



## **Court of Criminal Appeal**

Hon. Judge Giovanni M Grixti LL.M., LL.D

Appeal No. 244/2018

**The Police**

**vs**

**Johnson Anene**

Today the 3rd of December 2018

### **The Court;**

Having seen the charges brought against Johnson Anene, holder of Maltese identification card number 41571A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having for the month of November 2017, in the Maltese Islands failed to give Maria Angelique Anene, the sum of 600 euro monthly, fixed by the Court or as laid down in the contract as maintenance for his child(ren) and/or wife, within fifteen days from the day which according to such order or contract, such sum should have been paid;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 22<sup>nd</sup> May, 2018, whereby the Court found the said accused guilty and sentenced him to one week detention;

Having seen the appeal application presented by Johnson Anene in the registry of this Court on the 1<sup>st</sup> of June, 2018 whereby this Court was humbly requested to revoke the judgement above indicated and consequentially liberate the appellant of every accusation and punishment.

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court.

Having seen the grounds of appeal as presented by the appellant;

Having seen the records of the case;

Considered:

1. That during today's hearing, complainant, through her lawyer, confirmed that that amount of maintenance allowance merits of the charge were duly settled by the accused subsequent to the previous hearing;

2. That during the same hearing, appellant declared that he is renouncing to that part of the appeal whereby he requested the revocation of the judgement of the first court and that his request is then limited to a variation of the judgement regarding the punishment meted out by the

first court. The Attorney General is in agreement that this is now possible due to the amendment to article 520 of the Criminal Code which makes applicable article 143 (4) (5) and (6) of Chapter 12 of the laws of Malta where in an appeal before this Court a request for revocation shall also mean a request for a variation of the judgement. This Court will therefore deal with the appeal as being a request for variation of the judgement;

3. It is an established principle that this Court does not normally vary the decision of the first Court where punishment is involved and that it does not therefore substitute the discretion of the first Court with its own discretion unless it appears that the punishment meted out is beyond or less than that prescribed by law. In this case, however, the scope of the legislator in as evidenced in article 338 (z) of the Criminal Code has been achieved by the payment of all maintenance due by appellant and this Court is therefore inclined to make an exception to the principle;

4. The Court therefore concludes by turning down the request of appellant to revoke the judgement of the first court but accedes to the request to vary the said judgement by confirming that part by which appellant was found guilty of the charge, revoking that part of the judgement by which he was sentenced to detention for one week and instead condemns the accused to a reprimand.