



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

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

Case No.: 103/2024

THE REPUBLIC OF MALTA

-Vs-

BUBAKAR KANDEH

Today, 18th March 2025

The Court,

Having seen the charges brought against **BUBAKAR KANDEH**, 27 years of age, born in Basse, Gambia, on the 1st January 1997, residing at Flat 4, Triq Dun Xand Cortis, Birkirkara and holder of Gambian Passport number PC744604 who was charged with having sometime between then (22:00) in the evening and one (01:00) in the morning in the night between the thirtieth (30th) and the thirty first (31st) of January 2024 inside the building of Victoria Flats which is found in Triq Dun Xand Cortis in Birkirkara and/or elsewhere in the Maltese Islands:-

1. With the intention to commit a crime, manifested such intention by overt acts which were followed by a commencement of the execution of the crime was

not completed in consequence of some accidental cause independent of his will, and if such crime was committed it would have been willful arson of a house, warehouse, shop, dwelling-house, vessel, vehicle, dock or any building, shed or other place whatever, which arson would have been of a house, warehouse, shop, dwelling-house, vessel, vehicle, dock or any building, shed or other place whatever with a person being therein and he could have foreseen that a person was actually in the place and this in violation of Art. 52(1)(a) and 316(a) of Chapter 9 of the Laws of Malta.

2. And furthermore on the same date, place, time and circumstances, caused 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 on article 222(1) and this in violation of Art. 251(3) of Chapter 9 of the Laws of Malta.
3. And furthermore on the same date, place, time and circumstances, at night time, disturbed the repose of the inhabitants by rowdiness or bawling, or in any other manner and this in violation of Art 338(m) of Chapter 9 of the Laws of Malta.
4. And furthermore on the same date, place, time and circumstances, in any manner not otherwise provided for in this Code, willfully disturbed the public good order or the public peace and this in violation of Article 338(dd) of Chapter 9 of the Laws of Malta.
5. And furthermore on the same date, place, time and circumstances, in any public place or place open to the public, was found drunk and incapable of taking care of himself or whilst being in any public place or place open to the public was manifestly in a state of intoxication or being in such a state, caused any annoyance or disturbance and this in violation of Article 338(ff) of Chapter 9 of the Laws of Malta.
6. And furthermore on the same date, place, time and circumstances attempted to use force against any person with intent to insult, annoy or hurt such person or others and this in violation of Article 339(1)(d) of Chapter 9 of the Laws of Malta.

7. And furthermore on the same date, place, time and circumstances uttered insults or threats not otherwise provided for in this Code, or being provoked, carried his insult beyond the limit warranted by the provocation and this in violation and this in violation of Article 339(1)(e) of Chapter 9 of the Laws of Malta.
8. And furthermore on the same date, place, time and circumstances willingly committed any spoil, damage or injury to or upon any movable or immovable property belonging to any other person which amount of the damage does not exceed two hundred and fifty euros (€250) and this in violation of Article 325(1)(c) of Chapter 9 of the Laws of Malta.

In case of guilt for all the crimes mentioned above or for only one or some of them, the Court is kindly requested to use against the offender the provisions of Articles 15A and 532A of the Criminal Code, and this is in addition to inflicting the penalty or penalties established by law;

The Court is kindly requested that in addition to inflicting the punishment established by the Law, if it deems it appropriate to provide for the safety of the injured parties by making an Order of Restraint against the accused and this in accordance with article 382, 383, 384, and 385 of Chapter 9 of the Laws of Malta.

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

Having heard the accused during the examination plead not guilty to the charges;

Having heard the testimony of the witnesses brought forward by the Prosecution;

Having seen that by virtue of a decree dated 20th March 2024 the proceedings were ordered to be conducted in the English language;

Having seen that the Attorney General by means of a note dated 17th January 2025, sent the accused for trial before this Court in respect of the offences under the following articles of law:-

- (a) Articles 41(1)(a) and 316(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (b) Articles 250(1), 250(2), 251(1) and 251(3) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (c) Articles 338(m), 338(dd) and 338(ff) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (d) Articles 339(1)(d) and 339(1)(e) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (e) Article 325(1)(c) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (f) Articles 7, 15A, 17, 23, 31, 382A, 383, 384, 385, 386, 412C, 412D, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having heard the Prosecution and the defence declare during the hearing of the 13th March 2025 that it is agreed that in the circumstances that appear to have been established from the evidence, the provision in the Criminal Code which would be applicable in the event of a declaration of guilt in respect of the first charge, is article 318 of the Criminal Code even though this provision was not expressly indicated by the Attorney General in the written request filed on the 17th January 2025 as a crime in respect of which the accused was sent for trial by this Court in terms of article 370(3)(a) of the Criminal Code;

Having heard the defendant, in view of the said declaration, register a guilty plea in respect of all charges during the hearing of the 13th March 2025;

Having heard the defendant confirm his guilty plea even after having been afforded the time to reconsider his admission of guilt and to consult with his legal counsel and even after the Court explained to him in simple language, the gravity of the offences

with which he is charged and the punishment contemplated by law in the event of a finding of guilt for that offence and also after the Court was satisfied that the accused understood the legal consequences of his admission of guilt;

Have seen all the evidence and other acts of the proceedings;

Having considered;

That in view of the accused's voluntary and unconditional admission of guilt, in the presence of his legal counsel, the Court has no alternative but to find him guilty of all charges brought against him and proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence.

That the defendant is charged primarily with attempted arson under article 316(a) of the Criminal Code, which punishes whosoever shall wilfully set fire to any house, warehouse, shop, dwelling-house, vessel, vehicle, dock or any building, shed or other place whatsoever, any person being therein at the time of the setting on fire. He is also charged with voluntary damage to property and the crime of private violence in terms of article 251(3) of the Criminal Code.

The charges revolve around an incident which took place in the common parts of the apartment block where the accused used to reside, in Birkirkara, where while evidently intoxicated or under the influence of some other substance, he caused a commotion by shouting frantically and pounding on the doors of two apartments in the same block. When nobody responded, as the neighbours were frightened by his yells and the battering on their doors, the accused began to shout angrily and threatened to burn the place down. He also damaged the front door of the block and the door of Flat 1 in the same block and then proceeded to kindle a fire in the vicinity of two gas cylinders which had been purchased earlier on by Simone Spiteri and were placed under the staircase on the ground floor of the common entrance to the apartment block.

It is established from the evidence that although the accused did set fire to some material situated under the common staircase, this was described by the court-appointed expert, David Borg Saydon, as “a very small fire” which was not significant enough, even if it was left to burn without anyone having intervened to extinguish it, to cause the necessary pressure required for the gas cylinders or either of them to explode. Neither was it significant enough to spread to the common staircase of the block, because the stairs were made out of concrete and the fire was too small. The expert also confirmed that the fire was contained at ground floor level to the material that was ignited and there was no possibility that it would have spread further.

Bearing these considerations in mind, the Court, despite the admission registered by the accused to the charge of arson endangering life in terms of article 316(a) of the Criminal Code, cannot find the accused guilty of this crime since it is established from the evidence that the fire was contained to ground floor level only where, evidently, no persons reside and moreover there were no persons present at the time of the offence and consequently, there was no danger whatsoever that the fire could have imperilled life.

In fact, the accused registered his admission to the charge of arson only subsequently and in view of the declaration registered in the minutes of the hearing by both the defence and the Prosecution, that the circumstances of the case fall squarely within the scope of the crime of arson without danger to life envisaged by article 318 of the Criminal Code, which declaration is correct and the Court shall consequently find the accused guilty upon his own admission of the crime envisaged in the said article 318. As also rightly pointed out by the Prosecution in its submissions regarding punishment, although article 318 of the Criminal Code was not expressly indicated by the Attorney General as a crime in respect of which the accused was sent for trial by this Court, it is evident that the crime envisaged under article 318 is the lesser and minor offence when compared to the crime envisaged in article 316(a) of the Criminal Code and may thus be deemed to be comprised in the graver offence.

The Court also took into account the fact that the accused is charged with the attempted offence rather than the consummated offence of arson: the evidence is unequivocal in that the accused did ignite a fire inside the building with intent to burn the building, however this fire did not cause the building to catch fire due to a cause which was independent of the will of the offender, that is, the fire was too small for the purpose intended and failed to spread. In the circumstances of the case, where it appeared that the accused had been desperately seeking help as he was feeling unwell despite this being due to some form of intoxication, the fact that nobody responded to his call for help and the fact that he had also been respected neighbour in the apartment block, the punishment shall be decreased in terms of article 41(1)(a) of the Criminal Code, by two degrees, keeping in mind also the accused's clean conviction sheet.

Finally, the accused admitted his guilt in respect of the offence under article 325(1)(c) of the Criminal Code, that is the crime of voluntary damage to property. The Court understands that this crime refers to the damage caused by the accused to the detriment of the owners of some of the apartments in the block and in the common parts other than by means of the crime of arson and therefore, since the said damage was caused by any means other than those referred to in the preceding articles of the relative Sub-title, including the crime of arson under article 318, the accused can, and upon his own admission must, be found guilty of both offences.

Finally, the Court shall not find the accused guilty, despite his admission to the charges, of the crime envisaged in article 250 of the Criminal Code even though the accused was sent for trial by the Court for the said crime, since this crime is not reflected in any of the charges in the charge sheet and moreover, the said crime does not result from the evidence collected in the inquiry. Therefore, since this offence was not included in the inquiry and is in any event altogether separate and distinct from the offences included in the inquiry, it was necessary for the Attorney General to proceed in terms of article 435(2) of the Criminal Code, but she failed to do so. The Court

shall only make reference to the said article 250 in so far as it prescribes the applicable punishment for the offence under article 251(3) of the Criminal Code.

For these reasons, the Court after having seen articles 17(b)(d), 31, 41(1)(a), 251(3), 318, 325(1)(c), 338(m), 338(dd), 338(ff), 339(1)(d) and 339(1)(e) of the Criminal Code, Chapter 9 of the Laws of Malta, finds BUBAKAR KANDEH guilty as charged upon his own admission, and condemns him to imprisonment for a term of eighteen (18) months.

For the purposes of article 22 of the Criminal Code, any time prior to conviction and sentence during which the offender was in prison for the offences for which he has been hereby convicted and sentenced, not being time in prison in execution of a sentence, shall count as part of the term of imprisonment under this sentence.

In terms of article 533 of the Criminal Code, orders the offender to pay unto the Registrar the total sum of one thousand and seven Euro (€1,007) representing the amount incurred in the employment of experts in the proceedings, within six (6) months and orders also that a copy of this judgement is served on the Registrar of Court to take cognisance thereof.

For the purposes of article 15A of the Criminal Code, orders the offender to pay the sum of one hundred and fifty Euro (€150) to Simone Spiteri and the sum of twenty five Euro (€25) to Joyce Camilleri and the sum of forty Euro (€40) to either of the owners of the apartments in Victoria Flats, Triq Dun Xand Cortis, Birkirkara for the specific purpose of repairing the damages caused to the common parts of the said apartment block, by way of compensation for the damages caused as a result of the offence under article 325(1)(c) of the Criminal Code.

This order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure

The Court, for the purposes of article 383 of the Criminal Code and in addition to the punishment and in order to provide for the safety of the individuals living in Victoria Flats, Triq Dun Xand Cortis, Birkirkara and for the keeping of the public peace, requires the offender to enter into his own recognizance in a sum of one thousand Euro (€1,000) for a period of twelve months.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**