



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

MAGISTRATE DR ELAINE MERCIECA LL.D

POLICE

(Police Inspectors Nikolai Sant and Spiridione Zammit)

against

KARLIS MEIERS

Case No.: 152/2015

Today, 30th November 2022

The Court,

After having seen the charges brought against Karlis Meiers, of twenty-six years, son of Didzis and Parsala nee' Meiers born in Latvia on the 11th March 1990 residing at the Vine, Flat No. 3, Trejget il-Bajja, St. Julians and holder of Maltese identity card bearing number 59998(A), accused of having at Corradino Correctional Facility, on the 30th July 2014 and the previous days before this date:

1. Had in possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant Cannabis in terms of Article 8(d) of the Chapter 101 of the Laws of Malta; and
2. For being a recidivist after being sentenced for an offence by a judgement issued by the Court of Magistrates (Malta) presided by Magistrate Dr. Doreen Clarke on the 24th June 2013 which judgement has become absolute.

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

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

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

Considers:

Whereas from the facts of the case it transpires that on 30th July 2014 at about 8.15pm, two officers from the Corradino Correctional Facility – Frans Agius and Jason Farrugia performed a search at cell number 168 at Division 4, which was occupied by two inmates – Francis Scerri and the accused, Karlis Meiers. The officers testify as they went in the cell to perform the search, they found Mr. Scerri on the bed whilst the accused was sitting at a table near the door. On this table there was green powder on a piece of plastic. A search on the person of the accused yielded also positive results in the sense that in the pocket of his trousers they found a piece of paper containing green powder similar to that found on the table. On a shelf within the said cell, a blade was also discovered. The police were informed who from their end informed the Inquiring Magistrate, who decided to launch a Magisterial Inquiry. The findings from the search were photographed by PC813 Clinton Vella whilst the substance found was analysed by an expert appointed for this purpose – Pharmacist Godwin Sammut. Following such analyses Mr. Sammut concluded:

“That from the extract taken of the green coloured powder from document 218_14_01, no drugs were found to be present;

That from the extract taken of the green coloured grass taken from document 218_14_01 the substance Tetrahydrocannabinol was found. This substance comes from the Cannabis plant and is controlled by law under Part III, Section 8 of Chapter 101 of the Laws of Malta.”

During the course of these proceedings, the accused opted voluntarily to give evidence on oath, whereby he confirmed that the substance seized by the police

was brought over by another inmate within that division (other than Mr. Scerri). He also said that this substance was green tea (which was originally in the shape of a teabag but subsequently was removed from the teabag to make an infusion) and even alleged that one can buy the same substance from the canteen within the Corradino Correctional Facility. Asked if the said substance was his, he first replied that it was ‘ours’ implicating that the said substance belonged both to him and Mr. Scerri however later on in his testimony he confirmed that the green tea was his.

During the course of the investigations conducted by the police in this case, the accused released a statement to Inspector Spiridione Zammit in the presence of PC1081 J. Farrugia on 31st July 2018. Before having released this statement the accused consulted with a legal aid lawyer and was given information about his right of silence and the inference which was applicable in this case. From the acts of proceedings, it clearly results and that without any applicable impellent reasons, the accused was not granted the right to have legal assistance throughout his statement. This right was not given since it was not provided for in the law in 2014. In fact, in 2014, the right of assistance with regards to police interrogation was only limited to one hour before the start of the interrogation. In his interrogation it may be said that the accused incriminated himself in the sense that he took responsibility of the substance found in his cell even though he immediately said that the substance found was herbal tea. This statement was not specifically confirmed on oath when the accused took the witness stand in the course of these proceedings. Hence to safeguard the accused’s right of fair trial, this court will not be taking cognisance of the statement given by the accused and this with reference to the principles established in the judgement of **Beuze v il-Belgiu** (App. number 71409/10) delivered on 9th November 2018 and other judgements delivered by local courts having criminal and constitutional jurisdiction¹.

Going into the merits of the case with regards to the first charge proffered against the accused, namely that of simple possession of cannabis plant, it must be said that for this charge the prosecution need to prove not just the actus reus (the physical possession) but also the mens rea. In fact, the Court of Appeal in the judgement ir-Repubblika ta’ Malta vs. Arnold Farrugia delivered on 26th April 2018 held that:

“42. Issa sabiex tirrizulta kundanna ghar-reat tal-pussess aggravat ta’ droga u dan meta jkun hemm il-pussess kostruttiv izda mhux dak materjali, il-

¹ F’dan is-sens issir referenza ghas-segwenti sentenzi (izda mhux biss) Morgan Onourah vs L-Avukat tal-Istat (Qorti Kostituzzjonali), 27 ta’ Jannar 2021, Ir-Repubblika ta’ Malta vs Kevin Gatt et (Qorti tal-Appell Kriminali (Superjuri), (27 ta’ Ottubru 2021), kif ukoll Christopher Bartolo vs L-Avukat ta’ l-Istat Qorti Kostituzzjonali, (26 ta’ April 2022) u Ir-Repubblika ta’ Malta vs Andrew Mangion (Qorti tal-Appell Kriminali (Superjuri), (4 ta’ Mejju 2022).

Prosekuzzjoni trid necessarjament tipprova, u dan lil hinn minn kull dubju dettat mir-raguni, zewg fatturi:
i. Illi l-persuna akkuzata kellha x-xjenza dwar l-esistenza tad-droga.
ii. Illi l-persuna akkuzata setghet tezercita il-kontroll fuq dik id-droga.”

From the search performed by the correctional officers two substances were found one on the table and the other in the pocket of the trousers of the accused. The accused and even the correctional officers say that both substances were identical. The accused, even on oath, insists that the said substances were not cannabis but green tea. From the analysis performed by the court expert Godwin Sammut, it transpired that although the said substances were identical (even as confirmed by the correctional officers) one of the said substances was cannabis plant whilst the other substance was not illegal. In light of the expert’s conclusion that one of the substances found, was truly not an illegal substance (even if similar to the other substance which was identified as being cannabis plant), the accused, on the level of probability, could reasonably believe that both substances were not illegal. As after all one of them was confirmed to be. Hence this Court does not believe that the prosecution managed to prove the required *mens rea* in this case and hence the accused will be acquitted of this first charge proffered against him.

Given that the accused will be acquitted of the first charge, the second charge which requires a conviction on the first charge, will not result.

Decide:

Hence, for these reasons, the Court is finding the accused Karlis Meiers not guilty of the charges proffered against him and is therefore acquitting him of the same charges.

MAGISTRATE DR. ELAINE MERCIECA BA. LL.D.

Christine Farrugia
Deputy Registrar