

CRIMINAL COURT

JUDGE

Hon. Dr. Antonio Mizzi LL.D., Mag. Juris (Eu Law)

Bill of Indictment no. 08/2016

The Republic of Malta
Vs
Rotimi Williams Akande

Today 7th July, 2017.

The Court,

Having seen the bill of indictment no. 08/2016 against the accused Rotimi Williams Akande wherein he was charged with:

After the Attorney General premised in the first Count of the Bill of Indictment that the accused Rotimi Williams AKANDE, from Nigeria, was granted a residence permit in Malta as he was employed as a football player by the Gozitan football club S.K. Victoria Wanderers. Whilst in Malta, he met a Nigerian woman: Abiola Olowoshile. Abiola and her partner had a baby: Maleek Opeyemi Olowoshile. The accused Rotimi Williams AKANDE befriended the Olowoshile family, which friendship eventually ended up in an amorous relationship between the accused and Abiola. In fact, Abiola Olowoshile left her partner and father of her son Maleek, and in February 2013 she and her son Maleek (then just a thirteen-month old baby) moved in with the accused Rotimi Williams AKANDE at his place in Mellieħa. Soon after, Abiola was pregnant with the accused's baby.

That Abiola Olowoshile worked *full-time* as a housekeeper in a local hotel. She left home for work every morning at around 06:30am, and returned home after work round about 4:00pm. Since the accused Rotimi Williams AKANDE did not work in the morning, but attended football training sessions in the evening, Abiola Olowoshile used to leave her son Maleek under the care of the accused Rotimi Williams AKANDE while she was at work.

That on the 15th April 2013, Maleek woke up crying at about 06:00am. Abiola fed him a bottle of milk and put him back to bed. Before leaving for work at around 6:30am she prepared food for her son, as she always did, so that when Maleek woke up, the accused Rotimi Williams AKANDE could feed him. When she left for work in the morning of the 15th April 2013, Abiola's healthy fifteen (15)-month old son Maleek was peacefully asleep in his bed. There she left him in the care of her partner the accused Rotimi Williams AKANDE.

That some time that morning while the accused Rotimi Williams AKANDE was alone with his partner's baby Maleek Opeyemi Olowoshile, the accused Rotimi Williams AKANDE decided to kill the baby or put his life in manifest jeopardy. Whether the accused's motive was to 'get rid' of Maleek since Abiola was expecting his own biological son (and Maleek was not *his* son) or whether he had some other motive remains unknown. However, on that fateful morning, the accused Rotimi Williams AKANDE maliciously with intent to kill the said Maleek Opeyemi Olowoshile or to put his life in manifest jeopardy, grabbed the said baby and shook him so violently that little Maleek's brain sustained extensive haemorrhage and Maleek lost consciousness. The accused Rotimi Williams AKANDE knew perfectly well that a baby could easily be killed by violent shaking, as he had been duly informed about this just five (5) days earlier, when baby Maleek was admitted to Mater Dei Hospital suffering from similar - albeit milder - injuries (which injuries in fact form the subject-matter of the Second Count of this Bill of Indictment). Hence, when on the 15th April 2013 the accused Rotimi Williams AKANDE once again shook baby Maleek - this time much more violently than the previous occasion, he did so intentionally to kill him or to put his life in manifest jeopardy. The accused Rotimi Williams AKANDE then placed the unconscious and critically injured baby back in bed, and, at around Noon (12:00pm), called his partner Abiola Olowoshile and told her that he had just gone to wake up baby Maleek and found him stiff and unresponsive! Abiola rushed home and called an ambulance immediately.

That upon arrival by ambulance at Mater Dei Hospital, Maleek was certified to be suffering from injuries so grievous that he was in danger of loss of life. In fact, little Maleek was rushed to the operating theatre where the neuro-surgeons performed emergency cranial / cerebral surgery to save his life. It was in fact thanks to the timely intervention by the neuro-surgeons that Maleek Opeyemi Olowoshile's life was saved.

That following surgery, Maleek remained in a very critical state and in danger of loss of life for a number of days, until he started recovering slowly and was eventually put off the artificial ventilators as he gradually resumed spontaneous / independent breathing.

That despite Maleek's life being saved (thanks to the timely intervention by the neurosurgeons, and hence independently of the will of the accused Rotimi Williams AKANDE), sadly Maleek Opeyemi Olowoshile suffered irreversible brain damage. In fact, a report drawn up by a court-appointed medical expert almost two (2) years after the attempt on Maleek's life shows that Maleek, who was otherwise a healthy child, as a result of the attempt on his life by the accused Rotimi Williams AKANDE now suffers from a permanent disability in that for the rest of his life he has to endure *"loss of coordination, loss of tone..., incontinence of urine and faeces, lack of appreciation of what is happening around him, lack of communication, and inability to live a normal independent life"*. In simple terms, little Maleek Opeyemi Olowoshile (who is today four and a half years old) has to spend the rest of his life in a semi-vegetative state.

That by committing the above-mentioned acts with criminal intent, the accused Rotimi Williams AKANDE rendered himself guilty of attempted wilful homicide, namely that during the day of the 15th April 2013, in Mellieħa, Malta, maliciously, with intent to kill another person (Maleek Opeyemi Olowoshile) or to put the life of such other person in manifest jeopardy, the accused Rotimi Williams AKANDE manifested such intent by overt acts followed by a commencement of the execution of the crime, which crime was not completed in consequence of some accidental cause independent of the will of the the accused Rotimi Williams AKANDE.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Rotimi Williams AKANDE of being guilty of attempted wilful homicide, namely that on the 15th April 2013, in Mellieħa, Malta, maliciously, with intent to kill another person (Maleek Opeyemi Olowoshile) or to put the life of such other person in manifest jeopardy, manifested such intent by overt acts followed by a commencement of the execution of the crime, which crime was not completed in consequence of some accidental cause independent of the will of the offender.

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Rotimi Williams AKANDE be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term from seven (7) years to thirty (30) years as is stipulated and laid down in articles 17, 31(1)(a)(b)(i)(ii)¹, 41(1)(a), 211(1)(2), and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused.

After the Attorney General premised in the second Count of the Bill of Indictment that the incident referred-to in the First Count of this Bill of Indictment, namely the attempted wilful homicide of 15-month old Maleek Opeyemi Olowoshile by his mother's partner the accused Rotimi Williams AKANDE on the 15th. April 2013 was not the only instance of aggression / violence by the accused Rotimi Williams AKANDE on Maleek Opeyemi Olowoshile.

That in fact, just twelve days prior, precisely on the 3rd. April 2013 Maleek's mother Abiola Olowoshile had called an ambulance because Maleek had vomited blood, passed diarrhea, stiffened, uprolled his eyes, and was unresponsive. Once at Mater Dei Hospital little Maleek was diagnosed to have a scratch and a bruise on his chest, two broken ribs, bleeding in the retina of the eyes, and a mild haemorrhage in the brain. Since these injuries suggested deliberate (non-accidental) trauma, and were compatible with the so-called *shaken baby syndrome*, the Doctors at Mater Dei quizzed Maleek's mother Abiola over the matter. Abiola told the Doctors that she had left Maleek with the babysitter (Abiola referred to the babysitter as a "she", i.e. a female person), and this babysitter had informed her that Maleek had an epileptic fit so she (i.e. the babysitter) had shaken him to try and resuscitate him. The Doctors explained to Abiola that a baby should never be shaken, as this could easily kill or permanently damage the child.

That after informing Abiola about these dangers, they also informed her that they were going to refer the matter to the Police and to Social Workers, as foul play (i.e. deliberate shaking) was suspected.

¹ Prior to the amendments introduced by virtue of Act XXIV of 2014.

Maleek Opeyemi Olowoshile spent a week in hospital after which he had recovered sufficiently to be discharged. Prior to Maleek's discharge on the 10th. April 2013, the Doctors once again summoned Abiola and made it clear to her that shaking can kill children and hence on no account should children ever be shaken for whatever reason.

That a mere five (5) days after being so discharged from hospital, Maleek Opeyemi Olowoshile was once again admitted to Mater Dei Hospital, this time fighting for his life, after the accused Rotimi Williams AKANDE had attempted to end his life as described in the First Count of this Bill of Indictment.

That Police investigations revealed that Abiola Olowoshile had no female babysitter, as she had told the Doctors, and that while she was at work she left Maleek with her partner the accused Rotimi Williams AKANDE. Same investigations further revealed that it was the accused Rotimi Williams AKANDE who had shaken Maleek prior to Maleek's admission to hospital on the 3rd. April 2013 and caused him the above-mentioned grievous injuries.

That by committing the above-mentioned acts with criminal intent, the accused Rotimi Williams AKANDE rendered himself guilty of causing grievous bodily harm, namely that during the day of the 3rd. April 2013 and in the preceding days, in Malta, by several acts committed by him, even if committed at different times, which constitute violations of the same provisions of the law and were committed in pursuance of the same design, without intent to kill or put the life of any person in manifest jeopardy, caused harm to the body or health of another person (Maleek Opeyemi Olowoshile) or caused such other person a mental derangement in that it caused permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity.

That moreover this crime was committed on a person under fifteen years of age, and living in the same household as the offender.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Rotimi Williams AKANDE of being guilty of causing grievous bodily harm, namely that during the day of the 3rd. April 2013 and in the preceding days, in Malta, by several acts committed by him, even if committed at different

times, which constitute violations of the same provisions of the law and were committed in pursuance of the same design, without intent to kill or put the life of any person in manifest jeopardy, caused harm to the body or health of another person (Maleek Opeyemi Olowoshile – a person under fifteen years of age and living in the same household as the offender) or caused such other person a mental derangement in that it caused permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity.

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Rotimi Williams AKANDE be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term from eighteen (18) months to thirty (30) years as is stipulated and laid down in articles 17, 18, 31, 214, 216(1)(a)(i)(iv), 216(1)(d), 218(1)(a), 222(1)(a), 202(h)(v), 202(k), 208AC(2)(a) and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused.

After the Attorney General premised in the third Count of the Bill of Indictment That as explained in the previous two (2) counts of this Bill of Indictment, the accused Rotimi Williams AKANDE started a relationship with Abiola Olowoshile, with the latter soon becoming pregnant with his baby. Abiola, however, had a baby from her previous relationship: Maleek Opeyemi Olowoshile.

That since Abiola worked *full-time* and the accused Rotimi Williams AKANDE did not work but attended football training sessions in the evening, Abiola Olowoshile used to leave her son Maleek under the care of the accused Rotimi Williams AKANDE while she was at work.

That as explained in detail in the previous two (2) counts of this Bill of Indictment, while Maleek Opeyemi Olowoshile – then a fifteen (15)-month old baby – was under the direct responsibility of the accused Rotimi Williams AKANDE, the accused persistently ill-treated him.

That as explained in the previous Counts of this Bill of Indictment, on the 3rd. April 2013 Maleek Opeyemi Olowoshile was admitted by ambulance to Mater Dei Hospital suffering from a scratch and a bruise on his chest, two broken ribs, bleeding in the retina of the eyes,

and a mild haemorrhage in the brain - the so-called *shaken baby syndrome*. Although Maleek's mother Abiola tried to cover up for the accused Rotimi Williams AKANDE by inventing the babysitter story, investigations revealed that Abiola employed no babysitter and that Maleek's injuries were inflicted by the accused Rotimi Williams AKANDE while baby Maleek was left in his care. Maleek Opeyemi Olowoshile spent a week in hospital after which he had recovered sufficiently to be discharged. Prior to Maleek's discharge on the 10th. April 2013, the Doctors once again summoned Abiola and made it clear to her that shaking can kill children and hence on no account should children ever be shaken for whatever reason. From her end, Abiola passed on this information to the accused Rotimi Williams AKANDE.

That notwithstandingly, a mere five (5) days after being so discharged from hospital, precisely on the 15th April 2013, Maleek Opeyemi Olowoshile was once again admitted to Mater Dei Hospital by ambulance, this time suffering from fresh injuries to his brain so grievous that he was in danger of loss of life. In fact, little Maleek was rushed to the operating theatre where the neuro-surgeons performed emergency cranial / cerebral surgery and saved his life. Whilst medical investigations excluded that Maleek's injuries may have been accidental or the result of complications following his previous admission to hospital, and confirmed that Maleek had *once again* been shaken very violently subsequent to his discharge from hospital, Police investigations revealed that Maleek's injuries were once again inflicted by the accused Rotimi Williams AKANDE while baby Maleek was left in his care. Despite Maleek's life being saved thanks to the timely intervention by the neuro-surgeons, sadly Maleek Opeyemi suffered irreversible brain damage and a permanent disability in that for the rest of his life he has to endure "*loss of coordination, loss of tone..., incontinence of urine and faeces, lack of appreciation of what is happening around him, lack of communication, and inability to live a normal independent life*". In simple terms, little Maleek Opeyemi Olowoshile (who is today four and a half years old) has to spend the rest of his life in a semi-vegetative state.

That by committing the above-mentioned acts with criminal intent, the accused Rotimi Williams AKANDE rendered himself guilty of ill-treatment or neglect of a child under twelve years, namely that during the day of the 15th. April 2013 and in the preceding days and weeks, in Malta, by several acts committed by him, even if committed at different times, which constitute violations of the same provisions of the law and were committed in

pursuance of the same design, whilst having the responsibility of Maleek Opeyemi Olowoshile - a child under twelve years of age – by means of persistent acts of commission or omission, ill-treated or caused or allowed the ill-treatment by similar means of the said child Maleek Opeyemi Olowoshile.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Rotimi Williams AKANDE of being guilty of ill-treatment or neglect of a child under twelve years, namely that during the day of the 15th. April 2013 and in the preceding days and weeks, in Malta, by several acts committed by him, even if committed at different times, which constitute violations of the same provisions of the law and were committed in pursuance of the same design, whilst having the responsibility of Maleek Opeyemi Olowoshile - a child under twelve years of age – by means of persistent acts of commission or omission, ill-treated or caused or allowed the ill-treatment by similar means of the said child Maleek Opeyemi Olowoshile.

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Rotimi Williams AKANDE be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term not exceeding three (3) years as is stipulated and laid down in articles 17, 18, 31, 247A, and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused.

Having seen the verdict of today the th June, 2017, whereby the jury for:

The First Count.

By (8) counts in favour and (1) against found the accused guilty of the charge brought against Rotimi Williams Akande in the first count of the bill of indictment.

The Second Count.

By (8) counts in favour and (1) against found the accused Rotimi Williams Akande guilty of the charge of grievous bodily harm that can give rise to danger of loss of life or any permanent debility of the health or permanent functional debility of any organ of the body; or any permanent defect in any part of the physical structure of the body; or any permanent mental infirmity aggravated by the fact that the crime was committed on the person of

another person living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence and by the fact that the harm is committed on the person of a child under nine years of age.

The Third Count.

By unanimously vote found the accused not guilty of the charge brought against Rotimi Williams Akande in the third count of the bill of indictment.

Therefore in view of this verdict, the Court, declares Rotimi Williams Akande, guilty:

1. of attempted wilful homicide, namely that on the 15th April 2013, in Mellieħa, Malta, maliciously, with intent to kill another person (Maleek Opeyemi Olowoshile) or to put the life of such other person in manifest jeopardy, manifested such intent by overt acts followed by a commencement of the execution of the crime, which crime was not completed in consequence of some accidental cause independent of the will of the offender.

2. of grievous bodily harm that can give rise to danger of loss of life or any permanent debility of the health or permanent functional debility of any organ of the body; or any permanent defect in any part of the physical structure of the body; or any permanent mental infirmity aggravated by the fact that the crime was committed on the person of another person living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence and by the fact that the harm is committed on the person of a child under nine years of age.

Having seen the acts of the proceedings, including the compilation of evidence tendered in front of the Court of Magistrates.

Having seen the updated conduct sheet.

Having seen sections 17(b), 31(1)(a)(b)(i)(ii), 41 (1)(a), 211 (1)(2), 214, 216 (1)(a)(i)(ii)(iii)(iv)(d), 222 (1)(a), of the Criminal Code (Cap. 9 of the Laws of Malta), condemns the said Rotimi Williams Akande to a term of imprisonment of 14 years.

Furthermore condemns him to pay the sum of one thousand and six hundred and forty four Euro and six cents (€1644.06c) being the sum total of the expenses incurred in the appointment of Court Experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Should this sum not be paid within fifteen days, then it should be converted into a prison term in accordance with the law.

(ft) Antonio Mizzi
Judge

Brian Avellino
Deputy Registrar