



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

Magistrate Dr Leonard Caruana LL.D (Melit.) M.A. (Fin. Serv.)

Case No. 13/2021

The Police
(Supt Josric Mifsud)

Vs

Sunday Aluko Olunuywa
(ID No. 41219A)

Rashida Aluko
(I.D. No 41218A)

Today, the 22nd May 2023

The Court,

Having seen the charges brought against Sunday Aluko Olunuywa,
of 52 years, born in Nigeria on the 21st April 1968, residing at

Kunvent tal-Bon Pastur, Triq Idmejda, Balzan, holder of Identity Card number 41219A and Rashida Aluko, of 46 years, born in Nigeria on the 14th December 1973, residing at Kunvent tal-Bon Pastur, Triq Idmejda, Balzan, holder of Identity Card number 41218A and being accused that on the 21st January 2018 and in the preceding years, at Dar San Ġużepp, Dominican Sisters, Triq il-Mina ta' Hompesch, Żabbar, and in other locations in the Maltese Islands, by several acts committed by them, even if at different times, and which constitute violations of the same provision of the law and are committed in pursuance of the same design:

- a. through imprudence, carelessness, unskilfulness in their art or profession, or non-observance of regulations, caused the death of Victoria Aluko, their daughter of 7 years;

And Rashida Aluko alone:

- b. She became a recidivist in accordance with articles 49 and 50 of Cap. 9 of the Laws of Malta, after being sentenced for any offence by a judgement delivered on the 26th February 2010 by the Courts of Malta, which sentence has become *res judicata* and cannot be changed.

The Court was requested to, apart from awarding punishment according to law, orders the persons charged to pay the expenses in relation to the appointment of experts in accordance with Article 533 of Cap. 9 of the Laws of Malta.

Having seen that on the 7th January 2021 the Attorney General gave the consent in terms of Article 370(4) of Cap. 9 of the Laws of Malta for the accused to be tried summarily and that on the 4th April 2022 both accused declared they had no objection to their case being tried summarily;

Having seen that the acts of these proceedings were assigned to this Court as presided on the 28th July 2021 through the Assignment issued in accordance with Article 11(3) of Cap. 12 of the Laws of Malta and Article 520 of Cap. 9 of the Laws of Malta;

Having seen the documents exhibited, including their Criminal Record Sheet,

Having seen the evidence and testimony presented;

Having heard the submissions of the parties;

Having seen that the case has been set for today for the delivery of judgement;

Considered;

That when the tragic death occurred the accused were residing at Dar San Ġużepp, Domenican Sisters, Triq il-Mina ta' Hompesch, Żabbar. On the 21st January 2018, at around 7.35pm, the Żabbar police station received a call from St. Joseph Home, where the nuns stated that Sunday Aluko Olunuywa knocked on the convent's door hysterically shouting that his wife had died. The police immediately called an ambulance and went on site. Once there, the police entered the areas where the Aluko family was residing and found Rashida Aluko sitting down with the minor Victoria Aluko on her lap. The minor was unresponsive.

Upon arrival of the ambulance, the nurse found that the minor was already asystole and carried out CPR on site. The child was then rushed to the Emergency Department within Mater Dei Hospital where a full and extensive resuscitation procedure was carried out.

Unfortunately, the minor did not react to this intervention and CPR was stopped.

Sunday Aluko Olunuywa did not go to hospital immediately as he was still in hysterics. He was taken to the Paola policlinic for further examinations and subsequently, after calming down, was taken to hospital next to his daughter.

Considered;

That from the acts of the case, it results that Sunday Aluko Olunuywa obtained a Refugee status in 2011. For some unclear reason Rashida Aluko did not obtain this status however she and their children were able to remain in Malta on the basis of his refugee status. Together the accused have three minor children, Paula, Opeyemi Collins and Victoria, who was the youngest.

At first, they resided at the Ħal Far tent village and the children attended school at Birżebbugia. Sunday Aluko Olunuywa had a job and they were described as an exemplary family. When the tent village was converted into a male-only residential village, the family was asked to leave Ħal Far. The accused did not take this change well and resisted it. For a very short time they had no fixed address

until they were taken in by the Dominican nuns at St. Joseph Home in Żabbar. They were living in a private separate apartment within the convent's complex. During this period, the accused kept their children indoors and refused to send them to school notwithstanding the numerous interventions made by various governmental authorities. Sunday Aluko Olunuywa also refused to renew his work permit and consequently lost his job.

Although initially it was Sunday Aluko Olunuywa who adamantly refused to send the children to school, soon after Rashida Aluko joined him in this refusal.

A number of social workers and officers from governmental authorities and agencies, including Child Protection Services, the Agency for the Welfare of Asylum Seekers and the Ministry for Education got involved in this case to convince the Aluko family to send their children to school as required by law. They insisted in their refusal notwithstanding that Sunday Aluko Olunuywa was found guilty by the Local Tribunal of failing to send the children to school without a reasonable excuse.

The Court heard how the officials who were in close contact with the family were very concerned about this situation, which prolonged for two years prior to the tragic death of Victoria Aluko. They were concerned about the children's mental and physical health and on the 16th November 2017, Monica Cauchi from the Emigrants' Commission called for a doctor to examine the mental state of the accused and the minors. In fact, on that date Sunday Aluko Olunuywa was sent to Mt. Carmel Hospital for further examination whilst Rashida Aluko and the minors were sent to Mater Dei Hospital, where they were examined for any psychiatric or psychological anomalies. It was also decided that the minors should be examined by a paediatrician. This medical examination, however, did not occur as for an unknown reason, the appointment was never made. At Mt. Carmel Hospital, although the doctors found that Sunday Aluko Olunuywa was generally depressed and obsessed with the family's status, they did not find any sign of mental illness and in fact he was released on the 8th January 2018.

Rashida Aluko also had her share of psychological observations in 2016 however, she was also found not to suffer from any mental condition. From the report submitted by the social worker, psychiatrist and psychologist nominated in the *in genere*, namely Dr

Alexia Baldacchino, Dr. Joseph Cassar and Ms Carmen Sammut, it results that Rashida Aluko was not consistent in her words and although at first she wanted to send the children to school and let them out of their residence, later she took Sunday Aluko Olunujwa's position that she did not want to send them to school. She stated that her duties were to keep the children clean and well fed and to clean the house. She said that if the State wants the children to go to school, then the state should take them from her. It was also stated that Sunday Aluko Olunuywa was very dominant on his family and there was the suspicion that Rashida Aluko feared him and did whatever he told her to do.

It was evident to all those concerned that Sunday Aluko Olunuywa was obsessed with the fact that his wife Rashida Aluko and their children did not have their refugee status. Numerous officials explained to him that as long as he has the refugee status, all his family is safe and benefits from the same rights as his. Sunday Aluko Olunuwya, however, refused to accept this fact and was obsessed that his family has no rights in Malta and that he could not do anything about it. In order to address this obsession, however, towards the end of 2017 the officials also requested to review the

reasons why Rashida Aluko and their children were not granted the refugee status.

The officers commented that the minors were kept well, clean and that they attended hospital appointments when required to. Monica Cauchi, from the Emigrant's Commission, was following the family in the months leading to the tragic death, used to meet the family every 3 to 4 weeks and the last visit she had prior to the tragic death was at around Christmas time. In her testimony before the Court, she stated that their only concern with the family was the fact that the minors were not being sent to school and were kept inside. In an email she sent on the 10th January 2018, as a followup of a meeting she had with Sunday Aluko Olunuwya, however, she raises the concern that she noticed that Victoria Aluko was not walking well.

During the various meetings that the Aluko family with the social workers, officers from Child Protection Services, Appogg and other officials, all noted that the children were afraid to talk and whenever they were asked questions, they would look at their mum, Rashida Aluko, and reply with a simple yes or no. These officials were also considering, weeks before the accident, to request the issue of a Temporary Care Order in regard to the minors, which order was

subsequently issued in favour of Paula Aluko and Opeyemi Collins Aluko on the 23rd January 2018.

Considered;

That in the *in genere* investigation, the Inquiring Magistrate appointed Dr. Mario Scerri as the forensic doctor and Dr Ali Salfraz as the forensic pathologist to perform the post mortem.

From Dr. Scerri's report it results that the minor died from aplastic anaemia. He stated that there were no signs of violence or ill-treatment on her body. From the testimony taken, it results that Victoria Aluko had been complaining about pain in her feet since the previous November. Although she was eating well and sleeping, sometimes she felt tired. The day of the tragic event, Rashida Aluko went to tell the nuns about Victoria's ill health and they immediately called an ambulance.

When testifying, Dr. Scerri explained that aplastic anaemia is a severe case of anaemia which does not respond to treatment because there is a disruption of the homeopathic tissue. It is an idiopathic condition and may be the result of numerous circumstances, such as a viral infection or following some

medication taken by the patient. It is a very rare condition and although it can be managed, the failure rate is very high. He stated that this is not a condition that the child sustained due to some trauma. He further explained that the symptoms and signs of this condition are pallor and some lethargy. In his testimony, he held that *“lately it was reported that she was complaining of lethargy and sometimes shortness of breath and her mother did not take her to hospital because according to her, her symptoms did not worry her so much.”*

That the report of the post-mortem carried out confirmed that Victoria Aluko died due aplastic anaemia. In their examination it resulted to the pathologists that she had a history of severe anaemia and aplastic anaemia.

Considered;

That the charge brough against both the accused is based on Article 225 of the Criminal Code, which stipulates that:

*“**225.**(1) Whosoever, through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of*

regulations, causes the death of any person, shall, on conviction, be liable to imprisonment for a term not exceeding four years or to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87)."

The elements of this article have been discussed at length by our courts. In the case **Il-Pulizija vs Perit Louis Portelli**¹ the Court held that:

"Għall-kostituzzjoni tar-reat involontarju u meħtieġ li tirrikorri kondotta volontarja negligenti - konsistenti ġenerikament f'nuqqas ta' ħsieb, traskuraġni jew nuqqas ta' ħila fl-arti jew professjoni, jew speċifikatament f'nuqqas ta' tħaris tar-regolamenti - li tkun segwita b'ness ta' każwalità minn event dannuz involontarju; u għall-aċċertament tal-ħtija minħabba kondotta negligenti għandu jsir il-konfront tal-kondotta effettivament adoperata ma' dak tal-'bonus pater familias'"

¹ **Il-Pulizija vs Perit Louis Portelli**, Court of Criminal Appeal, 4th February 1961

Moreover, in the case **Il-Pulizija vs Saverina sive Rini Borg et²**, the Court drew a distinction between the subjective theory of causality and the objective theory of causality in the offence of involuntary homicide. It was held that our Courts have repeatedly adopted the subjective theory. In regard to the concept of culpa, the Court held that:

“In konkluzjoni, il-kunċett tal-kulpa jista’ jiġi definit hekk:

“Kondotta volontarja (azzjoni jew ommissjoni) li tikkaġuna event antiġuridiku, mhux volut, iżda prevedibbli, b’mod li seta jiġi evitat bl-użu ta’ attenzjoni jew prudenza fi grad normali”;

“Għalhekk, skond din il-Qorti, l-elementi essenzjali li jikkomponu dan il-kunċett tal-kolpuż jistgħu jiġu hekk stabbilit:

Azzjoni jew ommissjoni volontarja;

Event jew akkadut dannuż;

² **Il-Pulizija vs Saverina sive Rini Borg et**, Court of Criminal Appeal, 31st July 1998.

Ness ta' kawżalità bejn l-azzjoni (jew ommisjoni) u l-event jew akkadut dannuż;

Il-prevedibbiltà u eċċezzjonalment il-previżjoni ta' dan l-event jew akkadut dannuż;

Il-konnotat karatteristiku tal-kulpa hu għalhekk il-prevedibbiltà ta l-event dannuż li kondotta illegali ta' xi ħadd tista' ġgib. Din hija l-kulpa normali jew l-hekk imsejña la colpa incosiente a differenza minn dik imsejña la colpa cosciente li hija l-kulpa bl-element fiha tal-previst ta' l-akkadut;

Il-kulpa normali (incosciente) dik tal-prevedibbli, temerġi meta fil-kondotta ta' l-aġent hemm l-element tan-negliġenza, imprudenza, imperizja jew nuqqas ta' tħaris ta' dritt. Il-kulpa l-oħra (cosciente) tirriżulta meta quddiem il-kondotta tal-aġent, l-akkadut dannuż, bħala konsegwenza għal dik il-kondotta, jidher possibbli, u, b'danakollu, hu xorta jwettaq dak l-aġir tiegħu bl-isperanza li dak li possibbli li jġri fil-fatt ma jġrix. Din it-tip ta' kulpa (cosciente) għalhekk hi forma ta' kulpa iktar gravi mill-kulpa normali (incosciente), ċjoè dik tal-prevedibbli imma

*mhux previst, u dan għaliex fil-każ tal-colpa cosciente, dik tal-
previst hija viċin ħafna ta', u tikkonfina mad-doluż, il-volut;*

*Hemm diversi forom ta' kondotta kolpuża, derivanti minn atti
ta' negliġenza, imprudenza, imperizja u non-osservanza tal-
liġijiet regolament, ordnijiet u simili;*

*L-imprudenza tiġi mill-aġir ta' xi ħadd mingħajr ma jieħu
l-opportuni kawteli;*

*In-negliġenza tiġi mid-diżattenzjoni u disakortezza ta' l-
aġent fil-kondotta tiegħu*

*L-imperizja hija l-forma speċifika tal-kulpa professjonali,
ċjoè kif jgħid il-Manzini “intettudine e insufficienza
professionale ġenerali e specifica, nota all’agente, di cui
egli vuole non tener conto”;*

... omissis...

Taħt dawn il-forom ta' kondotta kolpuza sia minħabba imprudenza, negligenza u imperizja, siegħa minħabba nuqqas ta' osservanza tal-liġijiet, regolamenti, ordnijiet u simili, hemm differenza essenzjali, dik tal-prevedibbilità. Il-prevedibbilità tibqa' essenzjali taħt kull forma ta' kulpa, iżda fi gradi differenti.”

Finally, in the case **Il-Pulizija vs John Vella**,³ the Court held that:

“Infatti, id-definizzjoni klassika tal-“colpa criminale” tibqa' dik mogħtija mill-Carrara, Vol. I Parte Generale, b'dawn il-kliem: - “La volontaria omissione di diligenza nel calcolare le conseguenze possibili e prevedibili del proprio fatto” (para. 80, p. 114). Dan l-awtur ikompli jgħid li, tkun xi tkun id-definizzjoni tal-“colpa” fil-kriminal, eppure “.... il tripode sul quale si asside la colpa sarà sempre questo – (1) volontarietà dell'atto, (2) mancata previsione dell'effetto nocivo, (3) possibilità di prevedere”;

³ **Il-Pulizija vs John Vella**, Court of Criminal Appeal, 15th February 1958.

Considered;

As the Courts have stated in the above quoted landmark judgements, the concept of *culpa* necessitates a voluntary action which causes an unwanted yet illegal event which could have been foreseen and which could have been avoided with the normal attention and prudence exercised by a *bonus paterfamilias*. Furthermore, there must be a causal link and effect between the voluntary action and the resultant event.

It is the view of this Court that for a proper and correct examination of the circumstances leading to this tragic death and in order to determine whether the elements of this offence have been satisfied, or not, in this case, it is necessary for the Court to examine the background of the accused and their actions in the months preceding her death.

It clearly results that the move from Ħal Far tent village to St. Joseph Home, Żabbar severely affected the Aluko family's functionality. Sunday Aluko Olunuywa became obsessed with the status of his

wife and children in Malta so much that he believed that they have no rights in Malta and this notwithstanding the consistent assurances by the social workers and other officials that this was not the case and that they all enjoyed the same rights in Malta. Their obsession was so profound that for a period of nearly two years prior to the tragic incident, they refused to send their children to school and kept them indoors most of the time. It was clear that their status was being prioritised over the children's educational, social and medical needs.

From the acts of the case, it results that Victoria Aluko had been exhibiting symptoms of anaemia for a number of weeks prior to her tragic demise. In fact, from Dr Scerri's medical report it transpired that the minor had been complaining about pain in her feet since November. This testimony is also corroborated by Monica Cauchi in her email of the 10th January 2018, where she noticed that whilst being with the accused, she noticed that Victoria was not walking properly. Moreover, the pathologists also confirmed that Victoria Aluko had a history of severe anaemia. Victoria Aluko was residing with both the accused and the other children.

The Court heard that the condition of aplastic anaemia is a very rare condition. Although in various cases patients exhibit signs of lethargy and shortness of breath, it is very rare that these symptoms are the result of this condition. Dr. Scerri stated that this condition may be managed, although the failure rate is very high.

It is clear to the Court that although Victoria Aluko had exhibited signs of anaemia, the accused did not give her the necessary medical attention. There is no doubt that this medical condition was left untreated by the accused since, at least, November 2017. Although the Court cannot say whether any medical treatment could have enabled Victoria Aluko to overcome this tragic condition, the Court can safely say, on the other hand, that the neglect of her symptoms made her death an inevitable consequence.

Moreover, had the signs of this condition exhibited themselves a few hours or days before the tragic event one could possibly understand the accused for wanting to wait a few days to see whether the minor recovers from her lethargy and pain. In this case, this clearly did not happen. The symptoms have been manifesting themselves for weeks and it is only logical that the more time passed, the worse her

symptoms developed. The accused saw the minor's condition deteriorating over a span of weeks and yet, notwithstanding such visible deterioration, they kept on persisting in neglecting her medical needs. The accused, as parents, could have attempted at avoiding this tragedy by seeking medical attention for the minor. This attention does not require an elevated sense of prudence or attention, but a basic level as would be exercised by a reasonable *bonus paterfamilias*. It is clear to the Court that not even this basic level of attention was exercised by the accused and as a result of this negligence, the minor's death became inevitable.

Furthermore, there is no evidence suggesting that the accused were suffering from any condition that could have impaired their judgement in the months during which Victoria Aluko exhibited these symptoms.

It is clear in the Court's mind that by consistently neglecting Victoria Aluko's symptoms, both the accused neglected their duty towards the minor exercised as a normal *bonus paterfamilias* would do. The Court highlights that all parents and guardians are legally and morally obliged to look after, maintain, instruct and educate their

children and look after their health.⁴ In this case, this lack of attention is further aggravated with the fact that Victoria Aluko was too young to take care of her health and therefore relied totally on her parents to take care of this need – a care which the parents failed to provide without any justifiable cause. Had they exercised their diligence timely, Victoria Aluko would have had a fighting chance, albeit slim, to overcome this condition or, at least, to receive the appropriate treatment that could have extended her life.

Therefore, on the basis of the above, the Court finds that the prosecution has proven its case according to law.

Considered;

That from the voluminous correspondence submitted before the Court, it is also evident that the governmental authorities involved did not give this case the urgency and attention it required until it was too late. It results that from the moment the Aluko family moved in at St. Joseph Home, they were being followed by the Emigrants Commission. When it became evident that the minors were not being

⁴ Vide Articles 3B, 7 and 19 of the Civil Code, Cap. 16 of the Laws of Malta.

sent to school, various social workers and other officials started following the case. The numerous emails submitted, however, show a great deal of toing and froing between various entities such as the school's officials, the Emigrants Commission, FSWS-Appoġġ and Child Protection Services amongst others.

The Court cannot yet understand how in the face of this grave situation which prolonged over two years, it took the death of Victoria Aluko for the application and issuing of the necessary Temporary Care Orders⁵ when in November 2017 there was already talk of the serious need for this Order. It also results to the Court that although in November 2017 Dr Mariella Mangion had raised the need for the children to have a following examination at Mater Dei, for some unknown reason, this followup examination never materialised. Moreover, closer to the date of the tragic death, social workers were on strike and were not using any forms of communication or setting multidisciplinary meetings to discuss cases.

⁵ The Temporary Care Orders in respect to Paula Aluko and Opeyemi Collins Aluko were issued on the 23rd January 2018 – 2 days after Victoria Aluko's death.

The Court finds, however, that although the system failed Victoria Aluko, the ultimate responsibility for her health was left in the hands of the accused as at law they were still jointly vested with her care and custody.

Considered;

That in the case of Rashida Aluko only the prosecution requested the Court to consider her as a recidivist in terms of articles 49 and 50. The Court notes that no relevant evidence was presented by the prosecution in order to sustain this position and therefore, the Court will not consider her as a recidivist in terms of law.

Considered;

That as regards the punishment to be imposed, the Court shall be guided by the observations made in the case **Ir-Repubblika ta'**

Malta vs Rene' sive Nazzareno Micallef⁶ wherein it was stated that:

“... huwa minnu li l-piena m'ghandhiex isservi bhala xi forma ta' vendikazzjoni tas-socjeta` fil-konfront tal-hati. Il-piena ghandha diversi skopijiet. Wiehed minnhom huwa sabiex jigi ripristinat it-tessut socjali li jkun gie mcarrat bil-ghemil kriminali ta' dak li jkun. Taht dan l-aspett jassumu importanza, fost affarijiet ohra, kemm ir-rizarciment tad-dannu da parti tal-hati kif ukoll ir-riforma tal-istess hati. Skop iehor tal-piena huwa dak li tigi protetta s-socjeta`. Dan l-iskop jitwettaq kemm billi fil-kaz ta' persuni li b'ghemilhom juru li huma ta' minaccja ghas-socjeta` dawn jinzammu inkarcerati u ghalhekk barra mic-cirkolazzjoni, kif ukoll billi, fil-kaz ta' reati gravi, is-sentenza tibghat messagg car li jservi ta' deterrent generali. Il-Qrati ta' gustizzja kriminali dejjem iridu jippruvaw isibu l-bilanc gust bejn dawn u diversi skopijiet ohra tal-piena.”

⁶ Ir-Repubblika ta' Malta vs Rene' sive Nazzareno Micallef, Qorti tal-Appell Kriminali, 28 ta' Novembru 2006 (Nru 18/2002 VDG):

The Court believes that after taking into account all the circumstances of this case, the accused do not merit an effective custodial sentence. In this particular case, although the Court firmly believes that the accused need attention and treatment in regard to their obsession, it is evident that the provisions of Cap. 446 of the Laws of Malta would have no effect on them. The accused have been offered help numerous times in the past and they categorically refused to benefit from it. There is nothing to show the Court that this time, they will reap any long-term benefit from the provisions of Cap. 446 of the Laws of Malta.

Therefore, the only option the Court has in these circumstances is the application of Article 28A of Cap. 9 of the Laws of Malta. This does not mean, however, that a non-custodial sentence is to be taken lightly. As was held in the case **II-Pulizija vs Maurice Agius**:⁷

“Fl-ahharnett din il-Qorti trid tissottolinea li s-sentenza ta’ prigunerija sospiza mhix, kif jahsbu xi whud, a let off jew semplicement a slap on the hand. Min ikun gie kkundannat ghal piena ta’ prigunerija sospiza jrid ikun, matul il-periodu

⁷ II-Pulizija vs Maurice Agius, Court of Criminal Appeal, 13th November 2009.

operattiv taghha, kif jghid il-Malti, “imqarar u mqarben”, ghax appena huwa, matul dak il-periodu, jikkommetti xi reat iehor li ghalih hemm stabbilita piena ta' prigunerija, meta jinstab hati ta' dak ir-reat l-iehor tigi attivata l-piena ta' prigunerija li tkun giet hekk sospiza, u dak li jkun ikollu allura jibda jiskontaha.”

Decide:

Therefore, on the basis of the above, the Court after having seen Articles 18 and 225 of the Criminal Code, Cap. 9 of the Laws of Malta, finds the accused **Sunday Aluko Olunuywa** and **Rashida Alulko** guilty of the single charge brought against them and condemns them to two (2) years imprisonment which, after having seen Article 28A(1) of the Criminal Code, is being suspended for a period of four (4) years from today.

In accordance with Article 28A(4) of the Criminal Code, the Court explained to the offenders in ordinary language their liability under article 28B of the Criminal Code if during the operational period of this judgement they commit an offence punishable with imprisonment.

Finally, with the application of Article 533 of the Criminal Code, the Court is ordering the accused to jointly or severally pay to the registrar the sum of €3,075.75 representing the cost of this present case and of the *process verbal* of the inquiry, within one year from today.

**Ft.Dr. Leonard Caruana LL.D., M.A. (Fin. Serv).
Magistrate**

**Sharonne Borg
Deputy Registrar**