



**IN THE COURTS OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

Magistrate Dr. Monica Vella LL.D., M. Jur.

**The Police
(Inspector Karl Roberts)**

vs

Okhiulu Esheimokhai Yakubu

Compilation Number 9114/24

Today, the 05th February 2025

The Court;

Having seen the charges brought against:

Okhiulu Esheimokhai Yakubu, son of Okhiulu and Veronica, born on the 25th August 1984 in Benin City, Edo State, Nigeria, holder of Police Number 32525, residing in Siteplans, Flat 3, 46A, Triq il-Qalb ta' Gesu, Bugibba,

Accused with having on the 20th October 2024 or days prior this date in these islands:

1. Used or had in his possession a passport, which he knew to be forged, altered or tampered with;
2. Also charge him with having on same date, time and circumstances had knowingly made use of any other forged document;
3. Also charge him with having on the same date, time and circumstances made a false statement or gave a false representation to the Principal Immigration Officer;
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 purpose of this Act which is forged;
5. On the same date, period, place and circumstances he rendered himself a recidivist after being found guilty by a sentence of the Courts of Malta which sentence is definite and cannot be changed as per Art 49 and 50 of Chapter 9 of the Laws of Malta.

In case of guilt, the Court was humbly requested to oblige the accused to pay the expenses related to Court appointed experts according to Article 533 of the Criminal Code.¹

¹ Folio 1 and 7 of the acts . The Court notes that the charges in the Maltese language relate to an incident that allegedly happened on the **20th November of an unspecified year**, as per folio 3 of the acts . Thus, there is a substantive difference between the two charges.

Having seen that the accused informed the Court, as presided by Magistrat Dr. Astrid May Grima, that he does not understand the Maltese Language but understands the English Language. Thus, the Court ordered that the proceedings are conducted in the English language.²

Having seen that the prosecuting officer presented and read the charges brought against the accused under oath in the sitting of the 21st November 2024.³

Having seen that the accused pleaded not guilty of the charges presented against him.⁴

Having seen all the acts of the proceedings.

Having heard the witnesses brought forward.

Having seen and considered all the documents and evidence brought forward.

Having heard the final submissions of the parties during the sitting of the 27th December 2024.⁵

Having seen that the case was put off for judgement for today.

² Folio 5 and 22 of the acts .

³ Folio 5 of the acts .

⁴ Folio 6 and 20 of the acts .

⁵ Folio 48 of the acts .

Considered:

Facts in Brief

The case relates to an allegation that the accused used a forged Italian ID card having a serial number CA31893MY and a false residence permit having number I16931774. The accused was stopped by the ground handling operators of AviaServe while boarding flight FR 6236 from Malta to Bologna on the day of the 20th November 2024.

Considered:

Evidence

Police **Inspector Karl Roberts** testified whereby he gave an overview of the investigation. The officer explained that on the 20th November 2024 he was informed that subject had presented first a genuine asylum seeker document and after the ground handling operations told him that such a document was not good for travelling purposes presented fake documents in the form of an Italian identity card having serial number CA31893MY and a false residence permit number I16931774. He was arrested at the airport and during interrogation admitted that the documents were false and not genuine.

Cross-examined he stated that the documents under examination were on the accused name.⁶

Court appointed expert **John Charles Ellul** gave evidence on the 27th December 2024 whereby he presented his report marked as 'JE'. The expert concluded at page 14 of his report:

⁶ Folio 24 and 25 of the acts .

‘It is the opinion of the undersigned that both questioned documents, the Identity Card and the residence permit, are complete counterfeit. The forgery consists of clear and supported evidence that the substrate, the background printing, the security features that are expected to be embedded at all stages of the production, and the personalisation of this document, are not commensurate with the requisite standards for this specific type of document. It is also the opinion of the undersigned that both documents have been produced by the same forger as they have identical printing techniques, simulations and substrates.’⁷

Considered:

The accused is being charged with having on the 20th October 2024 or in the previous days prior this date in these islands committed crimes against Chapter 9 and Chapter 217 of the Laws of Malta and of being a recidivist under articles 49 and 50 of Chapter 9. The alleged crimes were committed when he presented two false Italian documents which during interrogation he also admitted to be false.

Considered:

In view of the evidence brought forward by the prosecution, the Court has no doubt that as a matter of fact the said documents are false and that the accused knew he was making use of false documents.

⁷ Expenses Euro 676.33c.

However, the Court, prior to finding guilt has also to find that the said facts are mirrored and result in the charges brought against the accused since the accused is to answer to the said charges.

The Court notes, as also submitted by the defence, that the charges in Maltese read: **‘20 ta’ Novembru, u jew fil-jiem, gimghat jew xhur ta’ qabel din id-data f’ dawn il-gzejjer....’**⁸.

The charges in English then read: **‘20th October 2024 or days prior this date in these islands.....’**⁹.

Thus, there is clearly a discrepancy in the date of the said charges: (1) the charges in Maltese do not carry the year and do not refer to any particular year, (2) the charges in English carry a full date, however, refer to the month of October not November.

All evidence brought forward refer to facts which allegedly happened on the 20th of November 2024.

The Court also notes that at no stage during the proceedings, including after the submissions, was there a request by the prosecution to rectify any of the charges presented, this even though the Prosecution has such right and in this case the proceedings would not have been prejudiced in any manner by prescription.

⁸ The time period extends to months prior to the alleged date while the English version extends to days prior to the alleged date.

⁹ Charge number 5 is also slightly different since the Maltese version also mentions article 289 of Chapter 9 of the Laws of Malta while the English version does not mention this article.

Thus, the Court, has first to decide this matter before proceeding forward to consider the case on its merits.

Considered:

Which charges are to prevail, the charge issued in the Maltese language or the English version of the charges?

Article 5 of the Constitution of Malta reads as follows:

5. (1) The National language of Malta is the Maltese language.

(2) The Maltese and the English languages and such other language as may be prescribed by Parliament (by a law passed by not less than two-thirds of all the members of the House of Representatives) shall be the official languages of Malta and the Administration may for all official purposes use any of such languages:

Provided that any person may address the Administration in any of the official languages and the reply of the Administration thereto shall be in such language.

(3) The language of the Courts shall be the Maltese language:

Provided that Parliament may make such provision for the use of the English language in such cases and under such conditions as it may prescribe.

(4) The House of Representatives may, in regulating its own procedure, determine the language or languages that shall be used in Parliamentary proceedings and records.

**Article 21 of the Code of Organisation and Civil Procedure (COCP)
Chapter 12 of the Laws of Malta** states the following:

21. (1) The Maltese language shall be the language of the courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language.

(2) Where any party does not understand the language in which the oral proceedings are conducted, such proceedings shall be interpreted to him either by the court or by a sworn interpreter.

(3) Any evidence submitted by affidavit shall be drawn up in the language normally used by the person taking such affidavit. The affidavit, when not in Maltese is to be filed together with a translation in Maltese, which translation is furthermore to be confirmed on oath by the translator.

Article 360 (2) of Chapter 9 of the Laws of Malta then reads:

The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time¹⁰ and place as it may be necessary or practicable to give. It shall also contain an intimation that, in default of

¹⁰ Underlined by this Court.

appearance, the person summoned shall be arrested by warrant of the court and arraigned on such day as may be stated in the warrant.

Considered:

Even if for argument's sake only, this Court had to accept the submission made by the defence that the Maltese version of the charge is to prevail over the English version, one cannot find any guilt since the Maltese charge does not have the year in which the crime was allegedly committed. This same issue was already decided by the Court of Appeal in the case **Il-Pulizija vs Clint Borg Ferriggi** (Appeal No. 158/2023) decided on the 28th July 2023 per Madame Justice Edwina Grima where it was held:

Illi, għalhekk, minkejja li l-funzjoni taċ-ċitazzjoni hija biss ta' avviso di comparire u l-Liġi tikkonċedi impreċiżjonijiet li jistgħu jiġu hekk sanati b'semplici korrezzjoni magħmula fil-mori tal-kawża, dan ma jfissirx li d-diċitura tal-imputazzjoni m'għandhiex tirrifletti l-fattispecie tal-każ hekk kif jemerġu mill-provi almenu b'mod approssimattiv għal dak li jirrigwarda il-partikolaritajiet taż-żmien, lok u ħin li fihom allegatament ikun gie kommess ir-reat – haġa li f'dan il-każ ma saritx, anzi hija għal kollox nieqsa. Illi dan ma huwiex każ fejn hemm data hażina jew diskrepanza fil-ħin, iżda huwa nieqes għal kollox l-indikazzjoni taż-żmien temporali li fih allegatament seħħ ir-reat, biex b'hekk għal Qorti huwa impossibbli li tasal biex issib htija meta il-binarji tal-azzjoni ma humiex definiti għal kollox. Illi, imfassla dawn il-prinċipji dottrinali u ġurisprudenzjali, huwa evidenti illi f'dan il-każ iċ-ċitazzjoni tippekka serjament meta ma tindikax iż-żmien temporali li fih allegatament kien

kommess ir-reat mill-appellant li dwaru huwa ġie mixli¹¹. Illi għalkemm il-Prosekuzzjoni ressqet diversi xhieda u provi oħra li taw xenarju ta' fatti li jistgħu jagħtu lok għal reita', madanakollu la l-Ewwel Qorti u lanqas din il-Qorti ma tista' tasal biex issib htija fl-appellant għal dawn il-fatti li ma jistgħu qatt jinkwadraw rwieħhom fix-xilja addebitata lilu fiċ-ċitazzjoni. Dan għaliex, kif ġustament isostni l-appellant f'dan l-ewwel aggravju minnu ntentat, il-Qorti ma tistax torbot dawk il-fatti li jemerġu mill-provi mal-imputazzjoni kif ifformulata. In oltre, minkejja dan l-iżball evidenti fiċ-ċitazzjoni, il-Prosekuzzjoni ma talbet l-ebda korrezzjoni fir-rigward fil-kors tal-proċeduri quddiem il-Qorti tal-Maġistrati, b'dik il-Qorti fis-sentenza appellata lanqas tindirizza dan il-preġudizzjali li kien sollevat mid-difiża quddiemha fit-trattazzjoni finali tal-każ. Dina l-Qorti għalhekk tqis illi l Ewwel Qorti ma setatx issib htija fl-appellant fir-rigward ta' l-unika imputazzjoni dedotta kontrih billi ma hux indikat fil-mod kif ġie mixli ż-żmien temporali meta allegatament seħħ ir-reat, bil-Qorti ma tistax torbot il-fatti li jemerġu mill-provi max-xilja kif ifformulata. Għaldaqstant l-appellant għandu jkun illiberat mill imputazzjoni lilu addebitata.

So even if this Court had to follow the Maltese charge as suggested by the prosecution, the case fails as rightly outlined by the Court of Appeal in the above mentioned case, since the date in the charges in Maltese state “20 ta’ Novembru” and thus do not carry a year.

The prosecution submitted that since on the charge sheet, the date of filing of the charges reads “Illum 20 ta’ Novembru 2024”, then necessarily the date of the charges refers to year 2024. The court, however, cannot agree with this submission, since it is not the first time

¹¹ Underlined by this Court. Page 4 and 5 of that sentence.

that charges are filed after a year or more has already passed from the date of the commission of the alleged offence.

Moreover, since the proceedings were held in English and the charge was read in English then this Court will have to follow and examine the evidence in the light of the latter charge and not the Maltese charge.

As to the charges in the English language, these read “20th October 2024”. So the Court has to examine whether the accused, from the evidence brought during the proceedings can be found guilty that on the 20th October 2024 he committed the offences with which he is charged.

Considered:

The Court notes that this discrepancy in the charge sheet did not cause any prejudice to the accused, so much so that the accused did not make any such plea in the beginning of the hearing of the proceedings.

The Court also notes that the defence brought up this issue only in the final submissions as a means of defence of the accused. Therefore, this also shows that no prejudice was caused to the accused and that the accused was aware of all the facts which led to his arraignment and was also capable of preparing his defence.

The Court holds that the defence is right in its submissions that the charge cannot result since on the 20th October 2024 and on the previous days, that is one week from the latter date¹², there is no evidence that the

¹² Vide **Il-Pulizija vs Carmel Polidano** (Appeal 312/13) decided by the Court of Appeal per Mr. Justice David Scicluna.

accused used or had in his possession or made a false statement to the authorities or that he knowingly made use of the false documents. This Court as presided has already stated that the facts of the case have to be intrinsically linked to the charge in **Il-Pulizija vs Abdifahid Mahahdi Mahmoud** (Kumpilazzjoni numru: 313/2021) which was decided on the 22nd July 2022.¹³

The Court notes that from the evidence produced by the prosecution, the prosecution has not shown that the facts attributed to the accused happened on the 20th October 2024 or on the previous days. The statement to the police by the accused does not even cover when such documents were in the possession of the accused. Since the evidence brought forward does not refer to the 20th October 2024 and days prior, but refers to the 20th November 2024, then this court has no other option but to acquit the accused.

This also in view of the fact that in his statement¹⁴ although the accused admitted that the documents were fake¹⁵, all the questions made to the accused refer to the facts that happened on the 20th November 2024 and not on the 20th October 2024.

¹³ Jurisprudence on this subject is exhaustive: **P vs Shaun Theuma** Appell. Nru. 306/2010 per S.T.O. Prim Imhallef Vincent DeGaetano. **P vs Joseph Demanuele** Appell Nru. 138/2105 per Onorevoli Imhallef Edwina Grima. **P vs Shaun Maria Mifsud** Appell Nru. 273/2021 per Onorevoli Imhallef Edwina Grima **P vs Harish Daswani** Appell Nru. 315/2019 per Onorevoli Imhallef Consuelo Scerri Herrera. **P vs Giuseppe Desira** Appell Nru. 41/ 2019 per Onorevoli Imhallef Consuelo Scerri Herrera. **P vs Jesmond Seguna** Appell Nru. 59/ 2023 per Onorevoli Imhallef Consuelo Scerri Herrera, **Il-Pulizija vs Katerina D' Amato** et. (App. Nru. 123/2008) deciz mill-Qorti tal-Appell Kriminali per Onor. Imhallef David Scicluna fil-5 ta' Novembru 2008 kif ukoll **Il-Pulizija vs Luciano Mirabatur** (App. Nru. 229/2018) mill-Qorti tal-Appell Kriminali per Onr. Imhallef Consuelo Scerri Herrera fis-16 ta' Mejju 2019.

¹⁴ Document AMG6 a folio 15-17 of the proceedings

¹⁵ Specifically in folio 16 of the proceedings.

Decides.

Thus, for these reasons, the Court after having seen article 5 of Chapter 61, articles 189, 49, 50 of Chapter 9, article 32(1c) and 32 (1f) of Chapter 217 of the Laws of Malta declares the accused OKHIULU ESHEIMOKAI YAKUBU NOT GUILTY of the charges brought against him and acquits him of the said charges.

The Court orders that the parties be given a copy of this judgment and that this judgement be immediately put online on the website of the court services agency.

Pronounced today the 5th February 2025, in Court, in Valletta, Malta.

Dr. Monica Vella LL.D, M. Jur.
Magistrate

Annalise Mifsud
Deputy Registrar