



THE COURT OF CRIMINAL APPEAL

The Hon. Mr. Justice Aaron M. Bugeja M.A. (Law), LL.D. (melit)

Appeal number - 20/2018

The Police

vs

Deidre Nyasa Rolfe HORNYOLD STRICKLAND

Sitting of the 28th November 2019

The Court,

1. This judgment relates to a preliminary plea raised by the Attorney General and the parte civile during the course of these proceedings following an appeal from a judgment delivered by the Court of Magistrates (Malta) on the 18th January 2018 against Deidre Nyasa Rolfe HORNYOLD STRICKLAND, holder of a Maltese identity card number 52870A, who was charged with having:

On the 28/09/2015 at about 1.30hrs and on the previous days whiles at 36 Villa Parisio, Triq Mabel Strickland, Lija :

- i. Pursued a course of conduct which amounts to harassment of John Cachia, and which she knew or ought to know amounts to harassment of such other person;
 - ii. Uttered insults or threats not otherwise provided for in this Code, or being provoked, carried her insult beyond the limit warranted by the provocation to John Cachia;
 - iii. Without intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, of his own authority, compelled another person to pay a debt, or to fulfil any obligation whatsoever, or disturbed the possession of anything enjoyed by another person or in any manner unlawfully interfered with the property of John Cachia.

2. By means of the said judgment, the Court of Magistrates (Malta), after having seen the charges brought against the accused, after having seen section 85 of Chapter 9 of the Laws of Malta, acquitted the accused from the first and second charge while it found her guilty of the third charge and after having seen article 383 of the Criminal Code, the Court bound the accused on a personal recognisance for a period of twelve months subject to a penalty of eight hundred euro (€800) in lieu of punishment.

3. HORNYOLD STRICKLAND filed an appeal in the Maltese language in the registry of this Court on the 29th January 2018 whereby this Court was requested **to vary** the said judgment by confirming the part where the appellant was found not guilty of the first and second charges brought against her while **revoking** the part of the judgment wherein she was found guilty of the third charge and of that part imposing punishment thereby acquitting her therefrom.

4. Having seen that by means of a decree issued by the Court of Magistrates on the 15th March 2016 that Court ordered that proceedings be conducted in the English language on account of the fact that the accused was an English national.
5. Having seen that during the first sitting before this Court the Attorney General and the parte civile pleaded the nullity of the appeal application given that it was drawn in the Maltese Language despite the fact that these proceedings were being conducted in the English Language.
6. Having heard submissions by the parties in relation to this plea of nullity of the appeal application.

Considers the following: -

7. The language of judicial proceedings in this country is, by default, the Maltese language. This is specifically provided by section 5(3) of the Constitution of Malta which states: -
 - (3) The language of the Courts shall be the Maltese language: Provided that Parliament may make such provision for the use of the English language in such cases and under such conditions as it may prescribe.
8. Furthermore article 516 of the Criminal Code states as follows: -
 - 516.(1) The Maltese language shall be the language of the courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language.
 - (2) Where any person charged does not understand the language in which the proceedings are conducted or any evidence is adduced, such

proceedings or evidence shall be interpreted to him either by the court or by a sworn interpreter.

9. According to section 3 of Chapter 189 of the Laws of Malta:

In a court of criminal jurisdiction:

(a) Where all the persons charged are English-speaking, the court shall order that the proceedings be conducted in the English Language.

(d) Where a court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings, unless the order is revoked by that court or any other court before which the proceedings are pending;

10. In this particular case all proceedings were carried in English except for the application found in fol 53 filed by the parte civile, the Court minutes in pages 53 and 54 and the submissions of the parte civile at fol 56. The charge sheet was in the English language as was the judgment delivered by the Court of Magistrates. Strangely, though, the appeal application was filed in Maltese.

11. During the course of their submissions the parte civile and Defence explained the reasons why some acts were filed in Maltese. This Court understands that before the Court of Magistrates, there were two concurrent criminal proceedings instituted against the accused and the parte civile. However, whereas the proceedings against the present accused were conducted in English, those against the parte civile were held in Maltese. These proceedings were heard simultaneously, and this accounts for the fact that the submissions of Dr. Giglio for the parte civile found at fol 56 are in Maltese. On the otherhand Defence claimed that the appeal application was

drawn in Maltese because this was the default language of the proceedings before these Courts.

Considers:

12. That Maltese case law on this subject is not unanimous. In some cases the position adopted by these Courts was that appeal applications or judgments written in a language that was not the language of the proceedings as ordered by the Court brought about their nullity. This was the *traditional* approach adopted in the case *The Police vs Martin Barnes* decided by this Court presided by Mr Justice Dr. Carmel Agius on the 11th December 1986. That Court considered that where a Court ordered proceedings to be conducted in English, that language had to be used in all subsequent stages of the proceedings, unless the order was revoked by that Court or any other Court before which the proceedings were pending. It added that where the wrong language was used, the nullity of the application of appeal could be raised by the Court *ex officio*.

13. Subsequently in the case *The Police vs Elizabeth sive Alice Piscopo* decided by this Court as presided by Mr Justice Dr. Vincent de Gaetano on the 10th December 1996 the Court upheld the plea of nullity of the appeal application of the Attorney General on account of the fact that the note filed by the Police in terms of article 414 of the Criminal Code was drawn up in English when it had to be drawn up in Maltese.

14. On the otherhand a different line of reasoning was adopted in the case *The Republic of Malta vs Martin James Denning*, decided by the Court of Criminal Appeal in its superior jurisdiction on the 11th January 1994 wherein it was held that :

It would not, however, be understandable or logical, if in the application of these rules, a stance is taken which would render a rule intended precisely in the interest of a special category of persons, into one which proves to be unnecessarily prejudicial to it. It is consequently perfectly right and just for these Courts to intervene when this special rule intended for the protection of the rights of a particular category of persons is not observed or is contravened in a way, which even in theory can be prejudicial to such category of persons, precisely because such non observance or contravention intrinsically would run counter to the *raison d'être* of this special rule. It would be incongruous, however, and illogical, if these Courts were to take the same stand if the failure to observe or the contravention of the same rule comes from the person who has the greatest interest for the observance and application of that rule and in whose main interest that rule has been conceived. In this contest, upholding the Attorney General's submission would be tantamount to stretching the application of the said rule to an extent which would only serve to defeat the purpose for which the rule owes its existence.

15. In the case *Il-Pulizija vs. Osy Chijioke Emanuel Nkwocha* decided on the 23rd November 2001, this Court presided by Mr Justice Noel Arrigo while acknowledging that the case law of the Court of Criminal Appeal constantly upheld pleas of nullity of appeal applications filed in the wrong language on the basis that these language provisions were matters of public order that could also be raised by the Court *ex officio*, it still accepted this same line of reasoning in re *Denning*. That Court claimed that it was legally absurd to penalise the person enjoying the benefit of language because the application of that rule was deemed to be a matter of

public order. In *Nkwocha* the Court obliged applicant to declare whether the remaining proceedings were to be conducted in the English or Maltese language.

16. This Court notes that since 1995 various legal amendments were introduced aimed at limiting, as much as possible, rigid and strict interpretation and application of procedural law. Courts accepted this current and started adopting a more practical and substantive approach in their administration of justice. This can be seen in the *Denning* and *Nkwocha* cases mentioned above. More recently, this Court presided by Madam Justice Consuelo Scerri Herrera in the case *Il-Pulizija vs Rudy Dorekens* decided on the 25th September 2018 adopted a similar flexible approach towards the language of the proceedings issue. It stated that the choice of language made by the Court could be also reversed implicitly by the same court or by a subsequent court and such a decision needed not be necessarily minuted in the records or in any way explicit. The Court concluded that it could be tacit and implicit.

17. In this particular case, the Court considers that the applicant qua an English speaking accused person was acknowledged as such by the Court of Magistrates and this in terms of article 7 of Chapter 189 of the Laws of Malta. Hence that Court ordered that proceedings in that case had to be conducted in terms of article 3 of Chapter 189 of the Laws of Malta. Clearly the accused had a right to understand these criminal proceedings against her and the decision of the Court of Magistrates was aimed to practically enforce this benefit such

that she could be in a position to follow the criminal proceedings against her in a language that she understood well.

18. When the judgment was delivered, the accused felt aggrieved and wanted to lodge an appeal from the judgment as can be seen from bond and the request for the suspension of the execution of the judgment found at folios 73 and 74 of the records of these proceedings. Subsequently the accused lodged her appeal from the judgment delivered by the Court of Magistrates but this appeal was drafted by her lawyers in the Maltese language. This fact was not in line with the provisions of the Court of Magistrate's decree and the provisions of the Law quoted earlier on. The appeal application should have likewise been drawn in the English language.

19. According to the traditional approach this appeal application should be declared null and the Court abstains from taking further cognisance of it. If this Court were to adopt this approach in this case, the practical effect of its judgment would be to deny a substantive right of appeal to the applicant due to a breach (not committed by the appellant herself) of a law that, while being subject to the language provisions of the Constitution, was aimed to grant the accused the benefit of having criminal proceedings against her in English; and this despite that the appeal application would have been written in the Constitutional default language of this Court - that is Maltese. In this Court's view this approach would place the language formality over the substantive right of the appellant to lodge an appeal from a judgment of a court of criminal

jurisdiction – and this when the appellant was not responsible for the drafting and filing of the appeal herself.

20. In this context this Court reiterates that the provisions of Chapter 189 of the Laws of Malta are subject to and have to be interpreted first of all in line with article 5 of the Constitution of Malta. The language of these Courts is Maltese by default. But if an accused is English speaking in terms of article 7 of Chapter 189, then he has the right to request the Court to have criminal proceedings carried out in English. If proceedings are carried out in English for the benefit of the accused, all pleadings should be carried out in that language. But if accused or his lawyers by mistake file an appeal application in Maltese - which still remains the Constitutional default language of these Courts - then that appeal application cannot be deemed to be null. In that case the appeal application stands but the appellant will have to produce also a translated copy of the appeal application in the records of the proceedings at his expense. In this Court's view this approach, which follows and builds on *Denning* and *Nkwocha* aims at safeguarding the substantive rights of appeal of persons convicted over language formality mistakes not attributable to them.

Decide

Consequently for the above mentioned reasons, the Court dismisses the preliminary plea raised by the Attorney General and the parte civile; and while granting the appellant twelve days within which to file an official

translation of the appeal application in the English language in the records of these proceedings to be duly served on the Attorney General and the Parte Civile, it orders the continuation of these proceedings in the English language.

Aaron M. Bugeja

Judge