

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

MAGISTRATE DR JOSETTE DEMICOLI LL.D

The Police

(Inspector Matthew Galea)

Vs

Abdiladeef Abdirahman Hassan and

Abdiwahab Ahmed Ali

Case No: 145/18

Today 5th June, 2019

The Court,

Having seen the charges brought against **Abdiladeef Abdirahman Hassan** bearer of Identity Card number 0103976A and against **Abdiwahab Ahmed Ali**, bearer of Identity Card number 0055013A

And charge them for:

1. On the ninth (09) day of December, 2018, at around seven in the evening (19:00hrs) whilst at 46, Triq San Tumas, Hamrun they produced, sold or otherwise dealt in the resin obtained from the plant cannabis, or any preparation of which such resin formed the base;
2. And more for in the same date, place in the indicated time and circumstances they had in their 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, which drug was found under circumstances denoting that it was not intended for his personal use;

3. And more for in the same date, place in the indicated time and they had in their 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;
4. And more for in the same date, place in the indicated time and circumstances they produced, sold or otherwise dealt with the whole or any portion of the plant cannabis;
5. And more for in the same date, place in the indicated time and circumstances they had in their 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, which drug was found under circumstances denoting that it was not intended for his personal use;
6. And more for in the same date, place in the indicated time and circumstances they had in their possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant cannabis.

The Court is kindly being asked that in case of finding of guilt, to consider the person charged **Abdiwahab Ahmed Ali** as being a recidivist as per articles 49 and 50 of Chapter 9 of the Laws of Malta after being found guilty of a sentence awarded to him to the Court of Malta which sentence has become absolute and cannot be altered.

The Court is kindly asked that in case of finding of guilt, apart from awarding the lawful punishment, to order the persons charged to pay the expenses relating to the nomination of experts as per article 533 of Chapter 9 of the Laws of Malta.

Having heard witnesses.

Having heard final submissions.

Having seen all the acts and documents of the case.

Considers

Inspector Matthew Galea testified¹ that on the 9th December 2018 at around eight in the evening, four RIU officers namely PS674 Nigel Mallia, PC868 Russell Psaila, PC681 Noel Muscat and PC275 Thomas Dimech reported at Hamrun Police Station informing that they had just arrested two persons, that is the accused, upon finding drugs suspected cannabis and drug paraphernalia in their possession. They were kept under arrest and eventually they released a statement. In a nutshell, each one of the accused was alleging that the other party was giving him drugs from the red box which was seized by the police and presented in the acts of the case².

PS 674 Nigel Mallia testified³ that on the 9th December 2018 he was working overtime duty at Marsa-Hamrun area together with his colleagues PC868 Russell Psaila, PC681 Noel Muscat and PC275 Thomas Dimech. Whilst on foot patrol in St Thomas Road, Hamrun they saw a person who was sitting on the stairs and as soon as he saw the police officers he left running. They told him to stop but he kept running and entered a residence number 46, St Thomas Road, Hamrun. He went up the stairs and the officers told him to stop and they went upstairs together behind him. He tried to grab a red box which was on the table inside the kitchen. He identified this person as being Abdirahman Hassan Abdiladeef. They arrested him. There was another person upstairs namely Ali Abdiwahab who tried to escape from another door but PC681 and PC 275 arrested him. In the red box they found some money as well as sachets suspected to be illegal substances. There were 12 small sachets in the red box with a black cover. They were inside the box. Also, when the cover was lifted there was some money in Euro and

¹ On the 19th December 2018

² Dok MG 15

³ On the 19th December 2018

foreign denominations. Underneath the lid there was also a block, suspected resin and another six sticks suspected resin as well. The witness recognized Dok MG 15⁴. He explained that this box was taken by PC 868 and himself in the presence of Abdirahman Hassan Abdiladeef and went to Hamrun Police station and spoke to the Saergent and Inspector Matthew Galea. The witness also confirmed and recognized Dok MG2 which is the receipt and description of what had been found in the red box.

PC 868 Russell Psaila testified⁵ on the same lines PS 674 Nigel Mallia did. He specified that Abdirahman Hassan Abdiladeef was sitting on a doorstep when they first saw him. The witness also recognized Dok MG15 and Dok MG2. In cross-examination he confirmed that no illegal substances were found in the mentioned residence, apart from the alleged illegal substances in the red box, and not even on the person of Abdirahman Hassan Abdiladeef and Ali Abdiwahab. Upon being asked whether the police had investigated who lives in the residence where the accused were arrested, the witness stated that on the day only the accused were there and there were two beds, one double and the other a single bed.

PC 681 Noel Muscat testified⁶ on the same lines PS 674 Nigel Mallia and PC 868 did. The witness also recognized Dok MG15 and specified the contents of it which description tallied with the descriptions given by his colleagues. The witness recognized the red box exhibited in the acts of the case.

Wpc Doris Al Sous testified⁷ that on the 9th December whilst on duty she took a report which she confirmed on oath⁸

PS 267 Anthony Cassar stated⁹ that on the 9th December 2018 whilst he was on duty at Hamrun Police station, RIU personnel presented themselves with the accused whom he recognized in Court. The RIU officers had seized a red tin box which had cash in it and about 12 small

⁴ The red box exhibited in the acts of the case

⁵ On the 19th December 2018

⁶ On the 19th December 2018

⁷ On the 8th January 2019

⁸ Dok MG1 at fol 9 et sequitur of the acts

⁹ On the 8th January 2019

sachets suspected cannabis as well as some sticks suspected cannabis. They were kept under arrest and the witness informed Inspector Matthew Galea and he issued a receipt, Dok MG 2, on which document he recognized his signature.

RPC3106 Manuel Buhagiar and **PC 1469 Emerson Borg** recognized¹⁰ their signatures on Dok MG 7, MG 19 and DoK MG8 and MG10 respectively.

The expert **Godwin Sammut** testified¹¹ and exhibited his report¹². He explained that he was handed over an exhibit in a brown envelope labelled K/B/ 489/2018 *containing white paper sack containing an evidence bag labelled as M013595818. The evidence bag contained a red metal box which contained (i) money (ii) 12 plastic sachets each containing green grass (iii) 7 brown substances and (iv) a joint.* With regards to the joint, the expert explained that he could not perform an analysis on it since it was packed with the resin so there could have been cross-contamination.

In his report, the expert declares that the exhibit previously described was being presented with the report, and the empty plastic sachets have been placed in a white envelope to separate them from the rest of the exhibits. The expert's conclusion is:

From the results obtained, the Court Expert, Godwin Sammut, can conclude that:

- (a) Tetrahydrocannabinol was found in the extracts taken from the brown substances that are in the exhibit labelled K/B/ 489/2018. The total weight of the brown substances is 33.27g. The purity of THC was approximately 21%. Cannabis is controlled under Part III of chapter 101 of the Laws of Malta.*
- (b) 5f-ADB was found in the extracts taken from the green grass that are in the exhibit labelled as K/B/ 489/2018. The total weight of the green grass is 4.53g. This substance is a new psychoactive substance (NPS) and is a synthetic cannabinoid which is controlled under the Part A of the Third Schedule of Chapter 31 of the Laws of Malta,*

¹⁰ On the 8th January 2019

¹¹ On the 21st January 2019

¹² Dok GS at fol 78 et sequitur of the acts of the case

It is to be noted that with regards to the brown substances, the expert examined 7 of them, all resulting positive to tetrahydrocannabinol, and they had the following weight:

- (i) 24.69g
- (ii) 1.22g
- (iii) 2.23g
- (iv) 1.26g
- (v) 1.42g
- (vi) 1.22g
- (vii) 1.23g

PC169 Jurgen Schembri testified¹³ that he was given exhibit K/B/489/2018 to examine the contents of it for the possible development of finger-marks. He explained that the document consisted of a red money box and an envelope which contained 12 pieces of plastic. On the money box there was some substance which was in the form of a block and there was also some substance in the form of a cigarette. Inside the money box there was a black cash drawer and also a business card with the name Charlie on one side and a mobile number and the name Joe on the other side. There was also some money. He explained the examinations he carried out and presented his report¹⁴ and he stated that he developed 10 imprints.

Joseph Bongailas was nominated to take the fingerprints and palm prints of the accused¹⁵ and then carry out a comparative examination with the findings of PC 169. From the expert's report¹⁶ it transpires that some of the imprints were not good for comparison because they missed characteristic points. However, there were prints which were good for comparison. The Expert concluded:

1. *The imprints which are seen in the photos documents 19 AEH C SG1, 19 AEH C SG2, 19 AEH C SG3, 19 AEH C SG6, 19 AEH C SG8 AND 19 AEH C SG 9 are not good for comparison.*

¹³ On the 18th February 2019

¹⁴ Dok JS

¹⁵ JB1 TO JB4

¹⁶ Dok JB

2. *The imprint which is seen in the photo document 19 AEH C SG4 matches with the index finger of the left hand of Abdiladeef Abdirahman Hassan.*
3. *The imprints which are seen in the photos documents 19 AEH C SG5 and 19 AEH C N1 were compared with the form of the digital imprints document JB1 and the form of the palm prints of the hands document JB2 of Abdiladeef Abdirahman Hassan, which resulted in the negative.*
4. *The imprints which are seen in the photos documents 19 AEH C SG4, AEH C SG5, AEH C SG7 and AEH C N1 were compared with the form of the digital imprints document JB3 and the form of the palm prints of the hands document JB4 of Abdiwahab Ahmed Ali, which resulted in the negative.*
5. *The imprint which is seen in the photo document 19 AEH C SG7 matches with the index finger print of the left hand of Abdiladeef Abdirahman Hassan.*

The accused **Abdiladeef Abdirahman Hassan** testified¹⁷ that the drugs which were found in the property in Hamrun were his. He specified that he used to buy them in a month and used to smoke them with his friend. He used to buy 20 grams every month. He stated that in a day he smokes 20 joints. His friends used to go over at his residence and smoke with him and when he does not have, he used to go with his friends and smoke with them. He stated that he never sold drugs but admittedly, he was an addict. With regards to the fingerprints found on the box, he stated that in this box he kept his things amongst which the drugs and his money. He had been living in the house for the past two months and he was trying to find an alternative house.

In cross-examination he stated that when he released his statement he had been smoking synthetic and he was paranoid. He stated that he is on social benefits and he receives a cheque to the amount of €309. Since he was staying with his friend he was paying €50 rent per month and he used to buy drugs from such benefits. He paid about €250 for the drugs. He used to buy drugs from someone in Hamrun.

¹⁷ On the 24th April 2019

Abdiladeef Abdirahman Hassan released a statement¹⁸ on the 10th December 2018 whereby he stated that he does not have a job but he gets social benefits. He said that on the eve before, he was at his friend's house and the police broke in and found drugs and his friend stated that it belonged to the accused. He also stated that his friend, the co-accused, uses his phone to contact his friends and then he tops up his phone at times or gives him synthetic to smoke. He declared that the red box belonged to the other accused and not to him. He also stated that he uses synthetic like two or three a day.

Abdiwahab Ahmed Ali also released a statement¹⁹ on the 10th December 2018 whereby he stated that he works. On the eve before he was at Abubaker's place in Hamrun and Abdiladeef Hassan was there because he was chucked out of his residence because of synthetic drugs. When the police broke in and asked who was the owner of the drugs, he immediately told the Police that the drugs belonged to the co-accused. He stated that he was smoking synthetic with the co-accused and that at times he paid €30 for three sachets or it depends how much money he has. He stated that he does not share drugs with the co-accused and he also emphasized that he never sold drugs but the co-accused did sell drugs. Apart from the co-accused he sometimes buys drugs from Hamrun.

Considers

The accused are being charged with dealing in and being in possession of cannabis resin in circumstances denoting that it was not intended for their personal use. They are also being charged with dealing in cannabis plant and of being in possession of both substances.

It is to be noted that with regards to the fifth charge there is a discrepancy between the Maltese and English charge sheet. In the Maltese version the accused were charged with being in possession of cannabis plant in circumstances denoting that it was not intended for their personal use; however in the English version the fifth charge is identical to the second charge whereby the accused are charged with being in possession of cannabis resin in circumstances denoting that it

¹⁸ Dok MG9 at fol 19 of the acts

¹⁹ Dok MG10 at fol 22 of the acts

was not intended for their personal use. Even though evidently this difference is a result of a mistake, however since the charges were read out in the English language it is this version which should prevail. Hence, the Court will be abstaining from taking further cognizance of the fifth charge brought against the accused.

Another point which must be dealt with at this stage is with regards to the fourth and sixth charge brought against the accused. They have been charged with dealing in cannabis plant and of being in possession of same drug.

It has however emerged from the expert's report that the green grass which was found in the residence where the accused were residing was not cannabis plant but was another illegal substance namely 5f-ADB which substance is controlled under the Part A of the Third Schedule of Chapter 31 of the Laws of Malta. Both of the accused have admitted being in possession of a synthetic drug. However, since the accused have not been charged with dealing in and being in possession of this psychoactive substance 5f-ADB, then the Court cannot find the accused guilty of these fourth and sixth charges brought against them.

Considers further:

Considering the proof brought forward it results that:

- Both the accused were residing in No 46, St Thomas Street, Hamrun when they were arrested on the 9th December 2018.
- Whilst **Abdiladeef Abdirahman Hassan** was seen sitting on a doorstep and as soon as he saw the Police officers he ran away and this raised suspicion and thus was followed by the RIU officers even when he entered his residence; **Abdiwahab Ahmed Ali** was in the house when the Police officers went in and as soon as he saw them he tried to escape but was arrested shortly.
- The red money-box containing (i) money (ii) 12 plastic sachets each containing green grass (iii) 7 brown substances and (iv) a joint was found in the above-mentioned residence on the kitchen table.
- When **Abdiladeef Abdirahman Hassan** entered the residence he tried to get hold of the red box immediately.
- The total amount of money which was found in the red box is €120 and money in other various currencies.

- The total weight of the brown substances is 33.27g. The purity of THC was approximately 21%. There were 7 pieces, all resulting positive to tetrahydrocannabinol, and had the following weight: 24.69g, 1.22g, 2.23g, 1.26g, 1.42g, 1.22g, 1.23g.
- The total weight of the green grass is 4.53g²⁰.
- Apart from the illegal substances found in the red box, no other illicit substances were either found on the person of either of the accused nor anywhere else in the above-mentioned residence.
- Upon examination by the expert, two imprints pertaining to **Abdiladeef Abdirahman Hassan** were found on the substances.
- In his statement, **Abdiwahab Ahmed Ali** admits smoking synthetic but denies ever selling drugs. He states that he either bought synthetic from the co-accused or else from some Maltese man in Hamrun.
- In his statement, **Abdiladeef Abdirahman Hassan** stated that the co-accused, uses his phone to contact his friends and then he tops up his phone at times or gives him synthetic to smoke. He declared that the red box belonged to the other accused and not to him. He also stated that he uses synthetic like twice or three times a day.
- However, when **Abdiladeef Abdirahman Hassan** testified on oath he changed his version than that originally given in his statement. He admitted that he kept his personal belongings in the red box including the drugs (without any distinction which illicit substance he was referring to) which he bought himself. He denied ever selling drugs but stated that these were for his personal use and at times he smoked with his friends. In his testimony he stated that he smokes 20 joints daily.
- No mobiles were seized.

Hence with regards to the first two charges, the accused **Abdiladeef Abdirahman Hassan** is contesting these charges and whilst admitting that such substances were found in his possession (thus not contesting the third charge), he contends that these were merely intended for his personal use and at times he shared with his friends. On the other hand,

²⁰ This is being mentioned for completeness sake because the accused have not been charged with being in possession of this psychoactive substance

Abdiwahab Ahmed Ali is contesting all the charges and he admits that he smokes synthetic.

When the co-accused released their respective statements, they were pointing fingers at each other in the sense that they were alleging that the other co-accused dealt in drugs.

However, at this stage it must be pointed out that it was a well-established principle in local jurisprudence that whatever a co-accused states cannot either benefit or prejudice the other co-accused²¹. The Court of Criminal Appeal had the opportunity to clarify the difference between the testimony of an accomplice and the testimony of a co-accused even by referring to various other judgments delivered by our Courts. The Court held that:

*ir-regola (kontenuta fl-Art. 639(3) imsemmi) ... tirrikjedi korroborazzjoni meta x-xhud wahdani kontra l-akkuzat ikun il-komplici, ... r-regola l-ohra (hi) li l-ko-akkuzat ma hux xhud kompetenti favur jew kontra l-ko-akkuzat l-iehor jew il-ko-akkuzati l-ohra. Din l-ahhar regola hi desunta a contrario sensu minn dak li jipprovdli l-paragrafu (b) ta' l-Artikolu 636 tal-Kodici Kriminali, u giet kostantement applikata mill-qrati taghna, fis-sens li l-koakkuzat isir xhud kompetenti fir-rigward ta' ko-akkuzat iehor biss wara li l-kaz fil-konfront tieghu jkun gie definittivament deciz.*²²

Hence in conformity with these principles, this Court can only take into consideration what each accused states as proof in his regard and not with regards to the other accused.

Considers further

The first charge

The accused are being charged with dealing in cannabis resin.

With regards to the accused **Abdiwahab Ahmed Ali**, the Court has already referred to the evidence which has emerged from the various witnesses and expert's reports and his statement and deems that no

²¹Ref II-Pulizija vs Austin Joseph Psaila et Appell Kriminali deciz 07.04.1992.

²²Ref II-Pulizija vs Jeremy Farrugia sentenza datata 23 ta' Mejju 2001.

proof whatsoever has been brought forward against him which proves that he was dealing in cannabis resin.

As regards **Abdiladeef Abdirahman Hassan**, the defence submitted that the dispositions of the proviso of article 22(9) of Chapter 101 of the Laws of Malta should be applied because this is a case of trafficking by sharing.

Reference is being made to the judgment in the names of **Il-Pulizija vs Dominic Giannakoudakis**²³ whereby that Court referred to a judgment delivered by the Court of Criminal Appeal

.....fl-ismijiet Il-Pulizija vs Marco Galea, deciza fil-5 ta' Mejju 2008, fejn il-Qorti fliet bir-reqqa l-elementi tac-cirkostanza ta' sharing kif ikkontemplat fl-ewwel proviso tas-sub-artikolu (9) tal-Artikolu 22 tal-Kap. 101 tal-Ligijiet ta' Malta. F'din is-sentenza, il-Qorti qalet hekk:

"Is-subartikolu (9) in dizamina jipprovdi li ghar-reat, fost ohrajn, ta' bejgh jew traffikar ta' droga bi ksur tad- disposizzjonijiet ta' l-imsemmija Ordinanza ma jkunux applikabbli d-disposizzjonijiet ta' l-Artikoli 21 (inzul taht il-minimu) u 28A (sentenza ta' prigunerija sospiza) tal-Kodici Kriminali, kif ukoll lanqas ma jkunu applikabbli d-disposizzjonijiet tal-Att dwar il-Probation. Ir-rizultat ta' din ilprojbizzjoni hi li fil-kaz ta' tali bejgh jew traffikar trid dejjem tigi applikata l-piena ta' prigunerija u ta' multa ghall-anqas fil-minimu taghhom - f'dan il-kaz, trattandosi ta' proceduri quddiem il-Qorti tal-Magistrati, il-minimu huwa ta' sitt xhur prigunerija u multa ta' Euro 465.87. L-ewwel proviso ghal dan issubartikolu gie introdott, kif tajjeb osservat l-ewwel qorti fis-sentenza appellata, bl-Att XVI ta' l-2006, u jipprovdi hekk:

"Izda meta, dwar xi reat imsemmi f'dan is-suabrtikolu, wara li jitqiesu ccirkostanzi kollha tal-kaz inkluz l-ammont u x-xorta tal-medicina in kwistjoni, ix-xorta ta' persuna involuta, l-ghadd u n-natura ta' kull kundanna li l-persuna kellha qabel, inkluzi kundanni li dwarhom tkun saret ordni taht l-Att dwar il-Probation, il-Qorti tkun tal-fehma li l-hati kien bi hsiebu jikkonsma l-medicina

²³ Decided by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 27th September 2017

f'dak l-istess post flimkien ma' ohrajn, il-Qorti tista' tiddeciedi li ma tapplikax id-disposizzjonijiet ta' dan is-subartikolu..." (sottolinear ta' din il-Qorti).

Huwa evidenti mid-dicitura tal-ligi li, apparti konsiderazzjonijiet ohra li l-qorti ghandha tizen sew qabel ma tapplika dan l-ewwel proviso (fosthom l-ammont u x- xorta ta' medicina involuta, ecc), trid tkun tirrikorri wkoll sitwazzjoni partikolari fejn id-droga tkun ser tigi, jew tkun giet, ikkunsmata (i) fl-istess post u (ii) minn min ikun qed jipprovidiha flimkien ma' ghall-anqas persuna ohra. Il-kliem "flimkien" u "fl-istess post" jissottolineaw l-element ta' komunanza – dak li aktar popolarment jissejjah "sharing" – jigifieri li dak li jkollu id-droga intiza ghalih jiddeciedi li jaqsamha ma' haddiehor f'dak l-istess waqt li jkun qed jikkunsmaha huwa stess. Kif inhu risaput, fil-ligi taghna min joffri d-droga, li jkollu ghall-uzu tieghu, lil haddiehor – cioe` jaqsamha ma' haddiehor – ikun qieghead jipprovidi ("supply" fit-test ingliz) dik id-droga ghall-finijiet tad-definizzjoni ta' traffikar (Art. 22(1B)), u, per konsegwenza, ikun qed jittraffika dik id-droga. Dak li l-legislatur ried kien li meta jkollok kazijiet zghar u izolati ta' "sharing" – persuna jkollha d-droga ghaliha u taqsamha ma' haddiehor – tkun tista' (izda mhux bilfors – ghalhekk iridu jitqiesu c-cirkostanzi kollha tal-kaz) tigi evitata, ghall-anqas ghall-ewwel darba, il-piena mandatorja ta' prigunerija b'effett immedjat." (sottolinear ta' dik il-Qorti) Din kienet ukoll l-interpretazzjoni tal-Qorti tal-Appell Kriminali fis-sentenza taghha fl-ismijiet Il-Pulizija vs Omissis, deciza fid-19 ta' Novembru 2015, fejn f'dak il-kaz, l-appellant kien xtara ghaxar pilloli ecstasy ghal shabu, sabiex jikkunsmawhom gewwa party. B'referenza ghall-proviso tal-Artikolu 120A(7) talKap. 31 tal-Ligijiet ta' Malta, li jadopera l-istess kliem tal-proviso tal-Artikolu 22(9) tal-Kap. 101, il-Qorti qalet hekk:

"Illi mid-dicitura tal-ligi allura johrog l-element formali tar-reat u cioe' l-hsieb preordinat maghmul mill-hati illi jikkonsma dik id-droga li ikollu fil-pussess tieghu fl-istess post u fl-istess hin ma' ohrajn, liema intenzjoni tohrog iktar cara mill-qari tat-test ingliz fejn jinghad illi "the offender intended to consume the drug on the spot with others." Dan certament ma jinkludix dik is-sitwazzjoni allura fejn ilhati ikun akkwista id-droga bl-intenzjoni li ighaddieha lil terzi.

Issa l-appellanti ighid hekk fl-istqarrija tieghu rilaxxjata a tempo vergine u emmnuta mill-Ewwel Qorti u dan meta mistoqsi x'kien ser jaghmel bil-11-il pillola u nofs li instabu fuqu mill-pulizija:

"Dawk jiena kont ghadni kif mort nixtrihom ghalija u ghal shabi ghal street party li kien hemm Bugibba."

On the basis of the evidence produced and upon the accused's testimony the Court deems that this proviso could have been applied. Infact it has emerged that the accused buys the drugs himself and his friends went over at his house and smoked together. It has not transpired that the accused has dealt in cannabis resin. However, the accused has been charged with reference to a particular date and time that is 9th December 2018 at about 19:00hrs and at that time it has not resulted that the accused was actually dealing in cannabis resin or smoking cannabis with his friend or friends. So much so that he was outside his residence when the police officers saw him and followed him. Undoubtedly, the accused was referring to previous days, weeks or months. Hence, the accused cannot be found guilty of the first charge brought against him.

As for the second charge, the accused are being charged with being in possession of cannabis resin in circumstances denoting that it was not intended for their personal use.

With regards to the accused **Abdiwahab Ahmed Ali**, the Court has already referred to the evidence which has emerged from the various witnesses and expert's reports and his statement and deems that no proof whatsoever has been brought forward against him which proves that he should be found guilty of this charge. The fact that he was present in the house where the drugs were found is not automatically tantamount to his being found guilty. The prosecution has not proven beyond reasonable doubt a connection between this accused and the drugs found in the property.

The same cannot be said about the other accused **Abdiladeef Abdirahman Hassan**. First of all, it must be noted that the accused has changed his version of events when he testified as to when he released

the statement to the police. In his statement he denied any wrongdoing and stated that he smokes synthetic and he said that he smokes three joints on a daily basis. Instead when he took the witness stand, he took responsibility for the money box and its contents but said that the drugs were for his personal use. The Court deems that since there were his imprints on the contents and particularly the RIU officers testified that when they followed him to his residence he went straight to grab said money-box which proves that the accused knew fully well what was in said box. The issue which remains to be decided upon is whether the cannabis resin was intended for personal use or otherwise as charged.

As was stated in the case in the names of *Il-Pulizija vs Marius Magri*²⁴:

“Illi dawn il-kazijiet mhux l-ewwel darba li jipprezentaw certa diffikolta’ biex wiehed jiddetermina jekk id-droga li tkun instabet ckienetx intiza ghall-uzu personali jew biex tigi spaccjata. Il-principju regolatur f’dawn il-kazijiet hu li l-Qorti trid tkun sodisfatta lil hinn minn kull dubbju dettat mir-raguni w a bazi tal-provi li jingabu mill-prosekuzjoni li l-pussess tad-droga in kwistjoni ma kienx ghall-uzu esklussiv (jigifieri ghall-uzu biss). Prova, ossia cirkostanza wahda f’dan ir-rigward tista’, skond ic-cirkostanzi tal-kaz tkun bizzejjed. (Ara App.Krim. Il-Pulizija vs Carmel Degiorgio” 26.8.1988) Meta l-ammont tad-droga ikun pjuttost sostanzjali, din tista’ tkun cirkostanza li wahedha tkun bizzejjed biex tissodisfa lill-Qorti li dak il-pussess ma kienx ghall-uzu esklussiv tal-hati (Ara Appell. Kriminali; “Il-pulizija vs Carmel Spiteri” 2.9.1999)

Illi pero’ kif gie ritenut minn din il-Qorti, kif presjeduta, kull kaz hu differenti mill-iehor u jekk jirrizultawx ic-cirkostanzi li jwasslu lill-gudikant ghall-konvinzjoni li droga misjuba ma tkunx ghall-uzu esklussiv tal-akkuzat, fl-ahhar mill-ahhar, hija wahda li jrid jaghmelha l-gudikant fuq il-fattispecje li jkollu quddiemu w ma jistax ikun hemm xi hard and fast rule x’inhuma dawn ic-cirkostanzi indikattivi. Kollox jiddependi mill-assjem tal-provi u mill-evalwazzjoni tal-fatti li jaghmel il-gudikant u jekk il-konkluzzjoni li jkun wasal ghaliha l-gudikant tkun perfettament raggungibbli bl-uzu tal-logika w l-bon sens u bazata fuq il-fatti, ma jispettax lil din il-Qorti li tissostitwiha b’ohra anki jekk mhux necessarjament tkun l-unika konkluzzjoni possibbli. (App.Krim. Il-Pulizija vs Brian Caruana 23.5.2002)”.

²⁴ App Krim. 12/05/2005

There is no doubt as to the contents of the brown substances upon the expert's examination and the report which was mentioned previously in this judgment, that is that they are cannabis resin.

This Court also remarks that the amount of cannabis 33.27g is not a negligible amount. There were 7 pieces, all resulting positive to tetrahydrocannabinol, and had the following weight: 24.69g, 1.22g, 2.23g, 1.26g, 1.42g, 1.22g, 1.23g. For sure, this amount is not an amount which is usually associated with personal use, taking into consideration the fact that a typical dose in a joint would be 0.2 grams cannabis²⁵

The accused at first in his statement declared that the money-box and drugs were not his and that he smokes 3 joints daily. Whilst upon testifying he stated that the money-box and its contents belonged to him and that he smokes 20 joints. Moreover, he declared that he does not work but receives social benefits to the amount of €309 per month. He pays €50 per month rent to his friend and testified that he spends €250 per month on drugs for his personal use. The Court deems that the inconsistencies which result from the different version of events the accused has given puts into question his credibility. Particularly, it must be noted that when faced with the evidence brought forward, the accused changed his version of events trying to make it seem more plausible in the circumstances. If his version of events, as to how much joints he smokes, were to be believed it would mean that the accused after having spent his money on drugs and rent was left with €9 per month to live and to cater for his daily needs which is totally impossible. And moreover if he were to be believed that he smokes 20 joints per day then this would mean that he approximately needs 4 grams per day and hence per month it would mean approximately 120 grams which means that the amount of drugs found in his residence would only serve him for just one week approximately and he stated that he buys drugs per month. The Court is convinced that the drug was not for his personal use particularly the total weight of the drugs, and apart from one piece, the other 6 pieces were of approximately the same weight. Another

²⁵ World Drug Report 2006 Volume I. Analysis, pagina 96 et seq.

circumstance is that on the basis of what the accused himself has declared in his testimony that is, that he spends €300 out of the €309 he perceives, the amount of money found in the money-box, including some other money found in various foreign currencies amongst which Serbian currency does not tally with the accused's income.

Hence, **Abdiladeef Abdirahman Hassan** is being found guilty of such charge.

As for the third charge, **Abdiladeef Abdirahman Hassan** is also being found guilty since it has been sufficiently proven.

Since **Abdiwahab Ahmed Ali** is not being found guilty of any of the charges brought against him, he is not being found guilty of being a recidivist since this is consequential to a finding of guilt.

Punishment

With regards to the punishment to be meted out, the Court is taking into consideration the nature of the offence, the circumstances of the case and the accused's clean criminal record.

Decide

For these reasons, the Court, whilst abstaining from taking cognizance of the fifth charge brought against both accused, after having seen Sections 8(a), 22(1)(a), 22(2)(b)(i) and (ii) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Sections 17 and 31 of Chapter 9 of the Laws of Malta, finds the accused **Abdiladeef Abdirahman Hassan** guilty of the second and third charges brought against him and condemns him to a term of ten (10) months effective imprisonment - from which term one must deduct the period of time, prior to this judgement, during which the person sentenced has been kept in preventive custody in connection with the offences in respect of which he is being found guilty by means of this judgement - and a fine (multa) of eight hundred Euro (€800). The Court is not finding

Abdiladeef Abdirahman Hassan guilty of the first, fourth and sixth charge brought against him and he is acquitted from same.

With regards to the accused **Abdiwahab Ahmed Ali**, the Court does not find the accused guilty of the other charges brought against him and acquits him from same.

The Court orders that the drugs exhibited in Document MG 15²⁶ 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 condemns the person sentenced, namely **Abdiladeef Abdirahman Hassan**, to the payment of the expenses relating to the appointment of court experts²⁷, in terms of Section 533 of Chapter 9 of the Laws of Malta, which expenses²⁸ amount to the sum of six hundred and thirty five Euro and forty-two cents (€635.42).

Moreover the Court is ordering the forfeiture of the money seized and presented in the acts of the case.

Dr Josette Demicoli
Magistrate

²⁶ Referred to

²⁷ Godwin Sammut, Joseph Bongailas and PC 169 Jurgen Schembri

²⁸ The accused is being condemned to pay half of the expenses