



## COURT OF CRIMINAL APPEAL

**Hon. Mr. Justice Dr. Neville Camilleri**  
**B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.**

**Appeal Number 518/2021/1**

**The Police**

**vs.**

**Ali Muuse Igaale**

Today 21st. of March 2023

The Court,

Having seen the charge brought against the appellant **Ali Muuse Igaale**, holder of Somali Passport P00968354 and Maltese Passport MT901352, charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature for having:

1. in these Islands on the 22<sup>nd</sup>. August 2021 at about 09.45hrs, at the Malta International Airport, Gudja failed to declare to the Commissioner for Revenue, that he was carrying a sum equivalent to Euro 10,000 or more in cash, whilst leaving

Malta, in breach of Regulation 3 of the Cash Control Regulations (S.L. 233.07).

The Court was requested that, in pronouncing judgment or in any subsequent order, sentence the person/s convicted, jointly or severally, to the payment, wholly or in part, to the Registrar of the costs incurred in connection with the employment in the proceedings of any expert or referee, within such period and in such amount as shall be determined in the judgment or order, as per Section 533 of Chapter 9 of the Laws of Malta.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 18<sup>th</sup>. August 2022 wherein the Court, upon the guilty plea of the accused, found the accused guilty as charged and, after having seen Regulation 3 of the Cash Control Regulations (S.L. 233.07), condemned him to a fine (*multa*) of eighty five thousand, six hundred and one Euro and forty cents (€85,601.40).

Having seen the appeal filed by the appellant on the 5<sup>th</sup>. of September 2022 by which he requested this Court to:

*“i. confirm the said appealed decision in so far as the appellant was found guilty, upon his own admission, of the sole charge brought against him, and;*

*ii. in the light of grievance “A”, on the basis of Article 46(3) of the Constitution of Malta as well as on the basis of Article 4(3) of Chapter 319 of the Laws of Malta, refer the constitutional matter expounded upon therein to the First Hall of the Civil Court in its Constitutional Jurisdiction so that the said Court may decide whether the Court of First Instance’s decree dated 23<sup>rd</sup>. August 2021, which validated the appellant’s continued detention by turning down his request for bail has violated his fundamental human right as protected by Article 5(1)(c) and (4) of the European Convention on Human Rights and if in the affirmative, to accord all necessary effective remedies to remedy such violation, and;*

iii. subsequently proceed, in the light also of grievance "A" and request number (ii) and in terms of Article 415 of Chapter 9 of the Laws of Malta, to overturn the decree issued by the Court of First Instance dated 23<sup>rd</sup>. August 2021 insofar as appellant's bail request was turned down and to consequently annul and declare as invalid said decree, **and**;

iv. in light of grievance "B", on the basis of Article 46(3) of the Constitution of Malta as well as on the basis of Article 4(3) of Chapter 319 of the Laws of Malta, refer the constitutional matter expounded therein to the First Hall of the Civil Court in its Constitutional Jurisdiction so that the said Court may decide whether the hefty fixed punishment established by Regulation 3 of Subsidiary Legislation 233.07 of the Laws of Malta as it currently stands violates the appellant's fundamental human right as protected by Article 1 to Protocol 1 of the European Convention on Human Rights and Article 37 of the Constitution of Malta and if in the affirmative, to accord all necessary effective remedies to remedy such violantion **and**;

v. Subsequently proceed, in light of grievance "B" and request number (iv), to reform the pecuniary punishment inflicted on the appellant by substituting it with a less onerous and more equitable punishment."

Having seen all the acts and documents.

Having seen that this appeal had been assigned to this Court as currently presided by the Hon. Chief Justice Mark Chetcuti on the 9<sup>th</sup>. of January 2023.

Having seen the updated conviction sheet of the appellant exhibited by the Prosecution as ordered by the Court.

Having seen the transcript of the oral submissions heard by this Court as diversely presided.

Having heard, during the sitting of the 7<sup>th</sup>. of March 2023, legal counsels declare that this Court could adjourn the appeal for a decree regarding the two requests of the appellant for a constitutional reference.

## Considers

That this is a decree regarding the two requests of the appellant for a constitutional reference.

That in his appeal application, the appellant alleges a violation of his human rights on two counts in the process leading to his finding of guilt and also seeks a reference to the First Hall Civil Court in its Constitutional Jurisdiction for a declaration of a violation of his human rights.

That the facts of this case are that on the 22nd. of August 2021 appellant was apprehended at Malta International Airport attempting to leave these Islands with an amount of cash in excess of €10,000 which fact gives rise to an alleged breach of the provisions of Subsidiary Legislation 233.07 of the Laws of Malta. The appellant was brought before the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 23rd. of August 2021 to answer to the charge of having failed to declare the amount in question to the Commissioner of Revenue.

That during the proceedings in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature, precisely during the sitting of the 18th. of August 2022 (*a fol. 161 et seq.*), the accused pleaded guilty to charge brought against him and after the Court of Magistrates warned him of the consequences of his guilty plea, the same Court ensured that he understood the penalties related to such charge and having been given time to reconsider his plea, the Court of Magistrates found the accused guilty of the charge proffered against him and condemned him to a fine (*multa*) of €85,601.40 based on the excess of the amount of €10,000 at the rate of 55% plus an additional €50 as prescribed under Regulation 3 of the Cash Control Regulations (S.L. 233.07).

That the accused entered an appeal against the judgment delivered against him by the Court of Magistrates demanding that this Court confirms the finding of guilt against him but to annul and declare invalid the decree of the First Court dated 23rd. of

August 2021 in so far as his request for bail was denied and to reform the pecuniary punishment meted out against him and substitute it with a less onerous and more equitable punishment.

That appellant's demands to annul the decree of the first Court by which it denied bail and to substitute the pecuniary punishment are based on the following premises:

**"A. The unconstitutionality and consequent invalidity of the appellant's continued detention - appeal from the interlocutory decree dated 23rd. of August 2021 in terms of Article 415 of the Chapter 9 of the Laws of Malta"**

and

**"B. Proportionality of punishment, legal arbitrariness & lack of judicial discretion"**.

That in the same appeal application appellant requested this Court to refer an alleged breach of his human rights to the First Hall Civil Court in its Constitutional Jurisdiction on the two counts as aforesaid.

### **Considers**

That as for the first count for a constitutional reference the appellant premised that he was arraigned under arrest before the Court of Magistrates and denied bail until being released on the 22nd. of September 2021 which means that he spent almost one month in custody. Appellant further argues that since the offence is one which falls within the original competence of the Court of Magistrates and since the offence is not punishable with imprisonment, his one month continued detention was unconstitutional and violated his fundamental right to personal liberty as safeguarded by Article 5 of the European Convention of Human Rights.

That this Court notes that breach of Regulation 3 of Subsidiary Legislation 233.07 of the Laws of Malta is an arrestable offence and it is up to the Prosecution to decide whether to arraign the suspect under arrest or to be served with a citation to appear before the Court of Magistrates. In this case appellant, then accused, was arraigned under arrest and denied bail by the First Court until such time as it deemed necessary that he remain in custody. The right of the Court to remand an accused in custody or otherwise does not depend on whether the crime of which he is accused entails the punishment of imprisonment or otherwise but is subject to the Court's conviction that the accused will abide by the conditions set out should he be released from custody in terms of Article 575 of the Chapter 9 of the Laws of Malta. Hence, the appellant's argument that since the offence does not entail the punishment of imprisonment he should not have been denied bail does not hold water and consequently his contention that such denial of bail amounts to a breach of his fundamental rights is frivolous and vexatious.

### **Considers**

That as for the second count for a constitutional reference the appellant brings forward the argument that since the law, namely Regulation 3 of Subsidiary Legislation 233.07 of the Laws of Malta does not allow the Court any discretion with regards to the penalty to be meted out and provides for a "blanket pre-set fixed punishment" it creates a situation where an offender could end up losing much more money than that actually carried in excess of that allowed by law. Furthermore, even though the relevant law was remodelled following judgments of the Constitutional Court, the fact that this now provides for a fixed punishment still translates into an arbitrary, manifestly excessive and disproportionate punishment.

That this Court notes that in this case, the appellant, holder of a Somali passport, was apprehended with the amount of €160,000 during a screening procedure at Malta International Airport while intending to board a flight to Istanbul. The Court notes further

that in accordance with Regulation 3(5)(b) of Subsidiary Legislation 233.07 of the Laws of Malta, since the amount carried by the appellant was in excess of €30,000 he was subject to a fixed penalty of 55% of the amount carried in excess of €10,000 plus a fine (*multa*) of €50 and it is precisely this provision of the law which appellant contends to be in breach of his fundamental human rights which is over and above the forfeiture of the amount of money carried in excess of the allowable €10,000.

That after having examined the above-mentioned Regulation together with Article 37 of the Constitution of Malta and Article 1 of Protocol 1 of the European Convention on Human Rights, this Court considers appellant's second request for a constitutional reference not to be frivolous or vexatious and that it merits to be referred to the First Hall Civil Court in its Constitutional competence in terms of Article 46(3) of the Constitution of Malta and Article 4 of Chapter 319 of the Laws of Malta.

Therefore, this Court refers the following question to the First Hall Civil Court in its constitutional competence, that is:

Whether appellant has sustained a violation under Article 1 of Protocol 1 of the European Convention on Human Rights and Article 37 of the Constitution of Malta due to an alleged disproportionality of punishment, legal arbitrariness and lack of judicial discretion as a result of Regulation 3(5)(b) of Subsidiary Legislation 233.07 of the Laws of Malta (Cash Control Regulations) which provides for a fixed pecuniary penalty for breach of the said Regulation.

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**Dr. Neville Camilleri**  
**Hon. Mr. Justice**

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**Alexia Attard**  
**Deputy Registrar**