



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

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

Case Number: 111/2018

Today, 18th July 2018

**The Police
(Inspector Matthew Spagnol)**

vs

**Awet Estifanos Weldetinsae
(Maltese Residence Permit Number 116951(A))**

The Court,

After having seen the charges brought against the accused, Awet Estifanos Weldetinsae, son of Estifanos and Wejni, born in Eritrea on 1st January 1991, without a fixed address, and holder of Maltese Residence Permit number 116951(A);

Accused of having on 22nd June 2018, at around 23:00 hrs, in St. George's Street, St. Julians:

1. Supplied or distributed, or offered to supply or distribute the drug (cocaine), specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, to person/s, or for the use of other person/s, without being licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939), or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6 of the Ordinance and when he was not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed to

distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

2. Had in his possession the drugs (cocaine) specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting it was not intended for his personal use;
3. 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, which drug was found under circumstances denoting that it was not intended for his personal use;
4. Had in his possession the psychotropic and restricted drug (ecstasy) without a special authorization in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended, which drug was found under circumstances denoting that it was not intended for his personal use;
5. 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.

The Court was requested to treat Awet Estifanos Weldetinsae as a recidivist from the following sentences given by the Court of Malta: the Court presided by Magistrate Dr. A. Bugeja LL.D. on 26th September 2014, the Court presided by Magistrate Dr. N. Galea Sciberras LL.D. on 4th December 2015 and the Court presided by

Magistrate Dr. N. Galea Sciberras LL.D. on 23rd October 2017, which sentences are definitive and cannot be changed.

The Court was also requested to condemn the accused to pay all expenses incurred by the appointment of experts during these proceedings and this in terms of 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) and subsection two (2) of Section 120A of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) for this case to heard by this Court as a Court of Criminal Judicature;

Having heard the accused plead guilty to the charges brought against him, which guilty plea he confirmed even after the Court, in terms of Section 453(1) of Chapter 9 of the Laws of Malta, warned him of the legal consequences thereof and allowed him sufficient time to reconsider his plea and to retract it;

Having heard final oral submissions by the parties regarding the punishment to be inflicted.

Considered that:

In view of the guilty plea filed by accused in respect of all the charges brought against him, the Court cannot but find him guilty of such charges.

For the purposes of the punishment to be inflicted, the Court took into account the early guilty plea filed by accused.

On the other hand, it also took into account his criminal record, from which it results that accused has been found guilty *inter alia* of the offences under Sections 95, 96, 221 and 251B of Chapter 9 of the Laws of Malta, in respect of which he was condemned to a suspended term of imprisonment and a fine (*multa*). It also results that he was, on another occasion, found guilty of the offence of possession of cannabis resin in circumstances denoting that this was not intended for his personal use, which offence was committed in aggravating circumstances. Furthermore, on 23rd October 2017, accused was again found guilty of possession of cannabis resin and cannabis plant in circumstances denoting that these were not intended for his personal use. This is, therefore, the third time within a period of less than three years, that accused is being found guilty of serious drug-related offences. The Court cannot but note that unfortunately, the two previous prison sentences, the latest of which only expired on 30th March 2018, do not seem to have deterred accused from dealing in drugs yet again.

The Court is also taking into consideration the serious nature of the charges brought against the accused and that these were committed in aggravating circumstances, in terms of the second proviso of Section 22(2) of Chapter 101 of the Laws of Malta and the corresponding proviso of Section 120A(2) of Chapter 31 of the Laws of Malta. Furthermore, it is also taking into account the amount of drugs found in possession of accused, namely, circa 4 grams of cannabis grass, circa 4 grams of cocaine and 3 ecstasy pills, as reported by Inspector Matthew Spagnol during his deposition.

With respect to the Prosecution's request to treat the accused as a recidivist in terms of law, Prosecution exhibited a true copy of three judgements – one delivered by this Court as presided, dated 4th December 2015, in the names '*The Police (Inspector Jonathan Cassar) vs Awet Estifanos Weldetinsae*', another also delivered by this Court, as presided by Magistrate Dr. A. Bugeja, in the names '*Il-Pulizija (Spettur Kevin Pulis) vs Awet Estifano Weldetinsae, Abdurai Imam Esmael Ibrahim*', which does not bear a date and a third judgement, dated 23rd October 2017, delivered by this Court as presided in the names '*The Police (Inspector Priscilla Caruana Lee) vs Awet Estifanos Weldetinsae*'. As stated above, accused has admitted all charges brought against him, including therefore, that he is a recidivist in terms of these judgements as indicated in the charges proffered against him. By means of the judgement dated 4th December 2015, accused was condemned to a period of eleven months imprisonment and a fine (*multa*) of €750. Neither the records of the case, nor accused's criminal record indicate whether this latter punishment, namely, the fine, has been paid or converted into a term of imprisonment and the Court, therefore, is considering accused as a recidivist merely in terms of Section 49 of the Criminal Code.¹ The same reasoning is being applied to the other two judgements, in which accused was also condemned *inter alia* to a fine (*multa*).

Furthermore, for the purpose of the punishment to be inflicted, the Court is applying the provisions of Section 17(h) of the Criminal Code with respect to the first two charges and the provisions of Sections 17(b) and (f) of the said Code with respect to the first, third, and fourth charges.

Conclusion

For these reasons, the Court after having seen Parts IV and VI, Sections 8(d), 22(1)(a), 22(2)(b)(i) and the second proviso of Section 22(2) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of Subsidiary Legislation 101.02, Sections 40A, 120A(1)(a), 120A(2)(b)(i) and the second proviso of Section 120A(2) of Chapter 31 of the Laws of Malta, Regulation 3(1) of Legal Notice 22 of 1985, Sections 17(b), 17(f), (h) and 49 of Chapter 9 of the Laws of Malta, upon his guilty plea, finds accused Awet Estifanos Weldetinsae guilty of the charges brought against him and

¹ *Vide* judgement delivered by the Court of Criminal Appeal in the names '*Il-Pulizija vs Anthony Said*', decided on 10th July 2015.

condemns him to a term of **eighteen (18) months effective imprisonment** – from which term one must deduct the period of time, prior to this judgement, during which he has been kept in preventive custody in connection with the offences of which he is being found guilty by means of this judgement – and **a fine (multa) of one thousand and five hundred Euro (€1,500)**.

Since no experts were appointed during these proceedings, the Court is not taking any further note of the Prosecution's request in terms of Section 533 of Chapter 9 of the Laws of Malta.

The Court orders that the drugs exhibited as Document MS 8 are destroyed, once this judgement becomes final and definitive, under the supervision of the Court 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, the Court recommends the Director of Prisons to provide the person sentenced with any assistance and/or treatment he may require in connection with drug abuse.

Natasha Galea Sciberras
Magistrate