



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

**MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA**

Sitting of the 4th December, 2012

Number 1014/2009

**Police
(Inspector Gabriel Micallef)**

vs

Morgan Izuchukwu Onuorah

The Court,

Having seen the charges against the accused with having on the night between the 19th and the 20th of September 2009 sometime between 22.00hrs and 02.00hrs in Qawra, St Paul's Bay:

1. caused grievous injuries on the person of Ndubisi Chukunyere as certified by Dr.S.B. Das MD (reg.no.2141) which injuries caused a permanent debility of the health or any functional debility of any organ of the body or any permanent defect in any part of the physical structure of the body;

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2. on the same place, date, time and circumstances wilfully disturbed the public order or the public peace;

The Court requested to issue a protection order in respect of Ndubisi Chukunyere.

Having seen the articles of law issued by the Attorney General by which the proceedings were remitted to this Court to judge on the guilt or otherwise of the accused;
Having heard the accused declares that he had no objection that the case is dealt with summarily before this Court;

Having heard the evidence;

Having heard submissions;

Having seen all the acts and documents;

Considers:

The facts which gave rise to these proceedings happened in a bar at St Paul's Bay where some celebration was taking place in honour of a certain Essen Mbong. Evidence shows that on the day and time referred to in the charge sheet, consequent to an alleged aggression perpetrated by the accused on the above mentioned, complainant suffered injuries to his left arm when he intervened to calm down things but was hit by the accused with a knife. Complainant states in his deposition before the Court in the presence of the accused that the accused hit him on his left hand. It is immaterial what caused the accused to act in the way he did towards the other party and later the complainant. What on the other hand appears to be of relevance is that the accused has not denied the facts as stated by complainant. Accused in fact refrained to take the witness stand (as is his right not to do so) and in the process renounced to give his version of the facts. Consequently, the Court has one version save for the accused's statement released to the police

and which is exhibited in these proceedings. In this statement, the accused states that his actions were in self-defence when some of the invitees set upon him after he had pushed Mbong to the ground and that his hitting out at complainant was accidental. This version the accused chose not to confirm on oath and is not corroborated by complainant.

Now, in terms of the articles of law cited by the attorney general as transmitted to this Court, accused is charged with having caused a grievous bodily harm which could have given rise to a permanent debility of the health or permanent functional debility of any organ of the body or could have caused a permanent defect in any part of the physical structure of the body to complainant. If it does causes, the permanent disability or the permanent defect, the punishment is increased.

In relation to this charge, it transpires that the injuries suffered, as described by Orthopaedic Surgeon Massimo Abele, consisted in a laceration across the inside of the left elbow which affected the movement of the left hand which in turn brought about numbness in two fingers. In his evidence the surgeon confirmed that complainant was admitted to hospital on the day of the incident, detained until the 24th of September and continued attending as an outpatient until the 15th December, referring to the year 2009. However, the surgeon was adamant as far as the injury left a scar but could not confirm if any permanent disability was caused which depended on the healing process of the nerve. Upon testifying, a year and two months later complainant stated that the numbness in his fingers persisted.

From what has been said so far it would result that the charge, relating to the injury, is proven as consisting in a grievous injury within the parameters of Article 216(1)(a)(ii)(iii) of the Criminal Code but falling short, due to lack of sufficient evidence, of Article 218 of same Criminal Code. To this end there is no doubt that the accused is responsible of having caused the injuries for

which the Court has not detected any justifiable reason. Accused is consequently guilty of this first charge.

A further and final charge refers to the contravention of having disturbed the public peace in breach of Article 338(dd) of the Criminal Code. As to this contravention it results that accused caused a breach of the peace as it created an apprehension on a third party concerning the inviolability to his physical person as a direct consequence of accused's action.

Therefore, declares the accused guilty of the charges proffered against him. Having seen articles 216(1)(a)(ii)(iii), 338(dd) and 17(d) of the Criminal Code condemns him to one year imprisonment which however on application of Article 28A of same Criminal Code is suspended for one year from today provided the accused does not commit a further offence punishable with imprisonment within the operative period of this suspended sentence. In view of this judgement the Court does not consider also applying against the accused a restraining order under Article 382A and/or any other order under Article 383 et seq and/or 412C of the Criminal Code against the accused.

< Final Judgement >

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