Criminal Court of Appeal

The Hon. Judge Edwina Grima

Appeal Number 337/2023

Appeal Number 341/2023

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The Republic of Malta

vs

Sunday Ikechukwu Eboh

Omissis

Alexandra Pace

Omissis 1

Tony Ogbonna Anuforo

Today, the 29th day of January 2025

The Court,

Having seen the charges brought against appellants Sunday Ikechukwu Eboh, holder of Maltese identity card bearing number 387207(L), Tony Ogbonna Anuforo, holder of Maltese identity card bearing number 147663(A), and Respondent Alexandra Pace holder of Maltese identity card bearing number 48664(M), wherein they were accused

before the Court of Magistrates (Malta) with having in these Islands, on the eleventh (11) of August 2020, and in the days and months following this date by several acts done by them, even at different times, and in breach of the same provisions of the Law, and made by a single resolution:

1. Committed acts of money laundering by having:

i. Converted or transferred 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. Concealed or disguised the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property was derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

iii. Acquired, possessed or used 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. Retained 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. Attempted any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;

vi. Acted 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).

2. And also on the same date, time, place and circumstances, in Malta, knowingly received or purchased any property which was stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or knowingly took part, in any manner whatsoever, in the sale or disposal of the same.

Alexandra Pace is also charged with having on these Islands, on the eighth (8) of January 2021 or in the following days, in order to gain advantage or benefit for herself or others, in a document, knowingly made a false declaration or statement or gave false information in violation of article 188(2) of Chapter 9 of the Laws of Malta.

Alexandra Pace is also charged with the offence of recidivism in terms of articles 49 and 50 of the Laws of Malta by means of a judgment of the Court which judgment became final and cannot be changed or revoked.

And charging ***Omissis*** with breaching his bail conditions which were imposed on him by a decree dated 11 August 2017 and revised by a decree dated 28 May 2018 issued by Magistrate Dr Natasha Galea Sciberras in the case 'The Police vs Eguavoen Collins'.

This Court was requested that in case of guilt, in addition to inflicting the penalties laid down in the Law and in addition to the said punishment, it also order the confiscation of all the exhibited goods, of the corpus delicti and the instruments which served or were intended to be used to commit the crime, and of all that has been obtained by the crime, as well as order the confiscation in favour of the Government of the proceeds offence or of such property the value of which corresponds to the value of such proceeds as well as of all the property of the accused in terms of Chapter 373 as well as articles 23 and 23B of the Criminal Code.

This Court was also requested to seize from third parties in general all moneys and movable or immovable property which are due to or pertain to the accused or are their property, as well as prohibiting them from transferring or otherwise disposing of any movable or immovable property in terms of article 5 of Chapter 373 even as applicable under article 23A of Chapter 9.

The Court was also requested to order in case of guilt, the accused to pay costs related to the appointment of experts in the proceedings as contemplated in article 533 of Chapter 9 of the Laws of Malta.

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 25th of September 2023, wherein the same Court:

(i) With respect to Sunday Ikechukwu EBOH, the Court, after having seen Articles 17, 18, 31 and 334(b)(c) of the Criminal Code, Chapter 9 of the Laws of Malta and Article 3 of The Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, found the defendant guilty of the charges brought against him and sentenced him to three (3) years imprisonment and a fine, *multa*, of twenty thousand Euros (€20,000).

(ii) With respect to Tony Ogbonna ANUFORO, the Court, after having seen articles 17, 31, 41(1)(a) and 334(b)(c) of the Criminal Code, Chapter 9 of the Laws of Malta and Article 3 of The Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, found the defendant guilty of the charges brought against him where, with respect to the offence contemplated by article 334 of the Code, the finding of guilt is limited to the attempt of such an offence, and sentenced him to twenty eight (28) months imprisonment.

Furthermore, having seen article 15A of the Criminal Code, Chapter 9 of the Laws of Malta, ordered the defendant Sunday Ikechukwu EBOH to make complete restitution to the victim in the amount of fifteen thousand and four hundred Euro (€15,400), which amount is to be wholly paid within six months from the date of the judgment. This order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

Having applied the provisions of Article 15A of the Criminal Code, the Court chose not to apply the provisions of article 23B of the Criminal Code, Chapter 9 of the Laws of Malta, preferring to compensate the victim rather than forfeit, in favour of the Government of Malta, an amount equivalent to the monies unlawfully received by the defendant Sunday Ikechukwu EBOH.

Furthermore, in terms of Article 533 of the Criminal Code, Chapter 9 of the Laws of Malta, ordered the defendants Sunday Ikechukwu EBOH and Tony Ogbonna ANUFORO to the payment of €2,572.57c each as expert fees.

Moreover, by virtue of Article 3(5) of the Prevention of Money Laundering Act, Chapter 373 Laws of Malta, and Article 22(3A)(b)(d)(7) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, rendered applicable to these proceedings by Article 3(7) of the Prevention of Money Laundering Act, Chapter 373 Laws of Malta, the Court ordered the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of Sunday Ikechukwu EBOH and Tony Ogbonna ANUFORO even if the immovable property has since the offenders were charged passed into the hands of third parties, and even if the said monies, movable property or immovable property are situated in any place outside Malta.

Having seen Article 5(2)(a)(d) of the Immigration Act, Chapter 217 of the Laws of Malta, the Court strongly solicited the Principal Immigration Officer to exercise his powers under the said Act once the defendants have served the punishments being imposed upon them.

Moreover, the Court ordered that this judgement be notified to the Director of Citizenship and the Commissioner for Refugees to assess whether a review of defendants' legal status in Malta is still warranted.

And,

(iii) With respect to Alexandra Pace, the Court, having seen articles 49 and 188(2) of the Criminal Code, found the defendant Pace guilty of the third offence, namely that of making a false declaration, and also found her guilty of being a recidivist solely under article 49 of the Criminal Code, and acquitted her of all other offences and condemned her to a fine, multa, of two hundred Euros (€200).

The Court ordered that once this judgement is *res judicata* the Asset Recovery Bureau proceeds to take the necessary measures contemplated in Article 36(7) of the Proceeds of Crime Act, Chapter 621 of the Laws of Malta with respect to Alexandra Pace.

Moreover, in terms of article 382A of the Criminal Code, Chapter 9 of the Laws of Malta, the Court issued a restraining order against the defendants Sunday Ikechukwu EBOH, Tony Ogbonna ANUFORO and Alexandra Pace in favour of Mary Anne Darmanin and Vanessa Darmanin for a period of three (3) years.

The Court ordered the Commissioner of Police to pursue investigations in the bid of identifying and bringing to justice Daniel Toshiduru *inter alia* for the crimes of money laundering, fraud and receiving property obtained by fraudulent means.

Finally, the Court ordered that the names of the victim and the victim's daughter are not to be disclosed by the media to avoid secondary victimization of the former.

Having seen the appeal application of the appellant Sunday Ikechukwu Eboh, filed on the 10th of October 2023, wherein he requested this Court to quash and revoke the appealed judgment and to declare him not guilty of any of the charges proferred against him and thus acquit him of both charges and consequently acquit him of any guilt and of any penalty and of any order imposed upon him and removes any order and recommendation to the authorities in his regard and this because his finding of guilt by the Court of First Instance is not a safe and sound one; and alternatively, in case that his guilt is confirmed by this Court, after ordering a social inquiry report, to impose upon him a different penalty than that decided by the Court of First Instance, including the order regarding the payment of Court expenses, and which penalty will be more in consonance with all circumstances of this case and with his personal circumstances.

Having seen the appeal application of appellant Tony Ogbonna Anuforo, filed on the 11th of October 2023, wherein he requested this Court to quash the appealed judgment, and in order not to deprive him from his right to appeal, sends back the acts to the Court of Magistrates to be dispensed with according to law, or alternatively, to reverse and vary the part of the judgment where he was found guilty of the first and second charge and instead acquit him from all the charges and guilt or, alternatively to reverse and vary the part of the judgment where he was condemned to 28 months imprisonment and instead impose a more just and equitable punishment in the circumstances of the case.

Having seen the appeal application filed by the Attorney General, on the 11th of October 2023, wherein he requested this Court to reform the appealed judgment by confirming it insofar as it found the defendants Sunday Ikechukwu Eboh and Tony Ogbonna guilty of the charges brought against them and also confirms the punishment inflicted upon them, confirming it insofar as it ordered Sunday Ikechukwu Eboh to make complete restitution to the victim, confirming it insofar as it ordered the defendants Sunday Ikechukwu Eboh and Tony Ogbonna to the payment of Eur 2,572.57c as expert fees, confirming it insofar as it ordered the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of Sunday Ikechukwu Eboh and Tony Ogbonna, confirming it insofar as it ordered the judgment to be notified to the Director of Citizenship and the Commissioner of Refugees, confirming it insofar as it found the defendant Alexandra Pace guilty of making a false declaration and insofar as it found her guilty of being a recidivist in terms of article 49 of the Criminal Code, and **revoking** it insofar as it acquitted the defendant Alexandra Pace from the offence of committing acts of money laundering and instead finds the defendant Alexandra Pace also guilty of the offence of committing acts of money laundering and awards punishment according to law.

Having seen the replies filed by the Attorney General on the 25th January 2024 to the appeal applications of accused Sunday Ikechukwu Eboh and Tony Ogbonna Anuforo.

Having seen all the records of the case.

Having seen the updated conduct sheet of appellants Sunday Ikechukwu Eboh and Tony Ogbonna Anuforo and that of Respondent Alexandra Pace, exhibited by the Prosecution as requested by this Court.

Having heard submissions by the parties.

Considers:

That, both the accused Sunday Ikechukwu Eboh and Tony Ogbonna Anuforo felt aggrieved by the judgment delivered by the First Court wherein they were found

guilty of the charges brought against them, and filed an appeal from the said judgment. The Attorney General also filed an appeal from the judgment of the Court of Magistrates and this insofar as the said Court passed on to acquit accused Alexandra Pace from the offence of money laundering. The Court will consider each appeal separately, since the grievances put forward are particular in each and every application.

The Appeal of Sunday Ikechukwu Eboh

In his first grievance, appellant Sunday Eboh laments that, on the strength of the body of evidence produced in this case, including naturally his statement released to the Police and his statement on oath, the First Court wrongly convicted him on the facts of the case, and states that the said Court based several of its considerations on imagination rather than on the evidence brought before it. He goes on to list a series of discrepancies in the case at hand to support his allegation that he was found unjustly guilty both of the crime of money laundering as well as of the crime of receiving stolen property.

That, given that this grievance relates to the merits of the case at hand, this Court reiterates that as has been oft decided, this Court may revoke a judgment delivered by the First Court when it deems that the same judgment is unsafe and unsatisfactory, and this in the light of the evidence found in the acts. The Court, thus, has re-examined the acts of the proceedings and this so as to be able to determine whether the assessment of the evidence made by the First Court was valid[1] at law in the light of the facts of the case.

[1] See amongst others, the Criminal Appeals (Superior Jurisdiction): Ir-Repubblika ta' Malta v. Rida Salem Suleiman Shoaib, 15 ta' Jannar 2009; Ir-Repubblika ta' Malta v. Paul Hili, 19 ta' Gunju 2008; Ir-Repubblika ta' Malta v. Etienne Carter, 14 ta' Dicembru 2004 Ir-Repubblika ta' Malta v. Domenic Briffa, 16 ta' Ottubru 2003; Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina 24 ta' April 2003, Ir-Repubblika ta' Malta v. Lawrence Asciak sive Axiak 23 ta' Jannar 2003, Ir-Repubblika ta' Malta v. Mustafa Ali Larbed, 5 ta' Lulju 2002; Ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino, 7 ta' Marzu 2000, Ir-Repubblika ta' Malta v. Ivan Gatt, 1 ta' Dicembru 1994; u Ir-Repubblika ta' Malta v. George Azzopardi, 14 ta' Frar 1989; and the Criminal Appeals (Inferior Jurisdiction): Il-Pulizija v. Andrew George Stone, 12 ta' Mejju 2004, Il-Pulizija v. Anthony Bartolo, 6 ta' Mejju 2004; Il-Pulizija v. Maurice Saliba, 30 ta' April 2004; Il-Pulizija v. Saviour Cutajar, 30 ta' Marzu 2004; Il-Pulizija v. Seifeddine Mohamed Marshan et, 21 ta' Ottubru 1996; Il-Pulizija v. Raymond Psaila et, 12 ta' Mejju 1994; Il-Pulizija v. Simon Paris, 15 ta' Lulju 1996; Il-Pulizija v. Carmel sive Chalmer Pace, 31 ta' Mejju 1991; Il-Pulizija v. Anthony Zammit, 31 ta' Mejju 1991.

In his grievances appellant contests the findings of fact made by the First Court in that he maintains that he had no contact with the said 'Tony', after October 2020, whom he indicates as the recipient of the monies deposited in his bank accounts, and yet he also states that he started withdrawing the funds from ATMs piecemeal and passed the money on to him, retaining only the sum of 1000 euro. He further states that contrary to what the First Court states in its decision the Bank did not enquire into the source of funds when he tried to withdraw the sum deposited in his account but only at a later stage in January 2021, when Tony had departed from Malta five months earlier. Moreover, he states that he never denied the fact that Shamson Alamu was a contact of his, however there is no proof that he was involved with Alamu in connection with the events occurring in this case. He also confirms that Johnson Anene was a friend of his and also that Anene had used his mobile phone to contact Ovi Tabi, however, in his opinion, these contacts do not prove his involvement in this romance fraud. He challenges the First Court's conclusions that he did not submit any information to the police with regards to 'Tony' and the 'African shop' he mentions where he had met this 'Tony', stating that he did in fact indicate the location of this shop in his testimony, stating that there were two shops, one in Bugibba close to the square and one in Qawra close to the church. He criticizes the conclusions reached by the First Court that his assertion that Tony did not have a mobile phone is not credible when there is no evidence in the acts to suggest whether this was the case or otherwise, and that it is normal for Nigerians living in Malta to congregate at the African shops and share information between themselves in this manner, in the same way as it was normal for them to contact each other making use of telephones at a business centre through the use of the internet, since this would be cheaper. He also criticizes the fact that the First Court drew comparisons between his case and that of Alexandra Pace, an exercise which at law could not be carried out, Pace being a co-accused. Also the fact that it was Tony who made contact with him so that he could hand over the monies to him, does not necessarily signify that appellant Eboh knew what was going on and that this was part of a scheme to defraud Darmanin. With regards to the

conclusions reached by the First Court pertaining to his lifestyle, he insists that he has only one alimony payment per month to pay, the rent is shared with a co-tenant, and the two holidays mentioned in Hong Kong and Greece, where his brothers reside, occurred way before the events pertaining to this case, whilst no mention is made by the Court of the fact that he had two jobs until June 2020, and that from the sale of a flat he co-owned with his wife, which sale took place in 2017, he received the sum of €20,000.

With regards to the offence contemplated in article 334 of the Criminal Code, he mantains that there is no evidence in the acts as to who was the mastermind or masterminds behind this fraudulent scheme. The person indicated by Collins Eguavoen in his testimony as being the mastermind, a certain Daniel Toshiduru, was never traced. Collins goes on to indicate Ovi Tabi and Alexandra Pace shedding a light on the *modus operandi* of this criminal organistaion. However, none of the persons arraigned in this case were charged with the crime of fraud but only with that of receiving stolen property. Morevover, none of the persons directly involved, be it the victim herself, Collins, or Ovi Tabi, indicated appellant as being involved in this ruse, and no links with these people was ever established. Searches carried out in appellant's car and residence yielded no evidence against him, and appellant always cooperated with the police. He admitted that he had accepted Tony's request for the sum of €7000 to be deposited in his account in order to help his girlfriend and that he did not know about the second amount of €8000 but also encashed this and passed it on to Tony who gave him a €1000 for helping him out, a fact no-one would have found out about had he not mentioned it himself. 'Tony' disappeared from his life in October 2020, so when he was arrested by the police in January 2021, he was not in a position to supply a lot of information about this 'Tony' except by giving them a description of this person and all the information he had. Appellant argues that had the police intervened earlier in September 2020 when they got to know about this fraudulent scheme, they would have been able to trace this Tony from the information appellant had regarding this person. After all, both Alexandra Pace and Shamson Alamu went through the same experience as him, and one was aqcuitted, whilst the other one was

not even arraigned in court. For him to have been fund guilty of the offence under article 334 of the Criminal Code, the Prosecution had to necessarily prove that appellant accepted the monies knowing that they derived from a fraudulent scheme, a link that in his opinion was not proven in this case, apart from the fact that it has not been proven, according to him when the material element of the crime under article 334 actually took place, since if appellant got to know of the illegitimacy of the funds after these were passed on to him, then the offence does not result since he could not have become an accessory after the fact. Appellant affirms that upon the receipt of the funds he was under the impression that he was only helping Tony receive money from his girlfriend and thus even the formal element is missing.

Considers,

That, from the evidence compiled before the First Court, it transpires that this case was brought to light when the Executive Police received a report from Mary Darmanin claiming that she had been defrauded of the sum of €58,700. She reported that this occurred after she had started chatting with a male person on *Facebook* who identified himself as a certain Smith Jones, an American soldier deployed in Afghanistan. They later exchanged mobile numbers and continued to chat via *WhatsApp*. One day Smith Jones told Darmanin that he was going to send her a package with a gift which contained several dollars in cash and a certificate for a house worth a million dollars. However, he told her that he needed money for it to be released by the customs department, and that the courier delivering the package was waiting for these funds so that he could return to his country. The initial sum requested was €3500, with subsequent requests being made on a regular basis, and with this Smith providing Darmanin with various bank accounts held with Maltese Banks into which she was to deposit the required amounts. He also sent her photos of custom certificates to make her believe that he was going to send her the sum of €45,000 and a million dollars worth of certificates.

On the 11th August 2020, Smith Jones sent her the bank account number ending in 1271 which was in the name of a certain Johnson Anene, into which account Darmanin

deposited the sum of €3,500. On the 13th of August 2020, she deposited a further €5,200 in an HSBC bank account of a certain Eguavoen Collins whilst on the 17th of August 2020, she deposited two amounts of €7,600 and €7,000 in the same account belonging to Collins. On the 21st of August 2020, she further deposited €8,400 and €7,000 in a BOV bank account pertaining to appellant Sunday Ikechukwu Eboh. On the 28th August 2020, she proceeded to deposited another two amounts of €7,000 and €3,000 in another bank account pertaining to Shamson Alamu. These last transactions were reversed by the bank when Alamu informed them that they did not pertain to him. After this, Smith Jones told Darmanin to deposit this amount in the accounts pertaining to appellant Eboh, but in actual fact this never transpired. She texted Smith Jones telling him that she was tired of all these requests, but he kept persisting that she deposit more money. In fact on the 31st of August 2020, she deposited €4,000 in two BOV bank accounts, one in the name of Alexandra Pace and the other in the name of Marvis Iyeke.

Alexandra Pace was arrested by the Police and after being spoken to and providing her version of the facts, Shamson Alamu was also arrested. Alamu's version of facts then led to the arrest of co-accused Tony Anuforo. Subsequently appellant Sunday Eboh was also arrested and released a statement to the Police on the 7th of February 2021, affirming that he was employed as a taxi-driver. When questioned about two deposits made in his bank account, one of €7,000 and the other of €8,400, Eboh stated that in January 2021 he received a call from a person with an Indian accent wherein he was informed that the bank was going to block his account since he had been sent an email which he did not reply to. He then went to the bank to verify what was happening where he was informed that his account had been debited with the amount of €15,370. He further stated that in January 2020 he met a guy named Tony in an African shop who asked him to find him a job in construction, with Eboh passing on his phone number to Tony. In August 2020 the same Tony told him that his girlfriend needed to send him the sum of €7000 and thus asked him whether he could use his bank account for this purpose, since he had no bank account in Malta. Once deposited by the girlfriend, Eboh was asked by tony to withdraw the money and pass them on

to him. Eboh seeing nothing untoward, accepted. After recieving a call from Tony emanating from a business centre informing him that the money had been deposited, he proceeded to the bank to withdraw the funds, but was not permitted to do so by the bank in such a large amount of money. So he proceeded to withdraw them in smaller amounts through several ATM transactions. Appellant says that he then noticed that another deposit had been made into his account so he withdrew it also and gave it to Tony, although he was angry with the fact that Tony had not informed him about this second amount too. As repayment for this service, Tony gave him €1000.

Now, it is uncontested that Eboh was not in a position to substantiate his version of events with any form of evidence. He states that he could not shed light on the identity of this Tony, as well as to the details on how they met and the agreement they made. In his statement when asked to provide Tony's contact number, he conveniently says that he lost his mobile phone the day before the interrogation took place. Furthermore, Eboh stated that he pays alimony to his wife in the amount of €150, rent in the amount of €600 and car installments of €150 when he receives a wage of around €950-€1000 per month, and thus could not provide an explanation as to his disbursements from the said bank account after the monies had been deposited, combined with the fact that his life style did not tally with his declared income, as pointed out by the First Court in its detailed judgment. Finally, he stated that he also had some left over money from the sale of his house and exhibits in his testimony an unautheticated copy of a contract which is not registered according to law (Document SE), and provides no further evidence as to the receipt of this sum of money by him.

That, from the testimony of Deborah Camilleri, representing Bank of Valletta, it resulted that when Eboh went to the Bank to enquire why his account had been blocked, he stated that the funds in question did not belong to him but that he had received the same on behalf of a third party called Tony, who had gone back to Italy. Camilleri testified that she had asked Eboh to sign a decleration to this effect and to

provide documentation to substantiate his version of facts, however appellant did not comply.

Appellant chose to testify before the First Court where once more, he was unable to provide specific details regarding Tony and the agreement they had made together. He testified that he met Tony in "*an African shop*" and the same Tony asked him for help regarding an employment issue. He went on to state that in August 2020, Tony called him and asked him for a favour. He told Eboh that his girlfriend wanted to send him some money but he needed a bank account for this to happen. Tony explained that he was an Italian immigrant and so he had no bank account in Malta. Appellant said he complied with this request and the funds were deposited. Since he was not authorised by the bank to withdraw the money in a lump sum, appellant started withdrawing the funds in smaller amount from various ATMs, and handed the same over to Tony. Eboh also testified that Tony had initially informed him that only the amount of €7000 was to be deposited, but later found out that a further €8,400 were deposited with Tony informing him later after the sum had already found its way into his account.

Now, it is this Court's opinion that the version of facts tendered by Eboh is neither consistent nor credible. The First Court in its judgment gave detailed reasons as to the inconsistencies in Eboh's version of events, which this Court concurs with. First and foremost, this Court considers that Eboh's ignorance as to the identity of the "Tony" he refers to in his testimony and statement is rather questionable. He states that he did not know this Tony or that he knew little about him, yet he felt comfortable enough giving him his personal bank account details, allowing him to deposit large sums of money in it without questioning the source of the same, and then withdrawing the same money to allegedly hand it over to this "Tony", without providing any further details regarding who this person is. He also insists that Tony was the one who initiated contact with him every time, yet as soon as the funds were received, Eboh managed to hand them over to Tony seamlessly, even though he knew very little about him and even though he stated that the only means of communication between

them was through their casual encounters at the African shop, which shop he also fails to identify. When asked for Tony's contact number upon interrogation, appellant conveniently declares that he lost his phone and therefore could not provide the Police with this contact. However, he filed no police report about such loss and stated that he had intended to go later that day after training, even though this phone was essential for his job as a taxi driver, as teh First Court rightly points out.

That, moreover, Eboh is also not credible with regards to the minor details he provides in his version of events. First he starts off by stating that 'Tony' had just told him that he needed a bank account for his girlfriend to deposit the money in as he was an Italian immigrant and he had no account here in Malta. Later on, however, he states that Tony told him that his girlfriend has lost her bank card. Then, at one time, Eboh also mentioned that Tony told him that he needed the money because his father had died.

Above all, the transactions carried out by appellant Eboh from his bank account as soon as the sum of €15,400 was deposited in his account are proof of his knowledge as to the illegitimate source of the same, since they do not tally with his version of facts when he states that the money was passed on to Tony after withdrawal. As rightly pointed out by the First Court in its detailed judgment, the balance in Eboh's account prior to the deposit was that of €641.04. After 11 ATM withdrawals in a span of 10 days amounting to €10,330, a cash withdrawal of €2000, three revolut transfers to an an unknown account amounting in total to €2,100 and purchaes from several shops in Sliema amounting to €403.20, his bank account ended once again with a balance of €412.78. Eboh provides no explanation as to the manner in which these monies were disposed of and the €1000 compensation does not feature in the said transactions nor is it reflected in the resulting balance. And although with reference to the Revolut transfers, he states that these payments were made to his brother who lives in Greece, however he never substantiated the same claim. Finally the Court finds it very difficult to believe that Eboh was compensated with the sum of €1000 for simply doing a favour to a person who was merely an aquaintance, with Eboh accepting a further deposit of

€10,000, which deposit finally never materialised with the victim failing to pass on the money as requested, finally realising that she was being scammed out of her savings.

Furthermore, the lifestyle that appellant Sunday Eboh was living and the expenses he was incurring, especially after the deposits were affected in his account, does not tally with his lawful income which he alleges to have been receiving at the time, and fails to provide a reasonable explanation as to the source of these funds, other than the funds that he recived in his bank account from the victim. Moreover, from the evidence produced it also transpires that Eboh was in contact with a certain Tabi Ovi who was also complicit in this romance fraud, and that there was constant communication between the parties involved in order to ensure that the monies had been received, thus also cementing Eboh's role in this plot. And although this piece of evidence on its own does not necessarily lead to appellant's involvment in this fraudulent scheme, however, when viewed together with all the other evidence, it is indicative of his involvment in this crimianl organistaion.

Now, although appellant laments that with regards to the offence of money laundering the Court did not specify in its judgment which of the material acts indicated in article 2 of Chapter 373 of the Laws of Malta was committed by appellant, whether in its attempted from, or as a principal or accomplice, as well as failing to indicate with regard to the formal element of the offence whether appellant had knowledge or just suspicion of the illicit source of the funds, and this beyond a reasonable doubt, however, from the detailed considerations made throughout the appealed judgement it is evident that appellant was found guilty of having full knowledge of the source of the illicit funds, and also that he was part of this criminal organisation which had at its basis a fraudulent scheme. The Court finds no reason to depart from the said considerations as it is evident that the *modus operandi* of this organistaion involved a number of persons who would provide various bank accounts where the funds could be deposited thus making it difficut to trace the individuals involved in the scheme, and benefitting from the same.

Consequently even appellant's grievance with regard to the offence of recieving stolen property is unfounded, since once the First Court reached a decision that appellant had full knoweldge of the illicit source of the funds, and was complict in the scheme, the elements of the offence under article 334 of the Criminal Code have been satisfied with appellant knowingly accepting funds which he knew derived from the crime of fraud.

Therefore, from the vast amount of evidence produced in this case, this Court is morally convinced of appellant's guilt with respect to both the offences of money laundering as well as that of receiving stolen property. Thus, it is of the opinion that the judgment delivered by the First Court was a safe and satisfactory one and there is no reason for the same to be overturned. In the light of the same, the first grievance of the appellant is being rejected.

Considers:

That, the last grievance brought forward by appellant relates to the punishment inflicted upon him by the First Court, which he considers to be very harsh, and this in the light of various factors such as his clean criminal record and the fact that he has lived and worked in Malta for the past twenty years. Moreover, he laments that all those charged and found guilty upon their own admission, although at a late stage in the proceedings, and although recidivists and with a tainted police record were spared an effective jail term.

That, it has been retained through constant gurisprudence that this Court is merely a Court of revision and as a rule, it should not change the punishment meted out by the First Court unless it results that that same punishment was in some way or another "wrong in principle" or "manifestly excessive".[2]

[2] The Republic of Malta vs v. Kandemir Meryem Nilgum and Kucuk Melek, deċiża nhar il-25 ta' Awissu 2005.

That, appellant was condemned by the First Court to a term of imprisonment of three years and a fine of €20,000. The First Court in considering the nature of the punishment to be awarded took into consideration the circumstances surrounding this case where a vulnerable elderly woman was duped into parting with her savings, with the perpetrators taking advantage of her emotions and generosity. Apart from his clean criminal record appellant laments that there is a dispartity in punishment with that of his co-accused who admitted to the crimes and were spared an effective jail term. Now, although a disparity in the sentence handed down to persons being co-accused even in separate proceedings of identical offences, in identical circumstances, is, in this Court's opinion, contra-indicated, however the courts upon a request on appeal on the basis of disparity must analyse whether the punishment was too severe when compared to the other offender, and must ensure that in granting a reduction it would not create a situation where there would result two lenient punishments, instead of one. Above all, the Court must ask whether the sentence was "the right sentence" in the circumstances and above-all whether it was within the parameters laid out by law.

Appellant was found guilty of two offences being that of money laundering and the offence enivisaged in article 334 of the Criminal Code which by itself carries a punishment between 2 and 9 years imprisonment, in terms of article 310(a), the proceeds of the crime exceeding €5000, with the offence of money laundering carrying the punishment of a fine (*multa*) not exceeding two million and five hundred thousand euro (€2,500,000), or to imprisonment for a period not exceeding eighteen years, or to both such fine and imprisonment. The First Court opted to impose the punishment of both a fine and that of an effective prison term of three years, and also applied the dispositions of article 17 and 18 of the Criminal Code.

Now, although appellant was charged with these offences in their continuous form, the Attorney General however, failed to indicate this dispostion of the law in its note of remittal such that the First Court could not pass on to increase the punishment in view of the continuous nature of the offence. Moreover, by ordering appellant to refund the injured party the sum of €15,400 within a period of six months, and at the

same time condemning him to an effective prison term and additionally to a fine of £20,000 could only mean that appellant would definitely not be in a position to repay the money taken fraudulently to the victim. Additionally, a forfeiture of all his property movable and immovable could only mean that such a restitution order would fail in its purpose, that of seeing the victim recover the money lost. Thus, an alternative punishment to that of imprisonment would make such restitution possible, with the application of article 28A of the Criminal Code, and article 17(h), making it possible for the Court to contemplate a punishment alternative to an effective jail term such that appellant can make reparation for the harm caused.

Morevover, with regards to the application of article 3(5) of Chapter 373 and article 22(3A)(b)(d)(7) of Chapter 101 of the Laws of Malta, rendered applicable to money laundering proceedings by article 3(7) of Chapter 373, that in line with the considerations made by this Court, as presided, in the judgment *The Republic of Malta vs Oliver Chamberline Chibuike* decided on the 13th of September 2024, it will pass on to apply the more favourable punishment in view of the amendments to the law brought into force by means of Act VI of 2024 with regards to confiscation orders, where upon conviction, the court does not order the forfeiture in favour of the State of all the assets pertaining to the guilty person in an indiscriminate fashion, with the person found guilty then having to initiate proceedings before the civil courts in order to recuperate those assets which have a legitimate source, but will proceed to confiscate only those assets which, from the acts, have been determined to constitute the proceeds of the crime with which accused is found guilty in terms of the new article 38 of Chapter 621 of the Laws of Malta. Having thus premised, although the new legal regime lays out a procedure wherein the Court after a declaration of guilt is to carry out an assessment with a view to establishing the *quantum* of the proceeds of the crime, the Court deems that such an exercise would be futile in this case since the First Court has already established in detail in its judgment the said *quantum,* from which part of the judgment no appeal has been lodged by the parties to the proceedings. Consequently, the Court will pass on to order the forfeiture in favour of the Government of Malta, solely, of the sum of €15,400 or of property having a value equivalent to the said sum.

Consequently, for the above-mentioned reasons, the Court is acceding only to the grievance brought forward by appellant with regards to the punishment, and is rejecting the remaining grievances.

The appeal of Tony Ogbonna Anuforo

That, in his first grievance appellant Tony Ogbonna Anuforo raises the plea of nullity of the appealed judgment, and this because "*the part of the judgment concerning the attempted offence of money laundering is ambiguous and does not conform to the requisites of article 382 of the Criminal Code*". Appellant goes on to state that it is a requisite *ad validatem* of every judgment that the Court indicates with precision the relevant articles of law which the accused is being found guilty of.

That, Article 382 of the Criminal Code stipulates that:

> "**The court, in delivering judgment against the accused, shall state the facts of which he has been found guilty, shall award punishment and shall quote the article of this Code or of any other law creating the offence**".

It is evident, therefore, that the *ratio legis* behind this article of law is that in delivering judgment the Court must clearly mention the facts of which the accused person is being found guilty, the punishment awarded and the articles of law creating the offence in question such that the person being found guilty of an offence would understand clearly the decision reached.

The appealed judgment states the following with respect to appellant Tony Ogbonna Anuforo:-

> **With respect to Tony Ogbonna ANUFORO, the Court, after having seen articles 17, 31, 41(1)(a) and 334(b)(c) of the Criminal Code, Chapter 9 of the Laws of Malta and Article 3 of The Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, finds the defendant guilty of the charges brought against him where, with respect to the offence contemplated by article 334 of the Code, the finding of guilt is limited to the attempt of such an offence, and sentenced him to twenty eight (28) months imprisonment.**

Now, appellant was charged with two offences being the offence of money-laundering and that of receiving stolen property, the First Court finding guilt for both offences. However, from the articles of law cited it is clear that there was a finding of guilt solely for the offence of receiving stolen property in its attempted form and thus it correctly indicates Article 41 of the Criminal Code together with the offence enshrined in Article 334 of the same. On the other hand, it also found appellant guilty under Article 3 of Chapter 373 of the Laws of Malta, being the offence of money laundering. The definition of the material acts of the offence of money-laundering, in terms of Article 2(1)(v) of Chapter 373 of the Laws of Malta, contemplates a finding of guilt as a completed offence in those instances where the guilty party attempts any of the matters or activities defined in sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code, thus signifying an attempted form as indicated in this article of law. Therefore, if appellant was found guilty by the Court of the attempted form of any of the acts mentioned in article 2(1)(i) to (iv), there would not be the need to expressly mention Article 41 of the Criminal Code given that this amounts to the completed form of the offence, and an act of money laundering in itself and is thus liable to the same punishment as indicated in article 3. Finally, the Court points out that the offence of money laundering is contemplated in article 3 of Chapter 373, the acts constituting the offence being outlined in article 2, with the duty of the Court, on pain of nullity, being to indicate the offence of which the person charged is being found guilty of, rather than the individual act or acts executed by him leading up to the commission of the offence. Thus, it was sufficient for the First Court to indicate in its judgment the dispositions of article 3 of Chapter 373 of the Laws of Malta which article of law speaks of the offence of money laundering, with article 2 speaking only of questions pertaining to interpretation, and does not lay out the offence itself.

Therefore, the Court does not envisage any nullity in the judgment of the First Court and thus this first grievance brought forward by appellant Tony Ogbonna Anuforo is being rejected.

Considers:

That, in his second grievance, appellant laments that the First Court was mistaken in its application of the law and the interpretation of the facts when it proceeded to find him guilty of the charges brought against him. He states that apart from the evidence not being unequivocal and reaching the threshold required at law for the prosecution to prove its case, the Court overlooked serious deficiencies in the police investigation, and his evidence together with his line of defence which point towards his innocence. Moreover, he contends that the Court reached conclusions that are not based on facts as reflected in the evidence brought before it.

That the Court has already outlined above the facts giving rise to the police investigation into this so-called romance fraud. Appellant was implicated in this scam by Shamson Alamu both in Alamu's statement released to the Police as well as in his testimony before the First Court. He states that in August 2020, appellant Tony Ogbonna called him and asked him for his bank account number because he needed to pay school fees, which he provided. At one point Ogbonna informed him that the sum of €3000 had been added to his bank account. When Alamu checked with his bank he realised that apart from this sum another €7,000 had been deposited too. Alamu states that Ogbonna had not informed him about this subsequent deposit, and thus he informed his bank that he had received these funds in error. Following this the sum of €10,000 was refunded back to its original sender, who was the victim Maryanne Darmanin. This was confirmed by both the victim as well as by Mark Galea, representative of Bank of Valletta. Alamu went on to testify that appellant Ogbonna tried to persuade him not to refund the money, and called him persistently during the day when the sums were deposited, but he went ahead just the same and contacted the bank to reverse the transfer.

On the other hand, appellant Ogbonna gives a contrasting version of facts. In his statement, he dismissed Sam Alamu's claims and said that Sam had lied because he was acting in revenge after he had an argument with appellant's wife. A confrontation between the two was held during Ogbonna's interrogation, where appellant kept

denying what Alamu was saying, whilst Alamu stuck to his version of events. Appellant insisted that he had only called Alamu to get the number of an agent so he could find a house for his cousin, and not for the purpose indicated by Alamu. He also denied knowing Maryanne Darmanin.

Appellant's insistence that Alamu had in fact lied as a revenge for having had an argument with his wife, however, was disputed in the testimony of appellant's girlfriend/wife Christiana Badmus. Badmus in fact testified that at the time when the money in question had been deposited in Alamu's account, there had been no issue between them and that those issues started some months later, which issues were subsequently also resolved prior to Ogbonna's arrest. Therefore, there was no reason for Alamu to invent such a story to exact revenge on appellant as the latter keeps alleging. Moreover, this story of revenge invented by appellant does not hold water also in the light of the fact that Alamu returned the money deposited in his account a few moments after it was received. Had Alamu been the mastermind behind this whole scam, as appellant is alleging, there would have been no reason for the said Alamu to reverse the deposit of the funds amounting to nothing short of €10,000. It is evident that Alamu was suspicious of these transactions and did not want to involve himself in any illict dealings. Furthermore, even the call logs exhibited before the First Court corroborate Alamu's version of events and that appellant had in fact called him nine times in a span of under four hours. Alamu confirmed in his testimony that appellant had called him initially to inform him that the funds had been transferred to his bank account and subsequently to beg him not to go to the bank to reverse the transaction. Appellant on the other hand stated that those calls were made because he needed a contact number for an estate agent to find a house for his cousin who was coming over to Malta – a version of facts that is not backed up by a shred of evidence. Appellant even fails to provide the name of this cousin conveniently coming up with the excuse that she had died in the intervening period. This Court also notes that as soon as the amount of €10,000 had been reversed back, the calls from appellant to Alamu stopped and the unidentified Smith-Jones informed the victim Maryanne Darmanin to ask the bank to reverse her transactions. This goes to corroborate further

the version of facts given by Alamu. The Court also notes that there was no plausible reason for appellant to ask Shamson Alamu to have the money deposited in his bank account, since from the report filed by the Asset Recovery Bureau it is evident that Ogbonna held two bank accounts in Malta one with HSBC and one with Lombard Bank plc. Therefore, this Court concurs with the appraisal of all the evidence made by the First Court in its judgment and is thus morally convinced of the credibility of the witness Shamson Alamu, as opposed to that of appellant.

Appellant then laments that even were the Court to believe the version given by Shamson Alamu, there is still no proof that appellant knew or suspected that the funds that were being deposited in Alamu's bank account had an illicit source. Now, contrary to what appellant contends in his appeal application, it is evident that the calls which appellant made to Alamu coincide perfectly with the time when the victim Darmanin was given instructions to deposit the money into Alamu's account. Moreover, it is also proven that the exact amount which the victim was asked to deposit found its way into Alamu's account. Thus, it is clear that appellant Ogbonna was clearly involved in this *mis-en-scene*, since the timeline of events occurring in relation with the victim happened in unison with the timeline recounted by Alamu. Not only, but when Alamu confronted appellant with the fact that more money had been deposited in his account than that agreed upon, appellant was not surprised by this fact, although he had initially told Alamu that he only needed the sum of €3000 in connection with school fees. In fact, appellant Ogbonna kept insisting with Alamu that he retain all the money and was trying to discourage him from contacting the bank to reverse the deposits. The Court thus deems the appealed judgment to be legally and reasonably sound and finds no reason to overturn the guilty verdict in respect of appellant Tony Ogbonna Anuforo. Therefore, even this second grievance is being rejected.

Now, apart from these grievances indicated in his appeal application appellant Ogbonna, raises a further grievance regarding the interpretation of the law in relation to the offence of receiving stolen property contemplated in article 334 of the Criminal

Code. He maintains that the attempted form of the offence cannot be contemplated at law, and also that there can never result the figure of an accomplice to the offence in article 334 since the perpetrator acts independently of the person committing the offence of theft or fraud, and cannot be the same person who handles the property deriving from the said crimes. To begin with there is no evidence in the case that appellant Ogbonna was the person in direct contact with the victim inducing her to part with her money, and thus that he was the Smith Jones, or the courier Daniel, who was communicating with her. Thus, appellant is not being charged with complicity in the offence of fraud but in that of receiving the illicit funds knowing fully well the source thereof. Also, article 334 of the Criminal Code considers that the material element of the offence consists in the agent knowingly receiving or purchasing any property which has been stolen, misapplied or obtained by means of any offence, or knowingly taking part, in any manner whatsoever, in the sale or disposal of the same. Now, it is evident from the acts that the monies disbursed by the victim were refunded to her, and thus the material act at the basis of the offence never took place since although appellant tried to convince Shamson Alamu to allow the deposit of the funds into his account, this never materialised once Alamu asked that the transaction be reversed immediately, such that the monies were never misapplied or obtained by the perpetrator, resulting in an attempted form of the offence, the consummation of which was frustrated by an act which was independent of the will of the offender. Consequently, even these grievances are unfounded.

Considers:

That, in his third and last grievance appellant argues that the punishment inflicted upon him by the First Court was excessive, especially in the light of the fact that he has a clean criminal record and is not a menace to society. He furthermore highlights the fact that several other persons charged in the same case were given a more lenient punishment than him and thus this justifies a mitigation in the punishment inflicted upon him.

Appellant Tony Ogbonna Anuforo was condemned to a punishment of 28 months imprisonment after having been found guilty of the offence of money laundering, and the attempted form of the offence contemplated in article 334 of the Criminal Code, the latter offence carrying a punishment between 2 and 9 years imprisonment, which must necessarily be decreased by one or two degrees, and with the offence of money laundering carrying the punishment of a fine (*multa*) not exceeding two million and five hundred thousand euro (€2,500,000), or to imprisonment for a period not exceeding eighteen years, or to both such fine and imprisonment.

Additionally, the First Court ordered the forfeiture of all appellant's property movable and immovable. It is undoubted that appellant is a first time offender and although he was involved in this fraudulent scheme however, there is no evidnce in the acts which indicates that he made some sort of gain from the commission of the same. This does not detract from the serious nature of the offence where a vulnerable elderly lady was forced to dispense with her savings under deceit. However, there is no reason which would justify a disparity in punishment when his accomplices benefitted from an alternative form of punishment to that of imprisonment. Thus in the cricumstances the Court will pass on to vary the punishment inflicted and apply the dispositions of article 28A of the Criminal Code, and article 17(h), with a period of imprisonment of two years suspended for a period of four years.

Morevover, with regards to the application 3(5) of Chapter 373 and article 22(3A)(b)(d)(7) of Chapter 101 of the Laws of Malta rendered applicable to money laundering proceedings by article 3(7) of chapter 373, the Court, as already outlined above, in line with the considerations made by this Court, as presided, in the judgment *The Republic of Malta vs Oliver Chamberline Chibuike* decided on the 13th of September 2024, will pass on to apply the more favourable punishment in view of the amendments to the law brought into force by means of Act VI of 2024, where upon conviction, the court does not order the forfeiture in favour of the State of all the assets pertaining to the guilty person in an indiscriminate fashion, with the person found guilty then having to initiate proceedings before the civil courts in order to recuperate those assets which have a legitimate source, but will proceed to confiscate only those

assets which, from the acts, have been determined to constitute the proceeds of the crime with which accused is found guilty in terms of the new article 38 of Chapter 621 of the Laws of Malta. Having thus premised, although the new legal regime lays out a procedure wherein the Court after a declaration of guilt is to carry out an assessment with a view to establishing the *quantum* of the proceeds of the crime, the Court deems that such an exercise would be futile in this case since the First Court has already established in detail in its judgment the said *quantum,* from which part of the judgment no appeal has been lodged by the parties to the proceedings. The Court refers to the defintion of property subject to confiscation as including the proceeds of crime, facilitating property, and all property involved in a money laundering offence, and when more than one person is convicted of an offence, each convicted person shall be jointly and severally liable for the total proceeds of crime obtained by any of them. Consequently, the Court will pass on to order the forfeiture in favour of the Government of Malta, solely, of the sum of €10,000 or of property having a value equivalent to the said sum, appellant facilitating the commission of the offence and being an accomplice to the offence of money laundering having as its sole victim Maryanne Darmanin, being jointly and severally liable with his accomplices.

Consequently, for the above-mentioned reasons, the Court is acceding only to the grievance brought forward by appellant Tony Ogbonna Anuforo with regards to the punishment, and is rejecting the remaining grievances.

The appeal of the Attorney General with regards to accused Alexandra Pace.

That, the Attorney General also felt aggrieved by the judgment of the First Court wherein it passed on to acquit Alexandra Pace of the charge of committing acts of money-laundering since he is of the opinion that this decision was unsafe and unsatisfactory and that it was not based on law and the facts of the case. He contends that from the evidence brought forward, it was proven beyond a reasonable doubt that Pace had the required knowledge or suspicion that the money she recieved amounted to proceeds of crime.

Respondent Alexandra Pace featured in the investigations which were carried out by the Police into this alleged so-called romance fraud when on the 31st of August 2020, the alleged victim Darmanin, upon a request by Smith Jones, was instructed to deposit the sum of €4,000 in two BOV bank accounts, one in the name of Alexandra Pace and the other in the name of Marvis Iyeke. Pace was arrested, and interrogated by the Police wherein she stated that two years prior to this date of August 2020 she started chatting with someone called William *via Facebook* who had asked her for her bank account number. At first she did not want to give him such details but she did not enquire why this person was asking her for these details. Eventually, she gave in and passed on the details that he requested. Furthermore, she stated that all the chats between them had been deleted and that she had no details of this unidentified William. She reiterated once more that she did not ask William why he wanted her bank account details but then stated that she wanted to buy a house and William, allegedly being involved in the construction sector, offered her his help. She states:

> ***"Għax fettili hekk. Jiena kont bdejt nitkellem miegħu li nixtieq nixtri dar. Hu kien jgħidli li ser jiġi Malta biex jixtri xi dar peress li hawn il-business tal-bini. U kien qalli li għandu bzonn in-numru tal-bank biex ikun jista jitfa l-flus. Imma mal-ewwel kien qalli li dawn il-flus ma kinux għalija. Li kien qalli li forsi kien jipprova jgħini meta jiġi hawn Malta***".

She went on to state that on the 31st of August 2020 she received a call on her mobile phone from the number 77010308 from a person who told her that he was a friend of William, later identified as Tabi Ovi, and that she was to receive the sum of €4,000 in her bank account. She was then asked to withdraw the said amount, and she complied. Subsequently she passed on the cash to a third party in Fgura but did not keep any of the money for herself. She insisted that she made no gain from this transaction but then, during a subsequent statement, confessed to taking €100 from the sum of €4000. Finally, Tabi Ovi kept affirming Pace's innocence in the matter:-

> "**I made her believe that the money is coming from... William**" .... "**No, she did not know, she is not part of it**" ... "**she is innocent, she does not know anything about the fraud**".

That, when Pace took the witness stand she confirmed all the facts given in her statement and insisted that she had only given William her bank account details after she had asked him if the source of the money he was going to send her was legitimate. When she received the money she vaguely suspected that something was off but stated that she could do nothing about the same given that the money had already passed into her account.

Considers:

That, the First Court acquitted Pace of the offence of money laundering given that the formal element was missing. The Attorney General argues that from the above facts the formal element required has in fact been proven since even a mere suspicion regarding the illicit source of the funds received would result in a conviction.

Now, the first Court examined in detail all the legal elements required for the offence of money laundering to subsist and makes ample reference to doctrine and jurisprudence on the matter, which this Court adheres to. Suffice it to say that the amendments coming into force by means of Act XXXI of 2007 and Act VI of 2010 to Chapter 373 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. 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 innocence, necessarily having to give plausible justifications with regard to his degree of knowledge or suspicion about the underlying criminal activity linked to the offence with which he 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.

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. There is thus no requirement for the suspicion to be clear or firmly grounded on specific facts, but there must be a degree of satisfaction, not necessarily amounting to belief but at least extending beyond mere speculation, that an event has occurred or not. Whether a person holds a suspicion or not is a subjective test. If a person thinks a transaction is suspicious, they are not required to know the exact nature of the criminal offence or that particular funds are definitely those arising from the crime. It is not necessary to have evidence that money laundering is taking place to have suspicion, however finding a transaction as being unusual would not suffice to establish the formal element in the person receiving the funds deriving from the predicate offence, and this would only place such a person under the obligation to make further enquiries as to the source of the funds, failure to do so could then amount to evidence as to the suspicious knowledge. Thus, if the Prosecution can show that the person was aware of facts which, when considered objectively, would provide reasonable grounds for suspicion, that would be enough to establish guilt even if the person did not have actual knowledge.

Now in the present case, it is true that Respondent Alexandra Pace *ex admissis* states that she was suspicious of what was being asked of her however, when this suspicion arose the monies had already be transferred to her account. Moreover, she affirms that she had "a vague feeling of unease" and did not suspect that something illegal was going on, although as already stated she was not comfortable with what Tabi Ovi was asking of her. In fact, she only provided her bank account details once she had

received reassurance that there was nothing illegal with respect to the provenance of the funds she was asked to receive. Moreover, this was in fact corroborated by Tabi Ovi who confirmed, over and over again, that Pace had no knowledge of what was going on and that she was innocent. Therefore, this Court shares the same opinion as the First Court before it, that is that the Prosecution failed to prove, beyond a reasonable doubt, that Alexandra Pace had the formal intent to commit the crime of money laundering. On the other hand, Pace managed to prove, up to the level of probability, that she was not aware of the illegal provenance of the funds in question. Thus, this Court deems that the appealed decision was legally and reasonably valid and there exists no reason to overturn the same. In the light of this, the appeal of the Attorney General is being rejected.

Consequently, for the above-mentioned reasons, the Court denies the appeal of the Attorney General, and accedes partially to the appeals filed by appellants Sunday Ikechukwu Eboh and Tony Ogbonna Anuforo regarding the grievance concerning the punishment inflicted, and thus varies the judgment delivered by the First Court in the sense that it:

(i) Confirms the same where the accused Sunday Ikechukwu Eboh and Tony Ogbonna Anuforo were found guilty of the charges brought against them, and also where accused Alexandra Pace was found guilty of the third charge brought against her and also where she was found guilty of being a recidivist in terms of article 49 of the Criminal Code, confirms it also where she was acquitted of all the other charges brought against her.

(ii) Confirms it also where the said Alexandra Pace was condemned to the payment of a fine of €200.

(iii) Revokes the punishment inflicted on accused Sunday Ikechukwu Eboh of three years imprisonment, and after having seen article 28A of the Criminal Code condemns him to a punishment of two years imprisonment, which term of imprisonment is being suspended for 4 years.

(iv) **Confirms the fine imposed upon the said Sunday Ikechukwu Eboh of €20,000 and confirms also that part of the judgment where the said accused was condemned to refund the victim Mary Anne Darmanin the sum of €15,400 within six months from today and this in terms of article 15A of the Criminal Code.**

(v) **Revokes the punishment inflicted on accused Tony Ogbonna Anuforo of twenty-eight months imprisonment, and after having seen article 28A of the Criminal Code condemns him to a punishment of two years imprisonment, which term of imprisonment is being suspended for 4 years.**

(vi) **Confirms that part of the judgment where accused Sunday Ikechukwu Eboh and Tony Ogbonna Anuforo were condemned to pay court expenses in terms of article 533 of the Criminal Code in the amount of €2,572.57.**

(vii) **Revokes it in the part where, upon application of Article 3(7) of the Prevention of Money Laundering Act, Chapter 373 Laws of Malta, which refers also to article 22(3A)(b)(d)(7) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, the First Court ordered the forfeiture in favour of the Government of the amount of <u>all</u> monies or other movable property pertaining to Sunday Ikechukwu Eboh and Tony Ogbonna Anuforo, and of the entire immovable property of even if the immovable property has since passed into the hands of third parties, and even if the said monies, movable property or immovable property are situated in any place outside Malta <u>and instead, after having seen article 38(7) of Chapter 621 of the Laws of Malta as amended by Act VI of 2024,</u> orders the forfeiture in favour of the Government of Malta with regards to Sunday Ikechukwu Eboh <u>the sum of fifteen thousand , four hundred euro</u>, and with regard to Tony Ogbonna Anuforo <u>the sum of ten thousand Euro,</u> which constitute the proceeds of the said offence, in the form of monies or other movable property and such immovable property of the appellants even if the movable or immovable property has since the appellants were charged passed into the hands of third parties and even**

if the said monies, movable property or immovable property are situated in any place outside Malta.

(viii) Confirms the remaining part of the judgment.

The Court explained to appellants Sunday Ikechukwu Eboh and Tony Ogbonna Anuforo the consequences according to law should they commit another crime during the operative period of their sentence, and this in terms of Article 28A of Chapter 9 of the Laws of Malta.

Edwina Grima
Judge