



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

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

Case Number: 156/2023

THE REPUBLIC OF MALTA

-Vs-

Omissis

JEMELYN ALIGA SILOS

Today, 18th June 2024

The Court,

Having seen the charges brought against *Omissis* and **JEMELYN ALIGA SILOS**, of 49 years of age, of Filipino nationality, born in San Pablo City, Philippines on the 3rd of August 1982 who were charged with having in the months between April of the year two thousand and twenty one (2021) and April of the year two thousand and twenty two (2022) in these Islands and/or outside of these Islands, with several acts committed by themselves even if committed at different times, constituting violations of the same provisions of Law, and have been committed in pursuance of the same design:-

1. Committed an act of money laundering by:

- i. Having converted or transferred property whilst knowing or suspecting that such property was 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. Having concealed or disguised 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;
- iii. Acquired, possessed or made 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. 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. On the same date, place, time and circumstances also accused of by means of any unlawful practice, or by use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made any gain to the prejudice of Roland Hokja, Reuben Grech, Monica Farrugia, Juanita Azzopardi, Jacqueline Attard and of any other natural or juridical person/s, when the amount of damage caused by the offender exceeds five thousand euro (€5,000);
3. On the same date, place, time and circumstances also accused that to the prejudice of Roland Hokja, Reuben Grech, Monica Farrugia, Juanita Azzopardi, Jacqueline Attard and of any other natural or juridical person/s, any other fraudulent gain not specified in the preceding articles of Sub Title III Title IX Part Two Book One of the Criminal Code, Chapter 9 of the Laws of Malta, when the amount of damage caused by the offender exceeds five thousand euro (€5,000);
4. On the same date, place, time and circumstances to the detriment of the holder thereof, or the agent of the holder in the carrying out of any requirement of the Identity Card and other Identity Documents Act, Chapter 258 of the Laws of Malta or of any other law, on behalf of the holder, had within their possession, or made any use whatever of any identity document;

The Court was requested to issue an 'Attachment and Freezing Order' and attach in the hands of third parties in general all moneys and other movable or immovable property due or pertaining or belonging to the accused, and also so that this Court prohibits the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property belonging to him or else held by himself, in terms of Article 5 of the Prevention of Money Laundering Act, Chapter 373 of the Laws of

Malta; Article 23A of the Criminal Code, Chapter 9 of the Laws of Malta and Article 36 of the Proceeds of Crime Act, Chapter 621 of the Laws of Malta.

The Court was also requested so that in case of guilt, in addition to any punishment which the Court deems fit to impose, order the forfeiture of all the exhibited objects, of the corpus delicti and any instruments that served or was intended to serve in the commission of the offence, and of any property acquired from the offence as well as ordering the confiscation in favour of the Government of Malta of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds, and also the forfeiture of every property appertaining to, or in the possession or under the control of any person found guilty in terms of Article 23 and 23B of the Criminal Code, Chapter 9 of the Laws of Malta; Article 3(5) of Chapter 373 of the Laws of Malta and also Chapter 621 of the Laws of Malta.

The Court was requested so that in the case of guilt, in addition to any punishment which the Court deems fit to impose, orders the accused to pay the expenses relating to the appointment of experts in terms of Article 533 of Chapter 9 of the Laws of Malta.

The Court was also requested so that in the case of guilt, it applies the dispositions found within Articles 15A and 28H *et seq* of Chapter 9 of the Laws of Malta, wherein the guilty person would pay the damages in terms of Articles 15A and 28H *et seq* of Chapter 9 of the Laws of Malta.

Having seen the respective orders given by the Attorney General on the 8th November in terms of subarticle 2A(a) of Article 3 of the Prevention of Money Laundering Act (Cap. 373 of the Laws of Malta)¹, that the defendants, that is *Omissis* and Jemelyn Aliga Silos, are brought before the Criminal Court in order to answer for the charges brought against them for the breach of the provisions of the said Act.

¹ Doc. NF1 and Doc. NF2, respectively.

Having seen the decree dated 8th November 2022 whereby the proceedings were ordered to be conducted in the English language;

Having heard the Prosecuting Officers read out and confirm the charges on oath;

Having heard the defendants plead not guilty during their arraignment on the 8th November 2022;

Having seen the Seizing and Freezing Order issued on the 8th November 2022 in terms of article 5 of Chapter 373 of the Laws of Malta, article 23A of the Criminal Code and article 36 of Chapter 621 of the Laws of Malta in respect of each of the defendants;

Having seen the decree dated 15th February 2023 in virtue of which the trial in respect of the accused person, Jemelyn Aliga Silos was ordered to continue and be decided separately from the proceedings in respect of *Omissis*;

Having heard the defence expressly exempt the Prosecution from bringing evidence authenticating the documents indicated in the note presented by the Attorney General on the 4th July 2023;

Having seen the counter-order issued by the Attorney General on the 28th November 2023 in terms of subarticle 2A(b)(c) of Article 3 of the Prevention of Money Laundering Act (Cap. 373) ordering that the defendant Jemelyn Aliga Silos, is tried before this Court as a Court of Criminal Judicature regarding the charges brought against her for the breach of the provisions of the said Act;

Having seen that in virtue of the same note, the Attorney General also sent the accused, Jemelyn Aliga Silos, for trial by this Court in respect of the crimes prescribed in terms of:-

- (a) Article 15A, 17, 18, 23, 23A, 23B, 23C, 28H, 31, 383, 384, 385, 532A and 533 of Chapter 9 of the Laws of Malta.
- (b) Article 308 and 310 of Chapter 9 of the Laws of Malta.
- (c) Article 309 and 310 of Chapter 9 of the Laws of Malta.
- (d) Article 22 and 24 of Chapter 9 of the Laws of Malta.

Having heard the accused declare during the hearing of the 29th November 2023 that she has no objection that the case is tried and decided summarily by this Court as a Court of Criminal Judicature;

Having heard the accused testify in her own defence during the hearing of the 6th March 2024;

Having seen the statement released by the accused person during her interrogation on the 7th November 2022 and the 8th November 2022²;

Having heard all the witnesses produced by the Prosecution and the defence;

Having seen all the evidence and documents forming part of the record of proceedings;

Having heard the final oral submissions of the Prosecution and the defence during the hearing of the 23rd May 2024;

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

Having considered;

The facts of the case, as would result from an examination of the testimony and evidence forming part of the record of the proceedings, are as follows.

² Transcript Dok. KV1 and Dok. KV2.

The Prosecution accused the defendant and her husband, *Omissis*, with the crimes of obtaining money by false pretences and money laundering³. *Omissis* admitted to the charges and was sentenced on the 23rd March 2023 for his role in the scam that defrauded several persons of the total sum of €9,389.95 and for other related and unrelated offences. This conviction was not appealed and is *res judicata*. Essentially, this admission and conviction means that the basic underlying facts of Prosecution's case regarding the fraud that was perpetrated, at least in so far as *Omissis* was concerned, were proved.

The Prosecution maintains that a Facebook page was created, imitating and purporting to be the official Facebook page of Bank of Valletta p.l.c. complete with its corporate logo, which was intended to deceive clients of the banking institution to believe that the Facebook page was authentic⁴. Several persons, that is, Roland Hokja, Reuben Grech, Monica Farrugia, Juanita Azzopardi and Jacqueline Attard, were deceived by this non-authentic profile and made use of the page in order to contact the bank and make enquiries via Facebook messenger, believing that communication was being made with official personnel of the banking institution. The Prosecution maintained that the investigations carried out by the Cyber Crime Unit revealed that the *modus operandi* employed by the fraudster was identical in all cases, where the victims would make contact purportedly with Bank of Valletta p.l.c. using the fake profile, where they would enquire about a difficulty they would have regarding a service provided by the Bank. They would then be requested by the person controlling the fake Facebook page to provide information including credit card details and copies of debit and credit cards and official identification documents, which the victims would voluntarily supply. This information would then be used for online purchases and transfers of funds from the victim's credit card account to local and overseas third party bank accounts. Where the victims had the 2-way authentication security feature installed and enabled, they would receive a code which they would be asked to

³ She is also charged with the lesser crime of having made a fraudulent gain and offences under the Identity Cards and Other Identity Documents Act.

⁴ See document at page 590 of the record of the proceedings, forming part of Doc. JD3.

provide in order to effect a test purchase, but once the code was provided, this would effectively complete the transaction, at which point the funds would be withdrawn from their account.

Having considered;

That defendant is charged with the crimes envisaged in articles 308 and 309 of the Criminal Code, that is the crime of obtaining money by false pretences and the less crime of other cases of fraudulent gain.

Article 308 of the Criminal Code criminalises the employment of any unlawful practice, or the use of any fictitious name, the assumption of any false designation, or any other deceit, device or pretence that is calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or the creation of the expectation or apprehension of any chimerical event, as a result of which any person shall make any gain to the prejudice of another person.

In the judgement in the names **Il-Pulizija v. Carmel Cassar Parnis**⁵, the Court of Criminal Appeal maintained:-

“Fit-truffa l-liġi riedet timpedixxi l-inganni għat-trasferiment ta’ oġġetti biex isir profitt indebitu minnu.” (enfasi ta’ din il-Qorti)

That same Court in the judgement in the names **Il-Pulizija vs. Carmela German**, delivered on the 30th December 2004, also held:

In tema legali gie ritenut minn din il-Qorti fis-sentenza tagħha tat-12 ta’ Frar, 1999 fl-ismijiet Il-Pulizija v. Anthony Francis Willoughby li:

⁵ Deciża fit-12 ta’ Dicembru 1959.

“Fil-ligi taghna biex ikun hemm it-truffa jew il-frodi innominata irid ikun gie perpetrat mill-agent xi forma ta’ ingann jew qerq, liema ingann jew qerq ikun wassal lill-vittma sabiex taghmel jew tonqos milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti qligh ghall-agent (Il-Pulizija v. Emmanuele Ellul, App. Krim., 20/6/97; ara wkoll Il-Pulizija v. Daniel Frendo, App. Krim., 25/3/94). Dan it-telf hafna drabi jkun jikkonsisti filli l-vittma, proprju ghax tkun giet ingannata, volontarjament taghti xi haga lill-agent (Il-Pulizija v. Carmel Cassar Parnis, App. Krim., 12/12/59, Vol. XLIII.iv.1140).

The evidence brought forward by the Prosecution reveals that ten fraudulent transactions to the detriment of five victims, were carried out as a result of the scam between April 2021 and January 2022, in the total amount of €9,389.95:-

- Roland Hokja was defrauded of a total sum of €2,915.96 which was withdrawn from his BOV account in four separate transactions carried out on the 20th April 2021. These transactions were established to have been carried out by Arvin Guerrero Silos, defendant’s husband, using email address rvnsls@yahoo.com, who then transferred the funds to a bank account held by Christine Joy Ciabal with Banco De Oro in the Philippines.
- Reuben Grech was defrauded of a total sum of €5,999.98 which was withdrawn from his BOV account in two separate transactions carried out on the 11th October 2021. These funds were transferred by means of an account ending with 9011 at www.azimo.com, registered in the name of Jemelyn Silos, born on the 3rd August 1982 with registered email address kobelyn@yahoo.com, to Arvin Guerrero Silos and then on to Cristina Joy Ciabalo in the Philippines;
- Monica Farrugia was defrauded of a total sum of €40 which was withdrawn from her BOV account between the 7th and 8th January 2022. These funds were transferred by means of two separate transactions into a Malta Public Transport card registered in the name of Jemelyn Silos.
- Juanita Azzopardi was defrauded of a total sum of €229.57 which was withdrawn from her BOV account on 10th January 2022 and transferred into an

account with Belgian Merchant Wise, using TransferWise. This account was registered in the name of Arvin Guerrero Silos.

- Jacqueline Attard was defrauded of a total amount of €204.44 which was withdrawn from her BOV account by means of an unauthorised transaction carried out on the 13th April 2022. The funds were transferred by an online bank transfer service provider, TransferGo, to a merchant registered in Lithuania, where the recipient of the transaction was established to be Arvin Guerrero Silos in whose name the TransferGo account was registered. These same funds were then transferred to a bank account with number 005930216216 held at Banco de Oro in the Philippines, also in the name of Arvin Guerrero Silos.

Indeed, Arvin Guerrero Silos testified as witness for the defence regarding his role in the fraud and confirmed that he alone was responsible for the scam. He explained how he conducted the fraudulent activity that deceived several customers of Bank of Valletta p.l.c. into providing their credit and or debit card details which he then used to make unauthorised transactions to their detriment, this by having created a fake BOV Facebook page. He testified that customers of the Bank began to send messages through the page and he managed to trick them into giving him their security code in order to authenticate the transactions. In one instance, involving Roland Hokje, he confirmed that he sent the money to his wife's cousin, Christina, in the Philippines telling her that he was cashing out some money from crypto and making her believe that he was earning money from crypto. He asked her to transfer it into his bank account in the Philippines and asked her not to tell his wife. He also gave her €100 as commission for having transferred the money.

As for the Azimo account that he claimed to have created in his wife's name, Arvin Guerrero Silos testified that he created this account himself as his own account got deactivated for some reason, most likely because he had not submitted his identification documents in time, and although he had tried to create a new account in his name, this was not accepted. He explained that in order to create an Azimo account, passport

identification is required and since his wife's passport was easily accessible as it was kept in their apartment, he decided to use her identity in order to create a new Azimo account.

Regarding access to her Identity card and passport, defendant testified:

“Xhud: We just leave it on the counter. It's on the kitchen counter where there is like shelves there, we put our passport and ID card there. I don't take Id cards everyday because I am scared of losing it and it will be a big problem so even the kids' passport and the ID is there.

Av: Ok so does your husband have access to them?

Xhud: Well it is there so I suppose he can get it anytime he can use it anytime”

Arvin Guerrero Silos confirmed that in order to set up the Azimo account, he also used his wife's email account, kobelyn@yahoo.com, which he has access to as it is logged onto his mobile together with her Facebook and Whatsapp accounts. However, he stated that he never told his wife anything about this and he also immediately deleted from her email inbox, the email notification confirming that the account was created. He also deleted instantly from his wife's inbox, all email notifications received in connection with the fraudulent transactions and he also emptied the email trash bin, although he was confident that his wife would not have seen the emails in any case, since she has no mobile data on her phone so she would need Wifi to access her phone while at work. In fact, he stated that his wife, the defendant, was “*clueless*” about the Azimo account.

Arvin Guerrero Silos also confirmed that he has had access to his wife's email, Facebook and Whatsapp accounts for the past ten years since she is not knowledgeable about these matters and requires help to access and operate them.

He also testified how another time, one of the victims sent him the details of her debit card which he saved in his phone so that he could use them to make future purchases.

When his wife asked him to top up the credit on her Tal-Linja card he used these card details to effect the top-up and given that he was not using his own money, he used it to effect two top-ups. In fact, his wife, the defendant, had asked him why there was a total of €40 in her account instead of the usual €20 and he had explained to her that there was a glitch in the Transport Malta system, which was also true as at the time there had been a technical issue with the Transport Malta top-up system. His wife never enquired further.

Arvin Guerreo Silos also confirmed that the other transactions which were carried out to the detriment of the victims of the fake Facebook page, were also carried out by himself alone and without his wife's participation or knowledge.

It is interesting to note that Arvin Guerrero Silos maintained defendant's innocence not only in his testimony before the Court as a witness for the defence, but also from the very outset, when he was interrogated after having been arrested together with her from their residence and detained separately from her thereafter. As would result from the testimony of Inspector Marcus Cachia and Inspector Clive Brimmer, during Police interrogation while under arrest Arvin Guerrero Silos declared that his mobile phone number is 99250957 and insisted repeatedly that his wife has nothing to do with the fraudulent transactions.

In his testimony, he claimed to have got blinded by the easy money and stated to have regretted his actions, and he also apologised to the victims who have since been reimbursed. He stated that he learnt a lesson from this episode.

Although this does not necessarily mean that Arvin Guerrero Silos is a credible witness, or that his testimony alone is sufficient to exonerate his own wife from the charges brought against her, the Court cannot ignore or underestimate this version of facts given that Arvin Guerrero Silos was definitively convicted for the fraud, and given also the fact that both him and his wife were consistent from the outset that defendant was not involved and had no knowledge of the fraud.

Having considered;

That however, in so far as defendant is concerned, a more profound analysis of the evidence must be made, rather than relying on Arvin Guerrero Silos's own testimony, in order to determine whether the Prosecution has brought sufficient evidence of defendant's involvement in and knowledge of the fraudulent activity in order to sustain a conviction for the crime of fraud and the offence of money laundering.

It is the role and duty of the Prosecution to prove the defendant's guilt in respect of each and every crime with which she has been charged, by bringing forward satisfactory evidence that morally convinces the Court that she committed these crimes as an author or accomplice, and, with regard specifically to the offence of money laundering, that she knew or suspected that the funds deposited into her Malta Public Transport Card and Asimo account were derived from criminal activity and that the latter funds were transferred from the Asimo account to Christina Joy Ciabalo's bank account in the Philippines.

Defendant, Jemelyn Aliga Silos, both in the two statements that she released during interrogation while under arrest on the 7th November 2022 and the 8th November 2022, and also in her testimony before the Court in these proceedings, declared that she had nothing to do with the fraudulent transactions, insisted that she knew nothing about them and confirmed that she still does not know today how the victims were scammed.

In her statement dated 7th November 2022, she provided her mobile phone number as being 99600954 and also confirmed that her husband administers and pays for the internet connections in their residence and since she is not very conversant with devices, he also sets up the passwords in order to have Wi-fi connection with the router and helps her to connect her phone to the Wifi. She confirmed that her husband also manages their family funds and because she does not know how to send money

overseas, he always sends the money that she transfers to his Revolut account, €300 each month, to Banca De Oro in the Philippines where her cousin Christina Joy Ciabal administers the funds that she sends to her family. She claimed that her cousin never mentioned to her that she had received more than the €300 that she sends every month.

This is consistent with her husband's testimony that he had in fact, requested Christina Joy Ciabal not to mention anything to his wife, the defendant, about the extra funds transferred by way of family support into her bank account in the Philippines. Arvin Guerrero Silos testified that he that did not tell his wife about the money that he sent to her cousin as she would be suspicious about the origin of this extra money. Upon being asked why he sent the extra money to his wife's relatives and not to his own relatives, he claimed that his relatives knew how much he earned so they would be suspicious. Having told Christina, his wife' cousin, that the funds were derived from his investments in crypto-currency, he asked her not to tell the wife about the money and he said this as his wife knew that he does not invest in cryptocurrency and would therefore be suspicious should her cousin tell her about the origin of the funds. He testified that today he no longer communicates with Christina as when she had found out about the illicit origin of the funds, she was worried she would get into trouble and he is ashamed of what he did. Today, his wife sends the money to another cousin also because Christina is busy with a new job.

As for the Malta Transport card ('Tal-Linja card'), in her statement, defendant declared that when she would require to top-up the credit on the card, she would purchase a scratch card or go to Maltapost as she does not know how to top-up the card on-line, and in fact, her husband would often top up the credit on her card on-line himself. She recalled a time when she noticed that she received a double payment of €20 into her Tal-Linja card after she asked her husband to top it up but did not give it much thought.

She explained that she is not proficient in using online services, she never heard of World Remit and also confirmed that she does not use Azimo, which is a money transfer service, and does not know how to send money through such means. She also stated that neither herself nor her husband ever mentioned Azimo and she does not know that there is an account with Azimo in her name.

In her testimony before the Court the defendant reiterated that she does not have an Azimo account and sends money to her family in the Philippines through her husband via Revolut who, in turn, would transmit the money to the Philippines from his own Revolut account.

As for her email address kobelyn@yahoo.com, she explained that this is used by both herself and her husband since she sometimes requires help with the account and her husband knows everything about her account.

In her second statement, released during interrogation on the 8th November 2022, the defendant reiterated that she had nothing to do with the fraud perpetrated through the administration of a false Bank of Valletta Facebook page and that despite having been shocked at the allegations that were made to her during the previous interrogation, and having thought about the matter all night, she had nothing to add. She also stated that she never saw her husband or anyone else carry out these illicit transactions and also repeated that her cousin in the Philippines never told her anything about having received more funds than usual from her husband by way of family support.

Having considered;

That the Court reiterates that that *Omissis*'s conviction upon his own admission of the same crimes with which his wife, the defendant, is charged, does not in or of itself exonerate the defendant. Neither does her husband's testimony that he was the sole perpetrator of the crimes, that he acted alone and that the defendant was not involved in any manner in the commission of the crimes and that she had no knowledge of his

actions and intentions or of the fact that he used her email account and Malta Public Transport card account in order to transfer and receive the illicit gains of his fraudulent scheme.

However, the Court examined all the evidence, documents and testimony that forms part of the records of the proceedings and observes that other than the fact that the defendant was the recipient of the fraudulent gain made to the detriment of Reuben Grech and Monica Farrugia in the total sum of €6,039.98, which was transferred to and deposited in accounts registered in her name, and the fact that her name and email address (kobelyn@yahoo.com) were used in order to register an account with Azimo (the money transfer service which was used to transfer the funds from Reuben Grech's credit card), there is no link whatsoever between any of the other victims and the defendant.

Specifically, the Prosecution failed to prove that it was the defendant who designed the fake Facebook profile or operated the scam, chatted with the victims on messenger, requested their banking details and other documents and then used this information to effect purchases and to withdraw funds from victim's debit or credit card accounts.

In fact, the evidence shows that it was *Omissis's* mobile phone number – 99250957 – which was always provided in each case for verification purposes in connection with the use of the fraudulent Facebook page that was used to deceive all the victims of the fraud with which defendant is charged in these proceedings.

- **Transactions relating to Reuben Grech**

As already pointed out, in the case of the two fraudulent transactions effected from Reuben Grech's credit card account with Bank of Valletta p.l.c., the information provided by Azimo showed that the Azimo account was registered in defendant's name and her email address was also provided for registration purposes. However, the mobile number 99250957, pertaining to *Omissis* and registered in his name with Go p.l.c was displayed on information provided to the Police by Azimo as being linked to

the said Azimo account⁶. Moreover, Melita p.l.c. confirmed⁷ that the IP address that was used to log into the Facebook account associated with the fake Facebook page, 92.251.66.37 on the 20th April 2021 and which was also used in order to effect the transactions made by the perpetrator using POS World Remit - Brussels, was owned by holder of Identity Card card number 53413A, that is, Arvin Guerrero Silos. This same IP address, 92.251.66.37, was also used on the 11th October 2021 to log into the fake Facebook page while the same IP address and also IP addresses 83.142.248/249 – which Azimo also confirmed was listed in the activity of rvnsls@gmail.com – were associated with the unauthorised transactions from Reuben Grech's credit card using the services of Azimo. Indeed, it would result that the IP addresses 83.142.248/249 are registered in the name of Arvin Guerrero Silos with mobile phone number 99250957 and holder of identity card number 53413A⁸, while the the said email address rvnsls@gmail.com pertained to the person who received the funds into bank account 5930216216, that is, Arvin Guerrero Silos⁹.

In the Court's view, the fact that IP addresses associated with the fraudulent Facebook activity on the 11th October 2021 to the detriment of Reuben Grech, belong to Arvin Guerrero Silos, combined with the fact that the mobile phone number that was identified by Azimo in connection with this transaction, both pertain to *Omissis* and not to the defendant, and above all the fact that the mobile phone number that was used for verification purposes in respect of each and every log-in activity on the Facebook page associated with the fraudulent transactions, further corroborates the defence's case that defendant was not the author or the administrator of the scam and neither did she effect the unauthorised transactions into the Azimo account registered in her name.

⁶ Information obtained from Google confirms that log-ins pertaining to email rvls@gmail.com are related to IP addresses 92.251.66.37 to 99.251.124.27 and IP 83.142.248.158 to 83.142.249.144 which

⁷ See Doc. MC8, page 405 of the record of the proceedings.

⁸ See Doc. MC9.

⁹ See also testimony of PS 617 Christian Mark Ferris, 11th July 2023.

All this circumstantial evidence combined, points almost univocally to *Omissis* as being not only the author and the administrator of the scam, but also probably the sole author and administrator to the exclusion of the defendant. The fact that the email address that was identified by Azimo in the activity relating to the fraudulent transaction to Reuben Grech's detriment, is that of *Omissis* (rvnsls@gmail.com) and not of the defendant (kobelyn@yahoo.com) supports the defence's assertion that defendant's name and email address was used solely in order to register the Azimo account. In this regard, the Court recalls that defendant had herself provided without hesitation during her questioning, kobelyn@yahoo.com as her email address and also stated that this email address is used both by herself and her husband.

This serves to add more credence to defendant's assertion that she did not even know of the existence of the Azimo account, and was not aware of the funds deposited in that account. Added to this defendant's evident lack of proficiency in the use of on-line technology and banking services and also her menial employment, convinces the Court that probably defendant could not have set up and operated the fake Facebook page, and above all, effected the unauthorised transactions from the victim's bank accounts or credit cards. The Prosecution failed to show that contrary to her assertions, defendant did have sufficient skills in online technology and customer support in a manner that would have enabled her to successfully defraud bank customers and then use money transfer services to transmit the funds to other banks and also overseas to the Philippines.

Regarding her knowledge and use of IT, defendant testified: *"Honestly I don't have, I just use my phone with facebook. Because of facebook. Because with facebook, whatsapp, messenger, I used to contact my family in the Philippines, I have a son in the Philippines, I have my parents in the Philippines so that is how I use my mobile. From Facebook and just Whatsapp."*

The Court examined the Revolut statements exhibited by the Prosecution and would observe that it does indeed result that defendant would regularly transfer significant

amounts to her husband and this would corroborate her version that she was unable to transfer the funds that she provided by way of financial support to her family in the Philippines, by using more sophisticated platforms and services, herself.

Moreover, PS 617 Christian Mark Ferris, a qualified forensic analyst, confirmed that in order to create and administer the fake Facebook page and also to create an Azimo account, one would necessarily have to possess some form of technical knowledge in the use of computers and internet and the management of pages, but above all, one would need to possess a certain level of customer support knowledge and the necessary know-how in order to act as a bank employee. He also confirmed that he knows of Azimo because he is a forensic analyst. A cursory look at defendant's employment history records would show that her only employments were of a menial nature (such as assistant carer and maid/housekeeper), without any indication that she ever worked in customer care or banking or evidence that she received any training or education in these areas.

- **Transactions relating to Monica Farrugia**

As for the unauthorised transactions to the detriment of Monica Farrugia, it would result from information provided by Bank of Valletta p.l.c. that the two transactions from Monica Farrugia's credit card were processed in favour of Malta Public Transport which, in turn, confirmed to the Police that the funds pertaining to the said two transactions were used to purchase top-ups of €20 each for the Malta Public Transport card of Jemelyn Aliga Silos.

Arvin Guerrero Silos confirmed in his testimony that he had used the credit card in order to make two transactions instead of one, to top-up his wife's Malta Public Transport account because the money "*was free*" but when his wife enquired, he had explained the double top-up with the pretext of a glitch in the system.

Defendant had claimed during questioning that she does not even know how to top up the credit in her Tal-Linja card on-line, and that on-line top-ups in her card would be effected by her husband whenever she would ask him to top up her credit.

Regarding the Malta Public Transport card, she testified:

“Yes. I am using the transport Malta by using it, I top up with the scratch card or Maltapost because I dont know how to use the online top up. So then sometimes when I don’t have time I ask my husband to do it for me, the online one because he knows how to. So then I ask him to do it for me, then one time.

... ..

“So then I ask my husband, how come I have more than that? And then he told me that there was, he heard that there is some problem with the top up system, that there is some glitching something like that. So since I dont have knowledge about it, I believe him.”

With this context in mind, the fact that defendant’s Tal-Linja card was credited with funds deriving from two online transactions on Monica Farrugia’s credit card, would reasonably exclude defendant as the person who carried out the fraudulent transactions to Monica Farrugia’s detriment. The evidence shows that Monica Farrugia unwittingly provided her credit card details via the fake Facebook page, believing that she was communicating with a bank official.

But above all, the Court would also observe that the IP addresses that were used by the fake Facebook profile between the 6th January 2022 and the 10th January 2022 including therefore, the dates when the page was used to deceive Monica Farrugia in order to provide her credit card details and other information, were all hosted by Go p.l.c which in turn, confirmed to the Police that the IP address 46.11.26.190 used on the 7th and 8th January 2022 was registered in the name of Alvin Guerrero Silos.

Defendant's version of events and her absolute lack of knowledge of the manner in which the fraud was executed and the use of her identity and credentials without her knowledge for the registration of an Azimo account, was not effectively contradicted or undermined by conflicting evidence. The Court is satisfied that even when faced with the fact that she was the direct recipient of some of the funds derived from the fraudulent activity and the fact that her credentials were used to register an account with Azimo – the only evidence of her alleged involvement in the crimes - her version remains credible and plausible.

In the Court's view, when weighed against the entirety of the evidence, above all the circumstantial evidence which shows that for every activity connected with the fraudulent transactions her husband's mobile phone number, email address and IP addresses were identified as being used, and her husband's own testimony in these proceedings which continues to ratify in the most absolute manner the defendant's own version, which was consistent from beginning to end, regarding her lack of awareness of the crimes and the use of her identity and credentials, this same version must be taken to have been proved on a balance of probabilities.

The Court would observe that defendant's version was given after she was arrested and was detained separately from her husband without any communication having taken place between them from the moment of their arrest until they were arraigned in court. This version was consistently maintained by her throughout the proceedings and was also confirmed by her husband in his testimony at a time when he was no longer a co-accused person, having been sentenced and convicted upon his own admission for the crimes of fraud and other offences.

In the Court's view, the Prosecution failed to prove beyond reasonable doubt that defendant was the author or co-author of the scheme or involved in as an accomplice in the setting-up or operation of the fraudulent Facebook page and far from morally convinced of defendant's involvement in either of the fraudulent activities that were carried out to the detriment of the victims, including Reuben Grech and Monica

Farrugia. Therefore, she cannot be found guilty of the crime of obtaining money by false pretences or even of the lesser crime envisaged in article 309 of the Criminal Code as it was not satisfactorily proven that the defendant carried out any material acts that deceived the victims of the crime and which led them to suffer a financial loss.

Having considered;

As for the charge of money laundering, the Court would be observing that the only funds which were derived from criminal activity and which were received or possessed by the defendant, consist of (i) the sum of €5,999.98 which was withdrawn from Reuben Grech's credit card and transferred by a money transfer service, Azimo, registered in her name, to a bank account in the Philippines pertaining to *Omissis*, and (ii) the sum of €40 deposited by *Omissis* into her Malta Public Transport account. Although one may speculate about the fate of the funds credited into defendant's Tal-Linja card, no concrete evidence was brought to establish that these funds were also withdrawn, transferred, disposed of or consumed.

The link between the criminal activity perpetrated by *Omissis* to the detriment of Reuben Grech and Monica Farrugia, and the monies received into the Azimo account in defendant's name and into her Malta Public Transport account, respectively, is manifest and in the Court's view, the Prosecution successfully proved the first element of the offence of money laundering, that is that the property which the accused is alleged to have concealed or disguised, constitutes the proceeds of criminal activity.

Article 2(2a) of Chapter 373 states: "*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*"

It is therefore not necessary for a conviction for the offence of money laundering under the Prevention of Money Laundering Act (Chapter 373), that there is also a judicial finding of guilt in respect of the underlying criminal activity. It is also settled case-law that the existence of the underlying criminal activity constituting the source of the property subject of the offence, 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 also without it being necessary to establish precisely the nature of the underlying criminal activity.

However, this having been established, for a conviction in respect of the offence of money laundering, the Prosecution needs to prove beyond reasonable doubt not only that the property constitutes the proceeds of criminal activity¹⁰ and that the defendant committed the *actus reus* – that is at least one of the prohibited acts listed in Article 3 of the Act - but also that when he committed the prohibited act or acts, he acted with the required *mens rea* that is, he had the knowledge, or at least the suspicion, that the property in question originated directly or indirectly from an underlying criminal activity.

The Court has already established that the defendant was neither an author nor an accomplice in the fraudulent activity that generated the funds that were received into her account and had no knowledge of this activity. This activity, as already established, was perpetrated by her husband, *Omissis*, who admitted to the same crimes which defendant is also charged with, and was duly sentenced. It therefore remains to be established whether the Prosecution has successfully proved beyond a reasonable doubt, even by inference from the factual objective circumstances of the case, that the defendant knew or at least suspected that the funds received into her account, sent to her by her husband, originated directly or indirectly from an underlying criminal activity.

¹⁰ It would therefore be incumbent on the accused to give a reasonable explanation as to the source of the money; however in this case, the accused contends that the formal not the material elements of the crime are lacking.

The defence contends that the evidence clearly shows that the formal element of the crime had not been proven since there is no evidence whatsoever which indicates that when the defendant received from her husband the proceeds of illegal activity committed to the detriment of Reuben Grech and Monica Farrugia, into accounts registered in her name, she knew or suspected that these funds were the proceeds of fraudulent or other criminal activity. Indeed, the defendant claims to have had no knowledge of the origin of these funds, specifically that they were derived from fraudulent activity carried out by her husband. Thus, the defence contends that although the *actus reus*, being the receipt of the illegally-derived funds, has been satisfactorily proved, this act was not accompanied by the necessary criminal intent as she did not know and had no suspicion that these were the proceeds of criminal activity.

The Court must therefore establish whether sufficient evidence, direct or circumstantial, has been adduced by the Prosecution to show beyond a reasonable doubt that the accused did know or at least have a suspicion as required by law, that the sum of €5,999.98 and the sum of €40 were derived from an illegal activity.

In fact, for the purpose of establishing the knowledge of the perpetrator *vis-à-vis* the origin of proceeds, article 3 of the Money Laundering Act (Chapter 373) criminalises not only the obvious specific knowledge/positive intention, but also the lesser mental element of suspicion mentioned in paragraph 3 of article 9 of the Warsaw Convention, defining money laundering, *inter alia*, as a conversion, transfer, concealment, etc. of property suspected to be directly or indirectly deriving from a criminal activity. Knowledge or suspicion inferred from the specific circumstances of the case may be enough to establish *mens rea*, and further knowledge about the predicate offences is not necessary.

The nature and degree of the lesser knowledge (*suspicion*) that has to be proved to establish the required *mens rea* of the offence under article 3 of the Money Laundering

Act, which may also be inferred from objective factual circumstances, nonetheless requires proof of a positive state of mind as opposed to an indirect or negligent state of mind (ought to have known).

In *'Money Laundering Offences'*¹¹ one finds the following definition of the term 'suspicion' as used in the Proceeds of Crime Act (UK):-

"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.¹²

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

¹¹ The Law Society, Chapter 5, 2013, October Practice Notes.

¹² Emphasis made by this Court.

not have to have evidence that money laundering is taking place to have suspicion.”¹³

It was also held in the judgement quoted in the above text:

*“... the prosecution must prove that the defendant's acts of facilitating another person's retention or control of the proceeds of criminal conduct were done by a defendant who thought that there was a possibility, which was more than fanciful, that the other person was or had been engaged in or had benefitted from criminal conduct.”*¹⁴

In **K Ltd v. National Westminster Bank plc** [2006] EWCA Civ. 1039, a civil case relating to suspicion of money laundering, it was held:

“... the existence of suspicion is a subjective fact. There is no legal requirement that there should be reasonable grounds for suspicion.”

In the judgement delivered by the Court of Criminal Appeal on the 19th November 2015 in the names **The Police v. Vladimir Omar Fernandez Delgado**, it was held:-

“This is being said since the Prosecution need only prove a mere suspicion on the part of accused regarding the source of the money, the degree of suspicion, as opposed to the certainty brought about by proof of full knowledge, being merely subjective and personal. In the past the courts have extended the definition of knowledge beyond actual knowledge and included situations where the facts would be clear to an honest and reasonable person. It would also include turning a blind eye. Suspicion, on the

¹³ **The Police v. Omissis, Vladimir Omar Fernandez Delgado**, decided by this Court, differently presided, on the 29th April 2015. Emphasis made by this Court.

¹⁴ The judgement continues: *“But the statute (Proceeds of Crime Act, 2002 [UK]) does not require the suspicion to be ‘clear’ or ‘firmly grounded and targeted on specific facts’, or based upon ‘reasonable grounds’. To require the prosecution to satisfy such criteria as to the strength of the suspicion would, in our view, be putting a gloss on the section.”*

contrary, is essentially a subjective issue and so is less than knowledge. The Court of Appeal in England had this to say on the matter: (Regina vs Hilda Gondwe Da Silva):

... ..

The Court added that: ‘using words such as "inkling" or "fleeting thought" in directing a jury is liable to mislead’. In particular they considered that a person who temporarily held a suspicion but honestly dismissed it from their mind upon further consideration should not be liable to be convicted.”

Unfortunately our law does not give a definition of what amounts to “suspicion” and consequently if the prosecution manages to prove such suspicion of the illegal source of the money, then their job is done. It is incumbent on the accused to bring forward evidence to rebut the alleged “suspicion”, as being fanciful or a mere possibility. It is then up to the judge or jury to evaluate both sides of the coin in order to establish whether that suspicion is such as can lead to a conviction.”

As drafted, the law in The Prevention of Money Laundering Act (Chapter 373) does not require the suspicion to be clear or grounded on specific facts or based upon reasonable grounds. Although in theory ‘suspicion’ may be less difficult to prove than ‘knowledge’, in order to prove ‘suspicion’ as one of the elements of the crime of money laundering, the Prosecution needs to prove beyond reasonable doubt that accused must have actually thought that there is a possibility that the relevant fact exists.

In this particular case, the Prosecution set out the following as the facts on which it relies and the inferences which it asks the Court to draw, as proof that the monies received or which were in the possession of the defendant were derived from criminal activity and that she knew that these monies constituted another person’s benefit from criminal conduct:-

- The fact that the Azimo account was set up in her name and with her email address; and

- The fact that the funds which derived from the fraudulent activity committed to the detriment of Monica Farrugia, were received into her account with Malta Public Transport.

According to the Prosecution, the accused's version that she did not know or suspect that the money received into this account was not derived from criminal activity is not credible and neither supported by the circumstantial evidence which, according to the Prosecution, provides a concrete inference that she knew or at the very least, suspected that the Azimo account in her name was used to transfer monies that were derived from criminal activity and that the funds received into her Malta Public Transport account were proceeds of crime.

The Court disagrees with the Prosecution and is of the firm view that taken collectively, the evidence fails to convince that the defendant knew or even suspected the existence of the Azimo account, let alone that this was used to effect unauthorised transactions and that the funds transferred with the use of Azimo were proceeds of crime, or that the funds received into her Malta Public Transport account derived from criminal activity on the part of her husband.

The Court examined the accused's version as would result from her statements to the Police and her testimony before the Court and considers that this version is credible and deserves to be given weight, and is also reasonable and probable. Moreover, the Court could not but take note of her demeanour on the witness stand where it was evident that defendant was exceedingly dismayed by the discovery – after her arrest - of her husband's wrongdoing, maintaining that this episode derailed her life and that of her children and that her husband's deceit almost destroyed her trust in him, threw their relationship into disarray and almost led to the breakdown of their marriage.

“But since that time they were questioning me, I still don't believe it. I still don't believe that my husband can do such thing. I still can't believe that we were living together, we were with our kids, and I was so clueless what he is doing”.

Defendant also explained in her testimony that to date, she still does not understand exactly what her husband did to defraud the victims and the manner in which the fraud was executed. She stated that she only understood what had taken place when her second lawyer eventually explained to her when she was under arrest.:-

“Not on the Monday, because when we questioning us, after that, I was still clue less. They took me to Floriana, for a night and I was detained for a night til the following day and after that I spoke to Dr Giglio but during that night I am still questioning and I still don’t believe it. Even they present my husband number and everything. I still don’t believe it until Dr Giglio spoke to me.”

In the Court’s view, this means that even before she understood the reason for her arrest and that she was being interrogated in connection with an online scam that defrauded several bank customers by means of a fake Facebook page, defendant still maintained the same version that she had already given in her previous statement and which she continued to maintain all throughout the proceedings, corroborated not only by her convicted husband’s testimony but also by overwhelming circumstantial evidence that supports the defence’s contention – already established as correct - that she was not involved, not even as an accomplice, in the set-up and operation of the fraudulent Facebook page and thus also in the chats and false pretences that deceived the victims into supplying their credit and debit card details, less so in the transfer of the monies via the money transfer service providers. In particular, the Court is also convinced that the Azimo account was set up in her name without her knowledge and operated not by herself but by her husband, also without her knowledge.

The Court could observe that defendant was genuine and could easily identify her marked disappointment when recounting the episode, particularly when she learnt that her husband had not only defrauded other persons but used her identification and accounts in order to receive and transfer the illicit funds.

She testified:-

“... at first I was confused but then I questioned him , I said what just happened? What just happened? And he told me that he made a mistake. He told me that he was, he was trying to help, he was trying to give us a more convenient life and he was trying to make money. I get mad. I get really mad because we were ok. We were ok in our job, we were ok in our small extra money. And I couldn't believe because of what he did, we were so in trouble and even our kids were in trouble. So I tried to do normal things but I couldn't. I don't have my ID, I don't have my passport.

... ..

“Since then, I was thinking of leaving him, I was thinking of leaving him. Because the feeling that I was betrayed, the feeling that I was so stupid that I am in this situation because of him. I was thinking of leaving him but in fact I already arranged something for my kids to the Philippines, the school, how I am going to send them, but when I spoke to my son who is 10 years old, he was crying because he doesn't want to, he wants to be with me. And I saw from that time, we were always fighting. Because it is like I am always mad at him so we are always fighting and I saw my kids, they were suffering. They were suffering because we are always fighting and they were suffering. And I cannot stand giving my kids a broken family. I grew up in a happy family in a full family so.”

This version was validated by her husband, Arvin Guerrero Silos who testified that when she understood what had happened, defendant had broken down crying and was yelling at him and blaming him for everything which was true. He also testified that one of the victims of the scam was harrassing her and threatening to kill the kids and he had also spat on her and she had to file a Police report. He fears that today his wife no longer trusts him as although she still sends him money to transfer to her family in the Philippines, she now asks for a screenshot of the transfer as evidence that the funds were indeed transferred.

Having had no knowledge of the scam and also absolutely no knowledge of the Azimo account that transferred the funds from Reuben Grech's credit card and thus of the existence of these funds, the Court sees no reason why the defendant should or could have ever suspected that her husband, who sent her the funds to top-up her Malta Public Transport account as usual, was involved in criminal activity when she testified, and maintained consistently from the outset, that she could not understand how this fraud was perpetrated. After all, it was not shown that *Omissis* was known to defendant, his wife, as someone prone to criminal activity and therefore there is no place for any assumption that the defendant should have known or suspected that the funds sent by her husband were being laundered.

Having considered;

That the defendant is also accused of the offence under article 22 of Chapter 258 of the Laws of Malta, that is Identity Card and Other Identity Documents Act which criminalises the possession or any use whatever made of any identity document by any person other than the holder thereof, or the agent of the holder in the carrying out of any requirement of this Act or of any other law on behalf of the holder.

During the execution of a search and arrest warrant on the 7th November 2022, a number of documents were seized from the residence of defendant and her husband at Musbieh, Flat 2, Triq Pietru Xuereb, Pieta', including a Maltese identity card of a certain Sandro Flores and a driver identification card and driving licence of the same person, Sandro Flores, including also a Malta Police Force NPS card with report number 6A/N/5079/2021¹⁵.

During Police interrogation while under arrest, the defendant stated that these documents were brought into their residence by her husband who told her that he had

¹⁵ Dok. CB16 – evidence bag LC00123134 relating to receipts numbered 4961 and 4962.

found them together with a wallet on the street unattended and intended to take them to the Police Station. She was not with him when he found these documents and declared that when after a while she did not see the wallet any longer, she assumed that it was no longer there.

In his testimony before the Court, Arvin Guerrero Silos confirmed that the identity card pertaining to Sandro Flores was found by him in a wallet, together with some other documents, that he found on the street. He stated that he intended to take it to the Pieta' Police Station in order that it may be returned to its owner but despite having gone twice to the Station, he had found it closed on both occasions. He then forgot about the document and after some time had even thrown away the wallet as it had become mouldy. The identity card was left on a tray on a shelf in the kitchen along with other loyalty cards and his and his wife's identification documents and passports.

The Court after having reviewed the evidence, is not convinced that the defendant, Jemelyn Aliga Silos, was in possession of the identity card pertaining to Sandro Flores. Although it is true that this document was left in a tray along with other documents in the kitchen of the apartment she shares with her husband and children, it does not result that this card was ever in her possession, this having been brought into the apartment by her husband and not by herself. It is also excluded from the testimony of both defendant and her husband that defendant was present when the identity document was found and the evidence shows that it was her husband who brought it into the apartment and handled the document. Therefore the Court is not satisfied that the defendant ever came into physical possession of the identity document pertaining to Sandro Flores or made use of the said document.

Consequently, she cannot be found guilty of the crime envisaged in article 22 of Chapter 258.

For all these reasons, the Court does not find JEMELYN ALIGA SILOS guilty of any of the crimes with which she was charged and consequently acquits her from all charges.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**