



Court of Criminal Appeal

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

Appeal: 1307/2010

The Police

(Inspector Dennis Theuma)

Vs

Anya Uchena

Sitting of the 13th June, 2022

This is a preliminary judgement regarding the plea of nullity of the proceedings raised by appellant during the hearing of the 16th May, 2022.

The Court,

Having seen the charges brought against Anya Uchena, holder of Id card number 46248(A) before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having on the 3rd of November 2010 and during the preceding three years in the Maltese Islands :

1. Conspired with another one or more persons on these Islands or outside Malta for the purpose of selling or dealing on these Islands

the dangerous drug (cocaine) in breach of the Dangerous Drugs Ordinance Chap. 101 of the Laws of Malta or promoted, constituted, organised or financed such conspiracy for the importation of the dangerous drug (cocaine) in breach of the Dangerous Drugs Ordinance Chap. 101 of the Laws of Malta;

2. Imported or caused to be imported or took steps preparatory to import the dangerous drug (cocaine) in Malta, in breach of the Dangerous Drugs Ordinance Chap. 101 of the Laws of Malta.

3. Had in his possession the drug (cocaine) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta which drug was found in circumstances denoting that it was not for his personal use.

4. been in possession of the whole or any portion of the plant cannabis in terms of Section 8(d) of the Chapter 101 of the Laws of Malta;

5. Committed an act of money laundering by :

- a. Converting or transferring property knowing that such property is derived directly or indirectly from, or the proceeds of criminal activity, or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
- b. Concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- c. Acquiring property, knowing that the same was derived or originated directly or indirectly, from criminal activity, or from an act or acts of participation in criminal activity;
- d. Retaining, without reasonable excuse, or property, knowing that the same was derived or originating directly, or indirectly, from criminal activity, or from an act or acts or participation in criminal activity;
- e. Attempting any of the matters or activities defines in the above foregoing sub paragraphs (i), (ii), (iii), (iv) and (v) within the meaning of Article 41 of the Criminal Code;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 16th March, 2021, wherein found the appellant not guilty of the third and fourth charges brought against him; found him guilty of the first, second, fifth charges brought against him and condemned him to a period of nine years imprisonment and a payment of a fine (multa) of ten thousand Euros. The Court condemned the appellant to pay the amount of one thousand, seven hundred and sixty three Euros and

eleven cents within a period of three months as to costs incurred solely in connection with the employment of experts. It also ordered the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs. Finally it ordered the forfeiture in favour of the Government of Malta of all the property involved, and other moveable and immovable property belonging to appellant.

Having seen the application of appeal of Anya Uchena to vary the appealed judgement as regard to the merits of the case, whereby whilst confirming that the appellant is not guilty of the third and fourth charges brought against him, revokes and reverses the finding of guilt in the first , second and fifth charges brought against him and consequently acquits him of them; alternatively varies the appealed judgement as regards to the punishment inflicted and instead applies a lesser and more appropriate punishment in the circumstances.

Having seen the plea of nullity of the proceedings raised by the accused during the hearing of the 16th May, 2022;

Having heard a witness under oath;

Having seen the records of the case;

Having considered:

1. That during the course of this appeal, appellant raised the following plea as dictated during the hearing of the 16th May, 2022 and being cited from folio 1083 of the records of the proceedings:

Dr. Franco Debono for appellant raises the plea of nullity of the proceedings due to the fact that the Attorney General's

application for an extension of the term in order to decide whether or not to issue a bill of indictment, which application is found in folio 880 of the records, does not seem to be acceded to by the Criminal Court.

2. The Attorney General reserved the right to register his position after being given site of the records. No counter was however registered by the Attorney General during the following hearing where the Court heard submissions by the parties;

3. That from an examination of the records it is evident that this case was first brought before the Court of Magistrates (Malta) as a Court of Criminal Inquiry. This required the eventual decision of the Attorney General whether to commit the accused to trial before the Criminal Court or before the Court of Magistrates (Malta) as a Court of Criminal Judicature which decision was made by means of an order dated 3rd of January, 2018, folio 882. Preceding such order, however, the Attorney General made a number of *renvoir* requesting the hearing of witnesses in accordance with article 405 of the Criminal Code and also requested the Criminal Court to extend the time-limit within which to decide whether to issue a Bill of Indictment or whether to commit the accused to trial before the Court of Magistrates in accordance with article 401 and 407 of the said Code. On the 2nd of January 2018 the Attorney General had again requested the Criminal Court to extend the time limit in which to decide whether a Bill of Indictment should be filed or otherwise and this in terms of article 432 of the said Code. The latter article requires the Attorney General to file an application before the Criminal Court

and there is no question as to whether this had been filed since a copy of said application forms part of the records at folio 882.

4. That appellant's contention is that there appears no decree of the Criminal Court acceding to the above mentioned request of the Attorney General and that if this were the case, the proceedings would be null and void as the time limit for the Attorney General to decide whether to issue a Bill of Indictment or otherwise would have lapsed and that therefore any proceeding subsequent to that date would be contrary to law. The Court concurs with appellant that this issue is one of public order as no proceedings can take place or continue to take place without adherence to the relevant articles of the Criminal Code;

5. That upon appellant's plea, the Court ordered its Deputy Registrar to effect a search in the records of the proceedings, in the records of the Registry of the Courts and with the Deputy Registrar of the Magistrate seized with the Inquiry for the relevant decree subsequent to the application of the Attorney. As stated under oath by the Deputy Registrar of this Court on the 26 May, 2022, the relevant decree acceding to the request of the Attorney General was duly traced in the records of the Registry. No reason has been forthcoming as to why the Deputy Registrar of the Magistrates Court failed to insert the decree and instead inserted the application which would not have been made to that Court but directly with the Criminal Court and subsequently sent to Magistrates Court for due insertion in the records. From a procedural point of view, therefore, the Criminal Court had acceded to the request of the Attorney General for an extension of the time-limit;

6. Now, however, appellant argues that this amounts to an introduction of new evidence which is not allowed at appeal stage except under special permission by the Court. Whereas this Court can not but concur with appellant's citation of the position at law which is provided for by article 424 of the Criminal Code, it is not of the same conclusion that this amounts to fresh evidence. The reason that this Court ordered that a copy of the relevant decree be exhibited is to ensure that the records are complete given that the decree acceding to the Attorney General's request had in fact been delivered. This document is not part of the documentary evidence introduced by either of the parties and can not therefore be considered to amount to fresh evidence in terms of article 424 of the Criminal Code. It is the duty of this Court to ascertain whether the time-limit had in fact been extended by the Criminal Court and once it had been so ascertained in the positive, ordered that the relevant document be inserted in the records for future verification if and when it arises;

7. Now, therefore, having made the above considerations, concludes that appellant's plea of nullity can not be upheld and consequently dismisses the said plea.