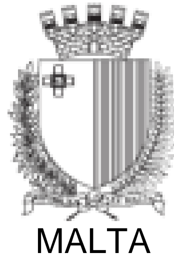

CRIMINAL COURT

THE HON. MR. JUSTICE JOSEPH GALEA DEBONO

Sitting of the 12 th October, 2009

Number 17/2008

The Republic of Malta
Vs
Eduardo Navas Rios

The Court,

Having seen the bill of indictment no. 17/2008 against the accused Eduardo Navas Rios wherein he was charged with:

1. After the Attorney General premised in the First Count of the Bill of Indictment that in October 2006 money laundering investigations were being carried out with regards to certain individuals, concerning large amounts of money transferred to Panama since December two thousand and five (2005) suspected to have totalled to one hundred and fifty thousand Maltese Liri (Lm150,000) equivalent to

three hundred forty nine thousand five hundred Euro (€349,500). Initially it transpired that the recipients of these funds were connected to an arrest which took place following a meeting with a drug courier and moreover the same recipients did not have any provenance for the funds transferred, hence indicating that drug money was being laundered to Panama out of Malta.

In the course of further investigations other persons were investigated, including a certain Simone Sciberras who had a substantial amount of money deposited in her bank account but which owing to her background couldn't have possibly been earned legitimately by her. This sum amounted to approximately twenty eight thousand Malta Liri (Lm28,000), equivalent to approximately six five thousand two hundred and forty Euro (€65,240). Although this suspect attempted to justify the source of these funds, these did not tally with what effectively transpired. It resulted further that Simone Sciberras at the time had a relationship with Eduardo Navas Rios who ironically featured as one of the persons who was also wanted for investigations connected with the money laundering investigations above mentioned. In fact Eduardo Navas Rios hereafter referred to also as the accused, informed the police that he had given the money to his girlfriend so that she could deposit same into her account and this even in the hope of acquiring accrued interest on the sum duly deposited. The money transferred by the accused, which amounted to between twenty and twenty two thousand Maltese Liri (Lm20,000 – Lm22,000) equivalent to between forty six thousand six hundred Euro and fifty one thousand seven hundred Euro (€46,600 - €51,700) was allegedly stolen by the accused from his cousin Georgie Neville Navas, who was also wanted in connection with the money laundering investigations and which money, according to the accused emanated from highly illicit activities. It resulted

also that Domingo Ricardo Duran Navas was another cousin of the accused, who likewise was involved and arraigned in connection with the original illicit transactions being investigated by the police.

It resulted further that following this incident, the accused went to Panama and used this money so as to rebuild his mother's house and started a car-importation business between the United States and Panama. When being questioned, it transpired that the accused had a working permit to work in Malta but upon verification it was established that he had acquired the permit since February two thousand and seven (2007) and hence too short a time to earn that kind of money legitimately, not to mention the nature of his jobs and income which were insufficiently paid to earn such an amount.

Besides further police investigations verified that the accused had carried out other transactions, which took place since January 2006 and which included purchases and transfers of sums of money to Panama, ranging between fifty Maltese Liri (Lm50) equivalent to one hundred sixteen Euro (€116) and eight hundred thirty Maltese Liri (Lm830) equivalent to approximately one thousand nine hundred thirty three Euro and ninety cents (€1933.90).

Hence the accused was arrested for having on the 5th March 2007, and in the preceding months, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design, committed the above offences as well as laundering the money/things stolen in that he intentionally and illegally transferred or converted same in such a manner so as to conceal or disguise the criminal origin thereof when he was fully aware of the nature of the origin of the same. In

effect this property was knowingly obtained from criminal activity by the accused.

By committing the abovementioned acts the accused Eduardo Navas Rios rendered himself guilty of carrying out acts of money laundering on the 5th March 2007, and in the preceding months, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design, by:

i) converting or transferring property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
ii) concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
iii) acquiring, possessing or using property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
iv) retaining property without reasonable excuse knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
v) attempting any of the matters or activities defined in the above foregoing paragraphs (i), (ii), (iii) and (iv) within the meaning of Article 41 of the Criminal Code;
vi) acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of

the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v).

Wherefore, the Attorney General, in his capacity, accused Rios Eduardo Navas of having on the 5th March 2007, and in the preceding months, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design, rendered himself guilty of carrying out acts of money laundering by:

i) converting or transferring property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
ii) concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
iii) acquiring, possessing or using property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
iv) retaining property without reasonable excuse knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
v) attempting any of the matters or activities defined in the above foregoing paragraphs (i), (ii), (iii) and (iv) within the meaning of Article 41 of the Criminal Code;
vi) acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of

the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v).

Demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of not more than thirty years imprisonment or to a fine (multa) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three Euro and forty cents (€2,329,373.40) or to both such fine and imprisonment, and to the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds, as is stipulated and laid down in sections 2, 3(1), 3(2A)(a)(i), 3(3) and 3(5) of Chapter 373 of the Laws of Malta, and articles 18, 23, 23B and 533 of the Criminal Code, or to any other punishment applicable according to law to the declaration of guilty of the accused.

2. After the Attorney General premised in the Second Count of the Bill of Indictment that during the investigations concerning the circumstances indicated in the first count of this Bill of Indictment, the accused himself admitted that the sum of money transferred to his girlfriend for the purpose of deposit, which sum amounted to between twenty and twenty two thousand Maltese Liri (Lm20,000 – Lm22,000) equivalent to between forty six thousand six hundred Euro and fifty one thousand seven hundred Euro (€46,600 - €51,700), was actually taken illegally by the accused himself and against the knowledge and will of Georgie Neville Navas, the cousin of the accused, who was in possession of the said money at the time. He admitted that some time during the weeks prior to the 3rd of May of the year two thousand and six (2006), the accused took the money illegally from a black sports bag belonging to his cousin, which bag was situated at the time of the offence at the apartment of Georgie Neville Navas. It transpired also that the accused was invited to

sleep over at his cousin's apartment whenever he felt like. In fact he even had a key to the apartment in question and added that he carried out this offence during the night time i.e. between sunset and sunrise, while his cousin was in his bedroom and without his cousin's knowledge or consent.

By committing the abovementioned acts the accused Rios Eduardo Navas rendered himself guilty of aggravated theft by person, place, time and amount of the thing stolen.

Wherefore, the Attorney General, in his capacity, accused Eduardo Navas Rios of rendering himself guilty of aggravated theft by person, place, time and amount of the thing stolen; demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of not more than seven years and not less than thirteen months imprisonment, as is stipulated and laid down in sections 261(c)(d)(e)(f), 267, 268(b), 269(g), 270, 279(b), 280(b), 17, 31 and 533 of the Criminal Code, or to any other punishment applicable according to law to the declaration of guilt of the accused.

3. After the Attorney General premised in the Third Count of the Bill of Indictment that at the same time and during the circumstances mentioned as indicated in the first and second counts of this Bill of Indictment, during a search effected on the 22nd March of the year two thousand and seven (2007) at the apartment of the accused situated at Flat 2, Block B5, Triq il- Frejgatina, Qawra, in the course of the investigations at issue, the police found a total of thirty eight bullets known as point two calibre LR (long rifle) situated on the bedside locker in the residence of the accused. No weapon was found in the flat. It further transpired that the accused has no licence to hold such ammunition in his possession.

By committing the abovementioned acts the accused Eduardo Navas Rios rendered himself guilty of on the 22nd March of the year two thousand and seven (2007), and in the preceding months, kept in any premises or have in his possession, under his control any firearm or ammunition without a licence.

Wherefore, the Attorney General, in his capacity, accused Eduardo Navas Rios of rendering himself guilty of keeping in any premises or have in his possession, under his control any firearm or ammunition without a licence; demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of not more than a fine (multa) of not less than six hundred and ninety-eight Euro and eighty-one cents (698.81) or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, as is stipulated and laid down in sections 5(1), 51(2) of Chapter 480 of the Laws of Malta and in sections 17, 31 and 533 of the Criminal Code, or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen accused's Note of Pleas filed on the 15th. December, 2008 wherein he pleaded :-

1. the nullity of the first count of the bill of indictment in view of the fact that the Attorney General's direction in terms of subsection (2A) of section 3 of the Prevention of Money Laundering Act (Chap. 373) was not given.
2. the nullity of the first count of the bill of indictment in view of the fact that the facts stated therein do not constitute, in substance, the offence stated or described in the said count of the indictment.
3. the first paragraph of the first count of the bill of indictment, particularly its second and final sentence, is merely intended to unduly prejudice the accused

since the facts stated therein are unrelated to the accusation as premised in the same indictment and should be therefore deleted.
4. the inadmissibility of the evidence tendered by Dr. Stefano Filletti as well as the inadmissibility of his report (Doc. SF1) filed on the 8th. November, 2007, in view of the fact that section 2 of the Prevention of Money Laundering Act (Chap. 373) does not empower the Court to nominate an expert to draw up an inventory.

Having seen accused's list of witnesses attached to said Note of Pleas and documents filed therewith.

Having seen the Attorney General's Note of Pleas wherein he gave notice of his preliminary plea concerning the admissibility of the evidence indicated from numbers 1 till 16 since the relevance thereof to the merits of the case is nowhere indicated and in default of the object of proof for which they are intended, their admissibility or lack thereof does not transpire.

Having seen the minutes of the sitting of the 16th. March, 2009, wherein it is recorded that Dr. Giglio, defence counsel to the accused, declared that, provided that the presiding judge in the trial will emphasise to the jurors that not what is stated in the narrative part of the Bill of Indictment is to be taken into consideration but the facts that result from the evidence produced during the course of the trial, the accused was prepared to withdraw the third plea

Having seen the Note filed by Dr. Giglio withdrawing the third plea..

Having seen the Note filed by accused on the 25th. March, 2009, wherein he explained the scope (Sic!) [recte: "purpose"] and relevance of the witnesses mentioned by him.

Having seen the Note of submissions of the accused filed on the 13th. April, 2009 with regard to the second plea

Having seen the Response (Sic!) [recte: "Reply"] to said Note of Submissions filed by the Attorney General on the 27th. April, 2009.

Having heard the oral submissions of counsel for the prosecution and of defence counsel.

Now therefore considers.

With regards to accused's first plea of the nullity of the first count of the bill of indictment in view of the fact that the Attorney General's direction in terms of subsection (2A) of Chapter 373 was not given, accused submits that according to the 2008 amendment to Chapter 373 the Attorney General is bound to order whether the case is to be disposed of by the Court of Magistrates as a Court of Criminal Judicature or by this Court. As the bill of indictment was filed on the 7th. November, 2008 and procedural amendments should come into effect forthwith, in pending cases, the order required by law was lacking in this case. The bill of indictment was a charge and did not remove the need of such an order.

Counsel for the Prosecution countered by submitting that this case was instituted in 2006, when this order was not required by law.

Now, whereas the accused is correct in submitting that by virtue of Legal Notice 105 of 2008, article 3 of Chapter 373 was amended 'inter alia' by the addition of a new subarticle (2A) (a) which stated textually:-

"Every person charged with an offence against this Act shall be tried in the Criminal Court or before the Court of Magistrates……, as the Attorney General may direct …"

and that normally such procedural amendments come into application with immediate effect, in this particular case, proceedings had been instituted against the accused in 2006 when similar cases could only be tried by the Criminal Court, in view of the punishment prescribed by law. Accordingly, the Magistrates' Court acting, as a Court of Criminal Inquiry, had already commenced the compilation of evidence against accused, a compilation of evidence which could have led to the present proceedings. When the compilation of evidence was concluded, the Attorney General, decided to file the present bill of indictment according to normal procedure in similar cases, where the punishment applicable exceeds the ordinary competence of the Magistrates Court.

Although this appears to be the first time that such a plea is being raised in connection with proceedings taken under Chapter 373 of the Laws of Malta, an analogy can be drawn from two judgments delivered on similar though not identical pleas raised in connection with criminal proceedings undertaken under chapters 37 and 101 of the Laws of Malta, where provisions identical to those introduced by subarticle (2A) (a) exist.

Two important principles emerge from these judgments. The first is that the commencement of the compilation of evidence does not depend on the "order" issued by the Attorney General but on all the other provisions found in the Criminal Code. Such an order is only required for the purposes of determining which Court is to try the case. (Vide: Criminal Appeal : "Ir-Repubblika ta' Malta vs. George Mifsud" [5.2.1996]).The same principle was re-affirmed by the Court of Criminal Appeal in its superior jurisdiction in the judgment : "Ir-Repubblika ta' Malta vs. Joseph Mifsud" [29.5.2008] wherein it was stated that ;-

"L-ordni skond l-imsemmi artikolu 22 (2) (of Chapter 101 in that case) jinhareg fil-bidu tal-proceduri quddiem il-Qorti tal-Magistrati ghall-skop biss biex dik

il-Qorti tkun tista' tirregola ruha u tara ghanhiex tipprocedi bhala Qorti ta' Gudikatura Kriminali jew bhala Qorti Istruttorja fir-rigward ta' dawk l-imputazzjonijiet li jkunu jipotizzaw reat skond il-Kap.101. …..L-iskop ta'l-ordni (in that case dealing only with one of the charges eventually filed against the accused in the bill of indictment) …intlahaq meta l-Qorti Inferjuri (Sic!) pprocediet ghall-kumpilazzjoni, u gie ri-affermat bl-att ta' l-akkuza….li permezz tieghu akkuzi migjuba kontra Joseph Mifsud….effettivament tressqu quddiem il-Qorti Kriminali."

This Court rules that once the compilation of evidence legally and regularly leading to these present proceedings had already been initiated under the law as it stood at the time, when the "order" in question was not required by law, there was no need for the Attorney General to give the directive under subarticle (2A) (a) when the 2007 amendment came into effect, as this would have been utterly superfluous and would have been tantamount to an order given by the Attorney General to himself to file a bill of indictment at the end of the compilation of evidence.

Procedural rules have to be applied in a practical and sensible way and not in such a way as to get criminal proceedings tied up in knots and obstructed from taking their natural legal course in the true administration of justice. The Court of Criminal Appeal in its superior jurisdiction in re. "Ir-Repubblika ta' Malta vs. Kevin Attard." [20.11.2008] aptly commented that in such matters:-

"Il-procedura hija intiza biex tghin u tippromwovi l-amministrazzjoni tal-gustizzja, mhux biex wiehed jinqeda' biha biex jipprova jaghti gambetti; u fejn il-ligi ma tikkominax in-nullita' espressament, il-Qorti ghandha tkun kawta hafna qabel ma tiddikjara xi att jew xi procedura nulla."

In any case, this would certainly be a case where one should apply the legal maxims:-

"interpretatio fienda est ut res magis valeat quam pereat" and "benedicta est expositio quando res redimitur a destructione…" (vide Criminal Appeal "Il-Pulizija vs. Russell Bugeja" (per V. De Gaetano C. J. [29.2.008]).

The Court is therefore dismissing the first preliminary plea of the accused.

With regard to his second plea relating to the nullity of the first count of the bill of indictment, accused submitted the following:- He states that the issue that has to be addressed relates to what, in actual fact, constitutes money laundering. The Attorney General was basically saying in the first count that since the accused's economic/financial situation was such that he could not have lawfully earned the amount of money transferred to Panama, then, since such money was transferred to Panama and since it was acquired from "highly illicit activities", this amounts to money laundering. He submits that the acts of money laundering mentioned in the definition contained in Section 2 of Chapter 373 must be so carried out precisely for the purposes of laundering such proceeds emanating from the criminal activity. One cannot consider the acts in a vacuum and presume that whenever a transfer/acquisition/retention of money involving illicit earnings takes place, then the legislator is automatically contemplating a scenario of an additional charge of money laundering. This is because money laundering is a separate and distinct offence from the predicate offence that alone is merely one of the constituent ingredients of money laundering. If this were not he case, then the commission of any criminal offence from which some benefit is derived would automatically bring with it a charge of money laundering. To launder money by one of the acts mentioned in the said definition

means precisely to give a legitimate appearance to proceeds that have an illegitimate origin. This is the raison d' etre of Chapter 373. He goes on to give examples of the illogical situation that may result out of the way the Attorney General was interpreting the law.

The Attorney General retorted in his submissions on this plea that the facts outlined in this count of the bill of indictment gave a much clearer chronology and description of events which gave rise to the investigation and eventual prosecution of accused for money laundering than those stated by accused. The sum involved was substantial and unjustifiable considering the lifestyle of the accused and his partner Simone Sciberras. The latter had alerted the authorities when she deposited the sum of E65, 240 at one go in her account and this led to a more in depth investigation . Then it transpired that the money had come from illegal activities. The accused made numerous transactions to transfer the money out of Malta in the aggregate sum of E51, 700 over a period of time and even helped rebuild his mother's house in his homeland. In so doing accused 'cleaned' the provenance of the money which related to criminal activity.

In this case the predicate offence was two-fold. Primarily, in the months leading up to the arrest of accused, the police were investigating a major drug and money laundering racket between Malta and Panama where the accused was being observed as possibly being one of the persons involved. Accused admitted that he had stolen the money from his cousin and it transpires that accused suspected all along that the money he took was most likely drug money He committed the theft of "dirty money" and used same to his advantage and to that of his family. Therefore the Prosecution was contending that the laundered money appears to emanate from two predicate offences – the drug racket and the theft committed by accused himself. Finally the accused

carried out transactions with said money, thus rendering it clean-looking as a result. The predicate offence in the circumstances need not be proved beyond reasonable doubt. Suspicion thereof is sufficient for the purpose of a money laundering conviction.

The definition of money laundering in Chapter 373 is very wide in its interpretation in that it presents numerous scenarios giving rise to and constituting money laundering. The examples given by accused in his note of submissions are regulated by separate provisions and by different categorisations in our legal system. The situation in this case is rather different in that one was referring to a substantial amount of money emanating directly or indirectly, knowingly or suspiciously from criminal activity, which proceeds were knowingly retained without reasonable excuse, converted, transferred, acquired or possessed so as to conceal the provenance thereof. In view of the facts of the case it appeared clear that the intention of accused was to launder the money all along. Therefore the Attorney General submitted that the elements and circumstances presented before this Court as constituting the facts of the first and second counts of the bill of indictment are indeed an accurate representation of the offence of money laundering for all intents and purposes of law.

Having considered that this second plea of accused appears to be based on paragraph (b) of the proviso to sub-article (5) of article 449 of the Criminal Code which refers to the case where "the fact stated in the indictment does not constitute, in substance, the offence stated or described in such indictment."

Now for such a plea to be upheld by the Court it is necessary that the facts as described in the bill of indictment or in a particular count which is being contested do not constitute in substance the offence with which accused is being charged in that bill or

that particular count. (Vide: a judgement of this Court dated 20 th. June, 1995 in re. "Ir-Republika ta' Malta vs. Aibrahim Bashir Ben Matue" [Bill of Indictment 4/95) confirmed on appeal on the 15 th February, 1996, "Ir-Repubbblika ta' Malta vs. Lawrence Gatt et." [6.12.2002], confirmed by the Court of Criminal Appeal on the 22nd May, 2003, "Ir-Repubbblika ta' Malta vs. Domenic Bonnici" [5.1.2004] and confirmed on appeal on the 22nd. April, 2004 and other judgements)

In these judgements the Court quoted from extensive case law wherein it was held that in examining whether the facts, as described, are related to the accusatory part of that particular count of the bill of indictment, the Court should refer to the facts as stated in the bill of indictment and not on the facts as resulting from the records of proceedings in the compilation of evidence or as they may result in the eventual trial by jury.

It has also been constantly held by our Courts that the reason for the annulment of a bill of indictment should emanate from the document itself and the Court should and need not enter into the merits of the truth or accuracy of the facts mentioned in the bill of indictment but its exercise should be limited to ascertaining whether the formalities prescribed by law have been adhered to.

In "Rex. vs. Strickland " [21.3.1923] (Vol. XXV , p.iv. p.833) it was held that :-

"Tanto secondo la nostra gurisprudenza quanto secondo quella inglese, la nullita' dell'atto d'accusa non si accorda per ragioni nel merito ma per difetti sostanziali recanti un pregudizio, non altrimenti rimediabile nell'accustato, risultanti dalla faccia dello stesso atto che si impugna..... Da altre sentenze stampate risulta che quando si e' trattato della nullita' o meno dell'atto di accusa, tale atto e' stato sempre esaminato per se stesso, indipendentemente dal merito e delle prove."

Having considered that;

That in the narrative part of the first count of the bill of indictment the Attorney General mentions a chronology of facts which, according to him, should lead to a conviction of the offence of money laundering contemplated in sections 2, 3(1), 3(2A) (a) (i) , 3(3) and 3(5) of Chapter 373.

Having examined the wording of this part of the first count of the bill of indictment which has been reproduced verbatim in the introductory part of this judgement (and which therefore need not be repeated here) this Court is satisfied that the facts therein stated, if proven in the course of the trial by jury and if the jury is properly addressed by the presiding judge on the relative points of law related to the offence or offences in question, could conceivably lead to a conviction as requested in the first count. In other words it is clear that there exists the nexus - required by law and case law for the bill of indictment not to be defective - between the facts as stated in the narrative part of the first count and the part thereof containing the charge itself. (vide Rex. vs G.C.B. et altri" - 8.3.05 Vol. XIX; iv. P.18)"

Accordingly this Court does not deem that the facts as described in the first count do not in substance constitute the offence as charged and on the contrary considers that the requirements of the law have been adhered to and that there is no case for annulling the bill of indictment on this score. Hence the court is rejecting the second plea raised by accused.

With regard to accused's fourth plea regarding the admissability of Dr. Stefano Filletti's evidence and report (doc. SF1), accused submits that article 2 of Chapter 373 does not empower the Court to nominate [recte: "appoint"] an expert to draw up an inventory.

Counsel for the prosecution countered by submitting that according to article 5 of Chapter 373, once the law provides for the issue of a freezing order, it was necessary for the Court to determine what assets were being frozen. Hence the need of the inventory which could be compiled by an expert appointed for the purpose. In this case the Prosecution had requested the Court of Magistrates to appoint an expert for the purpose (vide fols. 7 and 8 of the records).

Having considered;

That article 5 (1) of Chapter 373 provides that :-

"Where a person is charged under article 3, the Court shall at the request of the prosecution make an order-

(a) attaching in the hands of third parties in general all moneys and other immoveable property due or pertaining or belonging to the accused, and
(b) prohibiting the accused from transferring, pledging, hypothecating or otherwise disposing of any moveable or immoveable property."

The law then goes on to list various powers of the court in the application of such a "freezing" order.

Clearly, the powers therein mentioned would necessitate a detailed research regarding the assets possessed by accused, a research that a Court of Law can by virtue of article 650 of Chapter 9, definitely delegate to an expert, in this case a legal expert familiar with the notions of law mentioned in said subarticle. There is certainly nothing in the law - and in particular in Chapter 373 - precluding the Court from appointing an expert on such a technical matter, providing that the information therein obtained by the expert is obtained under oath by the person or persons from whom it is obtained and that all the procedures required by law have been adhered to.

The plea under review however is not based on the inadmissibility of evidence not so collated but merely on the alleged lack of authority of the Court of Magistrates as a Court of Criminal Enquiry to appoint such an expert in proceedings undertaken under Chapter 373.

This Court is therefore dismissing accused's fourth plea. However, it reserves to rule on the admissibility of Dr. Filletti's evidence and of his report, in the course of the trial by jury , if needs be, on other considerations not mentioned in accused's plea as aforestated.

With regard to the Attorney General's plea as to the admissibility of the witnesses declared in accused list of witnesses, this Court, after having duly examined the note filed by accused on the 25th. March, 2009, deems that the purpose of these witnesses, as explained in said note, should suffice at this stage to render these witnesses admissible, always reserving its right to declare any particular witness's evidence or any part thereof as irrelevant in the course of the trial should the case arise. Indeed, after this note was filed, Counsel for the Prosecution raised no further objections to them in the course of the sitting of the 21st. May, 2009. Accordingly this plea is being dismissed.

For these reasons this Court is abstaining from taking further cognisance of the third plea raised by accused as this was withdrawn by him. It is rejecting the, first, second and fourth pleas raised by the accused and rejecting the plea raised by the Attorney General with regard to the inadmissability of the witnesses declared by the accused.

The case is being adjourned sine die to be heard before a jury according to its turn after any eventual appeal or appeals from this judgement has or have been definitively determined.

Until then, accused will retain the status quo with regards to provisional liberty.

< Final Judgement >

---------------------------------END---------------------------------