



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

MAGISTRATE DR ELAINE RIZZO LL.D

POLICE

(Police Inspector Brian Xuereb)

against

AWET ESTEFANOS WELDETINSAE

Case No.: 2807/23

Today, 3rd October 2023

The Court,

After having seen the charges brought against the accused, Awet Estefanos Weldetinsae, son of Stefanus annd Wejni nee' Hagos, born in Asmara, Eritrea, on the 1st January 1991, holder of Refcom Maltese number 13K-014, Refcom Number 15587, holder of Maltese identity card number 0116951A and residing

at Charlie's Guesthouse, Apartment 7, Valley Road, Msida, for having on the 4th May 2023, at around 21hrs in St. George Street, St. Julians, Malta:

1. 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 Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
2. Had in his possession the drugs (cocaine) specified in the first schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
3. Carried outside any premises or appurtenance thereof, a knife or cutting or pointing instrument of any description without a licence or permit from the Commissioner of Police (article 6 and 51(7) of Chapter 480 of the Laws of Malta);
4. Reviled, threatened, or caused bodily harm to PS1161, person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty;
5. Has rendered himself recidivist with various sentences of the Magistrate's Court, which sentences have become definitive and cannot be changed.

Having heard all the evidence brought forward and the submissions made by the parties;

Having seen all the documentary evidence and the full acts of proceedings;

Considers:

Whereas in brief the relevant facts of the case are the following:

On 4th May 2023, PS1161 and PC1461 were patrolling the area in vicinities of Havana, at about quarter to nine in the evening, they noticed the accused trying to approach people and speak to them. The police approached him and asked him for his details but the accused ran away. The police caught up with the accused. In the meantime the accused threw garbage bags in the direction of the police officers. After being apprehended the police conducted a search on the accused's person and in his back-pack. During this search the police found a scuba diver knife, a large rock and a number of small sachets that contained possible cannabis and also several other sachets containing white substance suspected to be cocaine. The accused did not cooperate with the police with regards to his identity and also his residence. He also said that he goes to obtain food from the Millenium Chapel. Upon the prosecution's request the illegal substances seized were analysed by court expert Godwin Sammut, who concluded that:

“Tetrahydrocannabinol (THC) was found in extracts taken from the green buds that are in the document marked as BX4. The total weight of the buds was 1.38g, while the purity of THC in the buds was approximately 2.9%. Tetrahydrocannabinol is an extract of the cannabis plant and is controlled under Part III Section 8 of Chapter 101 of the Laws of Malta;

Extracts taken from the white powder resulted negative for any illicit substances.”¹

Further considers:

Whereas from the acts of proceedings it clearly results that after the prosecution amended the charges so that criminal proceedings would be against Awet Estefanos Weldetinsae and not Hohob Stefanus, the prosecution failed present the

¹ Fol. 4 of Godwin Sammut's report.

order by the Attorney General in terms of subarticle 22(2) of Cap. 101 of the Laws of Malta for Awet Estefanus Weldetinsae. This subarticle stipulates:

“Every person charged with an offence against this Ordinance shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty...”

The Court of Criminal Appeal in its judgement in the names Il-Pulizija (Spettur Jesmond Borg) vs. Matthew Carter, delivered on 25th March 2010 declared:

“Kif tajjeb osserva l-appellant il-Qorti tal-Magistrati ma gietx moghtija awtorizzazzjoni biex tiddetermina l-ewwel zewg akkuzi kif jidhru fil-bidu ta’ dan il-gudikat² bis-sahha tal-artikolu 120A(2) tal-Kap. 31, liema awtorizzazzjoni hija eskluza ghal kollox mill-kunsens tal-Avukat Generali tat-30 ta’ Gunju, 2008.

Jidher illi dan il-fatt sfugga l-partijiet waqt li kienu qeghdin jitrattaw il-kawza fl-ewwel stadju. Tant hu hekk illi fit-2 ta’ Dicembru 2008 hemm verbal tal-ammissjoni tal-imputat (fol. 64) ...

...

L-appellant issa qieghed jilmenta illi l-Ewwel Qorti ma setghetx issibu hati tal-ewwel zewg akkuzi daww li jirrigwardaw l-ecstasy peress illi l-Qorti tal-Magistrati ma kienitx awtorizzata tiddeciedi dak il-Kap bil-kunsens li kien ta l-Avukat Generali fit-30 ta’ Gunju, 2008.

Dan l-argument jidher li sab il-konfort ukoll tal-Avukat Generali fejn qabel ma l-appellant illi awtorizzazzjoni ma kienx hemm.

...

Fl-isfond tas-suespost jidher illi huwa accettat illi ma kienx hemm kunsens tal-Avukat Generali sabiex il-Qorti tal-Magistrati tiehu konjizzjoni tal-ewwel zewg akkuzi addebitati lill-appellanti. Ghalhekk l-Ewwel Qorti ma kienitx awtorizzata tikkundanna lill-

² Dan kien qed jinghad b’referenza għall-akkuzi ta’ traffikar u pussess aggravat tal-medicina psikotropika u ristretta ecstasy.

appellant ukoll ghal dawn iz-zewg kapi, dana minkejja l-ammissjoni tieghu registrata fil-verbal tat-2 ta' Dicembru, 2008.

...

... bin-nuqqas ta' kunsens tal-Avukat Generali, l-Qorti ma setghetx skond il-ligi tikkundanna lill-imputat ghall-ewwel zewg akkuzi u dana nonostante l-ammissjoni inkondizzjonata tal-appellant.”
(sottolinear ta' din il-Qorti)

This issue was also addressed in another judgement delivered by the Court of Criminal Appeal on 5th February 1996 – Ir-Repubblika ta' Malta vs. George Mifsud. In this case the said Court declared:

“L-artikolu 22(2) tal-Kap. 101 ma jghidx hekk. Dak li dan is-sub-artikolu jippreciza huwa illi il-Qorti li eventwalment sejra tiddeciedi l-kaz ta' allegat ksur tad-disposizzjonijiet ta' dak il-kap, ma jaghziliex l-imputat kif jista' jaghmel prattikament fil-kazijiet kollha kriminali fejn jista' jkun hemm ix-xelta prevista mil-ligi, izda jaghzilha l-Avukat Generali. Ghal din il-Qorti jekk wiehed jara it-test Malti u speċjalment it-test Ingliz, dak li hemm previst f'dan is-sub-artikolu huwa illi f'kaz ta' allegat ksur tad-disposizzjonijiet tal-Kap. 101, meta jittiehdu proceduri – u dawn jittiehdu mill-Pulizija li m'ghandhiex bzonn il-kunsens tal-Avukat Generali biex tibdihom – u jigu kompilati l-atti, ix-xelta dwar liema Qorti sejra tiddeciedi l-kaz, ma tispettax lill-akkuzat jew l-imputat bhal f'hafna kazijiet ohra, imma tispetta esklussivament lill-Avukat Generali ...

...

Din il-Qorti fir-rigward tikkonfessa li ghal mument kellha xi ftit tad-dubju minhabba li s-subartikolu (2) tal-artikolu 22 tal-Kap. 101 juza il-kliem “ghandha titressaq jew quddiem il-Qorti Kriminali jew quddiem il-Qorti tal-Magistrati tal-Pulizija Gudizzjarja”. Pero` dan id-dubju gie eliminat wara li kkonsidrat fl-ewwel lok it-test ingliz li kif jinghad juza l-kliem “shall be tried” u it-tieni, illi anke fit-test Malti l-istess sub-artikolu jibda bil-kliem “kull persuna akkuzata b'reat kontra din l-ordinanza”. Dan igib lil din il-Qorti ghal unika konkluzjoni plawsibbli fit-termini ta' dan is-sub-artikolu, u cioe`, li ebda awtorizzazzjoni mill-Avukat Generali ma hija rikjesta mil-ligi biex jinbdew il-proceduri u li dak li hemm previst mil-ligi hija id-diskrezzjoni assoluta tal-Avukat Generali li

jiddeciedi hu u mhux l-imputat mil-liema Qorti ser jigi gudikat l-istess imputat.”

Following an analysis of this jurisprudence the Court of Magistrates (Malta) as a Court of Criminal Judicature, came to the following conclusion in the judgement delivered in the names of Police vs. Andreana Caruana on 24th April 2019:

“Huwa evidenti għalhekk illi minkejja li l-proċeduri fil-każ ta’ reati dwar droga jistgħu jinbnew mingħajr l-Ordni tal-Avukat Ġenerali, finalment id-diskrezzjoni dwar il-kompetenza u konsegwentement il-proċedura li għandha tigi segwita (ossia jekk hux dik tal-qorti fil-kompetenza tagħha ta’ Qorti Istrutturja jew ta’ Qorti ta’ Ġudikatura Kriminali ab initio jew hekk reża, permezz tal-Kontro-Ordni tal-istess Avukat Ġenerali) hija fil-liġi esklussivament vestita fl-Avukat Ġenerali. Konsegwentement il-Qorti ma tistax tużurpa dik id-diskrezzjoni u tagħmilha tagħha billi tiġġudika lill-imputata odjerna mingħajr l-Ordni tal-Avukat Ġenerali. La darba baqa’ ma giex esebit dan l-Ordni taħt il-Kapitolu 31 tal-Liġijiet ta’ Malta, il-Qorti m’għandhiex triq oħra hlief illi tastjeni milli tiegħu konjizzjoni tal-ewwel żewġ imputazzjonijiet li jikkontemplaw reati taħt il-Kap. 31. Fil-fehma tal-Qorti, lanqas ma tista’ tghaddi sabiex tillibera lill-imputata minn dawn iż-żewġ imputazzjonijiet u dan stante illi f’dak il-każ, xorta waħda tkun qegħda tiddeciedi l-istess, minkejja n-nuqqas ta’ awtorizzazzjoni tal-Avukat Ġenerali li l-każ jinstema’ u jigi deċiż minnha fil-kompetenza tagħha surreferita.” (sottolinear ta’ din il-Qorti).

This Court concurs with this conclusion and for the same reasons it will not be taking cognizance of the first and second charge brought against the accused given that this Court was not granted the required authorisation in terms of article 22(2) of the Cap. 101 of the Laws of Malta by the Attorney General to do so with a view of pronounce judgement.

Established this the Court will proceed to deal with the other three charges brought against the accused Awet Estefanos Weldetinsae.

By virtue of the third charge, the accused is being charged with having carried outside any premises a knife, cutting or pointing instrument without a license or permit from the Commissioner of police. Article 7 of Cap. 480 of the Laws of Malta lists the exceptions to this general principle stipulated in article 6 of the Arms Act. Subarticle 7(b) stipulates as an exception:

“knife used by any person for the purpose of the exercise of his trade or for the purpose of his studies, or for diving purposes where,

having regard to the time, place and other circumstances, the court is satisfied that such knife was actually carried for such purpose.”

From the evidence brought forward by the prosecution it is clear that the accused was in possession of this knife outside a club in St. Julians not near a beach. The time was late at the evening and there was nothing which indicates that the accused had just finished a diving activity. Hence in view of these conclusions, this Court is convinced that the prosecution has managed to prove this charge beyond reasonable doubt.

With regards to the fourth charge, from the testimonies given by PS 1161 Zammit and PC1461 Alfred Breil, it does not result that the accused reviled them, threatened them or harmed them in any way. What transpires from these testimonies is that the accused ran away from the police and that at time he threw garbage bags in their direction without hitting them. Hence in light of these conclusions this forth charge has not been proven in terms of law.

With regards to the fifth charge concerning recedivism, it must be noted that the prosecution did not present a true copy of the judgement from which the identity details of the accused can be ascertained. Hence the accused will be also acquitted from this charge.

Decide:

Hence for the aforementioned reasons, the Court is hereby not taken cognizance of the first two charges brought against the accused and is acquitting him of the forth and fifth charges brought against him. However, the Court, after having seen articles 6 and 51(7) of the Arms' Act (Cap. 480 of the Laws of Malta) is finding the same accused guilty of the third charge proferred against him and is condemning him to a fine multa of one hundred and sixteen Euros and forty-seven Euro cents (Eur. 116.47).

Finally the Court is also ordering the confiscation of the corpus delicti in terms of article 23 of the Criminal Code.

Dr Elaine Rizzo
Magistrate

Christine Farrugia
Deputy Registrar