

28th May, 1993

Judge: -

The Hon. Mr. Justice Carmel A. Agius B.A. LL.D.

The Police

VERSUS

omissis Ananah Michael

***English Speaking Person - Proceedings in the English
Language - Nullity of Proceedings***

In this case the Court held that the proceedings before the first court should have been conducted in the English language and consequently annulled the proceedings.

The Court: -

By a judgement of the 19th December, 1992 of the Courts of Magistrates (Malta) appellant was found guilty of having breached the conditions inherent in all temporally residence permit in violation of articles 11 and 23(b) of Chapter 217 and the same Court in the circumstances sentenced him to a multa of one hundred Maltese liri (Lm100) and declared him a prohibited migrant and ordered his removal from these Islands. The said judgement was delivered in the Maltese Language and subsequently appellant by means of an application of appeal also in the Maltese language filed on the 29th December, 1992, appealed against the said judgement praying this Court to declare the proceedings before the first Court null and void and as far

as the merits of the case are concerned, to declare him not guilty of the charges brought against him and to acquit him of them;

In the sitting of the 28th April, 1993, this Court upon being informed that appellant is an English speaking person and understands no Maltese, ordered that all further proceedings in this case be conducted in the English language;

Defence counsel then raised a plea of nullity of proceedings as conducted by the first Court and asked for a decision on this issue;

Dr. Mallia for the Attorney General submitted that the said plea is being raised at the appeal stage after that appellant himself have appealed in the Maltese language;

This judgement therefore is limited to this plea only. Having premised this, the Court now wishes to point out that in terms of section 3 of Chapter 189 of the Revised Edition of the Laws of Malta, where all the persons charge are English speaking, the Court shall order that the proceedings be conducted in the English language. When however, of two or more persons charged together, one or more is or are Maltese speaking and one or more is or are English speaking and all the Maltese speaking persons so charged make a declaration in the records of the Court, consenting to the proceedings be conducted in the English language, or where none of the parties is either a Maltese speaking person or an English speaking person, the Court may order that the proceedings be conducted in the English language. Also by paragraph C of section 3, where of two or more persons charged together or more is or are English speaking and none of the others is Maltese speaking, the Court shall order that the

proceedings be conducted in the English language;

With this background, this Court is of the opinion that in this particular case, as will be explained, proceedings should have been conducted in the English language by the first Court. The reason for this lies not only in the provisions of the Law that have just been referred to, but also arises from the records of the case. Suffice it to point out that when the case was summoned before the first Court, on the 19th of December, 1992, there were five persons and it was only appellant who pleaded not guilty. At that point the question of whether the other co-accused were Maltese or Maltese speaking, became of minor importance, if any at all in the sense that in any case after that the other four accused had declared that they knew the Maltese language or that they were familiar with it, at the same time appellant declaring that he did not know the Maltese language and that he was English speaking, the procedure that should have been followed, is different from the one which was actually adopted. In the first place it should be noted that it was not sufficient for the purposes of the Law, for the Court to ask appellant if he knew the Maltese Language. He should have been asked whether he was English speaking as indeed he is. Secondly, the other four accused who are not Maltese and who declared they were familiar with the Maltese language, should have been asked if they were prepared to make the declaration in the records of the Court, consenting to the proceedings being conducted in the English language especially since they were pleading guilty to the charges brought against them, while the other accused, now appellant, was not. The situation could not be solved merely by the appointment of an interpreter to translate from the Maltese language to the English language, when it was only appellant who was contesting the case;

In addition to all this, there is another shortcoming which transpires from the proceedings and that relates to the service of the writ of summons. According to section 5(1) of Chapter 189, where any act is to be served on any person whom the registrar has reason to believe to be English speaking, the registrar shall cause a translation thereof to be made into the English language by an officer of the registry and service shall be effected by delivering a copy of the original and its translation. It is true that by sub-section 2 of section 5, if the translation into English of any such act is not served on an English speaking person, such person may make in the registry or forward to the registrar in any manner a declaration to the effect that he is an English speaking person and apply for an English translation of the acts served on him, but this is not compulsory in terms of the said sub-section;

In terms of the said act also, it is clarified that a Maltese speaking person is a person who has a sufficient knowledge of the Maltese language fully to understand and follow the proceedings conducted in that language, while an English speaking person is a person who has not sufficient knowledge of the Maltese language fully to understand and follow the proceedings if conducted in that language but has a sufficient knowledge of the English language fully to understand and follow the proceedings if conducted in that language;

The Court is of the opinion that the way that the proceedings were conducted before the first Court do not satisfy the requirements of the law stated in the above paragraphs and recapitulating the reasons of this are the following therefore:

- (1) *The accused should not have just been asked only to*

state whether they understood the Maltese language but it should have been ensured whether they were Maltese speaking persons in terms of the definition as laid down in section 7(a) of Chapter 189;

(2) Once the first Court was satisfied that appellant was not a Maltese speaking person, but an English speaking person, the first option should not have been to appoint an interpreter but to ask the other co-accused provided that it had been established before that they were Maltese speaking persons as defined by Law, whether they had any objection for proceeding to be conducted in the English language, the more so since they were pleading guilty to the charges brought against them while appellant was not;

(3) Also accused should have been served an English copy of the writ of summons or at least there is no apparent reason why this shouldn't have happened, particularly since he had released a statement to the police in the English language already and the registrar should have been informed by the police on this;

There is one further point raised by the Attorney General this time and that relates to his submission that appellant had fallen into a contradiction in submitting that proceeding should have been conducted in the English language and at the same time filing his application of appeal in the Maltese language;

This submission is unfounded because since no decree ordering that proceedings be conducted in the English language was made by the first Court and the judgement was given in the Maltese language, it was perfectly in order for appellant to file his application of appeal in that language and not in the

English language and if he had not done so, then his appeal would have been null because filed in a language which was not the language of the proceedings as conducted by the first Court;

The consequence of all this is that the Court is bound to uphold the plea that has been raised by appellant and is therefore proceeding to declare the proceedings taken against accused before the first Court as null and void. Furthermore in its opinion this is not a case which falls under section 428(3) of chapter 9 in the sense that we are here talking of absolute nullity of all proceedings and therefore the Court is not authorized to hear the evidence itself and decide the case.
