

Court of Magistrates(Gozo)
as a Court of Criminal Judicature

Magistrate Dr Brigitte Sultana LL.D., LL.M. (Cardiff), Adv. Trib. Eccl. Melit.

Sitting of today the 2nd of July 2019

The Police
Inspector Josef Gauci

vs

Beyene Fessahatsion Weldeabzghi, aged 28 years, son of Fessahatsion and Ezgharia nee' Weidetnsaie, born at Eritrea, on the 24th May 1991 and resides at 15, triq l-Innu Malti, Zebbug Ghawdex, holder of Maltese Identity card number 115501A.

The Court;

Having seen the charges brought forward against the accused for having between the 26th to the 27th June 2019, between 23.30hrs and 10.00hrs, whilst you were at Marsalforn bay limits of Zebbug Gozo and later on at Gozo General Hospital, at Victoria Gozo and/ or in the vicinity;

1. Assaulted or resisted by violence or active force, PC 102 Anthony Portelli, PC 109 Nathan Charles Theuma and PC 268 James Farrugia persons lawfully charged with a public duty when in the execution of the law or of lawful order, issued by a competent authority, **in breach of article 96 of Chapter 9 of the Laws of Malta.**
2. **And also with having on the same date, time, place and circumstances** reviled, threatened or caused bodily harm to PC 102 Anthony Portelli, PC 109 Nathan Charles Theuma and PC 268 James Farrugia persons charged with a public duty, while in the act of discharging their duty or because of them having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty, **in breach of article 95 of Chapter 9 of the Laws of Malta.**
3. **And also with having on the same date, time, place and circumstances,** voluntary caused slight injuries on the persons of PC 102 Anthony Portelli, PC 109

Nathan Charles Theuma and PC 268 James Farrugia **and this in breach of article 221 of Chapter 9 of the Laws of Malta.**

4. And also with having on the same date, time, place and circumstances disobeyed the lawful order of any authority or of any person entrusted with a public service, or hindered or obstructed such person in the exercise of their duties, or duly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever, in breach of article 338(ee) of Chapter 9 of the Laws of Malta.

5. And also with having on the same date, time, place and circumstances attempted to use force against the person of Dr. Lorna Attard M.D. with intent to insult, annoy or hurt such person, and this in breach of article 339(d) of Chapter 9 of the Laws of Malta.

6. And also with having on the same date, time, place and circumstances uttered insults or threats to the person of Dr. Lorna Attard M.D. and Kevin Galea, and this in breach of articles 339(1)(e) of Chapter 9 of the Laws of Malta.

7. And also with having on the same date, time, place and circumstances at night time, disturbed the repose of the inhabitants, by rowdiness or bawling or in any other manner and this in breach of article 338 (m) of Chapter 9 of the Laws of Malta.

8. And also with having on the same date, time, place and circumstances in any public place or place open to the public was found drunk and incapable of taking care of himself and this in breach of article 338 (ff) of Chapter 9 of the Laws of Malta.

9. And also with having on the same date, time, place and circumstances, willfully disturbed the public good order or the public peace, and this in breach of article 338(dd) of Chapter 9 of the Laws of Malta.

10. And also with having on the same date, time, place and circumstances, spit any substance or expelled mucus from the nose, or left or deposited human material excretion, including vomit, or left or deposited any animal material excretion upon or onto any street or any public place, and this in breach of regulation 4(e) First Schedule of Legal Notice 344/2005 of the Laws of Malta.

In case of conviction the Court is humbly requested to deem the accused to be a recidivist after being sentenced for other offences by a judgment from the Court of Magistrates of Malta, which has become *res judicata*.

The Court is humbly requested to apply also article 383 of Chapter 9 of the Laws of Malta for the security of PC 102 Anthony Portelli, PC 109 Nathan Charles Theuma u PC 268 James Farrugia, Dr. Lorna Attard M.D. and Kevin Galea.

The Court is also humbly requested to issue a protection order in terms of article 412 (C) of Chapter 9 of the Laws of Malta, during the case and in the event of guilt.

Thus whilst I am exhibiting the accused *refugee status* document and his conviction sheet, I humbly request that this case would be investigated according to the law.

Considering:

Having seen all the acts and the documents exhibited during the course of the proceedings;

During the sitting held on the 27th of June, 2019, the Court heard the accused plead guilty to all the charges brought against him;

The Court cautioned the accused as to the repercussions of his admission and explained that considering the nature of the charges, the punishment could include imprisonment and the imposition of a fine. The Court also granted the accused additional time to confer with his legal counsel to decide whether he wanted to confirm his guilty plea or not. The accused once again pleaded guilty and admitted to all the charges brought against him. The Court therefore considers this admission as final and definite.

Now, since the accused entered a guilty plea the Court, whereas it finds that the charges have been sufficiently proven and hence finds the accused guilty of all the charges brought against him.

With regards to the punishment to be meted out the court deems that though the accused entered a guilty plea early on yet the offences committed by him are of a serious nature. From the accused's criminal record filed by the Prosecution the Court cannot but note

that the accused has, in the past three (3) years garnered a good number of convictions. The Court also notes that so far the accused has been afforded the opportunity to rehabilitate himself and he has been given numerous chances, which the accused has failed to take up.

The accused enjoys the status of refugee which means that he has been granted the right to live in Malta. The Court expects that whoever has been given the right to enter Malta or reside therein should respect the laws of the country. The accused has exhibited disdain and utter disrespect for the laws of Malta and his behavior has repeatedly shown that he refuses to abide by the rules. The Court emphasizes that this behavior will not be tolerated.

Decide:-

With regards to the first, third and fourth charges the principle of formal concurrence of offences applies. Therefore the Court having reviewed the documentation presented the court finds that the circumstances of this case are tantamount to the offence provided for by Article 96 and of that of Article 95 Of Chapter 9 of the Laws of Malta and so therefore the Court is abstaining from taking further cognizance of the second charge .

For the foregoing reasons the Court whilst abstaining from taking cognizance of the second charge, and following the admission by the accused, hereby finds and declares Beyene Fessahatsion Weldeabzghi guilty of all the charges brought against him and after taking cognizance of Art. 17, Art.31, Art.49, Art. 50, Art 96, 221, Art.222 (1)(c) Art.338(ee),Art. 339(d), Art. 339(1)(e), Art.338 (m), Art. 338 (ff), Art. 338(dd) of Chapter 9 of the Laws of Malta, and Reg. 10 of Legal Notice 344/2005 of the Laws of Malta and Reg. 4(e) of the First Schedule of Legal Notice 344/2005 of the Laws of Malta, sentences him to two (2) years effective imprisonment and to the payment of a multa of Euro five thousand (€5000). The said Multa shall be paid within one (1) month from the date of this judgement.

In terms of Sections 382A of Chapter 9 of the Laws of Malta, the Court for the protection of Dr. Lorna Attard and Kevin Galea is hereby restraining the accused from approaching or in any way communicating with Dr. Lorna Attard and Kevin Galea and this for a period of three (3) years. The Court explained to the accused the legal consequences should he infringe the Restraining Order being imposed on him.

The court is hereby rejecting the request of the Prosecution for the protection order.

In the light of the accused's criminal record and present conviction the Court is hereby ordering that a copy of this judgment be notified to the Commissioner of Police so that he may exercise his powers in terms of the Immigration Act.

The Court orders that a copy of this judgment is also notified to the Minister Responsible for Home Affairs and National Security.

Magistrate Dr. Brigitte Sultana