



## **Criminal Court of Appeal**

Hon. Judge Edwina Grima, LL.D

Appeal No: 297/2024

**The Police**

**Vs**

**Abuchi John**

Today, the 19<sup>th</sup> day of April 2024

The Court,

Having seen the charges brought against appellant Abuchi John, holder of Police No. 20HH-004, wherein he was accused of having on the 17<sup>th</sup> of January 2024 and/or in the days, weeks or months before this date in these islands:

1. Had in his possession any passport which he knows to be forged, altered or tampered with and received a passport transferred to him by any other person, (Cap 61, Sec 3(a)(b) of the Laws of Malta);
2. Used or had in his possession a Passport, which he knew to be forged, altered or tampered with, (Cap 61, Sec 5 of the Laws of Malta);
3. Also charge him with having on same date, time and circumstances in relation to any information to be given under or for purposes of this act, made or causes to be made any false return, false statement or false representation (Chapter 217, Sec 32 (1c));

4. Also charge him with having on same date, time and circumstances without lawful authority used or had in his possession any document required for the purposes of this Act which is forged (Chap 217, Sec 32(1)(f) of the Laws of Malta)

5. Also charge him with having on same date, time and circumstances had knowingly make use of any other forged document, (Chap 9 Sec 189 of the Laws of Malta)

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 9th of February 2024 wherein after having seen Article 3 and Article 5 of Chapter 61 of the Laws of Malta, Article 189 of Chapter 9 of the Laws of Malta, and Article 32(1) (c) and (f) of Chapter 217 of the Laws of Malta the Court found the accused guilty as charged and thus condemned him to a term of effective imprisonment of six (6) months.

Having seen the appeal application filed by appellant Abuchi John of the 27th of February 2024 wherein he requested this Court to vary the appealed judgment by confirming the finding of guilt and instead to mete out a more appropriate punishment by applying article 28A of the Criminal Code to the term of imprisonment inflicted upon him.

Having seen another appeal application filed by appellant in the Maltese language on the 27th of February 2024 wherein he requested “*riforma tas-sentenza appellata bil-konferma ta’ dik il-parti fejn instabet htija fl-appellant u l-varjazzjoni tal-piena inflitta, u dan billi tkun imposta piena aktar ekwa u gusta għall-fatti speci tal-kaz.*”

Having seen the reply of the Attorney General also filed in the Maltese language.

Having seen the minutes of the hearing of the 22nd of March 2024 wherein appellant withdrew his appeal application filed in the English language and found at folios. 76 to 78 of the Court records.

Having seen all the records of the case.

Having seen the updated conduct sheet of appellant, exhibited by the Prosecution as requested by this Court.

Having heard submissions by the parties.

**Considers:**

Appellant's sole grievance is not directed towards the finding of guilt by the First Court to all the charges brought against him, but addresses the nature and *quantum* of the punishment inflicted upon him since he is of the opinion that the six-month prison term was too severe in the circumstances wherein he registered a guilty plea at an early stage of the proceedings, the appealed judgment not taking into consideration his clean criminal record, his cooperation with the police during the investigations and the fact that he has a young family which relies totally upon him for its subsistence. Thus, in these circumstances a suspended prison term would have been more just and equitable in his regard, since the term of imprisonment for six months was the minimum applicable at law for the offences of which he was found guilty.

Now, jurisprudence has always guided our courts in its appellate jurisdiction that as a rule the punishment meted out by the court at first instance should not be varied by this court unless it appears to be wrong in principle or manifestly unjust.

**"...The principle *nulla poena sine lege* does not mean or imply that a Court of Criminal Justice has to go into any particular detail as to the nature and quantum of the punishment meted out, or, where the Court has a wide margin of discretion with various degrees and latitudes of punishment, that it has to spell out in mathematical or other form, the logical process leading to the quantum of punishment. ....**

**As is stated in Blackstone's Criminal Practice 2004 (supra):**

**"The phrase 'wrong in principle or manifestly excessive' has traditionally been accepted as encapsulating the Court of Appeal's general approach. It conveys the idea that the Court of Appeal will not interfere merely because the Crown Court sentence is above that which their lordships as individuals would have imposed. The appellant must be able to show that the way he was dealt with was outside the broad range of penalties or other dispositions**

**appropriate to the case. .... In more recent cases too numerous to mention, the Court of Appeal has used (either additionally or alternatively to 'wrong in principle') words to the effect that the sentence was 'excessive' or 'manifestly excessive'. This does not, however, cast any doubt on Channell J's dictum that a sentence will not be reduced merely because it was on the severe side – an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question, as opposed to being merely more than the Court of Appeal itself would have passed."**

**This is also the position that has been consistently taken by this Court, both in its superior as well as in its inferior jurisdiction.<sup>1</sup>"**

It results from the acts that appellant was charged and found guilty, upon his own admission, of the crime contemplated in article 5 of the Chapter 61 of the Laws of Malta which carries the penalty of imprisonment for a period of six months to two years, also guilty of the offence set out in article 189 of the Criminal Code which is punished with the penalty of imprisonment from seven months to one year, and finally with the crime found in article 32(1)(f) of Chapter 217 of the Laws of Malta which carries the punishment of a fine of no more than eleven thousand, six hundred and forty-six euros and eighty-seven cents (€11,646.87) or imprisonment for a term not exceeding two years or such fine and imprisonment together, unless a greater penalty is established for that offence by another law.

It is uncontested that the six-month prison term inflicted on appellant by the First Court is within the parameters of the law and is in its minimum, although the First Court omitted to indicate in its judgment the application of article 17(h) of the Criminal Code in its calculations as to the *quantum* of the penalty imposed, with the Court passing on to inflict the punishment of imprisonment for six months being the punishment relating to the most serious offence of which appellant was found guilty.

Appellant, however, is appealing for clemency and asking this Court to inflict a punishment alternative to that of an effective prison term by applying in his favour

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<sup>1</sup> The Republic of Malta vs v. Kandemir Meryem Nilgum and Kucuk Melek tal-25<sup>th</sup> of August 2005

article 28A of the Criminal Code, thus condemning him to a suspended period of imprisonment.

There is no doubt that illegal immigration has become one of the scourges of modern society with criminal organizations making profit out of the desperate situations that people fleeing persecution or other forms of hardship find themselves in, seeking to flee from their countries in order to look for a brighter future in Europe. In his statement released to the Police, appellant states that he was escaping from a civil war in his country, Nigeria, where he was being persecuted by the Government in his fight for freedom. Appellant was stopped by the Police at the airport when trying to board a flight to Naples, in Italy, with his wife and young child using false passports. In his testimony before the First Court appellant states that he resorted to a solution which was contrary to law after spending three years in Malta seeking asylum for him and his family without success, and so was denied a decent living, since it was difficult for him and his wife to work legally, and to access social benefits and hospital care when the need arose. He was even threatened by his landlord that he would be evicted from the apartment where he was residing with his family since he had no financial means to pay the rent due. For these reasons he tried to leave Malta to seek asylum in another European country.

Now, unfortunately when these cases are brought before the Courts they are always treated in the same manner, more often than not, considered as 'an open and shut case', with the accused person being brought to court under arrest, having very few defenses available to him leading to an early admission of guilty with the Courts, without delving into the specifics of each and every case brought before it, passing on to deliver judgment finding guilt and imposing an effective custodial sentence. Although the reasoning behind the first judgments delivered by our courts in relation to these cases was that of inflicting an effective prison term, as stated, such judgments' aim being that of serving as a deterrent to other individuals who try to flee Malta using false passports, however till today these have not in effect served to instill fear in situations where a person finds he is desperate to leave Malta since he has not found the possibility of a decent living in our country. It is the opinion of this Court,

however, that the remedy is not found in the nature and quality of sentencing against these people who enter the country illegally. It is the State's duty to see that the international conventions that give protection to people seeking political asylum be respected, and that then even in those cases where people end up incarcerated after conviction, they are given all the necessary help to apply for political asylum and that their application is investigated and processed with the greatest alacrity. However, the Courts must also necessarily take into account, when it comes to handing out the appropriate punishment for each case presented before them, that as much as possible there is no repetition of these type of offences that are constantly increasing in number with a danger to security in the country, and that criminal organizations that make a profit from this illegal activity are not allowed to continue with their profiteering without any restraint and control.

Now, in the present case, although appellant alleges in his testimony that he resorted to obtaining false documents to be able to leave Malta, since his requests for asylum have not been entertained thus making his life in Malta unsustainable, however, he does not bring forward any proof to attest to his claims. This Court even asked appellant to provide it with a lease agreement where he intends to reside in Malta during his request for bail, the Court having also its doubts as to the authenticity of the document provided. Although the Court ordered appellant to provide this document in its original form and to file a declaration by the landlord that he is willing to accommodate him and his family in the residence indicated in the lease agreement, however, to date no such document was filed. In the circumstances, although the Court sympathizes with the predicament appellant and his family have found themselves in, and the hardships they have had to endure, however, it cannot consider any request for clemency when it is evident that appellant has failed to cooperate with the Court when he was offered an opportunity for release from custody.

Since the punishment meted out by the First Court is the minimum which could have been inflicted with regard to the offences with which appellant has been found guilty, and since appellant does not bring forward any form of proof which could have led

this Court to vary the nature of the penalty imposed and inflict an alternative punishment to an effective prison term, his grievance is being denied.

Consequently, for all the above-mentioned reasons the grievance brought forward by appellant is being denied and the judgment of the First Court confirmed in its entirety.

**Edwina Grima.**

**Judge**