



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

**MAGISTRATE DR MARSE-ANN FARRUGIA LL.D.**

**Sitting held today, Monday 27th January 2025**

**The Republic of Malta  
(Inspector Sarah Kathleen Zerafa)**

**vs**

**Frank Sunday**

The Court,

1. Having seen charges brought against:

Frank Sunday, thirty-three years of age (33), son of Sunday and Halin, born in Benin City, Nigeria, on the fifteenth (15th) of January of the year one thousand nine hundred and ninety one (1991), declared to reside at Tal-Forn, Flat 3, Triq il-Gdida, Hal-Luqa, Malta and bearer of Nigerian Passport number A13005942

Charged for having on the twenty seventh (27th) of October of the year two-thousand and twenty-four (2024) between the hours of midnight (00:00) and half past five o'clock in the morning (05:30), and/or in the preceding weeks and/or preceding months, on these Maltese Islands:

1. That he knowingly made use of a forged document, in breach of Articles 189 and 189A, of Chapter 9 of the Laws of Malta;
2. At the same date, time, place and circumstances, without lawful authority imported, exported, transported, purchased, received, obtained or had in his custody or possession forged currency knowing the same to be forged, in breach of Articles 188A and 188C of Chapter 9 of the Laws of Malta;
3. At the same date, time, place and circumstances, drove the vehicle bearing registration number MCA 190, being a Fiat Punto without a valid driving licence, and this in breach of Article 15(1)(a) of Chapter 65 of the Laws of Malta;
4. At the same date, time, place and circumstances, drove the vehicle bearing registration number MCA 190, being a Fiat Punto without having an active policy of insurance in respect of third-party risks, and this in breach of Articles 3(1)(1A)(2)(2A) of Chapter 104 of the Laws of Malta
5. That he had in his possession the whole or any portion of the plant Cannabis in breach of Article 8(d) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
6. That he produced, sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of Article 8(e) of the Chapter 101 of the Laws of Malta;
7. That together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in drugs, in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;

The Court was requested to:

1. Pendente Lite order a 'Seizing and Freezing Order' and seizes and/or holds in the hands of third parties in general all moneys and other movable or immovable property which are due or belonging to the accused, as well as the Court prohibiting the accused from transferring, promising, creating hypothecates, or change or otherwise dispose of any movable or immovable property which pertains to the accused or is possessed by them, in terms of article 22A of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.
  2. That in the event that the accused is found guilty of any of the abovementioned offences, apart from meting out the punishment according to law, order the forfeiture of all the objects which have been exhibited, in terms of Article 23 of Chapter 9 of the Laws of Malta.
  3. That in the event that the accused is found guilty of any of the abovementioned offences, apart from meting out the punishment according to law, order the forfeiture in favour of the Government of Malta of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds, as well as order the forfeiture of any property in the possession or under the control or belonging to the person found guilty, in terms of Article 22 of Chapter 101 of the Laws of Malta; Article 23B of Chapter 9 of the Laws of Malta; Article 3(5) of Chapter 373 of the Laws of Malta, as well as Chapter 621 of the Laws of Malta.
  4. That in the event that the accused is found guilty of any of the abovementioned offences, apart from meting out punishment according to law, applies against the person found guilty the provisions of Articles 532A, 532B and 533 of Chapter 9 of the Laws of Malta.
- 
2. Having seen the consent of the Attorney General in terms of Article 370(4) of the Criminal Code for this case to be dealt with summarily and having heard the defendant declare that he has no objection that his case be dealt with in this manner.
  3. Having seen the order of the Attorney General in terms of Article 22(2) of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) for the defendant to be arraigned before this Court of Magistrates (Malta) as a Court of Criminal Judicature.

4. Having heard the evidence and having seen all the records of the case and the documents exhibited.
5. Having seen that on the sitting of the 8<sup>th</sup> January 2025 the parties informed the Court that they have reached an informal agreement on punishment.
6. The Court declared that although it will take into consideration the informal agreement on punishment, if the defendant pleads guilty it reserves the right to mete out any other different punishment according to law.
7. The Prosecution declared that the sixth (6<sup>th</sup>) charge in the writ of summons is alternative to the fifth (5<sup>th</sup>) charge, and it withdrew the request for the confiscation and forfeiture of the proceeds of the offence in favour of the Government of Malta.
8. The defendant pleaded guilty to the charges preferred against him, except for charge number two (2) in the writ of summons.
9. The Court warned the defendant of the serious consequences of his registering a guilty plea, and in particular that the maximum punishment for the offences preferred against him for the offences for which he pleaded guilty, is of fifteen (15) years and four (4) and a half months imprisonment and a fine of nineteen thousand, seven hundred and ninety-nine Euro and sixty-nine cents (€19,799.69), disqualification from having a driving license, and other consequential measures, and suspended the sitting so that the defendant could consult with his defense lawyers to see whether he wanted to retract his guilty plea.
10. When the case was called again, the Court asked the defendant whether he had enough time to consult his defense lawyers and he answered in the affirmative. When he was asked by the Court whether he was going to confirm his guilty plea to the charges preferred against him except for charge number two (2), the defendant replied in the affirmative.

11. The Prosecution declared that with regards to the evidence on charge number two (2) in the writ of summons, it had no further evidence to produce and was closing its evidence.
12. The defence declared that it had no cross-examinations of witnesses to make or evidence to produce with regards to charge number two (2).
13. Having heard the oral submissions of the parties.

### **Considerations of this Court on Guilt**

14. Although, the defendant registered a guilty plea for the charges preferred against him except for charge number (2), the Court observes that the Prosecution has declared that the sixth (6<sup>th</sup>) charge is alternative to the fifth (5<sup>th</sup>) charge. Hence, inspite of his guilty plea, the Court is not finding the defendant guilty of the sixth (6<sup>th</sup>) charge, and is abstaining from taking cognisance of this sixth (6<sup>th</sup>) charge.
15. The defendant has not pleaded guilty to the second (2<sup>nd</sup>) charge, and hence the Court has to determine whether this charge has been proved according to law. This charge states that the defendant was found in possession of false currency, knowing the same to be forged. This charge relates to the fact that the defendant had in his possession a ten Euro (€10) bank note which the Prosecution is claiming to be forged. During his interrogation by the Police, the defendant stated that he was not aware that this ten Euro (€10) note was fake, and it was the Police who informed him that it was fake. He also stated that somebody had given him that bank note, but he did not know who.
16. The Prosecution did not produce any evidence to prove that this ten Euro (€10) note was fake, nor did it request this Court to appoint an expert to determine whether this bank note was fake or otherwise.
17. In the light of the above considerations, the Court is of the opinion that this second (2<sup>nd</sup>) charge has not been duly proven according to law, and hence is acquitting the defendant from this charge.

18. In view of the guilty plea registered by the defendant himself, the Court finds the defendant guilty of the charges number one (1), three (3), four (4), five (5) and seven (7) preferred against him.

### **Considerations of this Court on Punishment**

19. The Prosecution and the defence reached an informal agreement that the suitable punishment in this case should be the minimum one of eleven (11) months imprisonment and a fine of two thousand and five hundred Euro (€2,500), and submitted that the Court should mete out this punishment.
20. As the Court warned the defendant prior to his registering a guilty plea, the maximum punishment for the offences preferred against him for the offences for which he pleaded guilty, is of fifteen (15) years and four (4) and a half months imprisonment and a fine of nineteen thousand, seven hundred and ninety-nine Euro and sixty-nine cents (€19,799.69).
21. In their oral submissions, the parties submitted that this Court should mete out the minimum punishment because the defendant has admitted to charges at an early stage of the proceedings, he has co-operated with the Police and never denied that the drugs were in his possession, and that the total amount of cannabis found in his possession is relatively small – forty-one point eighty nine (41.89) grams.<sup>1</sup>
22. First of all the Court observes that whilst the punishment of eleven (11) months imprisonment is the very minimum punishment of imprisonment allowed by law for the offences for which the defendant has been found guilty, the fine of €2,500, actually falls below the minimum amount fine which should be imposed on the defendant according to law. In terms of Article 3(1) of Chapter 104 (which forms the merits of the fourth charge), the minimum amount of fine is €2,329.37. The defendant is also to pay half of the minimum fines contemplated in Article 22(2)(b)(i) of Chapter 101 for the fifth and seventh charge preferred against him – that is half the amount of €465.87. Since there are two charges under Chapter 101, this amount to €465.87. The amount of €2329.37

---

<sup>1</sup> See report of court expert Doctor Godwin Sammut at fol. 132 of the proceedings.

together with that of €465.87 already amount to a minimum fine €2,795.24 – an amount exceeding that of the fine which the parties submitted the defendant should be condemned to pay. Apart from this fine of €2,795.24, the defendant also has to pay another fine not exceeding €600, representing half the amount of €1,200, which is the fine contemplated in Article 15(1) of Chapter 65 (which forms the merits of the third charge). Hence, it is clear that the fine of €2,500, which the parties agreed upon falls below the minimum amount of fine stipulated by law for the offences for which the defendant has been found guilty.

23. Secondly, this Court does not agree that the defendant pleaded guilty at an early stage of the proceedings. Although it is true that the defendant pleaded guilty a little more than two (2) months from the beginning of these proceedings, the defendant actually pleaded guilty in the sixth (6<sup>th</sup>) sitting after a good number of witnesses, including two court experts had testified, and the Prosecution had nearly concluded its evidence. The defendant was caught red handed by the Police with the drugs in his possession, both in the vehicle he was using and at his residence, and with a fake driving licence. It is evident that when the defendant realised that he was cornered with the evidence produced by the Prosecution, he agreed to register a guilty plea, in the hope that the punishment would be mitigated to the minimum possible. However, the defendant still wasted the time and resources of the Police and of this Court. Hence the Court is of the opinion that there should be no mitigation in punishment on the basis of the timing of guilty plea, because the guilty plea was not registered at an early stage of the proceedings, but it was registered when the Prosecution had nearly concluded its evidence.
24. Neither does the Court agree that the defendant co-operated fully with the Police. His co-operation was limited to not resisting the arrest, to admitting immediately to the Police that he had drugs in the car, and pointing where it was, being polite with the Police during the search in his vehicle and in his room, and in giving the Police the password of his mobile phone. However, he told the Police that he did not have the door key of his room in the flat where he lived, and the door had to be forced open by the Police.<sup>2</sup>

---

<sup>2</sup> See evidence of PS 2416 Sarah Jane Ellul at fol. 40 of the proceedings, and the evidence of PS 308 Aiden Gatt at fol. 73 of the proceedings.

25. During the interrogation the defendant did not divulge from whom he bought the drugs, in which case he would have been entitled to a reduction in punishment in terms of Article 29 of Chapter 101 of the Laws of Malta. Instead, he claimed that he bought it from different persons from Marsa. The defendant was not found in possession of a few sachets, in which case his explanation that he bought them from persons at random would have been a plausible one. The defendant was found in possession of two bags of cannabis of 23.21 grams and the other of 17.33 grams<sup>3</sup>, which is quite substantial and is obviously expensive to buy – especially for a person like the defendant who was unemployed. The Court is not prepared to believe that he did not know from whom he bought the drugs. During the interrogation, he also denied that he sells drugs, and he said that he bought the drugs to share it with his friends that same evening, but then he did not divulge the name of these friends and he also claimed that he did know where they were going to meet.
26. Hence, although the defendant did co-operate to some extent with the Police, it cannot be said that there was full co-operation on his part.
27. The defendant admitted in these proceedings that the drugs were not intended for his exclusive use, and he also pleaded guilty to conspiracy with other unnamed persons to sell and deal with drugs. This also results from the evidence submitted by the Prosecution. Hence, the submission of the defence that the amount of drugs found would be considered for personal use under Chapter 537 of the Laws of Malta is totally irrelevant. The drugs were not intended for his exclusive personal use, but they were also intended to be sold to third parties – and the Court has to consider only this fact.
28. Court expert Doctor Godwin Sammut stated in his evidence that the purity of the drugs was street level, and that although for obvious reasons consumptions varies from person to person, the EMCDDA considers that on average 0.2 grams cannabis is used to make one joint. Since the defendant was found in possession of 41.89 grams of cannabis, this means that one can make roughly two hundred and nine (209) joints from the cannabis which the defendant had in his possession (41.89 grams division by 0.2). Even if the defendant intended to use some of the cannabis himself, selling enough cannabis to make approximately two hundred (200) joints is not a negligible amount.

---

<sup>3</sup> See report of court expert Doctor Godwin Sammut a fol. 132 of the proceedings.



29. Even if for the sake of argument only, the defendant intended to sell and deal in drugs in order to finance his own drug addiction – something which was not alleged and still less proved – the Court does not consider this to be a mitigating factor. As the Court of Criminal Appeal<sup>4</sup> stated in the case **The Police vs Carmel Shone Agius**, decided on the 20<sup>th</sup> January 1997,<sup>5</sup> a person who has a drug addiction should try to rehabilitate himself and not accept to traffic drugs in order to acquire it without paying money. The bad habit of a person does not entitle him to cause damage to other people, and possibly ruin the lives of young people to satisfy his own needs.
30. In view of the above considerations, the Court is of the opinion the appropriate punishment of imprisonment should not be the minimum punishment possible according to law, as submitted by both parties, although it should be towards the minimum. For the reasons explained above, the fine of €2,500 must also be increased because it is below the minimum amount of fine which should be imposed in this case. The Court is also of the opinion that this fine should not be the minimum imposed by law, although it should be towards this minimum.

## Conclusion

31. In view of the abovementioned reasons, the Court:
1. finds the defendant not guilty of the second (2<sup>nd</sup>) charge preferred against him, and acquits him of it;
  2. abstains from taking cognisance of the sixth (6<sup>th</sup>) charge preferred against the defendant;
  3. after seeing Articles 189 and 189A of the Criminal Code, Chapter 9 of the Laws of Malta, Article 15(1)(a) of Chapter 65, Articles 3(1), (1A), (2)(a) u (2A) of Chapter 104, Article 8(d), Part IV and Part VI, and Article 22(1)(a) and (f) and Article

---

<sup>4</sup> Presided by Judge Vincent De Gaetano.

<sup>5</sup> Appeal Number: 198/96

22(2)(b)(i) of Chapter 101 of the Laws of Malta, and regulations 4 and 9 of Government Notice 292/1939 (Subsidiary Legislation 101.02), finds the defendant guilty of charges numbered one (1), three (3), four (4), five (5) and seven (7) preferred against him, and in the light of all the circumstances of the case, condemns him to a period of eighteen (18) months effective imprisonment, from which one must deduct any time the person convicted was being kept under preventive arrest in connection with these proceedings.

4. Moreover, the Court condemns the defendant to the punishment of a fine (multa) of three thousand and five hundred Euro (€3500), which is to be paid forthwith. If the person convicted fails to pay the amount due as a fine, the fine will be converted into a period of imprisonment at the rate established by law.
5. In terms of Article 3(2A) of Chapter 104 of the Laws of Malta, the Court orders the disqualification of the person convicted from holding or obtaining a driving licence for a period of twelve (12) months from to-day.
6. The person convicted is also condemned to pay the amount of seven hundred and nine Euro and six cents (€709.06) representing the expenses incurred in the appointment of experts, in terms of Article 533(1) of Chapter 9 of the Laws of Malta, within six (6) months from to-day. If he fails to pay this amount, or if he fails to pay any balance of this amount within this time-limit, this amount or any balance of it will become immediately due and payable, and it will be converted into a period of imprisonment at the rate established by law.
7. The Court orders that the forged document, drugs and any other object related to drugs exhibited in these proceedings is forfeited in favour of the Government of Malta. The Court also orders their destruction of all these items under the supervision of the Registrar.

**Magistrate**

**Doreen Pickard**  
**Deputy Registrar**