COURT OF CRIMINAL APPEAL

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

Appeal Number 253/2020

The Police

vs.

Keven Agbigbi

Today 16th. of May 2023

The Court,

Having seen the charges brought against the appellant **Keven Agbigbi**, holder of Identity Card Number 57908(A), charged in front of the Court of Magistrates (Malta) with having on the 13th. of April 2019 at around 01:00hrs in St Paul's Bay:

1. without the intent to kill or to put the life of Matthew Anoja in manifest jeopardy, with the use of arms improper caused the mentioned grievous bodily harm in breach of Articles 217, 218 of Chapter 9 of the Laws of Malta;

2. on the same date, place, time and circumstances, without the intent to kill or to put the life of Blessing Aloun in manifest jeopardy, caused the mentioned slight bodily harm in breach of Articles 221, 222(1)(a) of Chapter 9 of the Laws of Malta;

3. on the same date, place, time and circumstances carried outside, any premises or appurtenance thereof, a knife or cutting or pointed instrument of any description without a licence or permit from the Commissioner of Police in breach of Article 6 of Chapter 480 of the Laws of Malta;

4. on the same date, place, time and circumstances uttered insults or threats against Matthew Anoja & Blessing Aloun in breach of Article 339(e) of Chapter 9 of the Laws of Malta;

5. on the same date, time, place and circumstances disturbed the repose of the inhabitants by rowdiness or bawling, or in any other manner in breach of Article 338(m) of Chapter 9 of the Laws of Malta.

The Court was requested to provide the needed security in favour of Matthew Anoja and Blessing Aloun even during the proceedings in terms of Article 412C of Chapter 9 of the Laws of Malta.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 13th. of November 2020 (Vol. IX: *a fol.* 2106 *et seq.*) wherein the Court, after having seeing Articles 17, 31, 202(h), 214, 215, 217, 218, 221, 222(1)(a), 338(m), 339(e), 382A, 383, 384, 385, 386, 412C, 412D, 532A, 532B and 533 of Chapter 9 of the Laws of Malta, found the defendant guilty of all the offences contemplated in these provisions of the law and, taking into account all the circumstances of the case, condemned the defendant to nine (9) years imprisonment. The First Court ordered the person convicted to pay the Registrar all the costs incurred in connection with the employment in the proceedings of all the experts in terms of Article 533 of Chapter 9 of the Laws of Malta and ordered also that these costs were to be paid within a

period of one (1) year from when the Registrar of the Criminal Courts communicates to the appellant the amount due by him. The First Court ordered that if the person convicted failed to pay this amount or part of it within the time prescribed, the amount, or any balance of it, would become immediately due and payable, and in default of payment thereof, the outstanding amount still due would be converted into imprisonment at the rate established by law. Since in the opinion of the First Court, when the appellant gave evidence before it in the sitting of the 26th. of May 2020, he did not say the truth, the Court ordered that a copy of the judgment be communicated by the Registrar to the Commissioner of Police, so that, after the necessary investigation if needed, he institutes criminal proceedings against the said appellant for having given false evidence.

Having seen the 315-page appeal filed by the appellant on the 25th. of November 2020 (Vol. IX: *a fol.* 2131 *et seq.*) by which he requested this Court to (Vol. IX: *a fol.* 2436 *et seq.*):

"1) Ask Dr. Mario Scerri to give once again his evidence in order to confirm amongst other things whether the following piece of wood is the ***instrument*** *that injured Matthew Anoja:*

"The witness: I do not like calling it a knife. I always like calling it an instrument, pointed, or not pointed, and having a sharp edge, either one single cutting edge or two. This lesion is more compatible to an instrument having an edge rather than a laceration inflicted by a blunt object... "[1]

..."But a lesion like that would necessarily ooze blood; if no blood was found, hundred percent pressure was applied to arrest the blood because you do not expect an incised wound that long on the shoulder, being a vascular area, and no blood comes out — kif Jista' jkun?!"

[Two Photos][2]

[1] Evidence-10-6-2020 – Case 368796 -Transcript 76202.
[2] What are those 3 dots? Blood?

2) *Ask the medical team who decided to operate Matthew Anoja to give their evidence in order to back Dr. Mario Scerri's evidence in order to confirm amongst other things whether the following piece of wood is the* ***instrument*** *that injured Matthew Anoja;*

3) *In order to confirm whether or not the Appellant had and has the necessary criminal Intent/**MENS REA** to breach his Bail Conditions, the Appellant Keven Agbigbi is humbly and respectfully asking this Honourable Court to consider appointing a court expert **(inclusive Dr. Vella Baldacchino – depression is a mental condition)** to not only examine the current medical and mental condition of the Appellant but also to draw up a report covering the past and the current medical and mental conditions (inclusive those of the injuries the Appellant had claimed to have suffered as a result of the beating by his aggressors) of the Appellant by going through even the Medical Records of the Appellant and as held by such Institutions as:*

   * *Mater Dei Hospital;*
   * *Mount Carmel Hospital;*
   * *Corradino Correction Facility;*
   * *The Refugee Commission; etc;*

4) *Reconsider Mr. William Uti's evidence given under oath which eventually had confirm the Appellant's allegations: i.e. that it was Mr. William Uti and his friend who had Ccntacted the Appellant not the other way round;*

5) *Reconsider the Appellant's desperate position especially when not only he is no longer enjoying his temporary liberty, but because Mr. William Uti once again mendeled with his life, the Appellant found himself now housed in Division 6 whereby the conditions are far worst than those of Division 1; i.e. he has to sleep with 6 other inmates next to the toilet and that he was only given 1 hour to sit alone in the yard;*

6) *Reconsider revoking the Decrees of the Honourable Court of Magistrates of the 19th. March 2020 and of the 14th. April 2020 whereby once again bringing into effect the Decree of the Criminal*

Court of the 18th. September 2020 (a fol. 869 et seq. of these proceedings) which granted the Appellant temporary release from custody.

7) *Reconsider the order of the Honourable Court of Magistrates of the 19th. March 2020 whereby that the deposit of one Thousand Euros (€1,000) as well as the personal guarantee of the Appellant to the amount of nine Thousand Euros (€9,000) – that is the total sum of ten Thousand Euros (€10,000) – had been forfeited to the Government of Malta; and*

8) *Reconsider the revocation of the issue of the warrant of arrest already issued by the Honourable Court of Magistrates on the 19th. March 2020 against the defendant in terms of Article 570 of the Criminal Code (Chapter 9 of the Laws of Malta);*

9) Reconsider the revocation IN TOTO of the Judgement as awarded by the Honourable Court of Magistrates on the 13th. November 2020 and that the defendant be acquitted from all the grounds laid down in the said judgment.

[No. 10 missing]

11) *Reconsider the Appellant's continuous appeal for this Honourable Court to investigate:*

A. Blessing Aloun or Blessing Ojo or whatever her real name is for the attempted wilful homicide of the Appellant because maliciously she, with the specific intent to kill the Appellant or to put the life of the Appellant in manifest Jeopardy, she tried everything in her power to cause the death of the Appellant;

B. Blessing Aloun or Blessing Ojo or whatever her real name is for with the giving of continuous sexual pleasures and promises of future continuous sexual pleasures to Mr. Innocent Lokri, knowingly, maliciously and with the specific intent to deceive and to defraud continuously lured Mr. Innocent Lokri to commit the wilful homicide of the

Appellant or to maliciously and with the specific intent to kill the Appellant or to put the life of the Appellant in manifest jeopardy, to try everything in his power to cause the death of the Appellant;

C. Blessing Aloun or Blessing Ojo or whatever her real name is for her Complicity and Conspiracy in the attempted wilful homicide of the Appellant because maliciously she, knowingly aided and/or abetted the perpetrator or perpetrators of the attempted wilful homicide of the Appellant in their acts by means of which the crime was prepared or by knowingly aided or abetted the perpetrator or perpetrators to put the life of the Appellant in manifest jeopardy, she tried everything in her power to knowingly aid and/or to abet the perpetrators to cause the death of the Appellant;

D. Blessing Aloun or Blessing Ojo or whatever her real name is for her Complicity and Conspiracy in the attempted wilful homicide of the Appellant because maliciously she not only, knowingly aided and/or abetted the perpetrator or perpetrators of the attempted wilful homicide of the Appellant in their acts by means of which the crime was prepared or by knowingly aided or abetted the perpetrator or perpetrators to put the life of the Appellant in manifest jeopardy, she not only tried everything in her power to knowingly aid and/or to abet the perpetrator or perpetrators to cause the death of the appellant but also she

a. commanded others to commit the wilful homicide of the Appellant;

b. instigated the commission of the attempted wilful homicide of the Appellant by means of bribes, promises, threats, machinations, or culpable devices, or by abuse of authority or power, or gives instructions for the commission of the attempted wilful homicide of the Appellant;

c. procured the weapons, instruments or other means used in the commission of the attempted wilful homicide of the Appellant, knowing that they are to be so used;

d. in any way whatsoever knowingly aided and abetted the perpetrator or perpetrators of the attempted wilful homicide of the Appellant in the acts by means of which the crime was prepared and completed;

e. incited or strengthened the determination of others to commit the attempted wilful homicide of the Appellant, and promised to give assistance, aid or reward after the fact inclusive the promised to give continuous sexual pleasures;

E. Blessing Aloun or Blessing Ojo or whatever her real name is for <u>the attempted sale of the Appellant presumed son Kaya</u>;

F. Blessing Aloun or Blessing Oje or whatever her real name for lying under oath and for knowingly, maliciously and with the specific intent to deceive and to defraud continuously fabricated false evidence against the appellant;

G. Blessing Aloun or Blessing Ojo or whatever her real name for appropriating the Appellant's property without his consent[3]*;*

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[3] *Please note also that according to the grapevine, it is being alleged that Blessing Aloun or Blessing Ojo or whatever her real name is, was banished by her own father from his home in Nigeria because her father and the Nigerian Authorities believed that she was directly involved in the "Accident/murder"' of her own mother.*

That because of the "Accident/murder" of her own mother, it is also being alleged that Blessing Aloun or Blessing Ojo or whatever her real name is, was not only banished from her village by her own neighbours, but had to escape also from the region because the Nigerian Authorities wanted to take her in.

That because of the "Accident/murder" of her own mother, it is being alleged that Blessing Aloun or Blessing Ojo or whatever her real name is, had to change her name a number of times and had to once again seek protection from one of the leading Criminal Gangs in Nigeria led by the Warlord known as Blessing Ojo.

That it is being alleged that the Warlord known as Blessing Ojo had not only changed Blessing Aloun's name a number of times but also had placed her in a number of "safe Families".

H. Matthew Anoja or whatever his real name is for the attempted wilful homicide of the Appellant because maliciously he, with the specific intent to kill the Appellant or to put the life of the Appellant in manifest jeopardy, he tried everything in his power to cause the death of the Appellant;

That it is being alleged also that Blessing Aloun or Blessing Ojo or whatever her real name is, eventually has a son from one of the members of a "safe Family".

That it is being alleged also that after Blessing Aloun was caught committing adultery, she had no alternative but to seek once again protection from the Warlord known as Blessing Ojo.

That it is being alleged also that the Warlord known as Blessing Ojo eventually sent Blessing Aloun or Blessing Ojo or whatever her real name is, to Italy to join his prostitution racket there.

That it was only by change that Blessing Aloun or Blessing Ojo or whatever her real name is, found herself in Malta.

That it is being alleged also that in order not to be extradited from Malta back to the Authorities in Nigeria, while still in detention, Blessing Aloun or Blessing Ojo or whatever her real name is, claimed that she got pregnant once again by one of the Illegal Immigrants there; i.e.: her son FAVOURATE.

That it is being alleged also that Blessing Aloun or Blessing Ojo or whatever her real name is, was allowed to stay in Malta because she claimed to be the wife of that Illegal Immigrant.

That it is being alleged that that Illegal Immigrant eventually got Subsidiary Protection.

That after some time, it is being alleged also that that Illegal Immigrant eventually found that most probably, that son was not his and sent Blessing Aloun or Blessing Ojo or whatever her real name is, packing.

That it is being alleged also that the Warlord's (known as Blessing Ojo) local representative eventually set Blessing Aloun or Blessing Ojo or whatever her real name is, with another "safe man" – a certain Keven Agbigbi (I.D. 57908A).

That whatever Blessing Aloun or Blessing Ojo or whatever her real name is and as could be seen from her "facebook", Blessing Aloun is currently using the name of her Warlord; i.e.: Blessing Ojo:

https://www.facebook.com/public/Ojo-Blessing

3. Blessing Ojo Profiles\Facebook

https://www.facebook.com/public/Blessing-Ojo

View the profiles of people named blessing Ojo. Join Facebook to connect with blessing Ojo and others you may know, Facebook gives people the power to...

4. Ojo Blessing profiles\Facebook

https://www.facebook.com/public/Ojo-Blessing

I. ***Matthew Anoja or whatever his real name is for Complicity and Conspiracy in the attempted wilful homicide of the Appellant because maliciously he, knowingly aided and abetted the perpetrator or perpetrators of the attempted wilful homicide of the Appellant in their acts by means of which the crime was prepared and by knowingly aided and abetted the perpetrator or perpetrators to put the life of the Appellant in manifest jeopardy, he tried everything in his power to knowingly aid and to abet the perpetrator or perpetrators to cause the death of the Appellant;***

J. ***Matthew Anoja or whatever his real name is for lying under oath, and for knowingly, maliciously and with the specific intent to deceive and defraud continuously fabricated false evidence against the Appellant;***

K. ***Rachel Fred or whatever her real name for lying under oath, and for knowingly maliciously and with the specific intent to deceive and to defraud continuously fabricated false evidence against the Appellant;***

L. ***Rachel Fred or whatever her real name for her Complicity and Conspiracy in the attempted wilful homicide of the Appellant because maliciously she, knowingly aided and abetted the perpetrator or perpetrators of the attempted wilful homicide of the Appellant in their acts by means of which the crime was prepared and by knowingly aided and abetted the perpetrator or perpetrators to put the life of the Appellant in manifest jeopardy, she tried everything in her power to knowingly aid and abete the perpetrator or perpetrators to cause the death of the Appellant.***

M. ***Mr. Innocent Lokri who with intent to extort money and/or any other thing, and/or to make any gain, and/or with intent to induce both the Appellant and the Appellant's Lawyer to execute in his favour huge sums of money for the alleged services rendered as a bail guarantor, had threatened to accuse and/or to make a complaint against, and/or to defame the Appellant before this Honourable Court which he***

eventually did when he gave his evidence on the 4th. March 2020, whereby Mr. Innocent Lokri had appeared before Magistrate Dr. Marse Ann Farrugia LL.D. sitting in the Court of Magistrates (Malta) as a Court of Criminal Inquiry requesting the Honourable Court to review his position because:

I. ***He suspects that the Appellant is in communication with Mr. William Uti from Nigeria; and***

II. *He suspects that the Appellant might be planning to escape from Malta;*

N. ***That as a result of the evidence given under oath, Magistrate Dr. Marse Ann Farrugia LL.D sitting in the Court of Magistrates (Malta) as a Court of Criminal Inquiry acceded to the request of Mr. Innocent Lokri.***

12) *Reconsider the Appellant's continuous appeal for this Honourable Court to not only investigate the above persons but to also order their detention because once they understand that this Honourable Court is investigating them, since they are Nigerian Nationals with no particular ties in Malta they would surely abscond from Malta."*

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 9th. of January 2023.

Having seen the preliminary judgment delivered by this Court as diversely presided on the 29th. of March 2021 (Vol. IX: *a fol.* 2496 *et seq.*) wherein the plea of nullity of the appeal application raised by the Attorney General was rejected.

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 18th. of April 2023, legal counsels declare that they had no further submissions to add to the submissions which were heard by this Court as diversely presided.

Considers

That in this case this Court is faced with two different versions. Blessing Aloun states that earlier on the parties quarrelled because the appellant accused her of being unfaithful to him. In view of this she left the apartment situated in Qawra which apartment she shared with the appellant. Blessing Aloun took also her children and states that she went to the apartment of William Uti which apartment was situated in Qawra as well. Uti informed the appellant that his partner and the children were in his apartment. The appellant went to this apartment but Blessing Aloun refused to open the door. After informing William Uti about this issue, the latter accompanied the appellant to his apartment and it is at this stage that the versions given start to divert.

That in the version given Blessing Aloun the latter says that the appellant hit her and took their child. She explains that she was worried because their child was sick. In order to try and retrieve the child she called a close friend Matthew Anoja who arrived on site accompanied by his girlfriend Rachel Fred. After speaking with William Uti, the four decided to go to the appellant's apartment to convince him to hand back the child he took with him and also to try and solve the matters between the couple. Blessing Aloun opened the apartment door using her key and the injured parties entered the apartment. However, in their words the appellant became very aggressive particularly when Matthew Anoja reminded him that he should not be in the apartment. Following this brief discussion, according to the injured parties the appellant went into the bedroom to get a knife and started slashing at them. Matthew Anoja tried to stop him and got his ear

cut. Upon seeing this, William Uti left the apartment in order not to get involved. In the meantime, Matthew Anoja managed to disarm the appellant and threw the knife which was previously wielded by the appellant on the floor. On his part the appellant got hold of two other knives and restarted the attack. In view of this, Blessing Aloun managed to take the child with her and left the apartment to take refuge in the apartment of the neighbours.

That in the midst of this, though it is not clear, Matthew Anoja got his right wrist slashed but he still managed to leave the apartment. Whilst on the landing he tried to hold the door so that the appellant could not get out. However, the appellant from the inside started banging the door which eventually broke down. From the hole in the door the appellant hit superficially Anoja with a knife. Anoja removed the knife and tried to jump into the lift, however as he was entering the lift, he received a final slash on his shoulder. He managed to exit the block before the appellant and was tended to briefly by his girlfriend whilst waiting for the ambulance to arrive. During that time the appellant started ranting towards them accusing them of having sex with his wife whilst he was at work. Matthew Anoja decided to drive himself to hospital because the ambulance was taking too long and because he was losing too much blood.

That as far as the version of the appellant is concerned, it is somewhat different in that he refutes the version whereby he hit his partner when in the apartment of William Uti. The appellant also stated that when he went back to his apartment, he took some pills to sleep and when he noticed there were people in his apartment, he woke up from bed and asked them to leave. At that point the appellant says that Matthew Anoja took out something from his pocket, probably a pocket-knife, and slashed the palm of his hand as well as punched him on the face. The appellant says that as a result of this punch, he lost a tooth and another one was moving. The appellant also recounts that the "intruders" tried to push him close to the balcony while Matthew Anoja had grabbed him from his private parts and Blessing Aloun stabbed him in the back. The appellant says that Matthew Anoja hit him with a stool

and following this they left the apartment. The appellant also describes how Matthew Anoja held the front door from the outside and that he broke the door stabbing himself with the door. After following them downstairs, the appellant went back upstairs and rested until the police arrived.

That as far as the above contrasting evidence is concerned, this Court notes in the judgment in the names **Il-Pulizija vs. Graham Charles Ducker** this Court as diversely presided said the following:

> "It is true that conflicting evidence per se does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one".

That this Court also makes reference to the judgment **Il-Pulizija vs. Jonathan Micallef** (Number 436/2009) delivered on the 2nd. of February 2012, where this Court as diversely presided said:

> "Huwa minnu illi jista' jkollok sitwazzjoni fejn numru ta' xhieda qegħdin jagħtu verżjoni differenti minn oħrajn illi xehdu qabel. B'daqshekk ma jfissirx illi għax hemm xhieda differenti bil-fors hemm kunflitt li għandha twassal għal liberatorja. Fil-kawża **Pulizija vs. Joseph Thorn** deċiża mill-Qorti ta' l-Appell Kriminali fid-9 ta' Lulju 2003, il-Qorti qalet:
>
> > "... mhux kull kunflitt fil-provi għandu awtomatikament iwassal għal liberazzjoni tal-persuna akkużata. Imma l-Qorti f'każ ta' kunflitt ta' provi, trid tevalwa il-provi skond il-kriterji annunċjati fl-Artikolu 637 tal-Kap. 9 u tasal għal konklużjoni dwar lil min trid temmen u f'hiex trid temmen jew ma temminx" (ara

wkoll **Repubblika ta' Malta vs. Dennis Pandolfino** 19 t' Ottubru 2006).""

Considers

That before proceeding any further, this Court notes that during the sitting of the 22nd. of February 2021 (Vol. IX: *a fol.* 2480 *et seq.*) the appellant withdrew the seventh (7th.) request and anything contained from the eleventh (11th.) request to the end of the appeal except where it is relevant to the appeal. Hence the Court will refrain from taking cognisance of these mentioned requests in so far as they are irrelevant to the appeal.

Considers

That in his 315-page appeal the appellant raises numerous points which are jumbled up and this Court experienced some difficulty in extracting a line of defence. However in order not to deprive the appellant from his right to have his case reviewed, this Court will extract the arguments which were brought forward by the appellant.

That the appellant brought forward the following arguments:

- The presumption of innocence (Vol. IX: *a fol.* 2148-2158). The appellant delves on the issue of the recordings he presented in front of the First Court. He complains that he did not understand why the First Court refused to accept the recordings and the photos he wanted to present wherein the truth of what happened on the 13th. of April 2019 resulted.

- Following this the appellant gives his version of events (Vol. IX: *a fol.* 2159-2167) including statements pertaining to the fact that allegedly an attempt on his life was committed. He then refers to parts of the judgment delivered by the First Court wherein the First Court noted incongruencies in his conduct. In this respect the appellant notes that he was admitted to Mater Dei Hospital and complains that a number of photos

taken by his lawyer were not taken into consideration by the Police. Following this, the appellant refers to the CD with the discussion with the person known as Prince (Innocent Lokri) and his wife. He complains that the Police were not present to take the statement they wanted to give. He says further that his partner was in an intimate relationship with Prince and that she was trying to make leverage on this relationship to stop Prince from testifying. He mentions the fact that allegedly his partner was involved in prostitution and asks this Court to accept the CD with the interviews as part of the evidence.

- Following this, the appellant makes numerous requests. The appellant requests this Court to investigate the allegations brought forward by himself and requests the application of Article 546 of Chapter 9 of the Laws of Malta.

- The appellant raises the plea of self-defence (Vol. IX: *a fol.* 2170).

- He also alleges (Vol. IX: *a fol.* 2170-2199) that the child with the name Kaya who supposedly is his son is in fact not his child. The appellant proceeds to describe how according to him his partner is a prostitute and that she was having intimate relationships with other men. He presents several convoluted arguments regarding paternity fraud and arguments pertaining to the fact that allegedly Blessing Aloun is part of Blessing Ojo clan. The appellant further complains once again why Prince and his wife were not allowed to give evidence.

- There are also extensive quotes from the testimony given by a number of witnesses (Vol. IX: *a fol.* 2199-2239).

- The appellant also states (Vol. IX: *a fol.* 2240-2264) that apart from a bitten ear and apart from the self-inflicted injury on the chest, Matthew Anoja had no other injuries when he left

the block of apartments. He also delves on the fact that Matthew Anoja was holding the door. The features of the wood used in the door namely pine wood are explained in the appeal. Apart from this, reference is made to Newton's Laws of Motion to explain why Anoja in fact stabbed himself. It is explained that this proves that Anoja was holding the door with both hands.

- There is a complaint (Vol. IX: *a fol.* 2264-2267) about the lack of the pools of blood and the appellant refers numerous times to what Dr. Mario Scerri testified in his testimony and requests this Court to ask questions to the Prosecution. The appellant infers that Matthew Anoja inflicted the other wounds on himself outside Mater Dei Hospital.

- That the appellant then refers to the principle that the Prosecution should be the accused's best friend (Vol. IX: *a fol.* 2268-2281). In particular, the appellant also refers to the presumption of innocence explaining that in line with this presumption, the Prosecution had to prove all the elements beyond reasonable doubt.

- The appellant also refers to the fact that he did not have the necessary *mens rea* to commit the crime linking it to the doctrine of diminished responsibility (i.e. insanity) (Vol. IX: *a fol.* 2281-2311). In particular, he refers to numerous US judgments. The appellant also links these legal doctrines to the fact that he suffers from a depression. He elaborates on this point and on how his depressive state allegedly influence his conduct rendering him *doli incapax*.

- That reference is also made to the principle of *jus cogens* and obligations *erga omnes* linking these to the alleged will of Blessing Aloun to sell their son Kaya (Vol. IX: *a fol.* 2311-2341). He complains about the facts linked to the revocation of bail that had been accorded to him. The appellant refers to the matters pertaining to circumstantial evidence linking this

to the fact that the other parties to the actions that took place on the 13th. of April 2019 are in effect members of a Nigerian criminal ring. He also states that a person known as Peter is willing to give evidence on this. He further explains how William Uti and Prince acted in bad faith and refers to issues that occurred in relation to the revocation of bail. Thereafter the appellant repeats the arguments he had presented in front of the First Court regarding how he suffered financial hardship when his bail was revoked. He requests the appointment of Dr. Vella Baldacchino as a court expert to review his past and present medical condition. Once again, he repeats the arguments relating to the issue of the CD with versions given by various alleged witnesses.

- That the appellant refers to the right of reply, i.e. the right to defend oneself (Vol. IX: *a fol.* 2341-2416*).* In particular, reference is made to the principle of *audi alteram partem*. In this respect he refers to the testimony given by the landlord in particular the part where the latter stated that he did not find signs of hammering on the apartment door. In his arguments, the appellant also refers to the size of the hole in the door where he explains that a hand could not pass through the hole and that hence he could not have stabbed Matthew Anoja. Furthermore, he repeats the arguments referred to previously in relation to the blood, or better the lack of pools of blood, that was on the site of the accident. The appellant complains about the testimony given by Dr. Scerri stating that he has asked other experts privately who have not confirmed the version of the court expert. In this respect he tries to give an explanation regarding the injuries that are expected to result on a person who is trying to defend himself. Reference is also made to the argument that if Matthew Anoja was badly injured when exerting the effort to keep the door closed, he would have lost more blood. Despite this the amount of blood on the landing was minimal. The appellant elaborates further on the type of wounds that could have been expected in comparison to what had

occurred. This is followed by a number of questions in relation to the knife with which he allegedly stabbed Matthew Anoja that is: Where is the knife? Why did Matthew Anoja not take the knife with him? Why the knife has not been found by the Police?

- Later on reference is once again made to the issue pertaining to bail and how it has been revoked mixing it up with the issue of the injury (Vol. IX: *a fol.* 2416-2445). The appellant refers to an alleged certificate issued by the University of Benin on the injuries sustained by Matthew Anoja. From this point onwards the Court could notice only the repetition of arguments already listed.

Considers

That by means of the <u>first request</u> (not a grievance) the appellant is asking that Dr. Mario Scerri is to give evidence once again to confirm whether the piece of wood that had been taken off the door is the instrument that injured Matthew Anoja.

That this Court notes that Dr. Scerri testified on the 20th. of June 2019 (Vol. II: *a fol.* 389 *et seq.*), on the 10th. of June 2020 (Vol. VI: *a fol*. 1281 *et seq.*) and on the 14th. of September 2020 (Vol. VIII: *a fol.* 1862 *et seq.*). In all instances he testified on the chest wound. In particular, the question that is being requested to be put forward has already been asked and Dr. Scerri said that the piece of wood indicated is not the source of the chest wound suffered by Matthew Anoja. Hence, given the above this Court deems that there is no utility in this request and it will be rejected.

That apart from this request, this Court also notes that spread out through the appeal there are other requests. This Court refers to what it understands as being a request to have Belinda Balog and a certain Peter (a person from Nigeria) testify (Vol. IX: *a fol.* 2317-2320). These requests shall, for convenience's sake, be reviewed under this request too.

That in respect to Belinda Balog, this Court notes that Balog had been summoned to testify during the sitting of the 26th. of May 2020 and the First Court deemed the questions that were going to be asked as being irrelevant (Vol. V: *a fol.* 1165 *et seq*.).

That in respect to the gentleman identified as Peter from Nigeria, this Court notes that the request to have him testify was dismissed by the First Court during the sitting of the 10th. of June 2020 (Vol. VI: *a fol.* 1278 *et seq*.) on the basis that this too was irrelevant.

That in respect to the request to have the CD of Innocent Lokri sive Prince admitted, this Court refers to the decree delivered by the First Court on the 27th. of May 2020 (Vol. V: *a fol.* 1202 *et seq*.) where the First Court invited the appellant to present these CDs in the manner prescribed by law. Furthermore, during the sitting of the 10th. of June 2020 (Vol. VI: *a fol.* 1278 *et seq*.) the First Court dismissed the request to have Innocent Lokri sive Prince and his wife testify.

That in view of the above, this Court refers to the judgment delivered on the 30th. of June 2022 in the names **Il-Pulizija vs. Matthew Cachia** (Number 247/2021) where this Court as diversely presided established the following:

> "23. Din il-Qorti hija sodisfatta li l-partijiet kienu konxji minn dan il-ftehim. Addirittura l-appellant ibbaża d-difiża tiegħu proprju fuq dan id-dokument kemm fl-istadju ta' trattazzjoni quddiem il-Qorti tal-Maġistrati (Malta) kif ukoll fit-trattazzjoni finali quddiem din il-Qorti. Biss, din il-Qorti bħala Qorti ta' Appell Kriminali hija wkoll marbuta bir-regola sanċita fl-Artikolu 424 tal-Kodiċi Kriminali liema dispożizzjoni tal-Liġi taqra bil-mod segwenti:
>
> > "424. Quddiem il-qorti superjuri ma jistgħux jinġiebu xhieda ġodda, ħlief –

> (a) jekk jiġi ippruvat bil-ġurament jew b'mezzi oħra li l-parti li toffri x-xhieda ġodda ma kinitx taf bihom, jew ma setgħatx, bil-mezzi li tagħti l-liġi, iġġibhom quddiem il-qorti inferjuri;
>
> (b) jekk il-prova tkun ġiet offerta quddiem il-qorti inferjuri, u din il-qorti, bla ma kien imissha, ċaħdet din il-prova."

24. Din id-dispożizzjoni tal-Liġi titkellem dwar il-produzzjoni ta' xhieda ġodda iżda huwa paċifiku kif il-prinċipju regolatur huwa li l-Artikolu 424 tal-Kodiċi Kriminali jestendi l-applikazzjoni tiegħu anki għal prova dokumentarja ġdida. F'dan ir-rigward din il-Qorti tagħmel referenza għall-kawża fl-ismijiet **Il-Pulizija vs. Jeremy James Farrugia** datata 14 ta' Ottubru 2003 fejn il-Qorti tal-Appell Kriminali stqarret is-segwenti:

> "Illi kif ġie ritenut minn din il-Qorti diversament preseduta fl-Appell Kriminali: **Il-Pulizija vs. Eddie sive Edward Micallef** [24.5.1995]:- "Din id-dispożizzjoni ġiet fil-ġurisprudenza tagħna nterpretata li tipprojbixxi l-produzzjoni mhux biss ta' xhieda ġodda **iżda ta' provi, ċioè anki dokumenti, ġodda**[4]. Dan għar-raġuni, ġusta fil-fehma ta' din il-Qorti, li f'dan l-istadju ta' l-appell dak li għandu jiġi eżaminat huwa biss jekk l-ewwel ġudikant iddeċidiex tajjeb jew ħażin fuq il-provi li kellu quddiemu (ara Kollezz. Vol. XXVII.IV.742 u XXX.IV.623.).""

That for the witnesses mentioned above, this Court notes that a request had been filed in front of the First Court and hence for these witnesses to be admissible at this stage the appellant had to

[4] Emfażi ta' din il-Qorti.

explain why the decision of the First Court not to admit these witnesses was wrong.

That this Court after reviewing the reasoning of the First Court does not find any reason to change its decision and hence these requests will be rejected.

That in this scenario the request (Vol. IX: *a fol.* 2338) to include the CD with the interview of Innocent Lokri sive Prince is of no validity given that it has not been presented in the appropriate manner and for all intents and purposes the CD could contain fabricated evidence instead of the evidence it purports to contain. Hence these requests will be rejected too.

Considers

That by means of the second request the appellant is demanding that this Court asks the medical team who operated Matthew Anoja to corroborate the version of Dr. Mario Scerri and to confirm whether the piece of wood is the instrument that injured Matthew Anoja.

That this Courts notes that such a request has already been made in front of the First Court and the latter by means of a decree given on the 12th. of August 2020 (Vol. VII: *a fol.* 1648 *et seq.*) had refused such a request. In view of these circumstances, this Court refers to the reasoning made in the previous request and applies it to this request. Given that the appellant did not mention why the First Court was wrong in refusing the request, after having noted the reasoning of the First Court, this Court finds no reason to overturn this decision hence such a request will be rejected too.

Considers

That by means of the third request the appellant is demanding this Court to determine whether he had or has the necessary *mens rea* (formal element of the crime) to breach the bail conditions. In addition, the Court is requested to appoint Dr. Vella Baldacchino

or any other expert to examine his medical records to draw up a report. In addition, by means of the fourth request this Court is asked to reconsider the fact that William Uti spoke to the appellant and not vice-versa during the period when he was on bail. By means of the sixth request this Court is being asked to bring into effect the decree granting him bail (Vol. IV: *a fol.* 869 *et seq.*). By means of the eight request the appellant is requesting the revocation of the arrest warrant issued on the 19th. of March 2020 in terms of Article 570 of Chapter 9 of the Laws of Malta. This Court shall treat these requests together given that they are linked.

That with regards to request to have the medical records of the appellant analysed, this Court refers to the fact that this request had been rejected by the First Court by means of a decree given on the 27th. of May 2020 (Vol. V: *a fol.* 1202 *et seq.*). Hence, once again this Court refers to its previous reasoning on similar requests. Given that the appellant does not adduce any specific reason as to why the decision of the First Court was wrong, this Court after having reviewed the said decree finds no reason why the request should be acceded to.

That with regards to the issue pertaining to the granting of bail and the revocation of bail by the First Court, the appellant complains that he did not and does not have the *mens rea* to breach the bail conditions. In respect to the formal element of the crime **Francesco Carrara** in his book Programma Del Corso Di Diritto Criminale (Parte Generale Quarta Edizione Con Aggiunte – Lucca Tipografia Giusti 1871) states the following:

> *"Se l'intelletto, o la volontà, od ambedue, mancano del tutto all'agente, non vi è intenzione, e non vi è per conseguenza imputabilità…".*

That **Professor Sir Anthony Mamo** in his Notes on Criminal Law (First Year – Criminal Law) explains that the formal element of the crime can take two forms. One form which is usually referred to as *dolus* and the second form which is referred to as *culpa*. In particular, Professor Mamo states the following:

> "This 'mens rea' may assume one or other of two distinct forms, namely, wrongful intention (*dolus*), or culpable negligence (*culpa*). The offender may either have done the wrongful act on purpose, or may have done it carelessly, and in each case the mental attitude of the doer is such as to make punishment effective."

That this line of thought is also confirmed by **Carrara** who in the above-cited book states the following:

> *"Meglio sembra poter servire a graduare la colpa la distinzione fra chi nulla affatto pensò al tristo evento (lo che i Romani dissero culpa ex ignorantia) e chi vi portò il pensier , ma previde che non sarebbe avvenuto (lo che i Romani dissero culpa ex lascivia). Un giovine sta per esplodere contro una fiera; il suo compagno lo avverte che ad una distanza vi è un uomo: ti par egli (risponde il primo) è impossibile che il piombo arrivi laggiù mai; ed esplode, ed il piombo giunge a ferire. Costui non è in dolo, perchè ha preveduto come cosa certa di non ferire: ma la sua colpa è più grave che non sarebbe quella di chi niente avesse veduto quell'uomo. Queste regole si sentono in pratica, ma difficilmente si riducono a formule assolute di dottrina."*

That in this case one of the conditions imposed by the Court in granting bail was that the appellant should not have spoken to the witnesses. One of the witnesses was William Uti. It transpired that William Uti and the appellant spoke to each other. Following this by means of a decree dated 19th. of March 2020 (Vol. V: *a fol.* 1099 *et seq.)* the First Court revoked the bail that had been granted previously to the appellant. One of the reasons which the First Court based her decision on was the fact that William Uti and the appellant gave different versions of what happened.

That in this respect there is no doubt that the appellant spoke to William Uti and even though his actions might not have been the result of wrongful intentions, he could have foreseen that such action was in breach of the bail conditions. Consequently, the

First Court was correct when it stated that it was the duty of the appellant *"to refrain from speaking"* to William Uti *"and inform the legal counsel about the incident"*. Given that the existence of the formal element of the crime has been determined based on the conduct of the appellant, this Court will reject this request.

That with regards to the part of the request relating to the future i.e. the part were the appellant refers to whether he does not have the *mens rea* necessary to breach bail conditions, this Court refers to what is stated under Article 581 of Chapter 9 of the Laws of Malta which establishes the following:

> "In the case referred to in Article 579, the party arrested shall not be admitted to bail a second time in the same cause."

That given this Court agrees with the decision of the First Court to revoke bail, there is no reason to change the decision of the First Court and hence these requests will be rejected too.

Considers

That by means of the fifth request the appellant complaining about his conditions in division 6 of the prison. In respect to the conditions in division 6, this Court does not have any remit as to the conditions in the Corradino Correctional Facility. Furthermore it is noted that from what the psychology assistant in prison **Rianne Psaila** had testified during the sitting of the 19th. of May 2022, the permanence of the appellant in division 6 is only temporary.

That given the above, this Court shall desist from taking further cognisance of this request.

Considers

That by means of the ninth request the appellant is asking for the revocation of the judgment delivered by the First Court and that he be acquitted.

That this Court will start its analysis by reminding the appellant that throughout his appeal he had to provide arguments as to why the decision of the First Court was wrong. Other arguments are irrelevant.

That throughout his appeal, the appellant established numerous arguments (most of which are irrelevant to the case) in a very disordinate and disjointed manner and at times it seems that this was a copy and paste exercise. This Court will start the analysis by referring to the arguments put forward by the appellant where in he mentions that the Police or the Courts did not take any action in respect to his allegations (Vol. IX: *a fol.* 2167-2170). This Court is somewhat perplexed by this submission since from an analysis of the acts there is no evidence that the appellant has ever satisfied the requirements established under Article 541 of Chapter 9 of the Laws of Malta. In view of the circumstances, this Court will reject this request.

That in respect to the request forwarded in terms of Article 546(4A) of Chapter 9 of the Laws of Malta, this Court notes that such a request does not fall within its competence and hence it is being rejected.

That in respect to the arguments brought forward by the appellant regarding the paternity of the child Kaya, these are not pertinent to this case. Hence the arguments brought forward in this respect (Vol. IX: *a fol.* 2171-2191) are being dismissed.

That the appellant also includes several statements on his wife and her alleged connection with Blessing Ojo (Vol. IX: *a fol*. 2192-2198). In this respect the appellant continues by claiming self-defence. The appellant substantiates this claim by stating that he has been attacked by his partner and Matthew Anoja. The appellant refers extensively to his testimony (Vol. IX: *a fol*. 2199-2225) and on how

he allegedly had been attacked in his home and how his partner had slashed him on his back.

That in respect to this line of defence, this Court points that as a fact from the DNA results it transpired that five (5) out of six (6) blood samples tested belonged to Matthew Anoja whilst only the blood samples taken from the undervest found on the table of the room belonged to the appellant. This means that purely from a factual point of view, the blood of Matthew Anoja was found:

- inside the lift,
- the blood in front of the apartment,
- the living room,
- the bedroom, and
- the last room.

Hence from these samples it transpires that Matthew Anoja has suffered some form of injuries and the loss of blood of Matthew Anoja was spread throughout the apartment as opposed to the blood of the appellant that was present only on an undervest. It is the opinion of this Court that had the appellant been stabbed, as he alleges, his blood would have been found spread around the apartment.

That such a line of thought is further corroborated by the testimony of the Prosecuting Officer Inspector Godwin Scerri given on the 8th. of May 2019 (Vol. I: *a fol.* 32 *et seq.)* where the Inspector says that the cuts *"were totally healed"* (Vol. I: *a fol*. 35). In addition, the fact that the appellant has not suffered any particular injuries is also corroborated by PC 1173 John Grech who during his testimony on the 20th. of June 2019 (Vol. III: *a fol.* 433 *et seq.)* says the appellant had some scratches on the back and a small cut on his right hand.

That during the testimony given by Dr. David Grima on the 5th. of August 2020 (Vol. VII – *a fol.* 1632 *et seq.*) the latter explained that the abrasions that the appellant had might have been so light that he did not deem them to be important enough to mention them in the report. Noteworthy is the fact that Dr. Grima stated this despite being confronted with the report by the nurse which stated that the appellant had multiple abrasions over the body (Doc. "CG 1" – Vol. VII: *a fol.* 1645 *et seq.*). Even if the nurse's report were to be taken into consideration, the nurse did not mention any stabbing.

That finally from the records presented by the representative of Mount Carmel Hospital, from the document dated 13th. of April 2019 (Vol. VI: *a fol.* 1383*)* there is clearly indicated that apart from the injury in his hand, the appellant had no other trauma.

That given the final request by the appellant, this Court refers to the judgment delivered on the 27th. of January 2022 in the names **Il-Pulizija vs. Steven Francis Haston** (Number 567/2020) where this Court as diversely presided quoted the following:

> "Il-Qorti għalhekk ser tgħaddi sabiex tara jekk f'dan il-każ tapplikax id-difiża ta' *leġittima difesa*. Hawnhekk din il-Qorti sejra tagħmel referenza għas-sentenza fl-ismijiet **Il-Pulizija vs. Joseph Micallef et**[5] fejn ġie ritenut:
>
> "Il-Qorti tagħmel referenza għas-sentenza mogħtija mill-Qorti tal-Appell Kriminali nhar l-ewwel (1) ta' Novembru, 2003 fl-ismijiet **Il-Pulizija vs. John Mizzi** dwar id-difiża ta' leġittima difesa. Dik il-Qorti sostniet li:
>
> > "Id-difiża ta' leġittima difesa hija limitata għall-każijiet fejn persuna tkun qed tiġi akkużata b'omiċidju voluntarju jew offiza volontarja fuq

[5] Deċiża mill-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali nhar it-2 ta' Marzu 2016.

> il-persuna mhux fejn l-akkuża tkun ma' xi reat ieħor; in-neċessita' hija differenti wkoll mid-difiża tal-koazzjoni, din tal-aħħar kontemplata fl-Artikolu 47(a) tal-Kap. 9 tal-Ligijiet ta' Malta."

Dwar il-fatt li l-imputati aġixxew in leġittima difesa, l-Qorti tirrileva li hemm kontemplata fl-Artikolu 223 tal-Kap. 9 tal-Liġijiet ta' Malta s-segwenti:

> "Ma hemmx reat meta l-omiċidju jew l-offiżi fuq il-persuna huma ordinati jew permessi mil-liġi, jew mill-awtorita' leġittima, jew meħtieġ mill-bżonn attwali tad-difiża leġittima ta' wieħed nnifsu jew ta' ħaddieħor."

Filwaqt li fl-Artikolu 224 tal-Kap. 9, dan isemmi ċerti każijiet (li taħt l-ebda immaġinazzjoni ma hi eżawriment) ta' neċċessita' attwali ta' difiża leġittima. Dawn il-każijiet huma biss eżempji.

Jiġi rilevat li huwa veru li d-dritt ta' leġittima jitwieled u huwa konsegwenza naturali mid-dritt fundamentali ta' kull bniedem li jipproteġi lilu nnifsu minn xi aggressjoni jew dannu anke bl-użu ta' forza.

Iżda l-liġi timponi ċerti kundizzjonijiet biex din l-eċċezzjoni tal-leġittima difesa tiġi milqugħa, fis-sentenza **Ir-Repubblika ta/ Malta vs. Domenic Briffa**[6] kien ingħad hekk:-

> "Sabiex wieħed jista' jitkellem fuq leġittima difiża li twassal għall-ġustifikazzjoni jew non-imputabilita' (a differenza ta' sempliċi skużanti - Art. 227(d)), iridu jikkonkorru, kif diġa' ngħad, **<u>l-elementi kollha li dottrinalment</u>**

[6] Deċiża mill-Qorti tal-Appell Kriminali nhar is-16 ta' Ottubru 2003.

> **huma meqjusa neċessarji, ċioè l-bżonn li l-minaċċja tkun gravi, tkun inġusta, tkun inevitabbli u fuq kollox li r-reazzjoni tkun proporzjonata għall-minaċċja jew għall-aggressjoni**.""

That given the difference in injuries and given the fact that the blood spread around the apartment was that of Matthew Anoja and given the testimony of all the parties, in particular that of William Uti who proclaims himself as being the friend of the appellant, this Court is convinced that this is not a case of self-defence as described by the appellant but rather a case where the appellant was the aggressor. Even if this Court were to consider the version given by the appellant as truthful, the defence of self-defence would fail because the injuries sustained by Matthew Anoja were not proportionate to the threat the appellant was facing. This Court is saying this because William Uti did not confirm that they were armed. Hence probably the hand injury suffered by the appellant was self-inflicted while he was handling the knives.

That following the claim of self-defence, in his appeal the appellant quotes (Vol. IX: *a fol.* 2225-2242) from the testimony given by Dr. Mario Scerri however there is no argument put forward. Later (Vol. IX: *a fol.* 2242) the appellant claims that until the point where Matthew Anoja left the apartment, the only injury inflicted to the latter by the appellant was the injury to the ear. This Court has its doubts as to the truthfulness of this statement and this is being stated because the appellant says that as a result of the fight he had a missing incisor and that other teeth were moving due to a punch received from MatthewAnoja. This Court asks: How could the appellant have injured the ear of the same Anoja with the problems in his mouth? This fact convinces this Court that the conclusion reached by Dr. Scerri about the injury to the ear is the truth. In the conclusions of his report (Vol. II: *a fol.* 409 *et seq.*), Dr. Scerri concludes that the injury of the ear was caused by an instrument that was sharp and it would have left a permanent mark on the face of Matthew Anoja. This point was

further confirmed by the same Dr. Scerri when during the testimony given on the 10th. of June 2020 (Vol. VI: *a fol.* 1281 *et seq.)* he testifies as follows: *"No, no, a bite does not cause an incised wound. Your Honour, a bite causes typically a laceration. That is why I enlarged that photo, to indicate clearly that the edges are sharp, clean, compatible with an injury inflicted by a sharp cutting instrument, not teeth; teeth produce lacerations, not incisions"* (Vol. VI: *a fol.* 1288*)*. Hence, since the appellant is admitting at inflicting the injury on the ear and this injury was produced with a sharp object, it follows that the appellant was at least wielding a sharp object. Consequently, the versions given by the other witnesses whereby they claim that the appellant attacked them using knives is very credible. This Court points out that this by itself confirms the first (1) and the third (3) charges brought forward by the Prosecution against the appellant.

The appellant gives a description of the incident relating to the door and gives technical details of the door (Vol. IX: *a fol.* 2242–2258) and of the fact that Matthew Anoja was using both his hands to keep the door closed. What the appellant fails to mention is the fact that as testified Matthew Anoja the appellant started hitting the door. Hence it was no longer a matter of only Anoja pulling the door but also of the appellant hitting it. Matthew Anoja mentions that the appellant used a chair (Vol. III: *a fol.* 816) to hit the door. This might account for the fact that there were no markings on the door.

That the appellant continues by stating that Matthew Anoja stabbed himself with the portion of the door that broke off due to the momentum created by the pull. This Court is not convinced by this argument. In particular it is sufficient to refer to the testimony given by Dr. Mario Scerri on the 14th. of September 2020 (Vol. VIII: *a fol.* 1862 *et seq.*) where he stated the following in relation to the wound on the chest: *"But it is inflicted by a sharp instrument more compatible to a knife than to this piece of wood you showed me"* (Vol. VIII: *a fol.* 1865). This once again confirms the testimony of Matthew Anoja where he said that the appellant hit him with a knife in the chest.

That furthermore the appellant argues that only minimal blood was found in the flat. However, this Court points out that the injury which led to the greatest amount of loss of blood occurred as Matthew Anoja was stepping in the lift. Furthermore, Matthew Anoja testified that his partner tried to stop the bleeding (Vol. III: *a fol* 817). This is corroborated by what Rachel Fred said during her testimony of the 12th. of August 2019 (Vol. III: *a fol.* 775).

That the appellant (Vol. IX: *a fol.* 2267*)* states that Matthew Anoja caused these injuries himself just outside Mater Dei Hospital. This Court notes that this version is not supported by any evidence and hence it will be dismissed.

That the appellant also quotes numerous judgments and legal principles in particular the presumption of innocence. That this is followed by a part relating to the formal element of the crime (Vol. IX: *a fol.* 2281-2288). That following this, reference is made to the M'Naghten Rules and the doctrine of diminished responsibility (Vol. IX: *a fol.* 2288). This Court understands that the appellant is pleading insanity as well.

That in respect to insanity, **Professor Sir Anthony Mamo** in his Notes on Criminal Law (First Year – Criminal Law) states the following:

> "Our Law, therefore, recognises insanity as an excuse not only when it deprives the victim of his power of distinguishing the physical and moral nature and quality of the act charged as an offence but also when it deprives him of his faculty of choice so as to exclude a free determination of his will in relation to that act. Insanity thus embraces all forms of disease of the mind, the word 'mind' being used as a general name for the combined operations of intellect and volition."

That later in the appeal (Vol. IX: *a fol.* 2307), the appellant links his depressive state to the lack of the formal element of the crime. In this case apart from the fact that the appellant has a condition of

depression, there is no evidence that at the time when he committed the offences, he was not able to distinguish the moral nature and the quality of the acts he is charged with.

That apart from the above, this Court is not convinced that the depressive state which the appellant was suffering from was such that it effected his mental capacity to the extent that it rendered him incapable of understanding the actions he was carrying out. In particular, this Court refers to the fact that in his evidence, the appellant confirms he had taken his medication before going to sleep. Hence he was under the effect of treatment at the time of the acts. Consequently, from a review of the evidence presented, it is the firm conviction of this Court that in this case the appellant not only had the understanding of what acts he was committing but also had the will to commit such acts. This Court is saying this because from the testimony given it transpires that he not only made one attempt and had been disarmed by Matthew Anoja but that he repeated the attack a second time using two knives. The repeated attack convinces this Court that the appellant willingly and knowingly carried out the attack in question.

That following this argument, the appellant mentions that his partner at the time of the acts is dependant on cannabis and is trying to sell her son (Vol. IX: *a fol.* 2311). This Court points out that this is not the correct forum for such allegations and consequently they are being discarded.

That following this, the appellant raises the argument (Vol. IX: *a fol.* 2325) pertaining to bail issues. The appellant refers to the alleged financial problems of William Uti and the allegations of Innocent Lokri sive Prince. These elements have already been decided upon previously and consequently this Court will not delve further on these allegations.

That the appellant raises the argument of natural justice and continues by referring to the testimony of the landlord, in particular the part relating to the fact that there seems to be no evidence of hammering on the door. It is noted that none of the

witnesses referred to the use of hammering. Rachel Fred (Vol. III: *a fol*. 772) mentioned the word *"banging"*. On his part, Matthew Anoja said that the appellant used a chair (Vol. III: *a fol.* 816). The use of the chair would explain why there were no marks on the door hence this Court is convinced that it is the combined action of the pulling and the banging that provoked the door to break. This Court finds no reason to doubt the version that the appellant was banging on the door.

That the appellant also mentions the fact that a few days later his partner at the time had to break another part of the door to enter the apartment because her hand could not pass through the hole to open the lock. The appellant asks: if his ex-partner could not pass her hand, how could he stab Matthew Anoja? This Court examined the photos present in the acts and notes that it is evident that although a hand might not have passed, a blade could have. It is the understanding of this Court that it is precisely this difficulty that led to a small injury on the chest of Matthew Anoja.

That the appellant repeats the argument pertaining to the pool of blood. However, this argument was already dealt with previously above and this Court does not consider the need to repeat itself.

That the appellant mentions (Vol. IX: *a fol.* 2362) that Dr. Mario Scerri stated on oath that whatever he stated before the 10th. June 2020 was not correct and that the chest wound was caused by a knife. This Court read the testimony of Dr. Scerri and found it consistent. He always said that the item used had an edge and in the testimony quoted by the appellant Dr. Scerri said that the wound is closer to a knife than the wood from the door. With regards to the comments made in the appeal regarding the opinion of other doctors, these are irrelevant since their testimony does not result in the acts of the proceedings.

That the appellant refers (Vol. IX: *a fol.* 2363 *et seq.*) to the fact that there was no pool of blood due to the incision on the chest. However, this Court has already delved on this factor pointing out that the worst injury was caused when Matthew Anoja was

entering the lift and that the injury on the chest was only superficial. Finally, regarding the stab on the chest, this Court notes that possibly the stab was not of a deeper nature because of the size of the hole in the door whereby the appellant could not fit his hand. Consequently, the arguments pertaining to these points are being dismissed.

That the appellant asks a number of questions in relation to the knife (Vol. IX: *a fol.* 2393*)*. This Court does not have a reply to these questions, however in her testimony given on the 12th. of August 2019 (Vol. III: *a fol.* 758 *et seq.*) Rachel Fred states that she saw the appellant coming out of the apartment after the accident with a black bag. She says the appellant went in the direction of his garage and when he came back, he did not have the black bag anymore (Vol. III: *a fol.* 775). This is too little to state that the appellant could have thrown away the knife hence the Court is not basing its decision on it.

That the appellant refers to an alleged certificate issued by the University of Benin which seems to state that it is speaking of a penetration of 10cm. This Court notes that the injury on the chest suffered by Matthew Anoja was superficial and not 10cm in depth (Vol. II: *a fol.* 409). Hence apart from not being confirmed under oath, the information therein contained is not correct. Such attempts add to the conviction of this Court that the appellant is lying. Consequently, these arguments are being dismissed.

Considers

That given the above and taking into consideration all the evidence presented and the testimony of all involved, this Court finds that the First Court could have reasonably found the appellant guilty of all the charges brought against him.

That this Court notes that in his 315-page appeal application, the appellant did not bring forward a ground of appeal with regards to punishment. In fact, during the final submissions heard by this Court as diversely presided during the sitting of the 19th. of May

2022, the appellant's lawyer said: "*Yes, because, the Advocate General brought the question of why did we not ask for reduction of punishment. We were asking to liberate him because there is supposed to be sufficient evidence to show that he was framed up. And we were asking for expert to re-examine the evidence, because we were questioning the evidence brought in by the Prosecution. That is why we never asked for a reduction in punishment.*"

Decide

Consequently, for all the above-mentioned reasons, this Court rejects the appeal filed by the appellant and confirms the judgment delivered by the First Court in its entirety.

Finally, as ordered by the First Court, this Court also orders that a copy of this judgment and a copy of the judgment delivered by the First Court be communicated by the Registrar to the Commissioner of Police so that after the necessary investigation if needed, he institutes criminal proceedings against the appellant for having given false evidence.

_____

Dr. Neville Camilleri
Hon. Mr. Justice

_____

Alexia Attard
Deputy Registrar