



## COURT OF CRIMINAL APPEAL

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

**Appeal Number 72/2021/1**

**The Police**

**vs.**

**Sam El Khatib**

Today 18<sup>th</sup>. of April 2023

The Court,

Having seen the charge brought against the appellant **Sam El Khatib**, holder of Identity Card Number 14391(M), charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature on behalf of the Commissioner for Revenue for:

1. whilst being a registered person with the Commissioner for Revenue as per Act of 1998 regarding Value Added Tax (Act No: XXIII of 1998) and Regulations imposed by the said Act, failed to submit within six (6) weeks to the Commissioner for Revenue two (2) Vat Declarations, with payments if any, for

the periods ending 31<sup>st</sup>. May 2014 and 31<sup>st</sup>. May 2015 thus being in breach of Articles 27, 66, 76(c) and 76(d) of Act XXIII of 1998.

The Court was requested that in the case of conviction to (i) inflict the penalty in terms of law; or (ii) apart from inflicting the penalty in terms of law, on a request by the Prosecution, to order the accused to conform within the stipulated time frame, which time frame cannot exceed three months, under the penalty of not less than €5 for every day, which penalty commences on the first day after the lapse of the period stipulated by the Court.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 4<sup>th</sup>. of March 2021 wherein the Court, after having seen Articles 27, 66, 76, 76(c) and 76(d) of Chapter 406 of the Laws of Malta found the accused guilty of all the charges brought against him and condemned him to pay a fine (*multa*) of eight hundred Euro (€800). The Court of First Instance ordered the accused to comply with the law within one (1) month from the day of the judgment and in default he would be liable to the payment of a further fine (*multa*) of five Euros (€5) for every day that the default continues after the lapse of one (1) month from the day of the judgment.

Having seen the appeal filed by the appellant on the 11<sup>th</sup>. of March 2021 by which he requested this Court to *"confirm the judgment given against him by the Court of Magistrates (Malta) as a Court of Criminal Judicature, on the 4<sup>th</sup>. of March 2021 with regards to his declaration of guilt, due to dire circumstances in which he is living, this Hon. Court varies and reforms the same sentence in the sense that (i) the fine (multa) of eight hundred Euro (€800) is reduced; and (ii) he will not be ordered to pay the further fine (multa) of five Euro (€5) per day if he defaults payment after one month from judgment, and this under all those provisions that this Hon. Court may deem fit and opportune to impose."*

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 27<sup>th</sup>. of February 2023, legal counsels declare that they had no further submissions to add to the submissions which were heard by the Court as diversely presided.

### **Considers**

This appeal is limited to the fine (*multa*) of eight hundred Euro (€800) imposed and to the further fine (*multa*) of five Euro (€5) per day if the appellant does not comply within one month from the date of the judgment of the Court of Magistrates to pay all that is due from him.

This Court notes that the appellant had pleaded guilty immediately in front of the Court of Magistrates to the charge brought against him. The appellant says that in the meantime he had lost his source of income due to the COVID-19 pandemic.

During the sitting of the 3<sup>rd</sup>. of February 2022 (*a fol. 74*) the appellant exhibited a Note (*a fol. 75 et seq.*) by means of which he annexed receipts of the payments showing that he had paid the VAT Department what was due by him.

According to Article 76 of Chapter 406 of the Laws of Malta:

“Any person who -

- (a) fails to apply for registration at the time and in the manner required by article 10 or 12;
- (b) fails to keep or to store records, documents and accounts for the time and in the manner required by this Act or any regulations made under this Act;
- (c) fails to furnish a tax return when required to do so in virtue of this Act;
- (d) fails to furnish any additional return, statement or information or to produce any books, records, documents and accounts, or fails to pay any tax or administrative penalty due when required to do so in virtue of this Act or of any regulations made under this Act;
- (e) supplies goods or services having failed to provide the security requested by the Commissioner under article 63(5),

shall, on conviction, be liable to a fine (*multa*) of not less than seven hundred Euro (€700) and not exceeding three thousand and five hundred Euro (€3,500) and, on a request by the Prosecution, the Court shall, in respect of an offence under paragraph (c), order the offender to comply with the law within a time sufficient for the purpose, but in any case not exceeding three months, and in default the offender shall be liable to the payment of a further fine (*multa*) of five Euro (€5) for every day that the default continues after the lapse of the time fixed by the Court:

Provided that the offender may, within thirty days after final judgement, apply to the Court which convicted him, requesting a total or partial remission of the penalty imposed under this article. The Court may grant a total or partial remission of such penalty provided that the

Prosecution, with the written concurrence of the Commissioner to be filed with any reply to such application, agrees to such request. Any such application shall be served on the Prosecution which shall reply within fifteen working days from such notification.”  
[emphasis added]

Since the appellant filed an appeal, the judgment delivered by the Court of Magistrates on the 4<sup>th</sup>. of March 2021 is not a final judgment.

As matters stand procedurally, this Court can only reduce the fine (*multa*) of eight hundred Euro (€800) to the bare minimum of seven hundred Euro (€700) and once the appellant has paid what is due to the VAT Department, the Court will be modifying that part of the judgment delivered by the Court of Magistrates regarding the payment of five Euro (€5) per day. For any total or partial remission of the penalty, the above quoted provision of Chapter 406 of the Laws of Malta applies.

### **Decide**

Consequently, for the above-mentioned reasons, this Court modifies the appealed judgment by confirming that part in which the Court of Magistrates found the appellant guilty of the charge brought against him but revokes that part in which the said Court condemned him to pay a fine (*multa*) of eight hundred Euro (€800) and instead condemns him to pay a fine (*multa*) of seven hundred Euro (€700) and revokes also that part of the appealed judgment by which the appellant was condemned to pay a further fine (*multa*) of five Euro (€5) for every day that the default continues since he has already paid the amount due.

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

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