



MALTA

**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE  
MAGISTRATE DR.  
CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 3 rd March, 2015

Number. 1248/2013

**The Police**

**(Inspector Robert Said Sarreo)**

**vs**

**GAMAL ABDELNASER MOHAMED ARAFA AREF**

**(holder of document issued by the Central Immigration Office no.  
85572)**

**The Court,**

Having seen that the accused **GAMAL ABDELNASER MOHAMED ARAFA AREF**, holder of document issued by the Central Immigration Office no. 85572, was hereby being accused that:

1. On the 20<sup>th</sup> December 2013 in these islands, received a passport which was transferred to him by another person, which passport is in the name of Matthew Meli bearing number 823091;
2. Further more during the same date, time, place and circumstances, whilst being on these islands, knowingly received or purchased any property which has been stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, which items is a Maltese passport on the name of Matthew Meli, or for knowingly taken part, in any manner whatsoever, in the sale or disposal of these items.
3. Futher more during the same date, time, place and circumstances he broke a provision of Article 22 of Chapter 446 of the Laws of Malta after he was found guilty by a judgement delivered by a Maltese Court of Law, Magistrate Dott. C. Stafrace Zammit LL.D. dated 29<sup>th</sup> April 2013, where he was conditionally discharged for a period of 1 year.
4. And finally, during the same date, time, place and circumstances, he deemed himself to become a recidivist as per articles 49 and 50 of Chapter 9 of the Laws of Malta after he was already found guilty of a crime from a Maltese Court of Law.

The Court was humbly requested that in case of guilt, to condemn the accused to pay for the fees that have to do with the appointment of experts as stated in Section 533 of Chapter 9 of the Laws of Malta.

Having seen all the documents exhibited in the acts of these proceedings by the Prosecution in particular the conviction sheet of the accused, the certificate of Registration from the Department of Social Security, two documents issued from the ETC and a document issued from the Central Immigration Office.

Having seen the note of the Attorney General dated first (1) July 2014 (fol 77) whereby he indicated the articles at law under which the accused should be found guilty and having seen that the accused had no objection to his case being dealt with summarily as can be evidenced from the *verbal* dated 1<sup>st</sup> July 2014 (fol 79), the Court proceeded with the case.

The Court also declares that this case was assigned to her by a decree given by the Chief Justice on the 21<sup>st</sup> November 2014.

**Inspector Robert Said Sarreo** gave evidence on the 3<sup>rd</sup> January 2014 and declared that on the 20<sup>th</sup> December at around nine thirty in the evening (09:30pm) the Valletta Police were informed by means of a telephone call that a fight was going on in City Gate, Floriana where some men were arguing and some knives were also involved. The police went immediately on site and only saw the accused Gamal Abdelnaser Mohamed Arafa Aref who was slightly injured as a result of the alleged argument. Gamal stated

that he was at the Al Fresco kiosk at City Gate when an argument arose between two Tunisians nationals. He alleged that one of them had approached him and asked him why he was not helping him out and consequently he started arguing with him.

The inspector said that at some point when he was speaking to the Police, Gamal produced a Maltese passport belonging to Matthew Meli (ID no. 212185M) and stated that one of the Tunisian guys had given it to him. The Maltese passport was reported stolen on the previous day, during the night of the 19<sup>th</sup> December, 2013 from Dawret ix-Xatt, ix-Xghajra. It was stolen from the vehicle of Matthew Meli bearing the registration number IBI 184 which was parked in Triq Dawret ix-Xatt, Xaghjra.

Gamal Abdelnaser Mohamed Arafa Aref was arrested and taken to CID lock-up. The accused released the statement on the following day the 21<sup>st</sup> December at nine thirty (9:30) in the morning where he stated that he was at the Al Fresco Bar in Floriana. There were two Libyans (possibly Tunisians clarified by the Court) sitting in the same bar and started arguing. After some time one of the Libyans (possibly Tunisian clarified by the Court) started fighting with the other one when the owner of the Kiosk told them to go away but five minutes later the guy returned and sat down in the Kiosk to carry on drinking. At some point he told the accused to go near him and told him that he had a Maltese Passport and asked him whether he could change the photo for him because he wanted to leave the island. The accused told him that he would do it for him and took the passport and put it in his pocket.

As soon as the accused was going outside of the kiosk, at some point the Tunisian guy started shouting at him and told him that he wanted the passport back and an argument arose between them. In fact the Tunisian guy attacked him but he managed to call the Police by calling 112. The police arrived but the other Tunisian managed to run away. When the accused was asked why the passport was in his hands, he said that he wanted to give it to the police and not because he wanted to change the ID card. When the accused was asked if he knew that the passport was stolen he said that he knew that the passport was stolen because it was not his passport. The Inspector exhibited the PIRS report marked as Document RS1. He also exhibited a statement which is marked as Document RS2. The Inspector recognized the accused as the person who released the statement. He also confirmed that the accused was given the due caution according to law and he exhibited the declaration of refusal to be assisted by a lawyer which is marked as Document RS3. He also exhibited a photocopy marked as a true copy of the passport which was found in the hands of the accused which belongs to Matthew Meli and is marked as Document RS4.

**WPS 32 Joyce Bonello** gave evidence on the 2<sup>nd</sup> May 2014 where she was shown a document which is exhibited in the acts of these proceedings at fol 14 which document was issued on the 10<sup>th</sup> of August 2013 by the Central Immigration Office. She confirmed that this document was issued from the Central Immigration Office and this in connection to Araf Aref, and this was issued so that Araf Aref will regularize his immigration position so that he can remain in Malta with an identification document. She confirmed that in fact he was given an identification document and

also given a status from the Refugee Commission. Asked if she ever saw his passport, she answered that she had never seen it.

**PS 1593 Alfred Cachia** gave evidence on 8<sup>th</sup> May 2014 where he confirmed that he was present when the accused was arrested at the Police Station and was given the right by the inspector to be assisted by a lawyer. The witness was shown the document which is exhibited in the acts of these proceedings at fol 27 and marked as Document RS2. He stated that he has nothing to do with this document. However he was also shown document RS3 at fol 29 and said that this is the declaration which must have been given to the accused who signed it in his presence.

**WPC 279 Fredianne Azzopardi** gave evidence on 8<sup>th</sup> May 2014 where she stated that on the 20<sup>th</sup> of December 2013, she was stationed at Zabbar Police Station. Matthew Meli had walked into the police station stating that the day before on the 19<sup>th</sup> December somebody had crashed into his car which was stationary. She confirmed that this car had damages because she in fact had gone to see it and she realised that the window on the left hand of the passenger was broken.

She exhibited a police report which she herself had done which the Court marked as Document PS.

**Matthew Meli** gave evidence on the 8<sup>th</sup> May 2014 where he confirmed that he is the owner of the Mitsubishi bearing registration number IBI 184. He confirmed that between the 19<sup>th</sup> and 20<sup>th</sup> December 2013, his car was

parked in Dawriet ix-Xatt, in Xghajra, Zabbar and at about eight o'clock in the morning (08:00hrs) of the 20<sup>th</sup> December he realised that his car was no longer in the place he had left it.

Subsequently we went to Zabbar Police Station and informed them that his car was no longer parked where he had left it. He confirmed that in his car there also was his passport. The witness explained that at about midday on the same day he received a phone call from the Valletta Police Station that somebody had found his passport and taken it to the police station. This passport was given to him by the police. However he exhibited *animo ritirandi* his passport in order to make copies of this passport. This document was marked by the Court as document Z. He stated that he has no idea who took his passport to the police station.

**WPS 217 Alison Formosa** gave evidence on the 19<sup>th</sup> May 2014 and said that on the 20<sup>th</sup> December 2013, she was stationed at Valletta Police Station and at about 21:53 hours she was informed that there was a fight outside City Gate, Floriana.

She together with PC 2738 and PC 1063 went to the place indicated to them and found out that the fight in question had happened in front of a kiosk known by the name Al Fresco. She was also informed by the alleged victim Gamal Abdelnaser Mohamed Arafa Aref that here was a fight in front of the bar known as Al Fresco. She explained that this said person Gamal Abdelnaser Mohamed Arafa Aref had a Maltese Passport and on his

own free will gave them his passport. This passport belongs to a certain Matthew Meli. When she asked him what he was doing with this passport he said that a Tunisian guy has given it to him sometime earlier and told her that he was going to pay him however he told her that he was going to give the passport to the police. That is exactly what he did and he handed it over to her.

Later on in her investigation, it transpired that the passport in question had been stolen from the car belonging to Matthew Meli and subsequently she informed the Zabbar Police Station about the matter in particular that they had found the passport and she spoke to PS 1576 S. Grech.

She confirmed that the report in question was a violent with three particular incidences and she found a PIRS report with the number 1/A/7919/2013 which is marked as document RS1 exhibited at fol 24 of the proceedings.

The witness continued to give evidence in cross examination. She confirmed that the passport in question was stolen from a car which belongs to Matthew Meli in Zabbar. As far as she knows the accused was outside City Gate in connection to a fight. She did not ask the accused if he was at anytime in Zabbar because at that time when she was in front of the Al Fresco, she did not know that the passport in question had been stolen from a car in Zabbar.

## Informal Copy of Judgement

Asked how long it was before the Tunisian guy had given his passport to the accused, she stated that he had given it to him an hour before and it was handed to him at the same place in Al Fresco. She also confirmed that at that stage the Tunisian guy was not there.

She confirmed that there were proceedings in Court with regards to the fight and these proceedings were against the Tunisian guy Ahmed Tareb Megrif. As far as she knows, this Tunisian was only charged with regards to the fight in question. She also confirmed that the accused had injuries in relation to this fight. The witness exhibited a copy of the injuries which the accused sustained and is marked as Document Z.

Asked if it transpired how the fight in question started she answered no. The only person who she found outside was the accused. She went on site because she had received a phone call from the Control Room. The phone call came in at the Central Station. When spoken upon the accused said that he was outside and there were two Libyan people fighting. She recollected that the accused himself when asked to give an explanation said that he was outside the establishment known as Al Fresco when all of a sudden he saw two Libyans fighting. One of them in actual fact was a Tunisian and in fact he asked him why he didn't interrupt him and subsequently the Tunisian apprehended him and gave him a punch in his face and head and started to insult him and telling him nasty words as described in fol 25 of the proceedings.

Subsequently amongst all the nasty words, this Tunisian pulled out a knife from his pocket of his trousers and started to threaten him. He also

explained that these two Libyans were under the effect of alcohol and subsequently ran away. She does not recollect whether the accused told her that he phoned the police himself. The passport was in the hands of the accused and when she asked him to give an explanation he had said that the Tunisian had given to him an hour before so that he could put him a photograph of himself on it. He also told her that he was ready to give him money the following day. However the accused confirmed that he never did this type of work and so passed the passport onto the police. The accused was however cooperative with the police too.

Having seen the document exhibited by the Defence at fol 83 which is issued by the Ministry for Home Affairs and National Security bearing Index Number 14515-13 dated 13 August 2013 by the Refugee Commissioner.

**Sarah Attard** gave evidence on the 17<sup>th</sup> October 2014 on behalf of the Ministry for Home Affairs and National Security in particular the Refugee Commission. Being shown the document which is exhibited in the proceedings fol. eighty three (83) which is dated thirteenth (13) of August, two thousand and thirteen (2013) she confirmed that this is a refugee certificate issued in the name of Arafa Aref Gamal Abel Naser Mohamed. Thus she confirmed that this same person was given refugee status. The person mentioned in this certificate is the accused present here in Court.

The accused chose not to give evidence in court as is his legal right however he had released a statement to the police and this on the 21<sup>st</sup> December 2013 *a tempo vergine* of the police investigation. He stated that

he had been living in Malta for two years and that he worked in the construction industry. Asked if he had ever crossed swords with the police he said he did on a particular occasion when he was on a boat and did not have the regular documentation to get down from this boat which he did and landed up in court. He stated however that the case was decided eight months prior to that date of his investigation. Asked why in the court judgement there was written that he was found guilty of drug possession he said yes though he claims he had a little bit.

Asked to explain how the stolen passport ended up in his possession the night before he explained that the evening before he had gone to take a coffee in a kiosk in City Gate by the name Al Fresco at about eight o'clock in the evening (8.00 pm). He said that in his vicinity was a Tunisian guy who had drunk a lot together with two other Libyan nationals. They started fighting and the owner of the kiosk asked them to leave. He explained further that after five minutes the Tunisian man came back and sat down in the same kiosk drinking. He then asked him to go next to him and informed him that he had a Maltese passport and asked him if he could change the photo on this passport for him because he wished to leave the island. He replied that he could do that and was handed the passport. He then put the passport in his office and went outside the kiosk. The Tunisian guy then started shouting at him and told him that he had wanted the passport back. He then attacked him though he managed to call 112 and the police arrived after ten minutes though the other guy managed to escape. The police then spoke with the owner of the kiosk who told them that he was not the person causing the array and he spoke to the police and told them what had happened and handed over to them

the passport in question. He then went to the clinic and after that he was arrested.

Asked why he took the passport he said he did so to give it to the police because he knew that it was the right thing to do. Asked why he did not call the police instead of taking the passport he said that everything happened in five minutes. Asked if he knew the Tunisian guy he said he does and said that the guy lives in Zabbar and steals a lot.

On the 19<sup>th</sup> January, 2015 the Court heard both parties make their oral submissions and ask the court to move on to pronounce judgment.

### **Consideration.**

The facts of this case are the following and up to a certain extent are not in contestation.

1. On the 20th December 2013 the accused was in the kiosk Al Fresco in City Gate, Valletta at about eight o'clock in the evening (8.00pm) and met a Tunisian guy who was in the company of two Libyan nationals.
2. Than subsequently a brawl broke up between the Tunisian guy and two other Libyan nationals.
3. Subsequently the Tunisian returned to the kiosk and spoke to the accused and asked him to help him change the photo on the Maltese

passport which he has in his possession because allegedly he wanted to leave the island.

4. The accused replied that he would help him out and the Tunisian guy handed him the passport only to change his mind a few minutes later requesting the passport back.

5. The accused refused to give him back the passport and claims to have called 112 and asked for police intervention. The Police in particular WPC Alison Formosa states that she had received a call from the control room asking for their help because there was a fight outside in City Gate.

6. WPS 217 Alison Formosa confirms that she went on site together with other police officials and was told that there had been a fight although on site she only met the accused and spoke to him and to the owner of the kiosk.

7. It transpires that the accused from his own will handed over to the police the passport he had received from the Tunisian national and told her what had happened so much so that WPS 217 Alison Formosa confirms that there were court proceedings with regards to the fight that had taken place between the accused and the Tunisian national.

8. When WPS 217 Alison Formosa was asked if it was the accused who called for the police she says she does not know but insists she had received a call from the Control room about the brawl that was taking place in City Gate.

9. WPS 217 Alison Formosa confirmed that the accused cooperated with her.

10. Matthew Meli confirmed that his passport (the one in question that was handed over to the accused) had been stolen from his car from Zabbar on the night between the 19<sup>th</sup> and 20<sup>th</sup> December 2013.

The defence *in limine litis* argues that the Court should not find the accused present in court guilty because the particulars of the accused as

shown on the charge are different than the ones shown on his official documentation particularly the refugee certificate though not only. In the charges sworn on oath by the prosecuting officer the date of birth of the accused is indicated as 27<sup>th</sup> January 1989 however in the refugee certificate as well as in the ETC documentation (fol. 13) his date of birth is indicated as 27<sup>th</sup> September 1989. It further appears however that when the police were investigating the case a *tempo vergine* the accused must have indicated to them that his date of birth was 27<sup>th</sup> January 1989 as indicated in the police report exhibited a fol 24 marked as Doc RS1 also when he released his statement on the 21<sup>st</sup> December 2013 doc RS 2 a fol. 27 where again his date of birth is indicated as 27<sup>th</sup> January 1989. Also on the Central Immigration Office documents exhibited a fol 14 the date of birth of the accused is 27<sup>th</sup> January 1989. It is thus not clear whether the date of birth of the accused is 27<sup>th</sup> January 1989 or 27<sup>th</sup> September 1989 since no birth certificate was exhibited in these acts.

With regards to this line of defence this Court is of the opinion that the defence should have asked for a correction in the charge at the onset of the proceedings not raise such an issue as a defence once the whole trial has been heard and now requesting the court to acquit the accused. **Sub-article (2) of Article 360 of the Criminal Code** provides that:-

*“The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give.....”*

As has been held repeatedly by our local courts the writ of summons or charge sheet is nothing more but an intimation to appear in court. In the judgment given by the Court of Criminal Appeal in the names **Il-Pulizija v. Joseph Buttigieg** decided on the 25<sup>th</sup> July 1994, it was held that:

*“L-insenjament tal-qrati taghna, kemm daww superjuri kif ukoll inferjuri, hu tista’ tghid univoku u gie kristallizzat fis-sentenza tal-Qorti Kriminali (li allura kienet tisma’ appelli mill-Qrati Inferjuri) tas-6 ta’ Dicembru, 1948 fl-ismijiet **Il-Pulizija v. Arthur S. Mortimer** A. & C.E. (Vol.XXXIII.iv.758) li dahlet ukoll fl-origini tas-subartikolu (2) tal-Artikolu 360, introdott fl- 1911. Brevement, ic-citazzjoni ma hi xejn hlief avviz jew ordni sabiex il-gudikabbli jidher quddiem Qorti Inferjuri fil-hin u data li jigu ndikati lilu, minnflok ma jingieb quddiem dik il-Qorti taht arrest (Art.360(1)). Din ic-citazzjoni ma hix il-bazi tal-akkuza, bhalma hu l-kaz tal-att ta’ akkuza quddiem il-Qorti Kriminali. L-akkuza jew imputazzjoni tigi profferita fil-Qorti Inferjuri meta tingara mill-Prosekuzzjoni: ‘La vera imputazione si deduce contro l’imputato dalla prosecuzione dinanzi alla Corte stessa. La lotta fra la prosecuzione e l’imputato non si impegna per mezzo della citazione, ma si impegna per mezzo della querela, della esposizione dei fatti che seguono innanzi alla Corte per parte dell’ufficiale prosecutore’ (ara sentenza citata, pagna 761). Dan ifisser li galadarba 1-persuna mharrka effettivament tidher quddiem il-qorti, il-funzjoni principali ta-citazzjoni (ghax hemm funzjonijiet ohra, bhal, per ezempju, li l-imputat ikun jaf biex qed jigi akkuzat sabiex ikun jista’ jiddefendi ruhu sew, kif ukoll l-interruzzjoni tal-preskrizzjoni) tkun giet ezawrita (ara f’dan is-sens ukoll is-sentenza ta’ din il-Qorti tad-19 ta’ Gunju, 1989 fl-ismijiet **Il- Pulizija vs Noel Zarb Adami**).”*

Also as was held by the same court in the judgment delivered on the 4<sup>th</sup> November 1994 in the names **Il-Pulizija v. Emanuel Buttigieg** it was also held that:

*“Id-dettalji msemminj dwar il-fatti ghandhom jigu ndikati fiha mhux ghall-fini tal-validita` taghha, jew tal-proceduri, kompriza s-sentenza, li jsegwuha, izda ghall-fini ta’ pratticita` u ta’ evitar ta’ telf ta’ zmien, u cioe` biex l-imputat x’hin jidher quddiem il-Qorti jkun jaf fuqhiex ikun gie mharrek, u hekk dakinhar stess li jidher ikun preparat biex jiddefendi ruhu ghall-imputazzjoni dedotta.*

.....

*Dan kollu premess ifisser li c-citazzjoni li jkun fiha l-ordni lill-imputat biex jidher quddiem il-Qorti tal-Magistrati qatt ma tista’ tkun nulla, kemm jekk tkun tikkontjeni kif ukoll jekk ma tikkontjenix dettalji korretti jew skorretti tal-fatti. F’ebda kaz dik ic-citazzjoni ma ggib in-nullita` tal-proceduri sussegwenti, kompriza s-sentenza.”*

Sub article 2(f) Article 360 of the Criminal Code really and truly requires only that the charge sheet contains the facts of the charge. This was confirmed in the judgment delivered by the Criminal Court of Appeal in the names **Il-Pulizija v. Philip Schembri** on the 18<sup>th</sup> November 1994 where the court explained that:-

*“Dawn il-fatti, naturalment, iridu juru b’mod car ir-reat li tieghu l-persuna tkun qed tigi imputata, minghajr il-htiega ta’ tigbid ta’ kliem jew immaginazzjoni, jigifieri b’mod li l-imputat ikun jaf ta’ liema reat jew reati qed jigi akkuzat u ghal liema reat jew reati jrid iwiegeb.”*

In the case of **il-Pulizija vs Carmen Grech** delivered by the same Criminal Court of Appeal on the 13<sup>th</sup> November 1998 a similar scenario arose to the one in question where the appellant Carmen Grech had appeared before the Magistrates Court and thus there could be no doubt with regards to her identity. The Prosecution went on to produce its evidence and the accused there also gave evidence. Thus the court held that should there have been a defect in her particulars in her name (or as could be the case her surname) this should have led only to a correction if need be even *ex officio* by the Court and this so that the judgement delivered by the first court will be given in the whole name of the accused. The Court held that this would never result in a pronouncement of acquittal but a need to make the necessary correction. Such a correction would not change the substance of the charges and neither would it change the offences that the accused is charged with.

An interesting judgement with reference to the matter under examination is the judgment delivered by the Criminal Court of Appeal in the names **il-Pulizija vs Oliver Abela** dated 23<sup>rd</sup> April 1989 wherein the court held that:-

*“Meta l-ligi tghid fl-Artikolu 360 (2) tal-Kodici Kriminali li c-citazzjoni ghandha ssemmi car il-persuna imharrka, dan tghidu biex proprju ma jkunx hemm dubbju dwar min qed jigi msejjah biex iwiegeb ghall-*

*imputazzjonijiet kif ukoll biex ma jkunx hemm dubju dwar fil-konfront ta' min tkun inghatat l-eventwali sentenza."*

In the present case the charge has given many other particulars of the accused namely his age, his father's name his mother's name and maiden surname, his place of birth, his official document that was issued by the Centre of Immigration and his residence besides his date of birth. All these details with the exception of his date of birth seem to be correct since they are not in contestation. Thus there can be absolutely no shimmer of a doubt about the identity of the accused and thus such a defence is being rejected.

This brings us to the merits of the case. The accused did not bring any evidence to sustain his version of events not even the owner of the al fresco kiosk who he says was present throughout the event. The accused does not seem very credible for many reasons even when he was asked by the prosecuting officer whether he has any other encounters in court he said he had a case which was decided about him being on a boat without the necessary documentation however it results from an examination from his police conduct that he was found guilty of possession of drugs and was given *a conditional discharge* (vide fol. 7).

Also the defence did not insist on summoning a witness to court to prove that it was the accused who had phoned the Head Quarters asking for help. In fact it is to be believed that if the version of events as stated by the accused were correct in that he had called the police he should not have only reported the fight but also the fact that there was a Maltese

passport in the hands of a foreigner. There was no mention of this fact to the police since the police who came on sight was taken abreast when the accused handed over to her a passport that had been stolen the day before. When the accused was asked if he knew the Tunisian guy who handed him the passport he replied in the affirmative and said that he is from Zabbar. Thus here again the Defence should have summoned him if it had nothing to hide. Surely it knew his address since apparently there were court proceedings in his regard and in regards to the accused in connection with the alleged brawl.

The accused says that he had good intentions when taking the passport from the accused in that he wanted to hand over the passport to the police immediately and not do what he was asked in other words change the photo that appeared on the passport so that the Tunisian could make use of it to try and attempt to leave the island. Asked if he had received any money from the Tunisian for this task he categorically denies having received any money. It is hard for this Court to believe that the accused was given a task by a Tunisian chap to do an illegal thing and not get paid for it. It is hard for the Court to believe that the accused had accepted the passport to co-operate with the police and inform them of this irregular or rather illegal doing. The likelihood is that the police went on the spot to investigate the reported fight and when the police only found the accused and he knew that he would be investigated he thought it would be safer to hand in the passport from his own free will rather than the police finding it on his person.

It is evident that the accused knew that the passport did not belong to the Tunisian guy since he himself says that the Tunisian was always stealing and more so especially in the light of the fact that he was being asked to do something illegal with it and tamper with it by placing the photo of the Tunisian and removing the one of Matthew Meli. Thus the accused knew that the passport had originated from an illegal activity and thus the offence of receiving stolen property subsists.

With regards to the offence ensuing from the Passport Ordinance the Court notes the following. **Section 3(b) of the Passport Ordinance Chapter 61** of the Laws of Malta provides the following:-

*3. "Any person who –*

*(b) receives a passport transferred to him by any other person, shall, on conviction, be liable to imprisonment for a term not exceeding two years".*

Now it results clearly that the accused received the passport of Matthew Meli without his consent. So much so that it was the same accused who related the circumstances of how the passport was handed over to him when he was asked to do an illegal thing with it. Thus such offence results too.

With regards to the third charge in that the accused was charged with having committed a crime during the operation of a conditional discharge given on the 29<sup>th</sup> April 2013, the Court examined the judgement exhibited

in these proceedings in the names Il-Pulizija (Spettur Pierre Grech) vs Gamal Abdelnaser Mohamed Arafa Aref and noted that the particulars of the accused were not indicated apart from his passport number allegedly issued in Egypt. However it does not appear that the defence at any stage exonerated the prosecution from summoning a witness to confirm the identity of the accused in regard to this judgement. Neither did the Prosecution exhibit a photocopy of the passport of the accused with his passport number and thus in the proceedings there is no evidence with regards to the accused in relation to this judgement and thus does not find him guilty of such charge.

With regards to the fourth charge in that the accused was charged with being a recidivist, in the light of what was said with regard to the third charge this charge cannot be proven. Besides the fact that a conditional discharge is not a punishment and thus cannot be the basis for the court to declare the accused a recidivist even if such judgement was confirmed in the presence of the accused. This charge too has not been proved.

With regards to the punishment that this Court will impose, the Court took cognisance of the fact that the accused has only one offence registered on his police conduct being that of possession of Cannabis and was given a conditional discharge. The Court however highlights the facts that the accused is not a recidivist in terms of law (Sec 49 and 50 of Chapter 9 of the Laws of Malta) and would only be prohibited from applying a suspended sentence if the Prosecution proved to the satisfaction of the Courts in terms of Sections 28A (7) (c) that the offences in question had been committed during a period of probation or of conditional discharge

under the Probation Act which it did not so the court is not impeded from giving a suspended sentence.

The Court saw that society did not suffer any material damage in this case and that the alleged victim Matthew Meli who had his passport stolen a few days before had his passport returned to him and that the accused has already spent five months in jail and thus a suspended sentence would be opportune.

**The Court saw the relevant sections at law in particular Section 334(a) and 533 of Chapter 9, Section 3(b) of Chapter 61, Section 22 and 23 of Chapter 446 of the laws of Malta and decides to find the accused GAMAL ABDELNASER MOHAMED ARAFA AREF guilty of the first (1) and second (2) charge and condemns him cumulatively to a period of one (1) year imprisonment suspended for three (3) years in terms of Section 28A of Chapter 9 of the Laws of Malta and declares him not guilty of the third (3) and fourth (4) charge and acquits him accordingly.**

**The Court explained the importance of this judgement to the accused and what happens if he fails to observe it.**

**< Final Judgement >**

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