



**Court of Magistrates (Gozo)**  
**AS A COURT OF CRIMINAL JUDICATURE**  
**Magistrate Dr. Jean Paul Grech B.A., LL.D**  
**M.Juris (Int. Law), Adv. Trib. Eccl. Melit**

**JUDGEMENT**

Today, Tuesday the second (2<sup>nd</sup>) of July 2024

Case Number 73/2022

**The Police**

(Inspector Josef Gauci)

VS

**Marzio Filippo Capece**

**Minutolo Del Sasso**

The Court,

Having seen the charges brought against **Marzio Filippo Capece**  
**Minutolo Del Sasso**, holder of Maltese identity card number 74786(A)  
for having on the seventh (7<sup>th</sup>) December 2021 at around eight o'clock

in the morning (08:00hrs) in the limits of Triq Wenzu Mintoff, Kerċem Gozo and/or in the vicinities in these Islands:

(1) allowed a dog to roam freely in public roads and which induced harm to humans or other animals;<sup>1</sup>

(2) also, in the same date, time, place and circumstances as an owner or keeper of a dog which is dangerous to persons, failed to keep the dog under control;<sup>2</sup>

(3) and also, in the same date, time, place and circumstances, as a person who had any dog under his control, he allowed such dog to stray, and took a dog out in any street without keeping him on a leash;<sup>3</sup>

(4) and also on the same date, time, place and circumstances, through imprudence, negligence or unskillfulness in his trade or profession, or through non-observance of any regulations, caused any fire or any damage, spoil or injury to the detriment of Karen Elizabeth Selby, where the same Karen Elizabeth Selby suffered injuries of a slight nature, as certified by Dr. Joseph Vella MD from Gozo General Hospital;<sup>4</sup>

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<sup>1</sup> Article 5(1)(a)(b) of Subsidiary Legislation 439.21 of the Laws of Malta;

<sup>2</sup> Article 14(1) of Chapter 312 of the Laws of Malta;

<sup>3</sup> Regulation 3(1) of Subsidiary Legislation 312.01 of the Laws of Malta;

<sup>4</sup> Article 328(d) of Chapter 9 of the Laws of Malta;

(5) and also on the same date, time, place and circumstances, set his dog at another person, or not endeavoured to restrain the same, when molesting any person.<sup>5</sup>

In case of a finding of guilt and if it deems it appropriate, in addition to punishment the Court was also requested to prohibit such person from keeping animals or from residing at a place where animals are kept for a period determined by the Court in terms of article 45(1) of Chapter 439 of the Laws of Malta.

Furthermore, in the event of a finding of guilt, in addition to the penalties prescribed, the Court was also requested to order the accused to pay for any expenses incurred for the treatment, relocation or forfeiture of animals from any place in Malta, the revocation of any permits issued for the operation of any activity regulated under Chapter 439 and for other reasonable expenses as the Court may deem fit, in terms of article 45(3) of Chapter 439 of the Laws of Malta.

Having seen all the records of the case, including the consent of the Attorney General for the case to be dealt with summarily;

Having seen that the offender declared that he had no objection for the case to be dealt with summarily;

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<sup>5</sup> Article 339(1)(g) of Chapter 9 of the Laws of Malta.

Having seen that the case was assigned to this Court as presided following an order dated nineteenth (19<sup>th</sup>) day of February 2024 issued by the Chief Justice in terms of Article 11(3) of Chapter 12 of the Laws of Malta and Article 520 of Chapter 9 of the Laws of Malta;

Having seen the minutes of the sitting of the thirteenth (13<sup>th</sup>) March 2024, wherein the Prosecution, the Injured Party and the Defence exempted the Court from the need of hearing again the evidence already tendered and from resubmitting the documents filed till that date;

Having seen the evidence compiled, the documents exhibited and all acts of the proceedings;

Having heard the evidence and final submissions;

Considers;

The facts of the case are as follows: on the 7<sup>th</sup> February 2022 Karen Elizabeth Selby filed a report at the Victoria Police Station concerning an incident which had taken place on the 7<sup>th</sup> December 2021 at around eight o' clock in the morning (08.00hrs). She reported that as she was out walking her dog who was on a leash in Triq Wenzu Minftoff Kercem, an unleashed dog (Husky) belonging to the accused charged in her

direction and attacked and injured her dog. The injured party also suffered injuries to her hand, although she did not immediately realise this. The injured party's dog required treatment spanning over a number of weeks and its overall health deteriorated considerably following this attack. From his end the accused denied that he was involved in this attack since he claimed that on the day and time of accident he was working in Malta.

Considers;

**A. The Second (2<sup>nd</sup>), Third (3<sup>rd</sup>) and Fifth (5<sup>th</sup>) Charges**

The first issue which needs to be tackled is the plea of prescription which was raised by the defence in its final submissions concerning the second (2<sup>nd</sup>), the third (3<sup>rd</sup>) and the fifth (5<sup>th</sup>) charges. The defence is claiming that these are contraventions and consequently time-barred by the lapse of three (3) months in terms of article 688(f) of Chapter 9 of the Laws of Malta.

The fifth (5<sup>th</sup>) charge is definitely a contravention as it is listed under the section of the Criminal Code entitled "*Of Contraventions Against the Person.*"

As regards the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) charge, the Court considers these as both being contraventions because:

- (a) both are punishable with a fine *ammenda*. In terms of article 7(2) of Chapter 9 a fine *ammenda* is one of the punishments which the law contemplates for contraventions;
- (b) regulation 3(1) of Subsidiary Legislation 312.01 specifically refers to the offence as a contravention;
- (c) article 14(1) refers to the breach as an offence and not specifically as a crime. Hence in view of the type and quantum of punishment which can be imposed, its more correct to classify this offence as a contravention rather than a crime.

Being all three (3) contraventions, a three-month prescriptive time-period applies to these three (3) charges. The Police Inspector signed the charges on the 6<sup>th</sup> November 2022 and the accused was notified with the English version of the charges during the sitting of the 16<sup>th</sup> March 2023. The accused was notified with the charges sometime between the 6<sup>th</sup> November 2022 and the 16<sup>th</sup> March 2023. Although he was notified with these charges during this period, he was notified in the Maltese language and consequently in a language which he could not understand. Hence the effective date of notification of the accused of the charges in a language he understands was the 16<sup>th</sup> March 2023. At this point in time fifteen (15) months had elapsed since the commission of the alleged offence. This not to mention that at the point

in time the charges were signed by the Police Inspector so that they could be filed in Court, the three-month period had already elapsed. Consequently, these three (3) charges are time barred.

### **B. The Fourth (4<sup>th</sup>) Charge**

As regards the fourth (4<sup>th</sup>) charge issued in terms of article 328(d) of Chapter 9 of the Laws of Malta, it is to be noted that criminal proceedings for this offence can only be instituted on the complaint of the injured party. This means that if the injured party decides to withdraw the complaint, the Court cannot proceed to take further cognizance of the offence. During the sitting of the thirteenth (13<sup>th</sup>) of March 2024, the injured party decided to renounce to the criminal action vis-à-vis the accused and in actual fact she withdrew her complaint.<sup>6</sup> This means that this Court is precluded from taking further cognizance of this fourth (4<sup>th</sup>) charge since the withdrawal of the complaint has effectively led to the extinction of the criminal action.

### **C. The First (1<sup>st</sup>) Charge**

Hence the only remaining charge which the Court still has to consider is the first (1<sup>st</sup>) charge issued in terms of regulation 5(1)(a)(b) of Subsidiary Legislation 439.21 of the Laws of Malta. This regulation makes it

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<sup>6</sup> Refer to evidence at fol.195 and 196 of the acts of the case.

unlawful for any person to allow a dog to roam freely in public roads and to induce harm to humans or other animals.

The Court examined in detail the evidence given by the injured party during the sitting of the 16<sup>th</sup> March 2023 as well as all records of the case. The Court does not have any doubt that on the seventh (7<sup>th</sup>) December 2021 whilst the injured party was out walking her dog in Kercem at around eight o'clock in the morning (08:00hrs), her dog was attacked by a dog owned by the accused who at that point in time was walking his dog without a leash. It is clear for this court that the accused had allowed his Husky to roam freely notwithstanding that in previous occasions his dog had attacked and caused injuries to the parte civile's dog. This is in blatant breach of regulation 5(1)(a)(b) of Subsidiary Legislation 439.21.

As a result of this attack, the injured party's dog suffered a bite to his left ear and the same injured party also suffered slight injuries to her left hand.<sup>7</sup> Proof beyond reasonable doubt was provided confirming that the injuries sustained by the injured party as well as the injuries sustained to her dog were compatible with a dog bite.<sup>8</sup>

The Prosecution also managed to prove that the accused effectively owns and is the registered owner of a dog which is identical to the dog

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<sup>7</sup> Vide photo at fol. 82 of the records of the case.

<sup>8</sup> Refer to the certificates issued by Dr Joseph Vella (fol. 28) and the certificates issued by Dr Peter Paul Camilleri (Fol. 50 and fol. 165).



which attacked the injured party and her dog. This information was provided by witness Roderick Cordina. Confirmation was also provided by Daniel Carmel Briffa from the Enforcement Section from the Animal Welfare Directorate. Hence the claims that only hearsay documentary evidence was provided because Roderick Cordina – though he had access to the Intertrace system – is an employee of the Ministry for Gozo is completely amiss. Daniel Carmel Briffa from the Animal Welfare Directorate confirmed the information provided by Cordina.

Although the defence in its final submissions, attempts to discredit the version of events given by the injured party, the defence is definitely not correct in its stance. First of all the evidence given by the injured party before this Court practically tallies with the notes which she wrote herself and which were exhibited together with the original complaint submitted to the Police by Mr Daniel Carmel Briffa of the Enforcement Section within the Animal Welfare Directorate.

The Court could not identify any discrepancies between what the injured party had originally reported and the version of events she gave when she took the witness stand. The injured party was consistent throughout in the exposition of the facts relative to this case. Secondly, it is definitely not correct that the injured party failed to adequately identify the accused as the person who was walking his dog without a leash and whose dog attacked the injured party and her dog and that she only did so upon multiple suggestions to her. The explanation which

she gave during her testimony **definitely excludes** that she arrived at recognizing the accused in the court room simply because this was suggested to her:

*“Inspector Josef Gauci: Do you know this person or not ?*

*The Court: You were asked whether you can see this person anywhere in this courtroom....*

***The witness: Yes, I cannot see him from here. I certainly recognize him because it has happened so many times, and I also got a mutual friend with his wife, and I have seen him with his wife, so . . . but unless he has changed his... oh! Here he is! This is him.”<sup>9</sup>***

This not to mention that this was the third (3<sup>rd</sup>) attack her dog had suffered at the hands of the accused’s dog.<sup>10</sup>

There is also no doubt that the injured party took her dog to the vet’s clinic on the same day so that her dog could be treated for the injuries he sustained. This was confirmed both by Dr Pierre Camilleri as well as

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<sup>9</sup> Fol. 76 of the acts of the case.

<sup>10</sup> Vide evidence given by the parte civile at fol. 71 and 72 of the acts.

his assistant Dr Deborah Sultana; both examined the dog on the day of the attack. There is definitely no confusion as regards this point or any conflicting evidence to this effect. Indeed whilst tendering evidence Dr Deborah Sultana upon being asked by the accused's defence counsel, she noted that: *"He (with reference to Dr Pierre Paul Camilleri) probably did (step in) yes because we are always working in a, this place is not so big so he is always walking in and out. But I do not remember exactly when and how he stepped in."*<sup>11</sup>

The Court is not at all convinced that on the date of the attack the accused was in Malta and that consequently it could not have been him walking out the dog who attacked the injured party and her dog. The documents filed by the same accused do not present a compelling or convincing defence as regards the accused's claim. First of all, the documents which he exhibited do at no point suggest or prove that the accused was physically present in Malta when the blocks were being delivered to a construction site. His signature does not appear anywhere on the delivery note referring to the materials supplied on a site in Malta on the 7<sup>th</sup> December 2021.<sup>12</sup> Secondly Document MF 2 which was also filed during the sitting of the 13<sup>th</sup> March 2024 is just a fiscal receipt for crane services provided on the 7<sup>th</sup> December 2021 and issued in the name of the accused. But once again this is not per se evidence that he was in Malta on the day. Furthermore, what the Court

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<sup>11</sup> Fol. 163 of the acts of the case.

<sup>12</sup> Vide Document MF 1.

finds strange is that when he was asked by the Police to give his version of events, the accused opted to avail himself of the right to silence. Had he really had an *alibi* as he is claiming now, he should have immediately informed the police at his first available opportunity. The fact that he opted not to at that point in time militates against the accused's credibility. This is in contrast with the evidence provided by the parte civile which was consistent throughout and corroborated by other evidence. The Court therefore considers that the first charge has been proven.

- **Considerations on Punishment**

As regards punishment for this offence, the law in article 45(1) of Chapter 439 provides for a fine between € 2,000 and € 65,000 as well as an imprisonment term of not more than three (3) years. This in relation to a first conviction. This punishment is applicable to the offence contemplated under article 5(1)(a)(b) of Subsidiary Legislation 439.21 by virtue of regulation 8(1) of the same Subsidiary Legislation. However, in the circumstances of this particular case taking into account the fact that the injured party has declared that she has no further interest in these proceedings and effectively withdrew her criminal complaint, the Court considers that it would be more appropriate to apply article 22 of Chapter 446 of the Laws of Malta rather than the punishment specified in article 45(1) of Chapter 439.

The withdrawal of the criminal complaint did not have any bearing on the first charge simply because this offence is prosecuted *ex officio*.

- **Decide**

Consequently, for the reasons outlined above the Court is:

- (a) declaring the criminal action as regards the second (2<sup>nd</sup>), third (3<sup>rd</sup>) and fifth (5<sup>th</sup>) charges as having been extinguished because such criminal action is time-barred;
- (b) declaring the criminal action as regards the fourth (4<sup>th</sup>) charge as having been extinguished since the injured party withdrew her complaint;
- (c) after having seen regulations 5(1)(a)(b) and 8(1) of Subsidiary Legislation 439.21 and article 45(1)(a) of Chapter 439 of the Laws is finding the accused guilty of the first (1<sup>st</sup>) charge.

After having seen article 22 of Chapter 446 of the Laws of Malta, the Court is discharging the offender on condition that he does not commit another offence within a period of one (1) year from today.

In terms of article 22(3) of Chapter 446 of the Laws of Malta the Court explained to the offender in ordinary language that in the eventuality of

him committing another offence during the period of conditional discharge, he will be liable to be sentenced for the offence he has been found guilty of today.

Finally, the Court also considers that the circumstances of this particular case do not call for the application of the provisions of article 45(1) and 45(3) of Chapter 439 of the Laws of Malta.

(sgd) Dr. Jean Paul Grech  
Magistrate

(sgd) Diane Farrugia  
Deputy Registrar

True Copy

For The Registrar