



CRIMINAL COURT

**Hon. Madame Justice Dr. Consuelo-Pilar Scerri Herrera LL.D., Dip Matr.,
(Can), Ph.D.**

Bill of Indictment Nr. 11/2015

The Republic of Malta

Vs

IZUCHUKWU MORGAN ONUORAH

Today the 22nd November, 2022

The Court,

Having seen the bill of indictment number eleven (11) of the year two thousand and fifteen (2015) brought against Izuchukwu Morgan Onuorah bearer of Nigerian Passport number A3059066 **wherein the Attorney General in the first count of the bill of indictment premised:**

Upon suspicion of involvement in drug related illegal activity, on 18th February 2010 the Police Drug Squad conducted a search in the residence of the accused, Izuchukwu Morgan Onuorah, situated at Flat1, Northan Court, Ciantar Street in Zurrieq, whereat the said accused lives with his wife Maria Lorna Onuorah and his children. Upon this search, in a kitchen cupboard, the police found a plastic bag which contained a substantial amount of capsules suspected to contain illegal substances. Moreover in

the main bedroom of the aforementioned flat the police found another capsule lying on the commode which was similar to the capsules found in the kitchen. In view of these findings the police proceeded to arrest the accused together with his wife Maria Lorna Onuorah for further police investigations.

The aforementioned capsules that were found at the accused's residence totalled to forty-eight (48) capsules. Forty-seven (47) capsules were found in a plastic bag in the kitchen cupboard whilst another capsule was found open on the commode in the main bedroom. The contents of these capsules were examined by a court-appointed expert, Pharmacist Godwin Sammut who concluded that the said capsules contained the total weight of four hundred fifty point fifty six grams (450.56grms) cocaine with the purity of forty-four percent (44%). The total price of the said drugs was valued to be that of thirty four thousand two hundred and forty-two Euros and fifty-six Euro cents (Eur. 34, 242.56).

Besides the fact that the abovementioned amount of cocaine is in itself indicative that the illegal substance was too great to be intended merely for personal use, from police investigations it also clearly transpired that these drugs were in Izuchukwu Morgan Onuorah's possession and intended to be trafficked to third parties.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta. Moreover, the accused, Izuchukwu Morgan Onuorah, was not in possession of any valid possession authorisation granted in pursuance of the said law.

Hence by committing the abovementioned acts with criminal intent, the accused Izuchukwu Morgan Onuorah rendered himself guilty of having been in possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) when not in possession of any valid possession authorization granted in pursuance of the said law, and with intent to supply in that such possession was not for the exclusive use of the offender.

Wherefore, the Attorney General, in his capacity, accuses Izuchukwu Morgan Onuorah of having on the 18th February 2010 and in the preceding year of being guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply same in that such possession was not for the exclusive use of the offender; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand three hundred and thirty Euro (€2,330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 2, 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 4 and 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 17, 20,

22, 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

Wherein the Attorney General in the second count of the bill of indictment premised:

Police inquiries into the circumstances outlined in the first count of this Bill of Indictment, showed that on 18th February 2010 and in the preceding year, the accused, Izuchukwu Morgan Onuorah, decided to start trafficking illegally in cocaine. To this aim he conspired with other persons to traffic illegal drugs particularly cocaine, which is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

In fact it resulted that the accused conspired and agreed with other persons, to receive the amount of drugs mentioned in the First Count of this Bill of Indictment from a foreigner, identified by the accused as 'Shedrak', hold the said drugs at his residence and this until such time that an unknown third party (identified by the accused as a Maltese national) calls him with the aim of delivering the said drugs to him. The accused also agreed with the other persons what would be his remuneration for such services rendered. Fortunately, the accused was arrested by the police on 18th February 2010 whilst the cocaine was still in his possession and hence before such drugs were trafficked to third parties.

By committing the abovementioned acts with criminal intent, Izuchukwu Morgan Onuorah, rendered himself guilty of conspiracy to

trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance.

Wherefore, the Attorney General, in his capacity, accuses Izuchukwu Morgan Onuorah of having on the 18th of February 2010 and in the preceding year of being guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2,330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(f)(1A) (1B)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 4 and 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 17, 20, 22, 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

Wherein the Attorney General in the third count of the bill of indictment premised:

On 18th February 2010 and in the preceding year, in the same circumstances outlined in the first and second Counts of this Bill of the Indictment, the accused, Izuchukwu Morgan Onuorah, decided to start

trafficking, supplying, procuring and distributing dangerous drugs (cocaine) to other persons in the Maltese Islands.

In fact, as aforementioned, the accused received from another person, Shedrak, the abovementioned capsules which were found at the accused's residence. These capsules which totalled to forty-eight (48) capsules contained 450.56 grams of cocaine with the purity of forty-four percent (44%) and with the valued total price of the said drugs being that of thirty-four thousand two hundred and forty-two Euros and fifty-six Euro cents (Eur. 34, 242.56). Moreover, the accused offered to traffic the same dangerous drugs to a third-party Maltese national. For his services rendered the accused was going to be paid the sum of Eur. 1000. Fortunately, the accused was arrested by the police on 18th February 2010 whilst the cocaine was still in his possession and hence before such drugs were handed over to third parties.

The cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta. Moreover, the accused did not have any authorization required in terms of law to be in possession of or to deal in dangerous drugs.

By committing the abovementioned acts with criminal intent, Izuchukwu Morgan Onuorah rendered himself guilty of supplying or distributing, or offering to supply or distribute the dangerous drug (cocaine) in Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Izuchukwu Morgan Onuorah of being guilty of having, on the 18th February 2010 and in the preceding year, with criminal intent, supplied or distributed or offered to supply or distribute the dangerous drug cocaine in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 2, 9, 10(1), 12, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

Wherein the Attorney General in the fourth and final count of the bill of indictment premised:

In March 2009, the accused, Izuchukwu Morgan Onuorah, was arrested by the Malta Police Drug Squad on suspicion that he was illegally trafficking in dangerous drugs. During a search in his home, the police seized a substantial amount of money amounting to over Eur. 11,000. The Police tried to establish, among other things, whether the accused was in a position to give a reasonable explanation showing

that the money, property or proceeds that he had were derived from lawful origins and sources. But when asked from where the accused got this money, he simply declared (without providing further documentation) that he got them with him in cash from Nigeria the previous December when he visited his parents. However, from police investigations it clearly transpired that such substantial amount of money was never declared with the Customs upon his arrival in Malta. The police continued with their investigations regarding the accused's activity in drug trafficking and money laundering.

In fact, from further police investigations, even following his second arrest in February 2010 in the circumstances mentioned in the previous Counts of this Bill of Indictment, it was discovered that flat in Zurrieq in which the accused resides with his family was bought for the price of sixty thousand Maltese Liri (LM60,000) shell. This amount was paid in full by the accused. When the accused was requested to provide the police with the origin of the said money, he used to buy the said property he declared that his parents had given him the aforementioned cash and he brought the same with him in cash from Nigeria. Once again, the police inquired whether such hefty amount of cash was declared with the Maltese Customs but no declaration to this effect was found.

Moreover, from police inquiries it also transpired that on various occasions during the period of January 2008 up to March 2010 the accused transferred at different times, various amounts of money to various persons through the Western Union Offices at San Gwann. In aggregate this money amounted to the substantial amount of Eur. 127, 719.42. No reasonable explanation was given by the accused to verify

the lawful origin of this money. Although Izuchukwu Morgan Onuorah was principally employed as a footballer in Malta, his salary could in no way generate the aforementioned amount of money. Hence there was no justification for the possession of such considerable sums of money.

Hence the accused was arrested for having committed the above offences as well as laundering the money in that he intentionally and illegally transferred or converted same in such a manner so as to conceal or disguise the criminal origin thereof when he was fully aware of the nature of the origin of the same. Moreover, from the searches and investigations carried out the accused was discovered to have retained illegally in his possession money originating illegally and even used some of the same in default of justification from his part to the police. On the other hand, he claimed legality thereof when in effect this property was knowingly obtained from criminal activity.

By committing the abovementioned acts with criminal intent, the accused, Izuchukwu Morgan Onuorah, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design rendered himself guilty of carrying out acts of money laundering by:

- i. converting or transferring property knowing or suspecting 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;
- ii. concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - iii. acquiring, possessing or using property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - iv. retaining property without reasonable excuse 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;
 - v. attempting any of the matters or activities defined in the above foregoing paragraphs (i), (ii), (iii) and (iv) within the meaning of Article 41 of the Criminal Code;
 - vi. acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v).

Wherefore, the Attorney General, in his capacity, accuses Izuchukwu Morgan Onuorah of having on the 18th of February 2010 and in the preceding year, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design, being guilty of carrying out acts of money laundering by:

- i. converting or transferring property knowing or suspecting 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;
- ii. concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iii. acquiring, possessing or using property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iv. retaining property without reasonable excuse 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;
- v. attempting any of the matters or activities defined in the above foregoing paragraphs (i), (ii), (iii) and (iv) within the meaning of Article 41 of the Criminal Code;
- vi. acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v);

- vii. and demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of fourteen years imprisonment or to a fine (multa) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three Euro and forty cents (€2,329,373.40) or to both such fine and imprisonment, and to the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds, as is stipulated and laid down in sections 2, 3(1), 3(2A)(a)(i), 3(3) and 3(5)(a)(b)(c) of Chapter 373 of the Laws of Malta, and articles 17, 18, 41(1)(a), 42, 23, 23B and 533 of the Criminal Code, or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen the acts of the proceedings, including those of the compilation of evidence before the Court of Magistrates as a Court of Criminal Inquiry.

Having seen that the accused presented an application in terms of article 449 in the Maltese language on the 3rd May 2022, followed by a faithful translation of the same on the 12th May, 2022, wherein he submitted:

'1. That the accused had raised various preliminary pleas in accordance to Article 438 of Cap. 9 of the Laws of Malta;

2. That the accused makes reference to the lack of accreditation of the laboratory where the substance suspected drugs was analysed and due to this asks for the removal of the analysis and the conclusions of the same chemist's report;

3. That this is being stated due to the fact that the accreditation of a laboratory is a technical process to certify that a laboratory produces credible results which can be relied on as evidence and in default, such evidence should not be admissible and this as shall be elaborated;

4. Therefore, in light of the above and as shall be explained subsequently, the testimony of the chemist as well as his report, together with any reference direct or indirect, ancillary or in any way whatsoever SHOULD BE REMOVED from the acts of the proceedings;

5. That therefore, applicant asks leave of the Court to raise a further plea after the timeframe established at law and this according to Article 449(1) of Cap 9 of the Laws of Malta;

6. That moreover, it is also said that from the acts of the proceedings, it results that the substance which was exhibited was not preserved according to law and therefore that requested by Legal Notice 121/2002 was not observed and such inobservance gives rise to a serious procedural defect in relation to the chain of evidence which is also defective;

7. That Legal Notice 121/2002 of Cap 9 states that by virtue of Article 669(2) of Cap 9, the Registrar of the Criminal Courts with the approval of the Minister of Justice and Local Government nominated the Director of Health to hold on is behalf dangerous drugs;

8. That therefore, some of the documents should be removed from the acts and consequently any relations related with them;

That therefore, in light of the above, applicant humbly and respectfully asks this Honourable Court to AUTHORISE him to give a further preliminary plea, after the time-period established at law in terms of Article 449(1) of Cap 9 of the Laws of Malta, and this under those conditions that this Honourable Court may deem fit and opportune to impose in the circumstances;

Having seen that the Attorney General, during the sitting dated the 26th May, 2022, objected to the applicant's request since the time period listed under Article 449 has elapsed and there is no reason for the Court to sustain these two preliminary pleas.

Furthermore, and without prejudice, the Attorney General stated that there is ample jurisprudence to both preliminary pleas which clarify that the applicant is not correct. The Attorney General makes reference to the court decrees given by the Courts of Magistrates in the names 'The Police vs Robert-Iosif Galambos' dated the 11th April, 2022; 'Il-Pulizija vs Emanuel Calleja' dated 21st March, 2022; the judgment delivered by the Criminal Court in the names 'Ir-Repubblika ta' Malta vs George Degorgio et', with particular reference to preliminary plea 115, delivered on the 30th October, 2020; the judgment delivered by the Court of Criminal Appeal in the names 'Ir-Repubblika ta' Malta vs George Degorgio et' with particular reference to preliminary plea 115, delivered on the 27th September, 2021; the decree given by the Court of Appeal in the names 'Il-Pulizija vs Mario Buhagiar' delivered on the 26th June, 2020 and lastly the judgment delivered by the First Hall Civil Court, Constitutional Jurisdiction in the names 'Christopher Bartolo vs L-Avukat tal-Istat' delivered on the 22nd June, 2021.

Considered:

The accused is requesting this Court to authorise him to bring forward new preliminary pleas after the time-period established at law in terms of Article 449(1) of Chapter 9 of the Laws of Malta. Therefore this Court would like to start off by quoting Article 449:

'449. (1) The following pleas, that is to say:

- (a) plea to the jurisdiction of the court;*
- (b) plea of nullity of or defect in the indictment;*
- (c) plea of extinguishment of action;*
- (d) plea of "autrefois convict" or "autrefois acquit";*
- (e) plea of insanity of the accused at the time of the trial;*
- (f) plea of insanity at the time of the offence or any plea relating to any other point of fact which excludes the imputability of the accused or in consequence of which the trial should not take place at the time, or at any future time; and*
- (g) saving the provisions of article 446(1), any other preliminary plea, may only be raised if notice thereof has been given as provided in article 438(2):*

Provided that the court may authorise such pleas to be raised for a reason which arises after the time within which the note referred to in article 438(2) is to be filed in the registry of the court'

Article 438(2) of the Criminal Code provides that the applicant can bring forward any plea regarding the admissibility of evidence which he intends to raise **not later than fifteen working days from the date of service of the bill of indictment.** However, the Court may authorise other pleas **which arise after** the time indicated in the previous sentence. Reference is here made to the judgment in the names **Ir-Repubblika ta' Malta vs Romario Barbara**,¹ where the Court stated:

¹ Decided on the 26th May, 2021.

'Illi qabel ma l-akkużat iressaq eċċezzjoni ġdida wara it-terminu lilu konċess fl-artikolu 438(2) tal-Kodiċi Kriminali huwa jrid jagħmel talba lil qorti għaldaqstant. Illi allura huwa biss bl-awtorizzazzjoni mogħtija lilu mill-Qorti Kriminali illi l-akkużat jista' iressaq eċċezzjoni li ma tkunx ġiet sollevata qabel. Dan il-proviso jipprovi testwalment hekk;

Iżda l-qorti tista' tawtorizza li jingħataw dawg l-eċċezzjonijiet għal raġuni li tkun inqalgħet wara z-żmien li fih in-nota msemmija fl-artikolu 438(2) għandha tiġi ippreżentata fir-reġistru tal-qorti.'

Therefore, if the Court authorises the accused to bring forward new preliminary pleas, by law **he will then have to proceed and bring forward such pleas by means of a note**. The Court will then deliver a judgment not a decree. At this stage, the Court can't and will not pronounce itself on the merits of the case even though in his application the accused specifically stated the preliminary pleas he intends to bring forward. What the Court needs to decide here is whether the accused could have brought forward these preliminary pleas before and in terms of Article 438(2) of the Criminal Code or not. Subsequently, the Court will hand down a decree.²

It results from the acts of the case that the accused was served with a copy of the bill of indictment on the 25th June, 2015. On the 14th July, 2015 the accused filed a note informing the Court that he will not be filing any pleas in accordance with Article 449 of the Criminal Code. The Council Framework Decision 2009/905/JHA on the Accreditation of Forensic Service Providers carrying out Laboratory Activities has been transposed and implemented in Maltese Law through

² See also the decree in the names **Ir-Repubblika ta' Malta vs Kevin Sammut** delivered by the Criminal Court on the 28th July, 2022.

Subsidiary Legislation 460.31 dated 29th March, 2016. Since the transposition of this law came almost a year after the accused was notified with the bill of indictment, this Court is of the opinion that the latter could not have brought forward this preliminary plea before, that is in terms of Article 438(2) of the Criminal Code. However, not the same could be stated for the preliminary plea stating that Legal Notice 121 of 2002 was not observed. The accused could have filed such preliminary plea on the 14th July, 2015 since the case dates back to 2010 and the legal notice was enacted in 2002.

In view of the above, this Court is authorising the accused to bring forward the preliminary plea related to the lack of accreditation of the laboratory where the alleged drug was analysed and this in terms of Article 449(1). Yet, this Court is rejecting the accused's request to bring forward a preliminary plea related to the non-observance of Legal Notice 121 of 2002.

(ft) Consuelo Scerri Herrera
Judge

True copy

Nadia Ciappara
Deputy Registrar