



**IN THE COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE**

Magistrate Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

JUDGEMENT

Given today Wednesday, the twenty-third (23rd) of April 2025

Case Number 11/2023

The Police

(Superintendent Bernard Charles Spiteri)

Vs

Bechir Faissal El Bechir

Mohamed Abdirisak Ahmed

The Court,

Having seen the charges brought against:

- A. **Bechir Faissal El Bechir**, son of Faissal and Elhasem, born in Sudan on the first (1st) of January 1993 holder of identity card number 126278(A);

B. **Mohamed Abdirisak Ahmed**, son of Abdirisak and Ayan, born in Mogadishu, Somalia on the first (1st) of January 1996 and residing at Mercieca Lodge, Flat G2, Triq ir-Ranċiż, Munxar, Gozo holder of identity card number 9001290(A);

for having on the fifth (5th) April 2023, at about half past seven in the evening (19.30hrs) whilst being in Rabat Road, Xlendi I/o Munxar or in the Maltese Islands:

(1) committed theft of local currency, which value did exceed two hundred thirty-two euro and ninety-four cents (€232.94) but did not exceed two thousand and three hundred and twenty-nine euro and thirty seven cents (€2,329.37), which theft was aggravated by violence, amount and place to the detriment of Beshir Gemie Mohemmed Ali;¹

(2) and also with having on the same date, time, place and circumstances without a lawful order from the competent authorities and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined any person namely Beshir Gemie Mohemmed Ali against the will of the same;²

¹ Articles 261, 262, 267 and 269 of Chapter 9 of the Laws of Malta.

² Article 86 of Chapter 9 of the Laws of Malta.

(3) and also with having on the same date, time, place and circumstance without the intent to kill or put the life in manifest jeopardy, caused grievous injuries on the person of Beshir Gemie Mohemmed Ali as certified by Dr. Alexander Krynicky M.D. Reg. No. 4908;³

(4) and also with having on the same date, time, place and circumstances willfully disturbed the public good order or the public peace;⁴

Bechir Faissal El Bechir alone was also charged:

(5) with having on the same date, time, place and circumstances driven a vehicle of the make Peugeot Partner with registration plates CGV 325, without a license issued from the competent authority;⁵

(6) and also with having on the same date, time, place and circumstances, driven a vehicle of the make Peugeot Partner with registration plates CGV 325, without being covered with an insurance policy;⁶

³ Article 214, 216 and 218 of Chapter 9 of the Laws of Malta.

⁴ Article 338(dd) of Chapter 9 of the Laws of Malta.

⁵ Article 15(1)(a) of Chapter 65 of the Laws of Malta.

⁶ Article 3 of Chapter 104 of the Laws of Malta.

(7) and also with having on the same date, time, place and circumstances driven vehicle of the make Peugeot Partner with registration plates number CGV 325 in a reckless, negligent and dangerous manner;⁷

Mohamed Abdirisak Ahmed alone was also charged:

(8) with having on the same date, time, place and circumstances carried outside any premises or appurtenance thereof, a knife or cutting or pointed instrument of any description without a licence or permit from the Commissioner of Police;⁸

(9) and also with having become a recidivist after being sentenced by the Courts of Malta/Gozo for an offence by a judgment which has become absolute.⁹

The Court was also humbly requested to provide for the safety of Beshir Gemie Mohemmed Ali in accordance with Article 383 of Chapter 9 of the Laws of Malta.

The Court was also humbly requested that, in passing judgment against the accused, together with any punishment to which it may sentence the offender, make a Restraining Order in terms of Article 382A of

⁷ Article 15(1)(a) of Chapter 65 of the Laws of Malta.

⁸ Article 6 of Chapter 480 of the Laws of Malta.

⁹ Article 49, 50 and 289 of Chapter 9 of the Laws of Malta.

Chapter 9 of the Laws of Malta for the protection of Beshir Gemie Mohemmed Ali.

The Court was also kindly requested, for the purpose of providing for the safety of the injured party, to issue a Protection Order under 412C of the Chapter 9.

The Prosecution also asked the Court to disqualify the offender from holding or obtaining a driving license for a period of time that the Court deems fit.

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

Having seen the documents exhibited and all acts of the Case;

Having seen the testimony given by all witnesses in this case;

Having seen the note filed by the Attorney General dated twenty-first (21st) February 2025¹⁰ by virtue of which she sent both accused for trial by this Court of Magistrates (Gozo) as a Court of Criminal Judicature:

¹⁰ Fol. 269 et seq of the acts of this case.

- as regards **both accused** under the provisions of:
 - (a) Articles 261, 262, 267, 269, 276, 277, 279, 280 and 281 of Chapter 9 of the Laws of Malta;
 - (b) Article 86 of Chapter 9 of the Laws of Malta;
 - (c) Articles 214, 215, 216 and 218 of Chapter 9 of the Laws of Malta;
 - (d) Article 338(dd) of Chapter 9 of the Laws of Malta;

- As regards **Bechir Faissal El Bechir** alone under the provisions of:
 - (a) Article 15(1)(a) of Chapter 65 of the Laws of Malta;
 - (b) Article 3 of Chapter 104 of the Laws of Malta;
 - (c) Articles 17, 31 and 533 of Chapter 9 of the Laws of Malta;

- As regards **Mohamed Abdirisak Ahmed** alone under the provisions of:
 - (a) Article 6 of Chapter 480 of the Laws of Malta;
 - (b) Articles 49, 50 and 289 of Chapter 9 of the Laws of Malta;
 - (c) Articles 17, 31 and 533 of Chapter 9 of the Laws of Malta.

Having seen that during the sitting of the sixth (6th) of March 2025 the articles sent by the Attorney General were read out in open court and during the same sitting both accused declared that they had no objection that the case be heard and tried summarily by this Court;

Having heard final submissions by the Prosecution and the Defence;

Having seen the Court minutes of the sittings of the first (1st) of April 2025 and the fourteenth (14th) of April 2025 wherein the case was adjourned today for judgement;

Considered;

The facts of the case are as follows: on the fifth (5th) of April 2023 Beshir Gemie Mohammed Ali (hereinafter referred to as the complainant) lodged a report at the Victoria Police Station wherein he alleged that earlier on that day as he was walking alone along Triq il-Għajn, Fontana direction Victoria, he was stopped by another Sudanese national whom he knew and whom he identified as also named Bechir Faissal El Bechir (hereinafter referred to as Faissal). The latter got out of his vehicle armed with a piece of wood and requested the complainant to hand him over the money. The alleged aggressor grabbed complainant from his shirt and dragged him to a nearby wall whilst insisting with complainant that complainant had to hand him over the money. At that point in time a bus passed by and the aggressor left.

Complainant stated that he continued walking to Victoria when some minutes later he was once again stopped by the same Faissal and his friend Mohammed Abdirisak Ahmed (hereinafter referred to as

Mohammed). Both of them had got off a vehicle which had stopped nearby. Faissal had a piece of wood in his hands whereas Mohammed had a knife which was some fifteen centimetres long. Faissal insisted with complainant that he had to give him the money due as otherwise complainant was going to face dire consequences. Faissal then hit complainant with the piece of wood he had in his hands. Complainant fell and he was restrained by Mohammed. Faissal then headbutted complainant while the latter was being restrained by Mohammed. Mohammed also punched complainant causing him some tooth injuries. The sum of five hundred and fifty euro (€ 550) was also stolen from complainant. Complainant was admitted to the Gozo General Hospital where he was certified that he had suffered grievous injuries.

Following investigations carried out by the Police, the two alleged aggressors were traced by the Police and arrested.

In the statement which Mohammed Abdirisak Ahmed released to the Police after that he was given his legal rights, he claimed that complainant owed rent money to Faissal. He had seen complainant walking up the road to Victoria and he had informed Faissal about this. He went on to say that the two boarded Faissal's car and went to meet complainant. Complainant was already holding a stone in his hands behind his back. He went on to state that Faissal and complainant started talking and then the two ended up fighting. Mohammed stated that he got out of the car and managed to separate the two. During the

fight he saw Faissal headbutting complainant. Mohammed also insisted that nobody made use or had a knife as the argument was unfolding. He also insisted that nobody stole complainant's money.

In the statement which Faissal released to the Police after that he was given his legal rights, Faissal admitted that although he had had an argument with complainant, he refuted the claim that he had stolen money from complainant and that he had hit him with a piece of wood. Faissal insisted that he only headbutted complainant to defend himself because complainant had grabbed him by the neck. Faissal also confirmed that no knife was used in this whole argument. Faissal insisted that he had approached complainant because he was owed money by complainant and because complainant was holding his mobile and was refusing to return it to him. Faissal admitted that he was driving a vehicle which was not covered by a road licence and a valid insurance policy.

Considered;

As this Court pointed out in the case **Il-Pulizija vs Ahmed Mohammed Abdulkadir**¹¹:

*“għas-sejbien ta’ htija fl-imputat għar-reati li dwarhom
ikun gie mixli fiċ-Ċitazzjoni, jeħtieg li l-Prosekuzzjoni*

¹¹ Decided on the sixteenth (16th) December 2024 – Case Number 272023.

tipprova rabta ossia a link of causation fil-każ ta' kull reat addebitat, bejn l-imputat u l-event kriminuz: ness li jrid jikkonvinċi lill-Qorti sal-grad taċ-ċertezza morali illi kien proprju l-imputat u ħadd iktar, li seta' wettaq dan l-att kriminuz. Din iċ-ċertezza trid tkun imnissla mir-rizultanzi ta' sħarriġ sħiħ u bir-regqa tal-evidenza kollha miġjuba, tal-provi ammissibbli kollha li jkunu tressqu quddiemha u s-sottomissjonijiet, li jiffurmaw parti mill-atti proċesswali, u f'xejn iktar jew inqas minn hekk." (Enfażi tal-Qorti).

The Court needs therefore to analyse whether in the light of the evidence submitted this link of causation exists. After having gone through all the evidence submitted, the Court notes the following:

- (a) the parte civile who was the main witness in this case opted not to testify so as not to incriminate himself. This weakened the Prosecution's case to a substantial extent since the parte civile's testimony was definitely the Prosecution's main piece of evidence in this case. Hence, the Court was not provided with first-hand information of this alleged mugging which resulted in the parte civile suffering grievous injuries;

(b) secondly the same complainant declared that he was not interested in continuing this case.¹² This is tantamount to a renunciation of the criminal action against both accused. However, this *per se* will not lead to an automatic acquittal since all charges are *ex officio* in nature and the continuation of criminal proceedings is not dependent on the parte civile's complaint. Furthermore, there were other witnesses who testified in these proceedings and whose evidence needs to be examined too;

(c) PS 428 Carmelo Debattista and PS 364 David Borg Grima testified on the contents of the reports which were received by them or on the contents of the statements which were given to them. Therefore, their evidence amounts to hearsay evidence. The other Police Officers testified on the execution of the arrest warrants which were issued against both accused. Once again this evidence does not throw any light on what effectively happened on the 5th April 2023;

(d) the only available evidence as to what really happened on the day are the written statements given by both accused to the Police after that both of them were given their legal rights.

¹² Fol. 110 of the acts of the case.

The Court will now examine the articles of law which have been quoted by the Attorney General. This to determine whether on the basis of the available evidence, the Court can arrive to a declaration of guilt.

I. Articles 261, 262, 267, 269, 276, 277, 279, 280 and 281 of Chapter 9 of the Laws of Malta (First Charge)

These articles refer to the offence of theft. From the evidence submitted, the Court cannot effectively conclude that the accused stole money from complainant. As already highlighted, the complainant chose not to testify in these proceedings. Secondly, both accused vehemently deny that they stole money from complainant. Thirdly, the sum which complainant said that it was stolen from him was not found in the possession of the accused. Furthermore, the acts do not contain any other circumstantial evidence which clearly pinpoints to the fact that this theft took place and that the accused were solely responsible for it. Hence, the first charge has not been proven.

II. Article 86 of Chapter 9 of the Laws of Malta(Second Charge)

Article 86 refers to the illegal arrest of a person by another private citizen. Once again there is no evidence in the acts which links both accused with this specific offence. Hence the Court will also be constrained to acquit the accused from this second charge.

III. Articles 214, 215, 216 and 218 of Chapter 9 of the Laws of Malta (Third Charge)

These articles refer to the offence of grievous bodily harm which was allegedly suffered by complainant at the hands of both accused. In his report the medico-legal expert Dr Mario Scerri appointed by this Court concludes that as a result of the alleged aggression complainant had suffered a fracture of the maxilla as well as a tooth and a dental crown. In view of the fracture of the maxilla, the expert classified the injuries as grievous *per durata*.

In his statement, the accused Mohamed Abdirisak Ahmed denies that he was involved in the argument which took place between complainant and Faissal. He specifies that he stayed inside the vehicle and he only went out when Faissal and complainant started fighting and he separated them. There is nothing in the acts which contradicts the version given by Mohamed Abdirisak Ahmed because the parte civile did not testify in this case.

In his statement Faissal only admits that he headbutted the parte civile when the latter grabbed him by the neck. He did so in order to defend himself. He denied hitting the accused with a piece of wood. The Court finds it difficult to attribute the extent of the injuries sustained by the parte civile – which were described in detail by the Court expert – as the result of a simple head-butt. Had the injuries

really been caused just by a head-butt, Faissal would have definitely sustained injuries in the whole process. However, no evidence was submitted indicating that the accused Faissal had suffered injuries which were compatible with a strong head-butt. The only injuries which were reported on Faissal's person was tenderness on the left side of his back. The incident itself was not captured on any CCTV footage and the piece of wood which was referred to by complainant in his original report was never found.

In the light of the fact that the parte civile decided not to testify in these proceedings, the Court was not in a position to determine the exact dynamics how the parte civile suffered these injuries. Hence, in view of the lack of adequate evidence clearly linking the injuries suffered by the parte civile to the accused, the Court cannot arrive to a finding of guilt. Hence the Court will also be acquitting both accused of this third charge.

IV. Article 338(dd) of Chapter 9 of the Laws of Malta (Fourth Charge)

The Court is also constrained to acquit both accused from the charge contemplated under article 338(dd) of Chapter 9 since the elements required for a finding of guilt for this offence have not been proven.

V. Article 15(1)(a) of Chapter 65 and Article 3 of Chapter 104 of the Laws of Malta (Fifth, Sixth and Seventh Charges)
(Referable only to the accused Bechir Faissal El Bechir)

As regards the fifth charge, in his statement Faissal admitted that on the fifth (5th) of April 2023 he was driving the vehicle indicated in the charge sheet. From the evidence submitted, precisely the testimony given by Transport Malta representative Saviour Farrugia, it transpired that Faissal was not in possession of a Maltese driving licence. Hence he was not authorised to drive any vehicle in Malta. Since he was not in possession of a driving licence, he could not have been covered by a valid insurance policy as required by Chapter 104 of the Laws of Malta. This as pointed out in various Court of Criminal Appeal judgements, amongst which, **Il-Pulizija vs Mohammed Knann**.¹³ As highlighted in these judgements, to exclude criminal responsibility in so far as the charge contemplated under article 3(1) of Chapter 104 is concerned, the accused had to actively prove that the insurance policy would have covered him all the same notwithstanding that he was driving the vehicle without a driving licence. No evidence was produced by Faissal to this effect. Hence the fifth (5th) and sixth (6th Charge) have been proven.

The Court also notes that from the evidence submitted on the fifth (5th) of April 2023 the vehicle in question that is CGV 325 was also

¹³ Decided 7th February 2023, Appeal Number 479/2022.

not covered by a valid road licence. In fact its road licence had expired on the 31st March 2023.¹⁴ However, the Court cannot pronounce guilt as regards this breach for the simple reason that this charge was not cited as one of the charges in the original charge sheet and hence there was no compilation of evidence vis-à-vis this charge.

As regards the seventh (7th) charge, there is no reference whatsoever to the way Faissal had driven the vehicle on the day this case refers to. Hence the Court cannot pronounce guilt as regards this charge.

VI. Article 6 of Chapter 480 (Eighth Charge) and Articles 49,50 and 289 (Ninth Charge) (Referable only to the accused Mohamed Abdirisak Ahmed)

Although from the evidence submitted, it resulted that Mohammed Abdirisak Ahmed was not in possession of a licence issued in terms of Chapter 480 to carry outside any premises a knife or a cutting or pointed instrument, the Court does not have a confirmation that on the day of the incident Mohammed was in possession of a knife. He clearly rebutted this fact in his statement. No other evidence was brought to contradict this claim. Hence, the Court will be acquitting the accused of this charge.

¹⁴ Vide Document SF 1 at fol. 94.

Likewise, the Court will also be acquitting Mohammed as regards the ninth charge. Mohammed will not be found guilty of any charge and consequently he cannot be considered as a recidivist.

Considered;

In view of what has been stated earlier on in this judgement, the Court will only be pronouncing guilt vis-à-vis Faissal as regards the fifth (5th) and sixth (6th) charges: it will be finding him guilty that on the fifth (5th) April 2023 he drove a vehicle when he was not in possession of a driving licence and when he was not covered by an insurance policy.

As regards punishment, the Court notes that Faissal has been kept under preventive custody since he was first arraigned on the thirteenth (13th) April 2023. He was never granted bail because after the arraignment no request for bail was ever filed. Although normally the Court in similar cases imposes a fine (*multa*), the Court considers that if it were to do so in this case it would be effectively punishing the accused twice bearing in mind that he has already been in preventive custody for more than twenty-four (24) months. In the circumstances of this case the Court therefore considers that it is more appropriate to impose an effective term of imprisonment and to have the term of preventive custody deducted from such term of imprisonment.

- **Decide**

Therefore, for the reasons expounded above the Court:

- (a) **is not finding the accused Mohamed Abdirisak Ahmed guilty of all charges brought against him (precisely the first (1st), the second (2nd), the third (3rd), the fourth (4th), the eighth (8th) and the ninth (9th) charges) and consequently it is acquitting him of all charges brought against him;**
- (b) **is not finding the accused Bechir Faissal El Bechir, guilty of the first (1st), the second (2nd), the third (3rd), the fourth (4th) and the seventh (7th) charges and is acquitting him of these charges;**
- (c) after having seen article 17 of Chapter 9 of the Laws of Malta, articles 15(1)(a) and 15(3) of Chapter 65, articles 3(1), 3(2)(a) and 3(2A) of Chapter 104 **is finding the accused Bechir Faissal El Bechir guilty of the fifth (5th) and sixth (6th) charges** and is condemning him to **four (4) months effective imprisonment.** The period of time which the offender Bechir Faissal El Bechir has spent under preventive custody in connection with this case is to be deducted from the term of imprisonment imposed in this judgement.

Furthermore, the Court is disqualifying the offender Bechir Faissal El Bechir from obtaining or holding a driving licence for a period of twelve (12) months running from midnight of tomorrow.

Since the parte civile opted not to testify in these proceedings so as not to incriminate himself, he effectively renounced to the criminal action vis-à-vis both accused and the Court acquitted both accused from all charges involving the parte civile, the Court is rejecting the Prosecution's request to apply articles 382A and article 383 of Chapter 9 of the Laws of Malta.

Finally, since both accused have been acquitted from the charge relating to the grievous bodily harm allegedly suffered by the parte civile, the Court will not be ordering the accused to pay the expenses related to the Dr Mario Scerri's report in terms of article 533 of the Criminal Code.

(sgd.) Dr. Jean Paul Grech
Magistrate

(sgd.) Diane Farrugia
Deputy Registrar

True Copy

For The Registrar