 of the records of the proceedings – also intervened to put questions to the witness in relation to the report that he presented as evidence in the proceedings against Dragomanski. The Court requested that the report presented in the records of these proceedings be certified by the witness (the author thereof) as a true copy of the original that was presented as aforementioned:

Court: Okay. Are you going to present the equivalent of that here?

Witness: Yes I have the whole report.

Court: Is that a true copy?

Witness: Yes.

Court: Certified true copy.

Witness: Certified true copy.

86. During the sitting of the 21st May 2021 no objection was raised by Defence Counsel as to the capacity in which the witness Zampa was testifying. Nor was any opposition raised by reference to the evidence tendered by witness Francesco Zampa and to the report as presented by him. Defence Counsel limited itself to reserve its right to cross-examination.

87. Then during the second deposition of this witness on the 7<sup>th</sup> October 2021 at folio 2034 of the acts of the proceedings, witness

Francesco Zampa once more explained how he was appointed by Magistrate Dr. Joseph Mifsud as a court expert to evaluate jewellery items found in the possession of the suspects and he once more testified that he was so appointed in May 2021. Defence Counsel to the accused did not contest the report exhibited by the witness; however Defence Counsel requested proof of the qualifications in the industry of the witness Zampa. Hence the Court of Magistrates proceeded to order the witness to present a copy of his qualifications as requested by the Defence at the next sitting.<sup>23</sup>

88. The Court of Magistrates as a Court of Criminal Inquiry could have, at least, requested the Prosecution to produce a true copy of the minutes of the proceedings in the case **The Police vs. Victor Dragomanski** to prove that witness Francesco Zampa was appointed by that Court as an expert witness and specifically tasked to make an evaluation of the gold items relevant to both the proceedings against Victor Dragomanski as well as to the present case. On the otherhand, Defence Counsel did not contest the fact that Francesco Zampa was appointed as expert with the determinate task of evaluating the gold items in that case, which are also part of the merits of this case too.

89. That there was nothing at Law precluding the Court of Magistrates as a Court of Criminal Inquiry in this case from receiving the testimony of Francesco Zampa – who was appointed as expert by the Court of Magistrates as a Court of Criminal Inquiry in the proceedings against Victor Dragomanski – who is being charged with his involvement in the same double wilful homicide et al. Indeed in this case, the Court of Magistrates as a Court of Criminal Inquiry acknowledged the fact that Zampa was appointed in that capacity and that it was also prepared to accept his expert testimony. Even the Attorney General went along these same lines, as can be seen from the written demands in question. In this case the Court of Magistrates as a Court of Criminal Inquiry confirmed Zampa as a witness, albeit expert witness in the case, in relation to a matter that was of common relevance both to this case as much as it was in the case where he was also appointed as an expert.

90. Hence there was nothing in the appointment of witness Francesco Zampa or in his confirmation as expert witness in this case that went against the provisions of Article 650 of the Criminal

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<sup>23</sup> Folio 2134 of the acts of the proceedings.

Code, thus rendering the evidence given thereby as inadmissible in these proceedings. In the ruling of the Court of Criminal Appeal (Superior Jurisdiction) in the names **Ir-Repubblika ta' Malta vs. Francis Grech** dated 14<sup>th</sup> February 2013 it was stated:

11. L-eċċezzjoni ta' inammissibilita' tippresupponi xi dispożizzjoni tal-liġi li teskludi dik il-prova milli tingġieb 'il quddiem fil-proċess. L-artikolu li jirregola l-ħatra tal-perit fil-proċeduri kriminali huwa l-artikolu 650. Dan l-artikolu fis-subartikolu (2) tiegħu jirrikjedi li l-perit għandu jigi maħtur mill-Qorti. Fil-każ odjern hekk sar. Imbagħad is-subartikolu (5) tal-istess artikolu jipprovdi li: 'il-qorti, kull meta jkun hemm bżonn, tagħti lill-periti d-direzzjonijiet meħtieġa.' Dan sar ukoll għaliex l-inkarigu tal-ispizjar Mario Mifsud ġie speċifikat mill-Maġistrat Inkwirenti bħala 'biex jistabbilixxi l-fatti kollha rilevanti dwar il-każ.' Din id-deskrizzjoni tal-inkarigu mogħti lill-espert tħalli ħafna x'jiġi desiderat iżda ma jstax jingħad li ma tissodisfax il-vot tal-liġi li fuq kollox ma tirrikjedix sine qua non li l-espert jingħata tali direzzjonijiet għaliex l-istess liġi, kif ingħad, tipprovdi dwar id-direzzjonijiet jingħataw 'kull meta jkun hemm bżonn'.

91. This Court therefore cannot agree with the accused that the depositions given by witness Francesco Zampa and the reports prepared by the same should not be admissible in the proceedings against the accused as expert evidence once that he was accepted and confirmed by that same Court as an expert witness during those same proceedings.

92. **Therefore, preliminary plea number fourteen was being rejected.**

#### **Considered further:**

93. That the fifteenth and final preliminary plea addressed the inadmissibility of those parts in the testimony of Inspector James Grech of the 3<sup>rd</sup> September 2020 and of the 7<sup>th</sup> October 2021 wherein the witness referred to the accused's past and to any other pending criminal cases involving the accused.

94. Defence Counsel to the accused failed to indicate where in the testimony given by witness Inspector James Grech, was there reference to the accused's past and to other pending criminal cases involving the same. An indication was simply made as to the date of those depositions wherein any such reference was made. This meant that this Court had to undertake an exercise of identifying what the accused or rather Defence Counsel had in mind when

contesting references made to the accused's past. This Court understood that the accused referred to the following extracts of the deposition given by Inspector James Grech:

Folio 37 – Deposition of 3rd September 2020 - 'A warrant of arrest was duly signed by Inquiring Magistrate Dr Ian Farrugia on the twenty fourth of August twenty twenty. On the same day I was informed that Daniel Muka had moved out of the residence he had registered **for the purpose of bail** and squatted a place in Robert Sammut Square corner with Saint Francis Street Floriana.

Folio 2062 – Deposition of 7th October 2021 – 'So your honour I am going to present the bail conditions granted to Mr. Daniel Muka whom I am recognising as the accused in the Courtroom granted to him on the twenty fourth of July two thousand nineteen by Judge Dr. Consuelo Scerri Herrera'..

95. The witness did not make reference to any past criminal convictions of the accused but referred to pending criminal proceedings in which the accused was granted bail. Mention of these bail conditions was made in relation to the tenth charge as proffered against him in these proceedings.

96. Now the legal implications of Article 579(2) of the Criminal Code meant that for the accused to be found guilty of breaching the bail conditions imposed on him by the Criminal Court on the 24th July 2019, his guilt beyond a reasonable doubt had first to be established by reference to the offences committed on the 18th August 2020, in the preceding and in the subsequent days. The bail conditions are still to be exhibited by the Prosecution/Attorney General at the trial by jury stage. But given the nature of these charges and the ensuing evidence, this would only happen should the jury turn a verdict of guilt. The jury would only be called to decide on the tenth count of this bill of indictment after a verdict of guilt would have been delivered and under the directions as given by the presiding judge.

97. This same procedure was seen at play in a situation where the accused was also indicted by the Attorney General as a recidivist in terms of Articles 49 and 50 of the Criminal Code. In a ruling in the names **Ir-Repubblika ta' Malta vs. Gamil Abu Bakr** dated 27th April 2009, the Criminal Court held:

"Id-decizjoni jekk l-akkuzat - una volta misjub hati - hux recidiv jew le ghall-fini tal-artikolu 49 u 50 jew xi wiehed biss minn dawn l-artikoli, hija decizjoni ta' fatt li tispetta biss lill-gurija w dana wara li jkunu taw verdett ta' htija kontra



I-akkuzat u b' verdett separat, stante li kif jiddisponi l-artikolu 489 tal-Kodici Kriminali, meta l-ligi, minnhabba r-ricidiva, tkabbar il-piena ghar-reat li jsir wara, l-kawza ghandha titmexxa bhallikieku fl-att ta' l-akkuza ma kienx hemm migjub li, qabel, l-akkuzat kien gie misjub hati w ikkundannat u m'ghandux jinghad lill-guri li l-akkuzat kien gie qabel misjub hati w ikkundannat, hlief wara u jekk il-guri ikun iddikjara l-akkuzat hati tal-ahhar reat. **In osservanza ta' din id-dispozizzjoni l-prassi minn dejjem kienet li l-Imhalled li jippresjedi l-guri, wara verdett ta' htija w wara li jinqara lill-gurati l-addebitu tar-ricidiva ghall-ewwel darba w jingiebu l-provi dwar ir-ricidiva - fejn dan l-addebitu ikun kontestat mill-akkuzat - u wara sottomissjonijiet mill-avukati, jindirizza mill-gdid lill-gurati w "inter alia" jispjegalhom il-punti ta' dritt li jkun jirregolaw l-applikazzjoni tar-ricidiva, mbaghad jitlobhom jirtiraw mill-gdid biex jaghtu verdett ulterjuri dwar l-addebitu tar-ricidiva kontenut fl-Att ta' l-Akkuza.**<sup>24</sup> Ghalhekk jekk il-Qorti, kif issa komposta, b' Imhalled togat biss, tiddeciedi hi jekk l-addebitu tar-ricidiva jirrizultax f' dan il-kaz, tkun qed tuzurpa l-funzjoni tal-gurija li hi biss kompetenti li tiddeciedi dan wara li tigi "properly addressed" mill-Imhalled togat fl-istadju oportun u cioe' wara li u jekk ikun hemm verdett ta' htija kontra l-akkuza. Konsegwentement f' dan l-istadju din il-Qorti ma tista' bl-ebda mod tesprimi ruha w tiddeciedi jekk it-termini kontemplat fl-artikolu 50 skadiex jew le f' dan il-kaz u tista' tirrizerva li taghmel dan biss waqt xi indirizz ulterjuri lill-gurati fl-istadju opportun jekk u wara li jkun hemm xi verdett ta' htija.

98. Also, in this regard the Court of Criminal Appeal (Superior Jurisdiction) ruling in the appeal lodged by the **Degiorgios and Muscat** as aforementioned:

Il-Qorti hija perfettament konkordi mad-decizjoni tal-ewwel Qorti li apparti c-cahda tal-eccezzjoni ghamlitha cara li ghandu jkun hemm ottemperanza shiha mal-ligi li tipprojbixxi kwalunke xhud milli jirreferi ghall-possibbli passat tal-akkuzati hlief fejn hu hekk koncess. Dan huwa dritt sagrosant tal-akkuzati u din il-Qorti ghandha serhan il-mohh illi l-Imhalled togat, kif invariabilment isir f'kull guri, ser jiggarrantixxi dan id-dritt bid-debiti twissijiet u censurazzjoni f'kaz li xhud jazzarda jaghmel dak li hu espressament projbit mil-ligi. Ventilat dan, l-akkuzati ma huma prekluzi bl-ebda mod li qabel l-inizzju jew waqt ic-celebrazzjoni tal-guri fl-assenza tal-gurati jigbdu l-attenzjoni tal-Qorti dwar fejn fit-traskrizzjonijiet tax-xiehda tirrizulta tali referenza sabiex il-Qorti tkun tista' preventivament tilqa' ghal dik ic-cirkostanza.

99. The only exceptions that were allowed by Law were the provisions of Articles 459A and 489 of the Criminal Code. In all other cases, this Court could allow no references to previous convictions, previous charges or bad character of the accused.

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<sup>24</sup> Emphasis of this Court.

100. However at this stage, the references made by Inspector James Grech before the Court of Magistrates as a Court of Criminal Inquiry cannot be declared to be inadmissible at this stage seeing that the general rule is that the transcripts of the deposition given by the witnesses at the compilatory stage of the proceedings are not passed on to the jurors (except when requested by either of the parties for the purpose of exercising control over a witness).

## **DECIDE**

**Consequently:**

- 1. This Court rejected the first preliminary plea.**
- 2. This Court rejected the preliminary pleas number two to seven.**
- 3. Having made these considerations, this Court therefore did not consider the reports listed as Dok RG and Dok NM1 respectively as having been drawn up in breach of the applicable provisions at law or that the fairness of the proceedings against the accused had been prejudiced and therefore rejected preliminary pleas number eight and nine. However, to set the accused's mind at rest and ensure that he clearly understands the content of all documents, including the ones mentioned by him, the Court orders the Registrar to produce a translation of the documents mentioned by Defence in this plea in the English language and to ensure that the said translations be served on the accused and duly inserted in the records of the proceedings.**
- 4. This Court rejected the tenth preliminary plea.**
- 5. This Court rejected the preliminary pleas numbered eleven, twelve and thirteen.**
- 6. This Court rejected preliminary plea number fourteen.**
- 7. This Court acceded to the fifteenth preliminary plea in part in the sense that no reference to the past criminal conduct of the accused could be made by Inspector James Grech during the**

**course of his testimony unless this was rendered necessary by any one of the circumstances required by Articles 459A and 489 of the Criminal Code or unless the jury arrived to a verdict of guilt in relation to the accused, in which case proof relating to the tenth accusation would have to be produced by the Prosecution unless the accused would exempt them from so doing at that stage.**

**The case is being therefore adjourned 'sine die' until the outcome of any appeal lodged or/and until such time as it is appointed for the trial by jury to take place before this Court, depending if an appeal is lodged therefrom or not.**

**Aaron M. Bugeja,  
Judge**