



Court of Criminal Appeal

Hon. Madame Justice Dr. Edwina Grima LL.D.

Appeal Number: 234/2015

The Police

Vs

Stephen Osei Boateng

Today the 30th June, 2016,

The Court,

Having seen the charges brought against the appellant Stephen Osei Boateng holder of Maltese Identity Card Number 0044884A, brought in the Court of Magistrates (Malta) with having:

On these on these Islands, during the month of January 2014 and in the preceding years, in various parts of Malta, by means of several acts committed by the accused, even if at different times, which acts constitute violations of the same provisions of the law :

1. In order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information;
2. For having on the same dates, time and place committed any other kind of forgery, or knowingly made use of any other forged document, not provided for in article 188 of chapter 9 of the Laws of Malta;

3. For having on the same dates, time and place forged, altered or tampered with any passport or uses or had in his possession any passport which he knew to be forged, altered or tampered with.
4. For having on the same dates, time and place without lawful authority used or had in his possession any document required for the purposes indicated in Chapter 217 of the Laws of Malta, which was forged.
5. For becoming a recidivist, after being sentenced for any offence by a judgment from the Courts of Magistrates (Malta) which judgment has become absolute;

The Court was also requested that, in pronouncing judgment or in any subsequent order, sentence the person/s convicted, jointly or severally, to the payment wholly or in part, to the Registrar, of the costs incurred in connection with employment in the proceedings of any expert or referee, within such period and amount as shall be determined in the judgment or order, as per Section 533 Chapter 9 of the Laws of Malta.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 6th May, 2015, whereby the Court found Stephen Osei Boateng not guilty of the first, third, fourth and fifth charges brought against him and therefore acquitted him therefrom and after having seen Article 189 of Chapter 9 of the Laws of Malta finds the accused Stephen Osei Boateng guilty of the second charge proffered against him and condemned him to four months imprisonment.

Having seen the appeal application of Stephen Osei Boateng, presented in the registry of this Court on the 18th May, 2015, whereby he requested this Court to vary the appealed judgement by confirming the acquittal of the applicant of the first, third, fourth and fifth charges and revoking the finding of guilt in the second charge and the punishment meted out and acquitting the applicant of the same; alternatively, and only in the vent that this Honourable Court should dismiss the grievance of the applicant regarding the finding of guilt the applicant respectfully requests this Honourable Court to vary the said judgement by reducing the punishment meted out and applying a lesser and more appropriate punishment in light of the circumstances and the nature of the case as explained above, and this in

accordance with all appropriate and opportune measures that this Honourable Court deems fit to impose.

Having seen the acts of the proceedings.

Having seen the updated conduct sheet presented by the prosecution as requested by the Court.

Having seen the grounds of appeal as presented by appellant Stephen Osei Boateng:

The first grievance consists in the fact that the Court of Magistrates was, with regards to the second charge, incorrect in its evaluation of the evidence produced.

That when tackling the position of 'International Driving Documents' the Court of Magistrates was initially correct in its comparison to that of the 'State of Sabotage Passport'. As the Court of Magistrates correctly pointed out these documents fall within the realm of 'fantasy documents'. They are not issued by officially recognized State authorities or organizations recognized at International Law but by private organizations for instance the International Automobile Alliance which organization is found in the list drawn up by the European Commission as per Article 6 of Decision Number 1105/2011 EU of the European Parliament and of the Council of the 25th October, 2011. As the Court of Magistrates correctly pointed out *'the documents are not recognized to be valid travel documents or licenses. Hence they are also referred to as 'fantasy documents'.'*

That the Court of Magistrates' conclusion vis-à-vis the 'State of Sabotage Passport' should have also been applied as regards the 'International Driving Documents'. The Court in fact pointed out that there is nothing real, official or legally valid about the fantasy passport and about its origin and its State of issue. The same theory applies to the 'International Driving Documents' since they too lack a State of Issue and thus are not official and neither legally valid. As a matter of fact the document and plastic card itself clearly show that these are issued not by a state but by the International Automobile Driver's Club (in the case of the blue document) and the International Automobile Association (in the case of the white document).

That the question thus lies as to how the applicant could be found guilty of having forged a document which document in the first place is a fantasy document having no State of origin and official and legal status. That the international driving documents are fantasy documents is confirmed from the fact that such documents completely lack a State of issue. Just like the scenario of the passport seized from the applicants' residence where the Court concluded that there exists no 'State of Sabotage' and therefore such passport was never a valid travelling document, similarly the booklets and plastic cards have no State of issue at all and thus can never be valid travelling documents. As a result one cannot be found guilty of having forged a document which can never be officially and legally valid and which is a fantasy document in the first place.

That if this Honourable Court does not uphold the theory expounded above and if one had to argue that the documents are purporting to be something they are not, then one must delve into the issue of *dolus*. As the Court of Magistrates pointed out, for the crime of forgery to exist, the intent to defraud is always required. Indeed *'the possibility to deceive is deemed to be an essential ingredient in the crime of forgery whether in relation to both private and public documents'*. The Court of Magistrates also quotes Professor Anthony Mamo who states that there is no crime of forgery if the forgery itself is so clumsy that is obvious almost *'ictu oculi'*. According to Mamo the document, though made to appear to resemble the true instrument must still *'be capable of deceiving persons using ordinary observation, according to their means of knowledge'*. In this particular case, the documents in question cannot be said to be capable of deceiving persons using ordinary observation. As a matter of fact, the booklets and plastic cards evidently show that they are not linked with any country whatsoever so much so that they completely lack a state of origin. Apart from this every document and card has the word *'International'* written in capital letters and a logo on both the booklet and the plastic card containing the words *'International Automobile Association'* or *'International Automobile Driver's Club'* which again clearly shows that there is no link to any authority or any country whatsoever. Apart from this, the applicant emphasizes that the documents exhibited in the acts of the proceedings in the first place do not even remotely purport to resemble the true

instrument. Indeed no international driving permit has the term 'translation' written everywhere and no international driving permit has the logo and the words 'Internationa Automobile Driver's Club' or 'International Automobile Association' on the front of both the booklet and the plastic card. Indeed an international driving permit will have indicated the State which issued said permit and there will be no feature of the terms 'association' or 'drivers' club'.

That one may ask: if these documents are not valid travel documents or a forgery/counterfeit of the original international driving permit,. Then what are they? These documents in fact are simply an unofficial translation of one's native driving licence intended to help persons overcome language differences when travelling. It is precisely here that the Court of Magistrates was incorrect in its evaluation of the evidence produced. The Court failed to note that the documents exhibited in the acts of the proceedings are simply a translation of a driving licence issued by the bearer's native country and not a replica, imitation or forgery of an authentic international driving permit. As a matter of fact the translations do not even purport to resemble their original counterpart in that they do not lista a particular State of issue but rather list in clear print within a logo the name of the private enterprise issuing such translation. The fact that the documents exhibited are solely a translation of a national driving licenece is evidenced by the format of both the booklet and the plastic card which is in several languages so as to cover as many language barriers as possible. Apart from this, the purpose behind such documents and plastic cards emerges evident from the term 'translation' written on all the booklets and plastic cards exhibited and which term can be found on the external components of such documents.

That with all due respect the Court of Magistrates is incorrect when it states that the *'documents purport to be translations of the driving licenses issued by native countries of their bearers'*. In actual fact these documents are translations of authentic driving licences and do not simplu purport to be so. The Court of Magistrates failed to examin in detail the documents exhibited byt the applicant during his testimony which documents show that the private enterpreise responsible for such translating

documents makes it very clear that such 'international driving documents' are merely a translation having no official status. They are not valid for driving and must be accompanied at all times by a valid driving licence. Such translations are done by a private club or association and a simple search on Wikipedia confirms the existence of such translating documents and the legality of said documents which are not tantamount to a forged document:

'An International Driving Permit (IDP) (sometimes called the International Driver's Licence) is a booklet which is an authorized translation of a drivers' home licence into many languages (especially languages with non-Latin scripts). In some cases, it is obtained from a motoring organization such as the 'Automobile Association'. The IDP has no validity except when used in conjunction with the driver's own licence. The existence of the IDP is necessitated by many countries refusing to recognize driver's licenses written in foreign languages without accompanying translations.

That as evidently confirmed above these documents are merely translating documents in their own right and not a forgery of an original international driving permit or a document purporting to resemble an international driving permit. With all due respect the Court of Magistrates was incorrect in concluding that the '*booklets emulate genuine and lawfully issued international driving licences such as the ones issued by Transport Malta*'. Contrary to the Court's conclusion, the witness representing Transport Malta, Brian Farrugia, in his testimony of the 9th May, 2014 when asked whether there are any similarities between the documents found in the applicant's possession and those issued by Transport Malta replied in the following manner: '*there is a bit in the middle page the translation that are a bit similar but the rest is totally different...*'.

That the term 'Translation' can be found both on the external cover of the booklets as well as on the plastic cards. With all due respect the Court of Magistrates was also incorrect when it came to examine the white booklet and attached plastic card. Contrary to the Court's conclusion the fact that this card is simply a translation of an original driving licence is 'ictu oculi' evident. The front side of the plastic card states in clear print: 'TRANSLATION OF FOREIGN DRIVERS' LICENCE VALID WITH

ORIGINAL ONLY' whereas the back of the card clearly states: 'INTERNATIONAL DRIVER'S LICENCE IS A TRANSLATION OF AN ORIGINAL DRIVERS' LICENCE OF ANY COUNTRY. IT MUST BE ACCOMPANIED AT ALL TIMES BY IAA BOOKLET AND AN ORIGINAL VALID DRIVERS' LICENSE OF ANY COUNTRY'. Apart from this the accompanying white booklet is also extremely clear that it is a translating document so much so that on the cover one finds in large print the words: INTERNATIONAL TRANSLATION OF DRIVER'S LICENCE which is reiterated on the second page of the booklet as well as on the last page of said bookle underneath the bearer's signature.

That with all due respect the card bearing the name of Emre Ayae is just as clear as the other cards exhibited in that it is merely a translation of a foreign driver's licence. The card does not purport to be anything else other than a translation of a driving licence and the small difference in colour and print are simply due to the fact that unlike the blue cards, this card is issued by a different private enterprise. Having said this, the purpose of the card is 'ictu oculi' evident and it cannot be said that this card is 'capable of deceiving persons using ordinary observation, according to their means of knowledge'. On the contrary, said card is not capable of deceiving in the first place particularly because the term 'translation' can be found both on the front and at the back of the card in clear print. At first glance of the front side of the card one can immediately see in the middle of the card and the term 'translation' as well as a logo containing the words 'International Automobile Association.' This evidently shows that such card is issued by an association and not a State. On this fact alone it is evident that the card in question cannot even remotely purport to deceive persons using ordinary observation.

That the Court was also incorrect in its conclusion of applicant's role as agent. That at no point in time did the applicant say in his testimony that he acted as a seller. Indeed the Prosecution officer, Inspector Jonathan Ferris, stated in his testimony that 'Mr. Stephen Boateng is an authorized agent for selling these international driving licences...' The Applicant vis-à-vis the International Automobile Driver's Club merely acted as an intermediary whereby he would solely receive documents which

contained mistakes in customer's details so as to send them back to the private enterprise and receive the corrected versions which would then be collected by the customer. The applicant as an agent on the territory of Malta acted as a point of reference between the customer and the private enterprise. For this the applicant would receive a small commission from said private enterprise. The Court of Magistrates is thus incorrect in its conclusion that the applicant '*aimed to sell these documents for a profit*'. That the Court of Magistrates is also incorrect in its conclusion that the applicant made 'use' of a forged document and that the Prosecution proved beyond a reasonable doubt that the provisions of Article 189 of the Criminal Code have been breached, as will be explained in further detail through oral submissions.

That applicant therefore humbly submits that the Court of Magistrates should not have found the applicant guilty of the second charge proffered against him.

That alternatively and without prejudice to the foregoing, if this Honourable Court should dismiss the grievance regarding the finding of guilt of the applicant, the second grievance consists in the fact that punishment meted out by the Court of Magistrates, even though it enters within the parameters of the law, is excessive.

That in this regard the applicant refers Honourable Court to Article 22 of Chapter 446 of the Laws of Malta which reads as follows:

22. (1) Where a court by which a person is convicted of an offence (not being an offence punishable only by a fine (multa or ammenda) and not being an offence which apart from an increase of punishment in view of continuity or previous convictions, is punishable with imprisonment for a term exceeding seven years) is of opinion that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is inexpedient to inflict punishment and that a probation order, a community service order or a combination order are not appropriate, the court may make an order discharging the offender absolutely, or, if the court thinks fit, discharging the offender subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified therein. The provisions of the proviso to article 7(2) shall mutatis mutandis apply to this subarticle.

That in this particular case the punishment prescribed in Article 189 allows for the Court to apply the provisions of Article 22 of Chapter 446 of the Laws of Malta which cater for a more apt punishment given the nature of the offence and even more so given the character of the offender, as will be explained in further detail

through oral submissions. That in view that the punishment inflicted by the Court of Magistrates does not exceed a term of two years imprisonment, the Court of Magistrates also had the option to apply Article 28A of Chapter 9 of the Laws of Malta which provision caters for the application of a suspended sentence of imprisonment.

That it is true that the Prosecution might argue that the applicant chose not to register an admission, but it is equally true that no person must be punished because he chose to contest the charges brought against him. Indeed as will be explained in further detail during oral submissions, there is a great discrepancy between the punishment inflicted in this case and the punishments normally inflicted by the Court of Magistrates on the finding of guilt under Article 189 of the Criminal Code. IN this regard it must also be emphasised that the applicant is a hard-working person who, apart from a traffic offence is of good conduct.

Considers,

This case revolves around the possession by accused of a fantasy passport in his name together with seven international driving documents which appellant alleges to be International Translation of Drivers' Licenses. Both these two types of fantasy documents are envisaged in article 6 of Decision number 1105/2011/EU of the European Parliament and of the Council of Europe of the 25th October 2011. It enlists those travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa, as well as the non-exhaustive list of known fantasy and camouflage passports. These are drawn up by the European Commission with the assistance of EU Member States and Schengen Associated States on the basis of information gathered within the framework of local Schengen cooperation, as established by the said Decision. The purpose behind compiling a list of known fantasy and camouflage documents is clear since the same should not be subject to recognition or non-recognition and consequently do not entitle their holders to cross the external borders and should not be endorsed with a visa.

It results from the acts that there is no contestation regarding the use which can be made of these documents as travel documents such documents as pointed out being recognized as incapable of being utilized for the purpose of crossing external borders.

Having premised this, this Court finds that the First Court consequently rightly concludes that with regard to the State of Sabotage passport issued in the name of accused and the other international driving documents exhibited these cannot be capable of deceiving since they are documents clearly not intended for travel purposes and easily recognizable, even brought to the attention of Member States of the European Union through the decision above mentioned.

The conviction from which appellant feels aggrieved, however, refers to one document found in the acts being Document JF8 which purports to be an international driving license (accompanied with a white IAA booklet) contrary to the other driving documents exhibited (accompanied by a black IAA booklet) issued by an international organisation bearing the name of International Automobile Association Inc. having as one of its objects the translation of travel documents for use abroad by its holder. The reasoning put forward by the First Court in arriving at its detailed judgment is that this document as distinct from the others declares to be a false document which in plain lay terms is telling a lie about itself. The document, as pointed out by the First Court is purporting to be an international driving license when it clearly is not and that the warning signs on the document indicating that this is only a translation of the original and has to be used in conjunction with a valid original driving license are not clear on the document thus inducing third parties into a mistake with regards to its status. Consequently, the First Court opines that this document is a false driving license intended to lead third parties into deception believing it to be something which it is not.

However for the Prosecution to prove beyond reasonable doubt that the document consisting in a driving license is a falsified document it is necessary to bring forward evidence that the document lacks those essential requisites which make it an authentic public document like the country of origin, the signature of the issuing

authority or the falsification of the signature of the licensee or the details provided therein or contains a false declaration or false information. It must be a document, as the First Court rightly points out that tells a lie about itself, the lie being that it contains information which does not reflect the truth about it. Now in this case appellant argues that, although the document exhibited as Document JF8 is entitled international driving license, however it is an original document which is produced by a company by the name of International Automobiles Association Inc. and is not a falsified driving licence of the licensee. In fact it indicates on the said document, although perhaps not as clearly as the other documents exhibited, that it is not the original driving license but only a translation of the same and that it must at all times be accompanied by the IAA (International Automobile Association Inc.) booklet and original valid drivers' license of any country. Thus, in his opinion, it is evident that the document issued in the name of a certain Emre Ayae is a document in its original form and is not a falsification of the licensee's driving license, does not contain false information and is not an alteration of the original, which original was never produced by the prosecution.

The First Court in its learned judgment concludes that the document in question is purporting to be something which it is not and is capable of deceiving. This is made clear when comparing the international driving documents exhibited as Document JF10 with the said incriminating document wherein the differences between the two is obvious. However the expert who examined all the documents, WPS 306 Claire Borg, in her report and subsequent testimony states that the documents exhibited are fantasy documents which can be easily acquired online. She states under cross-examination regarding their acquisition and possession that: "it is not against the law that you have one but you cannot present it. It is just simple as that." Now the First Court concludes, however that with regard to document JF8, this could deceive third parties into believing it to be a valid travel document since it purports to be an international drivers' license when it is not.

This does not necessarily mean, however, that the *dolus* for the commission of the offence of which appellant has been found guilty is present or could be presumed. It

is clear from the evidence found in the acts that appellant is an official agent of IADC Inc as the certificate exhibited as Document JF5 indicates, the authenticity of which has not been put into dispute by the Prosecution. It is uncontested that the document being the international driving license exhibited as Document JF8 was not produced by appellant but received by him allegedly to be passed on to the client. Consequently the acts carried out by accused in his capacity as agent of the said international organisation to assist clients in acquiring this document being an international driving document in accordance with the rules and regulations laid out by this organisation, does not necessarily mean that he had the *dolus* sufficient at law making him an accomplice in the production, handling and use of a falsified document - the documents as already pointed out are not a falsification of the original but as argued by the defence are an original in their own right, the production use and possession of which is not illegal, however incapable of being used as valid official travel documents.

In fact the First Court in its judgment with regards to this document states that although it indicates that it is not a valid driving license in its own right but only a translation of the same and cannot be used for official purposes however there is the 'possibility of deception' since the warning words are not clearly indicated and therefore cannot be easily detected by ordinary observation. *A contrario senso* the fact that the document states, although not in a clearly visible fashion, that it is in actual fact only a translation puts into doubt the *mens rea* which appellant could have formed in handling such a document - the same not being any different in its contents from the others. The sole fact that the document could be used by its holder as a driving license does not necessarily prove that appellant's intention in passing it on to its holder was an accomplice to any crime. If the client or licensee's motive in acquiring this document is to trick the authorities into believing that this document is his original driving license does not necessarily imply that the issuer's intention or even less that of the agent handling such a document is one of deception. This could be so, and one could rightly say that such an enterprise is of its nature very dubious and shady, however the evidence tendered in this case does not lead this Court to

arrive at a conviction beyond reasonable doubt that the accused is part of an international scam.

Consequently this Court cannot agree with the arguments put forward by the First Court in its judgment that appellant was knowingly using or handling forged documents since it results from the acts that the documents are not a forged reproduction of the original but are original documents produced by an international organisation recognised as being fantasy documents by the international fora and therefore such that cannot receive official recognition as travel documents in their own right. Although as pointed out by the First Court they could deceive in that such documents are not official documents issued by a competent public authority, however the same adverts indicate the limited use which can be made thereof and thus there is not sufficient evidence in the acts to indicate that appellant knew that such a document was different from the rest and is of a dubious nature. Although suspicion exists, however this in itself is not sufficient at law to lead to a conviction.

Consequently, the Court upholds the grievance put forward by appellant and whilst confirming the judgment of the First Court wherein appellant was acquitted from the first, third, fourth and fifth charges brought against him, revokes that part of the judgment wherein appellant was found guilty of the second charge brought against him and therefore acquits him also from the same.

(sg) Edwina Grima

Judge

TRUE COPY

Franklin Calleja

Deputy Registrar