

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

**The Police**

**[Inspector Roderick Attard]**

**vs**

**Eliasu Mohammed**

**Comp. No: 184/2021**

**Today, 23<sup>rd</sup> September 2024**

**The Court;**

Having seen the charges brought against accused **Eliasu Mohammed** holder of Italian travelling document number MD0025211 being charged with having on the 25<sup>th</sup> of March 2021 and the months prior in these Islands:

1. Produced, sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of Section 8 (e) of the Chapter 101 of the Laws of Malta.
2. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant Cannabis in terms of Section 8 (d) of the Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use.
3. Had in his possession the psychotropic and restricted drug (synthetic) without a special authorisation in writing by the superintendent of Public Health, in breach of the provisions of the Medical and Kindred Professions Ordinance Chap 31 laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended.
4. With his behaviour caused –Omissis–, a minor to fear that violence may be used against her.

5. By means of an electronic communications network or apparatus threatened the commission of a crime.

6. Uttered insults or threats not otherwise provided for in the criminal code, or being provoked, carried his insult beyond the limit warranted by the provocation.

Charged him further that on the 25<sup>th</sup> of March 2021 between 18:00hrs and 21:30hrs at 41, Triq Il-Farfett, Marsa and in Triq Il-Farfett, Marsa:

7. Without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detains or confined – Omissis– against her will.

8. Assaulted or resisted by violence or active force not amounting to public violence, PS2145 Graziella Zammit and PC1127 Damien Caruana, persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority, shall, on conviction,

be liable – (a) where the assault or resistance is committed by one or two persons, to imprisonment for a term from six months to two years and to a fine (multa) of not less than four thousand euro (4,000) and not more than ten thousand euro (10,000).

9. Without the intent to kill or to put the life of PS2145 Graziella Zammit and Pc1127 Damien Caruana in manifest jeopardy, caused slight bodily harm on the person of PS2145 Graziella Zammit and PC1127 Damien Caruana, persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority.

Charged him further that on the 25/03/2021 between 21:00Hrs and 23:30hrs at the Hamrun Police Station and/or Hamrun, Malta

10. Uttered insults or threats not otherwise provided for in the Criminal Code, or being provoked, carried his insult beyond the limit warranted by the provocation

11. Reviled, or threatened, or caused a bodily harm to PC627 and PC948, persons lawfully charged with a public duty, while in the act of discharging their duty or because of their having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty, shall, on conviction, be liable to the punishment established for the vilification, threat, or bodily harm, when not accompanied with the circumstances mentioned in this article, increased by two degrees and to a fine (multa) of not less than eight hundred euro (800) and not more than five thousand euro (5,000).

The Court was requested that in the case of guilt, apart from inflicting the punishment as prescribed by law, order also the confiscation of all objects exhibited.

The Court was also requested to apply Section 533 (1) of Chapter 9 of the Laws of Malta, with regards to the expenses incurred by the Court appointed Experts.

The Court was also requested to treat Eliasu Mohammed as a recidivist in accordance with articles 49 and 50 of chapter 9 of the Laws of Malta with a number of sentences that have been decided and cannot be appealed.

Having heard all evidence produced;

Having seen the criminal record of the accused.

Having seen the acts of the Magisterial Inquiry as conducted by Magistrate Dr Joseph Mifsud dated the 30<sup>th</sup> of March of the year 2021.

Having seen the articles of the law as listed by the Attorney General by means of a note dated the third (3<sup>rd</sup>) of November of the year two thousand and twenty-two (2022) whereby guilt is being requested under the hereunder articles of the law:

- (a) Articles 31, 251B (1)(2) and 251H(d) of Chapter 9 of the Laws of Malta;
- (b) Article 49(a) of Chapter 399 of the Laws of Malta;

- (c) Article 399 (1)(e) of Chapter 9 of the Laws of Malta;
- (d) Article 86 of Chapter 9 of the Laws of Malta;
- (e) Articles 96 and 99A of Chapter 9 of the Laws of Malta;
- (f) Articles 31, 214, 215, 221 (1) and 222 (1)(c) of Chapter 9 of the Laws of Malta;
- (g) Article 339 (1)(e) of Chapter 9 of the Laws of Malta;
- (h) Articles 31, 95 and 99A of Chapter 9 of the Laws of Malta;
- (i) Articles 49 and 50 of Chapter 9 of the Laws of Malta;
- (j) Articles 382A, 383, 384, 385, 386, 412C and 412D of Chapter 9 of the Laws of Malta;
- (k) Articles 15A, 17, 23, 31, 532A, 532B and 533 of Chapter 9 of the Laws of Malta;

Having heard the 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 **Dr Martin Bajada** who was given sixteen (16) documents to examine and to extract information from the same

documents. The documents consisted of nine (9) cell phones, four (4) laptops, a set of keys and a cell phone battery. The documents were presented along with a report marked Dok. MB1 confirming the information extracted from the aforementioned documents.

Having heard Charmaine Deguara who confirms that she works as a support worker with Appogg. She testifies that on the 25<sup>th</sup> of March 2021 she was working on her night shift when the parte civile –Omissis– informed her that she had received messages in the form of threats. The threats occurred due to the fact that she was given a mobile phone by a person when the very same person wanted it back. She further explains that later on –Omissis– approached her at her place of work and explained to her that he is a resident in the same residence as the victim. She testifies that –Omissis– explained to her that the victim was being held hostage. She testifies that along with –Omissis– she approached the Police Station to file a report on this issue and from there the Police carried on with their investigation.

She further explains that as a Support Worker her job is to visit the homes of people who approach Appogg and take down notes to be



passed on to the Social Worker in charge of the client. She confirms that the victim's full name is –Omissis– and is aged sixteen years old (16). She confirms that the victim resides at –Omissis–. She confirms that the accused is the same person that she saw at the Police Station. She states that the victim would tell her that she is afraid of the accused Eliasu Mohammed however she did not know why. Upon cross-examination she explains that she has known the victim for around six (6) months. She confirms that before the residence in –Omissis– the victim used to reside at –Omissis–. She further testifies that the victim had known the accused since November of the year 2020. Before that time the victim had mentioned the accused when she came to Appogg with a black eye.

She states that regarding the threatening voice-mail messages both the victim and –Omissis– confirmed that it was the accused who sent them. She confirms that from her records the victim –Omissis– is listed as missing.

Having heard Deputy Registrar Benjamina Mifsud who confirmed and exhibited the proces verbal entitled “*Arrest illegali ta’ –Omissis– u s-sejba ta’ sustanzi llegali gewwa l-fond 41, Triq il-*

*Farfett, Marsa u fil-vicinanze nhar il-25 ta' Marzu 2021*" with the number 192/2021 dated 30<sup>th</sup> March 2021.

The victim -Omissis- testifies that she had many arguments with the accused in the run up to the alleged crime. She states that the accused sent her a number of messages to return his mobile phone that he had lent her, and she went to his residence to give it back. She testifies that he met with him at his residence in Hamrun and she believes that this was a pretext to make her come to his house and try to resolve their issues. She testifies that when she tried to leave, the accused started to tell her not to leave whilst also smoking marijuana in her presence. She testifies that at one point the accused took her mobile phone so that she wouldn't be able to leave the house. She further states that -Omissis- (who she considers to be her brother) was trying to call her on her mobile phone and when she replied, she instructed -Omissis- to go to the window so she can pass on his wallet to him.

She continues that when the Police came to the residence of the accused some bags of marijuana were found which did not pertain to the accused. She states that she knows for a fact that Eliasu had

about ten (10) bags of marijuana which he used for his own possession. She testifies that she does not remember what she had told the Police when asked about whether she used drugs. She recalls that the Police found her on the roof as she was trying to hide from the Police. She testifies that two (2) other individuals were hiding on other roofs in the area. She further testifies that when she was found by the Police, she thanked them due to the fact that she was in a state of fear. This state of fear was brought about by the fact that there were some arguments between the accused and herself. She further states that at the time when she was in the house, she didn't realise that the accused was trying to keep her from leaving in order to try and resolve their issues.

She specifies that the address of the property she was at was in fact number 41, Triq il-Farfett, Marsa. She continues to testify that this property is a house consisting of many floors. The witness confirms that she was in the second floor of the residence. The messages she was receiving in the run up to the alleged crime were about the return of his mobile. The said messages were voice recordings as well as written ones. She clarifies that the accused sounded very irritated in the voice recordings and that the same

recordings contained words of a vulgar nature (“whore” etc.). These messages were sent on the day of the alleged crime.

She also testifies that one time during their relationship the accused struck her in the face causing bruises, however she did not feel the need to report the incident to the care worker. She continues to testify that the care worker presumed that the person who struck her was the accused as she knew that the relationship was a tumultuous one.

Upon cross-examination she testifies that she used to visit the property in question around two (2) or three (3) times a week for around three (3) or four (4) months since December. She confirms that she had access to the whole house. She testifies that the accused resided with two (2) or three (3) other people and that the property consists of three (3) bedrooms in all. The accused had given her the mobile phone for her birthday as a gift on the – Omissis–. She clarifies that in order to talk to –Omissis– via the window she had to go down one floor and that at the time the accused was waiting for her in his bedroom. She states that the

accused did not want her to go and this in order to talk and it wasn't against her will.

She further testifies that the accused was smoking cannabis and that she could tell it was that particular substance due to the smell however she denies smoking the drug. She further testifies that there were two (2) bags of synthetic drugs, but she didn't know to whom they belonged to. When asked whether she has ever taken synthetic drugs she opted not to reply.

Having heard once again Dr Martin Bajada who presented a report, he concluded in the English language marked as Dok. MB1A.

Having heard Inspector Roderick Attard who testified that on the 25<sup>th</sup> of March 2021 the Hamrun divisional police were informed by the Social Worker Charmaine Deguara who works at Appogg that a female minor was being held at a residence in Marsa against her will. This was brought to Charmaine Deguara's attention by a certain –Omissis– and that the address where the victim was being held captive was that of 41, Triq il-Farfett, Marsa. He further testifies that PC627, PC948 and PC1127 acceded to the address at

Marsa. The Police constables noted that there were people on the rooftop, namely foreigners, who were attempting to flee. He testifies that the victim was found to be on the roof as well. The foreigners on the rooftop were identified as Mohammed Isaku (Italian ID number AY 8691059), Darbo Mustafa (ID AU 7668234), Shaibu Abdul Aman (Passport number H 2773130) and Eliasu Mohammed (Italian travelling document MD 0025211). He testifies that PC1127 was the first to arrive on the scene and found the alleged victim –Omissis– trembling with fear on the roof. The accused Eliasu Mohammed was found on the same roof and resisted arrest causing slight bodily harm to PC1127 and PS2145 as certified by the respective medical certificates marked as Dok. RA1 and RA2.

He further testifies that a search within the premises yielded to a bag with considerable amount of the substance cannabis. It was at this point that Drugs Squad Duty Officer Inspector Ryan Steven Micallef was called to the scene along with PS579 and PC1295. He confirms that a search was conducted at 41, Triq il-Farfett, Marsa which to yielded a bag containing cannabis found in the kitchen. The same search also resulted in the revelation of substance

suspected to be two packets of synthetic drugs found on the top floor. It was discovered that the property numbered 39, Triq il-Farfett, Marsa contained packets suspected to be cannabis and it seemed to be the case that these packets were thrown from the adjacent property (41, Triq il-Farfett, Marsa). He testifies that around fifteen (15) sachets were found on site containing one (1) or two (2) grams of illicit substances per sachet. The Police on site spoke to a certain Galea (ID number 239373M) who stated that the skylight from his garage adjacent to the property numbered 39, Triq il-Farfett, Marsa was damaged and that a considerable amount of cannabis was found in his garage.

He confirms that duty Magistrate Dr Joseph Mifsud was informed of the incident and thus a Magisterial Inquiry was initiated, and several experts were appointed namely Dr Marisa Cassar, Dr Martina Bajada, Dr Godwin Sammut, SOCO officer PC1283 and PC2156 Lara Garzia. He continues to testify that –Omissis– was spoken to by himself and by Inspector Steven Micallef and this after being given the right to speak to her legal representative (Dr J. P. Bonnici). The victim stated that she was being held by the accused after trying to return a mobile phone that she had borrowed from

the accused which she claimed to be a Samsung S9 with a red cover. The victim stated that she had received a number of threatening voice messages which contained messages such as: "Bitch I will slap you." The victim further stated that this was not the first time that threats like these occurred and that normally these threats would be followed by beatings.

He continues to testify that the suspected illicit substances were collected by the SOCO Officer PC2156 Lara Garzia. On the 26<sup>th</sup> of March the witness along with Inspector Steven Ryan Micallef interrogated the suspects Darbo Mustafa and Shaibu Abdul. Darbo Mustafa stated that the accused Eliasu Mohammed supplied him with cannabis. After this statement a separate statement of the accused was taken down and recorded. The accused Eliasu Mohammed had admitted that he had lent the victim a mobile phone and had then returned to his address to return the same mobile phone. The accused admitted that he occasionally sold cannabis to his friends and that the fifteen (15) sachets which were found at property number 39, Triq il-Farfett, Marsa were his and that once the Police entered his residence, he tried to get rid of them by throwing them into the aforementioned property. As a



result, the accused Eliasu Mohammed was arraigned under arrest and brought before duty Magistrate Dr Victor Axiaq.

Having heard -Omissis- who testified that he was for the victim - Omissis- in Marsa when after a while he called her to check where she was. He states that when she replied to his phone call, she explained to him that she couldn't come out to meet him as she was being held against her will by the accused Eliasu Mohammed. He went next to the property where she was being kept and was given his wallet by her from the balcony. He testifies that after this he went back to the residence in Appogg which is situated in - Omissis- and explained to the carers what happened. He continues to testify that -Omissis-'s exact words were "*-Omissis- jien ma nistax nohrog ghax hallieni gewwa, sakkarni hemm gew*" ("Omissis- I cannot come out as he has left me inside, he has locked me inside").

He also testifies that on the day the alleged victim and himself went to Marsa when he was told by the former to wait for her in the garden whilst she went to meet with Eliasu Mohammed due to the fact that he wanted to talk to her alone. He testifies further that the

reason why the alleged victim had to meet the accused was due to the fact that she had to give back the mobile that the accused had lent her. He continues to testify that he knows that there was some sort of relationship between the alleged victim and the accused but not a hundred percent sure.

Upon cross-examination the witness testifies that on the 25<sup>th</sup> of March 2021 he went out from the residence at around two in the afternoon. He confirms that he was told by the alleged victim to wait for her in the garden in Marsa whilst she went to visit the accused. He further testifies that he left Marsa to go back to the residence at around seven in the evening and communicated with her by phone. He confirms that he had entered the house where the alleged victim was being kept several times and always with the same person. He corrects his testimony in the sense that the alleged victim did not throw his wallet from a balcony but from a window on the first floor. He testifies that at the time he did not feel the need to go to the Police Station as he did not want to escalate the situation any further and thus not damage the relationship the two had.

Having heard Inspector Ryan Steve Micallef who testified that on the 25<sup>th</sup> of March 2021 at around 21:45Hrs he was informed by Inspector Roderick Attard of an alleged kidnapping in Triq il-Farfett, Marsa. He was also informed that members of the Police found substantial number of illicit substances. He testifies that together with PS579 and PC1295 he went to the scene of the which was number 41 and 39 in Triq il-Farfett Marsa as well as a garage which is adjacent to residence number 39. He testifies that in the garage a number of drugs were found inside, and it seemed as if glass from the skylight was broken due to the fact that the bag of drugs was thrown there. He testifies that he was told by his colleagues that when they had approached the scene of the crime a number of people fled the area via the rooftops. He continues to testify that in the residence number 39 at the back of the residence he found a substantial number of sachets that were seemingly thrown from a window above that pertains the adjacent property that is that of number 41.

The witness continues to testify that he then proceeded to enter residence number 41 and inside he found a number of drugs that were of a greenish colour suspected to be cannabis. He clarifies

that on the first floor where the kitchen is situated drug paraphernalia could be found such as cigarette filters as well as cannabis. On the second floor where the bedroom is situated two (2) sachets were found that contained a greenish substance. He deduced that the suspicious substance could be synthetic. This information was relayed to the Inquiring Magistrate Dr Joseph Mifsud who in turn appointed a number of experts. He continues to testify that later on he spoke to the alleged victim –Omissis– along with his colleague Inspector Roderick Attard in the presence of the Social Worker. The victim stated that she went to the residence to give back a mobile phone that belonged to the accused and ended up being forced to stay against her will. He further testifies that from his end what interested him the most was the fact that the accused was packaging drugs whilst the alleged victim was in his presence. She stated that the accused had bought synthetic drugs for her to consume whilst also stating that all the drugs found at the scene of the crime belonged to the accused.

He continues to testify that the accused was spoken to on the 26<sup>th</sup> of March 2021 and that the same stated that the drugs found in

the courtyard belonged to him and he also admitted to trafficking drugs. He clarifies that the accused was given his rights at law prior to releasing a statement at the Police Station. He further testifies that the accused stated that he was packaging the sachets found on site in order to sell them. It transpired through the accused's testimony that the persons present at the residence were sellers or pushers. The accused denied ever buying synthetic drugs for the alleged victim –Omissis– and also denied holding her against her will. The witness continues to testify that a certain Mustafa Darboe was also interrogated and who indicated that the accused was the individual that sold him drugs. The same Mustafa Darboe also stated that it was a regular occurrence for him to visit the residence of the accused and buy drugs from him.

Upon cross-examination the witness testifies that the property in question is an elevated terraced house. He further testifies that when he spoke to the accused Eliasu Mohammed he proceeded to give him the warning as well as the right to legal assistance. He testifies that he never spoke to the accused at the scene of the crime and that he was spoken to the day after.

Having heard PS2145 Graziella Camilleri who testified that on the 25<sup>th</sup> of March 2021 she was on duty at the Hamrun Police Station when at around 19:30hrs a certain Charmaine Deguara reported that a girl was being kept against her will at a residence situated in 41, Triq il-Farfett, Marsa. She further testifies that from there she sent her colleagues to investigate and later received a phone call stating that there were noises coming from the residence and that upon knocking many people fled from the scene via the rooftops. She testifies that she had a physical description of the accused and proceeded to go on site. Upon meeting the accused, she testifies that he shoved her to the ground. She continues to testify that the alleged victim was found on the roof and the accused was put under arrest and escorted to the Hamrun Police Station. She testifies further that at the scene of the crime a neighbour approached her and was asked to open the garage near the residence where the victim was found. Upon entry a large bag containing a suspicious substance could be noted. She confirms the medical certificate at folio 192 of the acts of the proceedings. The certificate confirms that the witness was medically seen to and that she had a pain in the right hand but no other visible injuries.

Upon cross-examination the witness testifies that upon arrival the accused was not under arrest and that as soon as she arrived on the scene she was pushed to the floor by the same accused. She further testifies that she knew who the accused was based on a physical description that was given to her. She testifies that the primary issue at the time she arrived was the safety of the alleged victim –Omissis–.

Having heard PC1127 Damian Caruana who testified that on the 25<sup>th</sup> of March 2021 a Support Worker by the name of Charmaine Deguara reported at the Hamrun Police Station at around 19:30Hrs. He continues to state that this person informed him of a certain – Omissis– who happened to be a minor and was being kept against her will inside residence number 41, Triq il-Farfett, Marsa. He testifies that he proceeded to go on site when he started hearing shouting and objects being thrown. He continues to testify that after a while he managed to enter the premises and proceeded to search for the alleged victim. He states that he managed to find – Omissis– on the roof who was in a scared state. He further testifies that he then proceeded to escort her to the Hamrun Police Station. After doing so he testifies that his colleagues were in the process

of arresting the accused who was resisting the arrest. He continues to testify that he recalls seeing PS2145 on the floor during the arrest as well as succumbing to some slight injuries and this as confirmed by the medical certificate issued by Dr Yanika Vella (MD 3505). He continues to testify that after arresting the accused a search was conducted in the residence which resulted in the finding of various substances such as cannabis. He testifies that more substances were found in the residence adjacent to number 41 and that is number 39, Triq il-Farfett, Marsa. Upon further investigation of the garage next to number 39, Triq il-Farfett, Marsa, the witness along with the owner of the relevant property a certain Adrian Galea found broken glass and a large bag full of a substance suspected to be cannabis.

Upon cross-examination he testifies that he was accompanied by two (2) other colleagues when he went to the residence in question. He confirms that the accused resisted arrest as he was trying to run from them. He further testifies that before the Sergeant came him and his colleagues managed to subdue the accused. He further states that when the Sergeant came to the house the accused pushed her to the ground. He confirms that upon entering the



residence he went straight to the roof to seek out the victim and it was only afterwards that he found the accused.

Having heard Pharmacist Godwin Sammut who testified that he was appointed by Inquiring Magistrate Dr Joseph Mifsud on the 25<sup>th</sup> of March 2021 then on the 13<sup>th</sup> of April 2021 where he was handed six (6) exhibits from PC2156 Lara Garzia. The exhibits consisted of buds, green buds, crusher, a pink pill and two packets of green grass. He confirms that an analysis was conducted on these exhibits. He further testifies that the green buds resulted positive for THC, the weight of the buds was 44.04 grams and the purity was approximately 21%. He also confirms that THC was found in the crusher. He further concludes that the pink pill resulted positive for Methylenedioxymethamphetamine (MDMA also known as ecstasy). He specifies that on this point two (2) pills of ecstasy were found. He concludes that the green grass resulted positive for a type of synthetic cannabinoid known as MDMP with a total weight of 0.57 grams. This was redacted in a report presented and marked as Dok GS1.

Having heard **PC948 Christian Gauci** who testified that on the 25<sup>th</sup> of March 2021 he was on patrol when he was instructed by WPS2145 that at Triq il-Farfett a certain –Omissis– was being held against her will in a residence in 41, Triq il-Farfett, Marsa. Upon trying to enter the premises he could hear many noises emanating from the property such as glass shattering. He testifies that neighbours were informing him that dark-skinned persons were jumping from 41, Triq il-Farfett, Marsa to other houses. He testifies that upon entering the residence he found the accused in the stairs and thus the accused confirmed his identification. He further testifies that upon being asked to exit the property the accused pushed aside WPS1415 and started to escape. As a result, the accused was arrested and was taken to the Police Station. He further testifies that the accused was spitting towards several Police officers whilst also directing vulgar words to them. He specifies that the accused was taken to the Hamrun Police Station.

Having heard **PC627 Daniel Gauci** who testified that on the 25<sup>th</sup> of March 2021 he was patrolling the streets near Marsa when PC2145 informed him and his colleagues that a minor was being held against her will in a residence numbered 41, Triq il-Farfett, Marsa.

As soon as he and his colleagues knocked on the door of the mentioned residence a lot of commotion could be heard as well as glass shattering. He further testifies that a few doors up a Maltese resident informed him that a number of dark-skinned males were jumping from one roof to the another and into neighbouring gardens. He testifies that upon returning to the property numbered 41, Triq il-Farfett, Marsa he and his colleagues found the accused. The accused was then escorted to the Hamrun Police Station when he started to resist the arrest and even pushed PS2145 to the floor. Upon entering the Police Station, the accused started to spit in his direction as well as throwing insults at his colleagues.

Upon cross-examination the witness specifies that he does not know who the Maltese resident in the neighbouring property was and does not recall the number of the property. He further clarifies that the information provided to him by PC2145 originally came from a certain Charmaine Galea.

Having heard Dr Lennox Vella who presented a transcription of the accused's interrogation marked as Dok LV1.

Having heard Dr Yanika Vella who testified that the medical certificates presented at folio 193 of the acts of the proceedings is her own certificate. She explains that she examined Damian Caruana and found that he had pain over the base of his left thumb together with small scratches over the base of the third finger of the left hand and also the little finger. These were all deemed to be small lacerations or grazes which didn't need any stitches thus resulting in injuries of slight harm.

Having once again heard Inspector Roderick Attard who presented the birth certificate of the alleged victim –Omissis– as well as a copy of a judgement in the names “Police Inspector Joseph Scerri vs Rammi Rajab Ali Ratima and Eliasu Mohammed” found from folios 350 to 387.

Having heard PC1285 Graham Cassar and PC2156 Lara Garzia who both testified that they were appointed to investigate the alleged crimes by the Inquiring Magistrate on the 25<sup>th</sup> of March 2021. They testified that they were asked to head to the residence 41, Triq il-Farfett, Marsa where an investigation was conducted. PC1285 Graham Cassar confirmed that photography work was his remit

whilst preservation and elevation of objects was the responsibility of PC2156 Lara Garzia.

Having heard the testimony of Dr Kenneth Falzon who testified that on the 26<sup>th</sup> of March 2021 at around 00:32Hrs he had seen Graziella Zammit (ID 429686M). He confirms that that the injury he observed was an alleged pain in the right hand however there was no visible injury. He confirms that the nature of these injuries was classified as “slight”. He does not recall what the patient’s attire was. He does not recall what the patient had told him as to how these injuries occurred. He confirms the medical certificate exhibited in the acts of the proceedings at folio 192.

Upon cross-examination he testifies that he had no objective test to confirm that the patient he examined was in pain and that he relied on the patient’s statement.

Having heard PS2284 Kimberly Hili who testified that PS2145 Graziella Zammit was enlisted in the Malta Police Force on the 27<sup>th</sup> of November 2007 and is currently stationed at District Seven (7) Rabat. She further testified that PC1127 Damien Lee Caruana was

enlisted in the Malta Police Force on the 24<sup>th</sup> of July 2019 and is currently stationed at District Seven (7) Hamrun. She presented this information in the form of reports exhibited and marked as Dok KH1 and Dok KH2.

Having heard Franklin Calleja as an Assistant Registrar to the Criminal Courts and Tribunal who confirmed that there was no appeal lodged in the acts of the judgement in the names of "*Police vs Eliasu Mohammed*" dated 30<sup>th</sup> July 2019 and decided by Magistrate Dr Rachel Montebello.

Having heard Inspector Joseph Xerri who testifies that he was the prosecuting officer in the criminal proceedings of the case in the names of "Police vs Rammi Rajab Ali Ratima and Mohammed Eliasu". He testifies that the judgement exhibited as Dok RAY from folios 321 up to 358 pertain to same case and that he had arraigned the convicts on the 1<sup>st</sup> of April 2019 charging them with theft. He confirms that the judgement was delivered on the 30<sup>th</sup> of July 2019 wherein the accused was found guilty of a series of thefts and was sentenced to eleven months incarceration suspended for eighteen months.

Having heard Dr Richard Sladden who testifies that he was nominated by Inquiring Magistrate Dr Joseph Mifsud in order to assist during the inquiry by being present during access, to take down any necessary evidence on oath and to make any necessary observations. He testifies that his findings were finalised in a report presented and marked Dok. RS1. He further presented the original report marked Dok. RSX.

Having heard Dr Katya Vassallo who presented a translation from the Maltese language to the English language of the report redacted by Dr Richard Sladden.

Having heard Dr Marisa Cassar who collected a sample of the accused on the date of the 15<sup>th</sup> February 2022 testifies that the inquiry titled *“Arrest illegali ta’ -Omissis- u sejba ta’ sustanza illegali gewwa l-fond 41, Triq il-Farfett, Marsa fil-vicin nhar il-hamsa u ghoxrin ta’ Marzu 2021”* and the inquiry titled *“Fl-Atti tal-Inkjesta dwar sejba ta’ sustanza suspettuza droga nhar il-hamsa u ghoxrin ta’ Marzu 2021”* deal with the same case. She clarifies that the swab of the accused was not used since it transpired from the acts of the inquiries that an identity of the accused was already

established. She concluded and presented a report marked Dok MCX. In her conclusion she testifies that no genetic profile could be gathered from the exhibits handed to her amongst which were the alleged illicit substances.

Having heard Charmaine Borg who testifies that she had leased the property to individuals she did not know. She testifies that she had received a phone call from the Hamrun Police Station and was told to come in for questioning. She was informed by the Police Sergeant that there was an individual in her property that was keeping a minor against her will and that cannabis was found. She continues to testify that her tenants had only been living in her property for around a month. She confirms that there was more than one (1) tenant, but she does not know their names.

Having heard PC1269 Doris Al Sous Camilleri who testified that she was on her nightshift with her colleagues on the 25<sup>th</sup> of March 2021 when at around ten o'clock in the evening a Police Seargent called them to go to property number 41, Triq il-Farret in Marsa. The reason for this was because there was a young lady who was kidnapped and being held against her will in that property. She



continues to testify that they knocked on the door and as a result they started to hear a lot of noise such as the breaking of glass on the rooftops. They went inside and this after a person opened the door, and eventually they found the alleged victim –Omissis– on the roof. She continues to testify that as soon as the victim was found the same victim started thanking them and it was then that she was taken to the Police Station. She confirms that two (2) individuals were arrested.

She continues to testify that she stayed at the Police Station with – Omissis– when later on the accused was brought in for questioning. She testifies that the accused started to spit in the direction of PC627 and also started insulting her and her colleagues. She clarifies that the accused was calling them “pigs” along with a myriad of obscenities. She clarifies that the victim thanked them for finding her as she had been saved from the accused.

Having once again heard Dr Lennox Vella who was nominated to translate the document presented by Dr Godwin Sammut from the

Maltese language to the English language. The translation was presented and marked as Dok LV1 at folio 325.

Having heard Adrian Galea who testified that on the 25<sup>th</sup> of March 2021 at around 21:00Hrs he was at home when the Police spoke to him informing him that to view his garage in Marsa. He states that the Police entered his garage and found his skylight broken as well as a bag with a substance of some sort inside it. He testifies that this took place in Triq il-Farfett, Marsa. He continues to testify that he does not remember who got arrested on that night. He further clarifies that he concluded that someone must have jumped from the rooftops due to the presence of scratches on the walls.

Having once again heard PC948 Christian Gauci reproduced by the defence in cross-examination. He testifies that him and three (3) other officers entered the property numbered 41, Triq il-Farfett, Marsa. He specifies that it was the accused who allowed entry into the residence and from there he immediately went up towards the roof to look for the victim. He testifies that on the night two (2) people were arrested and were taken to the Hamrun Police Station. He continues to testify that he stayed at the residence with the

Police Sergeant and his other colleagues. He testifies that it was the Police Sergeant who had passed on a description of the accused.

He continues to testify that he found the victim on the roof and that the accused was near the door of the property when he came down with the victim. He also testifies that that the arrested persons were taken to the Hamrun Police Station via vehicles from the Rapid Intervention Unit. He confirms that he was the driver of one of the vehicles. He testifies that whilst his colleagues took the arrested people to the station, he stayed at the scene of the crime with the Police Sergeant 2145 Graziella Zammit. He clarifies that the physical description that the Sergeant gave him was procured from a Social Worker. He continues to state that the victim was then taken to the Police Station. He also states that neighbours in the street approached him telling him of certain people fleeing from the residence via the rooftops. He then escorted the accused under arrest towards the Police Station via his vehicle. He testifies that the accused was uttering vulgar words in the direction of the Police Officers and this whilst going from the Police Station to the Lock Up.

Having heard the accused Mohammed Eliasu who testified that at the time of the alleged crime he was residing in Hamrun. He recalls that on the day of the alleged crime he had called the alleged victim –Omissis– because she had his phone and wanted it back. He testifies that he lives with three (3) other people at his residence. When describing the residence, he testifies that as soon as you enter the door one would find stairs leading up to the hall. Along the hall one can find a first bedroom and then another flight of stairs that leads to two (2) other bedrooms and then the roof. He testifies that his room was at the top floor and that the victim entered this room when she came over at around five o'clock in the evening. He continues to testify that when the victim met him, he was listening to music and smoking a joint.

He further testifies that when they met on the day of the alleged crime, she gave him a bag along with his phone and it was after this that he wanted her to stay to solve their issues they had with each other. He recalls that they had talked for around two (2) hours. He states that the phone was a black Samsung S9. He testifies that he had given it to her two (2) months prior. He confirms that it was later when his fellow roommate informed him that the Police were

at the door. He also testifies that the victim –Omissis– told him that she couldn't stay long as she had to be back at her residence by nine o'clock. He explains that he had met the alleged victim after she had asked him for a lighter when they happened to be attending an establishment in Marsa.

He further testifies that whilst the victim was at his residence on the day of the alleged crime a certain –Omissis– called her on her phone. He confirms that this –Omissis– was waiting for –Omissis– outside the house and was asking her to come out. He testifies that he was told by the alleged victim that –Omissis– needed some money, so she went down to lend him some money. An hour later he testifies that the Police arrived, and he let them in. He testifies that they entered the property looking for the alleged victim –Omissis– whilst he stayed at the door. He testifies that the Policewoman asked him for his documents and to retrieve a face mask. He further testifies that whilst he went to find a mask his roommates either fled or were arrested and that he does not know what happened to –Omissis–.

He testifies that when he re-entered the residence, he found a mess inside the property and whilst he was trying to put things back in order a friend of his by the name of Shaibu visited him. He continues to testify that around ten (10) minutes later the Police came to the property, and he opened the door. He states that the Police grabbed him by the neck and even resorted to push him to the ground. He saw the Policewoman after being arrested and when he was taken outside of the property. He states that he was later taken to the Police Station by car and during the voyage a Police Officer of short stature uttered racist and vulgar phrases in his direction, and it was due to this that he replied in a vulgar manner as well. He continues to testify that he had in his possession two (2) sachets of synthetic and around fourteen (14) sachets of marijuana. He states that these were for him, and that the victim entered the residence initially with her own drugs.

He further testifies that he used to sell drugs and this due to the fact that he was not working due to an injury in his wrist that he suffered for around three (3) months. He further states that the victim could have left the residence out of her own free will. He also testifies that he was not in a sexual relationship with the victim. He

clarifies that the phone he had gifted to the victim was in his possession for around a year. When asked about the injuries that the police officers suffered on the night of the alleged crime, he declined to comment save for the fact that he was under the influence of drugs. He testifies that he threw the fourteen (14) sachets out of the window when the Police came.

Having heard oral submissions by the prosecution and defence.

### **HAVING CONSIDERED**

That from the outset this Court points out that the prosecution didn't manage to prove its case beyond reasonable doubt and this according to the judgment given by the Court of Appeal in the case **Police vs Emad Masoud** (dec 16/05/2019) wherein it was stated:

*"Illi jinkombi fuq il-prosekuzzjoni sabiex tressaq l-ahjar prova u sabiex tipprova l- kaz taghha fuq bazi ta' minghajr dubju dettat mir-raguni. Filwaqt li d-difiza ma ghandha bzonn tipprova xejn.*

*Dwar l-oneru ta' prova, kif ikkunsidrat fis-sentenza fl-ismijiet 'Il-Pulizija (Supretendent Ian Joseph Abdilla) (Spettur Kevin Borg) vs. Joseph Baldacchino Farah Kirpalani Philip Micallef (Deciza mill-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali nhar l-24 ta' Mejju, 2017 (Numru 809/2005) ghalkemm dwar mertu u imputazzjonijiet differenti minn dawk in kwistjoni:*

*Illi huwa l-oneru tal-Prosekuzzjoni li tressaq l-ahjar provi sabiex tikkonvinci lill-Qorti li l-imputazzjonijiet addebitati fil-konfront tal-imputati huma veri u dan ghaliex kif jghid il-Manzini fil-ktieb tieghu Diritto Penale (Vol. III, Kap. IV, pagna 234, Edizione 1890):*

*“Il così detto onero della prova, cioè il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osservit”.*

*Huwa principju baziku pprattikat mill-Qrati taghna fil-procediment kriminali li, biex l-imputati jigu ddikjarati hatja, l-imputazzjonijiet dedotti ghandhom jigu pruvati*



*oltre kull dubju ragjonevoli, cioè oltre kull dubju dettat mir-raguni.*

*Hawnhekk il-Qorti taghmel riferenza ghas-sentenza moghtija mill-Qorti tal-Appell Kriminali fis-7 ta' Settembru 1994 fl-ismijiet Il-Pulizija vs. Philip Zammit et u tghid pero' mhux kull icken dubju huwa bizzatejded sabiex persuna akkuzata tigi ddikjarata liberata, hemm bzonn li "dubju jkun dak dettat mir-raguni".*

*Fil-fatt fis-sentenza moghtija mill-Qorti tal-Appell Kriminali nhar il-5 ta' Dicembru 1997 fl-ismijiet Il-Pulizija vs. Peter Ebejer, dik il-Qorti fakkret li l-grad ta' prova li trid tilhaq il-Prosekuzzjoni hu dak il-grad li ma jhalli ebda dubju dettat mir-raguni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubju. Id-dubji ombra ma jistghux jitqiesu bhala dubji dettati mir-raguni. Fi kliem iehor, dak li l-Gudikant irid jasal ghalih hu, li wara li jqis ic-cirkostanzi u l-provi kollha, u b'applikazzjoni tal-bon sens tieghu, ikun moralment konvint minn dak il-fatt li trid tipprova l-Prosekuzzjoni. Fil-fatt dik il-Qorti ccitat l-*

*ispjegazzjoni moghtija minn Lord Denning fil-kaz Miller vs. Minister of Pension - 1974 - 2 ALL ER 372 tal-espressjoni "proof beyond a reasonable doubt".*

*"Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing shall of that will suffice".*

That during these proceedings it results that there is no tangible and concrete proof to convince this court that the alleged crimes were committed by the accused and this due to the fact that there exist a series of inconsistencies and deficiencies in the evidence gathered by the prosecution. The Court shall duly explain these inconsistencies further on in this judgment.

That since these proceedings are characterised by circumstantial evidence, it is thus up to this Court to examine any circumstantial evidence brought forth in these proceedings in order to verify whether the prosecution managed to prove its case. That our Courts are clear on the concept of circumstantial evidence. Reference is being made to the judgement in the names of Repubblika ta' Malta vs George Spiteri decided by the Court of Appeal (Superior Jurisdiction) on the 5<sup>th</sup> of July 2002 wherein the following was declared:

*“Huwa principju fundamentali fil-process kriminali li l-ligi tesigi li kull min jrid jipprova xi haga, ghandu jressaq l-ahjar prova, u dan jista' biss jaqa' fuq prova sekondarja kemm il-darba din l-ewwel jew l-ahjar prova mhiex disponibbli. Hu veru wkoll, izda, li min ghandu jiggudika jista', skond il-ligi, u minkejja dan il-principju fundamentali appena msemmi, joqghod fuq ix-xhieda anke ta' persuna wahda jekk b'dak li tghid din il-persuna, jikkonvinci lill-gudikand sal-grad tal-konvinciment morali mill-htija tal-persuna akkuzata.*

*Il-prova indizzjarja trid tkun wahda assolutament univoka, li tipponta biss minghajr dubju dettat mir-raguni lejn fatt jew konkluzjoni wahda. Ovvjament jekk fatt jew cirkostanzi jistghu ragjonevolment jinghataw aktar minn tifsira jew interpretazzjoni wahda, tkun li tkun, allura dik ma tkunx prova ndizzjarja tajba, skond il-ligi, sabiex in bazi taghha tista' tinstab htija. Kif tghid u titlob il-ligi, biex prova ndizzjarja tigi ammessa bhala prova valida fis-sens li wiehed jista' ragjonevolment jasal ghall-konkluzjoni tieghu ta' htija in bazi taghha bla ebda dubju dettat mir-raguni, irid ikun moralment konvint minn dan ir-rekwizit ta' l-univocita' taghha, cioe' li dik il-prova tfisser biss u xejn aktar li l-akkuzat huwa hati ta' dak addebitat lilu w, allura, kull dubju ragjonevoli fir-rigward ghandu jmur favur l-akkuzat skond il-ligi.*

*Wiehed ghandu jkun ferm attent fl-apprezzament u nterpretazzjoni tal-prova ndizzjarja ghaliex ghalkemm din hi prova ferm importanti, u kultant anke aktar mill-prova diretta, pero', din hi prova li facilment tista' tqarraq lil dak*

*li jkun qed jghamel l-interpretazzjoni w apprezzament taghha.”*

That further to the above the Court of Appeal (Inferior Jurisdiction) stated the following in its judgement in the names of Pulizija vs Cyrus Engerer (decided on the 8<sup>th</sup> of May 2014):

*“...Biex wiehed jistabilixxi jekk il-provi cirkostanzjali huma univoci wiehed irid jara l-assjem ta’ dawn ic-cirkostanzi migjuba bhala prova u li dan il-konvinciment morali huwa wiehed ibbazat sal-grad rikjest tal-prosekuzzjoni tac-certezza morali (u mhux dik assoluta) jew il-prova lil hinn minn kull dubbju dettat mir-raguni. In oltre il-konkluzjoni biex tkun univoka mhux necessarjament trid tkun l-uniku xenarju li jista’ jintlahaq izda trid tkun l-unika wahda li tista twassal ghal htija b’mod ragonevoli kontra dak li jkun. Fi kliem iehor jekk jinholoq dubbju dwar l-univocita tal-provi cirkostanzjali liema xenarju alternattiv ma jkunx wiehed ragonevoli, dan ma jistax iwassal sabiex il-Qorti tillibera a bazi tan-nuqqas ta’ univocita.”*

## HAVING CONSIDERED

That the accused is being charged with offences relating to the possession and sale of illicit substances as regulated by Chapter 101 of the Laws of Malta.

That the Court is making reference to the conclusions of the expert Dr Godwin Sammut in his report (as translated by Dr Lennox Vella) at folio numbers 333 to 334:

*“Therefore, from the acquired results the undersigned, Scientist Dr. Godwin Sammut, can conclude:*

- a. That upon an extract taken from the buds of green colour which are contained in documents 075\_21\_01, 075\_21\_02 and 075\_21\_05 the substance Tetrahydrocannabinol (THC) was found. The total weight of the buds was of 44.05 grams and the purity was of approximately 21%. The substance tetrahydrocannabinol was also found inside the crushers which are in documents*

*075\_21\_03 and 075\_21\_04. This substance is derived from the cannabis plant and is controlled by the law under Part III Section 8 of Chapter 101 of the Laws of Malta.*

*b. That upon extracts taken from the pills of pink colour which are in document 075\_21\_03 the substance 3,4-methylenedioxymethamphetamine (MDMA) was found. This substance is controlled under Part A, of the Third Schedule of Chapter 31 of the Laws of Malta.*

*c. That upon an extract taken from the grass of green colour found in document 075\_21\_06 the substance 5-Fluoro-MDMB-PICA which is a type of synthetic cannabinoid was found. The total weight of the grass is of 0.57g. This substance is controlled by Law under Chapter 31.”*

That the accused on oath admitted to making use of cannabis as well as to selling the same substance in the past and whilst the above substances were found at the scene of the crime, reference is also being made to the report presented by Dr Marisa Cassar at folios 630 to 634.

That the witness Dr Marisa Cassar was tasked with comparing the accused's DNA to any DNA that could be found on the illicit substances found at the residence 41, Triq il-Farfett, Marsa. That the conclusion drawn was the following:

*“Mill-kampjuni 075\_21\_02DNA u 075\_21\_06 DNA, ma hareg l-ebda profil genetiku.”*

That as a result the Court has no objective proof linking the drugs found at the scene of the crime directly to the accused despite what appears to be his admission. The Court cannot as such deem the charges relating to Chapter 101 of the Laws of Malta to be proven beyond all reasonable doubt since on the one hand even though as already said he sort of admitted the fact but such admission was not necessarily for the drugs present at the time of the offence so



much so that other persons used to live in the same residence, and thus cannot find the accused guilty of the first (1<sup>st</sup>), second (2<sup>nd</sup>) and third (3<sup>rd</sup>) charges.

### HAVING CONSIDERED

That the accused is being charged with the offence of the use of electronic communications apparatus to make threats as stated in Article 49 (a) of Chapter 399 of the Laws of Malta:

*“Any person who by means of an electronic communications network or apparatus:*

*a. threatens the commission of any crime”*

That the Court notes the report presented by the court appointed expert Dr Martin Bajada is the focal point when proving this allegation. The Court further notes that the extraction does indeed corroborate what the alleged victim –Omissis– alleged in her testimony and this due to several chat messages exchanged between the same victim and a certain Jah Pass Dem.

Having said that, the Prosecution nonetheless failed to reveal the identity of the account holder Jah Pass Dem and further failed to link those messages to the accused Eliasu Mohammed. Added to this the Court notes that the same court appointed expert extracted information from nine (9) cellular devices, none of which were proven to be linked to the accused by the Prosecution.

That due to this the Court cannot find the accused guilty of the fifth (5<sup>th</sup>) charge due to lack of proof.

### **HAVING CONSIDERED**

That the accused is also being charged with the offence of illegal arrest as stipulated under Article 86 of Chapter 9 of the Laws of Malta which states that:

*“Whosoever, without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrests, detains or confines any person against the will of the same, or provides a place for carrying out such arrest, detention or*

*confinement, shall, on conviction, be liable to imprisonment for a term from seven months to two years”*

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 this case relies completely on the credibility of the minor – Omissis– as corroborated by the circumstantial evidence brought

forth by the prosecution. Two observations that this Court makes when considering the evidence of the said minor are her fitness as a witness and the veracity in her testimony.

That regarding the witness' fitness to testify reference is being made to local jurisprudence that refers to this concept. That in the judgement delivered by the Criminal Court in the names of Il-Pulizija vs Giuzeppi Bonnici dated 28<sup>th</sup> March 1949 it was stated:

*“Skond il-Ligi Maltija (art. 626 Kap. 12 [illum art. 630 Kap. 9]), hadd ma jista’ jigi eskluż milli jaghti x-xhieda tieghu minhabba li ma jkollux xi età partikulari. Izda, tkompli tghid il-Ligi ta’ Malta, hemm bzonn li l-Qorti tkun sodisfatta illi x-xhud, ghalkemm mhux ta’ l-età, jaf illi hija haga hazina li wiehed jixhed il-falz. Minbarra dan, hu wkoll ligi (art. 625 [illum 629] illi meta l-Qorti, minhabba l-età tax-xhud, ikollha dubju jekk hu jifhemx l-importanza tal-gurament, anki wara t-tifsir tal-Qorti, u jkun jidhrilha mehtieg illi x-xhud, qabel ma jixhed, ghandu jigi nfurmat ahjar dwar il-konsegwenzi ta’ xhieda falza, hija tista’, jekk*

*fil-fehma taghha x-xhieda ta' dak ix-xhud hija rilevanti,  
thalli l-kawza ghal gurnata ohra;"*

That the question regarding the age of a witness was not only dealt with through various judgements but was also addressed by Sir Anthony Mamo in his *"Notes on Criminal Procedure"* like so:

*"The essential condition [regarding the competency of the witness] is that the person shall be of sound mind at the time of being tendered as a witness. If this condition is satisfied, the want of any particular age is not a reason for excluding competence, it being sufficient that the court be satisfied that the witness, though of young age, understands that it is wrong to give false testimony .... Competency thus depends not on the precise age but upon the actual intelligence of the witness.*

*Our law still makes it essential, however, to the competency of every witness that he should know and accept the obligation of an oath and that he shall in fact be sworn. The principle upon which our law still proceeds is*

*that 'it places no reliance on testimony not given on oath. Consequently no person whatever his age can give testimony upon any trial, civil or criminal, until he has, in the form prescribed by law, given an outward pledge that he considers himself responsible for the truth of what he is about to narrate, and renders himself liable to the temporal penalties of perjury in the event of his wilfully and corruptly giving false evidence' ....*

*If on account of his age or for other reasons it appears doubtful whether a person tendered as a witness understands the obligation of the oath, the court explains this to the witness; and if, notwithstanding such explanation the court shall deem it necessary that the witness, before giving evidence, be further instructed as to the consequence of the false testimony, the court may, if it considers the evidence of such witness to be important for the ends of justice, adjourn the trial to another day and, should the case be before the criminal court, discharge the jury.*

*If the court is not satisfied that the proposed witness can understand the obligation of the oath (nor that he can be instructed as aforesaid) the court is bound to reject that witness as incompetent<sup>1</sup>. It cannot hear him without oath (...)"*

Thus, in view of the above, this Court deems the alleged victim's testimony as one that is admissible and crucial to piecing together the events of the evening.

That reference is being made to the testimony of the alleged victim –Omissis– wherein she states the following:

*“Lawyer: So when you communicated with him Eliasu was not with you.*

*Witness: No, he was not next to me, he was upstairs in his room waiting for me.*

*Lawyer: He was in his room wasn't he?*

*Court: Yes hekk qalet.*

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<sup>1</sup> Emfazi tal-Qorti

*Lawyer: So you could go out of the room at your free will no?*

*Witness: Yes.*

...

*Lawyer: But you were never in any way kept against your will in the house?*

*Witness: When I wanted to go he did not let me, he did not wish me to go so that we stay talking.*

*Lawyer: So he did not wish that you go?*

*Witness: But it wasn't against my will."*

That the victim –Omissis– continues to state the following:

*"Lawyer: He took your mobile and then you went, you could go wherever you liked. Could you go out of the house without your mobile?*

*Witness: Yes.*

*Lawyer: So he never actually impeded you from going out.*

*Witness: He wished for me not to go away but obviously even without, due to the fact that he was*



*keeping my things I could still go out of the house. I was still free to go out of the house.”*

That this was corroborated by the testimony given by the accused in the latter stages of the proceedings:

*“Dr Joseph Mifsud: Ok. And then did you, what did you do with her?*

*Mohammed Eliasu: Nothing. She, when she came, she, she gave me a bag, the phone and we, I told her to stay so that we can, we can talk. So she stayed but she told me: “I can’t stay for, for a long time.”*

*Dr Joseph Mifsud: Ok.*

*Mohammed Eliasu: I said: “ok.” So she stayed and we have, we had a conversation you know? About the argument we had you know? So we apologize to each other. So we were sitting and later I found, I heard one of my, my friend*

*came up telling me: “the Police is at the door.””*

That the reason for the parties meeting on the 25<sup>th</sup> of March was so that the accused could have the opportunity to hash out any misunderstandings that there may have been between the two. This was confirmed by the victim herself which thus leads the Court to conclude that the victim was never in harms' way. Furthermore, even if the Court were to interpret the events of the evening as leading up to the illegal arrest of the victim it could never find any villainous intentions on the part of the accused. Reference here is made to the testimony of the victim who states the following:

*“Witness: At the time the arguments were and I didn't realise that when I was in the house that Eliasu was trying to keep me not to go away from the house, so that we resolve the things that we had together. What I can say is when I was thinking after these things happened I realised that the behaviour of Eliasu, therefore when he did not let me, when he wasn't letting me go*

*away from his house was not to keep me as a prisoner inside the house but to resolve our matters.”*

That the Court is from the outset deeming the testimony of the victim regarding the alleged charges as one that is credible despite the fact that the same cannot be fully said regarding the accused’s testimony. The Court is well aware of the testimony given by – Omissis– who paints a completely different picture of how events transpired of the night. Nonetheless the only eyewitness who can truly offer this Court insight to the incident is the victim, –Omissis– and no one else.

That the Court is therefore of the opinion that guilt cannot be found on the fourth (4<sup>th</sup>) and seventh (7<sup>th</sup>) charges due to a lack of proof.

### **HAVING CONSIDERED**

That the accused Eliasu Mohammed 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 former reference is being made to 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 193 as confirmed by Dr Yanica Vella. 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 PC1127 Damien Caruana:

*“PC1127 Damian Caruana:                    sorry as accused emm he was resisting the arrest. Emm immediately I saw PS2145 on the floor and as we were arresting him, he also laid some slight injuries to me as the certificate presented here by Doctor Yanika Vella, MD 3505 from Floriana Health Centre.*

...

*Magistrate:    So, I am showing you page of mela document*

*one nine three, RA2. It is the medical certificate pertaining to you. Do you confirm it?*

*PC1127 Damian Caruana: 3505 yes.*

*Magistrate: OK*

*Inspector Roderick Attard: Mela who caused those injuries? Who was the one responsible to causing those injuries on your person?*

*PC1127 Damian Caruana: Elias which I can recognise him while he was resisting the arrest.”*

That reference is also being made to the medical certificate exhibited in the acts of the proceedings at folio 192 as confirmed by Dr Kenneth Falzon. This witness also confirmed the injuries that the victim suffered were of a slight nature. However, reference is being made to the cross-examination of Dr Kenneth Falzon wherein it is stated the following:

*“Dr. J. Mifsud: Yes, but how did you come to the conclusion that she had pain? Did you see in her right hand, did you see the pain?”*

*Witness: Oh no of course not. You ask the patient if hemm as sin the patients said that they are in pain I physically examined to see if there's anything you know that needs to be further assessed and there was not. So, but I still the, you know pain is not something that we can simply check with a monitor, you know?*

...

*Dr. J. Mifsud: So, to my question when you said that she had, you started actually eh testifying that allegedly she had pain in her right hand.*

*Witness: Yes.*

*Dr. J. Mifsud: Allegedly?*

*Witness: Yes, because I had no objective test to confirm that the patient is in pain ah?”*

That despite the fact that the Court does not deem that the prosecution managed to fully prove the charge of causing slight bodily harm with regards to PS2145 Graziella Zammit, the same cannot be said for the slight bodily harm caused to PC1127 Damian Caruana which has been proven beyond all reasonable doubt.

That another article of the law that the accused is being charged with is the aggravating circumstance stated in Article 222 (1)(c) 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 –*

*c). on the person of whosoever was a public officer or was lawfully charged with a public duty or is or was an officer or employee of a body corporate established bylaw and the offence was committed because of that person having exercised his functions”*



That this aggravating circumstance emanates from the acts of the proceedings and this according to the documents exhibited at folios 493 *et sequitur* wherein it is confirmed that both PS2145 Graziella Zammit and PC1127 Damien Caruana were active in the line of the duty at the time of the alleged crime.

That these same documents are also relevant to the charges related to the crime as per article 95 of the Criminal Code which states:

*“Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, shall, on conviction, be liable to the punishment established for the vilification, threat, or bodily harm, when not accompanied with the circumstances mentioned in this article, increased by two degrees and to a fine (multa) of not less than eight hundred euro (€800) and not more than five thousand euro (€5,000).”*

That the Court is therefore of the opinion that guilt is to be found on the ninth (9<sup>th</sup>) and eleventh (11<sup>th</sup>) charge.

### HAVING CONSIDERED

That the accused has also been charged with the contraventions as stipulated in Articles 339 (1)(e) which states the following:

*“Every person is guilty of a contravention against the person who*

*e. utters insults or threats not otherwise provided for in this Code, or being provoked, carries his insult beyond the limit warranted by the provocation”*

That the prosecution brought forth the testimonies of a number of police officers on duty on the night of the 25<sup>th</sup> of March to substantiate the alleged contravention. It results to this Court that the accused did indeed utter insults towards the Police on duty on

the evening of the 25<sup>th</sup> of March 2021 even going as far as spitting towards them.

That the Court is well aware of the defence raised by the accused in that racial slurs were directed towards him by the police officers on duty. The Court however does not find this version of events credible – if this was the case, then why didn't the accused state this crucial fact in his statement of the 26<sup>th</sup> of March 2021?

That it is therefore the opinion of this Court that this defence was only a mere afterthought when the accused chose to testify in these proceedings on the 26<sup>th</sup> of February 2024.

That the Court is therefore of the opinion that accused may be found guilty on the tenth (10<sup>th</sup>) charge.

### **HAVING CONSIDERED**

That regarding the charge of recidivism the Court observes that the Prosecution presented the judgement exhibited at folio 350 *et sequitur* in the names of "Police vs Rammi Rajab Ali Ratima and

Eliasu Mohammed” given by this Court as diversely presided on the 30<sup>th</sup> of July 2019. Reference is being made to Article 49(3) of Chapter 9 of the Laws of Malta which states the following:

*“A document shall be deemed to be duly authenticated if one of the following conditions applies:*

- a. purports to be signed by a judge, magistrate or officer of the sentencing State; or*
- b. it purports to be certified, whether by seal or otherwise, by the Ministry, department or other authority responsible for justice or for foreign affairs of the sentencing State; or*
- c. it purports to be authenticated by the oath, declaration or affirmation of a witness”*

That reference is being made to the testimony given by Franklin Calleja in the sitting dated 16<sup>th</sup> of December 2021 who confirmed the following:

*“Witness: We were requested to testify whether there was any appeal from the judgement of the Court of Magistrates Police vs Eliasu Mohammed given by Magistrate Rachel Montebello on the 30<sup>th</sup> of July 2019 and I can confirm there was no appeal.”*

That considering all this it is in this Court’s opinion that the aggravation of recidivism subsists and will be reflected in the punishment to be administered by this same Court.

### **Decide**

On the above basis, and upon seeing Articles 17, 31, 95, 96(a), 214, 221(1), 222(c) and 339(1)(e) of Chapter 9 of the Laws of Malta, finds the accused **Eliasu Mohammed** guilty of the eighth (8<sup>th</sup>), ninth (9<sup>th</sup>), tenth (10<sup>th</sup>) and eleventh (11<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 three (3) years and to a fine of five thousand Euro (€5,000) whilst acquitting him of the first (1<sup>st</sup>), second (2<sup>nd</sup>), third

(3<sup>rd</sup>), fourth (4<sup>th</sup>), fifth (5<sup>th</sup>), sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) charges due to lack 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.

Furthermore, and upon seeing Article 533 of Chapter 9 of the Laws of Malta the accused **Eliasu Mohammed** is being condemned to the payment of expenses relating to court experts nominated in these proceedings amounting to five thousand and three hundred and forty-seven Euro and ninety-one cents (€5,347.91).

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

**Benjamina Mifsud**  
**Deputat Registratur**