



Court of Criminal Appeal

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

Appeal Nr: 189/2020

The Police

(Insp. Christian Abela)

vs

Ad Holom Ad Holom

The Court,

Having seen the charges brought against **Ad Holom Ad Holom**, holder of Police Number 18V-136, with having on the 27th September, 2020 and in the previous days in Malta while having in his possession a document issued by a competent authority, that is an Italian passport MC0037965 and Residence Permit bearing number I15161164, issued in the name of Kifle Adhanom, had transferred this document to another person or received this document which was transferred to him by another person (Chap 61, Sec 3 of Laws of Malta);

With having on the same date, time and circumstances made use of attempted to make use of passport, issued to another person, that is the mentioned document (Chap 61, Sec 4 of the Laws of Malta);

And also with having on the same date, time and circumstances made a false return, false statement or false representation to the Principal Immigration Officer (Chap 217, Sec 32(1c) of the Laws of Malta)

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 28th September, 2020, whereby the Court found the accused guilty of the first, second and third charge brought against him and condemned him to a term of imprisonment of six [6] months from which term is to be deducted any time served under preventive arrest. The Court solicited the Director of Prison to urgently and immediately address the medical difficulties of the offender so that he may be provided assistance and receive any necessary medical treatment;

Having seen the appeal application presented by the appellant Ad Holom Ad Holom in the registry of this Court on the 13th October, 2020 through which this Court was requested to reform the appealed judgement by confirming his finding of guilt and vary that part of the judgement by which he was condemned to a term of imprisonment of six months and instead impose a punishment which is more equitable and just for the circumstances of this particular case and that does not include further effective prison time;

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 by the Attorney General;

Having seen the records of the case;

Having considered:

1. That the present appeal is made on the ground that the punishment imposed by the first Court is too harsh and that the Court failed to take into consideration the particular circumstances in which appellant finds himself;

2. The records of the case show that appellant pleaded guilty to all three charges proffered against him which pleas was registered in the first and only sitting before the first Court upon arraignment. The records also show that the accused was intercepted at Malta International Airport whilst attempting to leave the Island to travel to Rome by using a passport belonging to another person and this therefore made him prosecutable for the three charges to which he pleaded guilty;

3. The accused presented the first Court with a document showing that he was in urgent need of a surgical intervention to remove an aggressive tumor which will be followed by a prolonged period of recovery. The Court makes reference to Dok IS which is a copy of a certificate issued by Dr. Timothy Vella Briffa of Mater Dei Hospital. Appellant alleges that it was his intention to travel to Germany via Rome to join his brother who can provide the necessary post intervention support both financial and moral. Dr. Briffa in fact states the following in his certificate: *“I kindly urge you to organize the support this patient requires after this major operation once he has been discharged from Mater Dei so that we can proceed with the treatment he requires”*;

4. The Court does not doubt the present unfortunate situation of appellant but cannot understand why he tried to embark on a journey to another country where he has not yet made any arrangement for the treatment which he actually needs when he has been diagnosed and offered surgery in Malta. But as in any desperate situation humans are prone to act irrationally and in this case not only be attempting to travel into the unknown but also in making use of a passport belonging to third parties for which he paid a hefty sum;

5. Appellant is well aware, as is evident in his application of appeal, that this Court does not normally interfere with the discretion of the first Court in meting out the prescribed punishment unless it appears that that meted out is beyond or below then that prescribed by law. Indeed the first Court showed leniency in condemning the accused to a term of imprisonment of six months. Crimes which concern a breach of border control are very serious in nature and tend to erode the security of a country if left unchecked;

6. Under normal circumstance this Court would have no reason to accede to applicant's request but every case should be dealt with on its own merits. Given that appellant has been offered medical treatment in Malta and is guaranteed such treatment, the judgement could stand and appellant be returned to prison to serve his time. But the Court understands that the recovery period from such surgery is not only a prolonged one but also one which requires a great deal of support as suggested by the answer given to the question posed by this Court to counsel to appellant in that appellant will be given the necessary support by Agency for Asylum Seekers in the post intervention and recovery stage;

7. This Court, therefore, purely on humanitarian grounds deems it reasonable to uphold the appeal. Consequently dispenses with this appeal by confirming that part of the judgement by which the accused was declared guilty of all three charges brought against him, revokes that part of the judgement by which he was condemned to a term of imprisonment of six (6) months and instead condemns the accused to a term of imprisonment of six (6) months which

term shall not not elapse unless the accused commits any other offence punishable with imprisonment within eighteen (18) months from today in terms of article 28A of Chapter 9 of the laws of Malta;

8. The Court explained to appellant in clear terms the meaning of this suspended sentence and his obligations arising out of same.

Giovanni Grixti

Judge