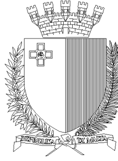

Court of Criminal Appeal

Hon. Madame Justice Dr. Consuelo Scerri Herrera LL.D.

Appeal number: 278/2018

The Police

Inspector Nikolai Sant

Vs

William Antony Adams

Today the, 11th December, 2018,

The Court,

Having seen the charges brought against William Antony Adams holder of British passport number 529271718, and three others, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

On the 2nd June, 2018 between 03.15hrs and 03.30hrs in Paceville, St. Julians:

1. Assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority;

2. Reviled, or threatened, or caused a bodily harm to any person/s lawfully charged with a public duty, while in the act of discharging his duty/their

duties or because of his/their having discharged such duty, or with intent to intimidate or unduly influence him/them, in the discharge of such duty;

3. Caused damages to the Police Uniform of PS 780 and PC 1221, when damages amount to €17.44 and this to the detriment of the Malta Police Force;
4. Wilfully disturbed the public good order or the public peace;
5. Disobeyed the lawful orders of any authority or of any person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any manner whatsoever, unless such disobedience or interference falls under any other provisions of this Code or of any other law;
6. In any public place or place open to the public, found drunk and incapable of taking care of themselves.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 2nd of June, 2018 whereby the Court, upon the unconditional guilty plea registered by all persons charged found William Antony Adams and *Omissis* guilty as charged and after having seen Articles 95, 325 (1) (c), 338 (dd), 338 (ee) and 338 (ff) of the Criminal Code condemned them to three (3) months imprisonment; however having seen Article 28A of the Criminal Code it ordered that the said sentence shall not take effect unless, during the period of one (1) year from the date of this order, they commit another offence punishable with imprisonment and thereafter the competent court so orders under Article 28B of the Criminal Code that the original sentence shall take effect.

The Court also condemned William Antony Adams and *Omissis* to a fine of one thousand euro (€1,000) each and after having seen Article 14 (2) of the Criminal Code

ordered them to pay their respective fines at a monthly rate of a hundred (€100) each.

The Court, upon their unconditional guilty plea, also found *Omissis* and *Omissis* guilty as charged and after having seen Articles 95, 96, 325 (1) (c), 338 (dd), 338 (ee) and 338 (ff) of the Criminal Code and condemned them to eight (8) months imprisonment; however having seen Article 28A of the Criminal Code it ordered that the said sentence shall not take effect unless, during the period of two (2) years from the date of this order, they commit another offence punishable with imprisonment and thereafter the competent court so orders under Article 28B of the Criminal Code that the original sentence shall take effect.

The Court also condemned *Omissis* and *Omissis* to a fine of five (5) thousand euro (€5,000) each and after having seen Article 14 (2) of the Criminal Code ordered them to pay their respective fines at a monthly rate of four hundred euro (€400) each.

In terms of Article 28A (4) of the Criminal Code, the Court declared and explained in ordinary language to all persons charged their liability in terms of Article 28B of the Criminal Code if during the operational period they commit an offence punishable with imprisonment.

Finally the Court, after having seen Article 392A of the Criminal Code ordered that this judgment together with the records of the proceedings be transmitted to the Attorney General within six working days in terms of law.

Having seen the appeal application presented by William Antony Adams in the registry of this Court on the 20th of June 2018 whereby this Court was requested to accept this appeal by:

1. **ANNULS AND REVOKES** the appeals judgement,

2. the appellant's guilty plea is discarded and declared inadmissible,

3. reinstating the appellant in the position status quo ante he was in prior to answering whether he was guilty or not guilty of the charges brought against him, whilst the acts are sent back before the Court of Magistrates for the continuation of the case,
4. orders the continuation of the case from that moment onwards in order for the appellant to benefit from an eventual possible appeal.

This is what the Appellant humbly asks the Court of Appeal together with any other order this Honourable Court may deem necessary to impose.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court.

Having seen the grounds for appeal of William Antony Adams:

FIRST PLEA - The admission of Appellant William Anthony Adams is null due to the fact that it was taken in questionable circumstances that effect the validity of the same.

Primarily, it was made evident that, without entertaining the merits of the case, the appellant together with his wife and two of his children were arrested and taken to the St. Julian's Police Station. They were kept in a state of arrest throughout the night. The Appellant was then taken to undergo the necessary medical care, after which he was returned to the same Police Station. Soon after they were all taken to Court. Therefore, as a matter of fact, both the appellant, as well as his wife and two children, were charged before the Court of Magistrates a few hours after the alleged incident following a sleepless night under arrest.

One ought to note that by the time they arrived at the threshold of the Court, they never spoke to neither a lawyer nor were they given the opportunity to speak with a consular representative of the British High Commission. The appellant was also

brought before the Court of Magistrates having his wife and children under arrest with him after a night spent apart in separate cells in the St. Julian's Police Station. In other words, the appellant spent a night in a high level of anxiety and without any form of rest. It also emerged that in the moments when the appellant was waiting outside the First Court, the appellant still did not exercise his right to speak to a legal representative or a consular representative as is his right under The Charter of Fundamental Rights of European Union and the European Convention on Human Rights.

After having made contact with the British High Commission, the appellant was also informed that they were not informed of the fact that there were four British nationals held under arrest and brought before the Court of Magistrates. Said information reached the British High Commission so late that they were not in a position to send anyone to accompany the Appellant and his family. This only compounded the state of anxiety being suffered by the appellant and his family who were terrified of being charged before a foreign Court of law.

It is admitted that a legal aid lawyer was indeed sent to assist the appellant, but it should be said that, as will be shown in more detail below, this legal aid lawyer never had any effective contact or communication with the appellant. It is evident that the legal aid lawyer was present in Court presumably defending other causes as is usual the case when cases are brought before the Court of Magistrates on a weekend. To the utter astonishment of the appellant, the legal aid lawyer explained to the appellant without too much detail that some form of plea bargain had already been agreed to beforehand. This was done entirely without the express consent of the appellant and without having the legal aid lawyer hear the appellant's version of events.

It was simply explained to the appellant that the plea bargaining already agreed to between the prosecution and the legal aid lawyer meant that the appellant had to a simple choice to make. He could either admit, take a minimum form of punishment

and fine, and simply leave the court with his family and go back to his country, or alternatively, he could deny the charges but, since the appellant and his family were British and not Maltese, **they would all be kept under arrest**.

The appellant, was thus faced with situation whereby he had to choose between either a minor punishment and the freedom to return back home with his family, <u>or effective prison time for him and his family pendente lite</u>. **When the option is presented in such a manner, when it is shown in such a simplistic light, it is obvious that in those circumstances whereby the appellant was not given any legal advice, he was not granted his right to speak to a consular representative, he was not given an explanation in detail of what exactly is happening and what the legal procedure entails, after a night held under arrest without any sleep where his family was held under arrest and having his son's seven-month-pregnant partner present in court, it is reasonable to expect that any person in such circumstances would do anything, even plead guilty, to be allowed to leave the Court together with his family and return back home. This is especially so when compared to the possibility of having the appellant and his family spend around two weeks under arrest. The choice would be obvious for anyone in such circumstances.**

However, it was never explained to the appellant that the "minimum punishment" meant an overall fine for him and for all his family, of twelve thousand Euro (€12,000). It was never been explained to the appellant that the "minimum punishment" also included a prison sentence, which despite being suspended, is still prison sentence that will ultimately result in the Appellant losing his employment and being barred from working in the security sector.

In addition, it was also explained to the appellant that there was no need to appeal the decision and if he wished to appeal this would ultimately result in him and his family having to spend at least eight days under arrest. With all due respect, this is sometimes the unfortunate reality of the way things operate in our legal system when foreigners are involved. Therefore, it is true that the appellant accepted the

plea bargain, but he did not accept the plea bargain voluntarily or in full knowledge of the consequences of his acceptance as dictated by the law.

In other words, the legal procedure to be followed in a case of this nature was not explained to the appellant. The appellant was not given a reason why he was in Court. The appellant was not given a description of the various legal avenues available to him, he was not shown what evidence there may be both in his favour and against him, in fulfilment of the full disclosure policy. It was not explained to the appellant that if he appealed, there may have been some form of preventive custody but that a request for bail could have been filed. The possibility that the court may find the appellant innocent was not even considered. Instead, the appellant was only given a simple choice. He either leaves the court room with a fine and a minimum penalty, or he and his family go to prison. With all due respect, presenting the appellant with this "choice" is not just, and worst still, it is prejudicial to the appellant rights to such an extent that it can be said that his admission of guilt was given in very dubious circumstances to such an extent that it ought to be rejected.

The appellant wants to emphasise the fact that no one is pointing any fingers at the First Court as there is an element of uncertainty of what was said and what was not said. However, the fact that something went wrong in the handling of this case is incontestable, so much so that it has been confirmed that;

1. The appellant's right to speak to his respective consular representative was breached,
2. The appellant's right to full disclosure was breached,
3. The appellant's right to consult his lawyer was breached,
4. The appellant was not supplied with the correct information in order to make an informed decision on whether he should admit to the charges or not.

Worse still, the appellant was awarded a punishment that he surely did not expect. If the appellant knew that the punishment involved a suspended sentence of imprisonment, he would have certainly not admitted. That is certainly not a **"minor punishment"!** As a result of this "minor punishment" the appellant will certainly lose his licence to operate in the security sector. This would ultimately result in the appellant being stripped of his role as a managing director of a security firm in England upon his return. There was absolutely no reason why the appellant should accept and admit the charges brought against him to be release, go back home and end up being barred from the sector he has worked in all his life.

As already mentioned, this is not the first time that we have, in our juridical system, encountered similar problems, especially when dealing with foreign nationals. Having plea bargains decided behind that accused's back just because the accused is a foreign national and explaining it to him in such a simplistic manner, is certainly not conducive to Justice and the Rule of Law. This was not merely a choice between leaving Court and with the ability to go home, or to spend two weeks in prison. The decision had many more ramifications and repercussions that had to be contemplated, but which the appellant was certainly not made aware about. Although, admittedly, on a practical level that is the difference, the decision is not a simplistic as it was made to seem.

In this case, although the appellant admitted, he had absolutely no idea that the penalty that was going to be imposed was effectively the loss of his livelihood. The appellant did not know that he could ask for bail and contest the charges brought against him basing himself on the well-established legal argument of self-defence. Above all else, he was neither given the opportunity to consult with a lawyer of his choice, nor the legal aid lawyer nor a consular representative in order to express these thoughts and form a learned opinion. Again, one must not forget the fact that this choice to plead guilty was compounded by the fact that he did not sleep, he suffered substantial injuries to the back of his head, whilst in a terrible state of anxiousness due to having his entire family under arrest.

For the benefit of this Court of Appeal, the appellant is attaching to this appeal application i. an affidavit by the appellant himself for the Court of Appeal to better appreciate the facts of the case and why then, the admission of guilt must be rejected, hereby marked as 'Doc. A'. The original version of this affidavit is currently on the way from the United Kingdom and the appellant is hereby binding himself to present said original once in hand by means of an additional note filed in the acts of these proceeding. ii. a copy of the appellant's clean Police conduct, marked as 'Doc. B', and iii. a copy of the conditions related to the appellants security licence that clearly shows that the appellant will lose his licence if he is found guilty of the charges contemplated in this case, marked as 'Doc. C'. The appellant humbly submits that these documents should be admitted as evidence by this Honourable Court of Appeal in terms of Article 424 (a) of Chapter 9 of the Laws of Malta. Said article states;

> No new witnesses may be produced before the superior court, except - (a) when it is **proved by oath or other evidence that the party requesting the production of the new witnesses had no knowledge of them, or could not, with the means provided by law, have produced them before the inferior court**. [emphasis added]

If one were to take into consideration the facts of the case as well as the affidavit submitted by the appellant, it is evidently clear that the appellant neither had the opportunity before the First Court to express himself in the way he has done in his own affidavit, nor did he have any opportunity to present the documents attached to this appeal application. The appellant humbly submits that it was impossible for him to present these documents before the First Court as he was not given the opportunity to do so by his legal aid representative.

It is evident that if the appellant was offered the possibility to give testimony, the First Court would have certainly acquiesced to this plea and allowed him to explain himself. However, said guidance from his legal aid lawyer never materialised. Therefore, the appellant was not aware that he could express himself or present said

documents. For the reasons hereby presented, the appellant humbly submits that the documents being presented with this appeal ought to be accepted by the Court of Appeal in terms of article 424 (a) of Chapter 9 of the Laws of Malta.

Therefore, the appellant humbly submits that the first plea ought to be accepted.

SECOND PLEA - The admission of the Appellant must be rejected due to the fact the Appellant's was not given a solemn warning by the First Court with regards to the gravity of the consequences of such a plea.

The fact that the appellant pleaded guilty to the charges brought against in an incontestable fact. However, it must be noted that according to the appellant's sworn affidavit, he was never warned of the legal consequences or the gravity of such a guilty plea neither by his legal aid lawyer nor by the prosecution. Worse still, with all due respect, according to the version of the judgement provided to the Appellant and always according to the appellant's sworn affidavit, **the First Court did not provide the appellant with a solemn warning of the repercussions of his guilty plea**. This is a blatant breach of the criminal procedure as dictated by article 392 A (1) of Chapter 9 of the Laws of Malta, that is applicable to this case per article 370 (6) of the same mentioned Chapter.

Article 392 A (1) of the Criminal Code stipulates the procedure the Court of Magistrates should adopt when an accused declares that he is guilty in any stage of the proceedings. The article states;

> If the accused, in answer to the question in article 392(1)(b) or in any stage of the proceedings, states that he is guilty of the offence charged and the said offence is liable to a punishment not exceeding twelve years imprisonment, **the court shall warn him in the most solemn manner** about the legal consequences of that reply, and shall allow him a period of time for him to reply. [emphasis added]

Again, according to the quoted article it should have been the Court of Magistrates itself that warned the accused about the gravity of the consequences of a guilty plea with respect to the charges brought against him. No mention of said warning is found within the sworn affidavit of the appellant.

Therefore, the appellant did not only admit to the charges after a sleepless night, after having suffered injuries to his head, having all his family held under arrest in separate cells, being in a abroad, without having consulted with a lawyer of his choosing or a consular representative from his country of origin, he was also denied the benefit of **"most solemn"** warning about the consequences of his guilty plea by the Court. In addition to this, he was also denied **"a period of time" in order to contemplate his decision**.

The appellant humbly submits that even if one were to, for a moment, discard the dubious circumstances surround his guilty plea, the lack of a solemn warning by the Court in terms of article 392 A (1) of Chapter 9 of the Laws of Malta **on its own** suffices in order to make the admission of the appellant invalid at law.

Therefore, the appellant humbly submits that the second plea ought to be accepted.

THIRD PLEA – This Appeal is valid at law irrespective of the fact that no plea for the suspension of the execution of the judgement was made.

It has emerged that the legal aid lawyer that was representing the appellant did not ask for the suspension of the execution of the judgement in order to be able to file an appeal. With all due respect, it would be unjust to reject this appeal due to this oversight as shall be explained.

As has been amply expounded, something did indeed go wrong in this case. The appellant was given what seemed to be a simple choice; he could either leave the court and be able to go back to his country, or else he could go to prison. That is the choice that was effectively given to the appellant. However, at no moment in time

did anyone provide the appellant with an explanation of the repercussion of said decision.

The appellant was also informed that apart from having to plead guilty in order to leave the court, he was also told that appealing the judgment was not in his interest. The appellant was told that if he wished to appeal he would automatically be kept under arrest for at least eight days, or else be stuck in Malta since his passport would be kept by the Court. **To top all this off, the legal aid lawyer did not even ask the Court to suspend the execution of the judgment**.

The appellant was neither given a briefing on the fact that, if he wanted to appeal as is being done, he would need to ask the court to suspend the execution of the judgment in order to file an appeal. Said short-coming of the legal aid lawyer should certainly not be a fault attributable to the appellant. This situation came about only due to the legal system failed the appellant. One ought to keep in mind that Criminal Code outlines the criminal procedure, in order to ensure that Justice always prevails. The fact that, in the circumstances where the appellant, never spoke with a consular representative or with his lawyer in order to provide an explanation of the iter processualis, the fact that the defendant does not ask for the suspension of execution of the judgement should not be used at this stage against the appellant. The appellant could never make such a request for a suspension in order to be able to appeal because **he did not even know that he had to do so in order to file an application for an appeal!**

Said shortcoming should never be used as an obstacle impeding this appeal application, as the scope of the Criminal Code, vis-à-vis an equitable and just procedure, dictates that this Court of Appeal ought to humbly observe the circumstances surrounding this case that ultimately lead the appellant to the situation in which his is now. The Court of Appeal should gather from the facts of the case whether the appellant's lack of a plea to suspend execution of the judgement

is justifiable in the current circumstances where it was impossible for the appellant to know he had to do so.

This impossibility is compounded by the fact that it seems as though the legal representative of the appellant was reluctant to ask for it as both him and the prosecution gave the appellant the impression that it was not in the appellant's interest to file an appeal, as if he were to do so he would not be able to return back to his country. Whilst it could be that the practical consequences of filing an appeal would limit the appellant from leaving Malta, this however is definitely not a necessary given. The appellant should have been given an explanation of all the potential repercussions, after which, he would then have been in a position to take an informed decision in this respect. Unfortunately, said explanation was never given and instead the appellant was told that if he appeals he would not return to the United Kingdom. The appellant was also not warned that if he does not ask for the suspension of the execution of the judgment, he would not be able to appeal.

God forbid we end up in the absurd situation where, in the case of a shortcoming of a legal representative, said mistake is compounded by the fact that the client cannot appeal as the same lawyer that was negligent with respect of the appellant, did not ask for a suspension of the execution of the judgment. Criminal procedure is not there to cruelly punish an appellant who was already failed by the judicial system once, and now the same procedure is being used in order to gag the appellant into not being able to file an appeal. The affidavit attached to this application gives ample detail on what was said to the appellant, and on what was not said to the appellant during the proceedings.

The fact that the appellant was given what seemed to be a simple choice is incontestable. The appellant was given the impression that the punishment to be meted out was going to be a minor one. Said choice was presented to the appellant in total lack of legal and procedural explanation on what could or could not happen to him, in circumstances where the appellant was not given the opportunity to

consult a lawyer or a consular representative in order to make a reasoned decision, whilst his family is held under arrest. The appellant was marched to the Court after having spent a sleepless night under arrest. With all due respect, this is certainly not the way that Justice ought to be meted out. It must be noted that this is a criticism of what happened in its entirety and all the above leads to the conclusion that the guilty plea should be rejected whilst the fact that the Appellant did not ask for the suspension of the execution of the judgement should humbly be set aside by this Court of Appeal.

Therefore, the appellant humbly submits that the third plea ought to be accepted.

Conclusion

In conclusion, the appellant humbly submits that the Criminal Court of Appeal has already addressed this matter in similar circumstances whereby guilty pleas where declared null and void due to the dubious circumstances in which said pleas where taken.

- In the judgement of the Criminal Court of Appeal of **Police vs Godfrey Formosa** (Appeal No: 99/2017) dated the 26th of October 2017, the Criminal Court of Appeal confirmed that a guilty plea can be discarded. The court discarded the appeal and ordered the case to be heard anew and said;

> Having seen the above and as per article 428(5), this Court shall decide on the merits of the case **just as though there was no admission of guilt from the appellant and order the hearing of the case once again.**
>
> For the reasons mentioned, the Court accepts the appeal, and thus **declares the judgement of the First Court dated the 28th of February 2017 null and without effect in terms of law** and after having given due consideration to article 428(5) of the Criminal Code orders that the case is heard anew.

- In the judgement of the Criminal Court of Appeal of **Police vs Jesmond Pulis** (Appeal No: 167/2017) dated the 18th of July, 2017, the Court ordered that the

appellant be reinstated status quo ante in order for the case to be heard again due to the fact that the First Court did not give the appellant enough time in order for him to understand the gravity of his guilty plea.

These two judgements clearly show that in cases where a guilty plea is entered in dubious circumstances, as is the case in this appeal, the Criminal Court of Appeal found no issue with accepting the appeal, even though no plea for suspension of execution was made. The Court declared a guilty plea null and void due to the circumstances surrounding it. Therefore, this Court of Appeal can be supported by the two judgements mentioned above.

The Court heard the oral submissions put forward by the parties in line with whether the documents submitted with the appeal application can be considered as admissible evidence.

The Court took note of what the Attorney General declared before her during the sitting of 8th November 2018, where in he requested the following:-

"*The Attorney General requests that the affidavit attached to the appeal application is removed from the records of the acts in view of the fact that according to law, no new evidence is to be presented at appeal stage, moreover an affidavit does not have any probative value according to the Criminal Code*."

The Court took note of the reply of the defence lawyer wherein he declared that "*the evidence was presented according to article 424(a) of the Criminal Code.*"

The Considers further the following undisputed facts that result from the acts of the proceedings, namely:-

1. The appellant was arraigned before the Courts of Magistrates (Malta) as a Court of Criminal Judicature on the 2nd June 2018 and charged with a number of offences as mentioned above.]

2. That the appellant declared that he was indigent so the first court appointed a legal aid lawyer to assist the appellant in these proceedings.

3. The first Court took note that the appellant has an English passport so ordered that proceedings are held in the English language.

4. The appellant did not contest his arrest, however nonetheless the Court deemed the arrest to be justified and therefore validated same.

5. The Prosecution then went on to withdraw the charge it had presented with regards to the appellant int terms of section 96 of the laws of Malta.

6. The Charges were read out by the prosecuting officer and confirmed on oath.

7. The appellant chose to register a guilty lea in the acts of the proceedings (fol. 17).

8. The Court gave considerable time to the appellant to withdraw his guilty plea should he so wish.

9. The Court heard the appellant together with the other co accused declare that they were ready to pay for the damage they caused to public property.

10. The appellant insisted on registering his plea of guilt and the Court proceeded to give judgment.

11. The Court took note of the following when delivering its judgment namely:

    a. That the persons charged were ready to pay for the damage they caused.

    b. That the persons charged had admitted to the hares at the earliest stages of the procedure.

    c. That all persons charged co operated with the prosecution.

12. The Court then pronounced judgment.

The appellant however felt aggrieved by this judgment and registered his appeal before this honourable Court. Together with his application of appeal he presented without permission of this the court the following documents.

i. Affidavit of the appellant duly sworn before Notary Public Anne Marie Aston marked as Dok A.

ii. Police record of convictions marked as Dok B.

iii. A letter confirming that appellant has been given a SIA license on 2nd February 2018.

It is these same documents marked as Dok A, B and C that the prosecution is objecting to.

Considers further.

This case is similar to the case that was decided by this court, though by a different judge in the names **Il-Pulizija vs Charlene Ann Attard**[1]. In this latter case the appellant had every right to give evidence in her trial without making any inferences in this regard though chose not to give her testimony before that Court. However, it appeared that in her application for appeal she annexed a number of fresh documents particularly a copy of legal letters. Acts regarding her medication with the complainant together with a birth certificate of their minor child. That Court held in its capacity as an Appeal court that it would not take cognisance of such documents since they were not presented before the first Court. In fact, it made reference to another case in the names **Il-Pulizija vs Joseph Said**[2] where in it was held that "*Dejjem gie ritenut li l-artikolu 424 tal-Kodici Kriminali ghandu jigi strettament interpretat u applikat mill-Qorti ta' l-Appell Kriminali, u dan in omagg ghall-principju li l-appell ghandu jsir primarjament a bazi tal-provi li jkunu nstemghu mill-ewwel qorti*";

[1] Decided on the 26th March 2918- Application Number 502/2015
[2] Decided on the 26th March 1996 - Application Number 246/95 VDG

Therefore, it is the duty of this Court to see if the documents that were presented by the appellant with his application could have been presented before the Court of first court because it is only in those circumstances when such documents could not have been presented earlier that this court of Appeal can accept such documentation. The reason being that such document would constitute new evidence and this Court should decided its appeals on the basis of the documents presented before the first court because this is a court of revision In particular this court is duty bound to re-examine the evidence brought before the court of first instance to see if on the basis of such evidence the first court could have reached the judgment it in fact delivered.

The Court feels that is should make refence to the judgment delivered by this court though by a different judge in the names **Il-Pulizija v Gaetano Abdilla**[3] **omisses.** The Learned Judge held that **:-**

Skond l-Artikolu 424 tal-Kodici Kriminali ebda xhud gdid ma jista' jingieb quddiem dina l-Qorti, cioe` fi stadju ta' appell, hlief (u hawn il-Qorti tirrileva li huwa relevanti biss il-paragrafu (a) ta' l-imsemmija disposizzjoni) "jekk jigi ippruvat ***bil-gurament jew b'mezzi ohra*** *li l-part li toffri x-xhieda godda* ***ma kinitx taf bihom, jew ma setghatx****, bil-mezzi li taghti l-ligi,* ***iggibhom quddiem il-qorti inferjuri****"*[4].

Therefore, it results from the above that in order for this court to be able to accept new documents and evidence of a new witness before it is imperative that the appellant proves by a sworn application that he did not know of such evidence **or** that he was not able to bring forward such evidence before the Courts of Magistrates, Therefore he has to comply with one of these two requirements

In the case under examination it appears that the evidence that the appellant wishes to produce is his own sworn affidavit. Apart from the fact that evidence in a Criminal Court has to be given viva voce[5] unless it is evidence that can be given by means of a declaration in terms of section 646(3) of the Criminal code, surely the

[3] Decided on the 8th June 2001 – Application Number 81/99

[4] Emphasis made by the Learned judge in that same judgement

[5] Section 646 (1) of the Criminal Code .

appellant new of the alleged importance of his own evidence prior to the judgment being delivered by the Courts of Magistrates . Nor can it be said that the appellant could not produce the documents attached to his statement earlier on before the Court of first instance especially since Dok B could have been requested at any stage since it is a copy of an official police record whereas Dok C is date February 2018 and therefore four month prior to the appellants arraignment and the decision given by the Court of first instance .

Thus in the circumstance this Court is upholding the request of the Attorney General and consequently orders the withdrawal of the documents attached to the application of appeal of the appellant and orders the continuation of his case.

(ft) Consuelo Scerri Herrera

Judge

TRUE COPY

Franklin Calleja

Deputy Registrar