



## **Court of Criminal Appeal**

**Hon. Mr. Justice Giovanni M. Grixti LL.M., LL.D.**

**Appeal Nr: 135/2019**

**The Police**

**(Sp. Darren Buhagiar)**

**vs**

**Izzedin Marek**

Today the 24 of October, 2019

The Court,

Having seen the charges brought against **Izzedin Marek** before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having on the 27th April 2019 and in the previous days in Malta while having in his possession documents issued by a competent authority, that is an Italian aliens passport and Italian residence permit card both issued on Abdulaziz Abdulrahman, had transferred the mentioned documents to another person or received these documents, which were tranferred to him by another person;

Also charged with having on the same date, time and circumstances made use or attempted to make use of same documents, issued to another person at Malta International Airport;

Also charged with having on the same date, time and circumstances made false return, false statement or false representation to the Principal Immigration Officer;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 28th April, 2019, whereby the Court upon a plea of guilt by the accused found the accused guilty of all charges brought against him and condemned him to a term of imprisonment of eighteen (18) months;

Having seen the appeal application presented by Izzedin Marek in the registry of this Court on the 13<sup>th</sup> May, 2019 through which he requested this Court to **confirm** the judgement of the 28<sup>th</sup> April 2019 of the Court of Magistrates with regards to his finding of guilt and to **vary** this same judgement with regards to the punishment imposed in order for this to be more equitable and fair according to the circumstances of this case;

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

Having seen the grounds of appeal as presented by the appellant.

Having heard submissions by counsel to appellant and counsel to the Attorney General;

Having seen the records of the case;

Having considered:

1. That this appeal is with regards to the penalty meted out by the first Court on the ground that it is exceedingly high and not proportionate to the crime committed. Appellant brings forward the argument that he has been residing in Malta since October 2018 and suffers a stomach ailment consequent to being shot in the stomach in

Sudan. He therefore has no suitable work opportunities in Malta and was seeking a better future abroad. Appellant also maintains that he cooperated with the police and registered an early plea of guilt and that the punishment meted out is disproportionate when compared to judgements with similar charges;

2. On examination of the records, in particular, of the judgment under appeal, the first Court made reference to “Section 3 and Section 4 of Chapter 621” of the laws of Malta when such Chapter does not exist under our laws. Article 382 of Chapter 9 of the laws of Malta requires that when delivering a judgement, the Court shall state the facts of which the accused has been found guilty, mete out the punishment and indicate the articles of the (Criminal) code or any other law that contemplates the crime. Failure to comply with this provision of the law has been deemed on several occasions by this Court to constitute a lack of an essential formality which brings about nullity of the judgment (ref: **Pulizija vs Trevor Farrugia** App Krim 29.1.1996) It has also been stated that this is a matter of public interest and must be considered by the Court *ex officio* when not raised by any of the parties (**Pulizija vs Anthony Tanti** App Krim 13.1.2016 DS);

3. This Court is of the opinion that mention of Chapter 621 is not a *lapsus calami* and that such an error is tantamount to not having indicated the proper article of law which in turn translates into a lack of an essential formality of the law. The judgement is therefore being declared null and void;

4. A declaration of nullity of a judgement brings about consequences that vary from case to case. The first amongst these is that in terms of article 428(3) of the Criminal code, this Court shall itself determine the case anew *where the superior court finds that a breach or an omission of any of the formalities prescribed by the law under pain of nullity* has taken place. Furthermore, a declaration of nullity affects only that part of the judgement which refers to a finding of guilt and

not that part where the accused may have been acquitted of one or more charges. The Court of Appeal will not therefore make any considerations or pass judgement on those charges where the accused had been declared not guilty (ref **II-Pulizija vs Karmenu Attard** App Kri 28.4.1995). This however, has no relevance to the case under consideration. Then again, the grievances of appellant will then be considered as submissions before this Court (ref **II-Pulizija vs Dr. Alfred Grech** [App Krim 10.09.07]). And finally that this Court is not bound by article 428(7) of the Criminal Code when passing judgement anew , that is, it is not bound by the same punishment meted out by the first Court and can consequently give a higher penalty (ref **II-Pulizija vs Joseph Farrugia** App Kri 13.1.1995);

5. In the present case this Court need not make any consideration with regard to a finding of guilt or others against appellant since he had registered a plea of guilt before the first Court as appears in the records of the case of the sitting of 28 April, 2019. The first Court had duly cautioned the accused with regard to his plea of guilt which was again confirmed by him after having been given sufficient time to reconsider;

6. This Court therefore finds the accused guilty on all charges brought against him.

7. Having seen articles 3 and 4 of Chapter 61 and article 32(1)(c) of Chapter 217 of the laws of Malta;

8. Having seen the conduct sheet of the accused;

9. Having considered the grievences of appellant which are now considered to be his submissions as aforesated and which relate to the penalty. Having considered the gravity of the charges and at the same time the fact that accused pleaded guilty during his arraignment, so however, that an early guilty plea does not entitle the accused to an automatic reduction of the penalty contemplated by the law, it is nonetheless to be considered that such early pleas have the added

benefit of reducing both time and expenses in relation to the proceedings;

10. Having considered all the above, the Court condemns the accused to a term of imprisonment of twelve (12) months from which is to be deducted the time already spent in imprisonment under the judgment annulled by these appeal proceedings.