



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

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

Case Number: 147/2016

Today, 28th October 2016

**The Police
(Inspector Frank Anthony Tabone)
(Inspector Priscilla Caruana Lee)**

vs

**Abdulahi Hassan Ali
(ID 106739(A))**

The Court,

After having seen the charges brought against the accused Abdulahi Hassan Ali, 21 years of age, son of Hassan Ali and Ajabo Adow, born in Somalia on 21st October 1994 and residing at No. 9, St. Joseph, San Piju V Street, Zabbar, Malta, holder of ID card number 106739(A);

Charged with having on 9th May 2016 and on the previous months on these Islands:

1. Produced, sold or otherwise dealt in the resin obtained from the plant cannabis, or any preparation of which such resin formed the base, in terms of Section 8(b) of Chapter 101 of the Laws of Malta;
2. And also for having on the same date, time and circumstances had in his possession (otherwise than in the course of transit through Malta of the

territorial waters thereof) the whole or any portion of the plant cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta;

3. And also for having on the same date, time and circumstances had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis, or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta.

The Court was requested to order the accused to pay any Court expenses related to the appointment of any court experts in the course of the proceedings, as stipulated in Article 533 of Chapter 9 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 heard the defence declare that it has no objection with respect to the acts that have been filed in the Maltese language, in the course of these proceedings;

Having heard final oral submissions by the parties.

Considered that:

Considerations on Guilt

The accused is first of all being accused with having sold or otherwise dealt in cannabis resin on 9th May 2016 and the previous months before this date. With respect to this charge, the case of the Prosecution rests solely on the deposition of a certain Kurt Grima, who released two statements on 10th May 2016 and 11th May 2016 respectively, identifying the accused as the person from whom he had bought *inter alia* cannabis resin during the weeks prior to 9th May 2016. Grima subsequently confirmed the said statements on oath before the Inquiring Magistrate, Dr. Audrey Demicoli on 11th May 2016 and gave his deposition during these proceedings. On his part, both in his statement dated 10th May 2016 and in his deposition during these proceedings, the accused denied selling any drugs.

As results from the evidence adduced throughout these proceedings, this case was instigated by a report filed by Kurt Grima at Valletta Police Station on 9th May

2016, wherein he reported that his wallet and mobile phone had been stolen that afternoon, near Tiger Bar in Marsa.

From the said report¹, it results that on 9th May 2016 at about 8.35 p.m., Kurt Grima filed a report at the mentioned Police Station, alleging that earlier that day, at around 2.45 p.m., he had gone to Marsa, near Tiger Bar, in order to buy 'smoke'. After he bought an amount for the price of €10, he was offered a cigarette containing a synthetic substance by the same person, who had provided him with cannabis and whom he described as being of a dark complexion. He stated that he felt dizzy as soon as he smoked the same. According to Grima, this person was accompanied by a third party of Libyan nationality, who also sold illegal substances. In terms of the said report, as soon as he returned home, he realised that he had been robbed of his wallet, mobile phone, ID card, credit card and forty five Euro in cash. Grima also informed the police that his friend, a certain Mustafa Ahmed, had found his ID card and credit cards in a building adjacent to Tiger Bar and since Grima stated that Mustafa was at that time in front of the said bar, the police accompanied Grima to the said place in order to speak to Mustafa. Also according to the said report, once there, in the presence of PC 331, PC 1177 and PC 734, Grima identified the accused as the person who had sold him drugs that afternoon and upon being asked to provide the particulars of the Libyan national who was accompanying him, the accused denied knowing the said Libyan national or selling any drugs to Grima. Grima indicated that he suspected that the Libyan national had stolen his belongings.²

According to the said report, on the following day, at about 10.00 a.m., Grima again reported at Valletta Police Station that the Libyan national who had robbed him on the previous day, was next to Tiger Bar. PC 710 Gulia, PC 1024 Rizzo and PS 507 Cassar went to the mentioned place, where Grima indicated the said person, namely a certain Elmejdi Mahmoud. During a search carried out on Mahmoud, the police found a wallet, which Grima identified as the wallet that had been stolen from him on the previous day and a small bag containing a green substance.³

In terms of another report⁴, on 9th May 2016, whilst WPS 250, WPS 3, PC 626 and PC 1177 were at Xatt il-Mollijiet, Marsa, Grima identified the accused as the

¹ This report is exhibited a fol. 22 to 24 and a fol. 70 to 72 of the records of the case.

² **WPS 3 Joanne Vella**, the officer who drew up the first part of this report, confirmed and exhibited said report during her deposition, a fol. 66 to 68 of the records.

³ This part of the report was drawn up by **PC 710 Stephen Gulia**, who confirmed and exhibited said report during his deposition, a fol. 18 to 21 of the records of the case.

⁴ This report is exhibited a fol. 14 *et seq* of the records of the case.

person from whom he had bought ‘smoke’ that afternoon. Grima also informed the police that he is a regular client of the accused and according to him, the accused always had substantial amounts of illegal substances in his possession. Abdullahi denied Grima’s claims. The report then states that a search was carried out on the accused at Valletta Police Station and a substantial amount of a suspicious substance was found in his possession.⁵

This was confirmed by **WPS 250 Amanda Bunce**, who testified that on 9th May 2016, at about 8.45 p.m., Kurt Grima went to Valletta Police station wherein he reported that earlier that day, his wallet and his mobile phone were stolen near Tiger Bar, Marsa. He further informed the Police that a friend of his knew the person who may have been responsible for this theft and that he could identify this person. After she instructed PC 331, PC 1177 and PC 626 to go near Tiger Bar in order that this person may be identified, she went to the mentioned site with WPS 3 and there she saw the accused. Grima insisted that the accused was the person who stole his belongings, whilst the latter denied that he knew the third party of Arab nationality to whom Grima was referring (as one of the persons involved in the theft). She states that she asked the accused several times to assist the police in their investigation, but the accused kept denying any involvement on his part and at that point, Grima told the police that the accused sells drugs and that earlier on that day, he had bought cannabis from him. The accused denied this claim.⁶ This is also confirmed by **PC 626 Giancarlo Bennetti**, who accompanied WPS 3 and WPS 250 to Marsa. He states that at one point, Kurt Grima started to allege that he frequently buys cannabis from the accused, that he was a client of his and that accused always carried substantial amounts of cannabis.⁷ Similarly **PC 355 Charlo Chircop** testified that upon the instructions of WPS 250, he accompanied Kurt Grima to Tiger Bar in order to try and find a wallet and mobile phone that Grima had reported stolen. Once next to the said bar, Grima indicated the accused as the person who was in the company of the third parties that stole his wallet. As soon as WPS 250 arrived on site and questioned the accused as to who could have taken said wallet, the latter denied having any knowledge of such person. According to the witness, Grima became angry (“*qisu rrabja*”) and indicated to the police that the accused had cannabis in his possession and that he had purchased drugs from him.⁸

⁵ **WPS 3 Joanna Vella**, namely the police officer who drew up this report, confirmed and exhibited same during her deposition, a fol. 9 to 13 of the records of the case.

⁶ A fol. 26 to 28 of the records of the case.

⁷ A fol. 29 *et seq* of the records of the case.

⁸ A fol. 32 to 34 of the records.

PC 626 Bennetti also testified that together with PC 355, he conducted a strip search on the accused at Valletta Police Station and that this yielded a bag, which contained a greenish substance and another bag which contained about 24 packets also containing a greenish substance. PC 355 confirmed PC 626 Bennetti's deposition and added further that one of the 24 packets found in the possession of the accused contained a different substance, although this was also greenish in colour. These substances were handed over to Inspector Frank Anthony Tabone⁹, who states that he personally handed over these substances to expert Godwin Sammut¹⁰.

PS 635 Alan Calleja testified that on 9th May 2016, he was instructed by Inspector Frank Anthony Tabone to escort the accused to his residence in Zabbar, together with PC 482 Keith Muscat and conduct a search therein. He states that in the accused's bedroom, they found a crusher, a fifty Euro (€50) note, a Nokia mobile phone, three digital cameras, three gold necklaces and one gold pendant.¹¹ These items were exhibited in the records of the case by Inspector Tabone together with the sum of €177 and the receipts for such items.¹² **PC 482 Keith Mallia** confirms that these items were found during a search conducted in the accused's bedroom at his residence in Zabbar. He further stated that the crusher was found on a desk in the said bedroom.¹³

From the report drawn up by **expert Godwin Sammut**¹⁴, it results that the following documents were handed over to him for analysis:

1. Evidence bag with number M00567835 containing i) a transparent plastic bag with green grass; ii) evidence bag with number S00538728 with 23 plastic sachets containing green grass and (iii) evidence bag with number A02903071 with a plastic sachet containing green grass.
2. A brown envelope marked S/B/238/2016 containing a transparent plastic bag holding a red crusher and evidence bag A02903070, which contained money.

⁹ Vide PC 355 Charlo Chircop's deposition, a fol. 73 and 74 of the records of the case.

¹⁰ Vide Inspector Tabone's deposition, a fol. 53 and 54 of the records.

¹¹ A fol. 59 to 60 of the records of the case.

¹² Vide Inspector Tabone's deposition a fol. 53 and 54 of the records of the case and the said receipts exhibited a fol. 56 and 57 of the records.

¹³ A fol. 151 to 153 of the records.

¹⁴ Exhibited a fol. 89 *et seq* of the records of the case.

In terms of the said report, on extracts taken from the green grass in paragraph (1) above, the substance 5-Fluoro-ADB, a type of *synthetic cannabinoid*, was found. The total weight of the grass was 55.35 grams. This substance is not controlled under Maltese law.

Furthermore, on extracts taken from the green grass in paragraph (1) above, the substance Tetrahydrocannabinol was found. The weight of the grass was of 0.42 grams. This substance derives from the cannabis plant and is controlled under Part III, Section 8 of Chapter 101 of the Laws of Malta.

The Court notes that in terms of the said report, the substance 5-Fluoro-ADB was found in 23 of the sachets analysed by expert Godwin Sammut, which sachets ranged between 0.20 grams and 0.38 grams in weight and in another bag, which weighed 48.57 grams. A smaller sachet, weighing 0.42 grams, was found to contain *Tetrahydrocannabinol*, as indicated above. Furthermore, although this is not stated in the concluding part of the report, the said report also indicates that the crusher also tested positive for *Tetrahydrocannabinol*.¹⁵

Considered further that:

As held above, Kurt Grima released two statements dated 10th May 2016 and 11th May 2016 respectively, which statements he confirmed on oath before the Inquiring Magistrate¹⁶ and subsequently, he gave his deposition during these proceedings.¹⁷

This case presents two opposing versions, namely, that provided by Kurt Grima, who states that he bought cannabis resin from the accused on 9th May 2016 and also previously to such date and that of the accused, who denies selling any drugs to Grima or to anyone else.

Thus, the case of the Prosecution, in so far as the first charge is concerned, depends on the credibility which ought to be given to its sole witness, Kurt Grima. In terms of Article 638(2) of Chapter 9 of the Laws of Malta, “... *in all cases, the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been*

¹⁵ This is also confirmed by expert Godwin Sammut in his deposition, wherein he states that the crusher contained *Tetrahydrocannabinol* (*vide* fol. 86 and 87 of the records).

¹⁶ *Vide* process verbal drawn up by Inquiring Magistrate Dr. Audrey Demicoli, a fol. 103 *et seq* of the records of the case.

¹⁷ A fol. 132 *et seq* of the records and in cross examination, a fol. 200 *et seq* of the records of the case.

proved by two or more witnesses". Article 637 then states that in considering the credibility or otherwise of a witness, regard shall be had to the demeanour, conduct and character of the witness, to the probability, consistency and other features of his statement, to the corroboration that may be forthcoming from other testimony, and to all the circumstances of the case. It has then been held that conflicting evidence does not necessarily lead to the acquittal of the person accused, but the Court must determine whom to believe and which parts of his testimony to believe or otherwise, taking into account the criteria contained in the above mentioned Article 637 (*vide* judgement delivered by the Court of Criminal Appeal on 9th July 2003, **Il-Pulizija vs Joseph Thorne**).

Furthermore, in terms of Article 30 of Chapter 101 of the Laws of Malta, where a person has purchased or otherwise obtained or acquired a drug contrary to the provisions of this Ordinance, the evidence of such person in proceedings against the person from who he shall have purchased, obtained or acquired the drug, shall not require to be corroborated by other circumstances. In terms of Article 30A of Chapter 101, then, notwithstanding the provisions of Article 661 of the Criminal Code, where a person is involved in any offence against the Ordinance, any statement made by such person and confirmed on oath before a magistrate and any evidence given by such person before any court may be received in evidence against any other person charged with an offence against the said Ordinance, provided it appears that such statement or evidence was made or given voluntarily, and not extorted or obtained by means of threats or intimidation, or of any promise or suggestion of favour.

The Court has examined thoroughly the original report filed by Kurt Grima, his sworn statements and his deposition and was also in a position to observe his demeanour on the witness stand on two separate occasions. In this respect, the Court notes that Grima was inconsistent in the versions which he provided at the different stages, outlined above, and his demeanour on the witness stand, in particular, during his cross-examination, did not convince the Court that he was a genuine and reliable witness.

In his sworn statement dated 10th May 2016, Grima states that on the previous day he stopped at Marsa, near Tiger Bar and there, he asked a man of dark complexion – whom he identifies as the accused in his second statement released on 11th May 2016 – to provide him with €10 of synthetic substance.¹⁸ He states that

¹⁸ The witness does not specify what kind of synthetic substance he bought. Yet, when the Investigating Officer questions him as to the last time that he made use of cannabis, Grima refers to having used the synthetic substance

subsequently, the said person gave him some synthetic substance and they made a joint, but as soon as he started smoking, he felt dizzy. His wallet and mobile phone, which were on his lap, fell on the ground. At that point, he saw the person who had sold him the synthetic substance standing up next to him and another person, whom he describes as an Arab, picking up his belongings. Although he asked the latter to give him his mobile phone and wallet, both walked away with his belongings. He further states that he had known the person from whom he bought the synthetic substance (whom he subsequently identifies as the accused) for about three weeks and that apart from buying the synthetic substance from him, he had occasionally also bought cannabis resin (to which he refers as “*blokka tal-kannabis*”) from the said person. In total, he had bought cannabis about six times from him.¹⁹ Grima explains that the first time he had met him, he had gone near the Tiger Bar in order to buy cannabis and this person had approached him and asked him whether he wanted cannabis. On that day, he had bought cannabis resin (or “*blokka tal-kannabis*”) for the price of €10 and the person who supplied him with the drug was accompanied by the Arab who had stolen his mobile phone and wallet on the previous day. He states that on the six occasions in which he bought cannabis from the said person, he always bought an amount for the price of €10 and so, according to him, he bought in total €60 worth of cannabis from the accused. He confirms that on the previous day, he indicated this person to the police and identified him as the person from whom he had bought a synthetic substance earlier on that day. He states that he had been making use of cannabis for about six years. He also states that on the previous day, he had made use of the synthetic substance, whilst on the day before that, he had used the cannabis that he had bought from such person the day before. He states that he always bought cannabis resin (“*blokka*”) from him. Grima further states that he had known the person to whom he refers as the Arab, for a period of three weeks namely the period of time during which he had been purchasing drugs near the mentioned bar. He explains that he never bought drugs from the Arab, but on three or four occasions, during the past three weeks, when he had purchased drugs from the other person (the accused), the Arab had given him an additional piece of resin, free of charge.

In his sworn statement of 11th May 2016, Grima confirmed the content of the statement made on the previous day and identified the accused as the person who

on the day before and “*blokka tal-Kannabis*” on the day before that. This leads the Court to conclude that Grima is here referring to synthetic cannabis.

¹⁹ It is clear to the Court that Grima is here referring to cannabis resin and not to synthetic cannabis because all questions and answers in the said statement refer clearly to the synthetic substance as ‘synthetic’ and to cannabis resin as ‘*kannabis*’ or ‘*blokka tal-kannabis*’.

had sold him cannabis on six occasions. He states that he always negotiated with the accused to buy cannabis resin (“*blokka tal-kannabis*”), although the Arab was almost always in the company of the accused. He also states that whenever he bought drugs (both synthetic and cannabis resin) from the accused, the drugs would always be on his person, namely in the pocket of his trousers or jeans. Grima states that he had only seen the Arab in possession of cannabis resin (“*blokka tal-kannabis*”) and the synthetic substance and that the latter had never offered to sell him any drugs.

During his deposition of 22nd July 2016²⁰, Grima states that on the day in issue, about two months prior to his deposition, he had gone to Marsa, near Tiger Bar, to buy “*smoke*”.²¹ He said that there were the accused and an Arab in his company and that he normally bought a “*blokka*” from the accused and also from the Arab and that they would give him a piece free of charge. He states that he used to buy €10 worth of “*smoke*” and that he did so on about three occasions. On that day, however, they gave him another type of smoke. He did not know what this was, but it seemed like white powder. He states that the accused gave him this substance and put it in a cigarette and the three of them shared the said cigarette amongst them, at which point he felt dizzy and they stole his mobile phone and wallet. He explains that he had bought the normal “*blokka*” on that day from the accused, that he used to deal with the accused and that the Arab used to give him another small piece free of charge. He states that on that day, they had given him the white powder in order to rob him of his belongings. When asked as to who used to provide him with the “*blokka*”, Grima replied that sometimes it was the accused and sometimes, it was the other. On that particular day, it was the accused who provided him with the drug and he used to pay the accused. He also states that on the other three occasions, it was also the accused who provided him with the “*blokka*” and he also paid the accused. As to the white powder which he had been given on that day, he stated that this belonged to both, that the Arab took out circa 0.5 grams of the said powder, they prepared a joint and they shared it amongst the three of them. Grima then confirmed the statements which he released on 10th May and 11th May 2016 respectively.

During his cross-examination, on 5th September 2016,²² Grima stated that he had been using drugs for 11 years and that he knew the accused from Marsa, adding that he came to know him when the latter robbed him. He then states that he had known the accused for a week or five days. He states that he did not have the

²⁰ Vide Kurt Grima’s deposition a fol. 132 *et seq* of the records.

²¹ This is also another term normally used to refer to cannabis resin.

²² A fol. 200 *et seq* of the records of the case.

accused's contact details and that he simply used to go to Marsa and buy 'smoke' and that he used to see the accused in the street over there, at the door of Tiger Bar. When it was pointed out to Grima that he had stated a few moments earlier that he came to know the accused when the latter stole his belongings, the witness replied that he knew him for about two days prior to the theft. He states that on the day of his report, he had bought cannabis resin (to which he refers as "smoke", "blokka" and the brown substance) from the accused. When it was pointed out to him that during his sworn statement, he had stated that he had bought a synthetic substance and not cannabis, Grima replied that he had bought cannabis and that the accused had later given him some synthetic substance. He states that had it been a synthetic substance, the accused would not have been arraigned in court ("*Kieku lanqas resaq dak fuq is-synthetic*"²³). He said that the accused had taken out the synthetic substance, rolled a joint which he passed on to his friend, the Arab and then this was passed on to him. Asked whether he had ever bought drugs from the Arab, Grima replies in the affirmative and states that at times, he had also given him drugs free of charge.

The Court has referred extensively to the statements and deposition of Kurt Grima in order to indicate the discrepancies and inconsistencies that underlie the same. Thus, Grima is inconsistent as to the period of time during which he states to have known the accused, referring to three weeks in his sworn statements, and then to one week or five days, two days prior to the theft and even the day of the theft, in his cross-examination. He states that he bought cannabis (with reference to cannabis resin) from the accused on six occasions in his statements and yet he refers to about three occasions during his examination in chief. And although he originally filed a report, at Valletta Police Station, stating to have bought cannabis from the accused, in his sworn statements he states that he went to Marsa to buy the synthetic substance (with reference to synthetic cannabis), and then again he refers to cannabis during his deposition and denies buying the synthetic substance on that day. In his second sworn statement, he states that the third party to whom he refers as the Arab, never sold him any drugs and yet he claims otherwise in his cross-examination. In his examination in chief, he claims to have always dealt with the accused when buying drugs, but at one point he also states that sometimes, he bought drugs from the accused and sometimes, he bought drugs from the Arab. Finally, he is also inconsistent when he refers to the accused as having given him the synthetic substance which caused him to feel unwell in his original report filed with the police, in his first sworn statement and in his cross-examination, but then

²³ A fol. 203 of the records of the case.

during his examination in chief, he states that it was the Arab who provided this substance.

In view of these discrepancies, it is clear that Kurt Grima cannot be considered as a reliable witness. The Court certainly does not deem such discrepancies as minor or trivial, since they give rise to reasonable doubt with respect to Grima's assertions regarding the accused. The Court cannot but note, furthermore, that Grima was significantly inconsistent notwithstanding the fact that not much time had elapsed from his original filing of the report at Valletta Police Station to his last deposition in cross-examination and that in fact this consisted merely of a period of four months. Moreover, the Court also notes Grima's declarations in his cross-examination, namely "*Jien meta sraqt jien, habs mort*"²⁴ ("I was condemned to a prison sentence, when I was found guilty of theft") which was made by Grima completely out of context, when the Court drew his attention to the fact that he should merely answer to the questions posed to him and to refrain from passing any comments during his deposition and "*Kieku lanqas resaq dak fuq is-synthetic*" ("He would not have been arraigned in Court in connection with a synthetic substance"), when it was pointed out to him that in his sworn statement he had indicated that on 9th May 2016, he had bought a synthetic substance from the accused and that he had gone to Marsa to buy such substance. Such declarations do not merely betray Grima's anger at the accused at being robbed of his belongings, which is understandable, but coupled with the significant amount of inconsistencies outlined above and a complete lack of other corroborating evidence indicating that the accused sold or otherwise dealt in cannabis resin, also lead the Court to doubt Grima's true intentions when he indicated the accused as having supplied him with cannabis resin.

Indeed, the Court notes that although the accused was found in possession of an illicit substance, namely cannabis grass, and also of a considerable amount of synthetic cannabis, yet no cannabis resin was found on his person or at his residence.

On the basis of the accused's statement²⁵ and deposition²⁶ and in view of the amount of synthetic cannabis found in his possession and the manner in which this was divided into numerous sachets, the Court is morally convinced that the accused dealt in synthetic cannabis. The fact that the accused himself consumed synthetic cannabis and cannabis grass, which results not merely from his statement

²⁴ A fol. 202 of the records of the case.

²⁵ Exhibited a fol. 50 to 51 of the records of the case.

²⁶ *Vide* a fol. 210 *et seq* of the records of the case.

and deposition, but as regards the cannabis grass, may also be deduced from the fact that a crusher that tested positive to *Tetrahydrocannabinol* was found in his bedroom, does not necessarily imply that he did not deal in synthetic cannabis. Thus, in this respect the Court notes that the accused was found in possession of 55.35 grams of synthetic cannabis, divided in one bag weighing 48.57 grams and in another twenty three sachets, the weight of which ranged between 0.20 grams and 0.38 grams. Although the accused claims that this substance was merely for his personal use, the Court does not deem the accused credible when he states that he smoked 10 grams (or even 15 grams) of the said substance in a day, as such amount is clearly excessive by way of a daily dose. Indeed if one were to go by the average dosage of normal cannabis in a joint – namely 0.2 grams per joint – the said amount would produce 50 joints or roughly two joints an hour, around the clock, apart from the fact that synthetic cannabis is known to be stronger than normal cannabis. Yet, the accused further claims that he would smoke 10 grams of synthetic cannabis over a period of 10 hours or even over 5 hours! Concurrently, the accused also states that the whole amount of synthetic cannabis found in his possession would have lasted him for a month or three weeks, which is in clear and direct contrast to his claim that he smoked 10 grams of synthetic cannabis a day, considering that he had 55.35 grams in his possession. If this were so, the latter amount would have lasted him merely for five and a half days or in other words, he would have required 300 grams of synthetic cannabis a month. The Court also notes that the manner in which the twenty three sachets were similarly divided – one sachet weighing 0.20 grams, four sachets weighing 0.25 grams, three sachets weighing 0.26 grams, one sachet of 0.28 grams, one sachet of 0.29 grams, three sachets weighing 0.30 grams, three sachets weighing 0.31 grams, two sachets weighing 0.32 grams, two sachets weighing 0.34 grams, two sachets weighing 0.35 grams and one sachet of 0.38 grams – leaves no doubt that these were intended to be sold to third parties.

Furthermore, in his statement, the accused states that he has been in Malta since June 2013, that he does not work, that he worked until 2014 in the construction industry and in 2013 as a cleaner. When questioned about the sum of money found in his possession – namely, the sum of €177²⁷ - he states that half of the money consisted of payments he receives from the Government, whilst the other half consisted of his savings. Considering that the accused did not work at the time of the statement, considering that he had not worked since 2014, considering further that in his deposition, the accused claims to have spent €365 in a span of twenty

²⁷ In his statement, the accused confirms that this sum of money was found in his possession (a fol. 50A). When the photograph, a fol. 175 of the records, was shown to the accused during his deposition, he confirmed that this was the money that was found in his pocket when arrested (a fol. 222 of the records).

minutes to acquire the synthetic cannabis found in his possession, when his sole income at the time consisted in Government benefits, and that this notwithstanding, he still had €177 in his possession and another €50 in his bedroom, it is clear that had he really spent the sum of €365 to acquire the said substance, he must have had another source of income. Spending such an amount of money on synthetic cannabis for personal use, is clearly not financially sustainable if the accused merely received Government benefits, as he asserts in his statement.

Yet, the fact that the Court is morally convinced that the accused was in possession of synthetic cannabis – the type of which is not an illegal substance as yet under Maltese Law - in such circumstances denoting that it was not for his personal use, does not, in the present case and circumstances, lead the Court to conclude beyond reasonable doubt, that the accused dealt in another substance, namely, cannabis resin. As already held above, the Court is not morally convinced of the truthfulness of Grima's assertion that the accused sold to him cannabis resin during the period of time to which the first charge refers.

For these reasons, the Court finds that the first charge has not been proved beyond any reasonable doubt.

The third charge refers to the possession of cannabis resin. This is also based solely on the sworn statements and deposition of Kurt Grima, since as already indicated above, in effect, no cannabis resin was found in the possession of the accused. Indeed, the accused was found in possession of synthetic cannabis and one sachet of cannabis grass. In his statement, when questioned as to whether he smokes cannabis resin or cannabis grass, the accused answers that he smokes marijuana "*like the one the police found on my person yesterday*"²⁸ and in his deposition, he explains that he smokes proper marijuana as opposed to synthetic cannabis, once a week. In view of the nature of the substances found in his possession, it is clear that the accused is here referring to cannabis grass and not to cannabis resin, in respect of which the laws makes a clear distinction by regulating the two separately in Sections 8(a) and (d) of Chapter 101 of the Laws of Malta respectively.

The Court is therefore not finding the accused guilty of the third charge brought against him.

²⁸ A fol. 51 of the recods of the case.

The second charge refers to the possession of cannabis grass. It is clear that this charge has been proved, to the degree required by law, both on the basis of the fact that a sachet of cannabis grass was found in the accused's possession and also on the basis of his statement and deposition, wherein he admits to smoking such substance weekly.

Considerations on Punishment

For the purpose of the punishment to be inflicted with respect to the second charge, the Court is taking into consideration the clean criminal record of the accused, that the cannabis grass found in his possession weighed 0.42 grams and that he states that he used cannabis grass weekly, on Saturdays. The Court is also taking into account that the accused has been detained in preventive custody since his arraignment on 16th May 2016.

Conclusion

For these reasons, the Court after having seen Sections 8(d), 22(1)(a) and 22(2)(b)(ii) of Chapter 101 of the Laws of Malta and Regulation 9 of Subsidiary Legislation 101.02, finds the accused not guilty of the first and third charges brought against him and acquits him thereof, and finds him guilty of the second charge, but in view of the considerations above made and in terms of Section 22 of Chapter 446 of the Laws of Malta, is discharging him upon condition that he does not commit any other offence within six (6) months from today.

The Court explained in clear and simple language the legal implications of this judgement to the accused.

The Court orders the release, in favour of Abdulahi Hassan Ali, of: (i) the following objects forming part of Document FT2, namely, a note of fifty Euro (€50), a Nokia mobile phone, a Fujifilm camera, a Sony camera and an Olympus camera, three gold coloured chains and one gold coloured pendant; (ii) Document FT 3 consisting of a Subsidiary Protection document issued by the Ministry for Home Affairs and National Security and dated 15th July 2014; (iii) Document FT5 consisting of a HTC mobile phone and (iv) Document FT6 consisting of the sum of one hundred and seventy seven Euro (€177).

The Court orders the destruction of Document FT4 and of the substances exhibited by Scientist Godwin Sammut with his report during this Court's sitting of 8th July

2016, once this judgement becomes final and definitive, under the supervision of the Registrar, who shall draw up a process verbal documenting the destruction procedure. The said process verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Finally, the Court is sentencing the accused to the payment of part of the costs incurred in the appointment of court experts in the course of these proceedings and in the examination of the process verbal of the inquiry in the following manner: part of the costs incurred in connection with the report drawn up by expert Godwin Sammut, amounting to the sum of one hundred and forty seven Euro and fifty cents (€147.50)²⁹ and three-fourths of the expenses incurred in connection with the report drawn up by PS 813 Clinton Vella, amounting to the sum of seventy five Euro and eighty cents (€75.80) - in total such costs amounting to the sum of two hundred and twenty three Euro and thirty cents (€223.30).³⁰

Natasha Galea Sciberras
Magistrate

²⁹ The Court has taken into consideration that the report includes both the analysis of a number of sachets containing synthetic cannabis, the type of which is not controlled under Maltese Law and also one sachet containing cannabis grass and a crusher containing *Tetrahydrocannabinol*. It is therefore deducting, from the total costs of €224.20 incurred in connection with the expert's appointment, half of the sum of €120 indicated as costs for 'GC/MS' and half of the sum of €10 indicated as costs involved for 'work up'. This brings the sum of costs to €125 and to €147.50 when value added tax is added to the former sum.

³⁰ The Court is not condemning the accused to pay any costs in relation to the report drawn up by Dr. Steven Farrugia Sacco, since this was irrelevant for the purpose of establishing the accused's guilt or innocence in respect of the charges brought against him.