



COURT OF CRIMINAL APPEAL

**His Honour Chief Justice Joseph Azzopardi – President
Hon. Madam Justice Abigail Lofaro
Hon. Mr. Justice Joseph Zammit McKeon**

This day, Friday 11th January 2019

Bill of Indictment No. 1/2017

The Republic of Malta

v.

Ikechukwu Stephen Egbo

The Court :

Having seen the application filed by appellant Ikechukwu Stephen Egbo on the 30th August 2018 whereby in essence he requested this Court to hear his evidence and that of his wife Tunde Csiki. In the application there is mention of a consequential request for the evidence of the Director of Prisons.

Having seen the document that was attached to the application.

Having seen its decree of the 30th August 2018.

Having seen the reply filed by respondent the Attorney General on the 3rd September 2018 whereby the request submitted by appellant was opposed.

Having seen its decree of the 28th September 2018 whereby the application was set for hearing for Friday 30th November 2018 at 9.00 a.m.

Having heard the parties` oral submissions at the hearing of Wednesday 5th December 2018 at 2.00 p.m.

Having noted that at that hearing the matter was deferred for today for a final and definitive decree on the application.

Having seen the acts of the case.

Considers :

Appellant submitted his request on the basis of **Sec 506(c) of the Criminal Code** (Chap 9 of the Laws of Malta) which states :-

The Court of Criminal Appeal may, if it thinks it necessary or expedient in the interests of justice –

...

(c) if it thinks fit receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application, subject to the provisions of article 635.

Considers :

Having attentively heard and noted the reasons of appellant for filing the application, and respondent`s objections, the Court makes the following observations :-

1. Sec 506 of the Criminal Code grants this Court the discretion (note the use of the word "may") to accede to or reject applicant`s request.

2. That provision directs this Court in the exercise of its discretion to be guided by the criterion of that which *it thinks it necessary or expedient in the interests of justice*.

3. Evidently the criterion has to be considered on the facts and circumstances underlying each and every application.

4. In his application, appellant is essentially requesting leave from this Court for both himself and his wife to be allowed testify at this stage of the proceedings.

5. The position of appellant and his wife has to be considered separately as their standing in the proceedings is most definitely distinct.

6. Before the Criminal Court, appellant (there, the accused) had the constitutional right to remain silent. Such a right is fundamental to the extent that accused`s mere fact of remaining silent is not questionable or subject to scrutiny, directly or indirectly, in any manner whatsoever.

7. From the records of the proceedings before the Criminal Court, it results that before that Court, appellant (there, the accused) availed himself of his constitutional right to remain silent and therefore chose not to testify following the declaration of closure of evidence on the part of the prosecution.

8. Appellant alleges that he was advised by his counsel not to testify before the Criminal Court. He has argued before this Court that he did not endorse his counsel`s direction. Nonetheless he did follow that advice and chose not to testify. The *note verbal* of the acts of the proceedings before the Criminal Court are clear and unequivocal.

9. This Court is of the considered opinion that the fact the outcome of the trial was unfavourable to appellant does not entitle appellant to contest before this Court any advice or direction that were allegedly given to him by his counsel.

10. Taking into account the facts and circumstances of this case, the appellant cannot seek refuge within the context of the phrase *in the*

interests of justice for decisions which he alone was legally bound to take before the Criminal Court.

11. Justice and the rule of law go hand in hand. By upholding appellant`s stand as results from his application, without any shread of substantive and objective supporting evidence, this Court would be divesting the phrase : *in the interests of justice* : of any reasonable meaning whatsoever.

12. Appellant`s request to testify is therefore being rejected.

13. Consequently orders that the document attached to the application be duly expunged.

14. As regards the evidence of Tunde Csiki, this Court notes from the acts of the proceedings, that appellant`s wife was a declared witness by appellant himself. Nevertheless it results that he renounced to her testimony by not requesting that she give evidence before the Criminal Court. This Court is of the considered opinion that *in the interests of justice* it should reject appellant`s request to allow his wife to testify before this Court.

Taking all facts and circumstances into account, this Court rejects appellant`s application in its entirety and consequently orders the removal from the acts of the proceedings of Doc KDF1 that appellant attached with his application.

(sgn) Judges

True Copy

**Joyce Agius
Deputy Registrar**