



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

**MAGISTRATE DR MARSE-ANN FARRUGIA LL.D.**

**Sitting of today Wednesday 15<sup>th</sup> May, 2019**

**The Police  
(Inspector Nikolai Sant)**

**vs**

**Abdikadir Mohamud Caw-Ali u  
Muhanad Kaarshe Ahmed**

The Court

Having seen the charges brought against:

Abdikadir Mohamud Caw-Ali of twenty (20) years of age son of Mohamud and Sarah born in Somalia on the 01<sup>st</sup> May 1998 and residing at Marsa Open Centre and holder of Maltese Identity Card No:- 0164710A

And

Muhanad Kaarshe Ahmed of twenty (20) years of age son of Kaarshe Ahmed and Hadija Jama born in Somalia on the 05<sup>th</sup> October 1997 and residing at Hal Far Open Centre and holder of Maltese Identity Card No:- 0178961A;

Charged with having on the 31<sup>st</sup> August 2018 at around 06:00 hrs in St' Julian's

1. Without the intent to kill or to put the life of another person in danger, they caused grievous injuries on the person of Adebimpe Toheeb Olaleken. (Art. 216 of Chapter 9 of the Laws of Malta);
2. On the same date, time and place and circumstances, whilst they were committing a crime, they kept, carried or used an irregular arm (sharpened pointed object – knife) (Art. 55 (a) of Chapter 480 of the Laws of Malta);
3. On the same date, time and place and circumstances, attempts (sic) to use force against any person with intent to insult, annoy or hurt Adebimpe Toheeb Olalekan (Art. 339 (e) of Chapter 9 of the Laws of Malta);
4. On the same date, time and place and circumstances, wilfully disturbed the public good order or the public peace (Art. 338 (dd) of Chapter 9 of the Laws of Malta);
5. Muhadan Kaarshe Ahmed solely is accused that he carried outside any premises or appurtenance thereof, a knife or cutting or pointing instrument of any description without a licence or permit from the Commissioner. (Art. 6 of Chapter 480 of the Laws of Malta);

The court is requested that in case both are found guilty, the court is to treat both accused as recidivists.

Having seen the note of the Attorney General of the 4<sup>th</sup> February 2019, wherein he sent the records of this case for the accused persons to be tried by this Court, since in his opinion, from the preliminary investigation, there might result an offence (or offences) under the provisions of:

- (a) Articles 214, 215, 216, 217 of the Criminal Code, Chapter 9 of the Laws of Malta;
- (b) Article 338(dd) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (c) Article 339(e) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (d) Article 64 of the Criminal Code, Chapter 9 of the Laws of Malta;
- (e) Article 6 and 51(7) of Chapter 480 of the Laws of Malta;

- (f) Articles 382A, 383, 384, 385, 386 and 412C of the Criminal Code, Chapter 9 of the Laws of Malta;
- (g) Articles 49 and 50 of the Criminal Code, Chapter (sic) of the Laws of Malta; and
- (h) Articles 18, 31 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having heard both the accused declare that they have no objection that their case be tried summarily by this Court.

Hearing the evidence and after seeing all the records of the case and documents submitted.

Having seen the written note of submissions of the parties;

Considered that:

### **The Facts**

There is a very marked difference between the version of the accused and that of the Prosecution and the injured party as regards the facts which gave rise to these procedures, and the determination of the case depends on the credibility of the evidence brought forward by each party and forms part of the merits of the judgement. In a nutshell, the versions of both parties is the following:

1. According to the injured party Adebimpe Toheeb Olaleken, he and his friend Moses Nwanoi were in St George's Road in St. Julian's were walking to the bus stop to catch the bus at 6.00a.m., when for no apparent reason, both the accused assailed them and started fighting with them. The accused Kaarshe hit him with a broken glass bottle on his hand, and caused him a greivous injury in his left forearm. The accused ran away, and he and his friend Moses started to chase them. He saw a police car coming, and he stopped it, and reported the incident to the Police. The Police arrested both the accused in Spinola Road, St. Julians.

2. On the other hand, according to the accused Muhanad Kaarshe Ahmed, he and the other accused Abdikadir Mohamad Caw-Ali, were coming out of a take-away foodshop, when he saw the injured party urinating in the street. He went to speak to him to stop doing it, and the friend of the injured party starting fighting with him. A fight broke out between all four of them. At one point, the injured party had a broken beer bottle in his hand and he came towards him with it. The accused Ahmed said he was afraid and he found another beer bottle and broke it to defend himself, and in doing so he also cut his hand. He pulled out his hand towards the injured party to defend himself, and in doing so injured the injured party. The accused Caw-Ali also said that he was injured in his hand by a glass beer bottle which was held by the friend of the injured party. The accused decided to run to the police station for protection but the injured party and his friend ran after them. On their way down in Spinola Road, they were arrested by the police.

### **Deliberations of this Court on the Guilt of the Accused**

Before deliberating on the merits of the case, the Court would like to point out that according to the established case-law of these Courts, when in proceedings like this case, there are co-accused, the evidence and every other declaration made by one co-accused is not admissible evidence in regard to the other co-accused, both if that evidence is in favour as well as if that evidence is against the other co-accused. This principle as reiterated by the Criminal Court<sup>1</sup> on 22 December 1998 in the case **Ir-Repubblika ta' Malta vs omissis Ian Farrugia**, wherein it was stated as follows: *“Il-gurisprudenza hija cara fuq dan il-punt: persuna li tkun akkuzata, kemm bhala komplici kif ukoll bhala ko-awtur, bl-istess reat migjub kontra akkuzat iehor ma tistax tingieb bhala xhud favur jew kontra dak l-akkuzat l-iehor sakemm il-kaz taghha ma jkunx gie definittivament deciz. Dan il-principju japplika sia jekk dik il-persuna tkun giet akkuzata fl-istess kawza tal-akkuzat l-iehor – b'mod li jkun hemm “ko-akkuzati” fil-veru sens tal-kelma – u sia jekk tkun akkuzata fi proceduri separati. Il-bazi ta' dan il-principju hu argument a contrario sensu li jitnissel mill-paragrafu (b) tal-Artikolu 636 tal-Kodici Kriminali.”* In its decree, the Criminal Court cited several judgements on the same principle.<sup>2</sup>

<sup>1</sup> Per Judge Vincent De Gaetano.

<sup>2</sup> See also in the same sense, the decree of the Criminal Court (per Judge Joseph Galea Debono) delivered on the 4th February 2004 in the names **Ir-Repubblika ta' Malta vs Brian Vella**.

Consequently, in its deliberations on the guilt or otherwise of both accused, this Court cannot take cognizance either of the statement and the declarations to Police Officers of the co-accused vis-a-vis each other, or of what the co-accused stated about each other under oath in these proceedings.

As regards the merits of the case, the versions given by the injured party and of both the accused as cited above are diametrically opposed to each other. However, after having carefully examined all the evidence submitted, the Court is of the opinion that the version given by the accused is more credible for the following reasons:

1. In the Police Incident Report drawn up by PS 345 Mark Cremona it is stated as follows:<sup>3</sup>

*“L-Isptar Mater Dei gie mitkellem Toheeb Olalekan Adebimpe fejn huwa stqarr li hu jahdem gewwa n-Nordic Club fejn hekk kif lesta mix-xoghol huwa kien tiela sabiex jaqbad tal-linja lura d-dar u hekk kif wasal fi Triq San Gorg zewg persuni li wara irrizultaw li huma Mohamud Caw-Ali Abidkadir ... .. kif ukoll Kaarshe Ahmed, Muhanad ... .. saqsewh jekk iridx droga. Huwa qallhom sabiex ihalluh kwiet ghax xtaq imur id-dar ghal dan huma bdew jargumentaw mieghu fejn waqt dan l-argument wiehed minnhom u cioe Kaarshe Ahmed Muhanad ... .. qabad flixkun li kien hemm f’dustbin fi Triq San Gorg kisru u darab lil Toheeb Olekan Adebimpe.”*

When Adebimpe, the injured party gave evidence, he never mentioned that the accused wanted to sell him drugs, and that the fight occurred because he refused. Neither does Moses Nwono, who was with the injured party when the incident took place, mention in his testimony that the accused wanted to sell drugs to the injured party. The Police did not find any drugs on any one of the accused when they conducted a body search on them. So, from the records of the case, it results the original version of events which the injured party gave to the police officers *a tempo vergine*, is totally different from the version of events which he gave under oath before this Court.

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<sup>3</sup> See Dok NS3 at page 8 *et seq.*

2. The injured party stated under oath that he did not know the accused before, and they wanted to fight with him for no apparent reason, whilst walking to the bus stop, after finishing his work. However, in the transcript of the evidence of the injured party it is stated as follows:<sup>4</sup>

*“Witness: They just come and I didn’t know them before and “Eh what are you doing there?” “What is the problem?” “What are you doing here?” “It is not your business.” And they tried to push and push. ... ..*

*Witness: I told them:”what I am doing is with my boss. What is your business?”  
....*

*Pros. So they wanted to fight for nothing with you? Something happened.*

*Witness: Nothing. “What are you doing?” “What am I doing? I don’t know you and it is not your business.”. They said: “Eh, eh, eh,” and pushed me in the way. And he took a bottle and pushed me.”*

This is re-iterated by the injured party during cross-examination:<sup>5</sup>

*“Witness: Yes, that is where they start from. Like “Ey, ey, ey, what are you doing, ey, ey, ey.”*

The Court does not find it credible that the accused wanted to start a fight for no reason at all. As the Prosecuting Officer pointed out whilst conducting the examination-in-chief of the injured party, something must have happened beforehand which triggered the fight on. The injured party gave no reason at all, let alone a plausible one, why the accused asked him what was he doing, and according to him it was his refusal to answer this question which triggered the fight.

Actually, the insistence of the injured party that the accused started by asking him repeatedly what was he doing, gives comfort to the version of events of the accused Kaarshe that he saw the injured party urinating in public and he tried to stop him, and the injured party and his friend were irritated and they started pushing him.

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<sup>4</sup> See page 31.

<sup>5</sup> See page 43.

3. Moses Nwanoi stated that after the accused Kaarshe injured his friend, he started chasing both the accused since they ran away.<sup>6</sup> The injured party stated that they ran in the direction of the Police Station.<sup>7</sup> Both Nwanoi and the injured party stated that the injured party remained walking behind them, and it was he who stopped a police car which was passing by.<sup>8</sup> On the other hand PC 803 Andrew Pullicino<sup>9</sup> gave evidence as follows “... .. *I was patrolling Triq San Gorg, further up the road of the ... .. St. Julians Police Station. I saw three persons running towards the Police Station. One of them stopped the victim who is Adebin Olalekan, he showed me his injuries ... .. and he told me that the other two persons who ran further down the road were involved in the fight.*” Under cross-examination he confirmed that the injured party was running after the accused.<sup>10</sup> PC 906 Elio Gatt, who was patrolling with PC 803, also said under oath that the injured party was running after the accused, and the friend of the injured party was a bit further behind.<sup>11</sup> He also stated that when he and his colleagues saw the accused, they were already running, and the injured party and his friend were behind them.<sup>12</sup>

In the first place, the version given by Moses Nwanoi that he was running first behind the accused conflicts with that of the Policemen, who both stated that it was the injured party who was running after the accused. Secondly, it is highly unlikely that a victim of an aggression, which caused him a greivous injury, or for that matter a friend of his, who happened to be with him, would run after the aggressors. The injured party stated on oath that his friend Nwanoi “*tried to follow them like: “Don’t let them go, don’t let them go.”*”<sup>13</sup> In case of an aggression, one would expect the victims to try to run away from their aggressors to a safe place. Hence, the Court finds more credible the version of the accused that the injured party and his friend were chasing them.

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<sup>6</sup> See page 55.

<sup>7</sup> See page 33.

<sup>8</sup> See page 33.

<sup>9</sup> See page 74.

<sup>10</sup> See page 81.

<sup>11</sup> See page 88.

<sup>12</sup> See page 90.

<sup>13</sup> See page 36.

4. When a body search was conducted on both the accused, the Police found a knife in the jeans of the accused Kaarshe. This knife was exhibited in Court<sup>14</sup> and its full length is 27cm, out of which 15cm is the blade. If there is one thing which both the injured party and his friend Nwanoi as well as both the accused agree, it is that the accused Kaarshe hit the injured party with a glass beer bottle which he broke. The question immediately arises, if the accused Kaarshe had a large knife on him, why didn't he use it, and instead looked for a glass beer bottle which he broke? The fact that the accused Kaarshe did not use the knife, which was the normal thing to do, for a person who intends to start a violent fight, is a clear indication that the accused Kaarshe was taken by surprise by what happened – so much so that he totally forgot to use the knife he had on him either to fight, as alleged by the injured party or to defend himself from aggression, as he submits. The fact that the knife was not used further corroborates the version of events of the accused that they were the victims of aggression by the injured party and his friend Nwanoi.
5. Moreover, had the accused truly been the aggressors, they would have been running away from the police station, not towards it – as is amply confirmed by the evidence.<sup>15</sup>
6. Although both the accused admitted under oath, that they had been drinking during the night, and PS 345 Mark Cremona said he could smell alcohol from their breath,<sup>16</sup> the prosecution brought no independent evidence that the accused were under the influence of alcohol when they were arrested. In fact all Police Officers involved confirmed that when they were arrested, they offered no resistance, they co-operated with them, and they were not aggressive. The statement they gave to the Police is fully consistent with the evidence they gave before this Court.
7. It results from the testimony of the Police that both accused had slight injuries in their hands, and were duly medicated. But the Police failed to at least take photos of these injuries, or ask a medical doctor to describe these injuries.

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<sup>14</sup> See Doc NC 11 exhibited in the sitting of the 14<sup>th</sup> September 2018.

<sup>15</sup> See for example page 77.

<sup>16</sup> See page 72.



In view of the above considerations, the Court is of the opinion that the accused have managed to prove on a basis of probability that it was the injured party and his friend Nwanoi who got violent initially with the accused Kaarshe for trying to stop the injured party from urinating in public, and subsequently also with the accused Caw-Ali, and attacked them with broken beer bottles. Obviously the accused acted in legitimate self-defence by using other broken beer bottles, and in doing so caused a grievous bodily harm to the injured party.

Consequently, the accused are not guilty of any of the criminal offences listed by the Attorney General in his note, except for the offence contemplated in Article 6 of Chapter 480 of the Laws of Malta, because the accused Kaarshe was carrying a knife with a blade exceeding 8cm, without a licence or permit from the Commissioner. The accused Kaarshe did not give any kind of explanation either to the Police when he was arrested, or to this Court when he gave evidence, why he was carrying this knife with him. WPS 110 Maria Scicluna stated under oath that the accused Kaarshe does not have a police licence to be in possession of a weapon, and exhibited the relative documents.

### **Deliberation of this Court on Punishment**

Since this Court found the accused Kaarshe guilty only of carrying a knife outside any premises, without a licence of the Commissioner of Police, it has to inflict on this accused a punishment.

From the judgements exhibited by the Prosecuting Officer, there is no doubt that the accused Kaarshe is a recidivist.

Nevertheless, considering all the circumstances of the case as outline above, as well as the fact that the accused have been held in preventive custody throughout the duration of these proceedings, the Court is of the opinion that it should not exercise its discretion to increase the punishment of the accused Kaarshe by one degree, in terms of Article 50 of the Criminal Code.

## **Conclusion**

In the view of the above considerations, the Court, after seeing the criminal offences listed in the note of the Attorney General of the 4<sup>th</sup> February 2019:

1. and after seeing Articles 6 and 51(7) of Chapter 480 of the Laws of Malta and Articles 49 and 50 of Chapter 9 of the Laws of Malta, finds the accused Muhanad Kaarshe Ahmed, guilty only of the criminal offences contemplated in these provisions of law;
2. finds both the accused not guilty of any of the other criminal offences contemplated in the said note of the Attorney General, and consequently discharges both the accused from having committed any of these other offences.
3. condemns the accused Muhanad Kaarshe Ahmed only to a fine (*multa*) of one hundred and sixteen Euro and forty-seven cents (€116.47), which by the application of Article 14(2) of the Criminal Code is to be paid in monthly and consecutive instalments of three Euro and twenty five cents (€3.25) each, the first instalment is due not later than the 30<sup>th</sup> June 2019. However, if the said accused person fails to pay any one such instalment, the whole of the amount outstanding shall become and be immediately due and payable, and in default of payment thereof, the outstanding amount still due shall be converted into imprisonment at the rate established by law.

**Magistrate**

**Robert Bugeja**

**Deputy Registrar**