

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

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

Case Number: 167/2016

Today, 10th August 2016

**The Police
(Inspector Trevor Micallef)**

vs

**Mohamed Hussein Abdi
(ID 155698(A))**

The Court,

After having seen the charges brought against the accused, Mohamed Hussein Abdi, son of Hussein and Anab nee` Khuriye, born in Somalia on 1st January 1990, residing at Marsa Open Centre, Xatt il-Mollijiet, Marsa and holder of identity card number 155698(A);

Charged with having in these islands on 16th July 2016 at ten to five in the morning (4.50 a.m.) in St. Julians and/or in the vicinity:

Produced, sold or otherwise dealt with the whole or any portion of the plant cannabis in terms of Section 8(e) of the Chapter 101 of the Laws of Malta;

Accused further of having on the same date, time, place and circumstances committed this offence 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;

Accused further of having on the same date, time, place and circumstances assaulted or resisted by violence or active force not amounting to public violence, persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority (Section 96 of Chapter 9 of the Laws of Malta);

Accused further of having on the same date, time, place and circumstances reviled, threatened or caused bodily harm on the persons lawfully charged with a public duty, while in the act of discharging his duty or because of having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty (Section 95 of Chapter 9 of the Laws).

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 during his examination, the accused pleaded not guilty to the charges brought against him;

Having heard final oral submissions by the parties.

Considered that:

Whereas the charge sheet exhibited in the Maltese language refers to offences allegedly committed by the accused on 14th July 2016, the charge sheet exhibited in the English language refers instead to 16th July 2016. From the evidence brought forward, it is clear that the alleged facts which led to the present charges took place, not on 16th July 2016, but on 14th July 2016 and indeed the accused was arraigned under arrest, before this Court as differently presided, on 15th July 2016. The incident report relating to this case¹ was entered by PS 1128 Glenn Sammut on 14th July 2016 and refers to an incident that allegedly occurred during the previous hour, as reported by PS 430 Andrew St. John and Wayne Sciberras. The accused released a statement on 14th July 2016 at 1.15 p.m.² PS 430 Andrew St. John, in his deposition, refers to 14th July 2016 as the date of the incident in question³ as do the other witnesses of the Prosecution and also the accused.⁴ The medical certificate issued in respect of the accused and exhibited by the Prosecution is also dated 14th July 2016.⁵

The Court further considers that the minute of the sitting held on 15th July 2016, during which the accused was arraigned before the Court under arrest, indicates that said Court acceded to the accused's request that the proceedings be heard in the English language, since he declared that he did not understand the Maltese language. Indeed, the proceedings were conducted in the English language and the charges that were read out and confirmed on oath by the Prosecuting Officer were also in the

¹ Doc. GS, a fol. 50 *et seq* of the records of the case.

² Doc. TM2, a fol. 12 *et seq* of the records of the case.

³ *Vide* deposition of PS 430 Andrew St. John, a fol. 24 *et seq* of the records.

⁴ PC 769 Stephen Incorvaja (a fol. 31 *et seq* of the records), PC 646 Albert Saliba (a fol. 34 *et seq* of the records), PS 1123 Glenn Sammut (a fol. 37 *et seq* of the records), Inspector Elton Taliana (a fol. 54 *et seq* of the records), Inspector Trevor Micallef (a fol. 59 *et seq* of the records) and Hussein Abdi Mohamed (a fol. 64 *et seq* of the records).

⁵ Doc. TM 9.

English language.⁶ It is therefore clear to the Court that during his examination in terms of law, the accused was answering to the charges, as served upon him and as exhibited in the English language.

Section 360(2) of Chapter 9 of the Laws of Malta states that:

“The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give ...”.

In its judgement of 19th November 2015 in the case **Pulizija vs Andre` Falzon**, the Court of Criminal Appeal referred to another judgement given by the said Court, as differently presided, on 18th October 2005 in the case **Pulizija vs John Mary Briffa**, where the appellant had been charged with offences that allegedly took place at around 7.30 p.m., whereas the evidence brought referred to an incident that had occurred at around 7.30 a.m.. In that case, it was held that:

“L-imputazzjoni ghalhekk kif impostata qed tirreferi ghal xi haga li allegatament grat tmax-il siegha wara u l-ewwel Qorti hekk sabet lill-appellant hati. Mill-provi ma jirrizultax li gara xi incident fil-hin indikat fl-imputazzjoni u ghalhekk l-appellant ma setax jinsab hati kif fil-fatt insab. Il-frazi “ghall-habta ta” tindika hin approssimattiv u tinkludi hin vicin dak imsemmi fl-imputazzjoni izda zgur mhux tmax-il siegha wara. Il-prosekuzzjoni qalet li huwa ovvju li dan kien zball dattilografu. Jekk inhuwa hekk, il-prosekuzzjoni kellha tiehu hsieb taghmel jew titlob il-korrezzjoni opportuna tempestivament.”

After referring also to other judgements which confirmed this same principle⁷, the Court continued as follows:

“Stabbiliti dawn il-principji dottrinali u applikati ghall-kaz in ezami huwa car allura illi l-appellanti kellu jigi illiberat mill-akkuza kif dedotti kontra tieghu billi dawn jirreferu ghal perijodu ta’ zmien differenti minn dak li fih sehew l-allegati fatti li wasslu ghall-imputazzjoni odjerna. Illi allura billi l-Prosekuzzjoni naqqset milli tinduna b’dan l-izball u tirrettifikah fil-hin opportun, u billi l-Avukat Generali huwa issa fi stadju ta’ appell prekluz milli jitlob il-korrezzjoni mehtiega biex tigi sanata l-akkuza, ma hemmx dubbju illi l-imputazzjonijiet kif dedotti kontra l-appellanti ma jistghux jissussistu billi fid-data indikata fl-akkuza l-appellanti ma ikkomettiex irreati lili addebitati.”

⁶ Vide a fol. 6 of the records.

⁷ **Pulizija vs Warren Piscopo** and **Pulizija vs Rita Theuma**, both decided by the Court of Criminal Appeal on 19th October 2011.

It is therefore clear in this case, that since the charges refer to 16th July 2016, whereas the alleged facts leading to said charges occurred on 14th July 2016, the accused cannot be found guilty as charged.

Conclusion

For these reasons, the Court is finding the accused not guilty of the charges brought against him and acquits him of said charges.

The Court orders that the drugs exhibited as Document ET 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.

Furthermore, it orders the release of Document ET1 (the sum of nine Euro (€9) in coins, the sum of sixty five Euro (€65) in notes and three (3) one Dollar (\$1) notes) and Document ET2 (mobile phone) in favour of Mohamed Hussein Abdi.

Natasha Galea Sciberras
Magistrate