



**Court of Magistrates (Malta)
As a Court of Criminal Judicature**

Magistrate Dr Josette Demicoli LL.D

**The Police
(Inspector Matthew Grech)**

**Vs
Abdi Ali Jama**

Case No: 119/21

Today 25th July 2022

The Court,

Having seen the charges brought against **Abdi Ali Jama**, holder of Maltese Identity Card bearing number 102614A:

Charged with having on the 20th July 2021 and during the previous three years in these Islands:

1. Produced, sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of Section 8 (e) of the Chapter 101 of the Laws of Malta;
2. Produced, sold or otherwise dealt in the resin obtained from the plant cannabis, or any preparation of which such resin formed the base, in terms of Section 8 (b) of the Chapter 101 of the Laws of Malta;

3. Supplied or distributed, or offered to supply or distribute the drug (cocaine), specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101, of the Laws of Malta, to person/s, or for the use of other person/s, without being licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939), or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6, of the Ordinance and when he was not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed to distribute the mentioned drug, when he was not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
4. Supplied or distributed, or offered to supply or distribute dangerous drugs (MDMA), being a drug restricted and controlled under the provisions of the Kindred and Medical Profession Ordinance to person/s, who are not authorised person/s or for the use of other person/s, without being fully authorised in breach of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended.
5. Supplied or distributed, or offered to supply or distribute dangerous drugs (MDMA), being a drug restricted and controlled under the provisions of the Kindred and Medical Profession Ordinance to person/s, who are not authorised person/s or for the use of other person/s, without being fully authorised in breach of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended

6. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant Cannabis in terms of Section 8 (d) of the Chapter 101 of the Laws of Malta;
7. Had in his 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, in terms of section 8(a) of Chapter 101 of the Laws of Malta;
8. Had in his possession the drugs (*cocaine*) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta;
9. Had in his possession a psychotropic and restricted drug (MDMA) without a special authorization in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended, which drug was found under circumstances denoting that it was not intended for his personal use.

10.Had in his possession a psychotropic and restricted drug without a special authorization in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended, which drug was found under circumstances denoting that it was not intended for his personal use.

Also for having on the 20th July 2021, between half past two in the morning (0230hrs) and three o'clock in the morning (0300hrs), in St Augustine Road, St Julian's:

11.Committed a theft of a mobile phone of make Samsung, to the detriment of Mohamed Hassan Abdullahi Police Number 13H057, which theft is aggravated by time, breaching articles 261(f), 270, 281(a) of Chapter 9 of the Laws of Malta;

12.Used force against Mohamed Hassan Abdullahi with intent to insult, annoy or hurt him, in breach of article 339(d) of Chapter 9 of the Laws of Malta;

13.Led an idle and vagrant life in breach of article 338(w) of Chapter 9 of the Laws of Malta;

14.Wilfully disturbed the public good order or the public peace in breach of article 338(dd) of Chapter 9 of the Laws of Malta;

15.Committed an offence whilst being under an operative period of a judgement issued by the Court of Magistrates (Malta) presided by Magt Dr Caroline Farrugia Frendo LL.D on the 12th July 2021, which judgment has become absolute.

Furthermore, it is requested that this Honourable Court treats Abdi Ali Jama as being a recidivist in accordance with articles 49, 50 and 289 of the Laws of Malta.

The Court is also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed experts.

Having seen the Attorney General's consent in terms of Article 22(2) of Chapter 101 of the Laws of Malta and article 120A(2) of Chapter 31 of the Laws of Malta.

Having heard witnesses.

Having seen all the acts and documents of the case.

Having heard submissions.

Considers

The accused is being charged with drug trafficking of various substances namely the plant cannabis, resin, cocaine, MDMA and restricted drugs and with being in possession of said drugs; of having stolen a mobile phone which theft is aggravated by time; of some contraventions; of having committed an offence during an operative period of a judgment; and of being a recidivist.

Inspector Matthew Grech testified¹ that on the 20th July 2021 during the early hours in the morning at around 2.40a.m while the Police were patrolling in vicinity of St Augustine Street in St Julians they noticed a struggle between men. They intervened in order to stop this fight. At a moment in time one of these men who resulted to be Abdi Ali Jama took out a mobile phone from his pocket and placed it on the ground. When the Sergeant picked up the mobile phone and asked Abdi Ali Jama if it was his, it resulted that there was a probability that the mobile phone was not his. Thus, a body search was affected on his person, where the Sergeant found a small sachet containing suspected cannabis grass. The suspect was arrested and escorted to General Police Headquarters in Floriana. He then referred to the statements released by the accused in detail.

PS918 Clayton Azzopardi testified² that on the 20th July 2021 at around 2.50a.m whilst on duty he was patrolling by foot the area of Paceville. In St Rita's steps, a bystander informed him and the officers accompanying

¹

² 4th November 2021

the witness that there was an ongoing fight down the stairs. They went immediately and noticed that two people were fighting. One of them, the accused, had a vodka bottle in his hand and was going to hit the other person in the head with the bottle. So, the witness stopped the accused and handcuffed the other person. This other person, Hassan Abdullahi, told him that the accused had drugs on him that he was selling drugs and that's why they were fighting.

The witness said that he had noticed that the accused had tried to walk down the stairs. When he stopped him, he put his hand in the left side of his pocket and took the mobile out and put it behind him on a wall. The witness asked him whether he had something illegal on him and accused stated that he did not. He carried out a search on him and from his right pocket trouser witness pulled out a sachet suspected to be drugs. So, he informed him that he was under arrest. Accused was given all his legal rights and was escorted to St Julian's Police Station. The witness confirmed that the mobile in the two photos marked as Dok MG2³ is the same model, Samsung, that he seized.

Dr Marisa Lautier Mifsud presented⁴ the transcriptions of the two statements⁵.

PS 1128 Glenn Sammut testified⁶ that on the 20th July 2021 at around 2.40 a.m he received a phone call from PS 918 that he had two persons, Abdi Ali Jama and Hassan Abdullahi, in custody because they were fighting and some cannabis was found in possession of one of them. So, the witness went on site and he took the two persons to the Police Station. He asked them whether they wanted to take action against each other and they replied that they did not want to. So, he released Hassan Abdullahi who was taken to hospital by means of an ambulance and took the accused to General Headquarters. The witness confirmed he made the report and entered it in the system.

³ At fol 34 in the acts

⁴ 11th November 2021

⁵ Dok MLM

⁶ 11th November 2021

Dr Joseph Roger Saliba testified⁷ that when the accused was first seen by his colleague on the 16th August 2021 his thinking was not clear and he started saying things that made them question his mental sanity. He was threatening to burn himself and asking for the prison officers to come and shoot him. He claimed he was qualified as a psychologist. He said other things. He was bizarre in what he was saying. The witness insisted that an independent expert should be appointed. He said that there were enough grounds for him to say that the accused is fit to attend Court and if he is asked questions he will answer them, but Dr Saliba could not testify as to whether he was sufficiently mentally sane to be considered fit to plea or for that matter responsible for his actions at the time of the alleged offence. The accused was put on anti-psychotic treatment and was on depot medication. He was on a stabilizer.

Dr Joseph Cassar, a Court-appointed expert, concluded that the accused is not suffering from an acute mental disorder at the present time. He concluded that *“he carries a diagnosis of mental and behavioural disorders due to multiple drug use and use of other psychoactive substances. Psychotic disorders predominantly manic psychotic symptoms (F 19.55 – according to the International Classification of Disease – 10th edition (ICD-10).*

He is not psychotic and is currently stable on depot medication. He can clearly understand the charges and respond to them appropriately in a court of law. He is fit to attend Court and to stand trial. In view of the limited insight into the harmful effects of his substance misuse on his mental state, our advice is to put him on a probation period with regular follow-up by his caring consultant in the community under formal treatment”.

Upon testifying, Dr Cassar explained that the accused’s psychotic disorder is related to the use of drugs and that this use of drugs changed his mental status. Thus, he needs to remain on medication since the accused has no insight that his problem is coming from what its coming. He is on depot medication namely getting an injection twice a month. This medication is available in the community and it can be done even against his will. The expert stated that the accused can even stay in the

⁷ 17th November 2021

community so long as he takes the injection and it can be done even against his will but this through a community treatment order.

Inspector Stephen Gulia recognized⁸ his signature and the other signatures on the declaration of the accused to renounce to his right for legal assistance and confirmed he was only present for this declaration.

PC 501 Maximus Sam Saliba recognized⁹ his signature on the declaration of the accused to renounce to his right for legal assistance and confirmed he was present for the interrogation. Whilst **PC 467 Jacob Sultana** recognized¹⁰ his signature on the declaration of the accused to renounce to his right for legal assistance dated 21st July 2021 and confirmed he was present for the second interrogation

Joanna Farrugia presented¹¹ a Social Inquiry Report. She said that the accused was understanding her during the interview. He admitted that he abused drugs and alcohol but he stated that he has no mental health issues. He has no support system in Malta. He stopped contact with his mother and brother in Somalia about three years ago. Prior to his incarceration he had been living a vagrant life and has no fixed address. He never had a job in Malta and was incarcerated three times. With her she said that he is not interested in seeking help, but with the care plan coordinator he said otherwise. Since arrested he has had several behavioural reports. He is getting help from Correctional Services Agency and has been admitted to Mount Carmel on a number of occasions.

Dr Maria Axiaq, a Psychiatrist, testified¹² that the accused was admitted to prison on 21st July 2021. Her first contact with him was on the 16th August 2021 where she saw him urgently because early that day he had told an officer that he was going to burn himself in his cell. Upon her assessment it was clear that he was psychotic, that is, detached from reality and she referred him to Mount Carmel where he was admitted. Throughout the past year he was admitted to the forensic unit at least

⁸ 16th December 2021

⁹ 16th December 2021

¹⁰ 16th December 2021

¹¹ 17th May 2022

¹² 23rd June 2022

eight times. She reviewed him five times in prison after he was discharged from the forensic unit, the last time being on the 10th May 2022 where it was evident that he had improved significantly with the treatment.

In cross-examination Dr Axiaq stated that when she saw the accused on the 16th August 2021 his symptoms were severe enough for him to render him vulnerable and unsafe to stay in prison and he needed urgent anti-psychotic treatment. The condition affects his emotions, his behaviour, his way of thinking and unknowingly he will not know that he is suffering from a psychiatric condition. He will have no insight that there is something wrong with him because he has no control on his condition and on his thinking process. Asked whether this is a temporary or permanent condition, the witness replied that there are different types of psychosis and in his case it all depends on his previous history before entering prison. The witness stated that she was not in a position to determine the accused's mental state prior to her examinations. Upon being questioned by the Prosecuting Officer the witness explained that you could have people who are psychotic who are perfectly calm and appear rational especially when their psychosis is mainly composed of delusions. In the accused's case when she saw him on 16th August 2021, he was in a very, very, very agitated state and was claiming that he was a doctor in psychology and admitted that he was hearing voices telling him to harm himself. She verified his mood levels when admitted to Corradino Correctional Facility and his ethanol level was very high and he tested positive for cannabis and cocaine.

The **accused** released two statements. The first statement released on 20th July 2021 at 15:26. The accused explained that he is from Somalia and had been in Malta for nine years. He confirmed that he understood the English language and that he was arrested during the night. He confirmed he was informed of the reason he was arrested and that he was given the right to a lawyer and that he did not want a lawyer.

He explained what led to the fight with Hassan Abdullahi and said that the latter went to the bus stop to fight with him and they fought about alcohol. He said that maybe two years ago, this Abdullahi had injured his face but he did not report him to the police. Abdullahi threatened to kill

him and accused told him to leave. Then he drank alcohol with other people on the bus stop. He said that he started drinking maybe at three in the day. They started to fight near Native Bar maybe at two in the morning. He said that he met the guy maybe at 9pm. Accused admitted that he drank alcohol and smoked weed. He said that maybe he smokes one gramme a day. The accused said that he stayed in the bus stop till midnight and then saw Abdullahi downstairs in Paceville. Abdullahi started to threaten him and threw at him vodka and then they started fighting. The accused admitted punching him on his head but not too much. The other guy was provoking him. He admitted that he took Abdullahi's mobile phone from the floor and he knew that it was the latter's mobile.

The accused stated that he had no money and he was living in an abandoned house with other homeless people. He confirmed that the sachet seized from his pocket weighing 0.43g was Marijuana and he got it from St Julians. He said that he smokes 3/4/5g smoke every day. It costs maybe €25/30. Asked from where he gets the money to buy the drugs and alcohol the accused stated that sometimes he helps people to sell drugs in St Julians. He said that in 2019 he stopped selling drugs. In the previous years, he said that he sold too much drugs. He used to sell cocaine, marijuana, pills. Then, he finished in prison twice for drugs. The first one in 2016 and the other one in 2018. He was condemned to 18 months and 12 months imprisonment. Then he stole a mobile phone and was arrested again. He said that when he got out of prison he stopped selling drugs and he helps them selling. He said that he also smokes crack cocaine. He uses all drugs including LSD, MDMA, Cannabis, everything except Heroin. To maintain his habit he sometimes steals. The last time he helped his friends selling drugs was the night before. He helps them everyday. He does not calculate how much he sold drugs. He sells cocaine, marijuana, pills, LSD, MDMA. He recognise that he was admitting to serious things and that he could end up in prison. He also mentioned the name of a person who is in prison and is a big drug dealer.

As for payments he receives when he helps people to sell drugs, he stated that he takes half the price for which the drug has been sold. He explained that if a person asks for a 5g cannabis, he gives him half of the amount,

but person thinks it is the 5g and he sells it for €100/120/150 and keeps half of the money. He explained that 'I don't keep it in my pocket, for stuff another man. Why? I am crazy? He keep it, his stuff and I bring customer, I say what do you have? Give me one cocaine, he give to me and I give them'. These people from whom he gets drugs are all Somalian or Erithrean.

Before the second statement on the 22nd July 2021, the accused was given all his rights again. He confirmed that he came out of prison on 13th May 2018. Between this date and the date of statement, accused was imprisoned again from 20th August 2020 till 09th October 2020 because he did not pay the fines imposed by the court. When he was not in prison he said that he sold drugs in St Julians near clubs, Spinola Gardens, St George's Bay. He admitted he sold cannabis, resin was not quite sure, cocaine, MDMA, pills meaning ecstasy but not heroin. He used to sell in small quantities. He usually sells to tourists because Maltese know the cheap ones. He sells most drugs in the weekend. He said he stopped selling drugs in 2018. Sometimes he took friends to some of his friends to get drugs. When the clubs were closed due to Covid 19 some people still went to him for drugs. Mostly he sells cannabis. So he confirmed that now he was selling again.

Considers

From the evidence brought forward, it can be said that the Prosecution is resting its case on the statements released by the accused. The defense argued that statements should be discarded because the accused had been under the influence of intoxication of any kind of drug for the past 12 to 15 years. He stated that he accused is living in a constant state of hallucinations. He cannot do without drugs. He cannot take care of himself. He argued who would recount what he did in his life for the past year in a statement? The Prosecution did not bring other evidence and so the Court for all these reasons cannot rest itself on these statements.

At this stage the Court refers to the judgment delivered by the Court of Criminal Appeal in the names of **Pulizija vs Omar Pisani**¹³

Illi kif ġie ritenut mill-Qorti Kriminali fis-sentenza preliminari tagħha “Ir-Repubblika ta’ Malta vs. John Attard” [14 ta’ Settembru, 2004] il-principji regolaturi hhal dak li jirrigwarda l-ammissibilita’ tal-istqarrija tal-akkużat huma s-sewgenti . Kull haġa li l-akkużat jistqarr , sew bil-miktub kemm ukoll bil-fomm , tista’ tittiehed bi prova kontra min ikun stqarrha , kemm il-darba jinsab li dik il-konfessjoni tkun ġiet magħmula minnu volontarjament u ma ġietx imġiegħlha jew meħuda b’theddud jew biża’ , jew b’wegħdiet jew bi twebbil ta’ vantaġġi (Art. 658 tal-Kodiċi Kriminali). Jekk il-konfessjoni sarix volontarjament jew le hi kwistjoni li trid tiġi deċiża mill-ġurati w mill-ġurati biss . (ara. Appell Kriminali : “Ir-Repubblika ta’ Malta vs. Emmanuel Farrugia” [20.1.1989] Kollez.Vol. LXXIII, p.5 Sect. I p 1036 u ohrajn.)

Meta l-konfessjoni titinżżel bil-miktub fil-waqt li tiġi magħmula, l-kitba għandha tiġi preżentata w biss jekk jiġi pruvati li l-kitba ġiet meqruda jew mitlufa , issir prova bil-fomm , sabiex tiġi pruvata s-sustanza ta’ dik il-konfessjoni . Pero’ anki fejn ikun hemm konfessjoni bil-miktub xejn ma jimpedixxi li tittiehed bhala prova kull konfessjoni oħra bil-fomm li tkun saret qabel jew wara (Art. 659).

Illi umbagħad kif ġie ritenut mill-istess Qorti Kriminali fis-Sentenza tagħha “Ir-Repubblika ta’ Malta vs. Salvatore Bugeja” [3.12.2004], hu aċċettat li kull dikjarazzjoni tal-akkużat magħmula qabel, waqt jew wara l-att inkriminat tista’ tingiebi bi prova kontra tiegħu w li l-konfessjoni li tkun saret volontarjament tista’ tittiehed bhala prova tal-ħtija tiegħu . Ta’ spiss jingħad li l-konfessjoni tal-akkużat hija l-prova reġina għax kif intqal:-

“A free and voluntary confession of guilt by a prisoner, whether under examination before magistrates or otherwise, if it is direct and positive, and is duly made and satisfactorily proved, is sufficient to warrant a conviction without any corroborative evidence: R. v. White, R.& R. 508; R. v. Tippet, id. 509; R. v. Eldridge, id.440; R.v. Falkner, id. 481; R. v. Francia , 15 St. Tr. 859, 1 East P.C. 133 n , Fost. 240; R. v. Lambe, 2 Leach 552; R. v. Wheeling, 1. Leach 311 n.”

¹³ 6th January 2005

Jintqal ukoll li :- "Admissions or confessions to persons other than magistrates , if in writing, are proved as any other written instrument ..If made by parol, they are proved by parol evidence of some person who heard them. What a prisoner has been overheard to say to another, or to himself, is equally admissible ; though it is evidence to be acted upon with much caution , as being liable to be unintentionally misinterpreted by the witnesses." (See R. v. Simons , C. & P. 540) (ARCHBOLD . p.376).

Reference is also made to the judgment delivered by the Criminal Court in the names of **Pulizija vs De Cesare**¹⁴ in which the Court held:

Illi fil-kamp penali dejjem gie ritenut li l-konfessjoni – popolarment maghrufa bhala l-istqarrija ta’l-imputat jew l-akkuzat – hija l-prova regina li tista’ tressaq ilprosekuzzjoni biex tipprova l-htija tal-persuna akkuzata, dment li din tkun saret volontarjament u ma gietx imgieghla, jew mehuda b’theddud, jew b’biza’, jew b’weghdiet jew twebbil ta’ vantaggi (artikolu 658 tal-Kodici Kriminali). Illi ukoll jirrizulta illi l-appellanti inghata l-jedd jikseb parir legali qabel ma irrilaxxja dina listqarrija liema jedd huwa irrinunzja ghalih b’mod volontarju u ghalhekk ghadha sabiex jaghmel id-dikjarazzjoni inkriminanti tieghu. Illi tali dikjarazzjoni hija ghalhekk wahda sufficjenti ghalbiex il-Qorti tasal ghal sejbien ta’ htija u dan sakemm ma hemmx xi prova illi tali dikjarazzjoni tista’ tkun wahda irovizzjata, liema 7 allegazzjoni ma jidhirx illi tressqet f’dan il-kaz, tant illi mil-verbal tas-seduta tas-16 ta’ Dicembru 2013, jirrizulta illi d-difiza ezentat lill-Prosekuzzjoni milli tressaq ilprova dwar il-volontarjeta’ ta’l-istqarrija rilaxxjata mill-appellanti. Illi allura l-Ewwel Qorti ma kellha bzonn l-ebda prova ohra sabiex tikkorobora dak iddikjarat millappellanti, u dan kif sottomess minnu fl-aggravovju minnu interpost u cioe’ il-prova permezz tax-xhieda tat-terza persuna lil lilha huwa forna d-droga u l-analizi ta’listess droga, iktar u iktar meta imbaghad fix-xhieda moghtija minnu fil-Qorti lappellanti jidher illi jonqos milli isemmi dan il-fatt minnu iddikjarat fl-istqarrija tieghu u jaghti xi spejgazzjoni valida dwar dak li kien gie mistqarr minnu jew inkella li iressaq provi biex jikkontrobatti u ixejjen dina l-prova tal-Prosekuzzjoni.

This Court, apart from reading the transcript of the audiovisual statements, has also seen attentively, the audiovisual ones. The Court

¹⁴ 22nd September 2016

does not agree with the defense that the accused lives in a constant state of hallucination. Infact, none of the psychiatrists who testified in Court stated this.

Although it has resulted that the accused was psychotic three weeks after he was arrested, he did not manage to prove, and this on a balance of probabilities, that this psychotic state was present at the time that he was releasing his statements. And even if this psychotic mental state was present, the Court cannot conclude that this impaired his ability to will and understand the course of his actions¹⁵.

During the statements it was evident, that the accused was understanding what was happening. He replied to the inspector's questions. The answers were relevant and meant to answer the question posed. He was capable of giving his particulars. Not only, he mentioned that he had been condemned twice to imprisonment for drug trafficking. Once he was condemned to 18 months and another time for 12 months. Although these judgements were not exhibited, it actually results from the criminal record sheet that the accused was found guilty in 2016 and 2017 by the Court of Magistrates Malta as a Court of Criminal Judicature for drug trafficking and was condemned precisely to the months he mentioned. He was also coherent in the first and the second statement in relation to selling drugs. He was composed, calm and co-operative throughout with the inspector.

The Court deems that once the statements were released after the accused has been given all his legal rights and once the statements were released voluntarily, then the statements are admissible and will be taken into account by this Court. The fact that the prosecution rests its case on the statement, once these statements are admissible, then the fact that it has not brought forward other evidence does not mean that the accused should be acquitted of all charges, even though with respect to some charges, other evidence needed to be brought forward.

Hence, with regards to the charges proferred against the accused, he has admitted that he had been selling drugs and that other times he has

¹⁵ Vide **Repubblika ta' Malta vs Michael Emmanuel** decided by the Court of Criminal Appeal on the 27th May 2020

helped people selling drugs and not necessarily having drugs on his person but he brings the customer and introduces him to the drug dealer. Obviously, this is still tantamount to drug trafficking according to our Law. He has stated that he has been selling Marijuana, LSD, MDMA, cocaine for the past years (with reference to the years indicated in the charge sheet) and when asked about resin he was hesitant and thus this Court is not convinced that he was admitting to resin too.

Thus, the Court deems that the prosecution has proven beyond reasonable doubt the first, third, fourth and fifth charges brought against the accused. With regards to the second charge, for the above reasons, the Court finds that it has not been sufficiently proven.

With regards to the 6th charge, that is, simple possession of the plant cannabis the accused stated that he smokes 3/4/5g per day. Due to the recent legislative amendments and reference is here made to article 4A of Chapter 537 of the Laws of Malta, the Court cannot find the accused guilty unless he was in possession of more than 7g Cannabis, which proof is missing.

The accused has never mentioned resin and hence the 7th charge has not been proven because no other evidence was brought forward. With regards to the 8th charge the accused has admitted to using cocaine, though quantities do not result from the statements. The same applies for the 9th and 10th charges since the accused has admitted of making use of MDMA and LSD in the past years.

With regards to the 11th, 12th and 13th charges these were also proven, because the accused has admitted them in his statement. Moreover, with regards the 11th charge, apart from the accused's statement, PS918 has testified that he saw the accused put his hand in his pocket and take the mobile out which mobile was not his. The accused must be acquitted from the 14th charge because no evidence was brought forward to prove it.

With regards to the 15th charge the prosecution has failed to exhibit to mentioned the judgement and has also failed to prove that the judgement was definitive.

With regards to recidivism, it is true that the accused has admitted in his statement that he had been found guilty by the Court and that he had been imprisoned. However, this is not enough to find him guilty. The Prosecution failed to present a copy of such judgments which proof was necessary not only to determine with precision the dates in which they have been given but also to prove that these judgments were actually delivered against the accused. Moreover the prosecution failed to prove that such judgments were definitive. Hence, the accused cannot be found guilty of recidivism.

Punishment

The Court is taking into consideration the nature of the offences of which the accused is being found guilty of, his criminal record, and the circumstances of the case. The accused will be thus condemned to imprisonment and to a fine. However, since the accused needs help he will also be put on a Treatment Order so that it is ensured that he will continue to be followed by professionals and to receive the necessary care and medication.

Decide

For these reasons, the Court after having seen article 8(e), Parts IV and VI and 22(1)(a), 22(2)(b)(i) and (ii) of Chapter 101 of the Laws of Malta and Regulation 9 of the Subsidiary Legislation 101.02, and articles 40A, 120A(1)(a), 120A(2)(b)(i) and (ii) of Chapter 31 of the Laws of Malta and Regulation 3(1) of Legal Notice 22 of 1985, articles 261(f), 270, 281(a), 338(w) and 339(1)(d) of Chapter 9 of the Laws of Malta finds the accused guilty of the first, third, fourth, fifth, eighth, ninth, tenth, eleventh, twelfth and thirteenth charges brought against him and condemns him to a term of twenty-two (22) months effective imprisonment – from which term one must deduct the period of time, prior to this judgment, during which he has been kept in preventive custody in connection with the offences of which he is being found guilty by means of this judgment – and a fine (multa) of one thousand and three hundred Euro (€1,300). Whilst with regards to the sixth charge brought against the accused the Court declares

the procedure as extinct, and does not find the accused guilty of the second, seventh, fourteenth and fifteenth charges brought against him and not guilty of recidivism and thus acquits him from same.

By application of article 412D of Chapter 9 of the Laws of Malta, the Court is placing Ali Abdi Jama on a treatment order for a period of two (2) years so that he will continue to receive medical care including being followed by a psychiatrist.

In terms of Section 533(1) of Chapter 9 of the Laws of Malta, the Court condemns the accused to pay the expenses relating to the appointment of expert Dr Marisa Lautier Mifsud amounting in total to the sum of €152.08¹⁶.

The Court orders the destruction of Dok MG1, once this judgment becomes final and definitive, under the supervision of the Court Registrar, who shall draw up a process-verbal documenting the destruction procedure. The said process-verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

The Court has informed the accused of the consequences if he does not obey the orders of the professionals.

The Court orders that this judgement be notified to the Director of the Office of Probation and Parole.

Dr Josette Demicoli
Magistrate

¹⁶ Although Gilbert Mercieca was appointed as expert in these proceedings, the Prosecution has not produced him to present his report.

**Cora Azzopardi
Deputy Registrar**