Court of Criminal Appeal

Hon. Madame Justice Dr. Edwina Grima LL.D.

Appeal Number: 250/2015

The Police

Vs

Atinuke Nne Ugoji

Today 26th May, 2016

The Court,

Having seen the charges brought against the appellant Atinuke Nne Ugoji holder of Nigerian Passport Number A 3668411A, Italian Identity Card Nr. AM 5699091 and Italian Residence Permit nr. ITA74613BA, brougth in the Court of Magistrates (Malta) with having:

With having on the 2nd of October 2009 and in the preceding days in Malta carried 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 property knowingly 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 without reasonable excuse of 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;

v. attempting any of the matters or activities defined in the above foregoing subparagraph (i,ii,iii, 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 subparagraphs (i,ii,iii,iv);

And with having on the 2nd October 2009 at the Malta International Airport failed to declare to the Comptroller of Customs [Director General (Customs)] whilst leaving Malta and carrying a sum of/equivalent to ten thousand Euro or more in cash;

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 12th May, 2015, whereby the Court found him guilty and after having seen section 3 together with Schedule Regulation 3 of Legal Notice 149/2007 and Article 2(i)(ii)(iii) and Article 3(2A)(ii) of Chapter 373 (as in force on the commission of the money laundering offences) condemned her to a fine (multa) of eight thousand five hundred euro (€8500).

Ordered the forfeiture of the seized items including monies in favour of the Government of Malta.

Having seen the appeal application of Atinuke Nne Ugoji, presented in the registry of this Court on the 22nd May, 2015, whereby she requested this Court to reverse the said judgement thereby acquitting applicant form the charges brought against her.

Having seen the acts of the proceedings.

Having seen the uptdated conduct sheet presented by the prosecution as requested by the Court.

Having seen the grounds of appeal as presented by appellant Atinuke Nne Ugoji:

That the first grievance consists in the fact that the Court of Magistrates was, with regard to the first charge, incorrect in its evaluation of the evidence.

Applicant is in principle in agreement with the Court's declaration that it was sufficient for the prosecution to prove possession of the excess money together with the corresponding suspicion on the illegal provenance of the money. Applicant is not in agreement that the prosecution reached the required level of proof.

That evidence of excess money is uncontested. However the corresponding suspicion on the illegal provenance of the money is the bone of contention in this case and was always strongly contested by applicant. The offence of money laundering, particularly due to certain recent amendments, is a draconian one. Applicant humbly submits that where the State introduces draconian laws, our courts of criminal justice should be wary of rigid interpretations rendering such laws instruments of injustice.

That whereas it is correct to state that the suspicion on the illegal provenance of the money suffices for the purposes of the offence of money laundering, such suspicion must be proved by the prosecution beyond reasonable doubt and not on a level of suspicion. One must be careful not to confuse the suspicion of the alleged perpetrator with the level of proof required to prove such suspicion.

That in actual fact the prosecution is wrong in stating that applicant did not provide a reasonable explanation for the possession of the money. Applicant explained a tempo vergine that the money was partly her own and partly belonged to friends who knew about her business trip to Malta and Belgium.

The circumstances regarding her relatively quick departure from Malta were also explained as due to *Omissis*'s unavailablity, due to work commitments, to show her

around Malta. Being a business trip and not a vacation, applicant decided to proceed as planned to Belgium. Applicant also explained how she got acquainted with *Omissis* and denied ever knowing her boyfriend Ferdinand Onovo. This is being stated because the prosecution's case is based entirely on these two persons and their troubles here in Malta. With all due respect the prosecution did not prove — beyond reasonable doubt — that applicant suspected that the money was linked to some illegal activity. Applicant was consistent and explained her stay in Malta with considerable detail as soon as she was arrested.

That the prosecution also referred to evidence that applicant knew persons in Italy who are implicated with drugs as well as evidence of a previous conviction for "drug substances breached". This is, with all due respect, completely wrong. The prosecution produced, by means of letters of request, a number of convoluted documents the content of which was never confirmed.

Defence raised this point in its final submissions but it does not seem to have been considered by the Court in its judgment.

That the fact that *Omissis*'s boyfriend was charged with drug-related offence, without any evidence whatsoever of the fact that applicant knew that this person was charged with drug-related offences and without evidence that this money originated or belonged to this person, cannot be deemed as evidence beyond reasonable doubt that she suspected that the provenance of the money was illegal. The link between the alleged underlying criminal activity and the money found in her possession is absent and all the evidence thrown in for good measure by the prosecution to make good for their evidential shortcomings in the case should have been discarded and applicant acquitted.

That the second grievance consists in the fact that the Court of Magistrates was wrong to dismiss the submissions brought forward by the defence with regard to the second offence contemplated in regulation 3(1)(4) of the Cash Control Regulations (LN 149/2007).

That the Court of Magistrates dismissed defence's arguments without giving much reason. The facts of the case relating to this second charge are not contested. Applicant was about to leave Malta and board a flight to Belgium and was in possession of an undeclared amount in excess of €10,000. Malta and Belgium are both countries within the European Union.

That the Schedule attached to Regulations — which in fact refers specifically to regulation 3 — presupposes entry or departure from the "EU". Reference is made to point 1 of the "Cash Declaration Form". Applicant was not entering and was not leaving the "EU". A person cannot be logically expected to make. A false declaration stating that he is entering or leaving the "EU" when in actual fact he is not. The only sound interpretation that may be given to regulation 3 and the Schedule is that it applies only to situations where persons are entering Malta from a non-EU country or leaving Malta to a non-EU country. Any other interpretation is incorrect, misleading and devoid of the legal certainty required by Article 6 of the European Convention.

That the Honourable Court of Magistrates should also have acquitted applicant on procedural grounds since the Attorney General — albeit unwittingly — forfeited the charge contemplated in regulation 3(1)(4) of the Cash Control Regulations.

That, by means of a note dated 10th December, 2013, the Attorney General decided that applicant should be judged by the Court of Magistrates (Malta) as a court of criminal judicature in terms of article 370(1)(3)(a) of the Criminal Code. Subarticle (1) is clearly not applicable to the case since proceedings were not summary proceedings ab initlo. Subarticle (3)(a) applies to crimes "punishable with imprisonment for a term exceeding six months but not exceeding ten years". According to sub-regulation (4) of regulation (3), the punishment for making a false declaration is that of a fine (multa) and thus does not fall within the parameters required for the applicability of subarticle (3)(a).

That the provision that applies to such a situation is clearly subarticle (5) of article 433 of the Criminal Code. In this case, in view of the Attorney General's counter-order with regard to the money laundering charge rendering the offence one within

the jurisdiction of the Court of Magistrates as a court of criminal judicature, there was the absence of an offence within the jurisdiction of the Criminal Court that warranted the procedure laid out in the said subarticle (5) of article 433. The absence of adopting such procedure should have lead to applicant's acquittal from the second charge.

Considers,

In the prosecution of the crime of money laundering there must result and this beyond reasonable doubt the link between the predicate offence, meaning one of the crimes contemplated in the First and Second Schedule of the Prevention of Money Laundering Act, and the offence of money laundering. However article 2(2a) of Chapter 373 states:

"*A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity*"

This implies that although the underlying criminal activity is not proven, however if the prosecution manages to prove that the source of the laundered money is linked to the alleged criminal activity, then the offence is deemed to have been proven, without the need for evidence to be brought forward regarding a criminal conviction with regard to that underlying criminal activity.

The prevention of Money Laundering Act was enacted on the 23rd September 1994, with subsequent amendments coming into force by means of Act XXXI of 2007 and Act VI of 2010. These amendments had a significant impact on the offence of money laundering to the extent that although prior to 2007, the suspect necessarily had to have full knowledge that the money in his possession was laundered, having as its source an underlying criminal activity, after 2007 it was enough for the prosecution

to prove that the accused had the suspicion of the illegal source of that money, for a guilty verdict to be reached. With the amendments coming into force in 2010, not only was the prosecution relieved of the burden to prove that there had been a conviction with regard to the underlying criminal activity, but it was no longer necessary either to prove which particular criminal activity was at the source of the laundered money, which latter amendment however does not affect the present proceedings, the offence having allegedly been committed in October 2009. These amendments, in the opinion of this Court, had far reaching effects, since the burden of proof needed to obtain a conviction for the offence of money laundering is now less tough on the prosecution, shifting the ball into the accused's court who is in a more difficult position to prove his/her innocence, necessarily having to give plausible justifications with regard to his/her degree of knowledge or suspicion about the underlying criminal activity linked to the offence with which he/she is being charged.

This is being said since the Prosecution need only prove a mere suspicion on the part of accused regarding the source of the money, the degree of suspicion, as opposed to the certainty brought about by proof of full knowledge, being merely subjective and personal. In the past the courts have extended the definition of knowledge beyond actual knowledge and included situations where the facts would be clear to an honest and reasonable person. It would also include turning a blind eye. Suspicion, on the contrary, is essentially a subjective issue and so is less than knowledge. The Court of Appeal in England had this to say on the matter: (*Regina vs Hilda Gondwe Da Silva)*:

"*The word suspect means that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice*."

The Court added that: "using words such as "inkling" or "fleeting thought" in directing a jury is liable to mislead". In particular they considered that a person who temporarily held a suspicion but honestly dismissed it from their mind upon further consideration should not be liable to be convicted.

Unfortunately our law does not give a definition of what amounts to "suspicion" and consequently if the prosecution manages to prove such suspicion of the illegal source of the money, then their job is done. It is incumbent on the accused to bring forward evidence to rebut the alleged "suspicion", as being fanciful or a mere possibility. It is then up to the judge or jury to evaluate both sides of the coin in order to establish whether that suspicion is such as can lead to a conviction.

Section 8 of the UK Criminal Justice Act 1967 provides valid guide-lines in reaching a decision in this regard:

"*A court or jury, in determining whether a person has committed an offence,-*

a. shall not be bound in law ***to infer*** *that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but*

b. shall decide whether ***he did intend or foresee*** *that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.*"

One therefore asks what degree of proof is necessary for the prosecution to bring forward in such cases? This matter was dealt with in many judgments delivered by the European Court of Human Rights, since it was regarded to impinge on the accused's right to silence in criminal proceedings brought against him, even at the early stages of police interrogation before being actually charged and brought to trial. Should therefore the suspect be duly cautioned after having been informed of the offence subject of the investigation that his right to silence in this case could seriously prejudice his defence?

In fact article 3(3) of the Act, when referring to article 22(1C)(b) of Chapter 101 of the Laws of Malta states:

"*In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph* ***the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.***"

In a judgment delivered by the First Hall of the Civil Court in its constitutional jurisdiction in the case Mario u Pierre Camilleri vs Avukat Generali decided on the 15 November 2010 it was stated:

"**Il-Prosekuzzjoni ghandha l-obbligu li tipprova l-ezistenza ta' xi reat - "*any criminal offence*" *ai termini* tat-Tieni Skeda ta' l-Att kontra *Money Laundering*, u dan fuq bazi ta' "prova cirkostanzjali jew prova ohra". Fil-kaz in dizamina dan ir-reat hu precizament dak ta' traffikar ta' droga u kongura. Dan iwassal ghal li l-Prosekuzzjoni ma kellha ebda htiega li ggib sentenza ta' htija fil-konfront tar-rikorrenti in konnessjoni mat-traffikar tad-droga jew kongura ghal dan l-iskop.**

... Interessanti wkoll hu l-fatt li l-Kap 319 fit-Tieni Skeda annessa mieghu li tinkludi d-Dikjarazzjonijiet u r-Rizervi tal-Gvern Malti, illi meta accetta li jirratifika l-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem l-istess Gvern impona riserva fis-sens illi:

"*The Government of Malta declares that it interprets paragraph 2 of Article 6 of the Convention in the sense that it does not preclude any particular law from imposing upon any person charged under such law the burden of proving particular facts*."

L-istess kwalifika tinsab fil-paragrafu 5 ta' l-artikolu 39 tal-Kostituzzjoni li jghid hekk:

"(5) Kull min jigi akkuzat b'reat kriminali ghandu jigi meqjus li jkun innocenti sakemm jigi pruvat jew ikun wiegeb li huwa hati:

Izda ebda haga li hemm fi jew maghmula skond l-awtorità ta' xi ligi ma titqies li tkun inkonsistenti ma' jew bi ksur ta' dan is-subartikolu safejn dik il-ligi timponi fuq xi persuna akkuzata kif intqal qabel il-piz tal-prova ta' fatti partikolari."

L-artikolu 6.2 jezigi li l-Prosekuzzjoni ggorr l-oneru li tkun hi li finalment trid tikkonvinci lill-Qorti jekk sehhx reat u jekk il-persuna akkuzata kenitx hatja ta' tali reat. Zgur li dan ma jwassalx ghall-fatt li l-imputat ikun qieghed jigi meqjus hati *ab initio*. Dejjem jibqa' l-obbligu tal-prosekuzzjoni li tipprova fatti konnessi mar-reat ta' *money laundering*. Il-Prosekuzzjoni trid dejjem tipprova ghas-sodisfazzjon tal-qorti aspetti ohra bhal ma huma kondotta refrattarja ta' l-imputat

jew li kien konness f'cirku ta' traffikar tad-droga. Jinkombi dejjem fuq il-Prosekuzzjoni li tipprova li s-sitwazzjoni finanzjarja tar-rikorrenti ma kienetx kompatibbli ma' l-ammont ta' flejjes li kellhom fil-pussess taghhhom. Huwa biss wara li jsir l-ezami mill-gudikant dwar ir-ragjonevolezza o meno tal-provenjenza tal-flus li in segwitu tkun tista' topera din il-prezunzjoni. Hawnhekk ta' min jqis fattur ferm importanti. Hija Qorti li suppost dejjem ghandha l-indipendenza ta' l-agir taghha li trid tiddecidi. Mhux qed nitkellmu dwar xi hadd mill-Ezekuttiv. Ghalhekk huwa necessarju biex tinstab htija li jkun hemm iz-zewg fatturi. Ghandu jkun hemm agir suspettuz segwit bi tranzazzjonijiet ta' flus f'ammonti li setghu jitqiesu eccessivi. U dan irid jigi konstatat mill-Qorti.

Skond Jacobs [The European Convention on Human Rights] il-presunzjoni tal-innocenza u t-tqeghid tal-oneru tal-prova fuq il-prosekuzzjoni m'humiex l-istess haga. Ukoll gieli l-oneru tal-prova jaqa' fuq l-akkuzat:

"*What the principle of presumption of innocence requires here is just that the Court should not be predisposed to find the accused guilty and second that it should at all times give the accused the benefit of the doubt 'in dubio pro reo'.***"**

....Din il-Qorti kif presjeduta trid pero` taghmilha cara li l-qlib ta' l-oneru tal-prova hija l-eccezzjoni u mhux ir-regola. Dan hu limitat ghall-kazijiet biss fejn huwa logiku li sta ghall-imputat li jaghmel il-provi hu minhabba li l-prosekuzzjoni ma jista' qatt ikollha dawk il-provi."

The Court therefore concluded that it is incumbent on the accused to give a reasonable explanation as to the source of the money and concluded "tqis il-presunzjoni hija *rebuttable and is not in itself unreasonable,* u … illi x-*shifting* tal-*burden of proof* huwa wiehed legali u jhalli l-*fair balance* rikjest ghall-iskopijiet ta' guri.[1]"

This legal exposition of the offence of money laundering has been carried out by the Court in view of the grievances put forward by appellant in her appeal application against the judgment of the First Court. The defence claims that from the acts of the

[1] Vide also Andrew Ellul Sulivan vs Commissioner of Police et – 08/07/2004 First Court (Constitutional jurisdiction)

case it clearly results that the Prosecution has failed to prove a link between the monies found in the possession of appellant and the crime of drug trafficking. Although appellant concedes that a substantial amount of money to the tune of €30000 was found in her possession, of which €20000 were not declared to the authorities upon her leaving Malta, and were concealed under her garments, however the First Court erroneously went on to conclude that she had a suspicion that such monies were laundered and that these represented the proceeds of a drug trafficking operation. Thus he contends that although the *actus reus* had been proven, being the underdeclared monies upon exit from Malta she had no suspicion that such monies were the proceeds of drug trafficking and that the money was allegedly derived from criminal activity. In fact appellant contends that not only had she no suspicion but she was certain that the money in her possession was derived from legitimate sources being her own personal savings and money passed on to her by her friends prior to coming to Malta for the purpose of acquiring wares from Malta and Brussels for re-sale in Nigeria. She further contends that the Prosecution has also failed to prove beyond reasonable doubt that the monies in her possession were in actual fact tainted monies and this in view of the fact that the only evidence brought forward by the Prosecution was her acquaintance with *Omissis* and her boyfriend Ferdinand Onovo who were allegedly well known to the police in connection with drug dealing operations and were arrested and arraigned in Court in connection with the same.

The First Court in its judgment concluded that there was sufficient evidence to establish a link between the excess monies found in the possession of accused and the consequent suspicion by her of the illegal provenance of the same as monies deriving from drug trafficking. This Court cannot but agree with this conclusion. It emerges from the acts that appellant was found in the possession of the sum of €30000, which she brought over to Malta for a day visit. She states that the purpose of her stay was linked to her business of selling wares bought from European countries in Nigeria. This was her second visit to Malta having met *Omissis* during her first stay who in fact encouraged her to extend her business to Malta.

However this affirmation gives rise to a serious of queries with regard to what appellant had stated both to the police during interrogation as well as during her testimony. The Court finds it strange that appellant came to Malta on a business trip arriving during the late afternoon and buying an airline ticket the next day at 10:00a.m. for a trip to Brussels which was to leave Malta on the same day. This second visit to Malta occurred only two weeks after her meeting with *Omissis* in Malta. Although appellant alleges that she is involved in this trade of buying wares from Europe and selling it in Nigeria, however she does not produce an ounce of evidence to substantiate her claims. No documents were produced regarding purchases or sales, no photos showing the products acquired by her. She states that some of the money in her possession belongs to her friends in the same line of business but does not mention who these friends are and how much of the money belongs to them. Appellant does not produce any documentation to attest to these facts, and she produces no documentation to attest to the source of her own money, like bank statements or other form of documentation. She alleges that she is separated from her husband who passes on a maintenance allowance but again produces no documents as evidence of her declarations. She states that she is gainfully employed in Italy but again brings forward no evidence in this regard. Appellant also states that the first time she met Ferdinand Onovo was at the travel agency and that he happened to be there at the exact time she was at the agency buying her ticket since he told her that his girlfriend *Omissis* had sent him there. This story also holds no water since she alleges that she had never met Onovo and that although she had been directed by her friend to this particular agency in Mosta yet she had not told her that she was sending her boyfriend to meet her.

Consequently having established that appellant was found in possession of a certain amount of money, having concluded that appellant does not justify the source of that money not even on a balance of probabilities by her evidence, having established that appellant had direct links during her short stays in Malta both with *Omissis* and her boyfriend Ferdinand Onovo, having been proven that these two

persons are facing drug trafficking and money laundering charges in Malta this Court cannot but conclude that the explanation provided by appellant that she had no knowledge or suspicion that the money in her possession was linked to an underlying criminal activity does not suffice at law to erase the evidence brought forward by the Prosecution that the money in question of €30000 was linked to drug trafficking and that appellant necessarily knew or suspected the illegal activity taking place.

Furthermore it is not customary for this Court as court of appellate jurisdiction to substitute the discretion excercised by the First Court with regard to the evaluation carried out of the evidence tendered before it unless there results a gross miscarriage of justice. In examining the acts of this case, this Court states that although appellant did explain that the monies found in her possession was linked to her line of business, however she failed to present the necessary evidence to substantiate her claims. No receipts were provided, no accounting records relating to her business and no other documentation attesting to the facts as purported by her, like business cards or sales samples of the products forming part of these negotiations, no proof regarding the source of the money brought forward such as to make all the justifications put forward by appellant appear rather shady. Thus this Court, concurs with the conclusions reached by the First Court, that although it was incumbent on appellant to bring forward evidence to justify her actions, she has failed to provide sufficient proof to quell the doubts raised by the unconfutable evidence brought forward by the Prosecution regarding the involvement in drug trafficking operations by Ferdinad Onovo and *Omissis* with whom appellant had direct links whilst in Malta, and the money found in her possession, carefully packed and concealed on her under her garments. The Court therefore finds that appellant's grievances directed towards the evaluation made by the First Court of the evidence found in the acts to be unfounded.

Appellant puts forward another grievance directed towards the second offence brought against her relating to the crime contemplated in Regulation 3(1)(4) of the Cash Control Regulations of 2007 as subsequently amended. Appellant opines that

the Regulations apply to all monies entering or exiting the European Union thus implying that no restrictions exist with regard to the movement of money between countries within the European Union. Now Regulation 3 of Subsidiary Legislation 233.07 reads:

"Any person entering or leaving Malta, or transiting through Malta and carrying a sum equivalent to €10,000 or more in cash shall be obliged to declare such sum to the Comptroller."

This regulation therefore makes no distinction between an EU member state and a non-EU state specifying only entrance and exit from Malta or transitting through Malta.

The scope of the Regulations is attested to in the section entitled "General Information" attached to the application found in the Schedule to the Act which clearly states that the obligation to declare cash on entering or leaving the European Union is part of the European Union strategy to prevent money laundering. However it continues that the monies exceeding €10000 have to be declared not only when entering or leaving the European Union according to EU Regulations but also when entering or leaving Malta according to Legal Notice 149/2007.

It is uncontested that appellant was leaving Malta with the sum of €30000 which money was not declared by her in breach of the above-mentioned regulations. When Malta signed the Treaty of the European Union, articles 56 and 60 of which speaks about the "*the freedom of capital movements*", it was stated in article 56:

Article 56 EC (ex Article 73b)

"1. Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.

2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited."

Article 58 however provides that:

"1. The provisions of Article 56 shall be without prejudice to the right of Member States:

(a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;

(b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

2. The provisions of this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with this Treaty.

3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 56."

This means that every Member State has the right to legislate freely with the aim of ensuring national security, thus empowering Member States to pass laws which however do not restrict the free movement of capital within the European Union. Now legal notice 149 of 2007 does not have at its scope the restriction of the free movement of capital exceeding the €10000 mark or of imposing a tax on the excess, but that the said person declare such excess to the authorities and this with the view of preventing money laundering.

In fact articles 7 and 8 of the mother law governing the subsidiary legislation being Chapter 233 state:

"The Minister may by regulations require any person to declare to the Comptroller of Customs the import or export by such person of banknotes and coins denominated in euro and, or in foreign currencies, and, or foreign exchange, and, or monetary instruments, and, or precious metals, and, or precious stones into or from Malta in such amounts as may be specified in such regulations and to disclose such other information as may be prescribed in such regulations regarding such import or export.

Without prejudice to the previous provisions of this Act, the Minister may after consultation with the Central Bank and the National Statistics Office by regulations require any person within such time and in such manner as may be prescribed to furnish the Minister such information, return or other detail relating to external transactions as may be required to collect, compile and disseminate statistical information on external transactions."

This conveys the scope of the legislator in regulating not only monies entering and exiting the European Union but also all monies entering and exiting Malta both to countries outside the European Union as well as within the European Union itself. Consequently even this grievance is hereby being rejected.

Finally appellant laments that she should have been acquitted of this last offence based on Regulation 3 of the Cash Control Regulations on procedural grounds. This is due to the fact that the counter order issued by the Attorney General with regard to the crime of Money laundering for the case to be tried by the inferior court did not need to contain an order for the case to be tried summarily with regard to the offence under the Cash Control Regulations since once the consent of the Attorney General is issued for the prosecution of the offence then the charge falls within the original competence of the Court of Magistrates. Although it is true that the order in terms of article 370(1)(3)(a) of the Criminal Code was not necessary in the circumstances, however such order does not bring about the nullity of the proceedings with regards to this charge. What would have invalidated the proceedings would have been the lack of consent from the part of the Attorney General for the initial prosecution of

the offence in terms of subarticle (6) of article 3 of Subsidiary Legislation 233.07. The order in terms of article 370 although unnecessary and uncalled for does not lead to the acquittal of the accused who by expressing also her consent and this in the sitting of the 8th January 2014, acquiesced to the validity of the proceedings, having also been given ample time to prepare her defence. Also the said order clearly indicates that the Court of Magistrates is to decide the case in accordance with section 433(5) of the Criminal Code meaning that the offence falls within the competente of the Court of Magistrates in its original jurisdiction. Consequently this grievance is also being rejected.

Consequently, this Court rejects all the grievances filed by appellant and hereby confirms the decision of the First Court.

(ft) Edwina Grima

Judge

True Copy

Franklin Calleja

Deputy Registrar