



**Court of Magistrates (Malta)
As A Court of Criminal Judicature**

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Today, the 25th day of September, 2023

Criminal Proceedings No. 88/2021

The Republic of Malta

vs

**Sunday Ikechukwu Eboh, holder of Maltese Identity Card number
387207(L);**

Omissis;

Alexandra Pace, holder of Maltese Identity Card number 48664(M);

Omissis 1, and

**Tony Ogbonna ANUFORO, holder of Maltese Identity Card Number
147663A.¹**

The Court,

¹ In the course of these proceedings Omissis (Collins Eguavoen) and Omissis 1 (Marvis Iyeke) pled guilty and there was a separation of the relative acts. After judgements became *res judicata* the said persons testified in these proceedings.

Having seen the charges brought against the defendants **Sunday Ikechukwu EBOH, Omissis, Alexandra PACE, Omissis 1 and Tony Ogbonna ANUFORO**, who are being charged with having:²

In these Islands, on the eleventh (11) of August 2020, and in the days and months following this date:

By several acts done by them, even at different times, and in breach of the same provisions of the Law, and made by a single resolution:

1. Committed acts of money laundering by having:
 - i. Converted or transferred property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
 - ii. Concealed or disguised the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property was derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - iii. Acquired, possessed or used property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - iv. Retained without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - v. Attempted any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;
 - vi. Acted as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and(v).
2. And also on the same date, time, place and circumstances, in Malta, knowingly received or purchased any property which was stolen, misapplied or obtained by means of any offence, whether committed in

² Fol.84 et seq. Vide Minutes a fol.76-77

Malta or abroad, or knowingly took part, in any manner whatsoever, in the sale or disposal of the same.

Alexandra Pace is also charged with having, on these Islands, on the eighth (8) of January 2021 or in the following days, in order to gain advantage or benefit for herself or others, in a document, knowingly made a false declaration or statement or gave false information in violation of article 188(2) of Chapter 9 of the Laws of Malta.

Alexandra Pace is also charged with the offence of recidivism in terms of articles 49 and 50 of the Laws of Malta by means of a judgment of the Court which judgment became final and cannot be changed or revoked.

And charging Omissis with breaching his bail conditions which were imposed on him by a decree dated 11 August 2017 and revised by a decree dated 28 May 2018 issued by Magistrate Dr Natasha Galea Sciberras in the case 'The Police vs Eguavoen Collins'.

This Court was requested that in case of guilt, in addition to inflicting the penalties laid down in the Law and in addition to the said punishment, it also order the confiscation of all the exhibited goods, 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, as well as order the confiscation in favour of the Government of the proceeds offence or of such property the value of which corresponds to the value of such proceeds as well as of all the property of the accused in terms of Chapter 373 as well as articles 23 and 23B of the Criminal Code.

This Court was also requested to seize from third parties in general all moneys and movable or immovable property which are due to or pertain to the accused or are their property, as well as prohibiting them from transferring or otherwise disposing of any movable or immovable property in terms of article 5 of Chapter 373 even as applicable under article 23A of Chapter 9.

The Court was also requested to order in case of guilt, the accused to pay costs related to the appointment of experts in the proceedings as contemplated in article 533 of Chapter 9 of the Laws of Malta.

Having seen the note by the Attorney General indicating the Articles of Law in terms of Article 370(3)(a) of Chapter 9 of the Laws of Malta, dated the 1st December, 2021, namely:³

Against all the defendants -

³ Fol.2058

1. Article 334 of Chapter 9 of the Laws of Malta;
2. Articles 15A, 17, 23, 23A, 23B, 31 and 533 of Chapter 9 of the Laws of Malta;

Against Alexandra Pace only -

3. Article 188(2) of Chapter 9 of the Laws of Malta;
4. Articles 49 and 50 of Chapter 9 of the Laws of Malta.

Having seen the Order dated the 1st December 2021, by the Attorney General in terms of sub-article (2A)(b)(c) of Article 3 of the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, by means of which the defendants were to be tried before the Court of Magistrates as a Court of Criminal Jurisdiction;⁴

Having heard the defendants declare that they do not object to the case being tried summarily and determined by this Court;⁵

Having heard witnesses;

Having seen all the acts and documents exhibited;

Having heard the prosecution and defence counsel make their final submissions.

Having seen the updated criminal record of the defendants' presented by the Prosecution as ordered by this Court;

Considers,

In his testimony, **Superintendent James Grech** explained that back in August 2020, Mary Anne Darmanin had filed a police report claiming that she had received a friend request on Facebook by a certain Smith Jones who said that he was an American soldier deployed in Afghanistan. After some time chatting over Facebook, Jones asked Darmanin to give him her mobile number and they continued exchanging messages on WhatsApp. Subsequently, Jones had told Darmanin that he was going to send her a package with a small gift. It then transpired that Jones started asking Darmanin for money, claiming that such money was needed by the customs department in order to release the package. Superintendent Grech stated that Darmanin paid fifty-eight thousand and

⁴ Fol.2057-2058

⁵ Fol.2060

seven hundred euro (€58,700) in total.⁶ Investigations revealed that the money was transferred in several separate payments to several accounts belonging to Johson Anene, Sunday Eboh, Collings Eguavoen, Shamson Alamu, Alexandra Pace and Marvis Iyeke. When the investigations were concluded the police decided to arrest all parties involved. Superintendent Grech confirmed that he was tasked with arresting Shamson Alamu, being the person who had received ten thousand euro from the victim Darmanin in two separate transactions. It also transpired however that Alamu, after receiving the money, went to the bank and informed them to reverse the payment.⁷

Grech also confirmed that notwithstanding such information, they proceeded to arrest Alamu who was very keen on helping the police in their investigations. Additionally, Alamu immediately informed the police that it was a certain Tony who had transferred the money in his bank account. Alamu stated that Tony had informed Alamu that he will be receiving three thousand Euro (€3,000) which he had to withdraw and give to him. However, Alamu had received a total of ten thousand Euro (€10,000) and suspected that something was wrong. Police confirmed that it was Alamu himself who turned up at the bank requesting the same bank to reverse the transactions!!⁸

After arresting Alamu, Grech confirmed that they called at Tony's address in San Pawl il-Bahar where he was arrested soon after. Statements of both Alamu and Tony were taken. Supt Grech continues:

*"Mr Alamu was keen to assist the police in the investigation and he said immediately that he received the money upon instructions given to him by a certain Tony. So I asked Mr Alamu who this Tony was and he told me that Tony was a friend of his, a Nigerian national, he needed a bank account to have some money deposited in regards to school fees. He gave him the account number and they agreed that he had to receive three thousand euros (€3,000) which he had to withdraw and hand them over to Tony. But on the day he received the three thousand, he also received seven thousand (7,000) from the same person who sent the three thousand (3,000). He said that he did not agree upon the seven thousand (7,000) and so he suspected something was wrong and went to the bank to stop the transaction. He said that he argued with Tony on phone and told him "I was not waiting for ten thousand (10,000), we only agreed on three thousand (3,000)." I asked him if he had any more details of Tony. In fact he showed me on his mobile phone how this Tony Moje is registered and he has two mobile numbers: 99554555 and the other one 77517136. I took a picture of details from the mobile of Alamu and I checked with control room if we have anything on the mobiles provided. In fact **it resulted that number 77517136 which was given by Alamu is registered***

⁶ Fol.532. Although later ten thousand Euro (€10,000) were returned to Darmanin.

⁷ Fol.532-533

⁸ Fol.533

on our system on Tony Ogbonna Anuforo. I asked him if he knows where this Tony lives and he told me that Tony lives in Triq Ġulju, San Pawl il-Baħar.”⁹

Doc.CB2 shows that the number used by Tony Ogbonna to call Alamu on the 14th and 28th August 2020 was **77517136**.¹⁰

Grech also explained that:

*“this call profile shows no contact between Tony Ogbonna and Shamson Alamu for the whole year, apart from the fourteenth (14th) of August two thousand twenty (2020) there was one call originating from the mobile of Shamson Alamu to the mobile phone of Tony Ogbonna, but then there were eight (8) telephone calls that were made from Tony Ogbonna to Shamson Alamu on the day of the transaction, twenty-eighth(28th) of August two thousand twenty (2020) and the time of the telephone calls from Tony Ogbonna to Shamson Alamu correspond with the communication the alleged perpetrator had with the victim at the same time she was instructed to deposit the money in Alamu’s account. In fact this telecommunication between tony ad Alamu started at around nine thirty-seven in the morning (9:37am) and ended at one twenty-two in the afternoon (1.22pm) and the time when **the perpetrator was messaging the victim MaryAnne Darmanin was between ten thirty-one and twelve forty-five in the afternoon (10:31am – 12:45pm)**...”¹¹*

Supt. Grech continues explaining the reasons why Alamu’s version was afforded more credibility than that of defendant Ogbonna:

*“So I was pointing out, Your Honour, that fact that took place, that happened at twelve ow three in the afternoon (12.03 p.m.) of the twenty-eighth (28th) of August two thousand twenty (2020) when **Mr Alamu received a phone call from Tony Ogbonna, the same time where the victim Maryanne Darmanin had received a message from the perpetrator telling her to wait, not to deposit the three thousand remaining in the account number he had given her.** It was some minutes afterwards when Maryanne Darmanin like realized and she is telling to the perpetrator, “Why are they doing this to me?” and the perpetrator tells her “the account which you sent the money is not [recte: available] for now”, Maryanne Darmanin which is to go to the bank to stop the transaction and she tells him, “What do I tell her?” to the clerk obviously. He tells her that it take time to reflect in their system. “They just found out this now.” “All of the money?” “Yes,” “Oh, no I will send a bank account now to you,” the perpetrator tells Darmanin. And she tells him, “with BOV?” “Yes,” and he gives her another account. Ms Darmanin also tells him that she was going to the bank to stop the transaction. However, the bank told her that now it is too late because it was processed and she could not retrieve the money back. So then the perpetrator **gives her an account number belonging to Mr Ikechukwu Eboh.** So I am presenting the call*

⁹ Fol.535-536

¹⁰ Fol.136

¹¹ Fol.537

profile from where I was testifying. It is being marked as document JG4.¹² The conversation between the perpetrator and the victim Ms Maryanne Darmanin which I was referring to during my testimony. It is being marked as document JG5¹³.”¹⁴

Under cross-examination he confirmed he personally witnessed the various messages Shamson exchanged with Tony, as well as a screenshot of Tony's number on Sam's phone (which images were previously exhibited as **Dok.JG2¹⁵**).¹⁶ Supt. Grech did not exclude Sam would have received calls from third parties but he confirmed that the calls Shamson spoke of as being received from Tony on the same day the funds were deposited to his account were borne out by Shamson's call profile on that day.¹⁷

Inspector Sarah Zerafa explained how in September 2020¹⁸, she was informed by WPS 187¹⁹ that a certain Vanessa Darmanin had filed a police report at the Paola Police Station on behalf of her mother who had been chatting with someone on Facebook by the name of Smith Jones. Smith Jones told the victim that he was an American citizen and that he was a soldier deployed in Afghanistan. Subsequently, Smith Jones asked the victim for her mobile number and they started chatting on Whatsapp. At one point he told the victim that he was going to deliver a package to her but told her she had to pay for it to be delivered. He also told her that she was going to receive forty-five thousand euro (€45,000) together with a certificate which is worth one million euro (€1,000,000). Jones provided the victim several Maltese bank account numbers together with details of the owners of such accounts. Eventually, the victim transferred the moneys requested by Jones. After she had effected the first payment, Smith Jones kept on requesting the victim to transfer more funds.

On the 11th August 2020, Smith Jones sent the victim a BOV account number and the name of the owner of this account was Johnson Anene. Once the victim received this information, she deposited the sum of three thousand, five hundred euro (€3,500) into the said account from funds held in her bank account. On the 13th August 2020, the victim deposited another five thousand two hundred euro (€5,200) in an HSBC, the beneficiary being Collins Eguavoen. On the 17th August, the victim made another two payments, one of seven

¹² **Dok.JG4** a fol.545

¹³ **Dok.JG5** a fol.546

¹⁴ Fol.537-538

¹⁵ Fol.543

¹⁶ Fol.2282

¹⁷ Fol.2285

¹⁸ 8th September 2020 (fol.1962)

¹⁹ Now PS2187 a fol.1959. Vide evidence of PS Grech a fol.1959 et seq. **Current Incident Report** exhibited on oath as **Dok.JG** by witness Grech at fol. 1960 -1964

thousand Euros (€7,000) and another of seven thousand and six hundred euro (€7,600), to the account registered in the name of Collins Eguavoen.

On the 21st of August 2020, the victim made another two payments; one of eight thousand and four hundred euro (**€8,400**) and another of seven thousand euro (**€7,000**) to a BOV account number ending 5867 registered in the name of **Sunday Ikechukwu Eboh**.²⁰ On the 28th August 2020, the victim effected another two payments; one of seven thousand euro (€7,000) and another of three thousand euro (€3,000) to BOV bank account number ending 8583, registered in the name of **Edekunlesh Shamson Alamu**. After having transferred this sum, Smith Jones told the victim to reverse these last transactions and in fact the sum of ten thousand euro (€10,000) was refunded to her bank account. On the 31st of August 2020, the victim transferred another four thousand euro (€4,000) in two separate BOV accounts; one registered in the name of **Alexandra Pace** and another registered in the name of Marvis Iyeke.²¹

Under cross-examination Inspector Zerafa confirmed that Shamson had informed police he had sent his account number details to Tony Anuforo over Whatsapp. Ogbonna's line of defence, particularly in the course of final submissions, attempts to make an issue over a phone which Shamson told police he had lost at the time of the investigations in February 2021, a good six months after the money transfer which occurred in August 2020! The fact that after six months a particular Whatsapp message – and more so one indicating a bank account is not found – reveals little much. In truth, there can be no doubt that Shamson sent Tony his bank account, as the funds did in fact get transferred to the said account. Moreover Shamson admits time and time again that he sent the account number; whether by Whatsapp, sms or by any other means makes absolutely no difference!

In truth the Court sees this line of questioning as a vain attempt to try to undermine Shamson's credibility however, it is the latter who consistently admitted to providing Tony with the account number. Meanwhile Ogbonna fails to provide any relevance regarding Shamson's 'lost' phone but attempts to create a baseless mystery simply owing to the fact that another phone pertaining to the witness Shamson was lost, forgetting in the process that call profiles from June 2nd 2020-June 2nd 2021²² were presented even with reference to this 'lost' phone number namely 77849659.

²⁰ Fol.95

²¹ Fol.95-96

²² **Dok.MTZ** a fol.2149 et seq

The innuendo Ogbonna attempts to give (to the fact that Shamson had stated that he had another phone which by February 2021 he had presumably 'lost') fizzles out as it transpires that at the time the money was transferred in August 2020 Shamson did not have another phone but another phone number as he had a phone with dual sim. Hence Alamu puts paid Ogbonna's insinuations o discredit Alamu's version which is **strictly related to the amount of €10,000 which Shamson himself asked the bank to reverse to the payer notwithstanding Ogbonna's pleas to the contrary!**

In fact, following Supt. Grech's cross-examination as well as in the start of investigations, police verified that throughout the previous months Shamson was in contact with 99802661 – a number which Shamson states was that of his friend Festos²³ - and since it was recurrent the police thought nothing of it and did not question Shamson about it. However, in preparation of her cross-examination Inspector Zerafa did enquire about it for thoroughness.²⁴ Although Tony Ogbonna tries to poke holes at the police's investigative work, Inspector Zerafa is steadfast and incisive, showing Police did conduct their investigations according to the evidence which at the time was available in relation to the money transfers being effected by elderly and vulnerable victims: *"The only number that was not recurring was a number registered on a Maltese woman, and from the reports that we saw on our system, it shows that she has friends with African people, she frequents Native Bar and she does in fact voluntary work, all that was done when we searched in the system; we did not felt the need to ask Alamu about them, but we checked about them. I checked at the time of the investigation. Recently I talked to Alamu.... I re-checked yes".*²⁵ Regarding the numbers which police found no reason to query in the initial phase of the investigations, Zerafa is quick on the mark to point out: *"The first time that I spoke to Alamu about them, yes, it was recently, but these numbers were checked at the time of the investigation. The fact that I did not talk to Alamu at that time is because we did not feel the need because they were not suspicious, that is why we did not talk to Alamu about them; we just checked them and that is all. We confirmed that they were not suspicious and that is all."*²⁶

During final submissions learned defence counsel raises the lack of Police investigating Festos. Given the wealth of evidence and the facts of this case, and similar to the final submissions made with regard to a "missing phone", these are but red herrings ably and wisely brought to bear, which however fail to detract from the substance and overwhelming evidence on which the prosecution's case is based.

²³ Fol.2319

²⁴ Fol.2293-2295

²⁵ Fol.2295

²⁶ Fol.2296

After Shamson's testimony and in preparation to tender her evidence, Zerafa had asked Shamson who the number 99802661, which police had originally dismissed as unimportant, belonged to. Although Ogbonna line of defence tries to read many things into such an act, the Court finds in no unclear terms that police are absolutely entitled and free to conduct such enquiries, with nothing untoward to taint such an act and the information derived therefrom. If only to provide correct and exhaustive details to the Court demonstrating only preparedness.

In fact, Zerafa states that Shamson confirmed what had been stated initially when investigations began, going to show that the police were indeed scrupulous in their investigations from the very start: *"Ok. So it checked the number, it is 99802661. This number was shown all year long and we confirmed that this is his friend because they were... he is also from Lagos, from Nigeria, and Alamu confirmed that he is friend.... [Dr Charles Mercieca: When did you confirm that this person is who the number belongs to, and when this person you confirmed, you said is Alamu's friend, when did you this?] At that moment we checked the whole profile and we saw the number that was recurring".*²⁷ Incidentally and in preparation for her cross-examination, Zerafa had also enquired about another number, 79093180, which turned out to be a number pertaining to an ex-girlfriend of Alamu's.²⁸ Thorough indeed!

Inspector Claire Borg stated that the first sum of €3,500 had been received by Johnson Anene, who also pled guilty in a separate arraignment. Borg presented a diagram indicating the transactions in play in this fraudulent scheme.²⁹ Declarations by the victim and her daughter were also presented.³⁰ The inspector explained how Darmanin's version was substantiated by HSBC Bank in the sense that Collins Eguavoen received three transactions between the 13th and the 17th February totalling €19,800³¹ whilst Marvis Iyeke received a transaction of €6,000 on the 31st August 2020.

Through two separate transactions, Eboh received a total amount of €15,400 on the 21st August 2020 in his BOV account. The bank's suspicions were raised after Eboh made enquiries to withdraw the said amount but could not satisfy due diligence requirements. Whilst having initially informed the bank that he had no idea about the deposit's provenance, that same day he returned to the bank stating the funds had been received on behalf of a third party named "Tony" who had travelled to Italy. Requested by the bank to show

²⁷ Fol.2293

²⁸ Fol.2298

²⁹ Fol.124. **Dok.CB** a fol.132

³⁰ **Dok.CB1** a fol.133 et seq

³¹ Fol.124-125

communications to substantiate this version, Eboh provided no such information. It was also noted by the police that **transactions showed transfers to Revolut card ending with number 5374 from which account several purchases were made by Eboh as were withdrawals in the days following Darmanin's transactions.**³² The bank statements exhibited corroborate the police's findings!

The witness explained how Alexandra Pace received €4,000 from Darmanin on the 31st August 2020 which funds were withdrawn the following day. Since the police received information of the account's imminent closure by Pace. Shamson Alamu received €10,000 from Darmanin but informed the bank he was not expecting such a payment thus causing the bank to return the funds to Darmanin's account.

Information received from telecom service providers and presented in a document for ease of reference,³³ showed *inter alia* that Alamu communicated with Johnson Anene, Collins Eguavoen and Eboh; Eboh communicated with Tabi Ovi and Johnson Anene; Tabi Ovi communicated with Collins, Eboh, Johnson Anene and Pace and Tony Ogbonna communicated with Johnson Anene and Shamson Alamu.

Borg mentions how *a tempo vergine*, when first approached by the police, Shamson Alamu had informed Supt. Grech that it was Ogbonna who had requested his bank account details in August 2020, whilst telling him it was for the purpose of receiving €3,000 in school fees. However, upon seeing that the amount was more than €3,000 he reported the transaction to HSBC Bank leading the bank to return the funds to the victim.

The interrogations revealed that from the amounts transferred into their bank accounts, the defendants took sums of money with Pace taking €100 in cash. Ogbonna gave no plausible reason why he chose Shamson Alamu to provide him with his bank details. Nor could he give an explanation why he called him nine (9) times on the day the money was deposited to the latter's account. Ogbonna alleged this was payback by Alamu after an argument which had taken place between him and Ogbonna's girlfriend in January 2021, well after the money transfer, thus making absolutely no sense.

On cross-examination Inspector Borg confirmed that defendant Ogbonna had not received any funds from Mary Anne Darmanin,³⁴ but was nonetheless arraigned on the basis of Alamu's testimony and the call profile which

³² Ibid.

³³ Fol.126. **Dok.CB2 -Dok.CB10** a fol.136-144

³⁴ Fol.384-385

corroborated Alamu's account. The inspector confirmed call logs showing Alamu was in contact with other defendants and the co-accused, with **Dok.CB2**³⁵ showing the communications between Ogbonna and Alamu.

Inspector Borg went on to explain that Tony's arrest was also due to the fact that Eboh had informed the HSBC clerk that he wanted to withdraw the monies to pass on to a certain Tony, adding that Eboh failed to identify Tony Ogbonna as the "Tony (Montana)" he spoke of.³⁶

Borg continues how following a confrontation between Alamu and Tony Ogbonna, police proceeded to believe Alamu's version. Inspector Borg also makes mention of the fact that when Tony Ogbonna was questioned, he insisted this was an act of revenge on Alamu's part and that it was by mere coincidence (!) that the calls took place on the date that the funds were received by Alamu.³⁷ Finally, Inspector Borg confirms that from telephone calls, that is excluding Whatsapp or other applications – which can only be accessed if they are still saved on a particular sim card³⁸ - it appears that it was Alamu that initiated the calls with Tony Ogbonna.³⁹

However, the Court finds that this detail has little relevance as the Court notes that Alamu did indeed call Ogbonna but this was on the 14th August 2020, two weeks prior to the money transfer.

What does have a strong evidentiary value is the fact that **on the 28th August – perfectly coinciding with the version given by Alamu – the calls are all made by Ogbonna⁴⁰ to Alamu starting from 9:27:25am until 1:22:31pm.⁴¹ The bank statement exhibited also corroborates the fact that the funds entered Alamu's account on the 28th August 2020 and were reversed the same day that the monies were reversed at 13:05hrs on the 28th August 2020.⁴²**

Inspector Borg exhibited the call logs of Alexandra Pace for the period between the 15th January 2020 and January 2021.⁴³ The inspector also presented the call

³⁵ Fol.136

³⁶ Fol.387

³⁷ Fol.388

³⁸ This is stating the obvious but is being underlined due to learned defence counsel for Ogbonna raising the issue that the message through which Alamu sent his bank details to Tony Ogbonna was not found.

³⁹ Ibid. Vide **Dok. CB2** a fol.136

⁴⁰ MTC+ Mobile Terminating Call

⁴¹ Fol.136

⁴² **Dok.VD6** a fol.230

⁴³ Fol.623. Vide **Dok.CBSC1** a fol.713 et seq

profiles of Collins Eguavoen⁴⁴, Marvis Iyeke⁴⁵ and Shamson Alamu⁴⁶ for the period spanning from the 1st January 2020 until the 12th January 2021. She also exhibited the call profile pertaining to Tony Ogbonna for the period February 2020 until February 2021.⁴⁷

Vanessa Darmanin, the victim's daughter, explained that in September 2020, she had been informed by her mother that she had effected several transactions after having chatted with a man on Facebook. The man told her mother that he had sent a package which was held by customs and thus requested her initially to pay the sum of three thousand and five hundred euro (€3,500). The witness stated that her mother was afraid and therefore paid the money. Subsequently, the man started making more requests to her mother to transfer more money, maintaining that customs had kept the package which contained cash in dollars and a certificate of a house worth a million dollars. Vanessa confirmed that her mother had transferred a total of fifty-eight thousand, and seven hundred euro (€58,700). Out of this sum, ten thousand euro (€10,000) were transferred back to her because when she had effected the payment as requested by this same man, he had subsequently called her claiming he had given her the wrong bank details. Thus, after her mother called at the bank and requested that the transfer is reversed, and whilst initially declining her request, after a person had informed the bank stating that he had received a sum of money which was not his, the bank reversed the transaction.⁴⁸

Let it be said at the outset that this declaration substantiates the version by witness Shamson Alamu who claims that defendant Tony Ogbonna had requested he receive the said funds into his account as a favour; **a transaction Alamu wanted reversed** when he realised that there could be more to Ogbonna's story!

Vanessa Darmanin explained that when her mother told her the whole story, she herself texted this man her mother was in contact with via Whatsapp and told him to refund all the money that he took from her mother. However, this man who identified himself as 'Smith Jones', come up with a lot of excuses and failed to repay all the sums which he took.⁴⁹ He had sent her an image of his passport which she suspected was fake due to different names appearing on it "REAL BR", GENERAL JAMES DAVIS" and "MICHAEL" in the machine-

⁴⁴ **Dok. CBSC2** a fol.770 et seq (Mob. No. 99637265) re Collins Eguavoen

⁴⁵ **Dok.CBSC3** a fol.790 et seq (Mob. No. 99501155) re Marvis Iyeke

⁴⁶ **Dok.CBSC4** a fol. 866 et seq (Mob. No. 79228664) re Shamson Alamu

⁴⁷ Fol.827. Vide **Dok.CBSC5** a fol.828 (Mob. No.77517136) re Ogbonna

⁴⁸ Fol.149-150

⁴⁹ Fol.150

readable zone of the passport.⁵⁰ The witness proceeded to exhibit the Facebook friend request⁵¹ which her mother had received in June 2020 and the customs certifications he had sent her mother to induce her to pay the monies he had requested her to pay.⁵² These exhibits – duly confirmed and authenticated by then victim in the course of her testimony- were downloaded by the witness from the victim's computer whilst the passport was also sent to her directly by 'Smith Jones' in a bid to prove he was genuine as Vanessa had asked for the repayment of all monies.⁵³ The certificate of incorporation was sent asking the victim to pay €5,200.⁵⁴

The Whatsapp messages between her mother and this man were also exhibited⁵⁵ as was a courier document declaring that customs had a package in her name waiting to be picked up. These were found on the victim's mobile as was a document of incorporation in relation to which Smith Jones had told her mother that a courier will be contacting her. In fact on the 10th August 2020, a courier texted her mother informing her that the package addressed to her was in Malta and that he needs the money to enable its release from customs. All the said documentation was authenticated by the victim.

Thus, the conversation for money to be transferred was being made not by Smith Jones but the courier a 'Donald' who claimed to be from the Philippines:

*"So he was texting now you have to pay three thousand five hundred, then you have to pay five thousand two hundred and giving her bank details like various bank details. Some of them she didn't effect a payment, but there were more bank details..... He said that he's from the Philippines. He said that he came with the package, unfortunately my mother is naïve and she actually thought that there is a person sleeping with her package at customs, and when I read the chat I was shocked to realise that she was actually caring about him, asking him whether they gave him any food until she pays, whether he slept, whether he has accommodation and he was saying that he has three weeks' time to go back to his country he needs to go back to his family, so she was panicking to pay the money so that this guy goes back to his country."*⁵⁶

Although communications with the courier were from a different number than that used by Smith Jones, the witness believed that from the way they texted on Whatsapp, it was one and the same person using different phone numbers.⁵⁷

⁵⁰ **Dok.VD1** a fol.158

⁵¹ **Dok.VD** a fol.157

⁵² **Dok.VD3** and **Dok.VD4** a fol. 160-161

⁵³ Fol.150-151

⁵⁴ Fol.152

⁵⁵ **Dok.VD5** a fol.162 et seq

⁵⁶ Fol.152-153

⁵⁷ Fol.153

The Whatsapp chats and documents her mother received from the courier⁵⁸ were also exhibited and authenticated by the victim. The chat started on the 10th of August with the last payment having been done on the 31st August. However, he was still chasing her to pay more money on the 7th September.⁵⁹ A copy of the bank transactions effected by her mother were also exhibited:⁶⁰

“There is the first payment sent to a BOV account to Johnson Alene [recte: Anene], three thousand five hundred. Then the second payment was for five thousand two hundred euro to Collins to his HSBC account, it was done on the 13th of August. On the 17th of August she sent again to Collins the sum of seven thousand euro and seven thousand six hundred euro. Two payments.....She did BOV payments from BOV account and HSBC payment from HSBC account.... Then she did another payment on the 21st of August to Sando Ebo Cecewko [recte: Sunday Ikechukwu Eboh] for eight thousand four hundred euro, and another payment on the same day to him as well of seven thousand euro. Then on the 28th of August she did two payments to Adekennes Johnson Alamo [recte: Johnson Anene] of Seven Thousand Euro and another one of three thousand but as explained earlier these were returned immediately with a payment of ten thousand on the same day. Then on the 31st of August she did a payment from her HSBC account to Marvis Iyeke for the sum of six thousand and again on the 31st of August she did a payment to Alexandra Pace of four thousand to a BOV⁶¹ account.

Although the said documentation was passed on to the witness by her mother after acquiring same from the bank,⁶² bank representatives called to testify, confirmed and authenticated the said documentation themselves. The same applies to the chats between her mother and the unknown individual/s (‘Smith Jones’ and ‘Donald’) which the daughter exhibited.⁶³ These communications were also confirmed by the IT expert who conducted the extraction from the victim’s phone.

Mary Anne Darmanin, the victim, explained how after her husband had passed away and with the onset of covid when she was living alone, she was lonely and, out of character, in June 2020 accepted a friend request from a man who said his name was Smith Jones. He had sent her a photo of an American soldier claiming to be him and stating he was in Kabul, so she was placated by the distance between them. After some time, on the 1st of July 2020, he asked her for her mobile number and he started messaging her via Whatsapp. After a month or two he asked for her address so he could send her a gift which she did after

⁵⁸ Dok.VD2 a fol.159

⁵⁹ Fol.154

⁶⁰ Dok.VD6 a fol.222 et seq

⁶¹ Fol.154-155

⁶² Fol.155

⁶³ Dok.VD5 a fol.162 et seq

some time. He told her he would send it by courier and when the courier came to Malta the courier contacted her.⁶⁴ At the start he was wooing her, stating he wanted to be with her whilst she began to confide in him, speaking of her loneliness living alone after her spouse's demise. He had informed her the gift would arrive via courier in three (3) days. When contacted by the 'courier' that the package had arrived in Malta, a photo was sent to her by the courier of the same package which had a label. The victim now believes the courier, Chris Donald, and Smith Jones were the same person. She continued receiving messages from both individuals via different numbers.⁶⁵

Donald told then victim that in order to release the package, she had to pay three thousand and five hundred euro (€3,500). Donald even sent her a certificate which was supposedly issued by the customs office, bearing the Maltese flag. Donald added that she was responsible for the package since it was addressed to her and that the customs department had opened the package and found inside forty-five thousand dollars (\$45,000) together with a certificate of a property worth one million dollars (\$1,000,000). Donald also informed her that she had to pay for the package, of which she was only sent a picture, to be released.⁶⁶ At the same time Smith told her that she had to pay the money to a customs' account for which he provided an account number without any names or details of the account holder. Meanwhile Donald sent her a 'Certificate of Incorporation'⁶⁷ and told her that she had to pay an additional five thousand and two hundred euro (€5,200).⁶⁸ She was told she had to pay this amount as she had brought in illegal money into Malta.⁶⁹

The victim confirmed the documents exhibited by her daughter as having been sent to her by Smith Jones,⁷⁰ as was the photo of the package which was supposed to have arrived for her.⁷¹ She also identified the photo of the package for which she was asked to pay the said (€5,200)⁷² together with a photograph which she was told by Donald was sent by customs. Initially Donald the 'courier' – who was always the one requesting monies, not Smith Jones – had requested three thousand five hundred Euro (€3,500). She had gone to the bank on the request of Donald and Smith Jones to procure the funds needed for the

⁶⁴ Fol.235-236

⁶⁵ Fol.237-238

⁶⁶ Fol.238-239

⁶⁷ **DOK.VD3 a** fol.160

⁶⁸ Fol.239

⁶⁹ Fol.241

⁷⁰ Fol.241 re **Dok.VD-VD1 a** fol.157-158

⁷¹ **Dok.VD2 a** fol.159

⁷² **Dok.VD3 a** fol.160

package's release from customs whilst also being told that she could recover the monies from the \$45,000 which were supposedly in the package.⁷³

When the bank refused to give her the amount of €3,500, Smith passed on to her a number of other accounts. Donald had asked her to take a snap shot of the transfer receipts which she was making purporting he needed it for customs' purposes.⁷⁴ Donald subsequently informed her that customs requested more money five thousand and two hundred Euro (€5,200) so she went to the bank and paid this second amount.

Another request was made by Donald for a further ten thousand Euro (€10,000) which was eventually returned to her after the bank notified her that, no later than 5 minutes later, an individual had claimed the money was not his and had returned it.

The haste with which Alamu acted upon his suspicions being raised is commendable! As will be noted further ahead **Shamson Alamu's version is corroborated by the victim!**

The victim's ordeal was significant:

"And he was always telling me that he was coming to Malta, he was going to buy a house here. So a little of my mind was resting because he was coming and he would be giving them back. Chris, Chris Donald, but Smith never asked for the money. I think it was the same person now. He told me that you hadn't paid enough, and i had to pay fifteen thousand I'm not sure. Then he told me after a day or two, that isn't enough either. They were very kind, first pay seven thousand, wait there outside thirty minutes later go pay the other seven thousand. It was like that. And snap the receipt and send to me to show to customs. I cannot believe all those accounts, all those foreign names, but all in Malta. HSBC or BOV, the ones i ask, because he sent me others. When i told him Paola and Valletta they don't want to send money, he told me there are other cities. He knew Malta more than me, because I never knew where BOV and HSBC where in Sliema. I never been to Sliema alone. My daughter was so angry, why did you go on the bus? [Court: One moment this is important. Compose yourself madam. So, you were being given instructions, as to which banks to go to?....You mentioned for example this Sliema. What was the conversation, go to this street, go to that street? How was it?] ...HSBC i never said i didn't know where in Sliema ok, but BOV i never knew where it was. But he told me ask around. My daughter now told me maybe he was following you, because he always knew where i was. Because he told me let me know before you go, Smith, let me know when you get home. And when i didn't make the transfer he use to tell me, don't worry, go home. And i go home, i shower and go to sleep. The only two hours i slept. It was a very bad time."

⁷³ Fol.242-243

⁷⁴ Fol.243

Smith was constantly giving her instructions as to which bank branches to have recourse to. The last transaction was in Sliema:

*"her name was Maltese Alexandra Pace, and i don't know why the bank clerk i had some money in the current for cheque book, and she took some from that and some from the savings, i don't know why. I never asked, i never ask a lot of things anyway..... i never kept account of how much i was sending. But when my daughter, because afterwards he asked for another five thousand after i sent four thousand to Alexandra Pace, because he said he wanted to come to Malta with money on him, and he wanted to send it someway. And I didn't have another five thousand, and i asked my sister, and my sister told me let me see. And she told me that is fake how did you get into it. And she told me tell him that we are going to the customs to get the box ourselves. And he got angry he told me look my daughter is dying and he wanted another one thousand two hundred to send her. But I know in America you cannot get into a hospital without a life insurance and that is what i told him, she's got health insurance. Because sometimes, things got into my head. Like the time he told me to send him money to Indonesia, its border with Afghanistan. I told him, there's the sea. I am a little bit, i always lived with my husband and family. And then he was angry with me, my sister told me he's going to insult you now, and then i told him i think you are not an American and there is no box. And he told me, insult me as much as you want, it's no problem. That made me see what a mistake it was."*⁷⁵

The witness proceeded to confirm the bank statements⁷⁶ together with the several transactions she effected at Donald's behest:

Sunday Eboh Ikechukwu:	€8,400 on 21.08.20 at 13:22 hrs ⁷⁷
	€7,000 on 21.08.20 at 10:50 hrs ⁷⁸

Total: €15, 400

Alexandra Pace:	€4,000 ⁷⁹
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⁷⁵ Fol.244-246

⁷⁶ Dok.VD6 a fol.222 et seq

⁷⁷ Fol.226

⁷⁸ Fol.227

⁷⁹ Fol.229

And,

Johnson Anene: €3,500 on 11.08.20⁸⁰;

Collins Eguavoen:⁸¹ €5,200 on 13.08.20;⁸²
€7,000 on 17.08.20; Ref:3310-00023;⁸³
€7,600 on 17.08.20; Ref 3310-00009;⁸⁴

Marvis Iyeke: €6,000.⁸⁵

The bank statement from BOV Bank plc. confirms that although withdrawals totalling €10,000 (€7,000 and €3,000) from Darmanin's account were made to a Adekunle Shamson Alamu on the 28th August 2020, this same was amount was reversed on the same date:⁸⁶

*"Then he told me it wasn't enough, and he told me to send more money. I think it was ten thousand? Which i went to Bank of Valletta, that i remember, and i remember because this person told me Chris Donald, that it wasn't valuable anymore. And he told me to go back and get them back. I went to the bank, and she told me you have to tell who you sent it to. But i told her it was a mistake and as soon as i began walking, someone from the Bank called me did you put the money by mistake there? And i told him yes. Because the person you sent the money to returned it, he said it was a mistake. It didn't even pass five minutes from when I did the transfer."*⁸⁷

Interestingly and considering Alamu's account, the transaction of €10,000 was highlighted to her as having been made erroneously by Donald. Thus, this **bolsters the statements made by Alamu when he claims that it was he who asked the bank to reverse the monies he had just received in his account upon Tony's instructions.**

The victim confirmed on oath the communications she had received from both Donald and Smith, which communications were still preserved on her mobile.⁸⁸ She noted the same grammatical mistakes made by both 'Donald' and 'Smith Jones' leading her to believe they were one and the same person.⁸⁹

⁸⁰ Fol.222

⁸¹ Vide also fol.232-233

⁸² Fol.223

⁸³ Fol.224

⁸⁴ Fol.225

⁸⁵ Fol.228

⁸⁶ Fol.230

⁸⁷ Fol. 244

⁸⁸ Fol.247; **Dok.VD5** a fol. 162 et seq

⁸⁹ Fol.248

Under cross-examination she confirmed that **Donald had sent details of the accounts of Alexandra Pace and Sunday Eboh**. Messages were being received concurrently from Smith Jones and Donald and, having informed Donald she was going to pick up the package from customs herself, Smith texted within minutes saying she was worrying Donald by doing so in a bid to stop her from thwarting the fraudulent scheme being perpetrated to her detriment.⁹⁰

The victim stated that ultimately she was forty-eight thousand, seven hundred euros (**€48, 700**) out of pocket, having initially paid out €58, 700 of which ten thousand Euro (€10,000) paid to Alamu's account were returned.⁹¹

- *The Victim's Initial Declaration Released to Police*

A declaration she had released with the Police in her daughter's presence was also confirmed.⁹²

The victim had originally explained to the police how in June 2020, she had received a friend request on Facebook from a certain Smith Jones. She had accepted him and on the 30th of June, he started chatting with her and told her that he was an American soldier, currently deployed in Afghanistan. At one point, he has asked Darmanin to text her on Whatsapp, and then informed her that he was to send a package to her, containing a small gift. She explained that Jones had told her that the package had arrived in Malta, but that she had to pay three thousand and five hundred euro (€3,500) for the package to be released from customs. In fact, he had also sent her a certificate issued by the customs department. Darmanin confirmed that she had sent the initial three thousand five hundred euro (€3,500) via bank transfer from her BOV account. She continued to explain that Jones had told her that the customs department had opened the box and found forty-five thousand dollars (\$45,000) inside, together with a certificate worth one million dollars (\$1,000,000). Smith Jones had then requested Darmanin to pay another five thousand two hundred euro (€5,200) supposedly for the currency conversion from USD to Euro, which sum was transferred by Darmanin from her HSBC bank account. Subsequently, Jones had asked her to pay another fourteen thousand six hundred euro (€14,600) since, according to Jones, this was needed by the customs department to release the package. This amount was transferred in two separate transfers; one in the amount of seven thousand euro and another in the amount of seven thousand and six hundred euro.

On the 21st August, Jones requested Darmanin to transfer another **fifteen thousand and four hundred euro (€15,400)** which were duly transferred by her. On the 28th of August, Darmanin transferred another **ten thousand euro** in two separate transactions. When the last two transactions were made, Jones called Darmanin and

⁹⁰ Fol.251

⁹¹ Fol.249

⁹² Fol.247; **Dok. CB1** a fol.133-135

told her that he had given the details of someone who was no longer employed with him. Therefore, Jones requested Darmanin to cancel and reverse the transaction. Darmanin confirmed that she went to the bank in order to reverse the transaction but she was informed that she cannot cancel it as it had already been completed. After some time however, Darmanin received a call from the bank and was informed that the transaction has been reversed since **someone called the bank and reported that he had received a sum of money which he was not expecting.**

Darmanin continued to explain that on the 2nd of September, Jones had contacted her again and told her that he wanted five thousand euro (€5,000) in cash. She then turned to her sister who promptly told her that this may be a scam. When she told Jones that the whole thing was a scam, Jones sent a photo of a child in bed and told her that the child was his daughter and that she was going to die if she doesn't transfer the money. The victim and her daughter both confirmed that notwithstanding several promises made by Smith Jones and even a certain Scott Williams (purporting to be the former's friend), the moneys were never refunded.

Finally the victim also mentions how on the 31st August, Smith Jones once again asked Darmanin to transfer the ten thousand euro (€10,000) which had been transferred back to her. Incidentally the chat shows that this time the victim was supplied once more with **Sunday Eboh's bank account.**

It must be reiterated, even at this early stage of the judgement, that **Shamson Alamu's version is substantiated to the letter by the victim's own account!** No wonder the great lengths Tony Ogbonna goes to in his bid to discredit not merely this pivotal witness but, regrettably, even Inspector Zerafa. He attempts to do this by unsuccessfully attempting to sow doubts as to whether this loyal, respected and hardworking officer could have possibly tainted the authenticity and genuineness of Alamu's last appearances in Court by suggesting the evidence the latter was to tender!

Such behaviour only served to **expose the defendant's true colours and character in his bid to exculpate himself from his deeds.**

David Sciberras⁹³, in representation of the Customs Department, confirmed that the certificates exhibited and marked as **Dok.VD3** and **Dok.VD4**⁹⁴ were not issued by the Customs Department. **Simon Galea**, Senior Customs Inspector, denied that any parcel had been received addressed to a Mary Anne Darmanin in the period between June 2020 and December 2020.⁹⁵

⁹³ Fol.574

⁹⁴ Fol.159-163

⁹⁵ Fol.596

Dr. Kenneth Camilleri from the Asset Recovery Bureau, exhibited inventories⁹⁶ of assets held by Alexandra Pace⁹⁷, Tony Ogbonna Anuforo⁹⁸ and Sunday Ikechukwu Eboh⁹⁹.

Joseph Saliba, in representation of Jobsplus, provided the employment histories of the defendants. Sunday Eboh had had his employment terminated on the 3rd May 2020 with Five Star Hotels Limited but retained employment as a driver with Jason Cab Services and Car Rental Ltd.¹⁰⁰ Alexandra Pace had been unemployed since 2006.¹⁰¹ However **Tony Ogbonna Anuforo had no employment records**¹⁰² despite having lived in Malta for several years and by his own admission, in the statement released to police, he had been working since 2018 as a security guard with G4S Malta; a fact which speaks volumes as to his **propensity to defraud even the coffers of the country which welcomed him and his family!**

- *The bank transfers effected to Eboh, Pace and Alamu*

Mark Falzon, in representation of BOV Bank plc., explained that the victim holds two bank accounts with BOV. On the other hand, Alexandra Pace had one bank account which was closed on the 14th January 2021 while Ikechukwu Sunday Eboh held two accounts although one was dormant during the period under review.¹⁰³ From the statements exhibited by Falzon it results that from the victim's account:¹⁰⁴

- a) On the 21st August 2020 – a transfer was effected in favour of **Sunday Eboh Ikechukwu** in the amount of €7,000 and another one to the same account in the amount of €8,400;¹⁰⁵
- b) On the 28th August 2020, two transfers were effected in favour of **Adekunle Shamson Alamu** in the amount of €7,000 and €3,000, which transfer was reversed on the same day,¹⁰⁶ and

⁹⁶ Fol.1714 et seq.

⁹⁷ **Dok.KC3** a fol. 1859 et seq

⁹⁸ **Dok.KC2** a fol.1825 et seq

⁹⁹ **Dok.KC1** a fol.1750 et seq.

¹⁰⁰ **Dok.JS** a fol.1346

¹⁰¹ **Dok.JS2** a fol.1350

¹⁰² **Dok.JS5** a fol.1358

¹⁰³ Fol.356-357

¹⁰⁴ **Dok.MF** a fol.359 et seq

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

- c) On the 31st August 2020, a transfer was made in favour of **Alexandra Pace** in the amount of €4,000.¹⁰⁷

From Sunday Eboh Ikechukwu's statement it was shown that indeed on the 21st August 2020, the sums of seven thousand Euro (**€7,000**) and **eight thousand four hundred Euro (€8,400)** were deposited by a **Mrs. Mary Anne Darmanin**.¹⁰⁸ The sum of four thousand (**€4,000**) is also shown as having been deposited by a Mrs. Mary Darmanin on the 31st August 2020 to **Alexandra Pace's** account.¹⁰⁹

i. Eboh

Deborah Camilleri, in representation of Bank of Valletta, explained that on the 6th of January 2021, the Birkirkara branch management team received an email from the Customer Issues Department, giving clear instructions to block fifteen thousand and four hundred euro (€15, 400) from Mr Sunday Ikechukwu Eboh's account.¹¹⁰ The following day Eboh went to the bank and enquired why the funds were blocked. Upon being asked to provide information in relation to the amount which was blocked, Eboh stated that the funds did not belong to him but he received them on behalf of a third party, a certain Tony whom he said had gone back to Italy.¹¹¹ The witness recalled how she had asked Eboh to sign a declaration stating that the funds belong to a third party, requesting that he provides screenshots of any messages which he may have had with Tony to attest to the veracity of his statement with the bank. However, **Eboh failed to furnish the bank with such documentation nor did he provide the declaration as requested**.¹¹² It is to be noted that the transactions were dated the **21st August 2020** yet the instructions to block the account arrived on the 6th January 2021 after the investigation kicked-off, with Eboh going to the bank on the 7th January 2021.¹¹³

Tonia Parascandolo, senior manager within the Customer Issues Office at Bank of Valletta, stated that back in October 2020, she had received a call from Dr. Chris Cilia on behalf of the victim, claiming that several fraudulent transactions were effected from her account. On the 4th of January 2021, the victim's daughter provided details of such transactions and then a decision was taken

¹⁰⁷ Fol.359

¹⁰⁸ **Dok.MF2** a fol.362

¹⁰⁹ **Dok.MF1** a fol.361

¹¹⁰ Fol.561

¹¹¹ Fol.567

¹¹² Fol.564

¹¹³ Fol.563

to block the Eboh's account for an amount of €15,400. When bank employee Deborah Camilleri, had enquired with Eboh as to the source of such funds, he stated that he had passed the money to someone named Tony, who lived in Italy *"That's all we know but we did not see any documents"*.¹¹⁴ From the information provided by the victim's daughter, the bank was also informed about a certain transaction which was effected in favour of Ms Alexandra Pace. Subsequently, Pace's account was also blocked for an amount of €4,000 after an email was sent to that effect following allegations of potential fraud.¹¹⁵ Reproduced she exhibited copies of the identity cards of defendants Eboh and Pace.¹¹⁶

ii. *Shamson Alamu*

Mark Galea, from BOV Bank plc., explained how it was Shamson Adenkunne Alamu who went to the bank and told him that he had received two separate transactions amounting to ten thousand Euro (€10,000) *"and he did not know the reason for them. So, I checked who sent the money. I phoned Mr [recte Mrs] Darmanin and she told me she sent them by mistake and that she would like to receive them back. So I effected the transfer back to her account....The witness: The date I know it because I received from the statement, but I do not remember exactly the time. I remember it was the same day that he received the money though."*¹¹⁷ From the documents exhibited it transpires that the monies were reversed at 13:05hrs on the 28th August 2020.¹¹⁸

This **coincides perfectly** with Alamu's account that he went to the bank in the *"Afternoon"*!¹¹⁹ Supt. Grech states: *"In fact, worth noting, this telecommunication between Tony ad Alamu started at around nine thirty-seven in the morning (9:37am) and ended at one twenty-two in the afternoon (1.22pm) and the time when the perpetrator was messaging the victim MaryAnne Darmanin was between ten thirty one and twelve forty-five in the afternoon (10:31am – 12:45pm)..."*.¹²⁰

¹¹⁴ Fol.1340

¹¹⁵ Fol.1141

¹¹⁶ Fol.1699. **Dok.TP-TP1** a fol.1701-1702

¹¹⁷ Fol.951-952

¹¹⁸ **Dok.MG** a fol.953-954

¹¹⁹ Fol.2358

¹²⁰ Fol.537

iii. *Alexandra Pace*

Tonia Parascandolo, senior manager within the Customer Issues Office at the Bank of Valletta, stated how following information provided by the victim's daughter, the bank was also informed about a certain transaction which was effected in favour of Ms Alexandra Pace. Subsequently, after an email was sent to that effect following allegations of potential fraud, Pace's account was also blocked for an amount of four thousand Euro (€4,000).¹²¹

Nathalie Meli, branch manager of the Cospicua Branch, stated that she had received a call from the Paola branch, informing her that there was a client complaining that she cannot use her card. When checking, it transpired that the client's card was blocked. Meli confirmed that she had sent for the client and asked her some questions in relation to a certain deposit which was made in her account. The deposit was of four thousand euro (€4,000) which was made on the 31st August 2020. The Head of the Customer Issues Department, Tonia Parascandolo, had requested Meli to ask the client to sign a declaration explaining what the funds were and to whom they pertained. On the 9th January 2021, the client Alexandra Pace went over to the bank and when asked about the deposit, Pace stated that she was speaking to a certain "William" online, and that she had given him her account details upon his instructions, following which the payment was made in her account stating that William had told her the monies were for his friend.¹²² Meli confirmed that Pace signed a declaration¹²³ exhibited as **DOK NM** and also presented screenshots of the communication Pace had with this "William" which Meli was shown by Pace on the day she turned up at the bank. Meli goes on to state that she wrote the declaration as on that day about being questioned regarding the finds Pace *"Was distraught, when I was asking for evidence she was distraught and she was incapable of writing it at that time....[I] read it twice to her and she voluntarily signed with no pushing at all"*.¹²⁴

The declaration made by Pace refers to *"a certain William, was in contact with me and asked for my account to deposit money to give to a friend. This person "Nigerja" as shown on Whatsapp, came to collect on 1/9/2020. I gave them to him in cash."* Whatsapp messages of the past had been deleted but to the declaration she made she annexed screenshots of the person she passed on the money to.¹²⁵ *"William, is no longer in contact and when I asked 'Nigerja' to contact him, he replied*

¹²¹ Fol.1141

¹²² Fol.565-567

¹²³ **Doc.NM** a fol.569

¹²⁴ Fol.568

¹²⁵ **Dok.NM** a fol.570-573

that he is waiting for him to get back. I did not benefit from this transaction. This was a one-off gullible transaction".¹²⁶

The contact she passed the money on to, used the mobile number **77010308**. Evidence by the Melita representative showed that this number was registered to **Tabi Ovi**¹²⁷ who confirms Pace's account.

This declaration that she did not benefit from the transaction is the reason for the charge contemplated by **Article 188(2)** of the Code which has been brought against Alexandra Pace.

Data Extraction

Keith Cutajar, who had initially been appointed as IT expert in the Magisterial Inquiry which had been conducted by Hon. Magistrate Dr. Audrey Demicoli,¹²⁸ had his task extended by the Court to extract data from the victim's Whatsapp and Facebook applications. After presenting his report he states:¹²⁹

"Basically these extracts were taken from Whatsapp application with number 99876586 showing, highlighting a number of correspondences from unknown numbers which basically are liaising with her on multiple topics primarily on requests for funds, on directions to pick up packets the report itself details these correspondences in quite some depth. There was also a couple of correspondences on Facebook messenger, primarily with a certain person with the name of Smith Jones, it seems from my initial investigation that the correspondence started on Facebook from this guy a certain person called Smith Jones, a person who seems to call himself as a war general so to speak, and then they shift on Whatsapp, they get to know the contact, and they get to know in depth the victim.... The period is vast, the chats are quite voluminous and I'm presenting them on a DVD¹³⁰,....they range from, there is a heavy activity during the past year and the past months basically. Lots of individuals texting the subject with unknown numbers so to speak, with numbers not saved on the contact phone and but initially i think it is circa a year ago something like that something of that sort. And there is quite some voluminous money involved circa 40K".¹³¹

¹²⁶ **Dok.NM** a fol.569

¹²⁷ Fol.757-758. **Doc. MCT** a fol.759 et seq. CD exhibited as **Dok.MCTCD** a fol.768

¹²⁸ **PV289/2021** a fol.552 et seq. Confirmation of expert by the Court as per fol.530. A translation into English of the said Proces Verbal exhibited as **Dok.VS** a fol.1063 et seq

¹²⁹ **Dok.KC** a fol.376 et seq

¹³⁰ Fol.381

¹³¹ Fol.374-375

Reproduced Cutajar presented another report which, *inter alia*, contains the extraction of data¹³² from equipment pertaining to Sunday Eboh, Tony Ogbonna Anuforo and Alexandra Pace.¹³³

- *Call Profiles and Mobile Numbers' Information*

Marie Claire Tabone, in representation of Melita plc., stated that the number 77010308 was registered in the name of Tabi Ovi. 9913491 pertains to Alexandra Pace. 77849659 is registered in the name of Alamu Adikunne Shamson whilst number 77517136 is unregistered. Tabone also presented a CD containing the relevant call profiles for the previous twelve months.¹³⁴

Reproduced at the defence's request Tabone again presented a copy of the call profile from June 2nd 2020 - June 2nd 2021¹³⁵ pertaining to number 77849659 which had been registered on the name of Shamson Alamu; this pertained to the 'lost phone' so many futile innuendos were made by Ogbonna; a phone number which at no point was shown to bear the slightest probative value.

Charmaine Zammit, from Epic Communications Limited, provided call profile and data information for the period between January 2020 and 14th January 2021 *inter alia* for 998322189 which was registered on Ikechukwu Sunday Eboh and 79232122 registered on Shamson Alamu Adekunne.¹³⁶ Reproduced at the defence's request she confirmed the evidence previously presenting relating to the call profile of Shamson Alamu relating to number 79232122 together with another copy of the same information.¹³⁷

Considers further,

A transcript¹³⁸ of audio visual statements released by Tony Ogbonna Anuforo,¹³⁹ Sunday Eboh,¹⁴⁰ Alexandra Pace¹⁴¹ and Shamson Alamu¹⁴² were exhibited by Inspector Borg. Sunday Eboh and Alexandra Pace also opted to testify *viva voce*.

¹³² **Dok.KCHD** a fol. 1698. KA 229/2021

¹³³ **Dok.KC** a fol.1439 et seq

¹³⁴ Fol.757-758. **Doc. MCT** a fol.759 et seq. CD exhibited as **Dok.MCTCD** a fol.768

¹³⁵ **Dok.MTZ** a fol.2149 et seq

¹³⁶ Fol.942 et seq

¹³⁷ Fol.2142 et seq. Vide **Dok.CZZ-Dok.CZZ1** a fol.2144-2145

¹³⁸ Transcripts **Dok.KV** a fol.1074 et seq

¹³⁹ **Dok.CB21** a fol.145A

¹⁴⁰ **Dok.CB24 (Part 1 and Part 2)** a fol. 145A

¹⁴¹ **Dok.CB25** a fol.145A

¹⁴² **Dok.CB26** a fol.145A

A. Sunday Ikechukwu EBOH¹⁴³

Inspector Anthony Scerri, explained how on the 7th of February 2021, together with his colleagues, he effected a search and arrest at the residence of Sunday Ikechukwu Eboh. Searches in Eboh's vehicles, a Suzuki Swift GBX165 and a Peugeot Station Wagon which he used as a Taxi, DLY067, were also searched. Strangely enough whilst admitting that he has been living in Malta for a number of years, Eboh was nonetheless unable to provide any details to identify the "Tony" he mentioned to the bank. According to Eboh he had met Tony in a St. Paul's Bay shop and the latter had asked him to give him his account details so monies could be sent to that account.¹⁴⁴

One recalls the testimony of bank employee Deborah Camilleri, who when she had asked Sunday about the source of such funds, he stated that *"he had passed on the funds to a person that he identified or named as Tony who lived in Italy.....That's all we know but we did not see any documents"*.¹⁴⁵

As will be manifested Eboh is being untruthful in his account as his version defies reason and the most basic of common sense.

- *Statement Eboh Ikechukwu Sunday – 7th February 2021*¹⁴⁶

In a statement released on the 7th of February 2021, Eboh stated that he works as a taxi driver with a car he is paying by instalments whilst he now lives with his girlfriend after being divorced. He has a daughter from his first marriage and two other daughters born after marriage. Eboh has been living in Malta for the past twenty years, but in the last two years prior to his statement he was living with his girlfriend in a rented apartment.¹⁴⁷ In relation to the payment of seven thousand euro (€7,000) and eight thousand four hundred euro (€8,400) which he had received in his account, Eboh stated that in January 2021, he had received a call from a person with an Indian/ Bangla accent¹⁴⁸ who told him that his account will be blocked since he had not replied to an email.¹⁴⁹ Eboh proceeded to go to the bank after he saw that his account was debited by €15,370.¹⁵⁰

¹⁴³ For ease referred to as Sunday Eboh or Eboh

¹⁴⁴ Fol.1703-1704

¹⁴⁵ Fol.1340

¹⁴⁶ **Dok.KV** a fol.1075 et seq

¹⁴⁷ Fol.1077-1079

¹⁴⁸ There is no doubt in the Court's mind that the call came from the back office of BOV bank which is focused on customer care relations.

¹⁴⁹ Fol.1080

¹⁵⁰ Fol.1081

His version challenges logic as he states that in January 2020, he met a certain Tony in an African shop in Bugibba¹⁵¹ without even going as far as to indicate the nature and location of this shop. This 'Tony' whom he said he calls "Tony Montana" since "he is a jovial guy"¹⁵² was supposedly a frequent traveller to Italy; Tony Montana is the fictional character played by Al Pacino in the 1983 film *Scarface*, **a Cuban gangster who emigrated to America; nothing jovial about that!**

Since Tony needed a job in construction, Eboh gave him his number with the intention that should a job be available he would go to the shop and let him know of the prospect. This is a ludicrous assertion as one would expect Tony to have a phone and pass on his number too, especially given that Eboh stated that Tony was frequently travelling to Italy and it is unlikely if not impossible that in this day and age, particularly as he was in search of a job and thus being accessible should the opportunity arise, owning a phone a sine qua non.¹⁵³

Eboh states that he saw Tony last in August 2020 when he told him that his girlfriend wanted to pay him €7,000 and thus asked to use his account. He agreed to help him out since money would be deposited and it would be him, Eboh, who would withdraw it.¹⁵⁴ Eboh strangely expects the Court to believe he had **no further details for this man**, who was not simply a fleeting acquaintance but a person who appeared to loiter around a particular shop in Bugibba/Qawra area, which shop remains unidentified or unspecified as to its nature and goods/services.¹⁵⁵

To give credibility to a statement that in today's reality one would not have a mobile, Eboh proceeds to fabricate yet another detail only aimed to keep this Tony constantly in the shadows and his identity undisclosed, if ever he existed: Eboh claims that Tony called him with from a business centre to tell him that the money had been transferred and he confirmed this after checking his account.¹⁵⁶ To this date this "business centre" similarly remains a mystery as to what it is supposed to represent or where it is to be found! Undoubtedly as a taxi driver living in the area for a number of years, and a person who had several contacts with Tony over calls from this "business centre" and in person, it is a foregone conclusion that Eboh knew well there was no such business centre nor any African shop which served as a meeting place.

¹⁵¹ Fol.1083

¹⁵² Fol.1096

¹⁵³ Fol.1083

¹⁵⁴ Fol.1084-1085

¹⁵⁵ Fol.1083

¹⁵⁶ Fol.1085

Who would be so irrational and silly, with time to waste, so as to go into the hassle to search after a person to give him a message, when it was that other individual who sought Eboh's help to find a job. Anyone truly in search of a job would be constantly checking their phone, making sure they remain within reach at all times. The version given by Eboh makes no sense since it is but the fruit of fiction intended as a distancing measure between him and this "Tony Montana".

These assertions are being highlighted at the outset as they set context to the evidence which remains to be considered hereunder. **Eboh's falsehoods begin instantaneously with his first interrogations** as had happened with the bank when - contrary to Alexadra Pace's reaction who immediately and on the spot showed the bank clerk screenshots of messages for the "William" she spoke of - Eboh had nothing to show for his **obviously feigned claims regarding the spectre of Tony Montana!**

Eboh explained to the Police that he met Tony "*in an African shop in Bugibba*" - which as stated remains unidentified even with regards to the type of shop he is referring to, name and location - and had given Tony his contact number because Tony was looking for work. After some time Tony contacted Eboh and asked whether he could use Eboh's bank account so that his girlfriend sends some money to him (around €7,000), because Tony needed money. Eboh agreed and provided his account details to Tony. Their agreement was that once the money is transferred into Eboh's account, he withdraws the money and passes them to Tony. After trying to withdraw the money from the bank, he wasn't permitted to do so given that it was a large amount. He therefore found an ATM in Bugibba, and withdrew around €2,000 - €2,500 which was the daily limit permitted.

Eboh's account is riddled with non-sequiturs. Whilst he insists Tony was the one making contact with him and never the other way round, upon the money being recieved he miraculously and conveniently managed to pass them on to Tony quite swiftly. Another contradiction which catches him out as being untrue and economical with the truth is the fact that Eboh, who was burdened with expenses, did not simply withdraw funds but **used the funds deposited to effect personal transactions, his income tax payment and made Revolut transfers.**

In truth the lifestyle Eboh was leading, rents, payments for maintenance and the holidaying abroad, is not consonant with his lawful income. This acquires significance when the Court will consider the provisions of Article 22(1C)(b) of the Dangerous Drugs Ordinance which is rendered applicable to money

laundering offences through the application of Article 3(3) of the Prevention of Money Laundering Act.

Eboh confirmed he uses Revolut but strangely declares **not knowing** the holder of Revolut card ending 5374 to which **card several payments had been made from his account namely the funds deposited by the victim.**¹⁵⁷

Strangely enough when he knew so little about this 'Tony', Eboh had no qualms providing him with his bank account details, going so far as to admit that this was the only occasion he did such a thing and with a stranger no less of whom he knew nothing as he would, unsuccessfully, have the Court believe!

- *Eboh's lost phone: another fabrication aimed to hide Tony's identity and distance Eboh's actions from the scam perpetrated.*

Moreover Eboh was confronted with the fact that when first spoken to by the police regarding Tony, **he never mentioned that he did not have Tony's number but only that he had lost his phone the day before.** A detail which was devised solely to hide one's own hand in the scam which had been unleashed:

"Spettur Anthony Scerri : Before when we spoke and I asked you about his telephone number you did not tell me that you did not have his telephone number, you told me that you lost your mobile.

Akkuzat : I lost my phone.

Spettur Anthony Scerri : When did you lose your mobile?

Akkuzat : When I lost my mobile I could not find it today.

Spettur Anthony Scerri : Today?

Akkuzat : Yesterday yesterday, I did not find it yesterday. So that is why I was ...charging it, you saw it there I was charging it. I could not see my phone there.

Spettur Anthony Scerri : Did you make any report to the police?

*Akkuzat : That is what I wanted to do this morning after I go to training. I keep my, I go to work at 7.15 and then I go to training, and then after training I go to Qawra Police to report."*¹⁵⁸

Every word uttered by Eboh makes no sense precisely because it is conceived exclusively to deceive the investigators. Oddly enough, he maintains that he still had not filed a police report about the lost phone explaining that he preferred to go to work first, proceed to go to his training (without specifying where and of what sort) and only tend to filing a report over the lost phone afterwards.

¹⁵⁷ Fol.1094

¹⁵⁸ Fol.1097-1098

Such a statement is absolutely absurd and mindless given that, as a taxi driver he needs to be in a position to receive calls, with the phone being indeed an indispensable tool of the trade. Truly an assertion which can only be arrived at after relentlessly spinning lies and falsehoods seeing that his job depends on being accessible and reachable. Thus what purpose did going to work as a taxi driver have if he had no phone through which he could be contacted to carry out trips? Eboh failed to provide that he had a secondary means of communication thereby permitting him to carry out his day's work. Details which reveal untruths and fabrications!

Eboh admitted purchasing a MacBook for his daughter for €1,259 on the 9th November 2020. Another expense which he fails to show how he could afford based on his lawful income. In fact, Eboh claimed he had been forced to stop using his BNF account as it was in debit by circa €15,000 but used his APS account. He stated he paid €150 as maintenance to his wife and €600 in rent whilst earning around €1,000 per month, thus leaving him with a monthly balance of circa €250. The car he owns is being paid by instalments of €160 but had not paid since the pandemic.¹⁵⁹ Interestingly, and bearing in my mind Eboh's meagre income and significant expenses, he admits that he travels to Hong Kong three times a year with his daughter where he stays with his brother for around two weeks.¹⁶⁰

He insisted he did not have more information about this Tony and finds difficulty explaining in a coherent manner how, should he have managed to find him a job, he would have contacted him given that their only means of communication was their casual and unplanned encounters at the elusive "African shop".¹⁶¹ He mentions how he spoke to Tony in August 2020 but encounters difficulty in explaining how he had managed to pass on the monies withdrawn from his account to Tony as in his own words he had no contact for him.¹⁶² In the second part of his statement Eboh now mentions that Tony needed the money to go to Italy since his father had died.¹⁶³ Another detail which is added on as an afterthought when hard pressed for logical and reasonable answers by his interrogators.

For the first time Eboh mentions that Tony needed his account details for his girlfriend to deposit money since the former had lost his card, a fact never mentioned before and an assertion which does not follow since losing one's

¹⁵⁹ Fol.1102-1104

¹⁶⁰ Fol.1113

¹⁶¹ Fol.1007

¹⁶² Fol.1108-1110

¹⁶³ Fol.1111

card does not mean one must use someone else's account but a new card is applied for!¹⁶⁴ Moreover banking applications obviate the need for a physical card to be at hand should a deposit be needed since the application generates an IBAN number easily.

Nor could Eboh explain to his interrogators the Revolut transfers he made with what he admits as being his sole Revolut card, ending 5232, to an account with Revolut ending 5374. He declared that before allowing his account to be used, between January and August 2020, he had only met Tony fifteen (15) times and if he made ten (10) withdrawals, he met him each time to pass on the money. **He had not even bothered to ask this Tony why he needed his girlfriend to send him money, forgetting that earlier he mentioned that Tony had told him he wanted the money as his father had died before the transaction was made.**¹⁶⁵ Obviously when events are the fruit of fiction and falsehoods, such inconsistencies escape even the shrewdest amongst our midst!

Sunday Eboh then progresses to seal the case against him by irreparably digging his position deeper into the ground when he states that the Revolut transfers were payments made to his brother, with no name or further details, who lives in Greece.¹⁶⁶

Thus it results that (i) once monies were received and retained in his account without lawful excuse, knowing full well, their tainted origins, and *multo magis* (ii) when the said monies were in his possession, transacted and withdrawn or purchases made therefrom, thus disguising the origin of the funds, Eboh became guilty of money laundering:

Article 2 of the Prevention of Money Laundering Act defines "money laundering":

- (i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
- (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

¹⁶⁴ Fol.1116

¹⁶⁵ Fol.1118-1120

¹⁶⁶ Fol.1121

- (iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

Mention has already been made of the import of Article 22(1C)(b) of the Dangerous Drugs Ordinance, and this will be considered in depth below. Suffice it to be mentioned at this juncture that taking into account Eboh's modest income, the payments and loans due as maintenance to his first wife, providing for his new family, car payments and home rentals, the two-week holidays he takes three times a year to Hong Kong with his daughter,¹⁶⁷ the potential to make expensive gifts when the balance in his account is a quarter of the MacBook's price, the above-mentioned legal provision acquires great significance. Had Eboh's intentions been honest and his account a true one, proof of his income as well as the furnishing of details to substantiate his claims, merely to the standard of possibility and forgetting the legal requirement of probability, could have been easily provided.

Instead, his confused and convoluted account of the facts knows no bounds when he states that he sent €1,110 in one day to his brother in Greece so that he could pay his sister's rent in Africa: *"Yes because he used to send me money from Greece"* without ever producing any evidence to substantiate these claims even on a basis of possibility let alone probability; an easy task given that Revolut transfers are recorded in the application itself!!¹⁶⁸ One questions if he has no issues sending money to his brother in Greece, holidaying three times a year in Hong Kong, what difficulty was there for him to directly make a money transfer to his sister? Yet again similar to the "business centre", Tony Montana, the African shop and the identities of the two brothers and sister also remain shrouded in mystery. Not even an address, a contact number of a mere family photo was produced to substantiate even the most insignificant of information he utters.

Sunday's Eboh is untruthful at best, unreliable, unsubstantiated in totality, with his Tony Montana remaining a phantom!

¹⁶⁷ Fol.1113

¹⁶⁸ Fol.1122

B. Tony Ogbonna Anuforo¹⁶⁹

In statement released on the 8th of February 2021,¹⁷⁰ Ogbonna indicated his mobile number as being **77517136**. His version as to why Alamu told Police he had asked for monies sent to his account by Tony to be reversed was that Alamu was having problems with Tony's wife.¹⁷¹ However he admits the argument happened in January 2021, a good **four (4) months after the money transfers** had been done and dusted way back in August 2020, and hence, there is simply no correlation between the two as Ogbonna desperately tries to portray throughout his statement. Tony denied asking Alamu for his bank details. He knew Eboh through football but didn't classify him as a friend.¹⁷² Tony confirmed he had a salary account with HSBC Bank wherein he receives his monthly income of around €800, with €500-€600 bonus from **employment with G4S**. He pays €800 per month as rent for his flat where he has been living since 2018. Ogbonna also confirmed he had a Revolut account. He denied talking to Alamu (aka Sam) about the €10,000 transfer and this prompted the Superintendent interrogating him to confront him with Shamson Alamu.¹⁷³

Tony Ogbonna finds difficulty accounting for Alamu's version and can only repeat that this was a lie on Alamu's part for some argument with his wife/girlfriend – again not with Tony himself!! – which happened in January, 2021 and before that there were “not any problems that I know”. Thus in his own words he lets it slip that in the time-frame when the ten thousand euro (€10,000) was deposited to Alamu's account, the relationship between them was a serene and tranquil one. In fact, messages from Tony's phone indicated that the incident had been sorted out and laid to rest with no hard feelings.¹⁷⁴ Ogbonna also elaborated that Alamu tried to date Ogbonna's wife/girlfriend and therefore this created some tension between them. No such evidence was produced to substantiate this assertion by Tony Ogbonna.

In actual fact Tony Ogbonna's girlfriend, **Christiana Badmus**, testifies to the contrary and corroborates Alamu's version that at the time of the money transfers there were no issues. Hence it is absurd to allege that Alamu's declaration, that Tony was the one who requested the money to be transferred to his account, is untrue or a form of revenge for something which still had to happen four (4) months later “*she told Tony about it, Tony called Sam who had*

¹⁶⁹ For ease also referred to as 'Tony', 'Tony Ogbonna' or 'Ogbonna'.

¹⁷⁰ Fol.1154

¹⁷¹ Fol.1155

¹⁷² Fol.1157-1159

¹⁷³ Fol.1160

¹⁷⁴ Fol.1161-1162

*apologised saying he didn't intend to offend her.*¹⁷⁵ The fact that until January 2021, Tony and Alamu were still on speaking terms proves quite the contrary; namely that the incident which had taken place months before, as Alamu stated, had been resolved and the matter lied to rest.

At this point, Adeku Shanson Alamu¹⁷⁶ was brought into the interrogation room to confront Tony Ogbonna. He immediately insisted on his version that in August 2020, Tony called him telling him he would be receiving €3,000 from Italy for school fees. He helped him out, knowing that he had no account, by giving the number to his account. When he had called him, he was still asleep and when he checked his balance using his phone he noted that besides the €3,000 a further €7,000 were also deposited. From the mobile application he could not verify who sent the money: *"So I told him like I called him, I said listen what is this money why what is this? He said, I said listen our agreement is €3000, if you do not provide the invoice I have to go to the bank to tell the bank to transfer the money back. Then he said okay. Then I went to the bank the same day immediately and I told them, I told them that that is not my money"*¹⁷⁷.

He told the bank he had no idea who put the money in his account, which moneys came in in quick succession, a few minutes before he had arrived at the bank. He insisted with the bank that he did not know the remitter and requested the transaction to be reversed.¹⁷⁸ After they spoke with the person who had effected the transfer, the money was reversed. Bank officials confirm Alamu's statement.

Even after this incident, Alamu shows he still respected Tony Ogbonna and thus learned defence's allegation that Alamu concocted this story to spite Ogbonna – albeit without providing any evidence which begins to suggest how such a state of affairs could ever have materialised and without showing he had any cause to as Ogbonna's own girlfriend confirms – fails miserably.

After this incident at the bank: *"I just called him on the phone I told him listen I don't like this kind of thing. Then he said okay okay okay, he is a gentleman, that is what he told me, okay okay okay. [Superintendent James Grech : And you never spoke from that day till yesterday.] No from that day we did not talk, I had an argument with his wife, with a friend of his wife, like his wife is a bit rude bla bla bla. Then he called me if I have any problem with his wife I could have called him. Then I said okay I am very*

¹⁷⁵ Fol.2369-2371

¹⁷⁶ For ease also referred to as 'Shamson' or 'Alamu'.

¹⁷⁷ Fol.1164

¹⁷⁸ Fol.1165

*sorry the matter is closed like that. [Superintendent James Grech : Did you have any arguments before?]: No no no. He is a lovely guy no."*¹⁷⁹

A version which, as already observed earlier, is **corroborated** by no other than Tony Ogbonna's own girlfriend.

Shamson Alamu explains that he had no reason not to trust Tony but upon seeing a larger amount than that agreed upon, and learning from the bank that the money came from Malta and not from Italy as Tony had initially claimed – minor details which continue to bolster the credibility of Alamu's version as is the detail that he had requested Tony for an invoice to show the bank when effecting the withdrawal – he became wary of this transfer.¹⁸⁰

Despite Alamu's version of events, Tony Ogbonna insisted that Alamu was lying and that this was an act of revenge from Alamu's side without giving any plausible or logical explanation as to why one had to go to all these lengths regarding an incident which only happened months later!! The money transfer occurred in August 2020, yet the argument with the friend of Tony's wife/girlfriend in January 2021, occurred a month before their confrontation at the police financial crime department.

The court notes that it is most revealing and enlightening, to say the least, that hearing Alamu dispel the allegation that this was an act of revenge on his part - since the incident had only just happened, way after August 2020 when he received the money - **Tony Ogbonna falls silent and does not contradict Alamu in any way, thereby confirming that the vengeance plot he is alleging to counter his deeds is a mere ruse which utterly fails to discredit or undermine Alamu's sound version of events.**

Instead of offering evidence to contradict Alamu's account, Tony Ogbonna simply keeps stating that this is a conspiracy without even managing to scratch the surface as to why, a matter which had been resolved six months earlier with the transaction being reversed on the 28th August 2020, had to be re-hashed in January 2021, when in actual fact throughout the intervening period there had been no issues. Indeed, Tony Ogbonna fails to convince or to bring even a tiny shred of evidence to contradict Alamu's version.¹⁸¹

Alamu instantaneously offers his phone to the police so that they may verify that Tony was calling him from two different numbers, clarifying **Tony called**

¹⁷⁹ Fol.1166

¹⁸⁰ Fol.1167

¹⁸¹ Fol. 1172-1173

him from his Melita number.¹⁸² Before August, they only greeted each other in the street and didn't communicate telephonically. Tony Ogbonna states his Melita number is 77517136 whilst the Go mobile one is 79517136.¹⁸³

Dok.CB2¹⁸⁴ corroborates this detail as Tony made nine (9) incessant calls from 77517136 to Alamu in a span of under four (4) hours.

Alamu states that Tony called him in the morning when he was still asleep.¹⁸⁵ This detail will assume relevance when Ogbonna's line of defence attempts to undermine the veracity of Alamu's testimony as to whether Tony called him at night or in the morning. In fact Alamu clarifies that he was asleep when Tony called even though it was the morning as he had returned from his night shift; records show that the call from Tony Ogbonna came in at 9:37am!¹⁸⁶ Thus, any misconceptions raised by learned defence counsel are resolved to the Court's satisfaction showing no inconsistency or contradiction on Alamu's part.

Alamu reacts in a manner which the court finds commendable as well as credible, bearing in mind **Tony's failure to substantiate even with common sense the allegation that Alamu could have concocted such a story, let it lie for 6 months than bring it up again when police began investigations in February 2021.** He shows he still trusts his friend for the out-of-character lapse of judgement but insists with Tony to be forthright and honest about the matter, even over the constant interjections of learned defence counsels for Ogbonna.

On this point, the court would be failing in its duties not to make mention of defence counsels' interventions manifestly and laudably aimed to assist their client, which extend beyond assisting their client in ensuring that he does not incriminate himself unwittingly. This observation is aimed at the Police who should be vigilant enough to circumvent and prohibit conduct in the interrogation room which is not foreseen by Article 355AUA(8) of the Criminal Code which provision states –

(c) the suspect or the accused person shall have the right for his lawyer to be present and participate effectively when questioned. Such participation may be regulated in accordance with procedures which the Minister responsible for Justice may by regulations establish, provided that such procedures shall not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using where possible in the opinion of the interviewer audiovisual means in terms of paragraph (d):

¹⁸² Fol.1168

¹⁸³ Fol.1169

¹⁸⁴ Fol.136

¹⁸⁵ Fol.1170.

¹⁸⁶ **Dok.CB2** a fol.136

Provided that the right of the lawyer to participate effectively shall not be interpreted as including a right of the lawyer to hinder the questioning or to suggest replies or other reactions to the questioning and any questions or other remarks by the lawyer shall, except in exceptional circumstances, be made after the Executive Police or other investigating or judicial authority shall or other investigating or judicial authority shall have declared that it has no further questions;....

Considering the way the confrontation between Tony Ogbanna and Alamu was allowed to progress, it does reveal to the Court that Alamu remained unmoved and steadfast in his version and replies. He never veered or was caught out in an inconsistency, galvanising the Court's stance in affording the utmost credibility to Alamu's account:¹⁸⁷

"Adeku Shanson Alamu : Listen I've known Tony more than ten years, the man sitting down there is a gentleman I am not going to lie to you.

Akkuzat : I am surprised he is saying all this, I am surprised he is saying all this.

Adeku Shanson Alamu : He called me, even when I was shouting on the phone with him, he was like okay okay okay okay okay. I said if he wants to lie..

Akkuzat : This did not happen, this story did not happen.

*Adeku Shanson Alamu : **You have to say the truth Tony.**"¹⁸⁸*

Logic fails the Court when trying to comprehend Tony Ogbonna's line of defence that Alamu, five to six months earlier could have conjured such an act. And for what reason, since Shamson Alamu had absolutely nothing to gain and everything to lose had the bank suspected anything untoward being transacted through his accounts. Instead Alamu took immediate steps to reverse a transaction which he had not agreed to, as cautiousness kicked in.

This brings the Court back to the issue as to its finding that there is nothing sinister with the fact that a message sent way back in August 2020 (by Alamu to Tony providing his bank details as the former finds no hesitation confirming time and time again) was not found in the course of police investigations in February 2021, six months later which is the time when interrogations and searches were effected on the defendants and their residences!

In truth Alamu's version is corroborated in no unclear terms with the constant and persistent incoming calls from Tony on the day the funds were deposited! The court finds **Alamu's version totally credible and reliable. Adjectives which can in no way apply to the account Tony Ogbonna tries to feed investigators!**

So much so that when, in the second part of the interrogation, Tony Ogbonna is confronted with mobile data showing that **he made multiple calls to Alamu on**

¹⁸⁷ Fol.1174 et seq

¹⁸⁸ Fol.1180

the day the moneys were received, a fact he conveniently failed to inform the police of when questioned earlier, he absurdly states that this was but a mere coincidence and related to a request to find accommodation for a cousin who, upon being asked her name claims she died in the intervening period between August and the interrogation date, failing also to provide her name!!¹⁸⁹

As is customary Tony excels at inventing answers without even bothering to back them up with the tiniest of details. When asked to provide further information or other details, his response is a deafening silence!

When Alamu is brought back to continue his confrontation with Tony, Alamu again **doesn't waiver and is adamant that Tony was calling him after he had returned from his shift**, on the day the money was deposited to his account:

*I was sleeping and he called me and I think I pick the call. So when I pick the call he told me to check the money that the money is there. I was like I could not gather myself so I said okay okay okay. As I check the, my mobile I saw three thousand. I think immediately I must have called him back, I saw another seven thousand. So he called me and I told him what is this money all about? He was trying to pass with me that I should go and withdraw it. I said no no no no no I don't do this no. Then I went to the bank at St Paul's Bay..... [Supretendent James Grech : Yes yes yes we know. And the money do you remember from whom you recieved it? Do you know the name from where you recieved it?] I don't remember because when I saw it I went to the bank to tell them to stop it and send it back. Because that is not what he told me. ...Tony you called me to let me know that the money is there. I was asleep. He called me, he was the one that called me. He told me that the money is there, is it possible for me."*¹⁹⁰

Alamu also makes mention of an important detail which goes to corroborate the veracity and authenticity of his account namely that since had no reason to check his account as he **had not effected any transactions**, he was alerted to do by Tony when the money he had informed him of was deposited. It is these tiny, perhaps for the untrained mind, insignificant details, which continue to convince the court of the genuineness of a character; as Alamu had made no transactions what need did he have to check his account when he was fast asleep after finishing his night shift? So true!

*"if I don't buy anything online, you understand, it is not possible for me. He was the one that called me Sam check your account the money is there, I was sleeping when he called.When he called me I was sleeping."*¹⁹¹

¹⁸⁹ Fol.1185

¹⁹⁰ Fol.1187-1190

¹⁹¹ Fol.1190

Another indication of Alamu's sincerity in the matter is afforded by none other than his indignation, nay perhaps even outrage, at being falsely accused by a person he offered to help out. Alamu becomes vexed, and perchance understandably so, when he is made to attend what he perceives to be a charade being committed to his detriment by a friend he was only trying to assist. Nonetheless, unfaltering and hence enhancing his credibility and dependability, he reacts in a way which one, faced with the same predicament, would be expected to act and react in:

"Listen Officer can I tell you something? I am here to tell your friend I am not stupid and I am not mad. Let me tell you one second, I know you are advocate or whatever, maybe you might try to tell him to lie like that but I know what I am saying. He is very lucky that I saw you and did not come and punch you..

.....[to Tony] Why are you talking about a fight between a woman when we are talking about this. [Akkuzat : Because of a woman you want to punch me? Now threatening me in front of everybody?] I am not threatening you I am just telling you you are very lucky. [Dr Charles Mercieca : I heard it.]

*Supretendent James Grech : Hu qal you are lucky I saw you and did not come and punch you. He did not tell him I am going to punch you so let us be fair. Now we can stop this here anyway we are going around the bush. Can you leave the room please thank you."*¹⁹²

Tony Ogbanna's account as to why he had to call Alamu in quick succession on the date the money was received leave no doubt for interpretation. **Tony is at a loss to explain the reason behind the calls he besieges Alamu with in the few hours after the monies were deposited until Alamu reversed the transactions when, unsurprisingly, Tony's frantic calling ceases suddenly!**

The investigation itself corroborates Alamu's version and disproves the fiction Tony attempts to create when it is shown to Tony that his calls to Alamu **coincided perfectly with the messages the victim Mary Anne Darmanin was receiving by Smith Jones requesting her to deposit the funds.** Insp. Borg confronts Tony:

*"I just went to the office to check the collaboration between the bank account and if there is any other coincidence during the time and the time frame that occurred when there were those calls with the transactions. So according to the chat Mr Alamu recieved.....WhatsApp chat of the victim with the person telling her which bank account she shall be placing the money. John Smith the one who was corresponding with the lady.: He is telling her to place this amount of money in this account which is of Alamu in his BOV account on the 28.08.2020 at 10.31. **From 10.31 till 12.12 there is this***

¹⁹² Fol.1191-1192

correspondence which we are going to give you, so there is also it corresponds also to the time frame that you made the eight calls to Alamu.”¹⁹³

In conclusion, the Court finds that it cannot even afford an ounce of credibility to Tony Ogbonna’s version that the whole incident which happened in August 2020, was fictitiously created by Shamson Alamu. Such an attempt is offensive and demeaning to say the least even to its proponent. It contrasts sharply with the statements and evidence tendered by Alamu where he is quick on the mark to provide details, finds no hesitation in his answers, is never caught out in any inconsistency and has credible explanations for the Court and the parties making his testimony, as his statement to the police; effortless and flowing. The **hallmark of truth, legitimacy and honesty.**

- *Statement Adekule Shamson Alamu– 7th February 2021*

Alamu started off to explain that he works with Agenzija Support whilst he rents a car at €420 per month and €252 monthly rent for his apartment.¹⁹⁴ Alamu confirms the version he repeated *ad nauseam* in his confrontation with Tony, explaining how two or three days prior to the deposit having been effected into his account, Tony had called him requesting his account details to receive funds aimed to pay school fees:

“[Tony] doesn't have an account. I said okay no problem. I gave him the account number. Then maybe after two or three days I was sleeping, then he called me he said I should check my bank. I have the app. And as I check it I saw three thousand and seven thousand, I was shocked. I called him I said listen you told me three thousand why did you send ten thousand? He said because I want to use it to pay for school. I said listen if you want to use it to pay for school you have to give me the invoice so that I can go to the bank and withdraw it for you. He said no, then he started arguing with me, I said listen I don't want problem I am going to the bank now to tell them to reverse it, then he said okay no problem. Then I drove to the bank. in St Paul's Bay. I drove to the bank and I told them the money I am expecting it is not from Malta it is from Italy. Could you please return the money back I do not know anything about the money. And they start laughing like they joke you don't like money, you know they joke. ...Yes they joke, and they told me are you serious? And they told me they check and they call the person to get, because they cannot tell me, the account number of the person, so it is not possible for them to tell me the account number, so they have to call the person, so they spoke with the person and they said the person is aware that I want to return it back, and they said okay no problem and they return it, they gave me a paper to sign and I return it back.” He trusted Tony so thought nothing of providing his assistance as he had known him for a very long time “he is a very quiet guy, and he told me he does not have an account so he wanted to pay school and for me if it is school it is not

¹⁹³ Fol.1195

¹⁹⁴ Fol.1204-1206

a problem.... I remember he was telling me about his wife wants to go to school M Cast I remember."

Tony had called him on his phone using a number starting with 77 but he had him registered under another number starting 99.¹⁹⁵ These are details which the Court determines mitigate in favour of Alamu's credibility, contrarily to the vague and nebulous declarations which Tony Ogbonna makes.

He had no issue with helping and trusting Tony as he thought of him *"he is a gentleman, he is a gentleman"* and had known whom from several years before.¹⁹⁶ Nonetheless he did not regard him as a close friend but would help out, even since he is a support worker. They used to meet at Havana and when they meet at a bar they sit alone.¹⁹⁷ When he realised that ten thousand euro (€10,000) and not three thousand Euro (€3,000) had been deposited he called Tony:

"I told him like listen if you want to use my account next time if you are not going to provide invoice like I can show to the bank do not call me for that.... when he called me I said okay I am going to check my mobile, so when I check when I saw the ten thousand I was shocked. Then I called him I said what is this? He said it is ten thousand I said no no no I don't do this, this is not what you told me, you said that you wanted to pay school fees, to pay the school two semester bla bla I said listen, give me the invoice, I take it to the bank and I take it for you, if you cannot I will tell the bank, he said okay okay okay go to the bank. I went to the bank immediately.... Immediately. ... I remember they call her that day, they call her. They call the person to return the money

Surgent Spiteri : You recieved a payment of three thousand and seven thousand. Why did you not keep the three thousand of school fees? Let's say they were for school fees. You sent the whole amount back not the seven thousand only?

[Alamu]: Yes yes because I told him that he lied to me. That is what I told him.

Surgent Spiteri : Was this the only lie you caught Tony in your years of friendship?

[Alamu]: It is the lie yes.

Surgent Spiteri : It was a lie, so you suspected that there was something wrong with these transactions?

[Alamu]: I didn't suspect anything but I am the kind of person that have family here so I am always careful with people how I do things, I like to do things to be careful just in case. So that is the kind of person that I am. So that is why I said if he give me the invoice I will withdraw it for him."

The last time Tony had contacted him was when he called him on Whatsapp to inform him that someone was coming from Nigeria and wanted to bring beads with her.¹⁹⁸ Alamu recalls that when he had contacted Tony about the fact that he recieved ten thousand Euro (€10,000) and not three thousand Euro (€3,000)

¹⁹⁵ Fol.1206-1209

¹⁹⁶ Fol.1212

¹⁹⁷ Fol.1213-1214

¹⁹⁸ Fol.1215-1216

Tony was stammering as he shouted at him. He had also requested an invoice to show the bank the purpose why the monies were going to be used but no invoice was ever furnished to him: *"I told him before I withdraw it you have to give me the invoice, he said no problem that was it. So for me if I go to withdraw it I have to present the invoice if it is five thousand and if it is five hundred. I still have to."* He doesn't trust Tony after this incident but they still acknowledge each other when they come across each other in the street.¹⁹⁹

Alamu knew Eboh for some time since they played football, but hardly met. His mobile number is **79232122**.²⁰⁰ He owns a barber shop in Bugibba in Triq il-Gifen.²⁰¹ He pays a monthly rent of €690²⁰² whilst from Agenzija Support he receives a salary of €1,900-€2,200.²⁰³ Interestingly, asked to provide backup documentation for jewellery he says he is buying them from a shop he fully indicates in Bugibba and a receipt is only given once he had paid for the item in full. His ability to provide comprehensive replies is a relief contrary to Tony Ogbonna's strained replies.

Indeed, at no point does Alamu hesitate to give a reply; nor does he stumble at any point. His answers are instantaneous and he provides details which go beyond what he is being asked without the need of any prodding by the police for any clarification since his replies give complete answers, offering details and additional information the police would not have even asked for. He is likewise prompt in providing a receipt for a phone he bought in December 2020.²⁰⁴

Shamson Adehulne Alamu testified how in August 2020, Tony Ogbonna Anuforo, called him and requested his credit card details so *"they wanted to pay students in Malta. And I told him, how much is it? Then he told me its 3000 euro. That he wants students to join the new academic in October, which is last year"*.²⁰⁵ Alamu accepted and gave the account number to Tony. After a couple of days Tony phoned him relentlessly after he had finished his night shift and when he took the call, he informed him that €3,000 had been transferred into Alamu's account from Italy. After checking his account through his phone banking application, Alamu could see that three thousand euro were deposited in his account:

"As i was talking to him another seven thousand came in. Then i told him, Tony our agreement is three thousand, why are you sending this type of money to my account?"

¹⁹⁹ Fol.1222

²⁰⁰ Fol.1229

²⁰¹ Fol.1231

²⁰² Fol.1235

²⁰³ Fol.1236

²⁰⁴ Fol.1240

²⁰⁵ Fol.368-369

Then he was like, no its not like that, i said no, listen if you cannot provide the invoice so the bank will see that you want it to pay the school fees I'm going to the bank now. You told me it's three thousand how come it's ten thousand? Then I went to bank with my pyjamas, i went to the bank, then i met a guy, i told him listen someone sent money in my account, i don't know where the money is coming from, that they should refund the money back. So when they checked the money they were telling me this money was deposited now in this account. I told them, i said listen, i don't know where the money is coming from, can you please refund the money back ?And they said ok, so they made a call, i don't know who they call, and they said ok, we can refund the money back. So they gave me the paper, i signed and they refunded the money back."

This happened on the 28th August 2020, as his shift had begun on the night of the 27th August.²⁰⁶ Alamu confirms the caller was Tony Ogbonna as his number was registered on his phone and he had known him for around nine to ten years. He always thought of him as a gentleman and a quiet man so he had no issues giving him his bank details. Some months before, Tony had informed him that his wife wanted to enter as a student and MCAST and he enquired about school fees, hence he saw nothing suspicious when Tony now mentioned that he needed to receive monies to pay school fees. Tony Ogbonna started using the mobile number starting with 99 around four or five years before, however around two weeks before the monies arrived Tony called him using a Melita number which he registered.²⁰⁷

Alamu recalls how **persistent** Tony became once the money was received and was calling him **constantly** even as he was driving to the bank, which he identifies as the BOV San Pawl branch.²⁰⁸ The witness adds that Tony *"was telling me to get the money first, then he will give the invoice, then i told him you told me three thousand how come its ten thousand.... He didn't say anything he was just like ok ok ok"*.²⁰⁹ He had given his card details to Tony via Whatsapp after the latter had informed him the money would be transferred from Italy.²¹⁰ Towards the end of his testimony he explains that when he was questioned by the police, *"Yes i confronted him and i told him Tony you are the one who i gave my account number to and that very day you tried to persuade me, you kept on calling and the police i told them they can go and print the callings, and they went to print it out.... i gave my account to him and he was **the one trying to persuade me not to refund the money that day. He called me 9 or 8 times that day.**"*²¹¹

²⁰⁶ Fol.369

²⁰⁷ Fol.370-371

²⁰⁸ Fol.373

²⁰⁹ Fol.371

²¹⁰ Fol.372

²¹¹ Fol.373

This is substantiated by the call log itself which shows that between 9:27:25am until 1:22:31pm²¹² Ogbonna made no less nine (9) calls several calls to Shamson Alamu.²¹³

Alamu also recognised Sunday Eboh since he knew him as well as Tabi Ovi, but they never spoke of money transfers.²¹⁴

No evidence is brought forward by the defence, even on the basis of mere possibility, to indicate that Shamson Alamu was lying about the version he gave Police or the evidence tendered before the Court. Police were investigating a specific framework of facts which were borne out by the call profiles examined and substantiated no less, by Shamson Alamu's own account! Creating smoke screens to try and obfuscate matters in this case, proved unsuccessful for Tony Ogbonna's line of defence and nothing can detract from the credibility and trustworthiness which the court deems is to be afforded to Shamson Alamu's **consistent and corroborated** account!

This emerges clearly from the replies Shamson Alamu gives to the well-executed and razor-sharp cross-examination of learned defence-counsel for Ogbonna. Alamu confirms he was contacted by Inspector Zerafa who had enquired about a particular number which he replied belonged to a friend with whom he communicated on a daily occurrence, Olabisi Festos "*we have known each other for years*". Defence at no point brings evidence to disprove this!

Asked about the money which was deposited into his account by Tony Ogbonna, Shamson becomes incensed and manifestly annoyed again repeating the reason for his reaction:

"My Lord, I have been living in Malta for the past nineteen (19) years, and I always make sure like I abide with the law. Tony, he gave me big trauma, I am not going to lie My mind always go there. If knows, if I have the opportunity I am telling the truth, My Lord, yes. [The Court: If you have the opportunity...?] Yes, I can fight him. [The Court: Why you fight him?] Because what he made me passing through. I do not want to remember it anymore..... I am passing through every day....I am not going to hide my word, the first day we met, that was February, eighth (8th) or seventh (7th), at the police headquarters in Hamrun, I said the same word in front of both of you, that if I have the opportunity, I do not know what I am going to do. [Dr Charles Mercieca: I will tell you exactly what you said to the police -] I said it in front of you to know that it is a big trauma for me!... I am telling you the truth. Believe me!"²¹⁵

²¹² Fol.136

²¹³ Fol.127

²¹⁴ Ibid.

²¹⁵ Fol.2326-2327

For the avoidance of any doubt and the integrity of these judicial proceedings, as pointed out by the Court earlier in the judgement,²¹⁶ Alamu was asked by the Court whether before his last testimony, any suggestions were made by the investigating inspector as to what to say on the witness stand. Whilst denying outright such a claim, Shamson adds a spontaneous detail which speaks volumes when he declares that he was not even given a reason why such questions were being made to him.²¹⁷ Such clutching at straws to undermine the prosecution's case may on occasion be demanded although such conduct potentially borders on the **unethical** when there is not a shred of evidence to warrant such a line of defence and the tarnishing of a diligent, dedicated and honest prosecuting officer!

Reproduced for cross-examination, Alamu confirms his numbers, 79232122 and 79221864 the former being registered with Vodafone/Epic and the latter registered with Go.²¹⁸ In 2020, at the time of the money transfer in question, he had but one phone with dual sim.²¹⁹ He explains how he came to Malta in 2003 and has a BOV bank account. He helps Nigerians buy flight tickets and gets a slight commission for giving them a service which is between €2-€2.50.²²⁰ He again declares that the only person he provided his bank account details to was Tony whom he didn't use to meet frequently and when they did, it was likely they met at a bar.²²¹ He confirms they are not friends but Tony also frequents his hair salon²²² and should they meet in a bar they would invite the other to their table.

- *The transfer of €10,000 on 28th August 2020*

On the 28th August 2020, Tony called him in the morning when he was still asleep after his night shift. Three to four days earlier he had given Tony his bank account details over a Whatsapp message. Tony's call telling him money had been deposited to his account, woke him up and he saw the first transaction of €3,000 but as he was in the process of checking his phone to see the account balance:

"a little later the figures changed again. Those was when the arguments came up....and when you have this mobile apps the figures changed again. Then I said: "Tony listen this is ten thousand...He told me [it's coming from Italy] and I told him "if its coming

²¹⁶ Supra a fol.12

²¹⁷ Fol.2328

²¹⁸ Fol.2335-2337

²¹⁹ Fol.2339

²²⁰ Fol.2343-2346

²²¹ Fol.2348

²²² Fol.2351

from Italy it is supposed to take from two to three working days. Then he said: "The person came to Malta to deposit the money." And then I told him: "So why cant send this address to this person to come and put the money in this account?" and that was when the arguments came up".

He went to the bank after Tony Ogbonna, despite being asked for a screenshot of the invoice to enable Alamu to present it at the bank, failed to produce one. He clarifies he went to the bank in his sleeping clothes t-shirt and light trousers which he had previously called his "pyjamas".²²³

Incidentally it is through defence's line of questioning, that Alamu continues to give more details which continue to militate in favour of the veracity of his own version whilst also accounting for the suspicions and alarm bells which these transfers, coupled to Tony's non-sensical and illogical explanations raised in Alamu's mind, going so far as to cause him to run to the bank in clothes he was sleeping in to ensure that the money is reversed!! He went to the bank after noon and on his way **Tony kept calling him on 79232122 telling him "Don't go the bank"**.²²⁴

Defence presented a print-out of the call profile pertaining to Shamson Alamu for number 79232122 for the period August 11th – August 28th 2020.²²⁵ The court notes that on the day €10,000 were transferred by the victim to Alamu's account, **in the time-frame between 9:27:25am until 1:22:31pm**²²⁶ **Ogbonna made no less nine (9) calls several calls to Shamson Alamu.**²²⁷

In truth, Ogbonna's line of defence itself ultimately serves to corroborate Shamson Alamu's account!!

The bank statement exhibited further corroborates the fact that the funds entered Alamu's account on the 28th August and were reversed the same day.²²⁸

Christiana Badmus testified that in late 2019 or early 2020 Alamu wanted to have a relationship with her. He used to help her book tickets for her travelling needs to Italy. Initially he was friendlier towards her but when she started a relationship with Tony, he started thinking ill of her. He had spoken badly of her with an acquaintance of theirs (77519589) and when she told Tony about it,

²²³ Fol.2352-2357

²²⁴ Fol.2359

²²⁵ **Dok.CM** a fol.2302 et seq.

²²⁶ Fol.136

²²⁷ Fol.127

²²⁸ **Dok.VD6** a fol.230 and **Dok. MF** a fol.360

Tony called Sam who had apologised saying he didn't intend to offend her.²²⁹ This witness actually goes on to prove the opposite of what Tony Ogbonna intended as his line of defence, corroborating Alamu's version instead by stating that any arguments between Ogbonna and Alamu had been long resolved. There was simply no reason why Alamu would have had to create such an elaborate and crafty mise-en-scène of monies coming from an actual vulnerable lady to be deposited into his account simply to frame Tony, yet to insist for the funds to be returned to this woman on the very same day. The hassle involved itself makes this suggestion farcical.

Indeed, a ludicrous theory and an insult to the Court's intelligence!

C. Alexandra Pace

Inspector Zerafa explained that on the 11th of January 2021, she had received information that the defendant Alexandra Pace was proceeding to the Cospicua branch in order to close her account. Upon having received such information, the Inspector requested the Court to authorise Pace's arrest and in fact, Pace was arrested on the 12th of January 2021. During her interrogation, Pace explained that about two years before, a certain "William" from America had sent her a friend request on Facebook and they both started chatting. She explained that she had provided her bank details to this man and he started transferring certain amounts into her bank accounts because "*she wanted to buy a house and since William told her that he wanted to invest in the construction business in Malta, he told her that he would deposit money in her bank account and that eventually helped her*"²³⁰. Pace explained that she hadn't been in contact with the man for quite some time until, on the 31st August 2020, she received a phone call from a male person who claimed to be William's friend, Tabi Ovi, who was arraigned and convicted in separate proceedings for his part in this case. Tabi Ovi had initially informed Pace that she was to receive four thousand Euro (€4,000) in her bank account. This person told her to withdraw the money once she received them, and then she met him in Fgura and gave him the four thousand euro (€4,000) in cash. When Pace was asked whether she had met any other friends of 'William', she replied that she had met with another person of dark coloured skin, but had no details about him.²³¹ The bank manager from Cospicua branch had told police that Pace had signed a declaration stating that she did not benefit from this transaction.²³²

²²⁹ Fol.2369-2371

²³⁰ Fol.96

²³¹ Fol.96-97

²³² Fol.97

On the 7th February police arrested Collins Eguavoen, Marvis Iyeke - who both pled guilty to their involvement in this case - Eboh, and Anuforo, whilst Pace was given police bail.²³³ Tabi Ove and Shamsom Addekunle Alamu were also arrested on the same day. Pace's statement was exhibited.²³⁴

Alexandra Pace was also interrogated a second time on the 8th February, 2021 and began by confirming how on the 12th January 2021, she had been arrested in front of the BOV Cospicua branch, taken to Paola police station where she had released a statement.²³⁵ She began by confirming how she had been informed that monies had been deposited to her account the day before a person called her and asked her to withdraw them. Since she could not go effect the withdrawal that same day she went the next day. The person who called her collected the monies in front of her previous residence. **She had shown police the mobile number the call had been received from.**

Alexandra Pace had closed her accounts and insisted her role was limited to the €4,000 of the one-off transaction police spoke of. Messages showed that on the 13th January, the contact saved under the name "Nigerja" had told her he had no success tracing William as she had attempted to get in touch with him in a bid for the monies to be returned to their lawful owner.²³⁶

- *Statement Alexandra Pace*

In her first statement she had made mention of the fact that after passing on the initial monies which had been deposited, "William" tried to effect a second one but she refused due to her being registered on social security benefits.²³⁷ Pace insists she had always conversed with William while she had never met the coloured man who picked up the monies and a photo of whom had been sent to her via Whatsapp to identify him for that purpose.²³⁸ Similar to her Facebook profile she had also deleted these images. Initially William had lured her into believing that he could help her out financially after learning she relied on social benefits and she believed that is what prompted her to pass on her account details. Pace states that a period of time had lapsed since the conversation of monies being deposited to her account and the actual deposit so much so that when she was informed of the deposit, she belied it was in jest. The following

²³³ Fol.98

²³⁴ **Dok.SZ3** a fol.117 et seq. Vide also Renunciation to Legal Assistance **Dok.SZ2** a fol. 116

²³⁵ **Dok.KVS** a fol.1290

²³⁶ Fol.1292-1294

²³⁷ Fol.1294

²³⁸ Fol.1295

day she went to Fgura branch and found out that it was true that €4,000 had indeed been deposited to her account.²³⁹

The following is important in view of the money laundering charge brought against the defendants and in particular the definition of money laundering which will be considered below:

"Spettur Sarah Zerafa: Issa meta rajt erbat elef fil-kont tieghek x'ghidt? Bdejt tissuspetta li hemm xi haga hazina?

*Akkuzata : **Bejn iva u bejn le, ghax ghidt dan kif qabad u tefali erbat elef hekk? Ghax imbaghad wara.***

Spettur Sarah Zerafa: Imma dak il-hin, dak il-hin x'hin rajt erbat elef. M'humieq flus imma erbat elef mix-xejn, qas one Euro ma tigi mix-xejn ahseb u ara erbat elef.

Akkuzata: Le uzgur sbieh. Jekk ma jkollokx anki mija tara sabiha.

Spettur Sarah Zerafa: M'humieq xi haga li jigu fl-account u ma tindunax mhux bhal forsi ten Euros, ten Euros tghid u iva forsi fejn kont ha tibqa'.

*Akkuzata: **Dak il-hin jiena ma hsibx xejn**, ma tajtx kas, jien ghidt forsi dan bhal ma qal li ried jigi hawn issa gej hawn u jrid jixtri xi post ghidt forsi, daqshekk. Jien ma kontx nohodhom bis-serjeta' dawn l-affarijiet eminni. Jiena minni hekk jekk trid issaqsi fuqi jew issaqsi lil min trid jiena minni hekk mohhi kultant, kbira fiz-zmien imma mohhi ma jridtx jikber.*

.....

Spettur Sarah Zerafa: Issa dak il-hin m'ghaddilekx minn mohhok li forsi huma gew b'mod hazin dawn l-erbat elef?

*Akkuzata: **Ma tantx tajt kas eminni**. Ghax m'hemmx xi, ma nafx, jew jien nifhimha hekk.*

Spettur Sarah Zerafa: Li tara erbat elef fl-account.

Akkuzata: Eh sbieh.

Spettur Sarah Zerafa: U li cempillek persuna li ma tafx ghalihom, m'ghadditlekx minn rasek li dawn gew b'mod hazin?

*Akkuzata : Ghax **jien peress ifhimni li kien ilu jkellimni u hekk fhimt**.*

Spettur Sarah Zerafa: Min kien ilu jkellmek?

Akkuzata: Issa ezatt ma nafx kont qed nirreferi ghal William dak iz-zmien. William ma nafux, qatt ma gie hawn.

....

Spettur Sarah Zerafa: Dan kien cempillek ghal t'apposta biex jigu depozitati l-flus jew beda jkellmek fuq affarijiet ohra qabel?

Akkuzata: Le le just kemm qalli qabbad lilu biex jigi jigborhom hu.

Spettur Sarah Zerafa: Min qabbdu?

Akkuzata: William.

Spettur Sarah Zerafa: William qabbad lil din il-persuna biex jigi jigborhom hu. U dawn il-flus min kien ha jdahhalhom fil-kont tieghek William jew din il-persuna?

Akkuzata : Le daww William poggihom. Almenu hekk qalli jien issa ma nafx.

Spettur Sarah Zerafa: Din il-persuna qaltlek hekk.

Akkuzata: Dan li qed nghidlek ma nafux William.

²³⁹ Fol.1296-1298

Spettur Sarah Zerafa: Dan li qed tghid William li ma tafux. Dan qallek li William ha jiddepozitalek xi flus. Hux hekk, hekk qallek?
Akkuzata: Ghandikun, filfatt tghidlix ezatt ghax ma nafx ezatt. Ahjar ma nghid xejn ghax inhawwad.”²⁴⁰

Pace confirmed that the contact she saved as ‘Nigerja’ was registered under number 77010308 and contact was via Whatsapp, the number belonging to Tabi Ovi who testifies in these proceedings. From the amount withdrawn **she kept €100** to pay her father’s medical bill and medication and he was fine with it. She had not mentioned the fact that she kept €100 in her first statement.²⁴¹ Pace also added how William had informed her he was from the United States but she never met him; communications were always via Whatsapp and in text. In return for allowing him to use her account he had promised that once in Malta he would help her out financially though never specifying in what sense.²⁴² William had told her that she could not use those funds for her own personal use since they were his.²⁴³ Questioned whether she had any suspicions as to the provenance of the funds she replies:

“Ma tantx ta, ghax jien ma narahiex hazin ghax qishom mhux hafna, tergax tghidli erba' ghax ghalija flus ukoll, ghax jien kull ma nghix b'erba mija u xi haga fix-xahar, tghidli ghal erbat elef hemm qabza, imma ma rajthomx li huma, bumm kif taqbad tghid, ta' barra minn hawn. Hdejn l-affarijiet u l-frodi li nisma'. Dawn l-erbat elef..... imma inti tahseb li kieku kont naf li hemm dawn il-kummiedji u hekk kont ha nidhol ghalihom jien? Fejn kont naf li ha nasal hawn fuq il-Whats App. ... Fuq Whats App telefonata bhala friends, taf nahseb m'hemm ghalfajn dan, ma kontx naf li ha nasal f'dawn l-affarijiet jien eminni ghax mhux kont naqta kollox kont..... jiena hadtha biex inhallas il-fee tat-tabib b'kollox hux. Ghax dan biex jigik id-dar ghandek 30 Euro mill-inqas. Xi hsibt li hi mitt Euro? Ahjar hadtha jien il-mitt Euro, irrangatni. U jien terga ghidtlu lili ma tghidtx m'ghidtlux ara kemm nimxi jien, jien ghidtlu li ha niehu mitt Euro mhux qbadt u hadtha.”.²⁴⁴

Collins Eguavoen testified how he had known a certain Daniel Toshiduru six years previously, through Facebook when at the time²⁴⁵ the latter had first mentioned that *“he is trying to talk to them (women) to get money out of them that he will need help in order to receive this money because he is not living Malta and he does not have Maltese accounts.”*²⁴⁶ They had not approached the subject until 2019 when Daniel called him again and informed him that the women were ready to

²⁴⁰ Fol.1298-1301

²⁴¹ Fol.1302-1305

²⁴² Fol.1306

²⁴³ Fol.1307

²⁴⁴ Fol.1308-1309

²⁴⁵ Fol.1996

²⁴⁶ Ibid.

pay and he needed an account, whilst never indicating the names of these women.²⁴⁷ Toshiduru had promised Eguavoen that if he provided his bank account details, he would be compensated, *"Look, this woman she is going to pay amount of five thousand euro (Eur 5000), can you give me an account? I said ok. And then I sent him my accounts. At first he told me it was just five thousand euros (Eur 5000) so when I sent him my accounts they send the five thousand euro (Eur 5000) when I confirm the five thousand euro (Eur 5000) I told him I received the five thousand euro (Eur 5000). So after the next day, the next morning about eight o'clock or nine o'clock (8:00am – 9:00am) I receive another amount of fourteen thousand eight hundred (14,800) in my accounts"*.²⁴⁸

Enquiring with Daniel about the other amounts, the former said he had forgotten to inform him of the additional amounts. He was instructed as to how to send the monies back to him and for his contribution he was compensated €3,000. The witness explains that upon checking his account he found deposits *inter alia* from the victim.²⁴⁹

After some time, Daniel Toshiduru asked him whether he could rope in anyone else to provide their accounts to participate in this scheme and he found Tabi Ovi and Marvis Iyeke, also identifying the latter in Court,²⁵⁰ who willingly sent him their account numbers.²⁵¹ When he contacted Tabi Ovi, he informed him that he knew of a friend who need help receiving monies from Malta, and the Tabi said he would get back to him. Tabi Ovi was told that the monies would be coming from women who were being beguiled by Daniel in a bid for them to part with their monies, *"the guy who is requesting this money is playing this woman to get this money from them.these women to get the money from them"*. Later Tabi Ovi sent him an account number via Whatsapp which pertained to a certain Alexandra Pace, however he had no contact with her and did not know her except in the course of these proceedings. He was passed on €2,800 by Tabi Ovi who had retained €1,200 as his cut and had given €100 to Pace. He knows Pace received the €4,000 in her account since Daniel had sent him the transfer slip.²⁵²

Tabi Ovi began his testimony by identifying the defendants adding that he knew Eboh as he was also a taxi driver too and would meet him at the airport.²⁵³ He first met the defendants when they were arrested on the 8th February 2021

²⁴⁷ Fol.1996

²⁴⁸ Fol.1994-1995

²⁴⁹ Fol.1996

²⁵⁰ Fol.2000

²⁵¹ Fol.1998

²⁵² Fol.2002-2004

²⁵³ Fol.2006

in relation to an investigation into money laundering and fraud. He explains how he became involved in the fraudulent scheme:

After the outbreak of the COVID-19 in 2020, he was facing some financial difficulties and he had some conversations about this with Collins Eguavoen. Eguavoen had told him that he was to receive money from abroad and he needed an account so that the money could be transferred there. Tabi explained that he agreed to forward his bank account details and he sent them to Eguavoen via Whatsapp. According to Tabi, his account was not ideal, because it was used solely to receive wages and thus it would appear strange if he had to receive other payments. Therefore, Tabi contacted Alexandra Pace to ask whether she can provide her account details and she agreed. In turn, Tabi forwarded the bank account details to Collins Eguavoen on Whatsapp. He had also agreed on a commission fee with Eguavoen for providing him with a bank account. According to Tabi, Pace took circa €400 since she needed the monies to cover medical expenses.²⁵⁴

This amount remains unestablished with the legal certainty required as Pace contends she only took €100, which amount in reality does not change the substance of the offence of which she stands charged.

Although the Court has its lingering doubts on the matter, the following extract of Tabi Ovi's testimony militates against a finding that Pace even suspected the funds she was about to receive were of tainted origin.

Consequently, Alexandra Pace cannot be found guilty of either receiving property obtained by fraud, and *multo magis*, of money laundering.

So much so, that Tabi Ovi himself did not learn of the full details of Daniel's scheme until proceedings commenced before the Maltese courts:

"Initially I did not know the money was coming from Malta because he told me, I am working with what he told me, so I do not really know if the money was coming from someone here in Malta or money was coming from. He told me he is in contact with people outside the country. Those people they are going to send money. He did not tell me the reason for the use of It was after everything I knew it was someone who lives here in Malta, I do not know. Collins told me, "Give me the time, I am going to continue..." Collins told me, "These people are ready to push, to send the money," so I should get the account ready. So I told him I am going to check. So I gave him some days that I am going to check with people that I know, maybe they are ready. I really tried to contact some people and some said they cannot and some said yes. But I had

²⁵⁴ Fol.2007-2010

Alexandra Pace in mind. So I spoke to Alexandra Pace and she told me ok she is going to use her account.....To receive the money.

The Court: Did she knew what she was getting into?

The witness: **Initially she did not know.** So it was when the money came in and the bank asked her... because she told me afterwards when I went to receive the money in person. She told me she had problems with the bank and she had to tell them something to the bank about the money. So, me, I did not further on to press her what she told the bank or what she did not tell the bank. So she gave me the account and I forwarded to Collins on Whatsapp and I told him "I have the account details." Then I forward the account to him and he told me... we both agreed on a commission [for Collins and Ovi].....**what Alexandra Pace received was not in form of a commission because we had a mutual agreement that she broke.** She told me her father was sick as well. That she need some money to do some shopping. So I told her, "ok, fine, you can take from part of the money... I am not very sure how much she took, around four hundred or so (~ 400)."

Tabi Ovi adds that he realised something was amiss when Collins informed him more money could be on the way. It was only when proceedings were instituted before these Courts that he realised that the monies came from a Maltese victim and the reason behind such payments.²⁵⁵ Alexandra had told him the account was used to receive unemployment benefits and enquired as to the amount that would be deposited in it.²⁵⁶

What appears to have convinced Pace to give her account details to Tabi Ovi, was the fact that he knew her from years before when he also befriended her on Facebook. He had mentioned that he had an American friend whom he met in Paceville called 'William' and whom Alexandra had also met. In fact, it was William who put him in contact with Pace and that is how they met. The money transfer incident happened years after, when Collins had asked for more bank accounts to transfer monies to.²⁵⁷ When Collins informed him the funds had been deposited to Pace's account, he contacted her and the following day she passed on the money she withdrew from her bank after contacting him to meet her in Fgura.²⁵⁸ She passed on an envelope with the money informing him that she had taken out an amount she needed to take. ²⁵⁹

As stated Tabi Ovi testifies in a manner which exculpates Pace from the first two charges. He declares that Pace did in fact ask about the provenance of the funds yet it was he that **lured her into believing that the money was being sent from Williams** through Collins and his friends: *"I made her believe that the*

²⁵⁵ Fol.2009-2011

²⁵⁶ Fol.2012

²⁵⁷ Fol.2014-2015

²⁵⁸ Fol.2022

²⁵⁹ Fol.2023

money is coming from William".²⁶⁰ Pace was scared that the government would withdraw her social benefits upon seeing €4,000 in her account:

The Court: Now, did you ever tell Sandra about this; I mean you just said that you tricked her to believing the money was from William.

*The witness: Because she was scared that **she was not ready to receive the money at that time.***

The Court: So she did not know that the money was part of a scam.

*The witness: **No, she did not know, she is not part of it.***

The Court: She is not part of it.

The witness: Yes.

The Court: Did you ever tell the police that she is not part of it?

*The witness: Yes, I told, I remember I told the other inspector, not you. **I spoke that she is innocent, she does not know anything about the fraud. She only was in need, she needed money at that time -***

The Court: but she did not know. Did she suspect at least that this is something which is not right, or not? You told her this is from William.

*The witness: No, she was not pushing, she was not pushing like she is not... she only asked me **"what is the risk?" And then I told her, "This money is just money for investment." And that's -***

The Court: you told her, "This money is for investment."

*The witness: **Is coming from William.***

The Court: And is coming from William.

The witness: Yes, because they both have

The Court: Was William a criminal?

The witness: Because herself and William both have the conversation, I do not know.

The Court: Do not worry. But is William a criminal?

The witness: No, no, no.....

The Court: So she had no reason to suspect to proceeds were tainted.

The witness: No, she asked me how I got to tell her, how I made her to believe that she, why she bring the money and why the money is going to be put into the account.......I told her the money is coming from William she was already expecting money from William in the past.

The Court: So you led her to believe that the money was coming from this William for investment, and on oath - I want you to be very careful here - on oath, you are saying she had no knowledge that the money was coming from the women who were being played. Correct?

The witness: That is correct... She asked me if the money was coming from William. And I told her the money was actually coming from William.

.....

The Court: when did she realize the money wasn't William's?

The witness: I think maybe until she was arrested.....

The witness: I think when she was, I do not really have an idea when she... because she went to the bank.

²⁶⁰ Fol.2013-1016

The Court: So, when she went to the bank, when the money is already in the bank, look what I am saying,
The witness: Yes, yes.
The Court: When the money is in the bank, she is still thinking that money is from William.
*The witness: Yes, correct."*²⁶¹

Tabi Ovi is certain that at the time when funds were deposited and later withdrawn, Pace was convinced the money belonged to William, going as far as to declare that he put this idea into her mind to get her to play along and concede for her account be used!²⁶² Pace handed him the money since she must have thought Ovi was going to invest it on William's behalf. Knowing that William had told Pace about his wish to invest in Malta some time before, he used that old conversation to lure her into believing the money was coming from William "I kind of, tried to freshen up the same idea in her mind".²⁶³ Ovi did not count the money Pace gave him before passing it to Collins, thus the Court's observation made earlier that the amount retained by Pace remains unproven.²⁶⁴

Alexandra Pace took the witness stand and testified how communications began on Facebook through Messenger with a certain 'William', who said he was an American soldier. Three weeks later they evolved into contacts on WhatsApp. Conversations were light at the start with her explaining her predicament of being on the dole and tending to an ill father. He began to tell her of his interest to come to Malta. He sent her a picture of him which depicted him as a white American. His attitude began as a flirtatious one and she willingly accepted the attention he seemed to be giving her and the solace it offered. Initially, around a month to six weeks before, having mentioned he wished to come to Malta, he asked her if she would pass on her account details and be willing to keep his monies in her account. Since she was on the dole she was not eager to receive extra funds into her account but at some point after asking him if the provenance was a legitimate one she consented but thought he would not actually deposit monies.²⁶⁵

This detail reminds the Court that Tabi also mentioned how Pace had enquired as to the origin of the funds 'William' had, through Tabi, asked to transfer to her account.²⁶⁶

²⁶¹ Fol.2016-2021

²⁶² Fol.2025

²⁶³ Fol.2026

²⁶⁴ Fol.2030

²⁶⁵ Fol.2153-2155

²⁶⁶ Supra

When Tabi Ovi informed her one evening that monies to the tune of €4,000 had been deposited, she was rather annoyed. She agreed to go to the bank to withdraw them the next day and was surprised to see her ATM transaction slip indicate that large amount as she only used to receive €400 per month in social benefits. She feared once more funds would be placed into her account her social benefits could be forfeited. The next day she went to Fgura branch where, a man William had described as a very trusted friend, turned up to collect the money she withdrew from the bank.²⁶⁷ She was pressed for cash to pay medication and informed him she took €100. Pace insists she had no idea as to the source of these funds but the man, Tabi Ovi, *"Hu qalli li bghathomlu, bghathomlok Willaim. Qalli inzommmhomlu jiena. Qalli imbghad dak, ikellmek hu meta jigi Malta"*.²⁶⁸

Pace was alerted that something was wrong when sometime after the transfer, she could not effect an ATM withdrawal. She was referred to the Cospicua branch manager and later that same day on being called back to the bank she was detained by the Police. This coincided with the start of police investigations in January 2021. She confirmed that the man she met to pass on the monies was Tabi Ovi who later admitted to his part in the scam which was perpetrated and object of these proceedings.²⁶⁹

Article 188(2) of the Criminal Code

Pace is also charged with having made a false declaration. The only evidence is a written declaration addressed to the Bank of Valletta, Cospicua Branch on the 8th January 2021, reproducing and recording a conversation which took place between Pace and the bank representative wherein besides explaining that the monies were passed on to a friend of a certain William who had asked for her account number to deposit monies, she states that ***"I did not benefit from this transaction. This was a one-off gullible transaction."***²⁷⁰

Article 188 of the Criminal Code provides:

188. (1) Whosoever, in order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information, shall, on conviction, be liable to the punishment of imprisonment for a term not exceeding two years or to a fine (*multa*):

²⁶⁷ Fol.2156

²⁶⁸ Fol.2157-2158

²⁶⁹ Fol.2158

²⁷⁰ **Doc.NM** a fol.569

(2) Where the document referred to in sub-article (1) is not one intended for any public authority the punishment shall be that of imprisonment not exceeding one year or a fine (*multa*).

Considering Tabi Ovi's statement, the only false declaration which the Court deems has been proven as having been made by Pace is that she did not benefit from the transaction in any way, with the benefit she derived from this declaration being solely that made in the bid to evade liability for keeping funds of tainted origin for herself and thus in the hope of evading responsibility under the banking and money laundering regulatory regimes.

Recidivism

A judgement delivered by the Hon. Magistrate Dr. Miriam Hayman on the 10th October 2012, against Alexandra Pace was exhibited.²⁷¹ In that judgement Pace had been convicted of drug trafficking offences and sentenced to two years imprisonment and a fine of three thousand Euros. The judgement was *res judicata* at the time of the offence as the fine imposed had also been paid.²⁷²

Given that the offence of which Pace is being found guilty took place in January 2021, beyond the five year period envisaged by Article 50 of the Criminal Code, Alexandra Pace is being found guilty of being a recidivist solely in terms of Article 49 of the Code.

Considers further,

The court has had occasion to underline the inconsistencies, lack of credibility and untruthfulness of the statements provided by defendants Sunday Eboh and Tony Ogbonna.

The evidence against the two defendants Sunday Eboh and Tony Ogbonna is compelling and leaves no room for interpretation.

Salient Points

I. Sunday Ikechukwu EBOH

1. **Sunday Eboh Ikechukwu**²⁷³ took the witness stand and repeated the version he had released under interrogation. Notwithstanding the passage of time since the time he met "Tony Montana" in January 2020, he was still unable

²⁷¹ **Dok.CBZ** a fol.1985

²⁷² Fol.1989. **Dok. MF** a fol.1991 et seq

²⁷³ Fol.2083 et seq

- three years down the line - to provide additional details regarding this individual as well as the shop which was supposed to be their meeting place! One would have thought that in the intervening three years, the date when he testified, he would have taken all measures to make up for the scant information he originally was in possession of in an attempt to exonerate himself! Evidently he was fibbing then and fibbing now. How is it possible that since August 2020 he had heard nothing still of this man he had befriended, located the business centre or the African shop for that matter!

Eboh again begins to explain that he met 'Tony' in an "African Shop" and Tony informed him that he was seeking employment and thus asked for Eboh's help in trying to find a job. Again, a person seeking employment would ensure that he is reachable by phone; ulterior comments on this point are superfluous! The African shop in Bugibba remains unidentified and one would have at least expected Eboh to provide a photo of same; after all as a taxi driver he ought to know and identify whereabouts easily, had he been honest and truthful in his account!

Indeed, it would have been more beneficial for his case had Eboh chosen to retain his right to silence!

Around August 2020, this Tony "He called me and he said, "can I do him a favour?" I said, "What favour?". He said his girlfriend want to put money, he need account to pay money into my account. And I said "why?". He said because he does not have an account. I said, "why don't you have an account?" He said he is Italian Immigrant. Then I remember, yes, they do not give them account, they do not open account for Italian Immigrant".²⁷⁴

He attempted to withdraw the money which was deposited into his account from the BOV branch at the Malta International Airport; however, there were a lot of people and he decided to go to the Birkirkara branch. When he went there, the cashier told him that he cannot withdraw the money because it was a large sum. Unable to make the withdrawal, Eboh explained that he then went and withdrew two thousand euro from the ATM at the airport.²⁷⁵

2. The court cannot believe such a statement! Any bank would allow an over the counter cash withdrawal provided it has no cause to believe that it is of tainted origin and that the payee would be equipped with the necessary documentation allowing due diligence requirements to be carried out. Thus, in so stating, Eboh continues to revel in his falsehoods and tales knowing full well

²⁷⁴ Fol.2088

²⁷⁵ Fol.2090

that he had no documentation to justify that transfer as there was no Tony in the shadows.

3. Any law-abiding citizen, who like Eboh had been living in Malta with a family for over twenty years would have sought to protect his status. Thus if he truly did not know or suspect of the tainted origins the funds which had been deposited to his account, he would have asked the bank to reverse same upon encountering the initial hurdle, similar to what Shamson Alamu did.

His greed and criminal intent however impelled him on to act differently

4. Eboh states that it was Tony who told him that his girlfriend had sent another eight thousand euro (€8,000) in his account, however in his interrogation he had stated that he realised a second amount had been deposited when he initially tried withdrawing the amount for Tony:

"Yes that I will withdraw it and give to him. I said okay. I said I trust you I give you my account if anything happens you know where I live I am popular in Malta they know me, he said okay. He called me again with phone in business centre, Bros they put the money in the account, and I check in my net and I saw 7000 I said ahh okay. I will withdraw the money let me go to the bank to withdraw. I think that was maybe Friday I don't know.

Spettur Anthony Scerri : So you are saying that the first time he sent you 7000.

Akkuzat : 7000 or 8000 I don't know what he sent the first time. Then I said okay. I will withdraw it and I go to the bank the one of the airport.

Spettur Anthony Scerri : Just a moment, when you checked you saw the 7000?

Akkuzat : I saw it.

Spettur Anthony Scerri : On the application on the mobile.

Akkuzat : On the application. Maybe 7 or 8 I don't know.

Spettur Anthony Scerri : No problem you saw the 7000."

Spettur Anthony Scerri : So you withdraw the total 7000 and gave it to the guy.

Akkuzat : I withdraw it and gave it to the guy. And then there is a new transaction in my account. I said but you did not tell me about this one, if you tell me everything that you have and this is the amount I want to get. Is this it or not? That is what I told the guy. The guy said sorry he could not reach me on the phone. That is why."²⁷⁶

In itself this is nothing but a strange declaration given that there was no real need for Tony to inform Eboh of the second payment given that when he went to withdraw the "initial" amount the following day²⁷⁷ the amounts were already both deposited. In fact statements show that both amounts were deposited the

²⁷⁶ Fol.1086

²⁷⁷ Fol.1086-1087

same day **within a span of less than three hours** with the first amount of €7,000 being deposited at 10:50hrs²⁷⁸ and the second amount of €8,400 at 13:22hrs.²⁷⁹

"The witness: Then Tony called me, said, "did I withdraw the money?" I said, "no, they did not give me in the bank, I only withdraw two thousand euros (€2,000)." Then he tell me there is another money inside the account. I said, "but you did not tell me something like that! Why you put another money there?!" He said the girlfriend just try to put the money for him again. Then I said ok.

Dr Mifsud: So he informed you that they had put into your account another money?

The witness: Yes.

Dr Mifsud: Did he tell you how much?

The witness: He told me eight thousand (8,000).

Dr Mifsud: Eight thousand (8,000).....

The witness: I told him to wait on the line, to hold on, then I check again, I saw –

Dr Mifsud: how did you check?

The witness: I check through my app."²⁸⁰

He continues in his convoluted and inconsistent testimony which is diametrically opposed to what he had initially told police under interrogation:

"Dr Mifsud: Ok. And what did you do with the two thousand (2,000) that you had withdrawn?

The witness: I gave it to him.

Dr Mifsud: You gave it to him.

The witness: yes.

Dr Mifsud: Ok. And then?

The witness: Then the next day I call customer care,

The Court: Where?

The witness: Customer care of bank.

The Court: Eh! Customer care.

The witness: Yes.

The Court: Ehe.

The witness: Then I asked, "how much can I withdraw a day?" He told me, ok, I can withdraw three thousand (3,000) a day. I said ok. They opened the –

Dr Mifsud: ok. Wait a moment. When you received the money the first time, do you remember the day of the week? Not the date, the day? Monday, Tuesday, Wed- ?

The witness: Friday, Friday.

Dr Mifsud: It was a Friday.

The witness: Yes.

Dr Mifsud: The first time that you received the money.

The witness: Yes.

Dr Mifsud: And that you withdrew two thousand you told us,

The witness: yes,

²⁷⁸ Fol.227

²⁷⁹ Fol.226

²⁸⁰ Fol.1089

Dr Mifsud: *So the next day was Saturday.*
 The witness: *Yes Sir.*
 Dr Mifsud: *And you went... where did you go?*
 The witness: *To withdraw it.*
 Dr Mifsud: *You went to the bank again you said.*
 The witness: *No, I did not... I called the bank.*
 Dr Mifsud: *You called the bank.*
 The witness: *Yes.*
 Dr Mifsud: *And what did you ask them?*
 The witness: *I told them, "how much is the limit that I can withdraw a day?"*
 Dr Mifsud: *Ok.*
 The witness: *And they said three thousand euros (€3,000).*
 Dr Mifsud: *Ok. And what did you do?*
 The witness: *And I went to ATM to withdraw it.*
 Dr Mifsud: *Ok. How much did you withdraw?*
 The witness: *Three thousand euros (€3,000)."²⁸¹*

5. The question arises naturally: given that Eboh could have easily withdrawn the amount sent to his account by effecting withdrawals of €3,000 daily over a maximum 5 day period ($5 \times €3,000 + €15,000$). Moreover, given he was given €1,000 to keep for himself, thus the remaining amount was that of €14,400 and hence Eboh never needed to make so many transactions if his aim was simply to withdraw the amounts at €3,000 daily from an ATM/ over the counter "for Tony"!!! Lies which beget more lies!

6. Just as naturally however, the answer to the question posed presents itself: Sunday Eboh was acting **on his own and/or alternatively in connivance with his delinquent partner whose true identity he refuses to divulge.**

No wonder this "Tony" remains a ghost; the "business centre" a secretive location and the African shop a furtive mystery!

In any case, the court has no doubts as to **Sunday Eboh's active involvement in the con perpetrated to Darmanin's detriment and the laundering of the proceeds thereof.**

7. A cursory look at these transactions reveals that the withdrawals never approached the €3,000 mark, but instead **over a ten (10) day span** from 21st August until 31st August 2020 were divided *inter alia* into no less than eleven (11) ATM withdrawals which amounted in total to **€10,330**;²⁸² a cash withdrawal of **€2,000** effected on the 25th August 2020 and Revolut transfers amounting to

²⁸¹ Fol.1090-1091

²⁸² Dok.MF2 a fol.362-364

€2,100 over a four day span (in that same period) to an account which has not been shown to have any link to any identifiable individual!

Contrary to what he claims he was advised by the bank, the withdrawals he made each fell well below the €3,000 permissible threshold he mentions!

More significantly he ended up withdrawing not merely €14,400, the amount owed to Tony Montana after he subtracted his €1,000. Suffice it to be said that, omitting ATM withdrawals (€10,330) and a cash withdrawal of €2,000, the Revolut transfers (€2,100) and Point of Sale purchases (€230.43) effected by Eboh amount to €2,330.43, double the €1,000 Eboh claims Tony gave him for his troubles!! If one had to add the ATM and cash withdrawals the amount balloons to **a total of €14,660.**²⁸³

Clearly Eboh did much, much more than simply withdraw monies allegedly “for Tony Montana” just as he is shown to have at least spent not just €1,000.

8. To be also underlined as revealing how fallacious Eboh’s account of events truly is, emanates from the fact that even with respect to the €1,000, he continues to be caught out as a prevaricator. For he originally states that upon giving Tony the monies he withdrew for him in cash, Tony handed him €1,000 for his service; thus a cash transaction: “He gave it to me like appreciation that I helped him, that is just what he did, just give me and I shall keep it for myself”.²⁸⁴

This means that this amount is over and above the banking transactions effected by the same Eboh. Little does Eboh care for making sense and being consistent in his testimony. He spurts out answers which in turn only serve to undermine irreparably his own version and defence.

There is no plausible explanation for the several Revolut transfers, point of sale purchases and withdrawals made by Sunday Eboh. In truth given that he fails miserably in providing information to justify the money transfers, the Court believes that **Eboh benefited wholly, or extensively** from the said transactions given that the shadowy character of “Tony Montana” remains the phantom of the tragic performance staged for the victim; a performance in which Eboh had a leading role in staging and which saw the victim parting with thousands of her life savings.

In his testimony Eboh states that he had agreed to give Tony his account so the latter’s girlfriend could transfer €7,000 or €8,000. This is **the first time that Eboh**

²⁸³ Fol.362-364

²⁸⁴ Fol.2100

actually mentions the second amount of €8,000 as *a tempo vergine* when interrogated, he had only spoken of the €7,000 and in his statement he goes as far as saying how surprised he was when he noted a second amount of €8,000.

This is what happens when one fabricates details since one is easily lost in the web of falsehoods hitherto spun; forgetting previous statements and disregarding pitfalls such perjurious statements undoubtedly result in. Moreover, this goes to show how instead of trying to make his story credible by providing details of this person or their meeting place, in the intervening 2 years since the start of the investigation and in what would have been a bid to exculpate himself, he instead chooses to makes up a story to justify the illicit bank transfers received from the victim, distancing himself from the part he so willingly played.

9. Eboh confirmed that he received €7,000 in his BOV bank account. When the transfer was effected, Tony called Eboh to inform him about it and Eboh, after checking his account on his mobile application, confirmed that he had indeed received the amount.²⁸⁵

In his interrogation he had stated differently and in fact informed police²⁸⁶ that it was only in January 2021, when alerted by a call from the bank that he got to know that two payments had been made. Moreover, he told the bank at the time that he knew nothing of these monies although earlier letting it slip that in he was made aware of the transfers in August. In truth each of Eboh's versions are plagued by fickleness, constantly changing and entirely unreliable:

*"Akkuzat : Yes. Then I went to the Bank in Bugibba, I went to Customer Care and told them see I got minus 15,000 in my account I don't know why, I have 25 year on it. They said ahh they will check, I stay almost forty five minutes and the money of the bank came, **there is transaction on my account 8000 and 7000**. I said okay what am I going to do? They said..*

Spettur Anthony Scerri : When they told you about the transactions of 7000 and 8000 in August you knew about them in January?

*Akkuzat : **No**.*

Spettur Anthony Scerri : In August you knew about them.

Akkuzat : In August.

Spettur Anthony Scerri : Can you explain?

Akkuzat : Yes that is why I said I went to the branch that they told me to go in Birkirkara. When I get there I saw a woman then they told me to come to this branch and I came, this is what happened, and when I come they start shouting at me, there is money there is going into your account. I said money when is this? They said August.

²⁸⁵ Fol.2088-2089

²⁸⁶ Fol.1080-1081

I said but this is January something like that, why is it that they are not calling me? Because they want to know I steal the money. I said me steal the money?
Spettur Anthony Scerri : Who told you that?
Akkuzat : The lady at the bank was saying it. Then I said okay I don't know anything about this money, maybe the guy I don't know talk to the woman I don't know, the guy come to me..
Spettur Anthony Scerri : So which guy?
*Akkuzat : Tony."*²⁸⁷

10. The Court cannot but highlight that this declaration of Eboh, namely that he knew nothing of the full amount of the monies received, is astonishing as it is inconceivable given that, it is his very actions which irreversibly undermine this statement of his knowing nothing of the full amount received into his account.

The very same spending spree he wallows in as soon as funds are deposited in his account, when he manages to spend **€14,350** in a 7-day period, bearing in mind his balance had stood at just **€641.04**²⁸⁸ before the said transfers, speaks volumes.

11. From the chats exhibited and confirmed by the victim, which chats begin on the 10th August 2020,²⁸⁹ it is apparent that the communication is that between the victim and the person purporting to be the 'courier' which she refers to as Donald. Donald had asked her to transfer a total of **€15,400**²⁹⁰ which were later divided into an amount of €8,400 and another of €7,000 in a bid not to arouse the bank's suspicion after she had been initially prevented by the bank's branch from transferring the whole amount. Unfortunately the victim was subsequently allowed to make the payments when she visited another branch,²⁹¹ *"To pay it two times is the easy way"* she is told at 5:02pm on the 19th August 2020 by "Donald".²⁹²

12. The chats exhibited confirm how the victim had begun receiving instructions to transfer this amount since the 19th August 2020 at 1:08pm²⁹³ and at 4:59pm, *"The total money is 15400"*.²⁹⁴

²⁸⁷ Fol.1082

²⁸⁸ Fol.362

²⁸⁹ **Dok.VD5** a fol.162 et seq

²⁹⁰ Fol.251

²⁹¹ Fol.184-185

²⁹² Fol.185

²⁹³ Fol.183

²⁹⁴ Fol.184

13. On the 21st August 2020, the day of the transfer of €15,400, the communications commenced at 9:02am initially indicating the bank account number which Marvis Iyeke held with HSBC.²⁹⁵ However following issues raised by alert bank employees from HSBC Bank which prevented her from effecting the transfer which was deemed suspicious, at 9:50am-9:51am she was then instructed to transfer funds to a BOV account registered in the name of a *“Mr Ikechukwu Eboh Account no:4001283586-7”*.²⁹⁶

Documentation from BOV bank shows that this is **Eboh’s BOV Savings account**.²⁹⁷

14. When the bank only allowed a transfer of **€8,400**, the victim was instructed to make another transfer for the remaining **€7,000** and again her instructions were received at 12:42pm *“Bank of Valletta Mr Ikechukwu Eboh Account no: 4001283586-7”*.²⁹⁸ The same savings account of which Mark Falzon presented the statement of accounts.

15. Eboh’s bank statements show that these funds were indeed received by Eboh on the same day, totalling: **€15, 400**. The first amount of **€7,000** was deposited by the victim at 10:50hrs²⁹⁹ whilst the second amount, that of **€8,400** was deposited by the same victim **at 13:22hrs**³⁰⁰ at Fgura Branch.

16. Incidentally on the day the bank transfer of €15,400 was made, the 21st August 2020 at 20:50:13, Tabi Ovi had called Sunday Eboh, clearly manifesting the constant communication in ensuring the funds had been received and the plan hatched to exploit the vulnerable victim, a success!

17. According to Eboh he had met Tony Montana in a St. Paul’s Bay shop and the latter had asked him to give him his account details so monies could be sent to that account.³⁰¹

Truly unlikely and remaining totally uncorroborated, that one would be so naive so as to provide his bank account details to a person he would occasionally meet in an *“African shop in Bugibba”* and of whom he knew nothing else!

²⁹⁵ Fol.186

²⁹⁶ Fol.187

²⁹⁷ Fol.1768. Confirmed by Bank representative Mark Falzon; **Dok.MF2** a fol.362 et seq

²⁹⁸ Fol.188

²⁹⁹ Fol.227.

³⁰⁰ Fol.226

³⁰¹ Fol.1703-1704

18. The incredulous assertions by Eboh come to the fore once more when one recalls the testimony of bank employee Deborah Camilleri, who when she had asked Sunday about the source of such funds, he stated that *“he had passed on the funds to a person that he identified or named as Tony who lived in Italy.....”* *“That’s all we know but we did not see any documents”*.³⁰²

This contrasts sharply with Alexandra Pace’s reaction when questioned at the bank regarding the transfer she had received in her account. Pace found no difficulty passing on screenshots of communications she had in hand!

19. In truth he was a **willing and conniving co-participant in the receipt of monies obtained under false pretences and the laundering of the proceeds thereof!**

20. One notes the different point of sale purchases and Revolut transfers as well as a €2,000 cash withdrawal made by Eboh besides the ATM withdrawals which goes to disprove his assertion that he was merely withdrawing funds for a fleeting acquaintance. A service for which he said he received €1,000, which is quite substantial considering the amount was **only that of a €15,400** unless it reflects the risks he knew he was taking knowing only full well of the source of funds. The Court is adamant in its conviction that the service was no other than for himself as well, even if partly so!

21. Eboh is further caught out in his deceit when he expects the court to believe that he was surprised to find out that on the same day that the initial transfer was made, a second deposit was made to his account. Again a fictitious assertion is that made by Eboh that whilst trying to find Tony a job (as he wants the Court to believe), he sensed nothing untoward that this jobless man would pass on €1,000 for allowing him to use his account.

Nowhere is Eboh’s **pivotal role** in the scam more evident than when it is revealed that after Alamu refused to accept the monies, **it was Eboh’s account which was once more indicated to the victim** as the account to which the reversed funds of €10,000 were now to be transferred!

In fact, whilst earlier at 12:03pm Donald instructs the victim not to proceed *“Wait please...They want to bring another account”*, thirty (30) minutes later the victim receives the account details pertaining to **Sunday Eboh**.

This is the same account to which she had already transferred €15,400. She is asked to re-transfer the €10,000 originally deposited into Alamu’s account:

³⁰² Fol.1340

“Bank of Valletta Mr Ikechukwu Eboh Account no 4001283586-7.... Let them transfer it to this account”!

22. Moreover Eboh fails to provide details as to how and what amounts he passed to Tony. Whilst in his statement he mentions that he was withdrawing around €2,000 - €2,500 daily from an ATM in Bugibba, the bank statement manifests that whilst €300 were withdrawn from an ATM in Gudja on the 21st August 2020 (**the same day Darmanin sent the €15,400**), €3,000 were withdrawn from an ATM in Bugibba on the 21st August 2020, another €3,000 from ATM in Bugibba on the 22nd August, a total of €3,000 (€500, €2,000 and €500) were withdrawn on the 24th August from an ATM in Gudja and Msida.³⁰³ A cash withdrawal of €2,000 was made on the 25th August, whilst a bankers cheque was issued to the Commissioner for Revenue on the same date of the 25th August for the amount of €613.00 following a deposit being made for the same amount.³⁰⁴ Further ATM transfers of €400 and €500 were made from Qawra and Bugibba on the 27th August 2020.³⁰⁵ Another €130 were withdrawn from an ATM in Qawra on the 31st August 2020.³⁰⁶

23. On the 21st August 2020 before the initial €7,000 transfer by the victim his account balance stood at **€641.04**. Yet the following transactions were subsequently effected:³⁰⁷

- i. **Eleven (11) ATM withdrawals over ten (10) days** from the 21st August, the day Eboh received €15,400 from the victim, until 31st August 2020 which amounted to **€10,330**;³⁰⁸
- ii. A Cash withdrawal of **€2,000** on 25th August 2020;
- iii. Revolut transfers of €500 each were made on 25th August, 27th August, 2020³⁰⁹ and a total of €1,100 on 28th August 2020 amounting in total to **€2,100**;³¹⁰
- iv. Point of sale purchases from shops in Sliema (Kiabi, Diesel, Adidas, Vodafone and Nike totalling **€403.20** between the 25th August and 2nd September.³¹¹

These amounts in total reach the sum of €14,833.20.

³⁰³ **Dok.MF2** a fol.362 et seq

³⁰⁴ Fol.363

³⁰⁵ Fol.363

³⁰⁶ Fol.364

³⁰⁷ Fol.362

³⁰⁸ **Dok.MF2** a fol.362-364

³⁰⁹ Ibid.

³¹⁰ **Dok.MF2** a fol.362 et seq

³¹¹ Fol.363-364

By the end of September 2020 his account balance was back to the modest amount of €412.78.³¹²

24. The clear incongruency between Eboh's spending power and financial fluidity also results from the Asset Recovery Bureau's report which shows that his bank accounts had balances varying between a paltry €20-€86 except for one term deposit account with a balance of €1,350.00.³¹³

His expenses are various considering that during the Covid pandemic which coincides with date of the money transfers, Eboh's employer was receiving a Covid Wage Supplement in his regard averaging between €600-€800 monthly, receiving only €498.42 in August and €623.03 in July.³¹⁴ Eboh states he earns around €1,000 per month yet his hefty financial commitments include:

- A rental agreement which sees him paying €500 a month;³¹⁵
- Car insurance for a Suzuki Swift Number plate GBX165;
- Monthly maintenance of €150 to his wife;
- Car payments for the taxi is paid by instalments of €160.³¹⁶
- He has a daughter from his first marriage;
- Two other daughters born after marriage.

Bearing in mind Eboh's meagre income and significant expenses, he admits that he travels to Hong Kong three times a year with his daughter where he stays with his brother for around two weeks.³¹⁷

The lifestyle led by Eboh, his financial commitments and the regular trips abroad with his daughter, are **inconsistent with his lawful income**.

This acquires significance in view of the provisions of Article 22(1C)(b) of the Dangerous Drugs Ordinance which is rendered applicable to money laundering offences through the application of Article 3(3) of the Prevention of Money Laundering Act:

(b) In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds

³¹² Fol.362-367

³¹³ Fol.1753

³¹⁴ Fol.1813

³¹⁵ Fol.1776 et seq

³¹⁶ Fol.1102-1104

³¹⁷ Fol.1113

described in the said paragraph, the burden of showing the **lawful origin** of such money, property or proceeds shall lie with the person charged or accused.

25. Although Eboh tells the police that monies were sent to a brother, who remains unnamed, to pay for his sister's rent in Africa – a sister which remains nameless - it is worth noting that these transfers were not made on a monthly basis but over a 3-day span clearly manifesting the untruthfulness of Sunday Eboh not to mention that his explanation defies the most basic of common sense as there was no reason why he could not pay his sister directly. An assertion which had it been true, in no way could militate in his favour since he is effectively still **converting to his benefit monies originating from tainted origins!**

A text-book case of money laundering is the only way Sunday Eboh's conduct could be described.

There is no doubt in the Court's mind that not only did Sunday Eboh suspect of the tainted origins of the monies he was receiving in his account but he knowingly and willingly participated in the heartless exploitation of an elderly woman, beset by the loneliness caused by the pandemic and the loss of a spouse.

Together with other delinquents he saw to it that her unbounding generosity and affability be abused and preyed upon.

26. Yet the most important evidence which serves to demonstrate the true and extent of Sunday Ebo's involvement is the communications the victim received.

At 4:09pm, when it appeared that the second transfer had not yet been deposited into Eboh's account, the victim was sent a message, *"The first payment have arrived but the are still waiting for the second payment"*.³¹⁸ By the 26th August, 2020 at 7:55pm she was told that the monies had not yet been deposited to which she promptly replied *"No I paid what they asked....7000...84000 [sic]....not true...they're not on my account"*.³¹⁹

One notes how the chat reveals concern that the second transfer had not yet been received in Eboh's account! Only Eboh had knowledge of this fact, no one else.

There can be no doubt of the fact that Sunday Eboh and no other spectre was a driving force in this despicable scam.

³¹⁸ Fol.189

³¹⁹ Fol.192-193

II. Tony Ogbonna ANUFORO

1. Telecommunications records show that Tony Ogbonna communicated *inter alia* with Shamson Alamu.
 2. The calls were made from number **77517136** which, in the course of his interrogation, Tony Ogbonna confirms with Police as being his number.³²⁰
 3. Given that the Asset Recovery Bureau's report into Tony Ogbonna showed that the defendant owned not merely one bank account but indeed two active (2) accounts³²¹ held with HSBC Bank plc and Lombard Bank Malta plc, there is no plausible reason for Ogbonna needing to transfer monies in a third account except if he wanted to distance himself from the transaction which he knew only too well to be tainted.
- Ogbonna gives no plausible reason why he chose Shamson Alamu to provide him with his bank details except that he was shrewd enough to rope in a friend to ensure that no dirty funds are transacted through his account. This exposes Tony Ogbonna as a calculating and conniving individual. The fact that he needed another account belonging to a third party – Shamson Alamu's account – to receive funds from tainted origins speaks volumes as to his criminal intent.
4. The account held with Lombard shows that this was the account used to receive a monthly income of €750 from, what results to be undeclared employment with G4S Security.³²²
 5. Similar to how he managed to avoid registering for regular employment throughout the years in Malta and thus to pay taxes and other dues due to the Maltese Treasury - which goes to **show character** - he showed no scruples in breaking money laundering laws after he had knowingly received money which was acquired through machinations and false representations, the essence of Article 334 of the Criminal Code:

334. Whosoever shall in Malta knowingly receive or purchase any property which has been stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or shall knowingly take part, in any manner whatsoever, in the sale or disposal of the same, shall, on conviction, be liable –

³²⁰ Fol.1155 and Fol.1169

³²¹ Fol.1834

³²² Fol.1842

(b) if the property has been obtained by means of any of the various offences relative to unlawful acquisition and possession of property, to the punishment established for such unlawful acquisition or possession;

(c) if the property has been obtained by fraud, to the punishment established for the particular fraud by which the property was obtained:

6. Nor could Tony Ogbonna provide an explanation why he called Shamson Alamu nine (9) times on the day and time the money was deposited by the victim to Alamu's account. The timings of the calls, which were relentless, corroborate to the letter Shamson Alamu's version of the facts and reveal Tony's deception.

7. On the 28th August 2020, Ogbonna made³²³ no less nine (9) calls to Alamu starting from 9:27:25am until 1:22:31pm.³²⁴

8. The bank statement exhibited also corroborates the fact that the funds entered Alamu's account on the 28th August 2020 and were reversed the same day at the monies were reversed at **13:05hrs** on the 28th August 2020.³²⁵

Thus, realising his pleadings proved unsuccessful in persuading Alamu not to reverse the funds, Tony's calls only stopped fifteen minutes (13:22) after Alamu had got his way and the funds were reversed to the victim (13:05 hrs).

9. Similarly to the failure by Eboh to provide supporting documentation to the bank, Tony Ogbonna too was requested by Alamu to send a screenshot of the invoice accounting for the transfer but instead Tony failed to provide any documentation for Alamu to show the bank thus triggering the actions wisely taken by Shamson Alamu in asking for the reversal of the funds.

10. From an analysis of the Whatsapp communications received by the victim from the person purporting to be the courier "Donald", there is a perfect convergence in time-frames between when the messages which were being sent to Alamu from Tony to withdraw the funds deposited and the messages which were being sent by Donald to the victim.

These chats were first exhibited by the victim's daughter³²⁶ and as stated were subsequently authenticated by the victim herself when she testified *viva voce*.³²⁷

³²³ MTC+ Mobile Terminating Call

³²⁴ Dok.CB2 Fol.136

³²⁵ Dok.VD6F a fol.230

³²⁶ Dok.VD5 a fol.162 et seq

³²⁷ Fol.247

Moreover an extraction of these communications is also to be found in the Court expert's report.³²⁸

11. Since 8:54am on the 28th August 2020, the victim was alerted to the fact that an account number was going to be indicated to her wherein she could transfer funds: *"I will send it to you once the give it to me [sic]"*³²⁹; *"The will give you a Malta account the give me bov [sic]"*.³³⁰

At 10.26am she is told: *"First pay 700...Then later you paid the remaining 3000"*.³³¹ It is at 10:31am that the victim is passed on the details of Alamu's account, *"MT28 VALL 2201 3000 0000 4002 4628 583.... ADEKUNLE SHAMSON ALAMU Bank of Valletta Malta"*.³³²

At 11:22am the victim informs Donald: *"I paid the 7k"* and a minute later at 11:23am he tells her *"Remain 3000.... wait you will still pay it in the same bank account To be easy.... When you wait a little time you go back and paid the remaining one [11:26]"*

12. These **timings coincide with the calls Tony Ogbonna Anuforo was making to Alamu:**

9:37:25; 10:08:06; 11:48:10; 11:52:10; 11:55:45; 12:03:05; 12:35:00 and 1:22:31³³³

As stated, these calls were made from number **77517136** which Tony Ogbonna Anuforo confirmed was his number.³³⁴ Service providers had testified that the number was unregistered. Incidentally and also attesting to the veracity of Alamu's version, this number is that he showed police as pertaining to "Tony Moje".³³⁵

13. It is imperative to point out that throughout the investigations and for that matter, the course of these proceedings, **Tony Ogbonna fails to provide an explanation for these persistent and frantic calls made to Alamu.**

³²⁸ **Dok.KC** a fol.381.

³²⁹ Fol.197 at 8:55am

³³⁰ Ibid at 10:06

³³¹ Fol.197

³³² Fol.198

³³³ **Dok.CB2** a fol.136. Vide also **Dok.KCHD** and testimony of mArie Claire Tabone as Melita representative. Vide also Fol.2142 et seq. Vide **Dok.CZZ-Dok.CZZ1** a fol.2144-2145

³³⁴ Fol.1155 and Fol.1169

³³⁵ **Dok.JG2** a fol.543

14. On the contrary, Alamu is the only one to give a credible, plausible and reliable account as to the reason behind the said calls!

So much so, that whilst one recalls how Alamu objected and reacted negatively to the transfer of more than €3,000 during the morning of the 28th August 2020, as of **12:03hrs Donald instructs the victim not to proceed “Wait please... They want to bring another account [12:03]”**.

Fortunately this attempt failed as the victim had already made the transfer “*I have sent it [12:04pm]*”.³³⁶

15. The communications by Donald which follow are a clear attempt to persuade the victim to go back to the bank, retrieve the monies Alamu rejected and await further instructions regarding the new account to which she should transfer those funds.³³⁷ Here is where it becomes manifestly obvious that **Sunday Eboh and Tony Ogbonna are entwined in this reprehensible and callous fraudulent scheme perpetrated on a vulnerable woman.**

For when the victim is at **12:33pm** now given a new account number to which to transfer the reversed €10,000 which Alamu refused, the new account to which she is now asked to make the transfer is none other’s than **Sunday Eboh’s, the same account she had already made a deposit totalling €15,400: “Bank of Valletta Mr Ikechukwu Eboh Account no 4001283586-7....Let them transfer it to this account”**.

Mercifully, the bank informed her that this was not possible “*They can’t get them back...the clerk told me I have to ask the man to send them back....I told her I made a mistake now I can’t tell her to pay that one...I’m so tired of all this [12:36-12:45]*”³³⁸

16. Again coinciding with the timings Alamu mentions and the call log reproduced above, which shows a call from Tony to Alamu at **12:35**,³³⁹ the victim informs Donald at **1:06pm** “*Someone at the bank called me to tell me that I will get them back*”.³⁴⁰ In fact the funds were reversed at **13:05hrson the 28th August 2020**.³⁴¹

³³⁶ Ibid.

³³⁷ Fol.198-199 at 12:11pm-12:27

³³⁸ Fol.199. The account of Alexandra Pace is then indicated to her at 12:45 but she informs him she had already paid the 10,000 and couldn’t make another transfer.

³³⁹ **Dok.CB2** a fol.136

³⁴⁰ Fol.200

³⁴¹ **Dok.VD6** a fol.230

The call profile showing communications between Alamu and Tony Ogbonna who was pleading with Alamu not to go to the bank,³⁴² shows that the last call was made at **1:22:31 pm**, by which time the 'courier' as well as Tony Ogbonna (!) had accepted that there was nothing further to do on that day as the victim was told that she would receive the funds back in a few days telling him that with the €10,000 being her last monies, only then would she be able to transfer them to another account.

Considers further,

Jurisprudence

In its judgement **The Police vs Omissis and Vladimir Omar Fernandez Delgado**,³⁴³ the Court examined *funditus* the legal requisites of the offence of money laundering. In Article 2(i)-(vi) of the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, the legislator describes the various types of conduct which amounts to money laundering:

Our Money Laundering Act, though a copious piece of legislation, does not give us a concise definition of the crime under issue. It does pronounce a number of instances which would constitute this crime, its attempt or complicity.

Reference is made to Archbold 2012 where one finds that this offence is described and defined as:

"The explanatory notes to the PCA (Proceeds of Crime Act 2002) define money laundering as "the process by which the proceeds of crime are converted into assets which appear to have legitimate origins, so that they can be retained permanently or recycled into further criminal enterprises."

(Archbold: Criminal Pleading, Evidence and Practice, 2012, page 2475).

The Law Society Anti-Money Laundering Practice Notes October 2013 (Supporting Solicitors) defines this crime as follows:

*"Money laundering is generally defined as the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source. Under POCA the definition is broader and more subtle. Money laundering can arise from small profits and savings from relatively minor crimes, such as regulatory breaches, minor tax evasions or benefit fraud. **A deliberate attempt to obscure the ownership of illegitimate funds is not necessary.**"*

Adds:

³⁴² Fol.2359

³⁴³ Court of Magistrates (Malta) As a Court of Criminal Judicature, per Hon. Magistrate Dr. Miriam Hayman; 29th April, 2015, Crim. Proc. No. 457/2013.

*“There are three acknowledged phases to money laundering placement, layering and integration. However, the broader definition of money laundering offences in POCA includes even **passive possession of criminal property as money laundering**.”* (page 9)

In examining this offence, our Courts have also established that the three elements – placement, layering and integration, are not per se sine qua non elements necessary for the crime to exist, establishing that these stages were but a general description of the crime in question, for better understanding of the lay person sitting in a Trial by Jury. The Criminal Court reiterated further that thus the Prosecution need not, according to Law, prove the intention in each and one of these stages.

This short summary reflects the main points raised by the Court of Appeal in the judgment **“Police (Insp Angelo Gafa’) vs Carlos Frias Mateo”**, dated 19th January, 2012, wherein the Court is here cited to have said this:

“Kif ben qalet tajjeb l-Ewwel Qorti diversi awturi jaqsmu l-process tal-hasil ta’ flus fit-tlett stadji imsejha “placement”, “layering” u “integration”. Dawn l-istadji gew imfissra b’mod konciz mill-Qorti tal-Magistrati. Pero` mill-bidunett ta’ min jipprecisa, li dawn l-istadji huma biss deskrizzjoni generali tal-process tal-hasil tal-flus. Hija skola ta’ taghlim li nholqot sabiex gurija tkun f’posizzjoni aktar felici sabiex tifhem l-intricci u l-kumplikazzjonijiet li jinvolvu dawn it-tip ta’ reati. Għalhekk il-qasma tal-process tal-hasil ta’ flus f’dawn it-tlett stadji hija wahda generali u bl-ebda mod dogmatika. Fil-fatt awturi ohrajn jikkritikaw din il-klassifikazzjoni minhabba li tissemplifika wisq is-sitwazzjoni u f’hafna kazijiet ma hiex riflessjoni veritjiera ta’ dak li realment ikun qed jigri. Għalhekk dawn l-istadji għandhom jittiehdu biss btala punto di partenza u btala deskrizzjoni generali tal-process tal-“money laundering” b’mod flessibbli tant li ma hux rikjest li l-prosekuzzjoni trid tipprova l-intenzjoni f’kull wiehed u wahda minn dawn l-istadji. Dan qiegħed jingħad fid-dawl ta’d-definizzjoni ta’ “money laundering” li nsibu fit-tieni artikolu tal-Kap. 373 kif ukoll ir-reati kkontemplati fl-artikolu 327, 328 u 329 tal-Att tal-Parlament Ingliż “Proceeds of Crime Act 2002” fejn analiżi tagħhom ma tirrikjediex li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti “placement”, “layering” u “intergration” bil-propjeta’.”

Furthermore, as justly pointed out by Defence Counsel in the note of submissions, our Courts have advised caution in dealing and assessing this case, as well explained in another judgment handed down by the Criminal Court in the case **“Republic of Malta vs John Vella”** decided on the 9th November, 2007:

“L-Avukat Ġenerali jista’ jakkuza persuna bir-reat ta’ money laundering mingħajr ma jkollu sentenza ta’ kundanna ta’ dak li jkun qed jiġi allegat li huwa l-attività’ kriminali sottostanti. Ċertament pero, ikun x’ikun il-każ, jekk l-Avukat Ġenerali jiddeciedi li jakkuza lil xi hadd b’money laundering irid jindika n-ness bejn l-attività’ kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverzjoni ta’ trasferiment ta’ proprjeta’, mhux kull habi jew wiri ta’ proprjeta’ necessarjament jammonta għal money laundering.

Din hi Ligi straordinarja li tintroduci kuncett radikali fis-sistema nostrana u li tirrikjedi applikazzjoni bl-akbar skuplu u attenzjoni biex ma tigix reza fi strument ta’ ingustizzja, iktar reminixxenti taz-zminijiet tal-inkluzjoni minn daww tal-era moderna tad-drittijiet tal-bniedem.”

Further considers, that as said our Law does not give a comprehensive definition of this crime, opting instead to delineate various instances which would constitute the crime of Money Laundering or its attempt or complicity. Section 2(1)(i) of the said Chapter defines the crime of

money laundering as being constituted in any one or more of the instances as reflected in the charge sheet.

Whilst the actus reus of this crime should present no problems to comprehend, it is immediately obvious that the mental formal elements involved range from **the actual knowledge that the proceeds laundered had a criminal provenance, to even the suspicion thereof**. The Law as amended uses the words "knowing" or "suspecting". [(Section 2(1)(i)]. The element of knowledge should present no difficulties to proof in a Court of Law, knowledge is what it is. It clearly means that one has a good understanding, knowhow, command, and comprehension of a situation. The term suspicion on the other hand can present and lend itself to a myriad of difficulties and is deserving of more exploration.

Guidance is here sought by reference to Money Laundering Offences: The Law Society, Chapter 5, 2013, October Practice Notes. This extract refers to the P.O.C.A. It can help us understand the mental elements necessary under our Legislation. To keep in mind is that our Chapter 373 speaks only of knowledge and suspicion, whereas the POCA speaks of three elements including that of "reasonable grounds for suspicion", this within the limitations hereunder outlined:

"5.3 Mental elements

The mental elements which are relevant to offences under Part 7 of POCA are:

- *knowledge*
- *suspicion*
- *reasonable grounds for suspicion*

These are the three mental elements in the actual offences, although the third one only applies to offences relating to the regulated sector. There is also the element of belief on reasonable grounds in the foreign conduct defence to the money laundering offences. A person will have a defence to a principal offence if they know or believe on reasonable grounds that the criminal conduct involved was exempt overseas criminal conduct.

For the principal offences of money laundering the prosecution must prove that the property involved is criminal property. This means that the prosecution must prove that the property was obtained through criminal conduct and that, at the time of the alleged offence, you knew or suspected that it was.

For the failure to disclose offences, where you are acting in the regulated sector, you must disclose if you have knowledge, suspicion or reasonable grounds for suspicion; while if you are not in the regulated sector you will only need to consider making a disclosure if you have actual, subjective knowledge or suspicion.

These terms for the mental elements in the offences are not terms of art; they are not defined within P.O.C.A and should be given their everyday meaning. However, case law has provided some guidance on how they should be interpreted.

5.3.1 Knowledge

Knowledge means actual knowledge. There is some suggestion that wilfully shutting one's eyes to the truth may amount to knowledge. However, the current general approach from the criminal courts is that nothing less than actual knowledge will suffice.

5.3.2 Suspicion

The term 'suspects' is one which the court has historically avoided defining; however because of its importance in English criminal law, some general guidance has been given.

In the case of Da Silva [1996] EWCA Crim 1654, which was prosecuted under the previous money laundering legislation, Longmore LJ stated:

'It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.'

There is no requirement for the suspicion to be clear or firmly grounded on specific facts, but there must be a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation.

The test for whether you hold a suspicion is a subjective one. If you think a transaction is suspicious, you are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. You may have noticed something unusual or unexpected and after making enquiries, the facts do not seem normal or make commercial sense. You do not have to have evidence that money laundering is taking place to have suspicion."
(P.O.C.A Proceeds of Crime Act 2002 (U.K).

This therefore is the level that the Prosecution must reach to prove the mental element of this crime, knowledge or suspicion as here explained, beyond reasonable doubt, on the part of the offender of the illegal provenance of the proceeds.

It is obviously only after an acute examination of all the facts of the case presented to the Court, that one of these elements can be proved. Obviously knowledge transcends any suspicion.

The proof of the underlying offence is regulated by Article 2(2)(a) of Chapter 373 that reads:

"A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity."

Therefore, the Prosecution are aided, to a degree, in proving the necessary crime originator of the questioned laundered proceeds by direct evidence where available, or by circumstantial evidence or any other evidence, and need not necessarily produce an actual conviction that establishes the underlying offence. Neither does the Law require them to proof with precision the nature of the crime involved.

Therefore the launderer need not be knowledgeable of the precise nature of the crime whose proceeds he is helping to convert into unsuspecting clean property. Suffice that he has knowledge or a suspicion that these proceeds might have a dubious origin.

Applied to the case in question this therefore means that the Prosecution need not prove John Joseph Evans' guilt but the nature of his operations, in his instance drug trafficking or that something appeared amiss at a stage in time to the accused.

Yet another exception arises in this Chapter concerning the level of proof and or the burden thereof. This emanates from Section 3(3) of Chapter 373 which refers directly to a shift in the burden of proof found entrenched in Chapter 101 of the Laws of Malta.

In fact mention has already been made of the dictates of Article 3(3) of the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta:

(3) In proceedings for an offence of money laundering under this Act the provisions of article 22(1C)(b) of the Dangerous Drugs Ordinance shall *mutatis mutandis* apply.

Article 22(1C)(b) of the cited Ordinance provides:

(b) In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused

The Court went on to make the following considerations:

Obviously this last quoted Section deals with proceeds of crimes dealt with under Chapter 101. This presumption is however applicable to all predicate offences and their proceeds as regulated by Chapter 373.

It therefore transpires that for a charge of money laundering to be proven successfully, **the Prosecution must prove the nexus between the criminal activity and the questioned dubious proceeds, but it lies with the charged or accused, failing a reasonable explanation thereof to prove, now to a level of probability, the lawful origin of the monies in question.**

In this regard, for a better understanding of the level of proof the Prosecution has to reach to establish the underlying offence and that necessitated by the accused as rebuttal of the illegal knowledge of the proceeds, the Court is once again referring to the Carlos Frias Mateo decision above cited, dated 19th January, 2012, wherein the Court said:

“F’din il-kawza, l-appellat qed jiġi akkuzat bil-ksur ta’ provvedimenti tal-Kap 373 tal-Ligijiet ta’ Malta iżda dan il-Kap jaġmel referenza wkoll għall-Artiklu 21(1C)(b) tal-Kap 101 tal-Ligijiet ta’ Malta li wkoll jiffa’ l-piz li juri l-origini leċita tal-flus, propjeta jew rikavat fuq il-persuna akkuzata.

Għalhekk, dan il-livell ta’ prova “prima facie” japplika kemm għall-persuna li tkun akkuzata b’money laundering taht il-Kap 101 kif ukoll taht il-Kap 373. Issa, peress illi l-Artiklu 2(2)(a) ta’ l-istess Att jezimi mir-responsabilita’ l-prosekuzzjoni illi tipprova xi htija preċidenti in konnessjoni ma xi attivita` kriminali, kull ma għandha tipprova l-prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal-persuna li kienux konformi ma l-istil ta’ hajja tal-persuna, liema prova tkun tista’ tigi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-prosekuzzjoni m’għandix tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kienu illegali. Kull ma trid tipprova huwa fuq grad ta’ “prima

facie” illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta’ dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, jkun imiss lill-akkuzat sabiex juri illi l-origini tal-flus ma kienx illegali.

Forsi f’dan l-istadju ikun opportun illi jiġi kwalifikat il-prova “prima facie” u fiex din tikkonsisti.

Ikkunsidrat :

Hu ben saput illi l-Qrati generalment jirrikonoxxu erba’ tipi ta’ prova, dak li huwa possibli, l-probabbli, minghar dubju dettat mir-raguni u c-certezza. Iżda l-prova “prima facie” hija wzata mill-Magistrat Inkwirenti meta jirredici l-Process Verbal u l-Magistrat Istruttur fl-gheluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta’ prova illi tidhol bejn il-possibli u l-probabbli.

L-awtur Blackstone (At D 6.21) jgħid fost affarijiet oħra,

“Thus, the standard of proof the prosecution are now required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer.”

Il-probabbli huwa l-livell uzat f’proceduri civili. Għalhekk skond dan l-awtur “prima facie” huwa anqas minn hekk u jista’ jiġi definit btala “a case to answer”, haga li għandha tiġi nvestigata aktar fil-fond.

Fil-kuntest tal-provi illi l-proskuzzjoni gabet f’dan il-każ, intlahaq dan il-livell ta’ “prima facie”? Kien hemm “a case to answer”?

Further considers:

First and foremost the Court is of the opinion that the first issue to be tackled is one raised by the Defence in its note of submissions regarding the charges proffered claiming uncertainty on the part of the Prosecution, having directed at the accused all the content of Section 2(2) of the Money Laundering Act. True enough, Prosecution chose to debit the accused with the burden of all the criminal instances found in the said Section. Obviously he cannot be guilty of all, but one does not necessarily exclude the other. Obviously these are alternate charges, this being more evident and obvious in as far as the alleged complicity or attempted charges are proffered. One must also remember that at a later stage in the proceedings, Attorney General, exercising his discretion under Chapter 373, sent this case for a summary judgement, therefore inviting this Court to examine the facts against the requisites of Section 2(2) of the said Chapter.

The Court of Magistrates (Malta), in its decision *Il-Pulizija vs Dayang Sakienah Binti Mat Lazin* observed:

That it is to be emphasised that the charge of money laundering brought against defendant is based on Chapter 373 of the laws of Malta and not Chapter 101. In the latter case the prosecution must necessarily show a link between the assets being laundered and some criminal activity prohibited under Chapter 101. In the former case (i.e. an offence under Chapter 373) what the prosecution must show is a link between the laundered assets and an offence listed in either the first or second schedule of the said Chapter 373 which however also include traffic in narcotic drugs and psychotropic substances.

That it must also be emphasised that what must be shown for the prosecution to satisfy its onus is a link between some criminal activity and the assets in question. This has been affirmed by the Court of Criminal Appeal in the case **Republic of Malta vs John Vella**³⁴⁴ when it said:

....l-Avukat Ġenerali jista' akkuza persuna bir-reat ta' money laundering minghjar ma jkollu sentenza ta' kundanna ta' dak li jkun qed jigi allegat li huwa l-attività kriminali sottostanti.... Ċertament pero ikun x'jkun il-każ, jekk l-Avukat Ġenerali jiddeciedi li jakkuza lil xi hadd b'money laundering ... irid jindika n-ness bejn l-attività kriminali sottostanti partikolari li jkun qed jallega.

That once the prosecution satisfied this onus, in terms of article 22(1C)(b) of Chapter 101 of the Laws of Malta which applies to proceedings for an offence of money laundering by application of article 3(2A)(3) of Chapter 373, the burden of proof then shifts on defendant who has the onus of showing the lawful origin of the money in question. Defendant produced no such evidence.³⁴⁵

For the sake of academic completeness and given that learned defence counsel for Sunday Eboh makes reference to same in his final submissions³⁴⁶, the Court finds it must underline the fact that at the time of the judgement **Ir-Repubblika ta' Malta v. John Vella**, referred to in **The Police vs Omissis and Vladimir Omar Fernandez Delgado**,³⁴⁷ and **Il-Pulizija vs Dayang Sakienah Binti Mat Lazin**,³⁴⁸ "*criminal activity*" as defined then under Article 2(1)(b) of the Prevention of Money Laundering Act, referred to one or more offences cited in the Second Schedule, making it imperative for a finding of guilt to show "*n-ness bejn l-attività kriminali sottostanti partikolari*" as cited in the said judgement.³⁴⁹

With the promulgation of **Act VII of 2010**, Article 2(2)(a) of the Act was amended and for the words "*underlying criminal activity*" there were substituted the words "*underlying criminal activity and without it being necessary to establish precisely which underlying activity*". Consequently it was no longer necessary to specify the particular type of criminal activity.

Article 2(1) of the Prevention of Money Laundering Act goes on to provide the following definition:

"criminal activity" means any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to:

(a) a crime or crimes specified in Article 3 (1) (a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on the 19th December 1988 in Vienna reproduced (in the English language only) in the First Schedule to this Act; or

³⁴⁴ Decided 29th November 1999 and cited in **Il-Pulizija vs Paul Borg** (Court of criminal Appeal (Inferior Jurisdiction), Decided 6th October 2003.

³⁴⁵ Case Number: 197/2008; 23.11.2009, per Hon. Magistrate Dr. Doreen Clarke.

³⁴⁶ Fol.2386

³⁴⁷ Supra

³⁴⁸ Supra

³⁴⁹ **Ir-Repubblika ta' Malta v. John Vella**

(b) one of the offences listed in the Second Schedule to this Act.

The Second Schedule in turn provides for: - Any criminal offence.

Lastly in this context in Article 2(2)(a) of the Prevention of Money Laundering Act it is established that:

(2)(a). A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity

The Court of Criminal Appeal in its Superior Jurisdiction, when pronouncing judgement in the names **The Republic of Malta vs Morgan Ehi Egbomon**,³⁵⁰ delved into the far-reaching effects which the said amendments brought about, thereby changing the legal position hitherto existing when the judgement **Ir-Repubblika ta' Malta v. John Vella** was delivered:

7. In its judgement regarding these pleas, the Criminal Court said:

“That as regards the first count, the accused is claiming that this is null and void because it does not in any way indicate the antecedent offence or source which could give rise to money laundering.

“The accused is arguing that the Attorney General must at least prove prima facie that the money is coming from an illicit activity. If there is a shifting of the burden of proof, this must be accompanied by an illicit activity which illicit activity should show in the bill of indictment. In this case no previous offence was established, therefore there is no antecedent criminal act. The situation is very similar to the crime of receiving stolen property where there must be proof that the goods have a criminal origin. Therefore, in matters of money laundering, the Prosecution must prove the illicit origin of the money. The suspicion of a crime is not enough. It has yet to be established what is the predicate offence.

“Considers:

“It has to be stated from the outset that the narrative part of the bill of indictment is not evidence of its own contents. It is just an explanation given by the Attorney General to show why he deems it necessary to charge the accused with the crime of money laundering. The narrative still has to be proven in a Court of law and the Attorney General is not bound with the details of the narrative but only with the general theme of the narrative. He is, however, fully bound by the concluding paragraph of the charge from which there can be no deviation.

³⁵⁰Appeal on a Decision by the Criminal Court on Preliminary Pleas, Bill of Indictment No. 16/2009. Decided on the 31st July, 2014

“This means, therefore, that if according to the accused, the bill of indictment does not in any way indicate the antecedent offence, or source, this does not mean that evidence of this offence can not be brought during the trial. According to the guidelines given by the Court of Appeal in the case “Police versus Carlos Frias Matteo” of the nineteenth (19th) of January two thousand and twelve (2012), it was stated that:

“Għalhekk, dan il-livell ta’ prova prima facie japplika kemm għall-persuna li tkun akkuzata b’money laundering taht il-Kap. 101 kif ukoll taht il-Kap. 373. Issa, peress illi l-artikolu 2(2)(a) tal-istess Att jezimi mir-responsabilita` lill-Prosekuzzjoni milli tipprova xi htija precedenti in konnessjoni ma’ xi attivita` kriminali, kulma għandha tipprova l-Prosekuzzjoni huwa illi l-flus illi nstabu filpussess tal-persuna ma kinux konformi mal-istil ta’ ħajja tal-persuna, liema prova tkun tista’ tiġi stabbilita anki minn provi indizjarji. Dan ifisser illi l-Prosekuzzjoni m’għandhiex tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kinux illegali. Kulma trid tipprova huwa fuq grad ta’ prima facie illi ma hemm lebda spjegazzjoni logika u plawsibbli dwar l-origini ta’ dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, ikun imiss lill-akkuzat sabiex juri illi l-origini tal-flus ma kinux illegali.”

“This Court finds that the bill of indictment does provide a correct description of what happened and includes also the predicate offence. Here, the Attorney General did not fail to indicate what the actus reus was all about even though he does not have to prove any specific offence.

“This Court, therefore, finds that the narrative part of the first charge of the bill of indictment contains sufficient information for the accused to prepare for his defence, is drafted according to law and sees no reason why it should be declared null and void.

“For these reasons, therefore, the Court dismisses the first plea of the accused.

.....

15. First of all this Court must point out that article 2(2)(a) of Chapter 373 of the Laws of Malta, as it stood at the time when the money-laundering offence with which appellant has been charged allegedly took place, provided:

“A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity.”

16. It was by means of article 59(b) of Act VII of 2010, that the words “criminal activity.” were substituted with the words “criminal activity and without it being necessary to establish precisely which underlying activity.” Yet by means of Legal Notice 176 of 2005 the Second Schedule of Chapter 373 of the Laws of Malta was amended such that “criminal activity” was to refer to “any criminal offence” and individual criminal offences were no longer specified in the Schedule (as was the case when the judgement **Ir-Repubblika ta’ Malta v. John Vella** decided on the 26th November 1999 by this Court differently composed, and to which appellant referred, was delivered).

17. In any case in its judgement the first Court did conclude “**that the bill of indictment does provide a correct description of what happened and includes also the predicate offence.**”

18. It is also true that article 22(1C)(b) of Chapter 101 of the Laws of Malta is applicable to proceedings under Chapter 373 (see article 3(3) of said Chapter 373) and that this article provides:

“In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.”

19. Nonetheless the following principles, as clearly outlined by the Constitutional Court in its judgement of the 1st April 2005 in the case **The Republic of Malta vs Gregory Robert Eyre and Susan Jayne Molyneaux**, must be applied:

“(i) it is for the prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the prosecution, to prove or disprove certain facts, he need only prove or disprove that fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence.”

20. Consequently this Court finds no reason to vary the first Court’s conclusion that it did not find the bill of indictment null and void. Thus appellant’s first grievance is dismissed.

The Court of Criminal Appeal embarked on an in-depth study on the onus of proof in money laundering offences. In its decision **Il-Pulizija vs Carlos Frias Mateos** it held:³⁵¹

Ma hemmx dubju illi r-reat ta’ money laundering huwa wiehed mir-reati l-aktar diffiċli u delikati biex jigu nvestigati. It-teknika u s-sofistikazzjoni tal-mod kif il-flus jigu girati u jinħbew mill-provenjenza llecita tagħhom jagħmluha kwazi mpossibli illi l-investigaturi jsibu tracca tal-provenjeza tal-flus. Kien għalhekk illi f’dawn ic-cirkostanzi l-ligi tal-Money Laundering Kap 373 ipoggi l-oneru fuq dak li jkun illi huwa jipprova għas-sodisfazzjon tal-Qorti l-provenjenza lecita tal-flus illi jkunu nstabu fuqu. Dan il-bdil ta’ l-oneru tal-provi m’hijiex wahda kapricċjuza u kif qalet il-Qorti fil-kawza “Il-Pulizija vs John Vella” “din hi ligi straordinarja li tintroduci kuncetti radikali fis-sistema nostrana u li tirrikjedi applikazzjoni fl-aktar skruplu u attenzjoni biex ma tigix reza xi sturment ta’ ngustizzja, aktar reminixxenti taz-zminijiet ta’ l-inkwizzizzjoni minn dak ta’ l-era’ moderna tad-drittijiet tal-bniedem. . . .”

³⁵¹ Per The Hon. Mr. Justice Dr. Michael Mallia; Decided 12th January 2012

Il-Qorti qieghda taghmel dan il-pronuncjament fl-isfond tad-dispost ta' l-Artiklu 2(2)(a) u l-Artiklu 3(3) tal-Kap 373 tal-Ligijiet ta' Malta illi ghandhom jinqraw fid-dawl ta' l-Artiklu 21(1C)(b) tal-Kap 101 tal-Ligijiet ta' Malta li jstipulaw li l-Avukat Ġenerali jista' jakkuza persuna bir-reat ta' "money laundering" mingħajr ma jkollu xi sentenza b'referenza għal xi offiza precedenti. Ma dan kollu, jibqa' l-fatt illi l-Avukat Ġenerali għandu jipprova n-ness bejn il-flus jew il-propjeta u l-attività kriminali li tkun generat dawk il-flus.

Dwar il-livell ta' prova li jinkombi fuq l-Avukat Ġenerali, l-Qorti taghmel referenza għall-kawza "Il-Pulizija vs Paul Borg" deciza mill-Qorti ta' l-Appell Kriminali fis-sitta (6) ta' Ottubru ta' l-2003. F'din il-kawza l-Qorti kienet qalet illi meta l-Avukat Ġenerali jakkuza lil xi hadd bl-offiza ta' money laundering taht il-Kap 101 tal-Ligijiet ta' Malta, l-Avukat Ġenerali għandu jipprova "prima facie" n-ness bejn il-flus jew il-propjeta u l-attività kriminali li tkun generat dak il-flus jew propjeta. Minn ezami u qari akkurat ta' din id-dispożizzjoni din il-Qorti thoss li una volta li l-prosekuzzjoni tiddeciedi li tipprocedi skond l-Ordinanza Kap 101 u mhux taht id-dispożizzjonijiet tal-Kap 373 ossia l-Att tan-1994 kontra "Money Laundering", fejn l-attività kriminali sottostanti tista' tkun varja u tirreferi għall-ksur ta' diversi ligijiet kif indikat fit-tieni skeda ta' l-istess Att, irid almenu jiġi "prima facie" pruvat li l-akkuzat ikun qed jagixxi bi hsieb li jahbi jew jikkonverti flus jew ir-rikavat ta' flus u jkun jaf jew ikollu suspett li dawk il-flus ikunu miksuba btala rizultat ta' ksur ta' xi dispożizzjoni ta' l-Ordinanza Kap 101 u dana qabel ma tiskatta l-inverzjoni ta' l-oneru tal-prova fuq l-akkuzat."

In Il-Pulizija vs Alfred Delia et the Court of Magistrates (Malta) was accurate and precise when it held:³⁵²

Illi għalhekk il-mistoqsija li trid tiġi rizolta fil-każ in ezami hija dik interposta mill-Qorti ta' l-Appell Kriminali fil-kawza hawn fuq kwotata u cioe fil-kuntest tal-provi illi l-prosekuzzjoni gabet f'dan il-każ, (provi biex jiġi pruvat in-ness bejn il-flus utilizzati biex jinxtraw il-vetturi imsemmija u xi attività kriminali) intlaħaq dan il-livell ta' "prima facie"? Kien hemm "a case to answer" biex mbagħad l-oneru tal-prova jdur fuq l-imputati biex jippruvaw l-origini legittima tal-flus utilizzati. [Emphasis by this Court]

In conclusion, and although given the doctrine enunciated above it is no longer a pre-requisite to establish with precision the underlying criminal activity to prove that an offence of money laundering has been committed, there can be no doubt as to the underlying criminal activity in this case.

The monies which were laundered originated from the unlawful acquisition of monies from the victim who was forced to part with her money owing to the fraudulent devices and machinations employed; the offence contemplated by article 334(b)(c) of the Criminal Code.

An offence the prosecution has satisfactorily proven with respect to defendants Sunday Eboh and Tony Ogbonna Anuforo.

Considers further,

³⁵² Court of Magistrates (Malta) per Hon. Magistrate Dr. Doreen Clarke. Decided on the 23rd May, 2013. Criminal Proceedings no. 672/2010

Bearing in mind the judgements and doctrines just reviewed, coupled to the proven facts of this case, the Court harbours no shadow of doubt that defendant Sunday Eboh is guilty of both receiving property obtained from fraud as well as to its laundering.

In Tony Ogbonna Anuforo's case, although the Court believes that he was the person Eboh speaks of as Tony 'Montana', and thus the person who took a cut from the €15,400 the victim poured into Eboh's account, this remains a conjecture by the Court, and a strong one at that. However, the Court cannot be led by suppositions or conjectures in the criminal arena but solely by nothing less than rigorously proven facts.

Hence, what satisfies this strict and prohibitive evidentiary legal requirement with respect to Tony Ogbonna is the attempted transfer of €10,000 which the victim paid into Alamu's bank account and his role in the said transaction. Conduct which, surpasses by far the level of proof laid down by law and thus Ogbonna is being found guilty not merely as an accomplice in the attempted laundering of proceeds, where **an attempt to launder money is tantamount to an act of money laundering nonetheless** - but as **co-author**.

Also satisfactorily proven in Tony Ogbonna's respect is the second offence with which he stands charged, that contemplated by Article 334(b)(c) of the Criminal Code but similarly only in its attempted form since the funds had not left Alamu's account. This contrasts with the funds derived from an offence in terms of Article 334 of the Criminal Code which not only were received in Sunday Eboh's account but subsequently converted and transferred from that same account, thereby resulting in the offences of Money Laundering and receipt of property obtained by fraud.

In **Ir-Repubblika ta' Malta vs Richard Grech**, the Court of Criminal Appeal in its Superior Jurisdiction considered:³⁵³

47. Illi sabiex l-appellant jista' jinstab hati bhala ko-awtur f'dawn id-delitti jrid jirrizulta sodisfacjentement ippruvat mill-prosekuzzjoni, lil hinn minn kull dubju dettat mir-raguni, illi kien hemm il-partecipazzjoni materjali tieghu ma' l-ezekutur jew ezekutori dirett/i tal-att li bih kien ikkonsumat ir-reat, izda u fuq kollox illi huwa ppresta l-ko-operazzjoni diretta u essenzjali ghall-esekuzzjoni tad-delitt. Dan allura necessarjament jimplika illi jrid ikun hemm il-ftehim pre-ordinat bejn tnejn jew aktar persuni ghall-fini li jigi kommess id-delitt. Mankanti din l-intenzjoni u cioe' dan l-akkordju bejn tnejn jew iktar persuni, allura ma jistax jinghad illi l-figura tal-ko-awtur tista' tiehu l-hajja. Kwindi jrid jigi ppruvat sal-grad tac-certezza morali illi "bejn dik il-persuna u l-awtur tad-

³⁵³ Per The Hon. Mr. Justice Joseph Zammit McKeon, Acting President, The Hon. Mdme. Justice Abigail Lofaro, The Hon. Mdme. Justice Edwina Grima; Dec. 31st October, 2018; Bill of Indictment No. 27/2007

delitt kien hemm il-hsieb komuni li jsir dak id-delitt, u li l-presenza ta' dik il-persuna effettivament assistiet lill-awtur, anke jekk biss moralment, biex iwettaq dak id-delitt.³⁵⁴

48. Dak allura illi jrid jirrizulta mhuwix biss l-att materjal li jindika l-presenza fizika ta' l-akkuzat fuq il-post tad-delitt ghaliex dan l-element wahdu ma jistax jistabilixxi r-reita', izda wkoll irid jirrizulta illi huwa jkun ha sehem attiv fil-kommissjoni tar-reat u wkoll illi kien hemm 'l hekk imsejjah "*common design*" bejn l-malvivi lill hinn minn kull dubju dettat mir-raguni. Il-fatt materjali wahdu li persuna tkun ghenet biss fil-kommissjoni tad-delitt ghalhekk ma jistax iwassal ghall-figura tal-ko-awtur, izda ghal dak tal-komplici billi kif inghad l-ko-awtur irid necessarjament ikun ha sehem attiv fil-kommissjoni tad-delitt u mhux semplicement offra l-ghajnuna tieghu fil-preparazzjoni ghall-kommissjoni tar-reat jew sabiex l-att materjali tal-ezekuzzjoni tad-delitt jirnexxi. Dan ifisser allura meta applikat ghal fattispecje ta' dan il-kaz illi :

"Jekk hemm il-hsieb bejn zewg persuni, wiehed huwa l-awtur, dak li fil-fatt jispara u l-iehor li jkun mieghu li ma jisparax, galadarba ghandu l-istess hsieb li joqtlu, u la qieghed hemm jiehu parti attiva - f'dak il-kaz it-tieni persuna li ma tisparax li qed tiehu parti attiva hija l-ko-awtur.

Il-korreu mhux ristrett ghal dak biss li kien l-esekutor dirett tal-att konsumattiv izda jikkompreni anke dawk li jippartecipaw f'kooperazzjoni diretta essenzjali ghall-esekuzzjoni tar-reat.³⁵⁵

Mhux biss izda:

'Min ihajjar lil persuna ohra biex tikkommetti s-serq, u waqt li dik il-persuna tikkommetti s-serq jiddistrabi lil dawk li jkunu prezenti, huwa hati ta' serq huwa wkoll bhala ko-awtur; ghaliex huwa ko-awtur f'delitt minhabba parteċipazzjoni materjali mhux biss dak li jkun l-esekutor dirett tal-att konsumatur tar-reat, imma anki min b'xi mod iehor jippresta ko-operazzjoni diretta u essenzjali ghall-esekuzzjoni tad-delitt.'³⁵⁶

49. Illi kif inghad aktar 'il fuq huwa stabbilit illi l-appellant kien wiehed mill-imhuh wara l-ftehim li sar bejnu u l-awturi l-ohra sabiex jigi kommess id-delitt. Kien hu li flimkien ma' Chris Scerri u James Vella fasslu pjan sabiex jisirqu il-basktijiet li fil-fehma taghhom kienu jikkontjenu l-flus minn fuq il-persuna ta' Alphonse Ferriggi li kien jasal kmieni fil-ghodu bil-konsenja l-bank. Kien l-appellant li haseb biex idahhal lil Joseph Zammit sabiex jassistihom fil-kommissjoni ta' l-istess ghaliex kien tal-fehma illi kien kapaci iharrabhom wara l-kommissjoni tad-delitt billi jistennihom b'vettura ohra sabiex ma jaghtux fil-ghajn li kienu involuti fil-kommissjoni ta' l-istess. Mhux biss izda huwa stabbilit ukoll, kif diga` nghan, illi l-appellant kien prezenti fuq ix-xena tad-delitt sabiex jassisti b'mod dirett fl-esekuzzjoni ta' dan il-pjan pre-ordinat, ghalkemm huwa baqa` jinnega illi kien prezenti u li spara lil Ferriggi.

³⁵⁴ Criminal Appeal Decided 24th May, 2002; **Il-Pulizija vs Carmelo Agius et.**

³⁵⁵ [Deciża fl-14/12/2004 mill-Qorti tal-Appell Kriminali (Sede Superjuri) mill-Imħallfin De Gaetano Vincent, Filletti Joseph A., Scicluna David - - **Repubblika ta' Malta vs Etienne Carter.**]

³⁵⁶ [Deciża fil-25 ta' Ottubru 1958 mill-Imħallef Dr. W. Harding - **Pulizija vs Joseph Scicluna** App.Inferjuri.]

50. L-appellant jishaq ukoll illi huwa ma kienx jaf illi l-komplici tieghu kellhom arma tan-nar fil-pussess taghhom, li ghalkemm hija skreditata mill-provi, madanakollu anke jekk *gratia argomenti* l-Qorti kellha temmen il-verzjoni tieghu xorta wahda dan ma jistax awtomatikament jezonerah mir-responsabbilta' penali ghall- konsegwenzi li sehhe.

51. Fis-sentenzi fl-ismijiet **"Ir-Repubblika ta' Malta vs Joseph Zammit"**³⁵⁷ u **"Ir-Repubblika ta' Malta vs Matthew Mizzi"**³⁵⁸ ghal dak li jirrigwarda komplicita', u l-korelazzjoni u l-komunikabilita' mal-awtur jew l-awturi tar-reat kien ddikjarat hekk :-

In materja ta' komplicita', tajjeb hawn li ssir referenza ghal dak li jghid il-Professur Sir Anthony Mamo³⁵⁹:

"... if a man, with the object of aiding the commission of a theft, assists the principal to enter into the house, knowing that he had provided himself with a weapon for the purpose of facilitating the theft if it should be found so necessary, will be co-responsible for the theft aggravated by 'violence' if the principal actually makes use of that weapon in perpetrating the theft. Nani³⁶⁰ puts the rule in the following words: 'Se la scienza del complice non si estendesse alla qualita' del delitto medesimo, non potrebbe a lui comunicarsi quella distinta imputabilita' la quale e' inerente alle qualita' ignorate del delitto, e conseguentemente non potrebbe essere colpito da quella specie o da quel grado maggiore di pena che la legge avesse riservato al delitto cosi' qualificato Questa scienza per altro dovrebbe presumersi per le qualita' connesse col delitto conosciuto o talemte dipendenti dalla non ignorata commissione del medesimo che la commissione del delitto importasse ancora la previdenza delle qualita' medesime.'

"...when the principal causes a more serious event or result than was in the contemplation of the accomplice, then the doctrine commonly accepted on the continent may be briefly stated as follows:

"i. If the principal deliberately commits an offence which is wholly different from that ordered or advised by the accomplice, the latter is not liable for the offence committed....

"ii. In all other cases, a distinction is made between what is called excess in the means ('eccesso nei mezzi') and excess in the purpose ('eccesso nel fine'). There is the former where the principal uses means different from those concerted between the parties: e.g. the original common design contemplated the use of a stick to beat a person, but the principal uses a sword and kills that person. In this case the responsibility for the more serious result is wholly of the principal. There is an excess in the purpose where, though the means are those actually combined between the parties, they produce a more serious result than that originally contemplated. In any such case, if the graver result ensues as a natural and foreseeable consequence of the means used or owing to the negligence (i.e. not to

³⁵⁷ [Deċiża fl-20 ta' Jannar 2011 mill-Qorti tal-Appell Kriminali (Sede Inferjuri) mill-Imħallfin Raymond Pace, David Scicluna u Joseph Zammit Mc Keon.]

³⁵⁸ [Deċiża fl-24 ta' Frar 2014 mill-Qorti Kriminali mill-Imħallef Michael Mallia].

³⁵⁹ [Lectures in Criminal Law, P. I, p. 148 – 149.]

³⁶⁰ [Principii di Giurisprudenza Criminale, s. 155.]

the deliberate intention) of the principal, liability for the graver result is contracted also by the accomplice: for, although he may not have expressly desired that result, nevertheless he maliciously wanted the means which by their very nature could cause that result³⁶¹.

“This is, as Maino says, the doctrine universally accepted on the continent. With us it applies subject to the express provisions of our law which, as we have seen, extends liability in respect of the aggravating act to all parties to the criminal enterprise with whose previous knowledge it was perpetrated and even to those who, becoming aware of the aggravating act at the time of its perpetration, and being able to prevent it, did not do so.”

52. **Francesco Antolisei** wkoll josserva³⁶² :-

“Nell’ipotesi, poi, che una rapina sia sfociata in un omicidio (ipotesi tutt’altro che infrequente nella pratica e grave di conseguenze), bisognerà considerare se l’uccisione sia stata il risultato di una insospettabile, e perciò eccezionale, resistenza della vittima o di altri avvenimenti singolarissimi. Nel caso che a tale quesito si risponda negativamente, i compartecipi che non vollero l’uccisione ne risponderanno.”

L-istess awtur jirreferi ghal sentenza tal-Qorti ta’ Kassazzjoni tat-18 ta’ Novembru 1960 fejn gie ritenut li “in casi in cui un rapinatore a mano armata aveva ucciso uno degli aggrediti, ha ritenuto la responsabilita’ per omicidio volontario ex art. 116 c. P. di tutti i concorrenti nella rapina.”

53. Fid-dawl tal-premess, jidher car illi min qiegħed fuq ix-xena tad-delitt u jkollu rwol dirett anke jekk mhux ewlieni fl-eżekuzzjoni tar-reat jitqies li huwa ko-awtur fid-delitt kommess, mhux komplici, ghalkemm jista’ ikollok il-figura tat-tnejn fl-istess persuna bħal per eżempju l-persuna li tkun ifformat il-pjan jew ħajret lil ħaddieħor jipparteċipa fid-delitt li sussegwentement pero’ tipparteċipa hi wkoll direttament fil-kommissjoni tar-reati nnfushom meta dawn ikunu fl-eżekuzzjoni tagħhom.

54. Stabbilit dan l-insenjament giurisprudenzjali allura l-figura tal-appellant tissarraf f’dik ta’ ko-awtur fil-kommissjoni tad-delitt mertu ta’ dana il-kaz, anke jekk l-appellant seta’ ma kienx il-persuna li spara t-tir kif qed jallega. Dan ghaliex jekk huwa ppruvat illi l-appellant kien konsapevoli li kienet ser tintuza arma tan-nar fl-eżekuzzjoni tad-delitt, ghalkemm ma jirrizultax ftehim ċar li persuna sejra tinqatel bl-arma li l-malviventi ikollhom fil-pussess tagħhom waqt l-eżekuzzjoni, xorta waħda l-appellant jitqies bħala ko-awtur u xorta waħda jitqies responsabbli daqslikieku kien hu stess li spara l-arma lejn Ferriggi.

The actions of defendants Sunday Eboh and Tony Ogbonna Anuforo fall squarely within conduct which is tantamount to the laundering of illicit proceeds. This is being said with reference to the amount of €15,400 laundered

³⁶¹ [Carrara, Programma, s. 500 – 504; Maino, 63, s. 339; Chaveau et Helie, Vol. I, Part I, Cap. XII, s. 279.]

³⁶² [Manuale di Diritto Penale – Parte Generale, sesta edizione, Giuffrè – 1969.]

by Sunday Eboh after the victim was defrauded out of her savings by him and any co-delinquents who may have played their part in the scam.

The defendants have also been charged with the crime contemplated by Article 334 of the Criminal Code

Article 334 of the Criminal Code

The Court of Criminal Appeal in its judgement **Il-Pulizija vs Darren Debono** succinctly contemplated the legal requisites and doctrine which Courts must be guided by in determining whether a person is to be convicted of such an offence:³⁶³

Illi skond il-gurisprudenza sabiex persuna tinstab hatja ta' ricettazzjoni hu mehtieg li jikkonkorru is-segwenti tliet rekviziti u cioe' :

1. il-provenjenza illegittima tal-oggett in kwistjoni ossia li jkun insteraq, jew gie mehud b' qerq jew akkwistat b' reat iehor;
2. l-akkuzat irid ikun laqa' ghandu jew xtara tali oggett li ghandu provenjenza illegittima w
3. fil-mument tal-akkwist, l-akkuzat kien jaf bil-provenjenza illegittima tal-oggett in kwistjoni (ara App. Krim **"Il-Pulizija vs. Bugelli"** [24.1.1942]; **"Il-Pulizija vs. Giovanni Grima"** [25.10.2002])

L-element formali ta' dar-reat hu li l-akkuzat kien konsapevoli tal-provenjenza illecita tal-oggett suggett tar-ricettazzjoni. Dan ir-rekwizit jista' jigi pruvat kemm minn provi diretti kif ukoll minn provi indizjarji. Hekk fl-Appell Kriminali **"Il-Pulizija vs. John Briguglio"** [24.6.1961] (per Harding J.) kien gie ritenut li :-

"Min jakkwista oggett taht cirkostanzi li fihom imissu jissuspetta li dak l-oggett kellu provenjenza illegittima, u ntant ma jaghmel xejn biex jikkontrolla dik il-provenjenza, u jaghalaq ghajnejh, huwa hati ta' din in-negligenza u kwindi ta' ricettazzjoni."

Gie ukoll ritenut li dan l-element formali tar-reat in dizamina ikun jissussisti anki jekk l-akkuzat ikun irceva jew xtara l-oggett fil-waqt li jkollu jew inkella imissu kellu suspett li l-persuna li taghtu dak l-oggett setghet giet f' pussess ta' dak l-oggett b' mod illecitu w b' dana kollu xorta jilqa' ghandu jew jixtri tali oggett minghajr ma jaghmel xejn biex jivverifika u jaccerta ruhu li l-pussess ta' dik il-persuna l-ohra kien wiehed legittimu u mhux kif kien qed jissuspetta hu. (ara App. Krim. **"Il-Pulizija vs. J. Briguglio"** [24.6.1961]; **"Il-Pulizija vs. John Dimech"** [24.6.1961]; **"Il-Pulizija vs. George Tabone"** [24.6.1961] u **"Il-Pulizija vs. Tancred Borg"** [26.10.1998])

S' intendi ix-xjenza mehtiega fir-ricettatur tirrigwarda l-provenjenza kriminuza generika u ma tirreferix ghad-dettalji specifici tar-reat principali. (Ara App. Krim. **"Il-Pulizija vs. Joseph Piscopo"** [21.3.1953]; **"Il-Pulizija vs. Nazzareno Zarb"** [16.12.1998] u ohrain)

³⁶³ Per Mr. Justice Dr. Joseph Galea Debono. Decided 15th January 2009; Criminal Appeal No. 245/2008

Kif jghid il-KENNY :

"The knowledge : The prisoner must have received the stolen goods with knowledge then of their having been stolen.. Such knowledge may be presumed prima facie if he knew of circumstances so suspicious as to convince any reasonable man that the goods had been stolen - e.g. ...when an unlikely vendor offers them for an unlikely price ... His subsequent conduct may be evidence of such knowledge - e.g. .. selling them surreptitiously ... or making no written entry of having bought them."

Illi kif qalet din il-Qorti diversament preseduta (per V. De Gaetano J., fl-Appell Kriminali : "**Il-Pulizija vs. Emanuel Seisun et.**"[26.8.1998]); it-teorija Ingliza "of unlawful possession of recently stolen goods" issib ukoll applikazzjoni fis-sistema legali taghna, ghax in tema ta' "law of evidence" il-gurisprudenza taghna ssegwi hafna dik Ingliza. Din it-teorija ma hi xejn hlief l-applikazzjoni tal-buon sens ghal cirkostanzi partikolari li jkunu jirrizultaw pruvati, fis-sens li meta jigu ppruvati certi fatti, dawn jistghu wahedhom iwasslu ragjonevolment ghall-konkluzzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba ghandha jew, skond ic-cirkostanzi, tar-reat ta' ricettazzjoni ta' dawk l-oggetti.

F' dik is-sentenza din il-Qorti ccitat mill-**Archbold** : Criminal Pleading, Evidence and Practice, 1997, paras. 21-125, 21-126):-

"**In R. v. Smythe**, 72 Cr. App. R. & C.A., the court stressed that it is a misconception to think that recent possession is a material consideration only in cases of handling: it adopted the following passage from **Cross on Evidence**, 5th. ed., p.49 (now 8th. ed., p.35): "if someone is found in possession of goods soon after they have been missed, and he fails to give a credible explanation of the manner in which he came by them, the jury are justified in inferring that he was either the thief or else guilty of dishonestly handling the goods, knowing or believing them to have been stolen....The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say that they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of handling was in possession of stolen goods, a jury may infer guilty knowledge or belief (a) if he offers no explanation to account for his possession, or (b) if the jury is satisfied that the explanation he does offer is untrue."

"Every case depends on its own facts.It would be impossible to compile a definitive list of circumstances which might be relevant. They will include, however, the time and place of the theft, the type of property stolen, the likelihood of it being sold on quickly, the circumstances of the defendant, whether he has any connection with the victim or with the place where the theft occurred, anything said by the defendant and how that fits in or does not fit in with the other available evidence." (ara ukoll f' dan is-sens :"**Il-Pulizija vs. Carmel Debono**" [1.11.1996], "**Il-Pulizija vs. Richard Spiteri** " [31.8.2006] u ohrajn).

Ikkonsidrat;

Illi fid-dawl ta' dawn il-principji ta' dritt u tal-fatti kif abilment esposti fir-rikors tal-appell u anki wara li semghet is-sottomissjonijiet orali tal-abbi difensuri, din il-Qorti hija tal-fehma li fic-cirkostanzi l-Ewwel Qorti kien imissha kkonkludiet legalment u ragjonevolment li, mill-provi li rrizultaw, partikolarment minn dak li qal l-istess appellat fl-istqarrija tieghu w fid-depozizzjoni tieghu, hu kien

imissu nduna jew issuspetta b' mod qawwi li t-trailer u r-reefer in kwistjoni kienu misruqa w
dana bl-uzu ta' intelligenza modika infurmata mic-cirkostanzi kollha
[Emphasis by this Court]

In the case under review **Eboh radically failed to give a credible explanation of the manner in which he came by the monies.**

The difficulties encountered by Eboh to provide a reasonable explanation, or even an explanation at all, as to how the funds ended up in his account, which funds have been shown to have been withdrawn and transacted even by his purchasing of items and Revolut transfers leave no room for any doubt that Eboh knew only too well the provenance of such funds. His evasiveness with the bank betrays any chance of his being unaware of who in fact placed those funds in his account, not once but on two separate occasions. Asked to return to the bank with a declaration and some sort of evidence to explain their provenance, he was a no-show!

As such Eboh is to answer for the offence contemplated in Article 334 of the Criminal Code, contrary to the pleas made in the course of final submissions where it is maintained he lacked the requisite mental element.

As for the €10,000 which the victim was later in the day instructed to deposit in Eboh's account after having seen the transfer to Alamu's account reversed, it is the Court's finding that in this case, the acts performed can only tantamount to preparatory acts, not the attempted offence.

This distinguishes itself from the circumstances surrounding the €10,000 transferred on Tony Ogbonna's behest in Shamson Alamu's account which constitutes a clear case of an **attempted offence**.

In this case it was solely thanks to the prompt and moral action taken by Alamu that the offences of money laundering and the preceding and underlying offence contemplated by article 334(b)(c) of the Criminal Code were only attempted and fell short of execution. Alamu's recourse to the bank seeking the reversal of funds received amounted to the accidental cause independent of the will of Tony Ogbonna which the law speaks of thereby thwarting the execution of the offences instigated by the said Tony Ogbonna both in terms of Article 334 of the Code as well as the offence of money laundering.

The **common design of both defendants is a forgone conclusion** necessitating no further consideration as their actions lay bare the evidence attesting to this. Eboh's bank details are sent to the victim on no less than three occasions. He is

the one who received them and withdrew the funds in the various manners described above.

Not merely does one find that a common design existed between the defendants Eboh and Anuforo and undoubtedly other delinquents, some of whom have already been convicted for their part in this malevolent scheme, but indeed both defendants are **material co-participants and co-authors in the money laundering offence as well as in the offence contemplated by Article 334** of the Criminal Code, albeit with respect to Tony Ogbonna only in their attempt. When Anuforo failed in convincing Alamu to keep the 10,000, it was Eboh's account which was sent to the victim so that she may transfer the reversed funds. Evidencing the common design existing between the two.

The acts of these depraved individuals which are inhumane, heartless and lacking in civility can also be seen as amounting to money laundering, even though the offence was merely attempted due to the fact that, as already observed above, **attempt, as after all is complicity, are deemed to constitute acts of money laundering in their own right.**

Article 2 of the Prevention of Money Laundering Act provides *inter alia*:

"money laundering" means -

(v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs(i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;

(vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and(v);

Punishment

Sunday Eboh and Tony Ogbonna Anuforo

In its considerations on punishment, the Court gave due weight not merely to the nature and gravity of the offences, and in particular that of receiving monies obtained through deceit and fraud to a vulnerable person's detriment, but also to the fact that this was not solely an offence of self-laundering as it included the laundering of funds derived from the illicit conduct of others.

The criminal records of the defendants were also considered as were the circumstances of the case, namely that the defendants acted in concert with

others in committing this wicked and despicable offence which witnessed the exploitation of a person's kindness and generosity as can be witnessed in the victim's conversations with the 'courier' who, whilst in full synergy with the other delinquents and hell-bent to continue to deceive her and break her self-esteem, serenity and deprive her of her life-savings, she perceived him as deserving of her pity and mercy as she was more concerned about his well-being, his being fed and having accommodation whilst waiting to deliver her fictitious package at customs, keen to see him re-united with his family abroad.

This was the woman they broke, physically and psychologically. The victim's main concern as she rushed from one bank to the next, overcome with fatigue and exhausted at the ordeal she ended up having to endure from the secure confines of her home, was focused on ensuring that she is not the cause for Donald having to remain in Malta longer than necessary believing he was delivering a package to her on behalf of her American friend.

Eboh's and Anuforo's offences were heartlessly perpetrated against a docile elderly woman whose only fault was her falling victim to the malicious, pitiless and basest of human nature which the wretched personas of Sunday Eboh and Tony Ogbonna Anuforo embody.

The fact that this scheme was an elaborate one, undoubtedly taking time to be devised and planned out, continues to reveal the extent these evil criminals would go to. Time, instead of serving to soften their resolve and re-think how they were about to scar an elderly innocent woman for life, only served to fortify their revolting and spiteful resolve.

The amounts which the victim was defrauded of, that amounting to €15,400 and the attempted fraud and laundering of a further €10,000 (which latter amount was also intended to be transferred to Eboh's account), were also given due consideration in the court's deliberations.

The **€15,400** constituted the proceeds of the underlying crime contemplated by Article 334 of the Criminal Code and the amount of money laundered by Sunday Eboh. On his part, Tony Ogbonna is being found guilty in the attempted offences of both receiving property obtained by fraud in the amount of **€10,000** and an attempt of money laundering which is tantamount nonetheless to an act of laundering of proceeds of crime.

Lastly, with regards to Sunday Eboh, the Court took note of the fact that the series of laundering acts by the defendant took place each time he made a transaction involving the funds which had been transferred by the victim to his account and thus, considering there were no less than at least twenty (20)

transactions comprised of point of sale purchases, cash and ATM withdrawals, 24X7 mobile pay, POS money transfers and Revolut transfers.³⁶⁴

If there ever was a case wherein the provisions of Article 18 of the Criminal Code merited application, surely this is such a case!

A social enquiry report into Tony Ogbonna revealed that his social life is family-centred and he receives unconditional support from his parents and siblings living in Malta. Tony Ogbonna never had any addiction problems and he provides for the family emotionally and financially. This notwithstanding there are no records of Ogbonna being legitimately employed and this in itself, calls for an investigation by the relevant authorities since the defendant provided information that he is gainfully employed as a security guard and has been so since 2018. This corroborates the findings of the Jobsplus representative who declared that no employment records could be found relating to Tony Ogbonna. In his statement the company he mentions is G4S, which is also to be investigated by the relevant authorities!

This circumstance manifests Ogbonna does not shy away from violating the law, thwarting Government Revenue in the process! This goes to prove **character**.

As such the court is ordering that a copy of this judgement be notified to the Police Commissioner, Jobsplus, the Social Security Department and the Commissioner for Inland Revenue for their respective and immediate investigations and possible prosecution with regards to the defendant Ogbonna's illegal employment, so that Tony Ogbonna Anuforo, as well as G4S Security Services Malta Limited, be investigated for illegally employing Ogbonna as well as defrauding the Treasury.

To this end a copy of the payments made from the said Company to the defendant's HSBC account as shown by the relevant Lombard bank statement is also to be forwarded to the investigating entities.

Finally the Court cannot ignore the fact that defendants Sunday Eboh and Tony Ogbonna Anuforo, showed **no remorse** for their actions. Having heard first-hand the woman testify and recount her heart breaking ordeal, her worries, the nightmarish experience she had to endure, the trauma which still has a hold on her which these callous individuals (who cannot in truth be called "men" – a term which presumes humanity which they so evidently are void of) cold-

³⁶⁴ Dok.MF2 a fol.362-364

bloodedly unleashed upon her, bizarrely and as observed by the Court left them impassive and unmoved to her suffering.

This attests to their character and to their actions which now at the stage of judgement and sentencing similarly are undeserving of any sympathy or clemency by this Court which is duty bound to protect society from individuals of such ilk.

These individuals are indeed a threat to society and thus meriting a punishment of incarceration to ensure that only once truly rehabilitated should they be allowed to roam amongst the population which deserves protection from such evil beings.

The punishment to be awarded is also to serve as a deterrent to anyone who thinks they can identify and prey on innocent, trustful and unsuspecting members of society. The more so when instead of repaying the kindness that society showed them as they were welcomed into it after leaving their country of origin for a new life, they had the audacity to return the good will shown to them by destroying the lives of the very same members of that society. Vile behaviour indeed.

The Court of Criminal Appeal in its considerations on punishment in **Il-Pulizija vs Anthony Cassar et**, delved into the guiding principles which a Court must take into account, balancing the rehabilitation of the offender with the need to protect society as well as bearing in mind how important it is to ensure that punishments also have an effect of deterrence:³⁶⁵

Illi l-piena erogata trid tkun tali illi taghmel gustizzja u li tfittex li tohloq bilanc bejn il-gravita' tal-kaz u c-cirkostanzi attenwanti li jista' jkun hemm. Illi l-artikolu 142(1) tal-Criminal Justice Act 2003 fl-Ingilterra jistabbilixxi hames principji li ghandhom jigu segwiti fl-imposizzjoni tal-piena bhala:

- (a) the punishment of offenders**
- (b) the reduction of crime (including its reduction by deterrence)**
- (c) the reform and rehabilitation of offenders**
- (d) the protection of the public**
- (e) the making of reparation by offenders to persons affected by their offence.**

Illi allura min hu imsejjah biex jiggudika ma ghandux ihares biss l-interessi tal-persuna kkundannata izda ghandu jara illi jhares l-interessi tal-vittma jew vittmi tar-reat u s-socjeta in generali billi jaghti dik il-piena li ghandha isservi bhala kastig ghal min jikkometti r-reat, li tara li twassal ghat-tnaqqs tal-kummissjoni ta' reati ohra, li tista' twassal ghar-rijabilitazzjoni u r-riforma tal-hati, li taghti il-harsien mehtiega lil pubbliku u li l-hati jaghmel reparazzjoni ghal hazin li jkun ghamel.

³⁶⁵ Per Mdme. Justice Dr. Edwina Grima LL.D.; Dec. 3rd July, 2020; Appeal Number 113/2014

Hu veru ukoll dak li qal l-insinji Leo Page fil-ktieb tiegħu, The Problem of Punishment, fis-sens li-

‘ The selection of the best treatment of an offender is a much more difficult problem than the question of his guilt.’

Hu pero’ ugwalment veru dak li inghad għap-propositu tal-kwistjoni tal-piena fil-Criminal Law Review, July 1961, p.482 –

‘The objects of which Judges commonly and properly have in mind, when imposing sentence, include not only the punishment and reformation of the offender, but also, and perhaps predominantly, the protection of the public.’

Mr. Justice Birkett, f’konferenza li hu ta taht l-awspicji tal-Clarke Hall Society, - li hi socjeta intiza għat-trattament riformatiku tal-hati – intitolata ‘Criminal Justice Problems and Punishment’ qal hekk –

‘The Court’s primary consideration must be the welfare of the community. To fail to be severe in certain cases is to do wrong to the community and to injure its interests.’[Il-Pulizija vs Lorenzo Baldacchino]”.

This Court will also be steered in the sagacious direction taken by the Court of Criminal Appeal as it considered the principles of sentencing: ³⁶⁶

Jinghad ukoll li, filwaqt li gudikant, fil-ghoti tal-piena (u dan mhux biss fil-kaz ta’ jekk sentenza ta’ prigunerija għandhiex tigi sospiza o meno) għandu jieħu kont tal-impatt tar-reat fuq is-socjeta` u tar-reazzjoni tas-socjeta` għal dak it-tip ta’ reat (tali reazzjoni hija r-rifless ta’ dak l-impatt) ,... Kif qal **Lord Justice Lawton** fil-kawza **R v. Sargeant** [(1974) 60 Cr.App. R. 74.]:

“Society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand, they must not disregard it. Perhaps the main duty of the court is to lead public opinion.”

Alexandra Pace

With respect to Alexandra Pace, the defendant is only being found guilty of the offence contemplated by article 188(2) of the Criminal Code.

As such the Court considered the circumstances of the case as well as her criminal record which, though tainted, poses no concerns for the Court. Moreover Pace is only being found guilty of being a recidivist in terms of Article 49 of the Code.

³⁶⁶ Per His Honour The Chief Justice, Dr. Vincent Degaetano LL.D.; Decided 13th November, 2009, Criminal Appeal No. 328/09

DECIDE

(i) With respect to **Sunday Ikechukwu EBOH**, the Court, after having seen Articles 17, 18, 31 and 334(b)(c) of the Criminal Code, Chapter 9 of the Laws of Malta and Article 3 of The Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, finds the defendant guilty of the charges brought against him and sentences him to **three (3) years imprisonment and a fine, *multa*, of twenty thousand Euros (€20,000)**.

(ii) With respect to **Tony Ogbonna ANUFORO**, the Court, after having seen articles 17, 31, 41(1)(a) and 334(b)(c) of the Criminal Code, Chapter 9 of the Laws of Malta and Article 3 of The Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, finds the defendant guilty of the charges brought against him where, with respect to the offence contemplated by article 334 of the Code, the finding of guilt is limited to the attempt of such an offence, and sentences him to **twenty eight (28) months imprisonment**.

Furthermore, having seen article 15A of the Criminal Code, Chapter 9 of the Laws of Malta, orders the defendant **Sunday Ikechukwu EBOH** to make complete restitution to the victim in the amount of fifteen thousand and four hundred Euro (**€15,400**), which amount is to be wholly paid within six months from today.

This order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

Having applied the provisions of Article 15A of the Criminal Code, the Court is choosing not to apply the provisions of article 23B of the Criminal Code, Chapter 9 of the Laws of Malta, preferring to compensate the victim rather than forfeit, in favour of the Government of Malta, an amount equivalent to the monies unlawfully received by the defendant **Sunday Ikechukwu EBOH**.

Furthermore, in terms of Article 533 of the Criminal Code, Chapter 9 of the Laws of Malta, orders the defendants Sunday Ikechukwu EBOH and Tony Ogbonna ANUFORO to the payment of **€2,572.57c each** as expert fees.³⁶⁷

³⁶⁷ Expenses include expert related to **Dok.KC** a fol.1440 et seq (**€2,293.21**) equivalent to one fifth each of the amount due as expert fees €11,466.08; Copy of taxed invoice a fol.1695-1695A. Original taxed report (**Dok.KC**) found in the acts **The Republic of Malta vs Tabi Ovi**. Does not include task relating to creation of clone as per report a fol.2166 et seq

Moreover, by virtue of Article 3(5) of the Prevention of Money Laundering Act, Chapter 373 Laws of Malta, and Article 22(3A)(b)(d)(7) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, rendered applicable to these proceedings by Article 3(7) of the Prevention of Money Laundering Act, Chapter 373 Laws of Malta, orders the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of **Sunday Ikechukwu EBOH** and **Tony Ogbonna ANUFORO** even if the immovable property has since the offenders were charged passed into the hands of third parties, and even if the said monies, movable property or immovable property are situated in any place outside Malta.³⁶⁸

Having seen Article 5(2)(a)(d) of the Immigration Act, Chapter 217 of the Laws of Malta, the court **strongly solicits** the Principal Immigration Officer to exercise his powers under the said Act once the defendants have served the punishments being imposed upon them.

Moreover, the Court orders that this judgement be notified to the **Director of Citizenship** and the **Commissioner for Refugees** to assess whether a review of defendants' legal status in Malta is still warranted.

And,

(iii) With respect to **Alexandra Pace**, the Court, having seen articles 49 and 188(2) of the Criminal Code, finds the defendant Pace guilty of the third offence, namely that of making a false declaration, and also finds her guilty of being a recidivist solely under article 49 of the Criminal Code, and acquits her of all other offences and condemns her to a fine, *multa*, of two hundred Euros (€200).

The court orders that once this judgement is *res judicata* the Asset Recovery Bureau proceeds to take the necessary measures contemplated in Article 36(7) of the Proceeds of Crime Act, Chapter 621 of the Laws of Malta with respect to Alexandra Pace.

³⁶⁸ Vide **Il-Pulizija vs Doris (Maria Dolores) Borg**, Per Onor. Imħallef Dr. Edwina Grima LL.D., Dec. 26th November 2021, Appeal No. 178/2018. Vide also **Il-Pulizija vs Brian Buttigieg et**; Per Hon. Mr. Justice Dr. Aaron Bugeja, Dec.25.02.2020; Appeal No. 276 of 2017

³⁶⁸ **Dok.MD** a fol.346

Moreover,

In terms of article 382A of the Criminal Code, Chapter 9 of the Laws of Malta, the Court is issuing a **restraining order** against the defendants **Sunday Ikechukwu EBOH, Tony Ogbonna ANUFORO** and **Alexandra Pace** in favour of Mary Anne Darmanin and Vanessa Darmanin for a period of three (3) years.

The Court orders the Commissioner of Police to pursue investigations in the bid of identifying and bringing to justice Daniel Toshiduru *inter alia* for the crimes of money laundering, fraud and receiving property obtained by fraudulent means.

Finally the Court orders that the names of the victim and the victim's daughter are not to be disclosed by the media to avoid secondary victimization of the former.

Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)
Magistrate

Notification: Asset Recovery Bureau