



Court of Criminal Appeal

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

Appeal Nr: 253/2020

The Police

(Insp. Godwin Scerri)

vs

Keven Agbigbi

Today the 29th March, 2021

The Court,

Having seen the charges brought against Keven Agbigbi;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the

Having seen the appeal application presented by Kevin Agbigbi in the registry of this Court on the 25th November, 2020 whereby appellant, amongst various demands requested the revocation of the judgement of the First Court;

Having seen the grounds of appeal as presented by appellant Keven Agbigbi;

Having seen the plea of nullity of the appeal entered by the Attorney General during the sitting of the 22nd February, 2021;

Having seen the records of the case;

Considered:

1. That this is a preliminary judgement on the plea entered by the Attorney General during the hearing of the 22nd February, 2021 which plea reads as follows:

“Dr. Maria Francesca Spiteri would like to raise the nullity of the appeal application in terms of article 419 of the Criminal Code because the application of appeal does not contain clear and specific grounds of appeal as required in terms of article 419 sub article (1) paragraph (b) of the Criminal Code. There are a number of requests which are unfounded in terms of law and which do not constitute grounds of appeal and which do not constitute the request to revoke the judgement of the Courts of Magistrates. Furthermore there are references to documents and information which do not form part of the proceedings”

2. Having seen appellant’s reply to the plea of nullity which reads as follows:

“Dr. Carmelo Gatt for appellant declares that all grounds of appeal are clear and manifest in his application. With regard to the Attorney General’s plea that the appeal

contains requests which should have been made in ad hoc application separate from the appeal, appellant renounces to his request number 7 on page 307 of his appeal without prejudice to his right to bring forward such request before a different Court. Appellant therefore for the sake of clarity declares that anything contained from request number 11 to the end of the appeal on page 315 is hereby being withdrawn except where it is relevant to the appeal”.

3. Article 419 of the Criminal Code provides the requirements for a valid appeal before this Court which consist of an indication common to judicial acts, a brief statement of the facts, the grounds of appeal and a demand for the judgement to be reversed or varied. The question to be addressed therefore, is whether the appeal under examination meets these requirements. This is a 315 page appeal the likes of which have never been seen by this Court which will not hesitate to state in the most clear language that it is drafted in the most incomprehensible manner to the extent that there is no other way to describe it as an irresponsible exercise by counsel who was admitted to the bar under oath of representing his clients to the best of his knowledge and abilities in accordance with the Code of Organisation and Civil Procedure;

4. This appeal application is a collection of disjointed declarations rife photos, allegations, conclusions and documents which were not part of the documents exhibited before the first Court. Moreover, appellant made a number of requests, eleven in number, with other subsidiary requests to

the final one. In the request numbered nine, applicant asks this Court to “*Reconsider the revocation IN TOTO of the Judgement as awarded by the Honourable Court of Magistrates on the 13th November 2020 and that the defendant be acquitted from all the grounds laid down in the said judgement.*”. This in itself qualifies as the fourth requisite of article 419 of the Criminal Code;

5. As far as the other requisites of a brief statement of the facts and the grounds of appeal, the facts are certainly not brief and these being spread over more than three hundred pages mashed together with the grounds of appeal. Now in jurisprudence of this Court it has been stated that it is not expected that this Court itself identifies the grounds of appeal as it is appellant’s duty to define clearly such grounds. In this case appellant has put the Court in a situation where it has to try and identify the grounds itself in a three hundred page disjointed and incomprehensible document. Where this Court to apply this learning in this case the Court would uphold the plea of the Attorney General and declare the appeal null. Given, however, that changes to the Criminal Code have in time been made in favour of doing away with exaggerated formalism, such as the recent amendments to article 520 of the said Code, appellant should not suffer for the grave mistakes of his counsel when the situation is one that can be sanctioned;

6. For the above motives, whilst this Court does not uphold the plea of nullity raised by the Attorney General, reserves to decide on which parts of the appeal application, documents and requests are to be taken cognisance of in the judgement.