



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

MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.

Inquiry Number: 666/2022

**The Police
(Inspector Mark Anthony Merieca,
Inspector Alfredo Mangion)**

vs

**Awal Mohammed
(Identity Card number 0045323(A))**

Today, 3rd August 2023

The Court,

Having seen the charges brought against the accused **Awal Mohammed**, 43 years of age, son of Ahmed and Rakiya nee` Hussein, born in Sierra Leone on 8th May 1979, residing at 125, St. Mary Flats, Blk C, Flat 1, Triq il-Ħgejjeġ, San Pawl il-Baħar and holder of identity card bearing number **0045323A**;

Charged with having on 13th November 2022 on these Islands:

1. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta, **which drug was found under circumstances denoting that it was not intended for his personal use**;

2. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis, or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 the Laws of Malta, **which drug was found under circumstances denoting that it was not intended for his personal use;**
3. For being a recidivist after being sentenced for an offence by several judgements issued by the Court of Magistrates (Malta), which judgements have become absolute and cannot be altered as per Sections 49 and 50 of Chapter 9 of the Laws of Malta.

The Court was also requested to attach in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and further to prohibit the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property in terms of Section 22A of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, Section 23A of the Criminal Code, Chapter 9 of the Laws of Malta, Section 5 of Chapter 373 of the Laws of Malta and in terms of Section 36 of Chapter 621 of the Laws of Malta.

The Court was further requested, in case of guilt, to inflict the penalties laid down in the law, and in addition to the said punishment, to order the forfeiture of all the objects exhibited, of the *corpus delicti* and the instruments which served or were intended to be used to commit the crime, and of all that has been obtained by the crime, and to order the forfeiture in favour of the Government of the proceeds as well as of all the property of the accused in terms of Section 22 of the Drugs Ordinance, Chapter 101, Section 3(5) of Chapter 373 as well as Sections 23 and 23B of the Criminal Code, and the Proceeds of Crime Act, Chapter 621 of the Laws of Malta.

The Court was further requested, upon pronouncing judgement or in any subsequent order, to sentence Awal Mohammed to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, within such period and in such amount as shall be determined in the judgement or order as per Section 533(1) of Chapter 9 of the Laws of Malta.

Having seen the records of the case, including the Order of the Attorney General in terms of sub-article (2) of Article 22 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) for the accused to be charged before the Criminal Court to answer to the charges against him for violation of the provisions of the said Ordinance¹;

Having seen that during his examination in terms of law, the accused pleaded not guilty to the charges brought against him²;

Having seen its decree of 12th December 2022, whereby the Court, heaving heard all the evidence adduced at the preliminary examination into the charges against the accused, held that there were sufficient grounds for the trial of the accused on indictment and consequently committed him for trial before the competent Court, directing that the records of the proceedings together with the material objects relating to the offence, be transmitted to the Attorney General within the time prescribed by law³;

Having seen the Order of the Attorney General, dated 11th May 2023, in terms of sub-article (2) of Article 22 and Article 31 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta for the accused to be tried before the Court of Magistrates (Malta) as a Court of Criminal Judicature with regards to the charges brought against him for the breach of the provisions of the said Ordinance. After examining the acts of the proceedings compiled by the said Court as a Court of Criminal Inquiry against the accused, the Attorney General also decided to send the accused for trial by the Court of Magistrates as a Court of Criminal Judicature, in default of any objection on the part of the accused, in terms of Article 370(3)(a) of the Criminal Code, so that this Court may decide upon the following offences in terms of the provisions of:

(1) Article 49 and 50 of the Criminal Code, Chapter 9 of the Laws of Malta;

(2) Article 17, 23, 23A, 23B, 23C, 31 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.⁴

¹ Doc. MM 1, a fol. 7 of the records.

² A fol. 17 of the records.

³ A fol. 92 of the records.

⁴ A fol. 184 *et seq* of the records.

Having seen that during the sitting held on 29th May 2023, the accused declared that he had no objection to his case being dealt with summarily⁵;

Having also heard the accused plead guilty to the charges brought against him, which plea he confirmed after the Court, in terms of Article 453(1) of the Criminal Code, explained to him the consequences thereof and gave him sufficient time to reconsider his plea and to retract it⁶;

Having heard the submissions of the Prosecution and the defence in respect of the punishment to be meted out.

Considers that:

In view of the guilty plea filed by the accused, as duly assisted by his lawyer, the Court cannot but find him guilty of the charges brought against him.

For the purpose of the punishment to be inflicted, the Court took into account that the accused registered his guilty plea at the very final stages of these proceedings, the serious nature of the offences of which he is being found guilty and the circumstances of the case, including the amounts of cannabis seized from the accused's possession.

From the records of the case, it transpires that following information obtained by Drug Squad personnel regarding alleged drug trafficking around Fra Ben, in Qawra, on 13th November 2022, several police officers carried out observations in the said area, where between 11.00 a.m. and 11.30 a.m., the accused was stopped and searched, after having been observed acting strangely and signalling to another person. The accused was found to be in possession of four (4) small plastic bags containing a green substance, suspected to be cannabis grass and two (2) mobile phones, which contained various messages indicating dealing in drugs. The accused was arrested. During a search at the accused's residence at 125, 'St. Mary's Flat', Block C, Flat 1, Triq il-Ħgejjeġ, San Pawl il-Baħar, where the said accused resided alone⁷, a bag was found to contain four (4) big bags with a green substance suspected to be cannabis grass and two (2) brown blocks suspected to be cannabis resin, two (2) digital scales and a blade with a yellow handle. A number of resealable bags was also found, and a sum of money was seized from his room. During a search carried

⁵ A fol. 192 of the records.

⁶ A fol. 238 of the records.

⁷ *Vide* the testimony of **Marvic Portelli**, a fol. 94a *et seq* of the records.

out in the accused's vehicle, a Renault Clio, bearing registration number GBE 782⁸, the police found a box of 'Panadols' containing small packets with suspected cannabis grass, new plastic bags and another mobile phone. On the same day, the accused released a statement whilst legally assisted, whereby he opted not to reply to any question that could incriminate him, in terms of his rights at law.⁹

It further results that an inquiry was held in this case by Magistrate Dr. Donatella Frendo Dimech, who appointed several experts to assist her.¹⁰

From the report exhibited by **expert Scientist Godwin Sammut**, appointed during the said inquiry¹¹, it results that on 14th November 2022, the said expert was handed over seven (7) documents by Inspector Mark Anthony Mercieca, which he documented as follows:

Laboratory code	Description
028_23_01	Evidence bag S00513320 that contained: (i) 14 transparent plastic sachets which contained green buds and (ii) an empty <i>Panadols Plus</i> box. The empty sachets were handed over to PS 844 C. Micallef (Malta Police Forensic Science Laboratory – Chemical Enhancement Unit).

According to the said report, the buds in the fourteen sachets weighed 0.89 g, 0.87 g, 0.88 g, 0.86 g, 0.87 g, 0.88 g, 0.93 g, 0.90 g, 0.89 g, 0.89 g, 0.91 g, 0.90 g, 0.87 g and 0.88 g respectively.

⁸ *Vide* the testimony of **Stephen Cachia**, a fol. 115a *et seq* of the records.

⁹ The audio-visual statement was exhibited by the Prosecuting Officer, Inspector Mark Anthony Mercieca as Doc. MM 12 (a fol. 37 of the records). *Vide* the testimony of **Inspector Mark Anthony Mercieca**, a fol. 22 *et seq* of the records; the testimony of **PC 1397 Ludvic Farrugia**, a fol. 41 *et seq* of the records; the testimony of **Inspector Alfredo Mangion**, a fol. 63 *et seq* of the records; the testimony of **PC 215 Clint Zahra**, a fol. 117a *et seq* of the records and a fol. 165 *et seq* of the records; the testimony of **PC 1560 Kevin Borg**, a fol. 117d *et seq* of the records; and the testimony of **PC 1124 Steve Borg**, a fol. 167 *et seq* of the records.

¹⁰ *Vide* the *proces verbal* exhibited as Doc. MM, a fol. 50 *et seq* of the records. Also *vide* the report Doc. AG, exhibited by **PS 2424 Abigail Grech**, appointed as Scene of Crime Officer, a fol. 151 *et seq* of the records and the photographs forming part of her report, a fol. 156 *et seq* of the records. The objects and substances seized may also be seen in the photographs forming part of the report exhibited by expert **Dr. Godwin Sammut**, Doc. GS, a fol. 136 *et seq* of the records.

¹¹ By a decree of this Court as a Court of Criminal Inquiry, dated 9th December 2022, the expert's appointment was extended to determine the market value of the substance (a fol. 47 of the records).

028_23_02 Evidence bag S00513322 that contained: (i) 4 lighters (ii) two screws and (iii) transparent plastic sachets.

028_23_03 Evidence bag M00145685 that contained two brown blocks.

The two brown blocks weighed 137.35 g.

028_23_04 Evidence bag MC00024071 that contained (i) a joint and (ii) four transparent plastic sachets each containing green buds. The empty sachets were handed over to PS 844 C. Micallef (Malta Police Forensic Science Laboratory – Chemical Enhancement Unit).

The buds in the four sachets weighed 0.88 g, 0.86 g, 0.88 g and 0.22 g respectively.

028_23_05 Evidence bag M1456686 that contained (i) two weighing scales which work and (ii) a blade with a yellow handle;

028_23_06 Evidence bag LC00124617 containing empty sachets.

028_23_07 Evidence bag LC00124619 that contained: (i) a plastic bag with the words PAVI PAMA and (ii) four transparent plastic sachets, each containing green buds. The empty sachets were handed over to PS 844 C. Micallef (Malta Police Forensic Science Laboratory – Chemical Enhancement Unit).

The buds in the four plastic sachets weighed 102.73 g, 100.47 g, 102.30 g and 102.65 g respectively.

The said expert concluded as follows in respect of these documents:

- a) On extracts taken from the green buds in documents **028_23_01**, **028_23_04** and **028_23_07**, the substance *Tetrahydrocannabinol (THC)* was found. The total weight of the buds was **423.41 grams**. The purity of THC in the buds

was circa 5.9%. The substance THC is derived from the cannabis plant and the buds are a part thereof and are therefore controlled by law in Part III, Section 8 of Chapter 101 of the Laws of Malta. The substance THC was also found on an extract taken from the joint in document **028_23_04** and on swabs taken from the weighing scales in document **028_23_05**.

- b) In terms of the last Country Drug Report to the EMCDDA in which Malta quotes a value, the value of cannabis herb is between €10 and €28 per gram. In this case, this gives a value between €4,234 and €118,554¹².
- c) On extracts taken from the brown blocks in document **028_23_03**, the substance *Tetrahydrocannabinol (THC)* was found. The total weight of the blocks was 137.35 grams. The purity of THC in the blocks was circa “5.9 4.7%”.¹³ The substance THC is derived from the cannabis plant and is thus controlled by law under Part III, Section 8 of Chapter 101 of the Laws of Malta.
- d) In terms of the last Country Drug Report to the EMCDDA in which Malta quotes a value, the value of cannabis resin is between €15 and €30 per gram. In this case, this gives a value between €2,060 and €4,120.¹⁴

For the purpose of the punishment to be meted out, the Court further took into consideration the Social Inquiry Report drawn up by **Probation Officer Gabriella James** in respect of the accused¹⁵ and the testimony of the said Probation Officer.¹⁶ From the said report, it transpires that the accused had a very difficult childhood, that in 2015/2016 he was diagnosed as suffering from epilepsy and that since his time in Libya, in 2003 and even in later years when he came to Malta, he used cannabis, socially and irregularly, until 2018. Although he took medication for his medical condition, this did not seem to have the desired effect as he still suffered from seizures and so in 2018, he started to self-medicate using cannabis, at which point he claims to have started using substantial amounts daily. The Probation Officer notes in her report that the accused could have formed a dependency on the

¹² The Court notes that 423.41 grams at a value of €28 per gram are equal to €11,855.48 and not €118,554 as indicated by the expert in his report.

¹³ In his testimony, expert **Scientist Dr. Godwin Sammut** states that the purity of the THC in the blocks ranged from 4.7% to 5.9% (a fol. 122 *et seq* of the records).

¹⁴ This report, Doc. GS, is exhibited a fol. 126 *et seq* of the records.

¹⁵ This report Doc. GJ, is exhibited a fol. 214 *et seq* of the records.

¹⁶ A fol. 211 *et seq* of the records.

substance, disguising this use as a need for medical purposes. According to the Probation Officer:

“... it is of utmost importance that Mr Mohammed is completely honest with his doctors about this substance intake, in order to ensure that his treatment could be appropriate for his medical needs. This could also allow for the further exploration on the possibility that Awal could be dependent on the use of this substance and thus allowing for appropriate intervention. Additionally, Awal could benefit from further psychiatric or psychological assessment regarding his present complaints on hearing specific sounds.

All this in the hope that Awal Mohammed is able to return back into the community and steer away from further brush ins with the law, and in turn allowing him to continue to adapt into a stable way of living through his work and familiar support.”¹⁷

The Court also took note of the testimony of Dr. Christopher Cremona regarding the medical condition of the accused.¹⁸

The Court is also considering the updated criminal record of the accused, from which it results that the accused had been found guilty of aggravated theft, illegal arrest, causing slight bodily harm, violent indecent assault on a minor and having failed to observe bail conditions, in respect of which the accused was sentenced *inter alia* to a term of imprisonment on two occasions.

In relation to the quantum of the punishment to be inflicted, the Court is also taking into consideration jurisprudence of the Maltese Courts dealing with similar offences. In the case, **Repubblika ta’ Malta vs Marlon Apap**, decided by the Criminal Court on 27th February 2023, in its considerations on the punishment to be meted out, the Court stated that:

“L-Avukat Ġenerali insista wkoll li f’Malta, għalkemm ma hawnx sistema ta’ “sentencing policy” formali, huwa fatt magħruf li l-Qrati jagħtu każ ta’ każijiet oħra li jkunu ġew deċiżi minnhom fil-passat u fis-sentenzi tagħhom iqisu l-fatti li fuqhom Qrati preċedenti jkunu waslu li jsawru l-pieni tagħhom fuqhom. Fil-fatt f’dan il-qasam jirriżulta ċar li

¹⁷ A fol. 226 of the records.

¹⁸ *Vide* a fol. 237a *et seq* of the records.

l-pieni mogħtija minn dawn il-Qrati fir-rigward tal-abbuż mid-droga cannabis matul dawn l-aħħar ftit snin għaddew minn tibdil sostanzjali mnejn jirrizulta li l-pieni tbaxxew. Dan huwa muri minn każijiet riċenti bħal **Ir-Repubblika ta' Malta vs. Abel Fernandez Vasquez** deċiża nhar it-28 t'April 2022 li kienet titratta każ t'importazzjoni, pussess aggravat u traffikar ta' cannabis fl-ammont ta' elf u mitejn gramma fejn f'kuntest li għalih ma kienx applikabbli l-artikolu 29 tal-Kapitolu 101 tal-Liġijiet ta' Malta il-Qorti issentenzjat lill-ħati għall-piena ta' erba' snin u tminn xhur priġunerija flimkien ma multa ta' ħmistax il-elf euro. Inoltre fil-kawża **Ir-Repubblika ta' Malta vs. Abigail Aborishade Abidemi** deċiż minn din il-Qorti kif presjeduta, l-akkużata giet sentenzjata għall-piena ta' ħames snin u sitt xhur priġunerija flimkien ma multa ta' tlieta u għoxrin elf euro (€23,000) għall-akkużi ta' importazzjoni u pussess kwalifikat ta' kilogramma pjanta tal-cannabis; f'dan il-każ sitt xhur priġunerija minnhom kienu komminati lilha in segwitu għall-sejbien ta' ħtija tat-tielet kap fejn hija gie mixlija bil-kummissjoni tar-reati de quo fil-perjodu operattiv ta' sentenza ta' priġunerija sospiża ta' sitt xhur u fejn allura l-Qorti ordnat li dik is-sentenza tiġi attivata kontra l-ħatja. Anke fil-każ ta' Aborishade ma kienx hemm il-benefiċċju tal-artikolu 29 applikabbli.”

In the case **The Republic of Malta vs Ryan Rahiel Irfaan Naipal**, decided by the Criminal Court on 9th May 2023, the accused had been charged with importing five hundred grams of cannabis plant, and the offence of conspiracy in terms of Article 22(1)(f) of Chapter 101 of the Laws of Malta. Here the Court took into account *inter alia* the early guilty plea registered by the accused, that he was to benefit from the application of Article 29 of Chapter 101 of the Laws of Malta, that the accused was part of a group consisting of at least another person and that they worked together so that the drug could be imported into Malta, though it did not appear that the accused had the main role in this association, and that although the drug cannabis is still considered by law as a dangerous drug, on the other hand it is considered that its abuse is not one of those that most harms human health. The Court further held that:

“During the last few years there has been a development in the way Maltese society and the Maltese Legislator look at the use of this drug in the sense that with laws introduced in 2021 the Maltese Legislator took a more tolerant position towards those who use cannabis drug for their personal use. But at the same time, the same Legislator kept an iron fist with anyone who in any way deals in this drug or is caught in

possession of such a drug in circumstances that show that it was not for the exclusive use of the possessor: so much so that it did not change the severe punishment for those who traffic in this drug or who possess this drug not for their exclusive use.”

Whilst referring to ample jurisprudence in relation to crimes with which the accused was charged, the Court condemned him to a term of imprisonment of two (2) years and to a fine (*multa*) of four thousand euro (€4000).

In the case **Il-Pulizija vs Jerken Decelis** decided by the Court of Criminal Appeal on 8th January 2020, where the cannabis resin seized amounted to 469 grams with a purity of 8%, the Court condemned the accused to two and a half years imprisonment and a fine (*multa*) of three thousand euro (€3,000), whilst considering that he was a recidivist in terms of Articles 49 and 50 of the Criminal Code, deducting the applicable punishment in terms of Article 29 of Chapter 101 of the Laws of Malta by two degrees and taking also into consideration that the appellant was leading a stable lifestyle and had rehabilitated himself. In that case the accused was found guilty of the possession of cannabis resin in circumstances denoting that this was not for his exclusive use.

In the case **Il-Pulizija vs Andre` Falzon u Sean Farrugia**, decided by the Court of Criminal Appeal on 28th January 2022, Falzon was condemned to a term of four years imprisonment and Farrugia to a term of three years imprisonment, each being also condemned to pay a fine (*multa*) of four thousand euro (€4,000). Both accused were found guilty of the crimes of conspiracy, dealing in drugs and possession in circumstances denoting that the drugs were not intended for their exclusive use. Here the Court took into consideration the substantial amount of cannabis plant seized (684 grams) and the serious nature of the offences of which they were found guilty, as well as of their role as intermediaries in the relevant deal, that they had registered progress in their quest for rehabilitation and the time elapsed since the commission of the said offences. The Court also applied Article 29 of Chapter 101 of the Laws of Malta to the benefit of the accused, reducing the applicable punishment by one degree.

It is also worth noting that in the case **Repubblika ta' Malta vs Marlon Apap**, the Criminal Court referred to the judgement of the Court of Criminal Appeal in the names **Ir-Repubblika ta' Malta vs Carmen Butler et**, decided on 26th February 2009, where it was held that:

S'intendi, kif diga` nghad, "sentencing is an art rather than a science" u wiehed ma jistax jippretendi xi precizjoni matematika jew identita` perfetta fit-tqabbil tal-fatti ta' kaz ma' iehor jew tal-piena erogata f'kaz ma' dik erogata f'kaz iehor.

It is clear that whilst the Court is taking into consideration the said jurisprudence, it is also taking into account the nature and the particular circumstances of the present case, as referred to above in its considerations, in meting out what it deems to be the appropriate punishment.

The Court is also applying the provisions of Article 17(b) of the Criminal Code in respect of the first and second charges brought against the accused.

Conclusion

For these reasons, the Court after having seen Articles 8(a), 8(d), 22(1)(a), 22(2)(b)(i), 22(3A), 22(7) and 24A of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Articles 17(b), 49 and 50 of the Criminal Code, upon his guilty plea, finds the accused **Awal Mohammed** guilty of the charges brought against him and condemns him to **a term of imprisonment of thirty (30) months** – from which term there must be deducted the period of time during which the accused has been held in preventive custody in connection with this case - and **a fine (*multa*) of four thousand euro (€4,000)**, which fine, in default of payment, shall be converted into a further term of imprisonment according to law.

In terms of Article 533 of the Criminal Code, the Court condemns the accused to the payment of the expenses incurred in the appointment of experts in this case, namely the sum of four hundred and forty-seven euro and eight cents (€447.08) in relation to the appointment of expert Godwin Sammut and the sum of one hundred and twenty-six euro and forty cents (€126.40) in relation to the appointment of PC 2424 Abigail Grech. Such expenses amount in total to the sum of five hundred and seventy-three euro and forty-eight cents (€573.48). Furthermore, in terms of Article 392C of the Criminal Code, the Registrar shall determine the costs relating to the appointment of Dr. Martin Bajada to date, and to proceed to their recovery from Awal Mohammed.

The Court further orders the forfeiture in favour of the Government of Malta of all the property involved in the crimes of which the accused has been found guilty and

other monies, moveable and immovable property belonging to the said Awal Mohammed.

The Court orders the destruction of all the objects exhibited, consisting of dangerous drugs or objects relating to drug use, once this judgement becomes final and definitive, which destruction shall be carried out by the Registrar, Criminal Courts and Tribunals, who shall draw up a *proces-verbal* documenting the destruction procedure. The said *proces-verbal* shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

In view of the Social Inquiry Report drawn up in respect of the accused, the Court draws the attention of the Director of the Correction Services Agency that Awal Mohammed should continue to obtain the support currently provided within the Agency and to obtain any psychological, psychiatric or other assistance, as deemed necessary by the professionals involved.

Natasha Galea Sciberras
Magistrate

Oriana Deguara
Deputy Registrar