



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

MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.

Case Number: 268/2015

Today, 15th February 2016

**The Police
(Inspector Nikolai Sant)**

vs

Eric Lawani

The Court,

After having seen the charges brought against the accused Eric Lawani, 27 years of age, son of Lawani and Joy nee` Idhosa, born in Nigeria on 26th March 1988, residing at 51, 'Bello', Filippu Farrugia, Zurrieq and holder of Italian Foreign Travelling Document No 105688;

Charged with having in the Maltese Islands on 18th October 2015 and in the previous days before this date:

- a) Produced, sold or otherwise dealt with the whole or any portion of the plant cannabis in terms of Section 8(e) of Chapter 101 of the Laws of Malta;
- b) Committed these offences in, or within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people habitually meet in breach of Article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Having heard the evidence and having seen the records of the case, including the order of the Attorney General in virtue of subsection two (2) of Section 22 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), for this case to heard by this Court as a Court of Criminal Judicature;

Having seen that the accused pleaded not guilty to the charges brought against him;

Having heard final oral submissions by the parties.

Considered that:

Considerations on Guilt

The Court deems as very significant the evidence tendered by PC 773 Ryan Tonna, who was the only police officer in this case to have actually noticed the two young men first making contact with a person, whom he describes as a foreigner and subsequently, with the accused. It clearly results from the evidence produced that all the other police officers who testified in this case followed the two young men on the basis of the observations made by PC 773, to which he drew their attention. According to **PC 773 Ryan Tonna**, whilst in Paceville, he noticed two young men approaching a foreigner, who signalled to them to go further down the road. At this stage he approached his Sergeant and colleagues and indicated to them to follow the two young men. He noticed that one of these young men was holding money in his hand and whilst following them, he saw them making contact with the accused. At this stage, some of his colleagues stopped the two young men, whilst together with PC 1311 Gregory Pizzuto and another colleague, he stopped the accused. The accused was found in possession of €20 and some small change and he was arrested on suspicion of drug trafficking. PS 773 also states that “*Then the sergeant got the two youths who were with him and asked them who gave them the drugs and one of the youths pointed to Eric Lawani*”.¹ A search at the accused’s residence yielded about €800 in cash and some roaches.²

During his cross-examination³, the witness states that he noticed two young men walking together, they approached a foreigner and then walked further down the road, where he saw them making contact with the accused. He also noticed these two young men talking to the accused for a short period of time. The witness also states that on their way down the road towards the accused, one of these men held

¹ A fol. 26 of the records of the case.

² *Vide* the evidence tendered by PC 773 Ryan Tonna, a fol. 25 *et seq* of the records.

³ A fol. 100 *et seq* of the records.

money in his hand. He explains that upon noticing the Maltese men making contact with the accused, he requested his colleagues to stop them. He further explains that his suspicions were raised by the fact that one of the Maltese men held money in his hand, although he could not tell the denomination. He states that after noticing the three people involved making contact and as he was walking down the road towards them with his colleagues, the accused walked away, at which point his colleagues stopped the Maltese men. Whilst the accused was still walking away, the witness stopped him. As to the contact between the two Maltese men and the accused, the witness states that he noticed them talking to each other, although this conversation was not a long one, since they were stopped. He further states that as soon they approached the two men and the accused, he got the impression that the accused noticed them because he started to walk away.

Upon being re-examined, the witness states that he did not see anything being handed over when he observed the two men making contact with the accused.

PS 839 Stephen Micallef states that on that particular night, whilst on duty in Paceville, he was informed by PC 773 that he had seen two young men making contact with a foreigner and that he had noticed them passing something to each other. Accordingly, they followed these two young men, who were walking towards Dragonara Road and he noticed that the accused was walking merely a few steps in front of them. Together with PS 579, he stopped the two young men – Omissis, a 16 year old and Micallef, an 18 year old. A search on the former yielded a small sachet of cannabis grass. The witness states that he asked Omissis from where he had obtained this substance and the latter immediately pointed at the accused. At this stage, since he was walking in front of them, the accused was arrested by PC 773, PC 1258 and PC 1311. The witness further states that upon being asked again about the provenance of the said substance, Omissis approached the accused, who had been handcuffed by this time and was sitting down and identified him again as the person who had sold him the cannabis grass.⁴

PC 1311 Gregory Pizzuto confirmed that upon being alerted by PC 773 about a suspicious contact between two young men and the accused, they walked down towards Dragonara Road, where PS 839 and PS 579 stopped the two men, whilst together with PC 773 and PC 258, he stopped the accused. Subsequently, the younger of the two men, a certain Omissis approached them with PS 839 and informed the latter clearly that he had just purchased drugs from the accused. He

⁴ A fol. 19 of the records of the case.

also states that the said drugs consisted of a small amount of a substance suspected to be cannabis grass.⁵

PS 579 Antoine Micallef confirmed that during that night, together with PS 839 he carried out a search on Omissis, in whose trousers they found a small bag containing a substance suspected to be cannabis grass. Nothing was found on the second man, Micallef. According to the witness, PS 839 asked Omissis from where he had bought the said substance and in the presence of the accused, Omissis identified the latter. When Omissis was stopped by the police, the accused was arrested about twenty feet away. He had been walking alone in front of the two young men, when the latter were stopped by the police.

During his cross-examination, PS 579 states that upon being informed by PC 773 that he had seen two young men making contact with a foreigner, they proceeded by following them at a quick pace. Together with PS 839 he stopped the two Maltese men, Omissis and Micallef and he conducted a search on Omissis, in whose trouser's front left pocket he found a plastic bag containing a substance suspected to be cannabis grass. At this stage, PS 839 asked him from where he had obtained this substance and although Micallef refused to reply to this question, Omissis immediately pointed towards the accused. They then walked towards the accused, about two metres away from him and PS 839 asked Omissis from where he had obtained the substance, at which point, Omissis pointed towards the accused. The witness also states that either Omissis or Micallef had €10 or a small amount of money, but he could not remember if it was Omissis or Micallef who had the money. One of them had an empty wallet, whilst the other had €10. He further states that he had not seen anything passing between them. Upon the suggestion made by the defence lawyer, that it was the police who had suggested to Omissis that the accused had sold him the drug, the witness replied that this was not the case and that the three of them had been stopped about thirty metres away from each other. The witness also states that whilst PS 839 spoke to Omissis in English, Omissis did not speak but he merely indicated the accused by pointing towards him. On being asked whether the two Maltese men looked normal or slightly drunk, he replied that they looked normal.

Inspector Nikolai Sant states that on 18th October 2015 at around 2.00 a.m., police officers, who were on duty in Paceville observed two young men, Omissis and Zachary Clifford Micallef making contact with the accused and later on, the accused passing suspected cannabis grass. All three were arrested and later on, the

⁵ A fol. 28 of the records of the case.

two young men informed the witness that they had bought the drug from the accused. On his part, the accused denied selling any drugs to these men. The witness exhibited the sum of €850, which was found in the possession of the accused, three mobile phones and some joints suspected to contain cannabis (Doc. NS 2).⁶

Inspector Herman Mula exhibited a substance suspected to be cannabis grass (Dok. HM) and states that this had been handed over to him by Inspector Nikolai Sant.⁷

Zack Micallef states that he had a couple of drinks with his friend Andy Omissis and he was pretty drunk. They were at top of the hill in Paceville, when Omissis asked him if he was interested in trying cannabis. He decided to try it, since he was drunk and although he was not so sure how this happened, they met a group of people, but ended up talking to one person, who was foreign and dark skinned. They were looking for cannabis. This person gave them the drug and then, suddenly the police intervened. Upon being asked about the conversation with the person who had provided them with the drug, prior to being stopped by the police, the witness stated that he did not remember much of it, but he remembered that his friend Andy did most of the talking and that the said person handed over the drug cannabis grass to Andy. He stated that he did not really see the drug on the night, but on being asked how he knew therefore that this person had passed the drug to his friend, he stated that *“it is like a handshake, like he just passed it on”*⁸ and that it happened very quickly. Upon being shown Dok. HM, the witness replied that he could not identify it because he had not really seen it. He states that he thinks that the police found it in Andy’s possession and he did not know whether Omissis had any drugs in his possession before they met this person. Upon being asked to look around the courtroom, the witness did not recognise the person they spoke to on the night in question and stated that all he remembered was that he was coloured and of average height. The Court noted however, as indicated in the transcript of this testimony, that the witness was specifically avoiding to look at the accused.

Andy Omissis states that on the night of 18th October 2015 at about 2.00 a.m., Zack Micallef and himself were walking down a street in Paceville, when a man approached Micallef and offered him drugs. They both agreed and accepted to buy drugs, a price of €13 was negotiated, the marijuana (which he later describes as *cannabis grass*) was passed to his friend Zack, who passed it on to him and they

⁶ A fol. 43 of the records.

⁷ A fol. 48 of the records.

⁸ A fol. 55 of the records.

were stopped and arrested by the police. They had not paid for the drug. He states that the man he was referring to was black, in his 30's, had a beard, was 5'9 in height, short and not very built. He states that he could not recall the man's words because he had spoken to his friend. He said that this man offered them *cannabis* for €15, but they told him that they only had €13 and he gave them a bag of marijuana. He stated that their decision to buy drugs had been a spontaneous one and was taken when the man approached them and offered them drugs. The witness identified the accused as the man who approached them.

During his cross-examination, the witness stated that he had drunk one or two drinks but he was sober. Regarding Micallef, he did not know whether he was drunk. He stated that he had only met Micallef five minutes before so he was not in a position to know Micallef's state at the time. He stated that Micallef negotiated with the accused and he did not recall that Micallef was drunk when making these negotiations, although this was possible. He then explained that he had not noticed or realised this, but it was possible. He stated that he had not heard the negotiations that were made very clearly, that he had only heard a part of what was being said, but he had heard the part about which he testified and that he was certain about that. He repeated that he was stating the truth. He stated that Micallef had prepared the money to pay and he was already holding it and that whilst they were negotiating, Micallef had asked him for the money. He also stated that he pulled out his wallet and gave him €10, whilst Micallef had €3 and Micallef told him that he would pay him later. He had already passed the money to Micallef and when the police stopped them, Micallef was still holding the money. Upon being asked whether he indicated the accused upon being arrested, he stated that he was caught with them, that the police had seen what had happened and that they did not ask him to indicate the man who had supplied them with the drug. He confirmed the defence's suggestion that it was the police who indicated the accused to him and that he had not indicated the accused to the police, but stated that the police had seen this incident happen and that the police had told them so, as soon as they were arrested. However he stated that that he had seen the transaction and so had the police. He stated that it was Micallef who communicated with the accused and that the deal had been made with the accused. He denied that they were looking for cannabis on that night and stated that this was a spontaneous decision and further denied that he had spoken to Micallef about this incident after that night, although they had met after the case.

In his statement, **the accused** denies that the police had seen him passing a small bag containing *cannabis grass* to a third party, denies selling anything, denies

being the one who gave third parties marijuana and states that he does not sell drugs.

Considered also that:

The Court notes first of all that from the evidence tendered by the Police Officers involved, it results that some roaches were found in the residence of the accused and furthermore, that Omissis was found in possession of a plastic bag containing a substance suspected to be cannabis grass.

The Court further notes that two sets of substances were exhibited by the Prosecution during these proceedings, namely, Document NS 2, which is described by Inspector Nikolai Sant during his testimony as suspected cannabis joints – and therefore certainly not the substance which was found in the possession of Omissis - and Document HM, which is described by Inspector Herman Mula in his testimony as suspected cannabis grass, which was handed over to him by Inspector Nikolai Sant.

In his report, Scientist Godwin Sammut describes the document given to him for his forensic analysis as follows: “A *brown envelope marked as S/B/600/15 that contains an Evidence Bag with ID S00698763 that contains: a small plastic bag containing green grass.*” On the evidence bag, there are also the words ‘*Omissis fil-but tal-qalziet 5199(M), 579, 839 + Zack Micallef*’. It is clear therefore that this substance is that found in possession of Omissis by PS 579 and PS 839, in the presence of Zack Micallef, to which ample reference is made by the police officers who testified in this case. According to the forensic expert’s report, “*Tetrahydrocannabinol was found in the extracts taken from the green grass*” in the exhibit mentioned, with the total weight of the green grass being 0.66 grams and the purity of THC being approximately 5%.⁹

The Court also notes that during the sitting held on 16th December 2015, the Court was requested to appoint an expert in order to analyse the substance exhibited as Document NS 2. It is also minuted that the Court acceded to this request and appointed Scientist Godwin Sammut. Yet, it is clear that Scientist Godwin Sammut did not analyse this document, which consisted in suspected cannabis joints, but Document HM, which consisted in a substance suspected to be cannabis grass and which was indeed found to contain *Tetrahydrocannabinol* as stated in the above paragraph. Although from the minutes of the case it results that the Court’s

⁹ *Vide* expert’s report a fol. 91 *et seq* of the records.

decree authorised the expert to analyse Document NS 2 rather than Document HM, yet the Court has no doubt that this was a mistake attributable to the Court itself in referring to Document NS 2 rather than Document HM when minuting the request made by the Prosecution to appoint an expert to analyse the substance exhibited. The Court is making such an assertion for various reasons. First of all, contrary to what is stated in the minutes of 16th December 2015, no substance was exhibited during the said sitting as is evident from the minutes of that sitting and from the minutes of the previous sittings, in which the relevant substances were in fact exhibited. Secondly, the Prosecution did not request the appointment of an expert when Document NS 2 was exhibited during the sitting of 9th November 2015, but the request was made during a later sitting, subsequent to the sitting of 23rd November 2015 when Document HM was exhibited. Furthermore, although in the sitting held on 2nd December 2015, it is minuted that the Prosecution requested the appointment of an expert to analyse Document NS 2 (again not Document HM), that the Prosecution's intention here was to request the appointment of an expert to analyse the substance found in the possession of Omissis and not the roaches found in the possession of the accused is again evident from the fact that the defence, during the same sitting, suggested that prior to such appointment and in order not to incur any unnecessary expenses, the Prosecution should first produce Andy Omissis as a witness. Clearly as is also evident from the records of the case, this suggestion was made by the defence after witness Zack Micallef, had not identified the accused during the previous sitting and it is likewise clear that the Prosecution's request was directed at the substance found in Omissis's possession, since the defence's suggestion would have had no relevance or basis if the Prosecution were referring to the roaches found in the accused's possession. Indeed, the Court upheld this suggestion made by the defence and at that stage, solicited the Prosecution to produce Omissis as a witness prior to acceding to such request. And as evident from the minute of 16th December 2015, it was only after Omissis tendered his evidence that the Prosecution requested the appointment of an expert to analyse the substance exhibited. The Court therefore has no doubt that the Prosecution's request was that the Court appoints an expert to analyse the substance found in the possession of Omissis – namely Document HM – and not Document NS 2 as erroneously indicated in the minute of the said sitting and it was this request, which was acceded to by the Court, following Omissis's testimony. And indeed it was Document HM which was analysed by Scientist Godwin Sammut and not Document NS 2.

In the present case, the defence has submitted *inter alia* that the evidence tendered by the two main witnesses, Zack Micallef and Andy Omissis is riddled with inconsistencies, that Andy Omissis's testimony is not credible and that as a result,

the Court cannot conclude, beyond any reasonable doubt, that it was the accused who had actually supplied them with the substance found in Omissis's possession.

Indeed the Court notes that there are various inconsistencies between the respective versions given by the two witnesses Zack Micallef and Andy Omissis as to what led to the purchase of the substance in question and as to what actually happened when the transaction was taking place. It is also clear that Omissis is not credible in parts of his testimony for reasons that the Court will explain in its considerations hereunder, and it is likewise clear that Micallef was a very reluctant witness, who started off tendering evidence by immediately stating that he was quite drunk on that particular night.

Nonetheless, taking into account not merely the evidence tendered by these two witnesses but also the evidence given by the police officers involved in this case, in particular PC 773 Ryan Tonna, the Court is morally convinced that on that night, the accused had indeed supplied the substance that was found in Omissis's possession.

As regards the evidence tendered by Micallef and Omissis, it is clear that the inconsistencies are mainly the result of the fact that both were reluctant to admit the extent of their involvement in the purchase of the said substance and that these inconsistencies in fact revolve around what led to the purchase of the substance and who of the two, was mainly involved in the discussions with the party who provided them with the same. Thus, Micallef states that it was Omissis who asked him whether he was interested in trying cannabis and that it was upon Omissis's suggestion that they went further down the road to look for cannabis. On the other hand, Omissis states that they were approached by the accused who offered them cannabis and that they had decided to buy the drug spontaneously upon such offer, thereby mitigating his involvement in the decision of the two men to buy drugs. In this respect considering the fact that PS 773 had noticed the two men approaching first a foreigner, then walking down the road, whilst one of them held money in his hand and then approaching the accused, renders Micallef's version more credible and plausible. Furthermore, taking also into consideration that the conversation between the two men and the accused had been a short one before the police intervened, leads the Court to conclude that the decision by the two men to buy cannabis had not been a spur of the moment decision as Omissis states, but that indeed, they had already agreed to buy cannabis before approaching or upon being approached by the accused. Similarly, whilst Omissis states that it was Micallef who carried out the negotiations with the accused, on the other hand, Micallef states that it was Omissis who held most of the conversation. And likewise, whilst

Omissis states that the substance was passed to Micallef, who in turn passed it on to him, Micallef states that the substance was directly passed from the supplier to Omissis and that this happened quickly, through a handshake. Indeed, Micallef states that it happened so quickly that he did not really see the substance. Even in this regard, the Court considers Micallef's version as the more credible and plausible one in the circumstances, mainly because none of the police officers who approached them, including PC 773 who had been following their movements, saw the substance being passed to the two men, apart from the fact that the contact did not last very long. It was so short in fact that the men did not even pay their supplier, having been cut short by the police. Furthermore, Omissis's version that Micallef had asked him for the money there and then, whilst negotiating a price with the accused, is not credible either, because PC 773 had clearly seen one of the men holding money before making contact with the accused. As already noted, the conversation with the accused was a very short one and there would have been no time for Micallef to ask Omissis to give him money and for Omissis to take it out of his wallet there and then and pass it on to Micallef. Yet, Omissis's lack of credibility as to what led to the acquisition of the substance eventually found in his possession and as regards the manner in which such acquisition took place, does not lead the Court to conclude that his entire testimony is not credible.

In this respect, the Court notes that both Micallef and Omissis state that they had agreed to buy cannabis and that they spoke to a foreign black male, who provided them with the substance. Whilst Micallef did not identify the accused as being the man who gave them the substance – and in this respect the Court has already noted that Micallef was evidently a reluctant witness, who paid particular attention not to look at the accused in the courtroom when asked whether he recognised the man who had provided them with the substance - yet he confirms that the police intervened as soon as they had acquired it. This is also confirmed by Omissis, who states that the police apprehended them as soon as they had acquired the substance, but before they had even paid the supplier. Both Omissis and Micallef confirm that they spoke only to one person, although Micallef states that initially he was forming part of a group. Furthermore, PC 773 clearly states that the two men made contact with one person, namely the accused, after he had noticed one of them holding money in his hand – a clear indication that they had the intention to buy cannabis when they approached the accused, rendered stronger by the fact that PC 773 had already noticed them speaking to another foreigner, who had signalled to them to go further down the road - and both PC 773 and PS 579 state that when they intervened, the accused was walking slightly in front of the two men and was in fact stopped a few metres away from them. There is absolutely no evidence to suggest that following their contact with the accused, the two men had made

contact with someone else, until the police intervened. Indeed, as noted by PC 773, it is very likely that the accused had noticed the police approaching when he started walking away, accelerating his pace and indeed did not manage to obtain payment for the substance he had just supplied in the process. In view of these circumstances, the Court is already morally convinced that, independently of Omissis's identification of the accused as the man who had actually supplied them with the substance, the accused was indeed the supplier. Furthermore, Omissis identified the accused as the supplier as soon as the police apprehended him and also during these proceedings. Although the defence raised doubts as to whether Omissis had actually indicated the accused to the police as the supplier or whether it was the police who had suggested to Omissis that the man who supplied them with the substance was the accused, Omissis nonetheless confirmed that Micallef and himself had indeed communicated and dealt with the accused. It is also worth noting that before identifying the accused in court, Omissis also provided a description of the supplier, which indeed tallies with that of the accused. Although he stated that the supplier was 5'9 tall, whereas the accused is a short man, yet the witness's account of the supplier's height was also accompanied by a description of the said supplier as a short, not very built man, which is in fact an accurate description of the accused.

The Court thus has no doubt that the accused had indeed supplied Micallef and Omissis with the substance in issue and therefore it cannot but conclude that the first charge has been proved to the degree required by law.

The Court also notes that even if it had not been proved that the substance found in Omissis's possession was indeed cannabis grass, it is still clear that the accused had offered to supply cannabis grass to Micallef and Omissis. Indeed from the evidence tendered it results that whether the two men had approached the accused or whether he had approached the two men, they were seeking to purchase cannabis – Micallef's version being more credible than that of Omissis's in this respect as above noted – and that upon such request, this had been offered to them by the accused, so much so that a price was also negotiated between the three and the accused subsequently provided a substance purporting to be cannabis grass. That such substance purported to be so is not only clear from the testimony of Micallef and Omissis, but also from the evidence tendered by the police officers involved, who described the substance found in Omissis's possession as suspected cannabis grass. In terms of Section 22(1B) of the Dangerous Drugs Ordinance, even an offer to supply drugs amounts to dealing in drugs and since it is irrelevant whether any such substance is actually supplied following such offer, the offer in itself being sufficient to constitute the completed offence of dealing in drugs, it

would have been of no consequence in this case had it not been proved to the degree required by law that the substance found in Omissis's possession was actually cannabis grass. As stated in the judgement delivered by this Court, differently presided, on 12th October 2001, in the names **Il-Pulizija vs Ronald Psaila**, which was subsequently confirmed by the Court of Appeal in its judgement delivered on 8th January 2002 (Appeal No: 187/2001):

*“Minn din id-disposizzjoni tal-ligi johrog car li r-reat ta’ Traffikar jikkonfigura anki jekk persuna **toffri** li taghmel wahda mill-azzjonijiet indikata f’dan l-Artikolu. Fit-test ingliz, il-kelma “joffri” hija trodotta bil-kelma “offer”. Issa stante li ma hemmx fl-Ordinanza definizzjoni ta’ din il-kelma, allura ghall-finijiet ta’ interpretazzjoni, din ghandha tittiehed fis-sinifikat ordinarju taghha, u cioe` li, spontaneament jew fuq rikjesta, direttament jew indirettament, **persuna turi**, bil-fatt jew bil-kliem, id-disponibilita` taghha li taghmel wahda mill-azzjonijiet indikati.*

In propositu huma interessanti l-osservazzjonijiet maghmula fil-Blackstone Criminal Practice 2001 – (11th Ed. B20.29) fuq l-interpretazzjoni tal-frasi “Offering to Supply” kontenuta fil-Misuse of Drugs Act 1971 s. 4. “An offer may be made by words or conduct ... Whether the accused intends to carry the offer into effect is irrelevant; the offence is complete upon the making of an offer to supply” (vide kazistika indikata – pg. 776).”

The Court is thus satisfied that the first charge brought against the accused has been proved beyond reasonable doubt. However, since the evidence tendered is strictly limited to one particular event which took place on 18th October 2015 and since there is no other evidence to the degree required by law, to suggest that the accused had dealt in cannabis grass also on the days prior to this date, namely the period covered in the charge sheet, the Court is finding the accused guilty of dealing in cannabis grass only on 18th October 2015.

As regards the second charge, namely that of having committed this offence in or within 100 metres of the perimeter of a school, youth club or centre or such other place, where young persons habitually meet, in terms of the proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta, there is no doubt that the offence took place in Paceville and thus, very clearly in a place where young people habitually meet. PC 773 states that he first noticed the two men down the road from Havana and that he had initially seen them whilst he was outside Axis carpark. Likewise, Omissis states that they had made contact with the accused further down the road from Subway. Furthermore, both PS 839 and PS 579 state

that they followed the two men in St. George's Road, whilst they were walking towards Dragonara Road. This aggravating circumstance has thus also been proved to the degree required by law.

Considerations on Punishment

As regards the punishment to be inflicted the Court took into account, the clean criminal record of the accused, whilst noting, however, that in his statement the accused states that he had been in Malta since around August of the same year.

The Court further took into consideration the weight of the cannabis grass, which was supplied by the accused to Omissis and Micallef and that this was a small amount and furthermore that the punishment to be inflicted for the first charge must be increased by one degree due to the aggravating circumstances, of which the accused is also being found guilty.

As regards the sum of €850 in cash found in possession of the accused, the Court notes that this was not found on his person, but at his residence. In his statement, the accused states that he had a weekly income of circa €180 and although he had been in Malta only for about two months and also paid a monthly sum of €185 in rent, water and electricity, he had come to Malta from Italy by taking an Air Malta flight. Since the charges refer to 18th October 2005 and the previous days, and since all evidence produced refers to the events that took place on 18th October 2015, the Court cannot conclude beyond any reasonable doubt that such monies were acquired by the accused through drug trafficking during the period to which the charges refer. For this reason, the Court is ordering the release of the said sum in favour of the accused.

Conclusion

For these reasons, the Court after having seen Sections 8(e), 22(1)(a), 22(2)(b)(i), the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta and Regulations 4 and 9 of Subsidiary Legislation 101.02, finds the accused guilty of the charges brought against him (though limitedly to 18th October 2015 and not the previous days before such date) and condemns him to **ten months effective imprisonment** – from which term one must deduct the period of time, prior to this judgement, during which the accused has been kept in preventive custody in connection with the offence of which he is being found guilty by means of this judgement – and **a fine (multa) of seven hundred and fifty Euro (€750)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the accused to pay the expenses relating to the appointment of expert Godwin Sammut during these proceedings, namely the sum of one hundred, fifty four Euro and seventy six cents (€154.76).

The Court orders that the substances exhibited as Documents NS 2 and HM respectively are destroyed, once this judgement becomes final, under the supervision of the Registrar, who shall draw up a *proces-verbal* documenting the destruction procedure. The said *proces-verbal* shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

The Court orders that the sum of eight hundred and fifty Euro (€850) exhibited and marked as Document NS and three mobile phones exhibited and marked as Document NS 1 are released in favour of Eric Lawani.

Furthermore, the Court orders a ban on the publication of the name of the witness, Omissis, since he is a minor.

Natasha Galea Sciberras
Magistrate