

BEFORE THE APPEALS PANEL
SPECIAL TRIBUNAL FOR LEBANON

Case No: STL-14-05/A/AP
Before: The Appeals Panel
Registrar: Mr Daryl Mundis
Date: 21 October 2015
Filing Party: *Amicus Curiae* Prosecutor
Original language: English
Classification: Public

IN THE CASE AGAINST
KARMA MOHAMED TAHSIN AL KHAYAT

PROSECUTION'S NOTICE OF APPEAL
ON SENTENCING JUDGEMENT

***Amicus Curiae* Prosecutor:**
Mr Kenneth Scott

Counsel for Ms Karma Khayat:
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Mr Rodney Dixon Q.C.
Ms Dato' Shyamala Alagendra



Pursuant to Rules 60*bis*(M) and 176(A) of the Rules of Procedure and Evidence of the Special Tribunal for Lebanon (“STL” or “Tribunal”), the *Amicus Curiae* Prosecutor (“*Amicus*”) appeals against the Reasons for Sentencing Judgement of 6-October-2015 (“Sentencing Judgement”),¹ sentencing Karma Mohamed Tahsin Al Khayat (“K.Khayat”) to pay a €10,000 fine for her conviction on Count 2 of the Order in Lieu of an Indictment of 31-January-2014 (“Order in Lieu”).²

I. INTRODUCTION

1. This Notice of Appeal is governed by Rules 60*bis*(M), 176(A), 177 and 187. Article 3 of the *Practice Direction for the Filing of Written Submissions in Appeal Proceedings Before the STL* sets out the required content.

II. GROUNDS OF APPEAL

Legal Errors

2. Ground 1: The Judge committed legal and factual error in determining that he could not be guided by the relevant international tribunal jurisprudence. That jurisprudence demonstrates enough similarities to the present case that it is fully and legally appropriate to serve as guidance.³

Factual Errors

3. Ground 2: The Judge committed legal and factual error by disregarding the availability of the subject Al-Jadeed broadcasts on Al-Jadeed’s public or online platforms and

¹ *In the case against Karma Mohamed Tahsin Al Khayat*, STL-14-05/S/CJ, Reasons for Sentencing Judgement, F0186, 6 October 2015.

² *In the case against Al Jadeed [Co.] S.A.L./New TV S.A.L. (N.T.V.) and Karma Mohamed Tahsin al Khayat*, STL-14-05/I/CJ, Decision in Proceedings for Contempt with Orders in Lieu of an Indictment, F0001, 31 January 2014.

³ Sentencing Judgement, para.22.

failed to take into account the scope of the broadcasts' dissemination as factors linked to the gravity of the crime.⁴

4. Ground 3: The Judge committed legal and factual error in improperly assessing the gravity of the crime.⁵

Errors related to Mitigating Circumstances

5. Ground 4: The Judge erred in law in finding that K.Khayat's attendance at trial was a mitigating circumstance.⁶

6. Ground 5: The Judge committed legal and factual error in considering that K.Khayat's agreement to be interviewed by *Amicus* was *per se* a mitigating circumstance without a finding of substantial cooperation (which being interviewed was not).⁷

7. Ground 6: The Judge erred in law in considering his finding that the evidence did not show (according to his Judgement) that the Al-Jadeed broadcasts were likely to undermine public confidence (relating to Count 1) as a mitigating factor concerning the knowing violation of a court order (Count 2).⁸

⁴ *Ibid*, para.17. In addition, the Judge's finding as to the availability and date of availability is currently also appealed by *Amicus*. *In the case against Al Jadeed [Co.] S.A.L./New TV S.A.L. (N.T.V.) and Karma Mohamed Tahsin al Khayat*, STL-14-05/A/AP, Prosecution's Appeal Brief, A-F0005, 20-October-2015, para.91 ("Brief of 20-October-2015").

⁵ *Ibid*, para.17.

⁶ *Ibid*, para.18.

⁷ *Ibid*, para.18.

⁸ *Ibid*, para.18. In addition, the Judge's conclusion as to the real risk of undermining public confidence in the Tribunal's ability to ensure protective measures and confidentiality of witness information created by Al-Jadeed's broadcasts is currently also appealed by *Amicus*. Brief of 20-October-2015, para.147.

Errors related to Aggravating Factors

8. Ground 7: The Judge committed legal and factual error by failing to take as an aggravating factor the Accused's pattern of conduct in defiance of the Tribunal and its Rules.⁹

9. Ground 8: The Judge committed legal and factual error by failing to take as an aggravating factor the Accused's lack of remorse.¹⁰

10. Ground 9: The Judge committed legal and factual error by failing to take as an aggravating factor the Accused's reckless disregard for the safety of the individuals exposed in the broadcasts.¹¹

Inappropriate Sentence

11. Ground 10: The Judge erred in fact by finding that *Amicus* failed to substantiate his arguments regarding the financial means of K.Khayat.¹²

12. Ground 11: The Judge committed legal and factual error when he did not impose a sentence of incarceration and sentenced a very wealthy accused to an ineffectually small (€10,000) fine. The penalty imposed is manifestly unreasonable in that the penalty imposed fails to punish and fails to deter similar behavior (and indeed may actually encourage future contemptuous acts), and fails to protect the integrity of the STL and its proceedings.¹³

RELIEF SOUGHT

13. One or more of the errors outlined above, either individually or in combination, led the Judge to impose a penalty/fine which does not address properly the retribution and deterrence functions of penalty, and is manifestly inappropriate in the circumstances of this case. *Amicus*

⁹ *Ibid*, paras.16-23.

¹⁰ *Ibid*, paras.16-23.

¹¹ *Ibid*, paras.16-23.

¹² *Ibid*, para.20.

¹³ *Ibid*, para.23.

asks (a) that the Appeals Panel correct each and all of the Judge's errors of law and fact ; (b) that the Appeals Panel quash the Judge's findings based on, or related to his errors of law and fact; (c) that the Appeals Panel, on a proper consideration and fair application of the evidence, assess *de novo* the evidence admitted in the record, in respect to factors mentioned in Article 24(2) and Rule 172, and (d) that the Appeals Chamber, in doing so, impose a correct, serious and appropriate sentence.

15. In particular:

(a) The error in Ground 1 occasions a miscarriage of justice and/or invalidates the Judgement. Relevant cited jurisprudence is factually comparable to Count 2 involving the violation of an order. Therefore the imposed sentence in this case is in stark and erroneous contrast to relevant jurisprudence. *Amicus* asks the Appeals Panel to (i) hold that the Judge erred in law and fact in relation to the sentence; (ii) correct the errors therein; (iii) assess *de novo* on the basis of the evidence admitted at trial the proportionality and adequacy of the sentence imposed; and (iv) impose a correct, serious and appropriate sentence.

(b) The errors set out in Grounds 2 and 3 occasion a miscarriage of justice and/or invalidate the Judgement. The scope of dissemination is a factor linked to the gravity of the crime. *Amicus* respectfully asks the Appeal Panel to (i) quash the findings regarding availability of the broadcasts on various platforms and accordingly the scope of its dissemination ; (ii) correct the errors therein; (iii) find that this factor increase gravity of the crime and; (iv) impose a correct, serious and appropriate sentence.

(c) The errors set out in Grounds 4, 5 and 6 invalidate the Judgement and cause a miscarriage of justice. The Judge's understanding of what amounts to mitigating circumstance(s) is incorrect. The relevant jurisprudence is clear that not all, but only substantial cooperation amounts to mitigating circumstance, and substantial cooperation did not occur here. The jurisprudence also does not recognize the appearance or due representation by counsel as mitigating circumstances. Similarly, Judge Lettieri erred in considering his finding that the evidence did not show (according to his Judgement) that the Al-Jadeed broadcasts were likely to undermine public confidence (relating to Count 1) as a mitigating factor concerning the knowing

violation of a court order (Count 2). *Amicus* asks the Appeals Panel to (i) reverse and correct the errors concerning mitigating factors; (ii) quash the related findings on mitigating circumstances; (iii) find that there were no mitigating factors concerning K.Khayat's conduct, regarding the count on which she was convicted and sentenced: and (iv) impose a correct, serious and appropriate sentence.

(d) The errors set out in Grounds 7, 8 and 9 occasion a miscarriage of justice and/or invalidate the Judgement. *Amicus* respectfully asks the Appeal Panel to (i) quash the findings regarding to aggravating factors; (ii) correct the errors indicated therein; (iii) find that the Accused's: (a) pattern of conduct in defiance of the Tribunal and its Rules; (ii) lack of remorse; and (iii) reckless disregard for the safety of the individuals exposed in the broadcasts, constitute aggravating factors; and (v) impose a correct, serious and appropriate sentence.

(e) The errors set out in Grounds 10 and 11 occasion a miscarriage of justice and/or invalidate the Judgement. The sentence imposed is not serious and grossly inadequate. The sentence does not address properly the necessary and important functions of punishment and deterrence. The Judge erred in finding that *Amicus* failed to substantiate his arguments concerning the circumstances of the accused. The evidence admitted at trial (including that concerning the financial means of the accused) was, and is sufficient to make relevant and reasonable inferences. *Amicus* asks the Appeals Panel to (i) hold that the Judge erred in law and fact in relation to the sentence; (ii) hold that there was, and is sufficient evidence to assess an appropriate sentence; (iii) assess *de novo* on the basis of the evidence admitted at trial the adequacy (including proportionality) of the sentence imposed; and (iii) impose a correct, serious and appropriate sentence.

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RESPECTFULLY SUBMITTED THIS 21 OCTOBER 2015.



Mr Kenneth Scott
Amicus Curiae

