



MALTA

**COURT OF MAGISTRATES (MALTA)**  
**AS A COURT OF CRIMINAL JUDICATURE**  
**MAGISTRATE DR.**  
**NEVILLE CAMILLERI**

Sitting of the 17 th March, 2014

Number. 463/2012

The **Police**

**(Inspector Edmond Cuschieri)**

**vs.**

**Lamin Jameh**

The Court,

Having seen the charges brought against **Lamin Jameh**, aged thirty (30) years, son of Lamin Jameh and Fatou Djitte, born on the 13<sup>th</sup>. of May 1981 in Senegal, holder of Identity Card with number 45626A and having no fixed address, charged with having:

- (a) on the 1<sup>st</sup> of May 2012 at around 06.30pm inside the residence Hampton Block, Flat 11, Paderborn Street, San Pawl il-Bahar used violence in order to compel Malgorzata Maria Kufel to do, suffer or omit anything and this in order to force her to marry him and this in terms of Article 251(1) of Chapter 9 of the Laws of Malta;
- (b) on the same date, time, place and circumstances inflicted a slight bodily harm on the person of Malgorzata Maria Kufel and this in terms of Article 221 of Chapter 9 of the Laws of Malta;
- (c) on the same date, time, place and circumstances by a manifested course of conduct caused Malgorzata Maria Kufel to fear that violence will be used against her or her property or against the person or property of any of her ascendants, descendants, brothers or sisters or any person mentioned in Article 222(1) as he knew or ought to have known that his course of conduct will cause the other so to fear on each of these occasions and this in terms of Article 251B(1) of Chapter 9 of the Laws of Malta;
- (d) on the same date, time, place and circumstance reviled, or threatened or caused a bodily harm on the person of PS 830 Christopher Debono, PC 1214 Malcolm Sammut and WPC 310 Sefora Debono who are lawfully charged with a public duty, while in the act of discharging their duty or because of them having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty and this in terms of Article 95(1) of Chapter 9 of the Laws of Malta.

In case of guilt the Court was also asked to provide for the safety of the victim in terms of Articles 383 or 412C or both of Chapter 9 of the Laws of Malta.

Having seen the documents exhibited and all the acts of the proceedings.

Having seen the consent of the Attorney General of the 3rd. of May 2012 for this case to be dealt with summarily (Dok. "EC 3" - *a fol. 10*).

Having seen that the accused did not object to his case being dealt with summarily (*fol. 13*).

Having heard the evidence brought forward by the Prosecution.

Having heard the testimony of the accused.

Having heard oral submissions by the Prosecution and by the defence (*a fol. 68 et seq.*).

### **Considers**

That, during the sitting of the 18<sup>th</sup>. of June 2012, the Prosecuting Officer **Inspector Edmond Cuschieri** gave his testimony (*a fol. 22 et seq.*) regarding the investigations carried out by the Police following a domestic violence report. He says: *“When the police called on site the accused was also a bit aggressive towards the police. I’m not saying that he physically assaulted the police but his manner was aggressive towards the police also and at one point he was also trying to kick the police vehicle but was taken to Qawra Police Station”* (*a fol. 23*). He exhibited a number of documents marked as Doc. “EC 1” to “EC 3” (*a fol. 25 et seq.*).

That, during the sitting of the 18<sup>th</sup>. of June 2012, the injured party **Malgorzata Maria Kufel** also testified (*a fol. 30 et seq.*) saying that she wanted to forgive the accused for what he had done because he is the father of their baby. Her testimony was suspended without the injured party describing what happened on the date in question. The Court notes that the injured party was not called again to testify in these proceedings.

That, during the sitting of the 18<sup>th</sup>. of June 2012, **PS 830 Chris Debono** also gave his testimony (*a fol. 32 et seq.*) regarding the police report marked as Doc. “CD 1” (*a fol. 35 et seq.*). He says that following a request for help, when he arrived on site, before knocking on the door, he could hear shouting and once he knocked on the door, the accused opened the door. He says: *“Hareg b’mod aggressiv u qabad jghajjat mieghi x’irid minghand il-pulizija. Flimkien mieghu hareg persuna ta’ kulur fejn prova jikkalmah u jien bdejt nitlob il-partikolarijiet ta’ din il-persuna biex inkun naf ma’ min qed nitkellem u biex nibda nigbor l-informazzjoni. Hu beda jaggresiva ruhu u li ma riedx jaghi l-partikolarijiet u l-ebda informazzjoni lill-Pulizija. [...] Hu baqa’ jisfida u baqa’ jghajjat u jhedded fil-konfront ta’ habib tieghu. L-habib tieghu baqa’ jikkalmah. F’hin minnhom meta jien ghidtlu li ser tigi arrestat ghax ma tridx*

*taghtini l-informazzjoni u l-partikolarijiet tieghek qabad aggressiv ruhu billi mbuttani bil-mod, dahal jigri l-appartament tieghu u sabbat il-bieb biex jaghlqu” (a fol. 32-33).* He further states that the accused got inside the apartment and tried to close the door behind him and at this time the police interfered and began pushing the door. He explains that neither him nor his colleague were hurt by the accused. He testifies that after the victim was spoken to, she told them that the accused was a very aggressive person and that it was not the first time they had an argument and that the argument this time arose because he began forcing her to marry him since his permission to stay in Malta was going to expire. Victim also said that the accused threatened her that if he did not marry her he would kill her and the baby.

That, during the sitting of the 18<sup>th</sup>. of June 2012, **PC 1214 Malcolm Sammut** also gave his testimony (*a fol. 39 et seq.*) by saying that he accompanied PS 830 to the residence of the accused. He testifies on the same lines of PS 830, saying also: *“While he was in the police vehicle he was so very agitated. He was banging on the doors of the police vehicle” (a fol. 40).*

That, during the sitting of the 17<sup>th</sup>. of September 2012, **WPC 310 Sephora Debono** gave her testimony (*a fol. 52 et seq.*) by saying that she went on site to the residence of the accused together with other police officers. She testifies on the same lines of PS 830 and PC 1214. She explains that the accused tried to attack PS 830, refused to give his particulars and tried to push the door on the mentioned PS 830.

That, during the sitting of the 17<sup>th</sup>. of September 2012, **Rebecca Debono** also gave her testimony (*a fol. 54 et seq.*) saying that the

injured party had asked her to call the police for help because the injured party told her that she was in danger.

That, during the sitting of the 28<sup>th</sup>. of October 2013, the accused **Lamin Jameh** gave his evidence (*a fol. 64 et seq.*). He states that the injured party Malgorzata Kufel was his partner, that they lived together as a couple and they even had a baby. With reference to the 1<sup>st</sup>. of May 2012, he states that that he needed ten Euros to buy something and his partner told him not to take any money and they ended up having an argument so much so that he took the money and put it in his pocket and the injured party told him that she did not want to marry him. He says that he decided to go outside to relax, met a friend of his and they decided to go home and his partner was not there. He further testifies that at one point the police knocked on the door and says: *"I opened. What are you doing here? They pushed me? ID Card? Tell me what are you doing here. You should not ask. So my wallet was in the kitchen with the money, I said before anything I have to take my money and they refused. So they pushed me, when I picked up my wallet I came to give them my ID Card. So they told me OK we have to take you, I said ok. And they took me handcuffed, they took me to Qawra"* (*a fol. 65*). He says that there was no incident of violence during the course of this incident and that they were just talking. He says that he is still in contact with his partner who is now in Poland and that they talk on skype every Sunday and every Saturday.

During cross-examination he denies threatening his partner that if she did not marry him he was going to throw the baby out of the window. He says that he never told his partner to marry him. He confirms that on the day of the incident he was a bit drunk. When he was asked whether he was a bit aggressive with the Police, he replies: *"No I did not want to go and leave my*

*wallet there with the money” (a fol. 66).* He denies kicking the police vehicle. He denies threatening the police and calling them names.

## **Considers**

### **The First (1<sup>st</sup>.) Charge -**

#### **Section 251(1) of Chapter 9 of the Laws of Malta:**

The accused is charged of having used violence in order to force the injured party to marry him. After considering the testimonies submitted by the various witnesses, including the testimony submitted by the injured party herself, who did not testify regarding what allegedly happened on the 1<sup>st</sup>. of May 2012, the Court notes that this charge does not result in any way whatsoever, and hence the accused will be acquitted from it.

### **The Second (2<sup>nd</sup>.) Charge -**

#### **Section 221 of Chapter 9 of the Laws of Malta:**

The accused is also charged of having inflicted a slight bodily harm on the injured party. The accused will also be acquitted from this charge and this for the same reasons mentioned above regarding the first charge brought against him.

### **The Third (3<sup>rd</sup>.) Charge -**

#### **Section 251B(1) of Chapter 9 of the Laws of Malta:**

The Court makes reference to the judgment **Il-Pulizija vs. Raymond Parnis** decided by the Court of Criminal Appeal on the 24<sup>th</sup>. April 2009. Reference ought also to be made to the

judgment **Il-Pulizija vs. Raymond Coleiro**, decided on the 7<sup>th</sup>. March 2012 and to the judgment **Il-Pulizija vs. Jeffrey Scicluna**, decided on the 21<sup>st</sup>. February 2012, both judgments delivered by the Court of Criminal Appeal. In the judgment delivered against Jeffrey Scicluna, the Court held the following:

*“Biex ikun hemm htija taht l-artikolu 251B irid jirrizulta li jkun hemm a course of conduct kif juri l-kliem: ‘lil xi hadd ieħor hekk jibza’ kull darba minn daww l-okkażjonijiet’. Jista’ jkun hemm aktar minn okkażjoni waħda fl-istess jum u għalhekk ikun applikabbli l-artikolu 251B xorta waħda. Izda kemm mill-imputazzjoni kif miġjuba kif ukoll mill-provi ma jirrizultax li kien hemm din a course of conduct fl-istess jum. Ix-xhud irreferiet għal x’għara qabel iżda l-kliem tal-imputazzjoni jkopri jum wieħed biss. Barra dan ma jirrizultax li kien hemm xi kundanni oħra tal-appellant dwar theddid lil martu. Isegwi li l-appellant ma jistax jinsab ħati skont it-tieni imputazzjoni kif dedotta”.*

That, after considering what has been stated in the judgment quoted, after considering the reasons mentioned above regarding the first charge brought against the accused and after considering that no course of conduct has been proven, the Court notes that the accused will be acquitted also from the third charge brought against him.

#### **The Fourth (4<sup>th</sup>.) Charge -**

#### **Section 95(1) of Chapter 9 of the Laws of Malta:**

Reference ought to be made to the testimonies tendered by PS 830 Chris Debono (*a fol. 32 et seq.*), PC 1214 Malcolm Sammut (*a fol. 39 et seq.*), and WPC 310 Sephora Debono (*a fol. 52 et seq.*). The three of them describe the way the accused acted in their regard, especially his aggressiveness towards them. PS 830 Debono also testifies that the accused pushed him. On his part,



PC 1214 Malcolm Sammut testifies that while the accused was in the police vehicle he was banging on the doors of the vehicle. On her part, WPC 310 Sephora Debono, whilst testifying on the same lines of PS 830 and PC 1214, also testifies that the accused tried to attack PS 830. The police officers mentioned corroborated each other's testimony. After considering these testimonies, the Court notes that there should be no doubt whatsoever that the fourth charge brought against the accused has been sufficiently proven.

### **Considers**

That it results that it is only the fourth (4<sup>th</sup>.) charge brought against the accused which has been sufficiently proven.

With regards to the punishment to be inflicted, the Court will be taking into consideration various factors, including the nature of the fourth charge brought against the accused, the clean conviction sheet of the accused (Doc. "EC 2" - *a fol.* 9) and the fact that none of the police officers were injured by the accused. The Court will be also taking into consideration what was decided by the Court of Criminal Appeal in the judgment **The Police vs. Francesco Nanni** delivered on the 7<sup>th</sup>. March 2012, where the Court confirmed a judgment delivered by the Court of First Instance where the Court decided to apply Section 22 of Chapter 446 of the Laws of Malta and hence the accused was conditionally discharged for a period of one year. The Court of Criminal Appeal stated:

"It is true that there is a line of judgements which states that violence should lead to an effective prison

sentence. However it is also true that the Court must reach its decision on the basis of the circumstances in each and every particular case. In this case, the injuries suffered were slight and apparently of little consequence. Respondent refunded the damage caused to Anthony Mifsud. The witnesses played down the incident considerably, Anthony Mifsud only saying that respondent should be reprimanded. There is not the slightest shred of evidence that respondent is a dangerous person or that the taxi-driver and the police were at any moment in a life threatening situation. The first Court clearly understood all this and thus reached the conclusion that a conditional discharge would in the circumstances be a sufficient deterrent. Consequently, this Court finds that there is no valid reason to vary the first Court's decision".

Hence, the Court, for the same reasons mentioned by the Court of Criminal Appeal in the judgment quoted above, and considering that none of the police officers were injured by the accused (as opposed to the judgment quoted above), will also be applying Section 22 of Chapter 446 of the Laws of Malta.

Therefore, the Court, whilst acquitting the accused from the first (1<sup>st</sup>), second (2<sup>nd</sup>.) and third (3<sup>rd</sup>.) charges brought against him for the reasons mentioned above, after having seen and considered Section 95(1) of Chapter 9 of the Laws of Malta, finds the accused Lamin Jameh guilty of the fourth (4<sup>th</sup>.) charge brought against him, and in terms of Section 22 of Chapter 446 of the Laws of Malta the Court is conditionally discharging the accused subject to the condition that he does not commit another offence within a period of six (6) months from the date of this judgment.

In terms of Section 22(3) of Chapter 446 of the Laws of Malta the Court explained to the accused in ordinary language what are the consequences if he commits another offence during the said period of six (6) months from the date of this judgment.

As regards the request of the Prosecution to provide for the safety of the victim in terms of Sections 383 or 412C of Chapter 9 of the Laws of Malta, the Court, after taking into consideration the testimony submitted by the victim, rejects such request.

**< Final Judgement >**

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