



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

MAGISTRATE DR MARSE-ANN FARRUGIA LL.D.

Sitting held today Friday 13th November, 2020

**The Police
(Inspector Godwin Scerri)**

vs

Keven Agbigbi

The Court,

1. Having seen charges brought against:

Keven Agbigbi, son of William and Margaret nee Agbigbi, born on 1st January 1989 in Nigeria and residing at 'Grandside' Blk B Flat Tamar Street, St. Paul's Bay, holder of Maltese identification card document number – 57908A.

Charged with having on the 13th of April 2019 at around 01:00hrs, in St Paul's Bay:

1. without the intent to kill or to put the life of Matthew Anoja in manifest jeopardy, with the use of arms improper, caused the mentioned grievous bodily harm, in breach of Articles 217, 218 of Chapter 9 of the Laws of Malta.

2. on the same date, place, time and circumstances, without the intent to kill or to put the life of Blessing Aloun in manifest jeopardy, caused the mentioned slight bodily harm in breach of Articles 221, 222(1)(a) of Chapter 9 of the Laws of Malta.
3. on the same date, place, time and circumstances carried outside, any premises or appurtenance thereof, a knife or cutting or pointed instrument of any description without a licence or permit from the Commissioner of Police in breach of Article 6 of Chapter 480 of the Laws of Malta.
4. on the same date, place, time and circumstances uttered insults or threats against Matthew Anoja & Blessing Aloun in breach of Article 339(e) of Chapter 9 of the Laws of Malta.
5. on the same date, time, place and circumstances disturbed the repose of the inhabitants by rowdiness or bawling, or in any other manner in breach of Article 338(m) of Chapter 9 of the Laws of Malta.

The Court was also requested to provide the needed security in favour of Matthew Anoja and Blessing Aloun even during these proceedings in terms of Article 412C of Chapter 9 of the Laws of Malta.

2. Having seen the note of the Attorney General of the 13th January 2020, wherein he sent the records of this case for the person charged 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, 217, 218, 221, 222(1)(a), 202(h) of the Criminal Code, Chapter 9 of the Laws of Malta;
 - (b) Article 339(e) of the Criminal Code, Chapter 9 of the Laws of Malta;
 - (c) Article 338(m) of the Criminal Code, Chapter 9 of the Laws of Malta;
 - (d) Articles 382A, 383, 384, 385, 386, 412C u 412D of the Criminal Code, Chapter 9 of the Laws of Malta; and

(e) Articles 17, 31, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

3. Having heard the person charged declare in the sitting of the 22nd January 2020, that he has no objection that his case be tried summarily by this Court.
4. Having heard the evidence and having seen all the records of the case and the documents exhibited.
5. Having heard the final oral submissions by the parties;
6. The Court considered as follows:

The Facts

7. The facts on which are not contested between the parties are very few and are in brief the following:

1.The defendant and the injured party Blessing Aloun had a relationship and lived together in an apartment in Saint Paul's Bay, together with their son Kaya, who was eighteen months old, and Blessing's son, who was ten years old.

2.The apartment where they lived was rented to both of them.

3.The defendant is a chef and used to manage a restaurant.

4.For the last few months before the incident in question, the relationship between the couple started deteriorating, and a few days before the incident, the defendant also told Blessing Aloun that he had been informed that she was unfaithful to him.

5.Blessing Aloun moved out of the apartment with her two children, but on the 12th of April 2019, she went with the children to take refuge in the apartment of William Uti, who is a common friend of hers and of the defendant. Uti's apartment is also situated in St. Paul's Bay.

6. William informed the defendant that Blessing was living at his apartment, and at some time after midnight, the defendant came with William to speak to Blessing. An argument broke out between the two of them. The defendant left the apartment, taking baby Kaya with him.
7. Blessing and William called Matthew Anoja, another common friend of theirs, to go to William's apartment to help them calm down the defendant. At the time Matthew was with his girlfriend Rachel Fred, at a concert at Coastline Hotel.
8. Matthew and Rachel went to William's apartment, and they decided to go to the apartment where Keven and Blessing used to live, to convince the defendant to give the baby back to Blessing. They went all together using Matthew's car. There was also with them Blessing's elder son.
9. Blessing opened the door of the apartment with her key, and they all went in the apartment. An argument broke out between the defendant and Matthew, and physical violence was used.
10. There is a very stark difference between the version of the defendant, who opted to give evidence and that of the Prosecution and the injured parties as regards both what happened in William's apartment, as well as what happened in the apartment of the defendant and Blessing. 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 stated hereunder:

8. *The version of the injured parties*

1. According to Blessing, whilst she was in William's apartment, the defendant punched and hit her, even on her face, causing her to bleed.
2. According to Blessing and Matthew, when they went in the apartment, the defendant got angry demanded to know why they were there, and Matthew told him that he (the defendant) should not be there because of previous incidents

between the couple, in which the Police were involved. Matthew states that Keven grabbed him by the collar of his shirt, and so the argument got violent physically.

3. At this stage the defendant ran to his bedroom, where he kept a set of chef knives, and he came back slashing a knife. Matthew managed to disarm him and threw away the knife. Whilst all this was going on, William was trying to separate the two men and keep things calm, whilst Blessing picked up the baby, who was in the bedroom.
4. Somehow the three men went into the defendant's bedroom to try to resolve the matter amicably, but another fight took place in the bedroom. When the fight calmed down, Matthew and William walked out of the bedroom into the corridor to go out. But the defendant came after them brandishing two knives, and he slashed Matthew's ear with one of them.
5. At this point, William gave up, and left the apartment, because he did not want to get involved in this fight.
6. The defendant started attacking Matthew with two (2) knives. He also injured Matthew in the chest with one of the knives. Matthew was defending himself with his hands, trying to evade the slashes, but in the process got a number of cuts from the wrist to the elbow of his right hand.
7. During this fight, Blessing also tried to take away the knives from the defendant's hand, but she finished with a cut on her thumb of her left hand.
8. Matthew told Blessing and Rachel to get out of the apartment. A couple living in the floor beneath let Blessing and her children in, and she called the Police. Rachel remained mid-way on the stairs leading from the fourth floor, where Keven's apartment is situated, to the third floor.
9. Somehow, Matthew managed to get out of the apartment, and he started pulling the handle of the front door of the apartment, so that the defendant could not get out, until the police arrived

- 10.** The defendant managed to break the middle of the front door of the apartment, and put a knife in the hole. So Matthew had to move back not to get hit by the knife, and the defendant was able to open the door and come out, still brandishing the two knives, and threatening Matthew he was going to kill him. Matthew hit the button for the lift. Whilst he turned to go in the lift, the defendant slashed Matthew on his back on his left shoulder.
- 11.** As soon as he came out of the lift, Matthew found the defendant on the groundfloor – he came down using the stairs, still brandishing the knives. He tried to attack Matthew, but Matthew pushed him away and ran out of the block of the apartments, where there was Rachel waiting.
- 12.** Rachel took off her jacket to try to stop the blood coming out of the cut on Matthew's shoulder. She also called an ambulance. Since the ambulance which was called, delayed in coming, and Matthew was losing lots of blood, Matthew drove all the way to Mater Dei Hospital in his car, with Rachel helping him.

9. *The version of the defendant*

1. On the other hand, according to the defendant, the injuries on the face which Blessing sustained in William's apartment, were caused because whilst he was holding her hand, she tried to free her hand forcefully, and hit her face with her own hand.
2. Later, when he went to his apartment with his son, he was in his bedroom, ready to go to sleep, when he heard someone coming in, and calling his name. He opened the door of his bedroom and he found William and Matthew. He told them to go away, but Matthew told him that he was not supposed to be in the apartment, and a verbal argument ensued between them.
3. Suddenly Matthew took something out of his pocket, probably a pocket knife, and cut his (the defenant's) right palm with it. Matthew also gave him a punch in his face, and due to this punch he lost two front teeth and another tooth is shaking.

4. Then Matthew pushed him to the balcony in the bedroom, and they started fighting. Matthew grabbed the defendant's private parts, and to release him, the defendant bit his ear.
5. When William saw the blood on the defendant's hand, he went away, but Matthew was still fighting with him. Blessing went behind the defendant's back and started cutting the defendant's back with a knife.
6. After Matthew hit him with the stool, they together with Rachel went out of the apartment.
7. Matthew was pulling the handle of the apartment door so that the defendant could not go out. The defendant was pulling the door in the other direction to try to open it. At one point, the handle broke off from the door, and the handle hit him on the chest, and he fell backwards, and hit his back with the metal railing of the stairs.
8. Then Matthew went inside the lift and the defendant went down the stairs, but Matthew had already got out of the block and was on the other side of the road with Rachel, when the defendant went downstairs. The defendant started accusing Matthew that he was having an affair with Blessing.
9. Then the defendant went upstairs in his apartment and he rested some minutes on the sofa, when the Police arrived, a few minutes later.
10. The defendant also stated that he never saw the chef knife case or any knives that were inside the case on the night of the incident. He stated that he saw the knife case open in his bedroom, when he went to the apartment, after he was released from Mount Carmel Hospital. He said he kept the knife case in a wardrobe, but Blessing knew where he kept it.

Considerations of this Court on the Guilt of the Defendant

10. The Court has no hesitation in stating, that from the evidence produced before it, there can be no doubt that the version of events given by the injured parties is the credible version of events. The Court reached this conclusion not only because it is corroborated

by other witnesses, including William Uti, who is a friend of the defendant, but also because the version of the defendant is riddled with inconsistencies and contradicted by other evidence. It is true that not all the witnesses of the Prosecution recalled the same details, but this is only natural because every witness states what he perceives through his own senses.

11. The Court gave particular importance to the evidence of William Uti, because he is a close friend of the defendant. In fact, after he was arraigned, the defendant called Uti from prison to go to speak to the defendant's lawyer to give him his version of events, and after the incident between the defendant and Blessing in his flat, he refused to call the police, and he left the defendant's apartment as soon as he saw Matthew injured, not to get involved.

12. In his evidence, William Uti said that when the defendant came to his apartment at about 1.00am, Blessing and the defendant started arguing because she did not want to speak to the defendant alone. Uti says that he was between the two of them, trying to mediate, when he thinks the defendant hit Blessing on her mouth, and there was blood on her face. When the Prosecution asked him to confirm whether the defendant was the one to hit her, Uti answered as follows *"But for the hitting I do not think he wanted to maybe hit with force. I think ... like always trying to grab her, you know. ... Not really want to punch her like that."*¹ Although it is evident that Uti is trying as much as possible not to put the defendant in a bad light, this evidence excludes that Blessing hurt her face with her own hand, as the defendant stated in his evidence.

13. As regards the incident in Keven's apartment, Uti states² that when Keven saw them he was angry and told them that he did not want to see anyone. Matthew told him that he was not supposed to be in the apartment because of a previous issue with Blessing. After that an argument started between them, and they started fighting with hands. Uti could not remember who started fighting with the hands first. He was trying to calm them down, whilst they were fighting in the bedroom. When he and Matthew came out of the bedroom, he noticed that Matthew had a cut in his ear, but he states he

¹ See page 460 of the proceedings.

² See page 463 *et seq.* of the proceedings.

does not know how the cut was done. The Court does not believe that Uti's assertion that he does not know how the cut was done is credible, considering that he was with the two men all the time.

- 14.** It is at this point that Uti mentioned for the first time that the defendant had a knife. Uti stated as follows:³

"The witness: The first time he had a knife, he take the knife after when they were arguing the first time Matthew I think Matthew take the knife from him before they start fighting with hands.

The Court: This is after you tried to stop them?

*The witness: No, before I tried to stop them, the first time he had the knife was going to Matthew and Matthew take the knife. I do not know how he take it because he was ...
... you know, and he take the knife"*

- 15.** When Uti was asked from where the defendant got the knife, he answered from his bedroom.⁴ Later on Uti repeated that *"Matthew take the knife from him before they start fighting with hands."*⁵ When Uti was asked what did the defendant try to do with the knife, he replead *"When he go to Matthew, Matthew take the knife from him."*⁶ According to the witness the knife was about twenty-five centimeters (25cm) long.⁷

- 16.** Uti left the apartment when he saw the blood coming from Matthew's ear.

- 17.** Under cross-examination, Uti was asked whether Matthew had a penknife with him. The witness replied: *"I did not see any penknife from anyone."*⁸

- 18.** Nowhere in his evidence does Uti say that before the verbal argument transformed itself from a verbal one into a violently physical one, Matthew punched the defendant in his face.

³ See page 467 of the proceedings.

⁴ See page 468 of the proceedings.

⁵ See page 469 of the proceedings.

⁶ See page 471 of the proceedings.

⁷ See page 471 of the proceedings.

⁸ See page 1322 of the proceedings.

- 19.** This evidence of Uti is alone sufficient to contradict the version of events given by the defendant, at least until Uti went out of the flat. Although Uti is a witness of the prosecution, he is certainly biased in favour of the defendant, since he is a close friend of his, as already stated above. Even when giving evidence, it was evident that he was reluctant to say things which threw the defendant in a bad light. It is also relevant that though he knew that a violent fight was going on, and Matthew had a cut ear, he did not deem it necessary either to call the police or an ambulance, but conveniently ran away from the apartment.
- 20.** Uti's evidence is corroborated in substance by that of the injured parties, Matthew Anoja and Blessing Aloun, and by Rachel Fred, Anoja's girlfriend.
- 21.** As regards what happened after Uti left the apartment, there is the evidence of Matthew Anoja himself. This evidence is in substance reproduced above, when the Court summarised the version of events of the injured parties. This evidence corroborated by Blessing, Rachel and Blessing's elder son, who was ten (10) years old. The witnesses say that the knives used by the defendant were between thirty (30) and forty-five (45) centimeters long.
- 22.** As already stated, the defendant's version that the fight started when Matthew cut his hand with a penknife and punched him in the face, is simply not credible, considering not only the evidence of the injured parties, but also that of William Uti, who categorically denied seeing a pen-knife and nowhere mentions that Matthew started the fight off when he punched the defendant. On the opposite, William admits, that before the physical fight started, it was the defendant who came wielding a knife in the direction of Matthew, and Matthew managed to take away the knife from him.
- 23.** The defendant states that after William left the apartment, Matthew continued fighting with him, while Blessing cut his back with a knife. This is also not credible, considering what has been stated in the previous paragraph. Moreover, if it is true that it was the defendant who was being attacked by William and Blessing, the Court can find no logical reason, why the defendant admits that Matthew eventually went out of the apartment, and pulled the door to prevent the defendant from coming out, whilst the defendant was pulling the door to try to come out. This admission obviously shows that

the defendant was not intimidated at all by Matthew, so much so that instead of immediately calling the Police and an ambulance for being violently assaulted in his own apartment, as he is alleging, he wanted at all costs to go out, presumably to continue the fight. Secondly, it shows that Matthew was afraid to let the defendant come out of the apartment, and the only logical reason why Matthew should be afraid of the defendant is that it was the defendant who was attacking him.

24. The defendant stated that eventually he managed to get out of the apartment, because the door broke, and very surprisingly, he ran down four (4) flights of steps to the groundfloor to continue chasing his alleged aggressor, Matthew, who had gone down with the lift, to continue at least provoking him by alleging that Matthew was having an affair with his ex-partner Blessing. This is hardly the behaviour one would expect, from a person who has just been violently assaulted.

25. The defendant then states that he went back upstairs, to rest on the sofa. Again, it does not seem that the defendant deemed it necessary to call the police not only because of the fight but also because his son was according to him “kidnapped” or call an ambulance for the injuries he alleges he sustained during the fight.

26. The Court also points out that PS 419 Anton Buttigieg, one of the first police officers who arrived on sight, stated that later that day, he conducted a search of the apartment in the presence of the defendant’s lawyer, “*where I did not manage to find the alleged knives, but on the bed in the main bedroom I noticed a black pouch of chef’s knives with some four empty pockets which means that there were four (4) knives missing. Two of these pockets were for big knives and two of them were small knives.*”⁹ This evidence also contradicts what the defendant stated on oath, namely that the pouch of knives was hidden in the wardrobe, and he did not see it, or the knives contained in it, during the night of the incident.

27. The defence did not deem it fit to request that the defendant be examined by a forensic doctor at the beginning of the proceedings. A lot of time was wasted more then

⁹ See fol. 17 of the proceedings.

a year later, when the defence wanted to bring forward evidence to corroborate the injuries which the defendant alleges he suffered.

28. First of all the Court points out, that the defence seems to have forgotten that from the evidence brought forward by the Prosecution, an ambulance arrived on site, soon after the Police arrived there. This ambulance arrived because it was called by Rachel Fred for Matthew, who by that time had gone to the hospital with Matthew in his car, because the ambulance took too long to arrive. PS419 Anton Buttigieg, who was one of the first policeman to arrive on site, confirmed on oath that the paramedics treated the defendant on site, and left.¹⁰ PS 419 had already testified that as soon as he arrived he noticed blood on the defendant's hands. PC 1173 John Grech also said that the defendant had some scratches on the back and also a small cut on his right hand, and he was treated by the paramedics of the ambulance.¹¹ It does not seem that the defendant thought it necessary to inform them that he lost two teeth during the fight, and another one was wobbling. From this evidence, it is clear that the paramedics of the ambulance did not think the defendant needed any more medical treatment.

29. Later during the day, the defendant had to be admitted to Mater Dei Hospital due to an unexplainable pain he said he was suffering from, whilst being held under arrest. Doctor David Grima who examined him on the 13th April 2019 at 7.30a.m., a few hours after the incident, stated in his report that the defendant had a three centimeter (3cm) lacerated contused wound over the palmer aspect of his right hand. The report does not refer to any other signs of trauma.¹² Doctor Grima further stated that "*I personally cannot remember the case at hand, so I cannot, you know, judge by memory on whether there were abrasions or not, however, judging by the notes I wrote, if there were any abrasions they might have been so trivial that I did not really feel the need to document them.*"¹³ Doctor Grima also stated that the wound on his hand was compatible with an injury with a knife.¹⁴

¹⁰ See fol. 12 of the proceedings. See also the evidence of PC 1409 Kevin Buhagiar a fol. 446 of the proceedings.

¹¹ See fol. 434 and 435 of the proceedings.

¹² See fol. 632 of the proceedings and Dok OB1 a fol. 1382-1385 of the proceedings.

¹³ See fol. 1638 of the proceedings.

¹⁴ See fol. 1641 of the proceedings.

30. The fact that, despite all the violent fighting which took place, the defendant only suffered this small cut on the palm of his hand undermines the last vestiges of credibility of the version of events of the defendant.

31. On the other hand, Matthew Anoja suffered very serious injuries. Doctor David Grima who also examined Anoja a few hours after the incident, declared that Anoja *“sustained a deep lacerated wound on the upper side of his right wrist which involved tendons and at the time, since the tendons were ruptured there was loss of function of his hand. There was also a deep lacerated wound over his left shoulder and scapular region which was bleeding uncontrollably and had to go for surgical management. And then there were small lacerated wound over his anterior aspect of chest and also very deep lacerated wound over his ear, with tissue loss as well.”*¹⁵

32. Doctor Mario Scerri, appointed as expert by this Court, concluded his medical examination of Anoja, as follows:¹⁶

- “2. That the lesions described on the nose and on the left side of Matthew Anoja were compatible with scratch marks and are of a slight nature;*
- 3. that the incised wound described on Matthew Anoja’s right ear was inflicted by a cutting instrument which remains as a permanent mark on the face;*
- 4. that the lacerations described on the anterior aspect of the left side of the chest was inflicted by a pointed instrument. This did not penetrate the thoracic cavity thus being of a slight nature;*
- 5. That the lesions on the distal end of the right forearm were inflicted by a sharp cutting instrument resulting in five tendons being cut. These tendons were sutured at operation. This is a lesion of a grievous nature per durata;*
- 6. That the incision described on the left shoulder extending to the scapular region was a lesion inflicted by a pointed cutting instrument;*
- 7. This lesion was of a slight nature.”*

33. In a subsequent report on Anoja, Doctor Scerri declared that:¹⁷

¹⁵ See page 126 of the proceedings.

¹⁶ See Dok MST1 at page 2084 *et seq.* of the proceedings. The original report drafted in the Maltese language is found as Dok MS1 at page 394 of the proceedings.

¹⁷ See Dok MS2 at page 413 *et seq.* of the proceedings.

“That as a result of this alleged incident there was a scar on the left side of the chest This scar was a result of a laceration inflicted with a pointed instrument 0.8centimeters long and 0.4 centimeters wide.

That there was a long scar with keloid formation, convex anteriorly, this being the result of an incision. This scar is 14.5 centimeters long and 0.8 centimeters wide ...

That there are multiple scars on the dorsum of the right hand and the medial aspect of the distal end of the forearm extending to the medial aspect

That the muscle power in the wrist is preserved;

That there is also a visible scar on the right ear, this being a result of an incised wound;

That the scars on the left ear and the right hand and the shoulder are visible from within talking distance;

That the area of these scars constitutes less than 10% of the total body area and so in the expert’s opinion these carry a percentage disability of 5%. ”

34. In his evidence, the defendant stated that in order to defend himself, whilst fighting Anoja, he bit Anoja’s ear. Under cross examination, expert Doctor Mario Scerri categorically ruled out the possibility that the injury to Anoja’s ear was caused by a bite. He states as follows:¹⁸

“No, no, a bite does not cause an incised wound (A) bite causes typically a laceration. That is why I enlarged the photo, to indicate clearly that the edges are sharp, clean, compatible with an injury inflicted by a sharp cutting instrument, not teeth; teeth produce lacerations, not incisions. ”

¹⁸ See page 1288 of the proceedings.

35. In his evidence, the defendant also stated that Anoja pulled the handle of the apartment door so hard, that he pulled it off, and with the momentum the handle hit his chest and caused the injury. In his evidence, Doctor Mario Scerri, on being shown a photo of the door handle in question, categorically declared that the door handle in question is compatible with the injury suffered on the chest by Anoja, and stated as follows “*The handle will not produce a laceration like that The laceration was inflicted by a sharp pointed instrument.*”¹⁹

36. Since the defence realised that the defendant’s evidence on how the injury on Anoja’s chest was caused was not going to hold water, it also submitted that the injury was caused by the piece of wood from the door which remained attached to the door handle, after the latter was pulled off the door. Again a photo of the door handle with the piece of wood was shown to Doctor Mario Scerri, and he again totally excluded that the piece of wood was compatible with the injury suffered by Anoja. Doctor Scerri stated as follows:²⁰

*“On the chest there was a wound, penetrating wound, but not penetrating so deeply to involve the thoracic cavity. That is why I classified it as being of slight nature. The wound described is a laceration. It is a clean laceration. I would not say it is compatible with the pointed edge of this wood because if this penetrated one would expect more lacerations on the lesion because it is a clean laceration, it is not a *** ** laceration. That was a clean laceration that was probably inflicted most compatible with a pointed instrument like a knife or a pen knife.*
(H)a nghidielek cara, it is compatible with a sharp instrument, kompatibbli ma sikkina iva. Mhux injama zgur.”

37. The defence asked Doctor Scerri why if the wound on the chest was inflicted by a knife, the knife did not enter that part of the body. Doctor Scerri replied as follows:²¹

“It was not deep enough to penetrate the thoracic cavity. This laceration involved the superficial layers of the skin, the deep layers of the skin, the subcutaneous fat and it lodged in the intercostals not penetrating the thoracic cavity. Ghalhekk hija slight.

¹⁹ See page 1864 of the proceedings.

²⁰ See page 1864 of the proceedings.

²¹ See page 1865 of the proceedings.

But it is inflicted by a sharp instrument more compatible to a knife than to this piece of wood you showed me.”

38. In the oral submissions the defence submitted that in his previous evidence of the 10th June 2020, Dr Mario Scerri had stated repeatedly that *“he did not agree it was a knife”* and he changed his version in his subsequent evidence. This allegation is totally unfounded. Nowhere in his evidence of the 10th June 2020, did Doctor Mario Scerri state that he did not agree that the injury was caused by a knife. In the sitting of the 10th June 2020 the defence suggested to Doctor Scerri that the wound on the chest was not made by a knife. Doctor Scerri replied as follows:²² *“I do not like calling it a knife. I always like calling it an instrument, pointed, or not pointed, and having a sharp edge, either one single cutting edge or two. This lesion is more compatible to an instrument having an edge rather than a laceration inflicted by a blunt object.”* Doctor Scerri was using forensic medical jargon, which the defence is unintentionally or intentionally, misinterpreting. It is obvious that a knife has a cutting edge, and so the wound on the chest of Anoja was compatible with a knife injury. But other objects have cutting edges, like blades or glass splinters, and consequently could also have caused the injury suffered by Anoja. Doctor Scerri, not being conversant with the facts, was simply being neutral on the precise object which could have caused the injury, but made it clear that the lesion was compatible with an instrument having an edge – as stated that definition obviously includes a knife.

39. The defence also tried to create a smokescreen on the fact that Doctor Mario Scerri stated that that Anoja bled from the incised wound on the shoulder because there are lots of blood vessels.²³ The defence, somewhat disingenuously, argued that this statement is incompatible with the fact that only drops of blood were found in the apartment and landings, and not pools of blood. The defence is, conveniently or otherwise, forgetting, two important facts. Anoja was hit by the knife on the shoulder when he was about to enter the lift, and once he got out of the lift, he nearly immediately got out of the block. So obviously the blood which started oozing from the shoulder started oozing in the lift and then on the landing of the entrance door of the block of

²² See page 1288 of the proceedings.

²³ See page 391 of the proceedings.

flats, and no “pools of blood” could ever be found in the apartment, because the injury was not inflicted in the apartment. Secondly, Doctor Scerri stated clearly “*(I) was not there and I do not know what pressure precautions were taken because if pressure was applied, obviously you will decrease the flow of blood.*”²⁴ In fact, from the evidence of Matthew Anoja and Rachel Fred it results, that as soon as Anoja went out of the block, Rachel tied her jacket round his shoulder to try to stop the blood oozing out.²⁵ So, pressure was applied on the lesion, a few minutes after it was caused. Nevertheless, Doctor David Grima who examined Anoja at the Emergency Department stated that the lesion on the shoulder was still bleeding uncontrollably.²⁶

40. From the above considerations, it is clear that the version of the defendant on how Anoja got an injury in his ear and an injury in his chest has been shot down by the expert opinion of Doctor Mario Scerri.

41. During the oral submissions, the defence made a large number of statements which are factually incorrect or do not result from the evidence submitted to this Court. This Court has no intention of wasting its time indicating all these statements, because this Court has already indicated clearly the relevant facts which were proven from the evidence which was brought forward by both parties.

42. However, as a last straw, in the final oral submissions, the defence referred to Article 223 of the Criminal Code on justifiable homicide or bodily harm. This Article states as follows:

“No offence is committed when a homicide or a bodily harm is ordered or permitted by law or by a lawful authority, or is imposed by actual necessity either in lawful self-defence or in the lawful defence of another person.”

43. The defence submitted that the defendant was beaten and the defence lawyer stated that he personally saw the knife injuries which the defendant had on his back.²⁷ From the evidence submitted before this Court there is no evidence that the defendant

²⁴ See page 392-393 of the proceedings.

²⁵ See evidence of Rachel Fred at page 775 and evidence of Matthew Anoja at page 817 of the proceedings.

²⁶ See page 126 of the proceedings.

²⁷ See fol. 1994 of the proceedings.

suffered knife injuries on his back. If the defence lawyer actually saw these knife injuries – which neither the Police, nor the paramedics of the ambulance nor Doctor David Grima of the Emergency Department saw – then it was his duty, to request the Court to preserve this evidence at the beginning of the proceedings and for him to confirm what he saw under oath, in accordance with the law of procedure.

44. Moreover, the fact that the defence invoked the plea of lawful self defence, is an indirect admission that – contrary to what the defendant stated under oath, except for the injury to the ear – it was the defendant who caused the other injuries to Matthew Anoja. But he is now submitting that he caused these injuries in the exercise of his right to lawful self defence. In other words, the version of events of the defendant is not only not a credible one, but, by pleading self defence, the defence is admitting that the defendant did not state the truth under oath.

45. As regards the plea of self-defence, in the judgement **Il-Pulizija vs Augusto Auguliario**, decided on the 26th August 1998, the Court of Criminal Appeal (in its Inferior Jurisdiction)²⁸ stated as follows:

“Mhux kull min “jagixxi biex jiddefendi ruhu” necessarjament jista’ jinvoka dana l-artikolu. Il-ligi titkellem car dwar il-“bzonn attwali” tad-difiza legittima” ta’ dak li jkun jew ta’ haddiehor. Kemm fid-dottrina kif ukoll fil-gurisprudenza taghna hu ormai stabbilit li biex wiehed jista’ jinvoka dina l-iskriminanti, l-aggressjoni subita trid tkun ingusta, gravi u inevitabbli. L-element tal-inevitabilita jigi nieqes meta wiehed, minflok ma jevita l-inkwiet ossia glied li jara gej, meta dan ikun jista’ b’mod ragonevoli jigi hekk evitat, imur minghajr raguni valida jaffrontah b’mod li jipprecipita huwa stess il-konfront fiziku. Mill-kumpless tal-provi jidher car li l-appellant, meta kellu l-opportunita li jwarrab bil-kwiet u jevita l-konfront, ghazel li jmur hu jisteden il-glied

Kif inghad, din il-Qorti hi sodisfatta li l-appellant, meta kellu l-opportunita li jevita l-inkwiet b’mod ragonevoli, minflok mar hu stess jisfida lil Vella Muscat ghall-glied. Jekk ivvibrax hu jew Vella Muscat l-ewwel daqqa hu fatt ta’ importanza marginali. Kif tajjeb intqal minn Lord Justice Widgelyy fil-kawza R. vs. Julien (1963) 1 WLR 839: “It is not

²⁸ Per Judge Vincent De Gaetano.

... .. *the law that a person threatened must take to his heels and run in the dramatic way suggested by Mr. McHale, but what is necessary is that he should demonstrate by his actions that he does not want to fight. He must demonstrate that he is prepared to temporise and disengage and perhaps make some physical withdrawal, and that is necessary as a feature of the justification of self-defence is true, in our opinion whether the charge is a homicide charge of something less serious.*" (fol. 843).

Din il-Qorti hi tal-fehma li din hi wkoll il-posizzjoni taht il-ligi taghna."
(sottolinear ta' dik il-Qorti).

46. In his book **Lectures on Criminal Law**, **Prof. Anthony Mamo** states as follows on the requisites for the plea of lawful self defence: "*The evil threatened must be: (1) unjust; (2) grave; (3) inevitable*".²⁹ As regards the requisite of gravity, he continues to say the following: "*The act of defence must have been done only in order to avoid consequences which, if they had followed, would have inflicted upon the person 'irreparable' evil; and the law considers as 'irreparable' and consequently grave, that evil which threatens the life, limbs, the body or the chastity of an individual.*"
47. As regards the the requisite of inevitability, **Prof. Mamo** continues explaining as follows: "*The accused must prove that the act was done by him to avoid an evil which could not otherwise be avoided. In other words, the danger must be sudden, actual and absolute. For if the danger was anticipated with certainty, a man will not be justified who has rashly braved such danger and placed himself in the necessity of having either to suffer death or grievous injury or to inflict it.*"³⁰
48. From the evidence presented before it, this Court is satisfied that the requisites of gravity and inevitability are lacking in this case. From the evidence, Matthew Anoja was unarmed. William Uti repeated twice that initially the argument between the defendant and Anoja was a verbal one. But suddenly the defendant went into his bedroom and came back with a knife, and Anoja managed to take the knife away from him. It was from then onwards that the argument turned into a physical one. Anoja

²⁹ See **Lectures on Criminal Law** (Part 1) fol. 103.

³⁰ See **Lectures on Criminal Law** (Part 1) fol. 104.

stated the defendant grabbed him by the collar of his t-shirt and the argument transformed itself from a verbal one into a physical one. Then suddenly, the defendant went into his room and got a knife, but he managed to disarm him, and then a physical fight ensued. When the fight was over, and he and Matthew had gone out of the bedroom, into the corridor, the defendant came after them slashing two knives.

49. The fact that Blessing and Anoja, together with William and Rachel went into the apartment certainly does not constitute irreparable evil. Blessing was a tenant of the apartment as much as the defendant, and in fact she opened the door with her own key. If the defendant was irritated with having them coming to speak to him, he could easily have called the Police. In both the versions of William Uti as well as Matthew Anoja, it was the defendant who became physically violent first. The fact that Anoja told the defendant that he should not be in the apartment, because of some previous order from the Police, certainly does not justify the violent behaviour of the defendant, and his resort to the use of knives. The huge discrepancy between the small cut in the hand sustained by the defendant, and the grievous and permanent multiple injuries sustained by Anoja also shows who the real aggressor was in this incident. Moreover, the fact that the defendant persisted in continuing the fight, by going out of the apartment and running down the stairs after Anoja proves that the defendant was far from afraid of Anoja. Hence, the plea of the defendant of legitimate self defence is totally unfounded.

50. The defence also made reference to Article 224(a) of the Criminal Code which states as follows:

“Cases of actual necessity of lawful defence shall include the following:

(a) where the homicide or bodily harm is committed in the act of repelling, during the night-time, the scaling or breaking of enclosures, walls, or the entrance doors of any house or inhabited apartment, or of the appurtenances thereof having a direct or an indirect communication with such house or apartment;”

51. This Article is clearly inapplicable in the present case. In this case, no one tried to break into the apartment clandestinely, or by breaking its entrance door. Blessing and Matthew, and the others with them got in, because Blessing opened the door with her

own key. According to the relative contract of lease,³¹ both the defendant and Blessing are tenants, so she had every right to open the door, and to allow whoever she wanted to go in. The fact that she had left the apartment a few days before is irrelevant, because at law she was still one of the tenants. For that matter, from the evidence it results that even the defendant had left the apartment for a number of days. Hence, even this plea of lawful defence is rejected.

52. The expert Dottor Mario Scerri stated that the injuries sustained by Anoja on his chest and on his shoulder were of a slight nature, whilst the injuries sustained on his ear and right hand are both grievous and will remain a permanent mark, which are visible from a talking distance. Hence, these latter injuries fall under Article 218(1)(b) of the Criminal Code, since they created a serious and permanent disfigurement of the face and the right hand of Anoja.

53. From the above considerations, the Court is satisfied that the Prosecution has succeeded in proving its case beyond reasonable doubt as far as the injuries sustained by Matthew Anoja are concerned, and is rejecting the plea of the defendant of legitimate self defence.

54. As regards the injuries sustained by Blessing Aloun, she was first examined by Doctor Simon Micallef, a doctor of the Emergency Department on the day of the incident, and he certified that her left thumb required sutures and had a swelling over the upperlip. He stated that she required two or three stitches on her thumb.³²

55. Expert Doctor Mario Scerri examined Blessing on the 2nd May 2019, and he concluded as follows:³³

“8. That Blessing Aloun sustained an injury to her left thumb remaining with a scar on the thumb which is visible but not so conspicuous from within talking distance.

9. that the function of the thumb was preserved.”

³¹ See lease agreement at page 1848 *et seq.* of the proceedings.

³² See fol.322 *et seq.* of the proceedings.

³³ See Dok MST1 at page 208 *et seq.* of the proceedings.

56. From the evidence brought forward, the Prosecution has proven beyond reasonable doubt that these injuries were caused by the defendant, as well as that Blessing Aloun was the former cohabitant of the defendant.

57. The contraventions under Article 339(3) and 338(m) of the Criminal Code have also been duly proven according to law.

Consideration as to Punishment

58. As regards punishment, the Court took into consideration the criminal record of the defendant, who has been in Malta for twelve years. He has only one judgement against him of having disobeyed the lawful orders of Police officers.

59. However, the Court cannot ignore the seriousness of the offences committed by the defendant. They were act of wanton violence, which must receive zero tolerance in a civilized society. It is actually something short of a miracle how Matthew Anoja, who was unarmed, manage to survive the attack of the defendant who was brandishing two chef knives in his direction. He suffered two slight injuries and two grievous and permanent injuries, one in his face and the other in his hand, in terms of Article 218(1)(b) of the Criminal Code. Even though the injury suffered on the shoulder is of a slight nature, it is very visible. This incident surely had life-changing effects on him. The punishment for a grievous offence under Article 218 of the Criminal Code is imprisonment for a term from five (5) to ten (10) years.

60. The Court also found the defendant guilty of causing slight injuries to his ex-partner Blessing Aloun, first by punching her in her face, and then by cutting her thumb, whilst doing his violence extravaganza. The punishment for this offence has to be increased by one decree, since he caused the injuries to his former cohabitant, and this in terms of Articles 222(1)(a) and 202(h) of the Criminal Code. The punishment for this offence is a maximum of three years imprisonment.

61. After applying the rules of concurrent punishments in Article 17 of the Criminal Code, the defendant is subject to a minimum punishment of six and a half years imprisonment and a maximum punishment of eleven years and six months imprisonment.

62. It is also relevant to point out, that at no stage of these proceedings did the defendant show any remorse for any one of the crimes he committed. He is evidently a danger to society, because when he loses his temper, he becomes uncontrollably violent.

Conclusion

63. For these reasons, the Court:

1. after seeing Articles 214, 215, 217, 218, 221, 222(1)(a), 202(h), 339(e) Article 338(m), 382A, 383, 384, 385, 386, 412C, 412D, Articles 17, 31, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, finds the defendant guilty of all the offences contemplated in these provisions of the law, and taking into account all the circumstances of the case, condemns the defendant to nine (9) years imprisonment.
2. The Court orders the person convicted to pay to the Registrar all the costs incurred in connection with the employment in the proceedings of all the experts, in terms of Article 533 of Chapter 9 of the Laws of Malta. These costs are to be paid within a period of one (1) year from when the Registrar of the Criminal Courts communicates to him the amount due by him. If the person convicted fails to pay this amount or part of it within the time herein prescribed, the amount, or any balance of it, will become 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.
3. Since in the opinion of this Court, when Keven Agbigbi gave evidence before this Court in the sitting of the 26th May 2020, he did not say the truth, the Court orders that a copy of this judgement is communicated by the Registrar to the Commissioner of Police, so

that, after the necessary investigation if needed, he institutes criminal proceedings against him for having given false evidence.

Magistrate

Doreen Pickard
Deputy Registrar