



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
GIOVANNI GRIXTI**

Seduta tat-22 ta' Marzu, 2012

Numru 447/2006

The Court;

Having seeing the charges brought against **Ismail Abubaker Garba**, 22 years, Ghanian national, son of Abubaker and Aisha, born at Tamare on the 1st July, 1983 and known by Immigration Identification Number 05 LL 010 but without any identification document;

Charged with having on the 24th March, 2006 at about 3.45pm at Ta' Kandja, assaulted or resisted by violence or active force, not amounting to public violence, PC 1478 Julian Grima a person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority, where such assault or resistance was committed by three or more persons.

Furthermore with having on the same day, time and circumstances, caused injuries of slight nature to PC 1478 Julian Grima, a 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 as certified by Dr. Adrian Cassar Gheiti of St. Luke's Hospital.

Furthermore with having on the same day, time and circumstances, took an active part in an assembly of ten or more persons for the purpose of committing an offence, although the said assembly may not have been incited by any one in particular.

Having seen the transmission of the acts of the attorney general of the 28 of November 2006 for the accused to be tried by this Court for breach of the provision of articles 96(B), 95(1), 68 and 533 of the Criminal Code;

Having seen the declaration of the accused that he has no objection for his case to be tried by summary proceedings by this Court;

Having heard the evidence;

Having seen the records of the case;

Considered:

That the accused was brought before this Court to answer for the above charges following a riot and escape by tens of immigrants held at the Immigration Detention Centre (Police General Headquarters) Floriana. Police officials were given instructions to bring the situation back to normal and a large number of police officers were involved in the operation. PC 1478 Julian Grima testified how he had been ordered to escort the accused to the lock-up but in doing so he was met with resistance by the accused who grabbed the officer by the hem of his trousers and bit his leg. Whilst trying to free himself from the clutch of the aggressor, the latter bit his finger and would not let go. Due to the pain, the officer fainted and hit his head after falling to the ground. PC 720 testified that when he went to the aid of PC 1478 he concluded that from the expression on the face of the accused the

latter wanted to bite off PC Grima's finger and he would only let go after applying pressure on a point on the accused's jaw. PC 720 also testified that the following day he went to the detention centre, check the files and identified the accused from a file photo and later on during the day also saw the accused playing football in the tennis court of the centre. The same officer also testified that the accused had also participated "in every aspect of the [escape] scenario" and also tried to force open the fence;

PC1478 testified that he has no doubt regarding the identity of the accused even though he changed his hairstyle many times both prior and after the alleged offence. PC 720 also testified that the uprising involved about 60 immigrants;

The accused testified before this Court and stated that the uprising involved about seventy people but he was not involved in the incident and was just an onlooker and he did infact witness five police officers trying to apprehend another immigrant. One month after the incident he was escorted to Ta' Kandia and was informed by the prosecuting officer that he was the one that bit PC1478 but immediately denied the accusation and also pointed out that it was another immigrant. Before this Court, the accused stated that he knew it was a Somali immigrant with number 05SS8 and also informed the prosecuting officer at the time of questioning;

The Court notes that the accused was questioned at Police General Headquarters on the 11 May 2006. Although the Court will not be refering to the contents of the statement of the accused, and this in line with Constitutional case law on the matter, it notes that the statement was given one and a half months after the alleged incident. This gives credibility to the testimony of the accused and although the decision of this Court should not be in any manner interpreted as not believing PC1478 and PC720, it nonetheless goes in line with the rules of evidence which state that the Court must be convinced beyond any reasonable doubt that facts as alleged by the prosecution have actually taken place as

stated in the charge. The testimony of the accused is corroborated by the date of his statement during the interrogation. PC 720 stated that the day after the incident he went to have a look at file photos and recognized the accused. But with due regard, when the Police are victims of crime, the procedure for identifying the suspect must be the same as that adopted for victims that are not in the police force. The Court does not feel that the method adopted by PC720 is one that can lead to a safe judgement if the accused were to be found guilty. Furthermore, PC 1478 did not specify when he went back to the centre to identify the accused and if this happened after the passage of such a relatively long time, then the accused must definitely benefit from the element of doubt in these proceedings;

For these reasons, the Court does not find the accused guilty and acquits him of all charges.

< Sentenza Finali >

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