



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

**MAGISTRATE
DR RACHEL MONTEBELLO B.A. LL.D.**

Case Number: 795/2021

**THE POLICE
(Inspector Darren Buhagiar)
(Inspector Gabriel Kitcher)**

-Vs-

EHIS IMBOHIO

Today, 9th August 2023

The Court,

Having seen the charges brought against **EHIS IMOBHIO** of 40 years of age, son of Imobhio and Grace born in Benin City, Nigeria on the 1/03/1981, residing at 39, Triq Santa Duminka, Zabbar and holder of Nigerian passport bearing number A10726156 and Italian residence permit card bearing number I15313145, accused of having on the 28th December 2021, at about 21:45hrs and in the earlier hours at Triq il-Biccieni, Zabbar;

1. Assaulted and caused grievous bodily harm to Ojelede Jude Okoeguale as certified by Dr. Kyle Muscat (MD 6382), in terms of Articles 216(1)(b) and 218(1)(b) of Chapter 9 of the Laws of Malta;
2. Voluntarily breached the lawful order and public peace, in terms of Article 338(dd) of Chapter 9 of the Laws of Malta;
3. Uttered insults or threats, or being provoked, carried his insults beyond the limit warranted by the provocation, in terms of Article 339(1)(e) of Chapter 9 of the Laws of Malta.

The Court was requested to provide for the safety of Ojelede Jude Okoeguale or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, require the offender to enter into his own recognizance in a sum of money to be fixed by the Court as per Article 383 of Chapter 9 of the Laws of Malta;

The Court was also kindly requested to condemn the person convicted to pay wholly or in part, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee as per Article 533 of Chapter 9 of the Laws of Malta.

Having heard the accused plead not guilty to the charges during his arraignment on the 30th December 2021;

Having heard the defendant during the hearing of the 3rd August 2023 plead guilty to all charges brought against him;

Having solemnly warned the accused of the legal consequences of his guilty plea and of a declaration of guilt and having heard the accused confirm his guilty plea even after having been given sufficient time in order to reconsider his admission of guilt

and to consult with his lawyer and also after having warned him of the applicable punishment according to law upon a finding of guilt for the crimes charged;

Having heard the testimony of the witnesses summoned by the Prosecution;

Having seen all the evidence adduced;

Having seen all the acts forming part of the record of the proceedings;

Having heard the oral submissions of the Prosecution and the defence regarding the appropriate punishment to be inflicted;

Having seen that the case was adjourned for today for sentencing;

Having considered;

That in view of the guilty plea filed by the person accused to all the the charges brought against him, in the presence of his legal counsel and after having observed the provisions of Article 392A of the Criminal Code, the Court has no alternative but to declare him guilty of all charges brought against him.

It is undisputed that the accused was involved in a fight with Ojelede Jude Okoeguale as a result of which, both suffered injuries. The accused was charged with having caused wilful grievous bodily harm to Ojelede Jude Okoeguale and he admitted to the charge *inter alia* of having voluntarily caused such injuries. From the evidence heard by the Court until the person accused entered and confirmed his guilty plea, it would result that the victim suffered skin and underlying tissue loss (cartilage) on the left part of his nose as a result of a human bite injury, and a lacerated wound on his lip.

Mr. Francis Xavier Darmanin and Ms. Juanita Parnis testified that the victim's nose had to be reconstructed with a skin flap taken from the cheek under general

anaesthetic. The lacerated wound on his lip was sutured but left a scar which was still visible in September 2022, several months after the injury was sustained. Ms. Juanita Parnis confirmed that this type of wound on the lip will always leave a permanent scar, a prognosis which was also endorsed by Mr. Francis Xavier Darmanin who testified that the wounds inflicted are permanent and the victim would require further surgery to correct minor deformities in the nose and also the insertion of cartilage in order to support it and restore its functionality. As explained by Ms. Juanita Parnis in her testimony¹, the diameter of the left-hand nostril of the victim as surgically reconstructed to date, is smaller than that of the other nostril: thus the need for further correction through additional surgical interventions.

According to the relevant provisions of article 218(1) of the Criminal Code, a grievous bodily harm is punishable with imprisonment for a term from five to ten years, *inter alia*:-

(a) if it causes any permanent debility of the health or any permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity;

(b) if it causes any serious and permanent disfigurement of the face, neck, or either of the hands of the person injured.

Article 216 of the Criminal Code deems a bodily harm to be grievous and is punishable with imprisonment for a term from one year to seven years, if, according to the relevant provision:-

(1)(b) ... it causes any deformity or disfigurement in the face, neck, or either of the hands of the person injured; ...

¹ 3rd August 2023.

The principles that govern the classification of the various degrees of bodily harm are well-established in case-law:-

“Il-kwistjoni ta’ jekk offiza hiex wahda hafifa u ta’ importanza zghira, hafifa, gravi jew gravissima hi wahda ta’ fatt u ghalhekk rimessa ghall-gudikant tal-fatt (fil-kaz ta’ guri, ghalhekk, rimessa f’idejn il-gurati; fil-kaz odjern rimessa f’idejn il-gudikant ta’ l-ewwel grad...). Ma hix, ghalhekk, kwistjoni, li tiddependi neccessarjament jew esklussivament fuq “opinjoni medika”. It-tabib jew tobba jispjegaw x’irriskontraw bhala fatt; u, jekk il-qorti tippermettilhom, jistghu joffru l-opinjoni taghhom dwar, fost affarijiet ohra, kif setghet giet ikkagunata dik l-offiza, jew ma’ xhiex huma kompatibbli s-sintomi li jkunu gew klinikament riskontrati. Ikun jispetta mbaghad ghall-gudikant tal-fatt li, fid-dawl mhux biss ta’ dak li jkun xehed it-tabib izda fid-dawl tal-provi kollha, jiddetermina n-natura ta’ l-offiza.”²

As for as the deformity and or disfigurement in the face, hands or neck, mentioned in articles 216(1)(b) and 218(1)(b) of the Criminal Code, it has been held³:-

“B’mankament fil-wiċċ il-ligi qed tirreferi għal kull deterjorament tal-aspett tal-wiċċ li, anke mingħajr ma jnissel ribrezz jew ripunjanza, jipproduċi sfigurament "cioe' peggioramento d'aspetto notevole o complessivo o per l'entita' della alterazione stessa, o per l'espressione d'assieme del volto". Sfreġju, mill-banda l-ohra u a differenza ta' mankament, hija kull ħsara li tista' ssir fil-regolarita' tal-wiċċ, fl-armonija tal-lineamenti tal-wiċċ, u anke f'dik li hija s-sbuħija tal-wiċċ. Skont ġurisprudenza ormai pacifika, din il-ħsara li tammonta għal sfreġju trid tkun viżibbli minn distanza li hi dik "li soltu jkun hemm bejn in-nies meta jitkellmu ma' xulxin.”

It is clear that the seriousness and permanence of the disfigurement of the face, hands or neck is an essential element for the disfigurement that is envisaged in article 218(1)(b) of the Code.

² **Il-Pulizija vs Joseph Azzopardi** – Qorti tal-Appell Kriminali, deciza 30 ta’ Lulju 2004.

³ **Il-Pulizija vs Paul Spagnol**, deciza mill-Qorti tal-Appell Kriminali wkoll fit-12 ta’ Settembru 1996.

In the judgement in the names **Il-Pulizija vs Antonio sive Anthony Randich**, delivered on the 2nd September 1999⁴, it was held:-

“Kif din il-Qorti kellha l-opportunita` li tirrimarka f’okkazzjonijiet ohra, l-isfregju (‘disfigurement’) fil-wicc (jew fl-ghonq jew fl-id) kontemplat fl-artikolu 216(1)(b) tal-Kodici Kriminali jista’ jkun anke ta’ natura temporanea, bhal, per eżempju, sakemm il-ferita tfiq. Huwa biss fil-kaz tal-hekk imsejja ‘offiza gravissima’ fl-artikolu 218(1)(b) li l-ligi tirrikjedi l-permanenza (oltre l-gravita’) ta’ l-isfregju.”

Upon applying these principles to the facts of the case at hand, it is the Court’s view that Ogolede Jude Okoeguale suffered a disfigurement of his face because it was seriously damaged - aesthetically at the very least - as a result of the bite wound to his nose, which resulted in the loss of nose cartilage. The severe damage to the face consisting in the evident loss of a part of the nose⁵, could only be corrected through reconstructive plastic surgery (which required the removal of a flap of skin from the victim’s cheek), failing which, there can be no doubt also as to the permanence of the disfigurement caused by the injury.

Consequently, the bodily harm caused to the injured person by the accused in this case is not merely “*any deformity or disfigurement*” of the face as would fall within the scope of article 216(1)(b) of the Criminal Code, but one of a far more grievous nature, consisting of a serious and permanent disfigurement of the face in terms of article 218(1)(b) of the Criminal Code.

Having considered;

The Court must point out that when faced with a plea of guilt which has been registered in compliance with all the procedural safeguards stipulated in article 392A

⁴ Court of Criminal Appeal.

⁵ Left nostril : see the several photos of the injury, exhibited in the record.

of the Criminal Code, it cannot apply a defence to a charge which might have been applicable had the person accused not pleaded guilty to the charges brought against him and maintained his innocence.

In this case, the accused had indicated his intention to plead self-defence during the hearing of the 12th October 2022, but this plea was tacitly withdrawn when he entered an unconditional and unreserved admission to the charges on the 3rd August 2023. Although after having reviewed the evidence in order to determine the punishment that is to be meted out upon the accused's admission of guilt, the Court excludes the absolute application of article 223 of the Criminal Code to the facts of this case⁶, and could not in such circumstances, apply article 392A(3) of the Criminal Code since there was no good reason to doubt that the offence took place or that the accused is guilty of the offence, it is reasonable to conclude from the evidence that there exist circumstances envisaged by law which would have applied to mitigate the applicable punishment had the person accused not insisted on filing an unconditional guilty plea to all the charges. Indeed, the Court finds that the person accused acted in circumstances that might - had this line of defence been duly and actively pursued - have justified a plea of excess of self-defence in terms of article 227(a) or (d)⁷ or excusable wilful bodily harm in terms of article 230(a), (c) or (d) of the Criminal Code.

But as already pointed out, the registration of a guilty plea precludes the Court from considering and deciding whether the crime of wilful bodily harm is in fact excusable (as it would have done when deciding on the guilt or otherwise of the accused had he maintained his innocence) and from applying the appropriate punishment according to Law. The Court can only find the accused guilty as charged and apply the applicable punishment as prescribed by Law upon a finding of guilt. Since as already established, the injuries suffered by Ogelede Jude Okoeguale are grievous in terms of

⁶ The accused's reaction to the violence was evidently disproportionate and exceeded the limits of necessity.

⁷ It was also the view of the Prosecuting Officer during final oral submissions that the accused may have acted in an excess of self-defence.

article 218(1)(b) of the Criminal Code, the applicable punishment is imprisonment from five years to ten years.

However, the defence, in its submissions regarding punishment and in the context of the accused's guilty plea, contended that the Court must apply article 21 of the Criminal Code when deliberating the punishment to be inflicted upon a finding of guilt, in view of the particular circumstances in which the grievous injuries were inflicted upon and sustained by the victim.

According to article 21 of the Criminal Code:

Saving the provisions of article 492, the court may, for special and exceptional reasons to be expressly stated in detail in the decision, apply in its discretion any lesser punishment which it deems adequate, notwithstanding that a minimum punishment is prescribed in the article contemplating the particular offence or under the provisions of article 20, saving the provisions of article 7.

Fis-sentenza fl-ismijiet **Ir-Repubblika ta' Malta vs Omissis u Soko Moussa Shah Ali**, deċiża mill-Qorti Kriminali fit-2 ta' Diċembru 2020, il-Qorti qalet hekk:

“L-artikolu 21 tal-Kap 9 huwa car u ghandu jigi rispettatt kemm fil-forma kif wkoll fis-sustanza mill-Qorti fil-ghoti tas-sentenzi taghhom. Ghandu jigi interpretat bl-aktar mod strett u l-applikazzjoni tieghu fi kliem l-istess ligi jirrikjedi:

- a. ragunijiet specjali u straordinarji, u*
- b. li dawn r-ragunijiet specjali u straordinarji ghandhom jissemew bir-reqqa fis-sentenza.*

Dan l-artikolu qed jitkellem fil-plural u ghalhekk dan jfisser li jrid ikun hemm ragunijiet [mhux raguni wahda] li jkunu specjali, kif wkoll li dawn ghandhom ikunu straordinarji [mhux jew straordinarja] u dawn ghandhom jissemew bir-reqqa kollha

fis-sentenza [vide Il-Pulizija v Pierre Bugeja u Il-Pulizija v Simon Camilleri.] Kif riteniet din l-istess Qorti fis-sentenza taghha fl-ismijiet Il-Pulizija vs Kenneth Ellul inghad li “Illi fil-fehma ta' din il-Qorti l-applikazzjoni ta' l-artikolu 21 tal-Kodici Kriminali ma tirrikjediex sensiela interminabbli ta' ragunijiet straordinarji u specjali”. Cio nonostante irid ikun hemm ragunijiet impellenti. Il-Qorti taghmel referenza ghas-sentenza fl-ismijiet Il-Pulizija (Supt. P. Abela/A. Farrugia Mamo Vs Carmel Sive Charles Zammit fejn gie rilevat fir rigward ta' meta il-Qorti ghandha tghati piena inqas mill-mimimu stabbilit mill-ligi li:- “Kull kaz irid jigi ezaminat bir-reqqa u fuq il-meriti tieghu; Wiehed irid iqis kollox: in-natura tar-reati u kif dawn effetwaw lill-vittma jew vittmi (jekk kien hemm..... u hafna u hafna affarijiet ohra li din il-Qorti ma tarax li tista' telenkahom kollha”.

It is this Court's view that the fact that manifest violence was used in the commission of the offence, or the fact that the injury inflicted upon the victim is grievous in nature in terms of article 218 of the Criminal Code and requires surgery, does not of itself exclude the application of article 21 of the said Code so long as the requirements of that provision of law are observed scrupulously and to the letter and so long as the Court applies its discretion in a reasonable and judicious manner for special and exceptional reasons that subsist and have been identified from the evidence and in the circumstances of the particular case.

Therefore, as requested by the defence in its oral submissions, the Court shall examine the evidence with a view to establishing the existence of any special and exceptional reasons for the application of a lesser punishment in terms of article 21 of the Criminal Code, including reasons relating not only to the circumstances of the person accused but also the circumstances in which the crime has been committed and which may affect the punishment to be inflicted.

It must be pointed out that the accused is guided and advised by his defence lawyers who have an ethical duty to afford him a valid, sustainable and effective defence. However in this case, the accused evidently was overcome by his desperation to have

the proceedings determined as soon as possible – something which the Court as a Court of Criminal Inquiry could not guarantee – in order to acquire certainty regarding the extent of his punishment and thus his future, after having been detained in custody for over one and a half years without bail having ever been requested. **In fact, despite several admissions of guilt throughout the proceedings, the accused always retracted his guilty plea when the Court explained the punishment that would be applicable upon a finding of guilt⁸**, save for the final admission of guilt, which the accused confirmed even after having been afforded ample time to consult with his defence lawyer and to reconsider, and also after having been solemnly warned once again about the consequence of such a plea and of the applicable punishment.

The Court cannot ignore the circumstances in which the person accused pleaded guilty to the charges and is of the view that the fact that the accused discarded the opportunity of raising or realising a valid defence to the charges affecting the applicable punishment, because of personal and emotional reasons relating to his future (which are evidently unrelated to the issue of the validity or otherwise of such a defence), or other compelling reasons, as mentioned above, justifies the evaluation of the evidence with a view to establishing whether any extenuating factors of punishment would have applied had the proceedings not been determined upon an admission to the charges.

Having considered;

That as would result from the testimony of Osas Idubor, an eye witness to the incident, it was the victim, Ojelede Jude Okoeguale who first assaulted the person accused by punching him twice in the face. This version is consistent with the statement of the accused during his interrogation by the Police, where he declared that Ojelede Jude Okoeguale punched him twice in the face before he then punched him back and a fight

⁸ 12th October 2022, 1st June 2023 and 14th June 2023. On the 17th April 2023, the accused expressed that he needed to consult with his lawyer about his position.

ensued. Faith Asemota also confirmed that the physical fight began when Ojelede Jude Okoeguale dragged the person accused out of the house⁹.

In the Court's view, Osas Idubor's testimony is crucial in that he confirms that after having seen Ojelede Jude Okoeguale punch the accused, he tried to stop them but was pushed away by Jude who grabbed the accused and held him strongly against him with his fingers around his neck, with the accused facing him. This version of events was confirmed by PS 1500 Alfred Cutajar who testified that when he arrived at the scene, the victim, Ojelede Jude Okoeguale was holding the accused by the neck. He confirmed that at this point, the two were still fighting but upon being given instructions, Ojelede Jude Okoeguale released his hold on the neck of the accused and let him go¹⁰.

The Court is of the view that while it is undisputed, even from the guilty plea which was registered by the person accused, that he did bite Ojelede Jude Okoeguale in the nose and caused him grievous wounds, it is also established unequivocally from the evidence that the victim was and could have only been bitten while he was holding the person accused by his neck and keeping him close to him¹¹. This is the only possible position in which an injury consisting of a bite to the nose could have reasonably been inflicted on the victim. Indeed he was still being held by the neck when the Police arrived on site, where it was observed that both persons were both struggling violently¹². Inspector Darren Buhagiar testified that during his interrogation, the accused repeated several times that he was being held by the victim all the time and he did not let him go, a statement that is substantiated by Faith Asemota's assertion that the victim is taller than the person accused, a fact that was affirmed by PS 1500 Alfred Cutajar, who also described the victim as more robust¹³.

⁹ See page 28 of the record of proceedings.

¹⁰ The person accused also declared during his interrogation, that the victim refused to let him go and was holding him.

¹¹ Ojelede Jude Okoeguale testified that he was indeed holding the person accused to his chest with an arm around his chest – testimony of 26th January 2022.

¹² See also testimony of PC 1234 Daniel Spiteri, 11th January 2022.

¹³ Testimony of PS 1500 Alfred Cutajar.

Moreover, the Court is also satisfied that the person accused punched Ojelede Jude Okoeguale in the mouth after having received two punches in the face. It is also undisputed that during the scuffle, the person accused suffered visible wounds to his head and cuts on his face and fingers, as would result from Inspector Darren Buhagiar's testimony¹⁴ and from the medical certificate exhibited by him (Dok. DB9) wherein it is stated that the head injury was sutured. It is doubtful whether such injury could be deemed to be of a merely slight nature. Such acts constitute at the very least, and without entering into the merits of whether the head injury inflicted on the accused was of a grievous nature¹⁵, a crime against the person in terms of article 230(c) of the Criminal Code.

The evidence therefore shows that (i) the accused inflicted the injury on the victim in circumstances where he had been assaulted by the victim and punched in the face, and (ii) during the ensuing scuffle between them, he was also being held by the victim to his chest and also by the neck, thus being unable to flee. In the Court's view, the fact that the accused was physically attacked by the victim and suffered injuries and was also placed by the victim himself in the only situation in which, during the ongoing violent struggle between them, a bite to the nose was possibly one of the only means of retaliation at his disposal, are compelling and extraordinary factors which must be taken into account for purposes of the punishment to be inflicted, **just as they would have been taken into account for the application of a punishment had a defence been raised in terms of articles 227(a) or (d) and or 230(a), (c) or (d) the Criminal Code. These circumstances are exceptional precisely because they are already in themselves considered and recognised by the law as special and extraordinary reasons which justify the application of a substantially lesser punishment for the crime of excusable wilful bodily harm, than the minimum punishment prescribed for the crime when not excusable.**

¹⁴ 11th April 2022.

¹⁵ As per article 227(a) and article 230(a) of Chapter 9.

The Court therefore considers that against the backdrop of the facts which emerge from the evidence and the course of the proceedings, there exist special and exceptional reasons which justify the application of article 21 of the Criminal Code and thus a lesser punishment than the minimum punishment imposed by law for the crime in article 218 of the Criminal Code.

The Court also took into account, for the purposes of evaluating an appropriate punishment, the fact that the person accused expressed his remorse for the injuries caused, immediately, during his interrogation¹⁶, and again apologised profusely for his actions also before the Court upon admitting his guilt to the charges.

Consequently, the Court, having identified both special and exceptional reasons for the application of article 21 of the Criminal Code, shall apply a punishment that falls below the minimum punishment prescribed by article 218 of the same Code, that is of five years imprisonment, and shall apply a lesser punishment of imprisonment for a term of two and a half years or thirty months.

For all these reasons, after having seen articles 17, 21, 31, 218(1)(b), 338(dd) and 339(1)(e) of the Criminal Code, Chapter 9 of the Laws of Malta, finds EHIS IMOBHIO guilty upon his own admission, of all the charges brought against him and condemns him to thirty (30) months imprisonment.

In terms of article 382A of the Criminal Code since it is expedient to do so for the purpose of providing for the safety of the injured person, Ojelede Jude Okoeguale, the Court orders the issue of a restraining order against the offender, EHIS IMOBHIO, which shall remain in force for a period of three (3) years, which period shall commence to run from the date of expiration or remission of the punishment.

¹⁶ See also testimony of Inspector Darren Buhagiar, 11th April 2022.

In terms of Article 533 of the Criminal Code, orders EHIS IMOBHIO to pay unto the Registrar of Courts the sum of forty three Euro and ninety eight cents (€43.98) representing the costs incurred in connection with the employment of an expert in the proceedings¹⁷.

For the purposes of article 15A of the Criminal Code, orders EHIS IMOBHIO to pay unto Ojelede Jude Okoeguale the sum of three hundred Euro (€300) as compensation for the permanent and serious injury caused by him through the commission of the offence under article 218 of the Criminal Code. This order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure, Chapter 12 of the Laws of Malta.

For the purposes of article 392A(2) of the Criminal Code, orders that within six (6) working days, the Attorney General shall be given access to a scanned copy of the records, together with access to a scanned copy of this judgment.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**

¹⁷ Dr. Katya Vassallo, Dok. KV1.