



MALTA

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

**MAGISTRATE DR.  
NEVILLE CAMILLERI**

Sitting of the 1 st June, 2015

Number 635/2012

**The Police  
(Inspector Trevor Micallef)**

**vs.**

**Justin West**

The Court,

Having seen the charges<sup>1</sup> brought against **Justin West**, son of Fisal and Sonya neé West, born England, date of birth 27<sup>th</sup> June 1972, residing at Crown Court Hotel, Room 1002, Triq San Aristarku, Bugibba, holder of British Passport No. 309505937, and charged that in these islands on the 16<sup>th</sup> June 2012 at about ten in the morning (10:00am) in St. Andrews Road, St. Julians and/or in the vicinity drove vehicle registration no. EBK 853 make Peugeot:

1. through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, caused the death of Antonio Grixti (Article 225 Chapter 9);
2. on the same date, time, place and circumstances through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle registration no. OTT 026 of make KYMCO to the detriment of Antonio Grixti and/or other persons (Article 328(a) Chapter 9);
3. on the same date, time, place and circumstances through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle registration no. NAO 022 make Peugeot to the detriment of Simon Grech and Josette Grech (Article 328(d) Chapter 9);
4. on the same date, time, place and circumstances through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle registration no. EBK 853 make Peugeot to the detriment of Paolo Tanti and/or KWL Rent A Car and/or other persons (Article 328(d) Chapter 9);
5. on the same date, time, place and circumstances drove vehicle registration no. EBK 853 make Peugeot in (a): dangerous

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<sup>1</sup> *A fol. 6 et seq.*

manner, (b) reckless manner, (c) negligent manner (Articles 15(1)(a), 15(2), 15(3) Chapter 65);

6. on the same date, time, place and circumstance drove or attempted to drive or was in charge of vehicle registration no. EBK 853 make Paugeot on a road or other public place when he was unfit to drive through drink or drugs (Article 15A(1) Chapter 65);
7. on the same date, time, place and circumstances drove, attempted to drive or be in charge of vehicle registration no. EBK 853 make Peugeot on a road or other public place after having consumed so much alcohol that the proportion of it in his breath, blood or urine exceeded the prescribed limit (Article 15B(1) Chapter 65);
8. on the same date, time, place and circumstances drove vehicle registration no. EBK 853 make Peugeot in an excessive speed (Article 127 L.S. 65.11).

The Prosecution requested that the accused be disqualified from holding or obtaining a driving licence for a period that the Court deems appropriate.

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

Having seen all the documents forming part of the *Proces Verbal* number 681/12 drawn up by Magistrate Dr. Edwina Grima (Doc. "CF 1" - a fol. 173 et seq.).

Having seen the Articles of Law sent by the Attorney General of the 18<sup>th</sup>. December 2013 (*a fol.* 320):

- (a) Article 225 of the Criminal Code, Chapter 9 of the Laws of Malta;
- (b) Article 328(a) of the Criminal Code, Chapter 9 of the Laws of Malta ;
- (c) Article 328(d) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (d) Article 328(d) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (e) Articles 15(1)(a)(2)(3) of Chapter 65 of the Laws of Malta;
- (f) Article 15A(1) of Chapter 65 of the Laws of Malta;
- (g) Article 15B(1) of Chapter 65 of the Laws of Malta;
- (h) Article 127 of Subsidiary Legislation 65.11 and Article 55 of Chapter 65 of the Laws of Malta;
- (i) Articles 17, 31 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having seen that, during the sitting of the 6<sup>th</sup>. January 2014 (*a fol.* 321), the Articles of Law sent by the Attorney General on the 18<sup>th</sup>. December 2013 (*a fol.* 320) were read out, during which sitting the accused declared that he does not object for his case to be tried and decided summarily.

Having heard the evidence brought forward by the Prosecution.

Having heard the testimony of the accused.

Having seen the written Note of Submissions filed by the Prosecution on the 1<sup>st</sup>. of December 2014 (*a fol.* 338 *et seq.*).

Having seen the written reply of Submissions filed the defence on the 12<sup>th</sup>. of February 2015 (*a fol. 346 et seq.*)

### **Having considered**

That reference will be made to the most salient testimonies heard and documents exhibited during the proceedings.

That, during the sitting of the 25<sup>th</sup>. of June 2012, **Dr. Mark Anthony Attard Biancardi** testified (*a fol. 37 et seq.*) that on the 16<sup>th</sup>. June 2012 at about 10.30am Antonio Grixti was taken unconscious to Mater Dei Hospital, at about 11.20am he went into cardiac arrest and at 11.25am he was declared dead. He confirmed the contents of Doc. "TM 5" (*a fol. 27*).

That, during the sitting of the 25<sup>th</sup>. of June 2012, the Prosecuting Officer **Inspector Trevor Micallef** testified (*a fol. 39 et seq.*) regarding the investigations carried out following the traffic accident in which Antonio Grixti and the accused were involved. He says that he informed the Inquiring Magistrate who in turn nominated a number of experts to assist her in the Inquiry. He went on site and says that even the accused was taken to Mater Dei Hospital since he had some injuries and when he was subjected to the breathalyser test in hospital, it resulted positive. He referred to the statement (Doc. "TM 7" - *a fol. 29 et seq.*) released by the accused which statement was released after the accused was informed about his right to consult a lawyer, which right was forfeited (Doc. "TM 6" - *a fol. 28*)<sup>2</sup>.

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<sup>2</sup> This document is the same as Doc. "TM 9" (*a fol. 41*).

During cross-examination, which was held during the sitting of the 12<sup>th</sup>. May 2014 (*a fol. 324 et seq.*), Inspector Micallef confirmed that when he arrived on site the accused was in a state of shock, saying that he was very quiet and did not speak a lot. He does not know if the victim was wearing a crash helmet or not yet says that the crash helmet was on the ground.

That, during the sitting of the 25<sup>th</sup>. of June 2012, **PS 750 Terry James Mallia** also testified (*a fol. 43 et seq.*) saying that he went on site together with PC 600 and PS 928 and that when he arrived whereas Grixti was in the middle of the lane towards Bahar ic-Caghaq, the accused was sitting on a side wall. He says that the accused was in a state shock and had a strong smell of alcohol. He says that three vehicles were involved: vehicle NAO 022 (Peugeot 107) which was coming out from Triq Prepusur, Madliena, quad-bike OTT 026 lying on its right hand side and another Peugeot 107 which was in Triq Sir Adrian Dingli which runs parallel to Triq Sant'Andrija. He also says that, amongst others, he picked up the helmet off the ground which was locked at the time he picked it up.

That, during the sitting of the 21<sup>st</sup>. of August 2012, **Josette Grech** testified (*a fol. 65 et seq.*) saying that on the date of the accident she was on her way from Madliena towards the Coast Road driving vehicle Peugeot bearing registration number ANO 022 [NAO 022] which is registered in her husband's name. She says that she stopped on the Stop Sign and she could see a yellow Peugeot and a quad-bike coming towards her with the Peugeot on the inner side (on her side) and the quad-bike on the outer side. She says that when she looked to see whether she could proceed, the accident between the vehicle and the quad-bike had already occurred. She says that the yellow Peugeot collided with the vehicle she was in which ended up facing Bahar ic-Caghaq. She says that the yellow Peugeot ended in the service road beneath the main road. She

testifies that the vehicle she was driving sustained damages in the front mudguard and bonnet. She exhibited a number of photos on two pages marked as Doc. "JG 1" (*a fol. 69*) and "JG 2" (*a fol. 70*). She says that the vehicle being driven by her was insured and that the damages were repaired.

During cross-examination when she was asked if she saw the yellow Peugeot and the quad-bike prior to the impact, she replied in the negative.

During re-examination she says that the yellow Peugeot and the quad-bike were being driven besides each other with the Peugeot ahead by a few centimeters since they were stuck together.

**Josette Grech** testified also in the Inquiry. Architect Richard Aquilina was nominated by the Inquiring Magistrate to hear her testimony. She says: "*F'daqqa wahda jien smajt hoss gej minn naha tal-lemm tiegħi u kif harist rajt il-quad-bike u Peugeot 107 safra mqabbdin ma' xulxin, izda l-Peugeot kien eqreb lejja, cioè aktar lejn il-hajt. Dak il-Peugeot is-safra habat miegħi fuq il-lemm u dawwarni għal pozizzjoni parallela mat-triq*" (*a fol. 144 and 147*).

That, during the sitting of the 21<sup>st</sup>. of August 2012, **Simon Grech** also testified (*a fol. 71*) saying that Peugeot 107 bearing registration number NAO 022 is registered in his name. He exhibited a copy of the logbook marked as Doc. "SG 1" (*a fol. 72*) and an insurance document marked as Doc. "SG 2" (*a fol. 73*).

That, during the sitting of the 21<sup>st</sup>. of August 2012, **Patrick Schembri** also testified (*a fol. 74 et seq.*) saying that he was a

passenger in the vehicle driven by his wife Michelle. He says that they were coming from St. Paul's Bay and when they reached the part where his wife put on the indicator to go down to St. Catherine's Street (on the left), he was looking on the left hand side and all of a sudden he looked forward and saw a quad-bike and a vehicle coming from behind and the quad-bike and the driver flying in the air and the vehicle ended up hitting another vehicle, then crossed all the road and passed in front of them and then stopped. He says: "*I could see that the car coming from behind kept on driving as if there was nothing in front of it and there was the quad-bike*" (*a fol. 75*).

That, during the sitting of the 21<sup>st</sup>. of August 2012, **PS 928 Ramon Mifsud Grech** also testified (*a fol. 76 et seq.*) saying that he rushed on site and explained what he did once on site. He says that he assisted the victim and when he approached the accused he had a strong smell of alcohol so he ordered that the accused be subjected to a breathalyser test.

That, during the sitting of the 21<sup>st</sup>. of August 2012, **PS 1354 Claudio Redent Coppola** also testified (*a fol. 79 et seq.*) saying that he was requested to effect a breathalyser test on the accused which was performed at Mater Dei Hospital at about 11.30am. He says that the accused was duly cautioned according to law and after the accused accepted, the third test resulted 79mg. The test was exhibited and marked as Doc. "CC 1" (*a fol. 81*). He says that the accused refused to sign this document, which document was signed by him (PS 1354) and PC 711 Robert Magro.

That, during the sitting of the 21<sup>st</sup>. of August 2012, **PC 711 Robert Magro** also testified (*a fol. 82 et seq.*) saying that he assisted PS 1354 Coppola whilst effecting the breathalyser test, specifying that the



accused did not refuse to submit himself to this test. He testified on the same lines of PS 1354 Coppola.

That, during the sitting of the 27<sup>th</sup>. of August 2012, **Mr. Joseph Zammit** also testified (*a fol. 90*) saying that he was nominated as a court expert by the Inquiring Magistrate to examine the three vehicles involved in the traffic accident: yellow Peugeot 107 bearing registration number EBK 853, white quad-bike bearing registration number OTT 026, and silver Peugeot 107 bearing registration number NAO 022. He exhibited a copy of the report marked as Doc. "JZ 1" (*a fol. 92 et seq.*)<sup>3</sup> and confirmed the contents of the said report. He reached the following conclusions (*a fol. 105 et seq.*):

*"3. Illi dan l-incident sehh filwaqt li l-quad-bike kienet qed tinstaq mid-direzzjoni ta' St. Andrews sejra lejn Bahar ic-Caghaq segwita mill-Peugeot is-safra u kif waslu fejn l-inkrocju ma' Triq Sant Andrija u Triq il-Madliena, il-Peugeot habtet b'sahha fuq wara tal-imsemmi quad-bike.*

*4. Illi l-quad-bike ntefa' l-quddiem u laqat il-Peugeot is-silver li dak il-hin kienet tinsab wieqfa fuq l-iStop Sign tal-hrug ghal got-triq principali, minn fejn il-quad-bike nqaleb u baqa' sejjer ghal distanza ta' madwar 12 il-metru sakemm waqaf mal-hajt tat-triq.*

*5. Illi l-karrozza l-Peugeot is-safra baqat titef il-kontrol, marret fuq in-naha tal-lemin, qasmet iz-zewg karreggati u harget fil-parti l-hazina tat-triq u waqghet f'gholi ta' tlett metri taht il-livell tat-triq.*

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<sup>3</sup> This report is the same report as Doc. "JZ" (*a fol. 187 et seq.*).

6. Illi l-Peugeot is-safra garbet hsarat estensivi fuq il-parti frontali lejn ix-xellug, tant qawwi li r-rim tar-rota ta' quddiem tghawweg u t-tyre tilef l-arja tieghu, kif ukoll iz-zewg airbags ta' quddiem sparaw 'l barra.

7. Illi minn ezamijiet teknici li l-esponent ghamel fuq il-vettura Peugeot is-safra sabiex jistabilixxi l-kagun tat-telfien ta' kontrol taghha, lill-esponent ma rrizultalu ebda hsara, bhal xi qtugh ta' steering, nuqqas ta' brejkijiet jew spluzjoni ta' tyre li setghet ikkagunat dan l-incident. Ghalkemm it-tyre ta' quddiem jinsab punctured u bla arja dan jirrizulta kagun tad-daqqqa soda fil-habta mal-quad-bike.

[...]

9. Illi l-quad-bike in kwistjoni garrab hsara tant estensiva li giet reza beyond economical repair".

He also concluded that the vehicle driven by the accused sustained no damages on its rear part and that the silver Peugeot sustained damages amounting to two thousand Euros (€2000). As regards the vehicle driven by the accused, Mr. Zammit established that this vehicle ought to be declared as being beyond economical repair.

Mr. Zammit's report filed in the *Proces Verbal* number 681/12 drawn up by Magistrate Dr. Edwina Grima (Doc. "CF 1" - a fol. 173 et seq.) includes also the photographs (a fol. 213).

That, during the sitting of the 27<sup>th</sup>. of August 2012, **Michelle Schembri** also testified (*a fol. 118 et seq.*) saying that on the day of the traffic accident she was in her car together with her husband Patrick Schembri. She says that she was driving the vehicle from the direction of Bahar ic-Caghaq towards Pembroke. She says that, all of a sudden, a vehicle hit a quad-bike with the quad-bike and the man driving it both ending flying in the air. She says that a yellow vehicle passed in front of her and fell into a street which is at a lower level from the road. She says that the man who flew in the air fell on his back on the ground.

During cross-examination, asked if before the impact she noticed a vehicle between the yellow Peugeot driven by the accused and the quad-bike, she replied in the negative.

That, during the sitting of the 8<sup>th</sup>. of October 2012, **Architect Richard Aquilina** testified (*a fol. 132*) saying that he was nominated as a court expert by the Inquiring Magistrate. He confirmed the report drawn up by him, which report was exhibited and marked as Doc. "RA 1" (*a fol. 134 et seq.*). In his report, Architect Aquilina indicated where were the damages sustained by the two vehicles and the quad-bike: silver Peugeot 107 sustained damages mainly on the right frontal part, the quad-bike sustained damages mainly on its rear part and the damages sustained by the yellow vehicle Peugeot 107 were on its left frontal part. Architect Aquilina notes:

*"Mix-xhieda li nstemghet, kif ukoll minn dak li gie kkostatat fuq il-post, deher li l-Peugeot 107 safra nru. EBK 857 [EBK 853] habtet ma' wara tal-quad-bike nru. OTT 027 [OTT 026], li bid-daqqa nqaleb.*

*Waqf li l-Peugeot 107 nru. EBK 857 [EBK 853] kienet ghada mqabba mal-quad-bike, dik habtet mal-karozza Peugeot 107 nru. NAO 022 u dawwriha minn pozizzjoni kartabun mat-triq ghal pozizzjoni parallel mat-triq.*

*Il-karozza Peugeot 107 nru. EBK 857 [EBK 853] baqghet sejra f'direzzjoni kkurovjata lejn il-lemin u waqfet ghal got-triq ta' taht".*

That, during the sitting of the 29<sup>th</sup>. of April 2013, **Dr. Mario Scerri** testified (*a fol. 244 et seq.*) saying that he was nominated as a court expert by the Inquiring Magistrate. He exhibited the report drawn up by him which report was marked as Doc. "MS 1" (*a fol. 245A et seq.*). He says that the victim sustained a massive head injury and that he died due to injuries sustained in the traffic accident. He described the accused as being hostile and says that the accused did not let him examine him but could elicit that he had an abrasion in his lower rib.

During cross-examination, which was held during the sitting of the 30<sup>th</sup>. of June 2014 (*a fol. 331*), when he was asked if the accused was in a state of shock, Dr. Scerri replies: "*He was in fact aggressive with us in hospital and he was confused and probably he was disorientated. But he was aggressive. In fact he did not give us his consent to be examined*" (*a fol. 331*). He says that the accused did not tell him that he was under medication otherwise he would have written it down in his report.

That, during the sitting of the 29<sup>th</sup>. of April 2013, **PS 239 Joseph Caruana** also testified (*a fol. 287*) saying that he was appointed as a Scene of Crime Officer by the Inquiring Magistrate. He exhibited

the report drawn up by him which report was marked as Doc. “JC 1” (*a fol. 289*) which report includes a number of photographs.

That, during the sitting of the 22<sup>nd</sup>. July 2013, **Prof. Marie Therese Camilleri Podestà** and **Dr. Ali Salfraz** testified (*a fol. 297 et seq.*) saying that they were nominated as court experts by the Inquiring Magistrate. They exhibited their report, which was confirmed on oath, which report was marked as Doc. “MC 1” (*a fol. 299 et seq.*). The mentioned experts reached the following conclusion (*a fol. 300*):

“The death of this male is certified as being due to fractured skull and transection spine due to a motor vehicle accident”.

That, during the sitting of the 22<sup>nd</sup>. of July 2013, **Paul Tanti** also testified (*a fol. 301 et seq.*) saying that on the day of the 15<sup>th</sup>. June 2012 he rented out a vehicle Peugeot 107 bearing registration number EBK 853 to Justin West. He testifies that his insurance company covered the damages sustained on the vehicle rented out on behalf of KWL Rent A Car. He exhibited two documents marked as Doc. “PT 1” and “PT 2” (*a fol. 303 et seq.*).

That, during the sitting of the 25<sup>th</sup>. of November 2013, **Karla Chanelle Attard**<sup>4</sup> testified (*a fol. 316 et seq.*) saying on the day of the traffic accident she was proceeding towards her home in Bahar ic-Caghaq. She says: “*the man who passed away was in the quad-bike in front of me, his indicator was on for the right hand side, he was going into Pembroke [...] and I was behind him waiting for him to enter that road,*

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<sup>4</sup> In the police report (Doc. “TM 4” – *a fol. 15 et seq.*), she is quoted as saying: “*Jiena kont ghaddejja direzzjoni lejn Bahar ic-Caghaq meta rajt il-quad-bike li xeghel l-indicator lejn Pembroke qbiztu kif qbiztu smajt il-hoss minn warajja u rajt bhal lehha safra minn magenbi u l-quad minn quddiemha fejn rajtu jolqot il-Peugeot il-griz u jien waqft warajhom*” (*a fol. 24*).

*and then from my mirror I saw the 107 just running over and the 107 on the other side of the road” (a fol. 316).* She says that the victim ended up flying in front of her car. Asked to describe the way the accused was driving his vehicle, she replies: *“It was very very fast, very fast” (a fol. 317).*

During cross-examination, she says that the road is a two-lane road and that she was behind the victim. She recalls a plastic bag flying in the air and that the indicator was on. Asked if she remembers whether the victim was wearing a crash helmet, first she says that she does not remember and then says that if she is not mistaken he was but is not one hundred per cent sure. She says that the road is a two way street and that it is quite wide and says that two vehicles can stay next to each other in the same lane but the lane is not meant for two vehicles to stay next to each other in the same lane.

That, during the sitting of the 29<sup>th</sup>. of September 2014, **Justin West** testified (*a fol. 334 et seq.*) saying that he had been out for the day and for the evening celebrating a friend’s birthday and that he went to sleep at about 4.00-5.00am. He says that he woke up at 9.30am, went to hire a vehicle and whilst driving back to the hotel there were three vehicles all turning left and decided to take over the vehicles to carry on along the coast road *“cause you have a side bit clear” (a fol. 334).* He says that all he remembers is a quad-bike doing a right turn which quad-bike he did not see pull from behind the vehicle and the impact occurred, which impact he describes as being a big one. He says that he was in a state of shock. He says that he was going towards Bugibba. He testifies that he does not remember seeing the quad-bike until he was taking over the last vehicle. He says that all that he remembers is taking over the last vehicle and the impact occurred. No brakes were applied. Asked what the victim was wearing, he says that he was just wearing the clothes and nothing else. He says that he (West) was badly injured

and that he was very upset and was crying. He says that he did not let the doctor examine him because he wanted to know what happened to the victim. He says that when he was told that the victim passed away he was very angry at himself and remembers punching the wall in the hospital room. Asked to explain his alcohol level, he says that he was asleep, he woke up and was not drunk and then says he does not think that he was drunk. He says that he had four hours of sleep and he felt fine and in the morning he even drank some orange juice and got in the vehicle. He says that he was taking medication, consisting of a cough mixture, since his throat was still bad. He says that he knew what he was doing and what was going on.

During cross-examination he says that he was going down the hill towards St. Andrews, Pembroke. He thinks that he was driving at a speed of 30/40 km per hour. He says that he was driving at an average speed. He says that it was sunny. Asked whether it is true that the victim was wearing a crash helmet, he denies. He says that the road is very wide and once the impact occurred, the vehicle he was driving went over to the other side of the road. He confirms that the victim and himself were driving on the same side of the road and that the accident occurred as soon as he overtook to go past the last vehicle. He says: *"he must have pulled out from behind the car [...]. I didn't see him I didn't see anything I just felt an impact, for me it was like someone stepping from behind the car"* (a fol. 336). He says: *"I feel for what's happened. I can't sleep sometimes cause of what, I know what's gone on, so I'm not going to lie you know"* (a fol. 336).

### **Having considered**

That in the statement (Doc. "TM 7" - a fol. 29 et seq.) released by the accused, which statement was released after the accused was given

the right to consult a lawyer, which right was forfeited (Doc. "TM 6" - a fol. 28), he says: *"I was driving towards Bugibba when I think the guy who was driving a quad-bike just came out from a sort of hill and I hit him. He came from behind a car and I did not see him. This other car was I think coloured white but I am not sure. It was a white car. I remember a big bang and then my car went to the other side of the road and ended on the side road under the street. I got out of the car and went over to where the driver was lying and I did not want to leave him"* (a fol. 29). Asked if it is true that he was drunk, he replies: *"I think yes. I did not have a lot to drink. It was later when I started drinking and may be had three or four beers"* (a fol. 30). He says that usually he does not get drunk when he drinks four beers and says that he does not know what happened, saying further that may be somebody had spiked his drink. He was not in a position to explain why the breathalyser test administered was positive and why it was higher than normal. He denies driving at an excessive speed and also denies driving in a dangerous and reckless manner. He does not know why the vehicle he was driving and the quad-bike ended meters away from the impact. Asked if it is true that he was driving in a drunken state, he replies: *"I am upset to answer any question"* (a fol. 30).

### **Having considered**

The Court asks: what is the duty of a driver who is in the same position as the accused? The reply undoubtedly ensues from the law in particular from Article 225(1) of Chapter 9 of the Laws of Malta which states the following:

*"Whosoever, through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, causes the death of any person, shall, on conviction, be liable to imprisonment for a term not*



exceeding four years or to a fine (*multa*) not exceeding eleven thousand and six hundred and forty six Euro and eighty-seven cents (€11,646.87)".

It is imperative that the Prosecution proves that the accused is responsible for his lack of thought or negligence or that he did not observe the traffic regulations as is expected from a driver on the road.

Thus it ensues that the Court has to determine whether the accused is to blame for the accident that took place and whether such accident was the result of the accused's carelessness and imprudence. In the judgment given in the Criminal Court of Appeal in the names **Il-Pulizija vs. Leonard Grech** decided on the 5<sup>th</sup>. of September 1990, the Court went into great detail with regards to the nature of blame in these type of cases. In brief and on the basis of a number of authors and the tripod of blame can be defined as:

- “1. *la volontarietà dell'atto;*
2. *la mancata previsione dell'effetto nocivo; u*
3. *la possibilità di prevedere”.*

In the judgment **Il-Pulizija vs. Richard Grech** decided on the 21<sup>st</sup>. March 1996, the Court of Criminal Appeal stated the following:

*“L-omicidju kolpuz hu ttrattat fil-ligi taghna fl-Artikolu 225 tal-Kodici Kriminali, ga' l-Artikolu 239 fl-Edizzjoni ta' l-1942 ta' dak il-Kodici. Fis-sentenza taghha ta' l-4 ta' Frar, 1961, fl-*

*ismijiet Il-Pulizija vs. Perit Louis Portelli, il-Qorti Kriminali sedenti l-kompjant Imhalled Joseph Flores, kienet esprimiet ruhha b'dan il-mod a rigward ta' dan ir-reat:*

*“Hu mehtieg ghall-kostituzzjoni tar-reat involontarju skond l-Artikolu 239 tal-Kodici Penali, illi tirrikorri kondotta volontarja negligenti – konsistenti generikament f'nuqqas ta' hsieb (“imprudenza”), traskuragni (“negligenza”), jew ta' hila (“imperizja”) fl-arti jew professjoni jew konsistenti specifikatament f'nuqqas ta' tharis tar-regolamenti – li tkun segwita, b'ness ta' kawzalita' minn event dannuz involontarju. Ghandu jigi premess illi, ghall-accertament tal-htija minhabba f'kondotta negligenti, ghandu jsir il-konfront tal-kondotta effettivament adoperata ma' dik ta' persuna li s-sapjenza rumana identifikat mal-bonus pater familias, dik il-kondotta, cioé illi fil-kaz konkret kienet tigi uzata minn persuna ta' intelligenza, diligenza u sensibilita' normali, kriterju dan li filwaqt li jservi ta' gwida oggettiva ghall-gudikant, ihallih fl-istess hin liberu li jivvaluta d-difligenza tal-kaz konkret” (Kollez. Deciz. Vol. XLV.IV.870,903);*

*Kif jispjega l-gurista Taljan Francesco Antolisei, biex wiehed jifhem l-essenza vera tal-kolpa wiehed irid izomm f'mohhu li fil-hajja socjali spiss jinholqu sitwazzjonijiet li fihom attivita' diretta ghal xi fini partikolari tista' taghti lok ghal konsegwenzi dannuzi lil terzi. L-esperjenza komuni jew l-esperjenza teknika – cioé l-esperjenza komuni ghall-bnedmin kollha jew dik l-esperjenza ta' kategorija ta' nies li jesplikaw attivita' partikolari – tghallem li f'dawn il-kazijiet wiehed ghandu juza certi prekawzjonijiet bil-ghan li jevita li l-interessi ta' l-ohrajn jigu ppregudikati.”*

In the same judgment, the Court of Criminal Appeal also stated the following:

*“Kif jispjega l-gurista Francesco Carfora (Digesto Italiano, Vol. 7, Parte 2, V. Colpa (materia penale), Diretto Vigente, p. 775), jekk il-prudenza tikkonsisti f’illi persuna taghmel dak li hu ragonevolment mistenni minnha sabiex tipprevjeni l-konsegwenzi dannuzi ta’ ghemilha, l-imprudenza, li hi n-negazzjoni ta’ din il-virtu’, tikkonsisti f’illi wiehed jaghmel avventatament daww l-affarijiet li hu messu ppreveda li setghu jikkagunaw hsara. It-traskuragni, mill-banda l-oħra, timplika certa non-kuranza, certu abbandun kemm intellettiv kif ukoll materjali. Fiz-zewg kazijiet, pero’, il-hsara tkun prevedibbli ghalkemm mhux prevista; kieku kienet ukoll prevista, wiehed ikun qieghed fil-kamp doluz b’applikazzjoni tad-dottrina ta’ l-intenzjoni posittiva indiretta.”*

It is clear in our legal system as to what constitutes reckless, negligent or dangerous driving. In the judgment in the names **Il-Pulizija vs. Michael Grech** delivered on the 20<sup>th</sup>. February 2007, the Court of Criminal Appeal stated:

*“Kif gie ritenut minn din il-Qorti ripetutament u kif intqal fl-Appell Kriminali **Il-Pulizija vs. Alfred Mifsud** deciz fis-6 ta’ Mejju 1997 (Vol. LXXXI.iv.157), din il-Qorti diversament presjeduta qalet:*

*Sewqan traskurat (negligent driving) hu kwalsiasi forma ta’ sewqan li jiddipartixxi minn, jew li ma jilhaqx il-livell ta’ sewqan mistenni minn sewwieq ragonevoli, prudenti, kompetenti u ta’ esperjenza. Bhala regola, il-ksur tar-regolamenti tat-traffiku kif ukoll in-non-osservanza tad-disposizzjonijiet tal-Highway Code li jincidu fuq il-mod jew il-kwalita` ta’ sewqan ta’ dak li jkun, jammonta wkoll ghal sewqan traskurat. Sewqan bla kont hu*

*deskritt ... bhala sewqan 'bi traskuragni kbira'. Din it-tieni ipotesi, jigifieri ta' sewqan bla kont, tikkontempla s-sitwazzjoni fejn il-grad ta' traskuragni tkun kbira u tinkludi l-kazijiet fejn wiehed deliberatament jiehu riskji fis-sewqan li m'ghandux jiehu minhabba l-probabbilita' ta' hsara li tista' tirrizulta lil terzi, kif ukoll kazijiet fejn wiehed ikun indifferenti ghal tali riskji. Sewqan perikoluz (dangerous driving) jirrikjedi li fil-kaz partikolari s-sewqan kien ta' perikolu ghal terzi jew ghall-proprjeta` taghhom. Biex wiehed jiddeciedi jekk kienx hemm dana l-perikolu, wiehed irid jara c-cirkostanzi kollha tal-kaz, inkluzi l-hin u l-lokalita` ta' l-incident u l-presenza o meno ta' traffiku iehor jew ta' nies ghaddejjin bir-rigel. [...]*

*U kif qalet din il-Qorti diversament presjeduta fl-Appell Kriminali **Il-Pulizija vs. Mario Gellel** deciz fid-19 ta' Frar 2004:*

*"... kif gie ritenut minn din il-Qorti diversament preseduta, jekk sewqan hux (i) negligenti, jew (ii) bla kont jew (iii) perikoluz hi kwistjoni ta' 'degree' (App. Krim. **Pul. vs. Charles Bartolo**, 14.3.59, **Pol. vs. Wilson** [Vol. XXXIX iv. 1018] u **Pul. vs. Alfred Vella** [Vol. XLIV, p. 933]) u kif jidhru wara xulxin huma fl-iskala tas-serjeta` taghhom (App. Krim. **Pul. vs. Hardingham**, 19.10.1963). Gie wkoll ritenut li biex jintegra ruhu r-reat ta' sewqan perikoluz, hemm bzonn ta' certu grad ta' 'recklessness' (App. Krim. **Pul. vs. Charles Farrugia** [Vol. XXXIX iv.978]). 'Recklessness' giet definita bhala 'wilfully shutting one's eye' (App. Krim. **Pul. vs. Joseph Aquilina**, 20.4.1963). Invece sewqan negligenti jew traskurat ifisser nuqqas ta' prudenza ordinarja li wiehed ghandu jadopera biex jevita s-sinistri stradali (App. Krim. **Pul. vs. Antonio Spiteri** [Vol. XLIV iv. 892])".*

Naturally, a particular type of driving can amount to two or more of these different forms of driving in which eventuality in case of guilt there will be the applicability of punishment for concurrent offences. For the purposes of punishment the legislator has grouped reckless driving and dangerous driving on the same foot. The crime of negligent driving is incorporated in the crime of reckless and dangerous driving (*Vide Il-Pulizija vs. Charlotte Chamberlain*, decided by the Criminal Court of Appeal on the 25th May, 1950).

After outlining the position at law, the Court will now move forward to examine the facts that gave rise to this accident which facts can be complied systematically as follows:

1. On the 16<sup>th</sup>. June 2012 at around 10.00am quad-bike OTT 026 was driven by Antonio Grixti in St. Andrew's Road, St. Julians. He stopped to enter towards Pembroke, St. Patrick area, when yellow Peugeot 107 bearing registration number EBK 853 driven by the accused hit the mentioned quad-bike at its rear, lifted it up and swerved to the left side of the street hitting a silver Peugeot 107 bearing registration number NAO 022 which was stationary on a Stop Sign. The quad-bike came to rest on its right side, the silver Peugeot 107 was shoved almost 90 degrees to its left and the yellow Peugeot 107 driven by the accused ended up on the other side of the road and under onto a parallel road where it stopped around fifty (50) metres away from the first collision.
2. Antonio Grixti was declared dead on the same day of the traffic accident at around 11.25am. This was confirmed by Dr. Mark Anthony Attard Biancardi (*a fol. 37 et seq.*) who confirmed the contents of Doc. "TM 5" (*a fol. 27*).
3. The witnesses testified as follows:

- Josette Grech (*a fol. 65 et seq.*), who stopped on the Stop Sign in vehicle bearing registration number NAO 022, testified that when she looked to see whether she could proceed, the accident between the vehicle and the quad-bike had already occurred.
  - Michelle Schembri (*a fol. 118 et seq.*), who was driving her vehicle from the direction of Bahar ic-Caghaq towards Pembroke, testified that all of a sudden a vehicle hit a quad-bike with the quad-bike and the man driving it both ending flying in the air.
  - Patrick Schembri (*a fol. 74 et seq.*), who was front seat passenger in the vehicle driven by his wife Michelle, testified that, after looking on the left hand side, he looked forward and saw a quad-bike and a vehicle coming from behind it and the quad-bike and the driver flying in the air and the vehicle ended up hitting another vehicle. He says: *"I could see that the car coming from behind kept on driving as if there was nothing in front of it and there was the quad-bike"* (*a fol. 75*).
  - Karla Chanelle Attard (*a fol. 316 et seq.*), who was proceeding towards her home in Bahar ic-Caghaq, testified as follows: *"the man who passed away was in the quad-bike in front of me, his indicator was on for the right hand side, he was going into Pembroke [...] and I was behind him waiting for him to enter that road, and then from my mirror I saw the 107 just running over and the 107 on the other side of the road"* (*a fol. 316*). She says that the accused was driving at an excessive speed.
4. The accused, who was not obliged to take the witness stand, gave evidence voluntarily and said that whilst driving back to the hotel there were three vehicles all turning left and decided to take over the vehicles to carry on along the coast road *"cause you have a side bit clear"* (*a fol. 334*). He says that all that he

remembers is taking over the last vehicle and the impact occurred. No brakes were applied.

The Court notes the following:

1. Although the road where the accident occurred is quite wide, the road is a two-lane road consisting of a lane where vehicles coming from the direction of St. Julians to Bahar ic-Caghaq are driven and another lane in the opposite direction. This is evident both from the photographs which form part of the report drawn up by PS 239 Joseph Caruana (Doc. "JC 1" - *a fol.* 289) and from the report drawn up by Architect Richard Aquilina (Doc. "RA 1" - *a fol.* 134 *et seq.*).
2. The accused was subjected to a breath alcohol test which test gave a positive result. This was test was exhibited and marked as Doc. "CC 1" (*a fol.* 81).<sup>5</sup> PS 928 Ramon Mifsud Grech testified (*a fol.* 76 *et seq.*) saying that he ordered that the accused be subjected to a breathalyser test since the accused had a strong smell of alcohol. Even PS 750 Terry James Mallia testified (*a fol.* 43 *et seq.*) that the accused, apart from being in a state shock, had a strong smell of alcohol.
3. Prof. Marie Therese Camilleri Podestà and Dr. Ali Salfranz concluded that the victim passed away as a consequence of the motor vehicle accident in question (Doc. "MC 1" - *a fol.* 299 *et seq.*). On his part, Dr. Mario Scerri testified (*a fol.* 244 *et seq.*) that the victim sustained a massive head injury and that he died due to injuries sustained in the traffic accident.
4. In his report (Doc. "JZ 1" - *a fol.* 92 *et seq.*), Mr. Joseph Zammit established that the vehicle driven by the accused had no technical defects.

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<sup>5</sup> *Vide* testimony of PS 1354 Claudio Redent Coppola (*a fol.* 79 *et seq.*).

## Having considered

That, after the above has been noted, the Court asks how come the accused did not see the quad-bike driven by the victim prior to the impact. Although the quad-bike is of a smaller size than that of a normal vehicle, yet if the accused, who resulted positive to the breathalyser test, had the required proper look-out he could have easily seen the quad-bike before the accident occurred. In the case **Il-Pulizija vs. Roderick Debattista** decided on the 26<sup>th</sup>. May 2004, the Court of Criminal Appeal stated the following:

*“Hu dover ta’ driver to see what is in plain view [...] u li min ma jarax dak li ragonevolment ghandu jara jfisser li ma kienx qed izomm a proper lookout [...].*

Keeping a proper lookout means more than looking straight ahead. It includes awareness of what is happening in one’s immediate vicinity. A motorist should have a view of the whole road from side to side and, in the case of a road passing through a built up area, of the pavements on the side of the road as well”.

The accused admits that he decided to take over the vehicles to carry along the coast road as a consequence of which the accident occurred. Although the accused testifies that he had four hours of sleep and says that he was fine to drive, yet the breathalyser test shows otherwise. Even though the accused says that he was taking medication, no proof of this was brought forward. Not even proof to substantiate the accused’s allegation that his drink was spiked was brought forward. Although the accused testifies that the victim was not wearing a crash helmet, this allegation was not substantiated. It results that the crash helmet was found locked on



the ground. On her part, Karla Chanelle Attard (*a fol. 316 et seq.*) testifies that she is not sure whether the victim was wearing a crash helmet yet she says that if she is not mistaken he was but is not one hundred per cent sure. Considering all this, considering also that the impact was a violent one (which was also confirmed by the accused), considering that the victim and the quad-bike ended up literally flying in the air and considering that the victim was on a quad-bike, the Court has no doubt whatsoever that the crash helmet could have easily flown off the victim's head. In the Note of Submissions (*a fol. 346 et seq.*) filed by the defence, the defence argues that contributory negligence ought to be attributed to the victim. After considering what has been outlined, the Court notes that there results no contributory negligence whatsoever on the part of the victim. As a consequence, after outlining all these considerations, the Court has no doubt whatsoever that the traffic accident in question was solely the fault of the accused.

As far as the charges brought against the accused are concerned, the Court notes the following:

- The first (1<sup>st</sup>.) charge has been successfully proven.
- It has been proven that the accused caused involuntary damages on:
  - the vehicle bearing registration number EBK 853 driven by himself<sup>6</sup>,

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<sup>6</sup> *Vide* testimony of Paul Tanti (*a fol. 301 et seq.*) and the two documents exhibited by him (Doc. "PT 1" and "PT 2" - *a fol. 303 et seq.*).

- the vehicle bearing registration number NAO 022 driven by Josette Grech<sup>7</sup> and

- on the quad-bike bearing registration number OTT 026 driven by the victim<sup>8</sup>.

Hence, the second (2<sup>nd</sup>.), third (3<sup>rd</sup>.), and fourth (4<sup>th</sup>.) charges brought against the accused have also been proven.

- As far as the fifth (5<sup>th</sup>.) and the eight (8<sup>th</sup>.) charges are concerned, the Court makes reference to the Court judgment **Il-Pulizija vs. Michael Grech** referred to above. The Court also notes that the impact between the vehicle driven by the accused and the victim's quad-bike was a violent one. It is also important to note where the quad-bike, the victim, the vehicle driven by the accused and the vehicle of Josette Grech ended up. In the judgment **Il-Pulizija vs. AIC Mortimer**<sup>9</sup> the Court of Criminal Appeal stated that: "*Speed jista' jigi dedott minn brake marks*". Furthermore the Court of Criminal Appeal in the case **Il-Pulizija vs. R. Bugeja** (decided on the 30<sup>th</sup>. June 1962) noted that: "*Speed jista' jkun eccessiv anki jekk ma jiskorrix il-limiti regolamentari, izda jiskorri daww dettati mill-prudenza w mill-fatturi ambjentali tal-mument*".

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<sup>7</sup> Vide testimony of Simon Grech (*a fol. 71*) and the two documents exhibited by him (Doc. "SG 1" and "SG 2" - *a fol. 72 et seq.*). Vide also testimony of Court expert Mr. Joseph Zammit (*a fol. 90*) and his report (Doc. "JZ 1" - *a fol. 92 et seq.*).

<sup>8</sup> Vide photographs forming part of report drawn up by PS 239 Joseph Caruana (Doc. "JC 1" - *a fol. 289*). Vide also testimony of Court expert Mr. Joseph Zammit (*a fol. 90*) and his report (Doc. "JZ 1" - *a fol. 92 et seq.*).

<sup>9</sup> Kollez. Vol. XL.iv.1282.

As a consequence of all this, the Court has no doubt whatsoever that even the fifth (5<sup>th</sup>.) and the eight (8<sup>th</sup>.) charges brought against the accused have been amply proven.

- As far as far as the sixth (6<sup>th</sup>.) and the seventh (7<sup>th</sup>.) charges are concerned, the Court notes that Article 15I(1) of Chapter 65 of the Laws of Malta states the following:

“For the purposes of this article and of Articles 15A to 15H, unless the context otherwise requires –

“breath test” means a test for the purpose of determining, by means of a device of a type approved by the Minister, whether the proportion of alcohol in a person’s breath is in excess of the limit prescribed by regulations under this Ordinance;

“drug” includes any intoxicant other than alcohol;

“the prescribed limit” means as the case may require:

(a) 35 microgrammes of alcohol in 100 millilitres of breath; or

(b) 80 milligrammes of alcohol in 100 millilitres of blood; or

(c) 107 milligrammes of alcohol in 100 millilitres of urine,

or such other proportions as may be prescribed by regulations made by the Minister”.

After considering this and after considering what has already been outlined above, including the positive result of the breath alcohol test (Doc. "CC 1" - *a fol.* 81), the fact that both PS 928 Ramon Mifsud Grech and PS 750 Terry James Mallia testified (*a fol.* 76 *et seq.* and *a fol.* 43 *et seq.* respectively) that the accused had a strong smell of alcohol, and the fact that no proof whatsoever was brought forward by the accused to substantiate his allegations that he was under medication or that his drink was spiked, the Court has no doubt whatsoever that even the sixth (6<sup>th</sup>.) and seventh (7<sup>th</sup>.) charges brought against the accused have been sufficiently proven.

### **Having considered**

That it results that all the charges brought against the accused have 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 charges brought against the accused, mainly the first (1<sup>st</sup>.), fifth (5<sup>th</sup>.), sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>.) charges, the fact that the victim has unfortunately passed away, the fact that the accused resulted positive to the breathalyser test he was subjected to and his manner of driving. The Court will also be taking into consideration the accused's clean conviction sheet (Doc. "TM 10" - *a fol.* 230). The Court notes that the accused's manner of driving coupled with the fact that he was driving under the influence of alcohol, as a consequence of which the injured party passed away, can only be considered as using a vehicle as a weapon of offence.

The Court notes that in other judgments delivered by various Courts the following was stated:

- “... *il-pieni li kienu qed jinghataw f'hafna kazijiet t'omicidju nvoluntarju kienu irreali u jaghtu wiehed x'jahseb li l-hajja ta' bniedem f'pajjizna, hija rhisa w ir-reat in kwistjoni mhux xi haga serja*”. [**Il-Pulizija vs. Mark Galea** (Court of Criminal Appeal – 15<sup>th</sup>. October 1987)];
- “*Il-piena preskritta mil-ligi ghar-reat in kwistjoni hija l-prigunerija li ma teccedix l-erba' snin jew il-multa. Din il-Qorti jidhrilha li n-nuqqas ta' prekawzjoni oovja ghal perikolu daqstant oovju, jindika l-piena ta' prigunerija u mhux ta' multa*”. [**Il-Pulizija vs. Joseph Busuttil et** (Court of Criminal Appeal – 26<sup>th</sup>. November 1992)];
- “*Fuq incidenti bhal dawn din il-Qorti kif preseduta gia kellha opportunita tesprimi ruhha precedentement [Vide **Il-Pulizija vs. Giovanni Conte** deciza 2 ta' Marzu 2000 u **Il-Pulizija vs. Antoine Cassar** kif konfermata fil-Qorti tal-Appell nhar it-22 ta' Settembru 2009] fejn uriet il-preokkupazzjoni taghha li paragonati ma' sentenzi f'kazijiet simili li jinghataw f'pajjizi civilizzati ohra, s-sentenzi ta' dawn il-Qrati huma pjuttost miti*”. [**Il-Pulizija vs. Gordon Micallef** (Court of Criminal Appeal – 11<sup>th</sup>. January 1994)].

The Court notes that each and every case has to be studied on its own and this does not signify that an effective jail term should be imposed whenever a person is killed in a traffic accident. Yet, when extreme irresponsibility is proven, the situation is different. It has already been outlined above that driving a vehicle under the influence of alcohol is tantamount to using the vehicle as a weapon in the hands of a person who is not responsible enough to drive it. The Court notes that if the accused in this case was more responsible, Antonio Grixti would not have lost his life.

The Court is aware of the judgment **Il-Pulizija vs. Ludwig Micallef** delivered by the Court of Criminal Appeal on the 1<sup>st</sup>. March 2012, which judgement was referred to by the defence in its written Note of Submissions (*a fol. 346 et seq.*). In this judgment, the Court of Criminal Appeal referred, amongst others, to the tender age of the accused. This does not apply to the present case. Apart from this, the Court notes that, in the judgement mentioned, the accused was not under the influence of alcohol as in the present case. This fact on its own places the present case on a much more serious level.

Furthermore, **Archbold Criminal Pleading, Evidence & Practice, 2006** makes reference to **R. v. Gray (2005) 149 S.J. 576, CA** which stated the following:

“The Court said that general considerations were, first, that whilst the test of dangerous driving was objective, the requirements that the driving should be far below the standard of the competent and careful driver, and that it would have been obvious to the same careful and competent driver that driving in that way would be dangerous, meant that it would usually be obvious to the offender that the driving was dangerous and he therefore deserved to be punished accordingly; secondly, the fact that Parliament had chosen to provide for a much heavier maximum sentence where death resulted as compared with where death did not result showed that Parliament regarded the consequences as a relevant sentencing consideration; thirdly, whilst Courts should take account of the anguish of the victim’s family it had to be remembered that no sentence will reconcile a family to their loss nor cure their anguish; fourthly, it was important for Courts to drive home the message as to the consequences that could result from dangerous driving; drivers must know that if

as a result of their dangerous driving a person was killed, no matter what the mitigating circumstances, normally only a custodial sentence would be passed; that was because of the need to deter other drivers and because of the gravity of the offence.

In assessing the seriousness of an offence, the Court said that culpability must be the dominant factor.”

That the message that ought to be sent to the society in general is that human life is not cheap and that the taking away of a life, even involuntarily, should be considered as being very serious. Hence, after the Court has outlined all the above-considerations regarding punishment, the Court feels that it has no alternative but to condemn the accused to an effective jail term.

Therefore, the Court, for the above-mentioned reasons, after having seen the Articles of Law sent by the Attorney General on the 18<sup>th</sup>. of December 2013 (*a fol.* 320), mainly Articles 17, 225, 328(a) and 328(d) of Chapter 9 of the Laws of Malta, Articles 15(1)(a), 15(2), 15(3), 15A(1) and 15B(1) of Chapter 65 of the Laws of Malta, and Regulation 127 of Subsidiary Legislation 65.11 of the Laws of Malta, finds the accused Justin West guilty of all the charges brought against him and condemns him to a period of two (2) years imprisonment. The Court orders that the accused be disqualified from holding or obtaining a driving licence for a period of three (3) years starting from today.

Finally, after having seen and considered Article 533 of Chapter 9 of the Laws of Malta, the Court condemns the accused to pay the amount of one thousand eight hundred and twenty one Euros and

sixty six cents (€1821.66) within a period of three (3) months from today which amount represents the costs incurred in connection with the employment of experts in this case.<sup>10</sup>

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**Dr. Neville Camilleri**  
**Magistrate**

**< Final Judgement >**

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<sup>10</sup> Mr. Joe Zammit (€377.60) (*a fol. 206 tergo*); Architect Richard Aquilina (€273.29) (*a fol. 140*); Dr. Mario Scerri (€361.04) (*a fol. 286*); PS 239 Joseph Caruana (€271.82) (*a fol. 289*); Dr. Ali Salfranz and Profs. Camilleri Podesta (€537.91) (*a fol. 300 tergo*).