



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 20 th November, 2007

Number. 258/2007

**POLICE
INSPECTOR JOHANN J. FENECH
VS
AKINOLA JOHNSON**

The Court,

Having seen the charges brought against the accused Akinola Johnson, (imm no 06WW 04), of 34 years, born in Sierra Leone on the 16th November 1972, son of Akinola and Oladepe and residing in Lyster Barracks, Hal Far, and charge him with having on the 28th March 2007, at about 12.45pm, at Lyster Barracks, Hal Far:

1. reviled, threatened or caused bodily harm to Sergeant Marco Sayan 6366 and Casual Officer William Plant, persons lawfully charged with a public duty, while in the act of discharging their duty or because of them having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty;

2. assaulted or resisted by violence or active force not amounting to public violence Sergeant Marco Sayan 6366 and Casual Officer William Plant, persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by competent authority;
3. committed spoil, damage or injury to or upon any movable or immovable property belonging to any other person, which damages exceed ten Maltese Liri (Lm10), but do not exceed fifty Maltese Liri (Lm50), to the detriment of the Government of Malta;
4. without intent to kill or to put the life of Sergeant Marco Sayan 6366 and Casual Officer William Plant in manifest jeopardy, caused them slightly bodily harm as certified by Dr D. Xuereb from PHC;
5. incited an assembly of persons, who when so incited were ten or more in number, for the purpose of committing an offence;
6. took an active part in an assembly of ten or more persons for the purpose of committing an offence although the said assembly may not have been incited by anyone in particular;
7. willfully disturbed the public good order or the public peace.

The Court was humbly requested to, in addition to, or in lieu of the punishment applicable to the offence, apply the provisions of Sec 383 of the Criminal Code for the safety of Sergeant Marco Sayan 6366 and Casual Officer William Plant.

Having heard the evidence tendered on oath;

Having seen the record of the proceedings;

Having seen the consent of the Attorney General (document JF4 at page 14), and the consent of the accused for the proceedings to be dealt with summarily;

Having heard the oral submissions of the parties;

Deliberates:-

From the evidence of Inspector Johann Fenech, at page 5 et seq, it transpires that the Police were informed by PS 827 Edward Grech, that riots broke out in Lyster Barracks, Hal Far, on the 28th March 2007. This took place whilst soldiers were effecting a search for smuggled canned food stuffs inside Hermits Block. During this search, the members of the Armed Forces found openers and knives.

Inspector Fenech informed the Court that during this search, Sergeant 6366 Marco Sayan and Officer William Plant were attacked by Akinola Johnson, who tore a jacket belonging to Marco Sayan and bit officer William Plant. The injuries suffered by William Plant were certified by a medical officer Dr Xuereb at the Paola Health Centre. Medical certificates were exhibited and marked as document JF1 and JF2, at page 10 and 11 of the proceedings.

Inspector Fenech testified that Staff Sergeant 857363 Robert Zammit, was affecting a search in the block adjacent to Hermits Block, when the scuffle involving the accused occurred. Robert Zammit witnessed Akinola Johnson assaulting Sergeant Marco Sayan and William Plant. Members of the AFM stated that Akinola Johnson was in fact citing his fellow immigrants, to attack the soldiers who were involved in the search.

The accused was arrested and released a statement, document JF3, wherein he denied attacking any members of the Armed Forces of Malta, stating that it was in fact the female immigrants who attacked the soldiers. The identification document of the accused was marked and exhibited as document JF5.

Inspector Fenech testified before the Court that he investigated the allegation made by the accused, and found that the female immigrants were not involved in any attack on members of the AFM. Asked whether a pregnant immigrant was involved in this scuffle, and whether she was injured and had to be taken to hospital, Inspector Johann Fenech stated that this fact was brought to his attention by the accused, but he did not verify it.

In his statement, Akinola Johnson, at page 12 and 13, confirmed that the members of the Armed Forces came to Zone C, in the Lyster Barracks, Hal Far, had to effect a search, and in fact, took cans of tuna and tomatoes from the immigrants. These food stuffs were given to the immigrants by Maltese citizens and volunteers. Akinola Johnson stated that the members of the Armed Forces of Malta informed the immigrants that they had no permission to keep such food stuffs, and that they also removed the possibility of the immigrants making their own hot water. One of the women immigrants started to shout at the soldiers, and the soldiers pushed them back and the pregnant woman fell down. After this, many immigrants started to shout at the soldiers, telling them that they ought to take the pregnant woman to hospital. The soldiers went out and called the Captain. The Captain ordered that the woman be taken to hospital, and thereupon, a soldier who had not been in Zone B but in Zone C, pointed at him and told the Captain to talk to the accused in another venue. The accused stated that he did not attack any soldier and nor did he damage any of the uniforms of the soldiers, and it was the women in the block that did this. The accused stated that he did not intervene in any way in this matter.

PC 583 Evan Grech, confirmed his presence during the statement released by the accused and confirmed that the accused had been cautioned in terms of law.

PS 827 Edward Grech, at page 18 et seq, stated that the Police had been informed of an incident that had occurred between the immigrants and the members of the Armed Forces of Malta, on the 28th March 2007, and that when he arrived at Lyster Barracks, he found that the situation had already calmed down. PS 827 Grech stated that he spoke to Sergeant Marco Sayan, who informed him with the search that was affected in Zone F, wherein the members of the AFM found three knives and some canned food stuffs. The knives wer ordinary cutlery knives.

PS 827 Grech stated that Sayan told him that it was the accused who began to insult and threaten him and grabbed him from his uniform and in fact, damaged the same uniform, that he pushed and punched him with his fists. PS Grech stated that he did not talk to Akinola Johnson, he was just given instructions to arrest him and take him to the Police station. PS Grech stated that he did not know anything about the pregnant woman and if she had ben injured. PS Grech stated that the accused did not resist the arrest and was very quiet in the Police car and at the Police station.

Mark Sayan, at page 28, stated that he was instructed to affect a search in Zone C at Lyster Barracks, on the 28th March 2007, and that he delegated this to his Lieutenant Hampton. Mark Sayan stated that he affected this search with twelve other members of personnel, who however, were mostly new recruits. In the course of the search, they collected two knives and some canned food stuff. As a result of the search in the third room, the immigrants became progressively angry because of the confiscation of the knives and the food stuff. At page 30, Mark Sayan stated that the knives were in fact kitchen knives. On being interrogated by the Court, Mark Sayan stated that they were both kitchen knives and cutlery knives and later admitted, in fact, that they were stainless steel knives. He stated that they were pointed knives which have a plastic handle.

Mark Sayan stated that the immigrants were prohibited from keeping knives and canned food stuffs in their possession. He stated how at one point, all the immigrants in Zone C advanced on them, and that they were around forty in number. They attacked him and tore his uniform. The witness stated that the accused grabbed him by his uniform, tore his uniform, and tried to throw him on the floor. However, he managed to extricate himself from him and escaped and closed the door of the zone. Mark Sayan stated that he had only been stationed at Lyster Barracks for three months, previous to the incident. Asked whether Akinola Johnson insulted him or threatened him in any way, Sayan stated that he did not

remember. He stated that the women were shouting and they were all speaking their own language so he did not really understand what was being said. Mark Sayan confirmed that there were several pregnant women in Zone C, but that he did not notice one pregnant woman in particular who was very heavily pregnant.

Mark Sayan stated that he had physical injuries, that is, he had a big scratch on his neck, and he confirmed document JF1 as the medical certificate regarding the scratch. Mark Sayan stated that he was told by the immigrants that the preserved food stuffs was intended for pregnant women, and that no extra food rations were necessary because the immigrants were served food three times a day.

William Plant, at page 36, stated that he was a watchman stationed at Hal Far, in the Immigrants Detention Centre, and that on the 28th March 2007, he was on duty. He stated that he was accompanying Sergeant Mark Sayan together with other members of the AFM. The search was being affected and a knife and a fork were discovered, together with a mirror. As they were taking out these prohibited objects, female immigrants surrounded him, they closed the gates and jumped on them. One immigrant took out a screw driver and hit someone, however the Sergeant managed to control him. William Plant stated that he then heard a cry which resembled the sound of a turkey, which seemed to be a signal to all the immigrants to join in the scuffle. This is in fact what happened, and that there was a fight.

William Plant stated that the immigrants closed a door on his hands, and in fact, he injured the nerve of his arm, and that he was also punched and thrown on the floor. It was fortunate that he managed to get out of the situation when his colleagues opened the gate. William Plant confirmed document JF2 as the certificate showing his injuries. He stated that he hadn't suffered any damage to his uniform because he had just been recruited and his uniform was not yet ready.

At page 39, William Plant **confirmed that it was the female immigrants who surrounded him.**

Robert Zammit, at page 40, Assistant Sergeant Major, confirmed that he was with the AFM, and confirmed that he was on duty on the 28th March, and that he was conducting a search in Zone B at Lyster Barracks. This search was ordered by Lieutenant Hampton. Robert Zammit stated that an illegal immigrant from Zone C approached the gate that separates Zone B from Zone C, grabbed him from his uniform, and challenged him to a fight. The witness also stated that this illegal immigrant informed him that something was happening in Zone C. Zammit recognized the accused as an immigrant from Zone C, and he stated that he was aggressive. On being asked to elucidate, Robert Zammit stated that **he did not see the accused do anything**, except that his face was showing signs of aggression. He stated that even when **he tried to grab him from behind the bars**, he in fact, did not manage to do so, and that he had only touched his clothing.

Zammit confirmed that there had been a fight in Zone C and there were some glasses which had been broken, and that some immigrants had picked up the chairs and were throwing them against the glass panes. **However, he was not in a position to recognize any of them.**

Henry Schembri, at page 44, confirmed that he was on duty on the 28th March 2007, and that he was on guard duty between gates Zone B and Zone C. He stated that he saw Mr Johnson challenging Mr Zammit to a fight, and that he also saw the accused breaking glasses.

Dr Darren Xuereb confirmed document JF1 and JF2, and stated that Marco Sayan had superficial abrasions on his left cheek and on his chest, whilst William Plant had a swelling on his wrist, and a swelling and pain on his left shoulder. All these injuries were classified as slight injuries.

Lieutenant Neil Hampton, at page 50, confirmed that he had given orders for a search to be affected in the Barracks, and that during this search, some knives and prohibited goods, such as canned food and mobile phones were found. He stated that he did not take part in this search and that he was just been informed as to what was happening. He confirmed that he saw the torn uniform of Mark Sayan, and that some members of his staff had suffered from abrasions. Lieutenant Hampton confirmed that he had been stationed at the Lyster Barracks **for seven months prior to the incident**, and that he had conducted only two searches within this time span. He did not remember whether there had been anything that had precipitated this search.

Asked to verify an incident which happened two days previous to the incident where an immigrant tried to escape and fell from a height, Lieutenant Hampton stated that this was a separate incident in a separate zone and that he could not remember the precise date. He confirmed that in Zone C, there were seventeen (17) immigrants. Another search was being carried out by thirteen (13) of his personnel. He also confirmed that half his personnel **were in fact new recruits**. He also confirmed that there were problems with English because both immigrants and the recruits had poor English skills.

At page 56, Lieutenant Hampton confirmed that during the search, **some cutlery knives as opposed to kitchen knives** were in fact collected by members of his personnel, together with canned food, including canned tuna and tomatoes. The only damage suffered was damage to one uniform of his personnel.

Sergeant 85538 Mark Gatt, confirmed that the cost of the torn uniform was a total of nineteen Maltese Liri and forty cents (Lm19.40) and exhibited the estimate at page 61.

Lieutenant Neil Hampton, at page 61, exhibited the report document NH1 at page 69-71. In cross-examination, and asked whether a person can be at the exit point of Zone C and at the gate dividing Zone B and C, that is, more than

20.7 metres apart in distance at the same time, Lieutenant Hampton confirmed that the incident happened in the same place, which is an area which covers a distance of 20.7 metres.

At page 65, Lieutenant Hampton explained the circumstances following the manner in which an immigrant had been injured and the time within which the ambulance in fact came to convey the immigrant to hospital, and the reasons why the immigrant could not be moved because of the injuries that he had suffered. He also confirmed that no pregnant woman in fact was treated in hospital, following allegations that she in fact, had been injured during this incident.

The accused Akinola Johnson stated that a search was affected in his zone on the 28th March and that the members of the AFM, who were conducting the search, confiscated canned food including canned tomatoes and tuna fish from the rooms of the immigrants. This canned food was left out in the open and was in no way hidden and the immigrants had protested against the reason for this prohibition. He said that the soldiers who took part in the search stated that this was an order that came from the Captain. They also confiscated an electric filament, used by the immigrants to make hot water in order to make tea. There were sixteen (16) women in the zone, and ten (10) men, and when the soldiers started to take out the food, all the women started to complain and in fact, they surrounded the soldier who was taking out this food, and they were hanging on to the food. Then he heard a shout from a woman who was hanging on to the canned food stuff, one soldier pushed this woman and she fell down on the floor, and all the immigrants started to shout at the soldiers to take this woman to hospital. Whilst the women were still shouting at the Police and protesting against the soldiers who were there to take the food away, the accused stated that he approached the gate between Zone B and C, and started to talk to Sergeant Zammit, for around two minutes.

The accused denied addressing or speaking to Sergeant Mark Sayan, or to William Plant, he denied attacking anybody or tearing anybody's uniform. The accused also elaborated on an incident which happened on the previous night, where an immigrant fell from a height. The accused denied that he attacked Sergeant Sayan, denied that he tore his uniform and denied attacking William Plant.

Deliberates:-

The Court, in evaluating the evidence tendered by the prosecution, observes at the very outset that the searches conducted by personnel at the Lyster Barracks. On the date cited in the charges brought against the accused, were all new recruits and that their commanding officer was also rather new to the post. The Court cannot fail to mention that the new recruits had poor command of the English language, which exacerbated the lack of communicative level between them and the immigrants detained at the barracks. This unfortunate state of events contributed in no small measure to the chain of events, as did the equally unfortunate event that took place a few days prior to the 28th March 2007 wherein a detainee fell from a height, could not be moved before paramedics, brought by an ambulance, attended to him, where insufficient information was given to the immigrants who could still hear him groaning in pain.

The evidence against the accused as tendered by the prosecution, is poor to say the least, is riddled with inconsistencies and does not bear the stamp of truth. This Court has come to this conclusion in the light of evidence tendered by William Plant which confirmed that it was in fact the female immigrants that encircled him in an effort to hang on to their food stuffs (provided by charitable volunteers) not the accused. Indeed Robert Zammit (AS Sergeant Major) confirmed that he did not see the accused do anything wrong and though he initially stated that the accused grabbed him and challenged him to a fight Zammit ended up by admitting that the accused only tried to grab his uniform from behind the bars of the

gate and did not in fact touch him but only touched his clothing.

It is however the evidence of Mark Sayan that the Court finds most objectionable. The report given by Sayan to PS827 Grech was to the effect that the accused insulted, threatened, grabbed him from his uniform, pushed and punched Sayan.

Mark Sayan, however, stated **on oath that he was surrounded by forty (40) female immigrants who attacked him and tore his uniform.** He did not remember that the accused insulted or threatened him. Thereafter he stated that it was the accused who grabbed and tore his uniform and tried to throw him on the floor. Indeed he also stated that the confiscated pointed knives were kitchen knives. However, later on in his evidence – after repeated questioning from the Court, he admitted that they were in fact stainless steel cutlery knives.

Deliberates:-

The evidence proffered by the prosecution supports this Court's conviction that the injuries and damage to the uniform suffered by Sayan and Plant were in fact a result of the scurries that took place between them and the female immigrants in Zone C where the search was being conducted. There is no real or substantial evidence of any wrong doing on the part of the accused.

Therefore the Court finds the accused Akinola Johnson not guilty of the charges brought against him and acquits him of the same.

< Final Judgement >

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