

**Court of Magistrates (Malta)  
As a Court of Criminal Judicature  
Magistrate Dr Claire L. Stafrace Zammit B.A., LL.D.**

**The Police  
[Inspector Audrey Micallef]**

**vs**

**Kenneth Victor Azobu**

**Comp. No: 400/2021**

**Today, 12th September 2024**

**The Court;**

Having seen the charges against accused **Kenneth Victor Azobu** holder of Identity Card number 0425118L being charged with having on the 21<sup>st</sup> June, 2021 and/or the proceeding days and months, at St. Paul's Bay and in the Maltese islands:

- 1. Harassed his partner Connie (Maria Concetta) Attanda Falzon and behaved in a way, which he knew or ought to have known amounts to harassment.**
  
- 2. Caused his partner Connie (Maria Concetta) Attanda Falzon to fear that violence will be used against her or her property or against the person or property of any of her ascendants, descendants, brothers or sisters or any person mentioned in Article 222 of Chapter 9 of the Laws of Malta.**

And further accused that on the 18<sup>th</sup> June 2021 in St Paul's Bay:

- 3. Without the intent to kill or to put the life of Connie (Maria Concetta) Attanda Falzon in manifest jeopardy, voluntarily caused bodily harm or ill health causing an offence of grievous nature on his partner Connie (Maria Concetta) Attanda Falzon as certified by Dr. Claude Borg (Med Reg. 4554) from the Mosta Health Centre.**

And further accused that on the 16<sup>th</sup> June 2021 at around 14:00hrs at "SND Uhru", Valletta Road, Qormi:

4. Without the intent to kill or to put the life of Connie (Maria Concetta) Attanda Falzon in manifest jeopardy, voluntarily caused bodily harm or ill health causing an offence of slight nature on his partner Connie (Maria Concetta) Attanda Falzon as certified by Dr. Stephanie Brincat (Med Reg. 6183) from Qormi Health Centre.

And further accused that on the same dates and circumstances:

5. He attempted to use force with intent to insult, annoy or hurt his partner Connie (Maria Concetta) Attanda Falzon.

6. Insulted, threatened or provoked his partner Connie (Maria Concetta) Attanda Falzon not otherwise provided for in this Code, or provoked or carried his insult beyond the limit warranted by the provocation.

7. Attempted to use force with intent to insult, annoy or hurt his partner Connie (Maria Concetta) Attanda Falzon.

The Court was requested to issue a protection order during the proceedings against Kenneth Victor Azobu to the benefit of Connie

**(Maria Concetta) Attanda Falzon and her family in terms of Article 412C of Chapter 9 of the Laws of Malta.**

**The Court was requested to provide for the safety of Connie (Maria Concetta) Attanda Falzon and her family or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, requires that Kenneth Victor Azobu to enter into his own recognizance in a sum of money fixed by the court as per Article 383 et seq of Chapter 9 of the Laws of Malta.**

**The Court was humbly asked that in case of a conviction, besides the decided punishment according to the law, the Court orders Kenneth Victor Azobu to incur the payment of costs in the employment of experts, as provided in Article 533 of Chapter 9 of the Laws of Malta.**

**Having heard all evidence produced;**

**Having seen the clean criminal record of the accused.**

Having seen the articles of the law as listed by the Attorney General by means of a note dated the ninth (9th) of June of the year two thousand and twenty-two (2022) whereby guilt is being requested under the hereunder articles of the law:

- (a) Articles 251A (1)(a)(b), 251A (4), 222 (1)(a), 202 (h)(v), 251H (a)(b)(f)(g)(h), 251HA of Chapter 9 of the Laws of Malta;
- (b) Articles 251B (1), 251H (a)(b)(f)(g)(h), 251H, 202 (h)(v) of Chapter 9 of the Laws of Malta;
- (c) Articles 214, 215, 216, 222 (1)(a) of Chapter 9 of the Laws of Malta;
- (d) Articles 214, 215, 221 (1) of Chapter 9 of the Laws of Malta;
- (e) Article 339 (1)(d) of Chapter 9 of the Laws of Malta;
- (f) Article 339 (1)(e) of Chapter 9 of the Laws of Malta;
- (g) Articles 17, 31, 383 (1)(2)(3), 384, 385, 386, 387, 533 of Chapter 9 of the Laws of Malta;

Having heard accused not objecting to these proceedings being tried and decided by this Court as summary proceedings after the articles of the law were read out to him;

### HAVING CONSIDERED

Having heard the parte civile Connie Falzon who confirmed that she made a report on the 19<sup>th</sup> of June 2021 against the accused Kenneth Victor Azobu. She testifies that the accused was her partner for around 4 years and that they used to live together in Saint Paul's Bay. Furthermore, they used to work at a grocer under the name of "SND Uhru" situated in Hal Qormi. She explains that on the 19<sup>th</sup> of June they were both in the shop when she misplaced a particular can of spice and therefore, she asked the accused's assistance. Eventually the accused found this can of spice and proceeded to taunt her by saying that she should take a red pill and go to Mount Carmel. Further to this she accidentally dropped a few cans of food and thus the accused proceeded to yell at her in the presence of customers and even hit her in the right side of the face with one of the tin cans of preserved food. She confirms the medical certificate at folio 41 of the acts of the proceedings.

The parte civile further testifies that on the 16<sup>th</sup> of June of that same year both herself and the accused were at home in Bugibba when the accused asked her to remove her clothes from his bedroom to which she replied that she was too tired to do so. In response to this the accused spat in her face and then proceeded to slam her against the wall whilst holding her from her hands. Further to this the accused then hit her underneath her right eye. Following this the Police were called and arrived at the place of the alleged crime and the situation was diffused despite the fact that the accused took away the keys to the store and the keys to the apartment from the victim.

Another incident which the parte civile testifies on was one that allegedly occurred on the 9<sup>th</sup> of June 2021 where when the shop was being closed, she asked the accused for her ring back to which he replies that he will keep it and use it to break her nose. She explained that the ring belonged to her family and was given to him by her. It was at this point that the accused struck the parte civile on the nose whilst wearing the ring. Following this the accused continued to say that he will end the victim's life through experience, and no one will know. The parte civile proceeded to

present a USB containing footages from the CCTV system in the shop.

Another instance that she recalls was on the 8<sup>th</sup> of March 2021 where the accused came up from behind her at the shop and kicked her in the back. On the 5<sup>th</sup> of May 2021 she recalls the accused threatening to hit her with a ladder. On the 12<sup>th</sup> of February 2021 she was having a conversation with the accused when he assaulted her and struck her on the head whilst also pulling her hair. Another incident that she detailed was on the 2<sup>nd</sup> of February 2021 when a Sales Representative by the name of Glenn visited the shop. When she suggested to the accused to learn on the job on how to order stock, he threw a glass bottle and assaulted her. On the 30<sup>th</sup> of January 2021 she alleges that the accused insulted her continuously after making a mistake. She further alleges that the accused tugged at her hair in a violent manner on the 17<sup>th</sup> of January.

The victim Connie Falzon further testifies that on the 10<sup>th</sup> of January of the year 2021 the accused suddenly assaulted her by punching her in the head. She further details how on the 9<sup>th</sup> of



January 2021 after she asked him to close down the shop the accused taunted her and proceeded to strike her with the pole of a broom. On the 5<sup>th</sup> of January 2021 she alleges that the accused threatened her and to also stand next to the freezer when he assaulted her. On the 29<sup>th</sup> of December 2020 she states that the accused assaulted her with a recycling bag.

She confirms that on the 12<sup>th</sup> of June 2021 the accused flung a bottle of iced tea hitting her on the hand. The 1<sup>st</sup> of June 2021 was an incident in which the accused allegedly punched her in the head due to the fact that she suggested that they store drinks in the fridges. In response to this she ran out of the shop in order to let things calm down however when she entered back into the shop, she threw a bottle of water in retaliation thus angering the accused further who proceeded to drag the victim out of the shop into the street by her hair. On the 2<sup>nd</sup> of May 2021 the accused allegedly struck her on the face. She further testifies that on the 8<sup>th</sup> of January of the same year the accused allegedly punched her underneath the left eye.

The parte civile testifies on more instances when the accused was aggressive with her. She testifies that every evening when they would be closing the shop and, on the way, back home the accused would constantly berate her and on one occasion the accused allegedly tried to take off her seatbelt whilst trying to drive in a manner that would put her in peril.

Having heard Dr Stephanie Brincat who testified that she wrote a police report on the 16<sup>th</sup> of June 2021 where the parte civile was examined by herself at the Hal Qormi Health Centre. The content of the medical certificate indicated that the victim had a swelling on the right-hand side of her cheek and the nature of the injury was slight. The certificate at folio 40 of the acts of the proceedings was confirmed by the same witness.

Having heard Jessica Grech employed at the Domestic Violence Unit who confirmed that the risk assessment at folio 29 of the acts of the proceedings was conducted by her at the Police Headquarters. The risk assessment was conducted on the parte civile in relation to the fact that the accused Kenneth Victor Azobu was posing a threat to her well-being and life. She explained that the accused

and the parte civile were in a relationship at the time of the assessment. She further testified that the data on the risk assessment was inputted by herself and her colleague a certain Rachel Farrugia.

Having heard PC2339 stationed at the Gender-Based Violence Domestic Unit who confirmed that her involvement was regarding the collection of CCTV footage from the shop “SND Uhru” situated in Hal Qormi. She testified that together with her colleague PS583 they went to the aforementioned shop on the 17<sup>th</sup> of June 2021 to talk to the parte civile Connie Attanda Falzon in order to extract the footages. It transpired that the footages could not be sent via e-mail and therefore it was agreed that the parte civile would provide the footages via CD or USB.

Having heard PC575 Mark Tonna who confirmed that on the 1st of July 2021 the parte civile Connie Falzon wanted to correct and update her initial police report. He testified that one of the amendments included the locality of the Health Centre from that of Floriana to Hal Qormi. Another amendment included changes in dates and times along with the allegation that she was hit in the

face with the accused's fist but with a bottle of iced tea. In his testimony he recognised the accused as well as the victim. He confirmed on oath the original report at folio 19 of the acts of the proceedings. He confirms that the document at folio 38 of the acts of the proceedings is the declaration of the refusal for legal assistance which is signed by himself. A copy of the updated report was presented and marked as Dok. MT1 at folio 206 of the acts of the proceedings.

Having heard PS157 Brian Mifsud who confirmed that on the 21<sup>st</sup> of June 2021 he was contacted by the Domestic Violence Unit where he was informed that the accused was to be arrested in Qui Si Sana in Sliema. He went on site and after informing the accused of his rights he proceeded to arrest Kenneth Victor Azobu. He then escorted the accused to the Domestic Violence Unit. He then proceeded to recognise the accused.

Having heard PC2229 Marvic Spiteri who confirmed that on the 21<sup>st</sup> of June 2021 at around 21.53Hrs the parte civile Connie Falzon filed a report against the accused. He testified that the victim was at the accused's residence when she was asked to remove her

clothes from the main bedroom which she refused to do. He continues to explain that the accused then proceeded to shout at her and spit at her. He adds that the accused also allegedly hit the victim's face. He testifies that this information was relayed to Inspector Audrey Micallef. He confirms the aforementioned report at folio 25 of the acts of the proceedings.

Having heard PS583 Evan Grech who confirmed that whilst he was on duty at the Domestic Violence Unit, he went with PC2339 at the shop "SND Uhru" to assist the victim due to the fact that she needed to extract footage from the CCTV system from the shop. It transpired that the footages could not be sent by e-mail and thus it was agreed that the footages were to be provided on a CD or on a pen drive.

Having heard PS2223 Charlene Calleja who testified that on the 16<sup>th</sup> of June 2021 at around 21.00Hrs the victim Connie Falzon reported to the Domestic Violence Unit where she stated that she wished to lodge a report against the accused who at the time was her partner regarding various arguments that they had had. She continues to testify that these arguments spanned a multiple number of days.

The victim confirmed that on the 15<sup>th</sup> of May 2021 she was at the accused's residence where they used to reside together at Triq il-Frejgatina, Qawra when an argument arose between them, and it was alleged that the accused assaulted the parte civile by hitting her in her eye with his fist and thus a black eye was caused. She testified that on this alleged incident no medical certificate was produced. She continues to testify that on the 18<sup>th</sup> of May 2021 at around 10.30 in the evening both the accused and the victim were in the accused's victim when Connie Falzon asked the accused to give her back her father's ring which she had given as a present. The accused refused to give her back this ring and proceeded to threaten her that he would use the ring to punch her and cause her bruises. He in fact did punch her and broke her nose however no medical certificate was produced.

She continued to testify that on the 12<sup>th</sup> of June 2021 between eight in the morning and two in the afternoon they were in the shop "SND Uhru" located in Hal Qormi when the accused flung a bottle of iced tea towards her. On the 16<sup>th</sup> of June 2021 at around two in the afternoon in the same shop in Hal Qormi, the victim was stocking up bottles of spices and curries when she required the accused's

assistance. When the accused offered his help, he proceeded to taunt the victim by telling her that she should be admitted to Mount Carmel Hospital and even threw a tin can to her face. On this incident a medical certificate by Dr Stephanie Brincat was issued showing injuries of a slight nature. This incident was also confirmed through the CCTV footage that was extracted from the shop. She confirms that she recognises both the accused as well as the victim.

The Court also heard the testimony of court expert on IT Keith Cutajar whereby he explains that on the 5<sup>th</sup> of July 2022 he was tasked to examine and analyse the contents of Dok CF2 presented in the acts of the proceedings. This document is a USB, and his assignment was to extract images and download still images from a number of still footages which were found on this USB. He testifies that a report was finalised on this assignment which details the contents on the USB. He testifies that present on this USB were a vast amount of short videos and he thus presented a report containing stills from the relevant footages. He further confirms that the footages consisted of ones that were extracted from a CCTV system and others from a cellular device.

The Court once again heard expert Keith Cutajar under cross-examination who confirms that he couldn't verify the time of the footages due to the fact that he would need the MVR itself. He testifies that he had collected the footage from a USB stick that was presented in the acts of the case.

The Court heard the testimony of Rachel Farrugia wherein the document exhibited at folio 29 to 37 of the acts of the proceedings was confirmed to be a risk assessment carried out by herself. She further confirms that the score on the assessment was that of 17 which indicates a level of high risk.

Having heard Dr Claude Borg who confirms the medical report presented in the act of the proceedings at folio 41. He testifies that he had seen the victim Connie Falzon on the 19<sup>th</sup> of June 2021 and that he had noticed a swelling on the right eye as well as an area of redness under the same just lateral to the side of the nasal bridge. This could be associated with bruising or discolouration. He continues to testify that these injuries were classified as grievous due to the fact that they were present on her face. The



witness confirms that he cannot recall whether the victim explained how the injuries came about.

Having heard the parte civile Connie Attard Falzon in cross-examination she states that she had been operating the shop “SND Uhru” for around 2 years. She further denies not giving the accused’s belongings back and neither did she operate the shop when the accused was under arrest. She confirms that she had been living with the accused for 3 years and that she used to use his vehicle. She further testifies that on the day that the accused was arrested she could not go back to the residence due to the fact that the accused kept the keys. She confirms that after trying to send an email to the Police with the CCTV footage she then asked the Police to come down to the shop to extract the footage via pen drive.

The Court also heard the testimony of the accused Kenneth Victor Azobu who confirmed that the victim was a friend of his who had approached him to seek out employment owing to the fact that she was struggling in making ends meet. He states that in fact her previous employer had fired her. He testifies that the parte civile

also tried to pressure him into ending his marriage in order to wed her. He adds that during the Covid Pandemic he opened a business in Hal Qormi alongside the parte civile. It was during this period also that he allowed her to live in a property situated in Saint Paul's Bay that is owned by him. He further adds that the victim was continuously trying to pressure him into entering an affair with her whilst he was continuously denying her advances.

This situation got to a point where the parte civile approached his wife and falsely claimed that she was pregnant with his child whilst also causing damage to her car. This was done in order to coerce his wife into leaving him. It was after this when he gave the parte civile an ultimatum to either leave the shop or leave the Saint Paul's Bay residence to which she asked to be given until the 30<sup>th</sup> of June to do both. He also adds that he has in his possession Police reports detailing how the parte civile was continuously harassing and threatening him and his relatives for 2 years. He further states that at one point they had an argument in the shop in which the victim wished to use his car to which he accepted.

Having heard oral submissions of the prosecution and the defence;

## HAVING CONSIDERED

That the accused is being charged with the offence of harassment as stipulated under Article 251A (1)(a) and (b) of Chapter 9 of the Laws of Malta which states that:

*“A person who:*

*a). pursues a course of conduct which amounts to harassment of another person; or*

*b). pursues a course of conduct which he knows or ought to know amounts to harassment of such other person”*

That the accused is also being charged with the offence as stated under Article 251B (1):

*“A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in article 222(1) shall be guilty of an offence if he knows or*

*ought to know that his course of conduct will cause the other so to fear on each of those occasions, and shall be liable to the punishment of imprisonment for a term from one to two years or to a fine (multa) of not less than six thousand and five hundred euro (€6,500) and not more than fifteen thousand euro (€15,000), or to both such fine and imprisonment.”*

That the Court is from the outset deeming the testimony of the victim as one that is credible even more so when the footages presented in the acts of the case and analysed by Keith Cutajar corroborate what was said on oath. It is apparent that the accused made it a daily and constant habit to make the victim’s life a living hell.

That the Court is making reference to a judgement handed down by the Court of Criminal Appeal (Inferior Jurisdiction) in the names of **Pulizija vs Simon Peter Grech** dated twenty-sixth (26<sup>th</sup>) April 2024:

*“Illi, ir-reat addebitat lill-appellant u li dwaru kien misjub  
hati mill-Ewwel Qorti huwa dak imfassal fl-Artikolu  
251B(1) tal-Kodici Kriminali li jiddisponi*

...

*Illi, fis-sentenza deciza minn dina l-Qorti fl-ismijiet Il-  
Pulizija vs Nazzareno Zarb, datata 29 t'Ottubru 2021, gie  
ritenut li -*

*Biex ikun hemm htija taht l-artikolu 251B irid ikun  
hemm a course of conduct kif juri l-kliem “lil xi  
haddiehor hekk jibza’ kull darba minn daw  
lokkazjonijiet”. Jista’ jkun hemm aktar minn  
okkazjoni waħda fl-istess jum u ghalhekk ikun  
applikabbli l-artikolu 251B xorta wahda.*

*‘Dan kollu - u cioe` dawn l-affarijiet kollha li sehew  
fil-kuntest ta’ incident wiehed - ma jistghu qatt  
jammontaw ghar-reat kontemplat fl-Artikolu 251B  
imsemmi. Dan ir-reat gie evidentement ispirat mill-*

*Artikolu 4(1) tal-Protection from Harassment Act, 1997 tal-Ingilterra, liema artikolu jipprovdi testwalment hekk:*

*“A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.”*

*L-Artikolu 251B taghna - u hawn il-Qorti ser tuza t-test Ingliz proprju biex wiehed ikun jista' jara x-xebh u fejn saru t-tibdiliet - jipprovdi, fissubartikolu (1) tieghu, hekk: “A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in sub-article (1) of article 222 shall be guilty of an offence if he knows or ought to know that his course of*

*conduct will cause the other so to fear on each of those occasions...”*

*Il-kliem “on each of those occasions” huma indikattivi li l-att materjali ma jistax isehh f’okkazjoni wahda izda jrid ikun hemm ghall-anqas zewg okkazjonijiet - proprju kif jinghad fil-matrici Ingliza, “on at least two occasions”. Ghal xi raguni - fil-fehma ta’ din il-Qorti kompletament illogika - il-kliem “on at least two occasions thallev barra”. Fi kliem l-edituri ta’ Blackstone’s Criminal Practice, 2008:*

*‘How separate the two occasions must be remains to be seen. The nature of stalking, the activity which primarily created the need for the new offences, might mean that the occasions are likely to be on separate days, although it may be possible to differentiate activities on one day where they can be viewed as not being continuous. The further apart the incidents, the less likely it is that they will be*

*regarded as a course of conduct...It was recognised, however that circumstances can be conceived 'where incidents, as far apart as a year, could constitute a course of conduct'. The type of incidents would be those intended to occur on an annual event such as a religious festival or a birthday...'*

*"Din il-Qorti mhix ser tipprova taghti definizzjoni ezawrienti ta' x'jammonta ghal "course of conduct" ghall-fini tal-imsemmi Artikolu 251B(1) - u anqas ma hi ser tipprova telenka kazijiet, anke jekk biss bhala forma ta' ezempju, li jammontaw jew ma jammontawx ghal tali "imgieba", haga li trid tigi deciza minn kaz ghal kaz skond ic-cirkostanzi u bl-applikazzjoni ta' doza qawwija ta' saggezza min-naha tal-gudikant. Dak li qed jigi deciz f'din ilkawza hu biss li incident wiehed (u, per di piu`, ta' minuti) ma jammontax ghal "course of conduct" ghall-finijiet tal-Artikolu 251B(1). Inoltre huwa evidenti li l-vjolenza kontemplata fl-imsemmi artikolu hija dik li talvolta tista' tigi perpetrata fil-futur u mhux dik li*



*effettivament tkun giet kkommessa. Il-vjolenza  
effettivament kkommessa tigi punita taht  
disposizzjonijiet ohra tal-ligi.”*

That with the evidence presented by the victim the Court is satisfied that the elements required for the crimes as stipulated under Articles 251A and 251B subsist.

That Article 202 (h)(v) of the Criminal Code states the following:

*“when the crime is committed on the person of:*

*v. another person living in the same household as  
the offender or who had lived with the offender  
before the offence was committed;”*

That through the testimonies of both the victim as well as of the accused the Court is not satisfied that this article subsists. On the one hand Connie Falzon testified that she had been in a relationship with the accused for around 4 years. On the other hand, the accused himself testified the following in the sitting of the 6<sup>th</sup> of February 2024:

*“Kenneth Victor Azobu: ... I had two apartments. So I have one living in Burmarrad and I have one in Saint Paul’s Bay. She was rendered homeless and I gave her accommodation in Saint Paul’s Bay to live in there...”*

That it is thus apparent that the accused, whilst living in a residence in Burmarrad, provided a different residence *in bona fede* to the parte civile in order for her to live in and thus this aggravation of the offence cannot subsist.

That however, the Court makes reference to article 202 (j) of Chapter 9 of the Laws of Malta:

*“The punishment prescribed for any of the crimes referred to in the preceding articles of this Sub-title, shall be increased by one to two degrees if any one or more of the following circumstances results:*

*j). the offence, or related offences, were committed repeatedly.”*

That the Court deems this aggravation to be applicable to the charge due to the testimony provided by the victim corroborated by the footage that the Court has available in the acts of the proceedings.

That the Court is therefore of the opinion that guilt is to be found on the first (1<sup>st</sup>) and second (2<sup>nd</sup>) charges.

### **HAVING CONSIDERED**

That the accused Kenneth Victor Azobu is being charged with the offence under Article 214 of Chapter 9 of the Laws of Malta which states that:

*“Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other*

*person a mental derangement, shall be guilty of bodily harm.”*

The Criminal Code further delineates the difference between slight bodily harm and grievous bodily harm. Regarding the latter reference is being made to Article 216 (1)(b) of Chapter 9 of the Laws of Malta:

*“A bodily harm is deemed to be grievous and is punishable with imprisonment for a term from one year to seven years*

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*b). If it causes any deformity or disfigurement in the face, neck, or either of the hands of the person injured”*

That on this disposition of the law, reference is being made to the medical certificate exhibited in the acts of these proceedings at folio 41 as confirmed by Dr Claude Borg wherein the bodily harm examined was classified to be of a grave nature. This due to the fact that the same medical doctor examined injuries that the parte civile suffered on her face.

That in furtherance to this medical certificate reference is being made to the testimony of Connie Falzon where she details the alleged incident that occurred in very vivid detail. Added to this the court makes reference to the CCTV footage presented in the acts of the case and that was analysed by the expert nominated by this Court Keith Cutajar.

That the Court notes and makes references to the charges that the Prosecution presented against the accused wherein it is being alleged that Kenneth Victor Azobu committed the offence of grievous bodily harm on the 18<sup>th</sup> of June 2021. On further examination however the Court notes that the victim testified that this offence occurred on the 19<sup>th</sup> of June 2021.

That on this defect of the charges our Courts have been consistent in the sense that such a defect can render the charge as being annulled. Reference is being made to the judgement **II–Pulizija vs John Mary Briffa** decided by the Criminal Court of Appeal in its Inferior Jurisdiction on the 18<sup>th</sup> of October 2005:

*“L-aggravju principali ta’ l-appellant huwa fis-sens li l-ewwel Qorti ma setghet qatt issibu hati ta’ l-imputazzjoni dedotta kontra tieghu stante li tali imputazzjoni hija wahda li fiha hemm indikat mhux biss il-gurnata izda hemm ukoll hin partikolari, u cioe ` “ghall-habta tas-7.30 p.m.”, mentri mill-provi migjuba mill-prosekuzzjoni jirrizulta illi dak li allegatament sehh fil-fatt gara “ghall-habta tas-7.30 a.m.”.*

*L-appellant ghandu ragun. Din il-Qorti semghet ix-xhieda u minn dak li qalu jirrizulta li dak li qed jigi allegat li ghamel l-appellant gara filghodu u mhux filghaxija. P.S. 849 Ivan Curmi xehed li kien xoghol ta’ filghodu u sar rapport minn Adreana Pace wara t-tmienja ta’ filghodu. Adreana Pace u zewgha Rokku Pace t-tnejn xehdu li l-kaz gara f’xis-7.30 ta’ filghodu.*

*L-imputazzjoni ghalhekk kif impostata qed tirreferi ghal xi haga li allegatament grat tnax-il siegha wara u l-ewwel Qorti hekk sabet lill-appellant hati. Mill-provi ma jirrizultax li gara xi incident fil-hin indikat fl-imputazzjoni*

*u ghalhekk l-appellant ma setax jinsab hati k if fil-fatt insab. Il-frazi “ghall-habta ta” tindika hin approssimattiv u tinkludi hin vicin dak imsemmi fl-imputazzjoni izda zgur mhux tnax-il siegha wara. Il-prosekuzzjoni qalet li huwa ovvju li dan kien zball dattilografu. Jekk inhuwa hekk, il-prosekuzzjoni kellha tiehu hsieb taghmel jew titlob il-korrezzjoni opportuna tempestivament<sup>1</sup>.*

*Konsegwentement l-appell jimmerita li jigi milqugh.”*

Similarly, a more recent judgement in the names of **Il-Pulizija vs André Falzon** decided by the Criminal Court of Appeal (Inferior Jurisdiction) on the 19<sup>th</sup> of November 2015 stated the following:

*“Illi fil-kaz in dizamina ma jistax jinghad illi l-appellanti qiegħed jallega illi huwa ma fehemx in-natura ta’l-akkuzi migjuba fil-konfront tieghu, jew inkella li ma kenitx linetnzjoni tieghu li jammetti, izda jirrizulta mill-atti illi abbazi tal-fatti tal-kaz kif esposti, l-Ewwel Qorti ma setatx issib htija għal tali akkuzi billi ma kenux jissussistu fid-*

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<sup>1</sup> Emphasis of this Court

*data indikata fl-akkuza. Issa l-kodici penali taghna jimponi l-obbligu fuq il-Qorti Kriminali taht l-artikolu 436(3)(c) li ghandha taghmel dak kollu li m'huwiex projbit jew mhux ordnat mill-ligi taht piena ta' nullita, kull meta l-Qorti fid-diskrezzjoni taghha jidhirliha li hu hekk mehtieg ghat-tikxif tal-verita.' Illi l-appellanti allura ghandu ragun u din il-Qorti ma tistax taghlaq ghajnejha ghal dan in-nuqqas procedurali daqslikieku ma kienx jezisti u dan ghaliex is-sentenza impunjata tirrifletti fatti li mhumieq sostanzjati bil-provi li hemm fl-atti, ghalkemm l-appellanti ammetta ghalihom. Kwindi din il-Qorti ma ghandhiex trqi ohra hlief li tghaddi sabieq tannulla id-decizjoni appellata u dan billi tirrizulta decizjoni hazina fuq ilmertu u dan kif previst fl-artikolu 428(5) tal-Kapitolu 9 tal-Ligijiet ta' Malta. Illi affermat dan allura din il-Qorti bis-setgha moghtija lilha fl-artikolu 428(6) ser tghaddi sabieq titratta l-mertu ta' dan il-kaz daqslikieku ma kienx hemm ammissjoni minn naha ta'l-appellanti.*

*Illi s-subartikolu (2) ta' l-artikolu 360 tal-Kapitolu 9 tal-Ligijiet ta' Malta jipprovdi li:*



*“Ic-citazzjoni ghandha ssemmi car il-persuna mharrka, u ghandu jkun fiha, fil-qosor, il-fatti ta’ l-akkuza, bil-partikularitajiet ta’ zmien u ta’ lok li jkunu jinhtiegu jew li jkunu jistghu jinghataw.....”*

The Criminal Court of Appeal then goes on to quote what was stated in **Il-Pulizija vs John Mary Briffa** whilst adding the following:

*“Illi dan l-istess principju gie riaffermat mill-istess Qorti ta’l-Appell Krminali f’diversi kawzi ohra inkluz dawk fl-ismijiet Il-Pulizija vs Warren Piscopo u Pulizija vs Rita Thuema, it-tnejn decizi fid-19 ta’ Ottubru 2011.*

*Stabbiliti dawn il-principji dottrinali u applikati ghall-kaz in ezami huwa car allura illi l-appellanti kellu jigi illiberat mill-akkuzi kif dedotti kontra tieghu billi dawn jirreferu ghal perijodu ta’ zmien differenti minn dak li fih sehew l-allegati fatti li wasslu ghall-imputazzjoni odjerna. Illi allura billi l-Prosekuzzjoni naqqset milli tinduna b’dan l-izball u tirrettifikah fil-hin opportun, u billi l-Avukat Generali huwa issa fi stadju ta’ appell prekluz milli jitlob il-korrezzjoni*

*mehtiega biex tigi sanata lakkuzza, ma hemmx dubbju illi l-imputazzjonijiet kif dedotti kontra l-appellanti ma jistghux jissussitu billi fid-data indikata fl-akkuza l-appellanti ma ikkomettiex ir-reati lilu addebitati.*

*Ghal dawn il-motivi u bis-setgha moghtija lilha bl-artikolu 428(6) tal-Kodici Kriminali din il-Qorti qed tillibera lill-appellanti minn kull htija ghall-akkuzi kif dedotti kontra tieghu.”*

That it is apparent to this Court that such an error should have been rectified by the prosecution who throughout the proceedings failed to amend the charges. The Court cannot emphasise its frustration enough when one considers the fact that the witness testified consistently in detail and even had medical proof to substantiate the allegation made.

That based on the above stated case law it is therefore the opinion of this court that the accused be acquitted from the third (3<sup>rd</sup>) charge.

That the accused is also being charged with the offence of causing slight bodily harm as dictated under Article 221 (1) of Chapter 9 of the Laws of Malta:

*“A bodily harm which does not produce any of the effects referred to in the preceding articles of this Sub-title, shall be deemed to be slight, and shall be punishable with imprisonment for a term not exceeding two years, or with a fine (multa).”*

That reference is being made to the medical certificate exhibited in the acts of the proceedings at folio 41 as confirmed by Dr Stephanie Brincat. The same medical doctor confirmed the injuries that the victim suffered were of a slight nature. Added to this the Court makes reference to the testimony given by the victim Connie Falzon.

That another article of the law that the accused is being charged with is the aggravating circumstance stated in Article 222 (1)(a) of Chapter 9 of the Laws of Malta:

*“The punishments established in articles 216, 217, 218 and 220, and in sub-articles (1) and (2) of the last preceding article shall be increased by one degree when the harm is committed –*

*a). on the person of any one of the parents or any other legitimate and natural ascendant, or on the person of a legitimate and natural brother or sister, or on the person of any one of the spouses, or on the person of any one of the natural parents, or on any person mentioned in article 202(h)”*

That as stated previously in this judgement this aggravating circumstance does not emanate from the acts of the proceedings.

That the Court is therefore of the opinion that guilt is to be found on the fourth (4<sup>th</sup>) charge.

**HAVING CONSIDERED**

That the accused has also been charged with the contraventions as stipulated in Articles 339 (1)(d), (e) and (h). The Court here makes reference to the footages by the victim which paint a clear and vivid picture of what she had to go through on a consistent and daily basis. The Court deplores the manner in which the accused made it his mission to torment the victim.

The defence made by the accused in his testimony is that the victim made it her aim to destroy his marriage. The Court is duty bound to point out that this is not a crime and thus does not merit the method of retaliation chosen by the accused to proceed to treat the victim like a beast of burden. Even if this defence were to hold, the Court is perplexed as to why the accused let a whole year fly by before finally deciding to cut ties with the victim.

That the Court is therefore of the opinion that guilt is to be found on the fifth (5<sup>th</sup>), sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) charges.

## **Decide**

The Court, on the above basis, and upon seeing Articles 17, 31, 202 (j), 214, 215, 221 (1), 251A, 251B, 339 (1)(d), 339 (1)(e), 339 (1)(h) of Chapter 9 of the Laws of Malta, finds the accused **Kenneth Victor Azobu** guilty of the first (1<sup>st</sup>), second (2<sup>nd</sup>), fourth (4<sup>th</sup>), fifth (5<sup>th</sup>), sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) charges and by virtue of Article 28A of Chapter 9 of the Laws of Malta condemns him to a punishment of two (2) years imprisonment which is being suspended for four (4) years whilst acquitting him of the third (3<sup>rd</sup>) charge from want of evidence.

The Court is hereby explaining to the accused the responsibilities that a suspended sentence carries in terms of Article 28B of Chapter 9 of the Laws of Malta.

Having seen Article 382A of Chapter 9 of the Laws Malta the Court is imposing a Restraining Order on the accused in favour of Connie Falzon for the period of three (3) years and which order shall form an integral part of this judgment.

Furthermore, and upon seeing Article 533 of Chapter 9 of the Laws of Malta the accused **Kenneth Victor Azobu** is being condemned to

the payment of expenses relating to court experts nominated in these proceedings amounting to two thousand and four hundred and fourteen Euros and seventy–six cents (€2,414.76).

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**Dr Claire L. Stafrace Zammit B.A., LL.D.**

**Magistrate**