



CRIMINAL COURT

Hon. Madame Justice Dr. Consuelo-Pilar Scerri Herrera LL.D.

Bill of Indictment Nr. 2/2015

**THE REPUBLIC OF MALTA**

**vs**

*Omissis*

and

**Kenneth DURU**

**Today the 28th July, 2021,**

The Court,

Having seen the bill of indictment number two (2) of the year two thousand and fifteen (2015) brought against Kenneth Duru holder of Maltese Identity Card Number 0046391A. Wherein the Attorney General in the first and only count of the bill of indictment premised:

That the accused Omissis and Kenneth Duru, both of them irregular migrants from Nigeria, met in Valletta, Malta, in the year Two Thousand and Ten (2010), and quickly became friends. Among the numerous conversations between them, the idea of making some 'easy money' cropped up, and the accused Omissis convinced the accused Kenneth Duru that he had overseas contacts through whom they could start importing to subsequently sell or deal in the dangerous drug Heroin in Malta.

That the accused Omissis and Kenneth Duru agreed to start importing the dangerous drug Heroin in Malta to eventually sell or deal in it, and therefore devised a plan and conspired with people overseas, including a certain 'Daniel', to this effect.

That the meticulous agreement agreed and planned beforehand between the accused Omissis and Kenneth Duru and the overseas supplier by the name of 'Daniel' was, in a nutshell, that just over a kilo of Heroin be concealed in a pair of shoes, which pair of shoes a courier would wear and come to Malta. The courier – a Spanish national by the name of Justo Ernesto Bellver Bayo – had to pick up the shoes containing the drugs from a place in Amsterdam, wear them, go to the airport, and catch flight number KM 397 to Malta. Once safely in Malta and past Customs, Justo Ernesto Bellver Bayo had to destroy the sim card of his mobile phone, buy a new sim card, and call 'Daniel' so that the latter would give him

detailed instructions as to when and where to meet the accused Omissis and Kenneth Duru to consign the drugs to them. For his job to courier the drugs to Malta, the accused Omissis and Kenneth Duru would give Justo Ernesto Bellver Bayo the sum of two thousand Euros (€2,000). The accused Omissis and Kenneth Duru would then sell or deal in those drugs.

That it so happened that on the Seventeenth (17th) day of the month of June of the year Two Thousand and Ten (2010) Drug Squad Police were informed by Customs officials at the Malta International Airport that a Spanish national had been stopped at the airport in Malta at approximately 15:30 hrs after his arrival on flight KM 397 from Amsterdam, the Netherlands on suspicion that he might be carrying drugs. This Spanish person resulted to be Justo Ernesto Bellver Bayo, holder of Spanish Identity Card number 48589478T. Upon further investigation it resulted that the said Justo Ernesto Bellver Bayo was carrying the aggregate amount of one thousand one hundred twenty seven point nine grams (1,127.9g) of the dangerous drug Heroin, which drug was hidden in his shoes. Analysis by the court-appointed expert showed that this drug had a purity of twenty-six point seven per cent (26.7%), and a street value of fifty one thousand five hundred and eighty three Euros (€51,583).

That Justo Ernesto Bellver Bayo agreed to participate in a 'controlled delivery' operation in terms of law and as authorised by the Inquiring Magistrate, so as to enable the Police to apprehend the individuals to whom the drug he was carrying was destined. In a nutshell, the 'controlled delivery' consisted of a Police Officer – PC 1183 Oliver Borg – 'impersonating' Justo Ernesto Bellver Bayo. Bayo was receiving instructions on his phone from the overseas supplier, which information he was relaying to the Police. These instructions were then carried out by PC 1183 Oliver Borg, impersonating Bayo.

That according to the instructions received by Bayo, Bayo had to walk to the playing-field in Birżebbugia, where a dark-skinned man wearing a baseball cap would approach him and make a sign to him. PC 1183 Oliver Borg, impersonating Bayo, walked to the playing-field in Birżebbugia, as per instructions, where he was approached by a dark-skinned man wearing a baseball cap who made a sign to him. This man was the accused Kenneth Duru. PC 1183 asked the accused Kenneth Duru, in Spanish, for the money, and the accused Kenneth Duru, thinking that PC 1183 was Justo Ernesto Bellver Bayo, told him to sit down on a bench and wait for his friend who was coming with the money.

That indeed, Duru's friend, the accused Omissis, approached the scene, but, sensing that something was 'fishy', fled the scene by quickly scrambling onto an oncoming bus. Both the accused Omissis and Kenneth Duru were arrested. On the person of the accused Omissis, the Police found two thousand Euros (€2,000) in cash.

That by committing the above-mentioned acts with criminal intent, the accused Omissis and Kenneth Duru rendered themselves guilty of illegally conspiring for the purposes of selling or dealing in a dangerous drug (Heroin) in these Islands in breach of the provisions of the Dangerous Drugs Ordinance, (Chp. 101 of the Laws of Malta);

Wherefore, the Attorney General, in his aforesaid capacity accuses Omissis and Kenneth Duru of being guilty of, on the eighteenth (18<sup>th</sup>) day of the month of June of the year Two Thousand and Ten (2010) and during the previous weeks, having

with another one or more persons in Malta or outside Malta, conspired for the purposes of selling or dealing in a drug in these Islands against the provisions of the Dangerous Drugs Ordinance, (Chp. 101 of the Laws of Malta), and specifically of selling and dealing in any manner in the drug Heroin, and having promoted, constituted, organised and financed such conspiracy.

Demands that the accused be proceeded against according to law, and that Omissis and Kenneth Duru each be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand, three hundred and thirty Euros (€ 2,330) but not more than one hundred and sixteen thousand, five hundred Euros (€116,500), and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in respect of which the offence was committed and as described in the Bill of Indictment, as is stipulated and laid down in Articles 9, 10(1), 12, 14, 15A, 20, 22(1)(a), 22(1)(f), 22(1A), 22(1B), 22(2)(a)(i), 22(3A), 22(3BA) and 26 of the Dangerous Drugs Ordinance (Chp. 101 of the Laws of Malta) and in Articles 17, 23 and 533 of the Criminal Code (Chp. 9 of the Laws of Malta) or to any other punishment applicable according to law to the declaration of guilt of the accused.

Having seen the verdict of the jury of today, 28<sup>th</sup> July, 2021, whereby the jury with regards to the first and only count proffered by the Attorney General in the bill of indictment by seven (7) votes in favour and two (2) votes against found the accused not guilty of the first and only count of the bill of indictment.

The Court in view of the verdict of today, declares the accused Kennet Duru not guilty of the first and only count of the bill of indictment and after having seen article 487 of Chapter 9 of the Laws of Malta, orders that unless he is in custody for some other reason, he is set at liberty.

The Court also orders, in view of the verdict reached by the jurors, that a copy of the evidence given by Theophilus Nwadike in the proceedings before this Court, namely in the trial by jury, as well as the evidence given in the inquiry and a copy of his statement released before the investigating officer are sent to the Commissioner of Police so that the same Theophilus Nwadike is investigated for perjury under section 104 of the Criminal Code.

Consuelo Scerri Herrera

Judge