



COURT OF CRIMINAL APPEAL

**THE HON. CHIEF JUSTICE
VINCENT DE GAETANO**

Sitting of the 18 th July, 2008

Criminal Appeal Number. 12/2008

The Police

v.

Ezechukwu Prince Okeke

The Court:

Having seen the charges preferred by the Executive Police against Ezechukwu Prince Okeke, to wit the charges of having (1) at the Law Courts in Valletta on the 7th December 2006 and on the previous day, with intent to harm Inspector Carmelo Magri or other persons, accused such person or other persons before a competent authority with an offence of which he knows such person or persons to be innocent (Section 101, Cap. 9); (2) during the same period and circumstances, fraudulently caused any fact or circumstance to exist, or to appear to exist, in order that such fact or circumstance may afterwards be proved in evidence against Inspector Carmelo Magri or other persons, with intent to procure

such other person or persons to be unjustly charged with, or convicted of, any such offence (Section 110, Cap. 9); (3) during the same period and circumstances, with the object of destroying or damaging the reputation of Inspector Carmelo Magri or other persons, offended Inspector Carmelo Magri or other persons by words, gestures or by any writing or drawing, or in any other manner; (4) during the same period and circumstances, breached the conditions in terms of Section 22 of Chapter 446 of the Laws of Malta that were imposed on him by a court sentence dated 1st April 2005 delivered by Mag. Dr Miriam Hayman whereby he was found guilty of an offence and conditionally discharged for a period of three years;

Having seen the judgment delivered by the Court of Magistrates (Malta) on the 9th January 2008 whereby that court acquitted the said Ezechukwu Prince Okeke of all the charges brought against him;

Having seen the application of appeal filed by the Attorney General on the 22nd January 2008 whereby he requested that this Court vary the said judgment of the 9th January 2008 by confirming that part of the said judgment whereby respondent was acquitted of the third charge (of defamation), and revoking it in so far as it acquitted him of the other charges, and that instead this Court should find him guilty of the other charges (calumnious accusation, fabrication of false evidence and breach of a conditional discharge) and impose the punishment according to law;

Having examined the record of the case; having heard counsel for the appellant Attorney General and counsel for the respondent Ezechukwu Prince Okeke on the 9th May 2008;

Considers as follows:

It must be stated at the outset that although the Attorney General, in his application of appeal, states that the ground of his appeal is that the first court acquitted "*in consequence of a wrong application and misapplication of*

the law", nowhere in the rather long winded appeal does the appellant pinpoint this "wrong application and misapplication of the law". The application of appeal seems more directed towards a re-appraisal of the evidence, suggesting that the real ground of appeal is that the first court failed to make a proper evaluation of the evidence.

The facts of this case are rather unusual. Okeke was charged with aggravated theft to the detriment of Malcolm Mifsud. The case was being prosecuted by Police Inspector Carmelo Magri. On the 7th December 2006 while the said Inspector was giving evidence, counsel for Okeke, Dr Daniela Mangion (who had temporarily taken over the case from Dr Leslie Cuschieri as he had to appear before another court, and who was under instruction from him) asked the Inspector the following question: *"Another thing inspector -- the accused here has approached us and told us in confidence that he was approached by Mr Mifsud and been told that the reason why this case is going on [is] basically because Mr Mifsud has approached you and offered also, offered to give you compensation."*¹ To this, which was rather in the nature of a statement than a question, the Inspector reacted immediately by stating that these "allegations" were unfounded, and he also requested the court's protection. The court then registered the following minute²: *"The Court, after having heard the last question put to the Prosecuting Officer, after having heard the same Prosecuting Officer reply to the same question and after having asked the accused directly, if he is insisting on his allegation, after having clarified the same allegation that the Prosecuting Officer was offered a sum of money by Malcolm Mifsud in order to institute proceedings against the accused in this case; after having considered the seriousness and the gravity of such circumstances, after having considered the circumstances as presented to this Court in these proceedings, orders that the accused be put immediately under arrest and duly investigated in*

¹ Fol. 20.

² See copy at fol. 13.

terms of Article 101 of Chapter 9 of the Laws of Malta and in terms of other provisions of law under which the accused may be charged.” It will be noted that at this stage that court – that is the court hearing the case of aggravated theft against Okeke – did not register in the minute above quoted what the accused had said *expressis verbis*; the minute merely states “...*having asked the accused directly, if he is insisting on his allegation, after having clarified the same allegation that the Prosecuting Officer was offered a sum of money by Malcolm Mifsud...*”. Moreover, the case of theft against Okeke was in the stage when the prosecution was still producing its evidence³, and the presiding Magistrate therefore had no right to put any question, whether directly or indirectly, to the accused (who was in the dock on not on the witness stand) touching upon the merits of that same case. It is trite knowledge, or should have been so, that the only questions that can be put to the accused in the dock are those stated in Section 392(1) of the Criminal Code. The court could have asked defence counsel to clarify the position which the defence was going to adopt at a later stage, but it could certainly not question the accused, whether directly or indirectly, as was done in this case. This Court is therefore going to ignore completely the minute of the 7th December 2006, a copy of which is exhibited in these proceedings at fol. 13. But even if this Court were to consider that minute as evidence, it is clear from the rest of the evidence that at no stage was Okeke alleging that Inspector Magri had received a bribe, and that the substance of that minute is clearly the result of a misunderstanding. In fact, when Okeke was interrogated by the police on the following day – 8th December 2006 – he explained that what he had told his lawyer (Dr Cuschieri) was that he (Okeke) had been approached by Mifsud who started bragging about the influence he has over the police: “...*he stopped the car and called me by name and he told me ‘You see what I can do to you. I am the king of Malta. I am the biggest Mafia in Malta and every Inspector is afraid of me and I*

³ See the evidence of Inspector Magri given before the first court – in the case dealing with the charges of calumnious accusation etc – on the 17th March 2007, fol. 47.

*walk together with the Inspectors'. He said 'I tell them what to do. I give them money and if they don't want to collect the money I make a bomb in their car. That is why they are afraid of me'. Then two days later on Monday, I went to my lawyer's office and I told my lawyer Leslie Cuschieri what Malcolm Mifsud had just told me. I know that Malcolm Mifsud is a criminal and he is always bluffing. Everybody knows him in prison that he is always bluffing.*⁴ Malcolm Mifsud denies having said these words to Okeke⁵. In other words, even assuming, for the sake of argument, that these words were uttered by Mifsud, at no time did Okeke allege that Inspector Magri had taken, or was about or was inclined to take, a bribe in connection with the theft charge or, indeed, in connection with any other case. At most – that is if those words were not really uttered by Mifsud – the said words are defamatory in terms of Section 252 of the Criminal Code with regard to the said Mifsud. The Attorney General, however, in his application of appeal has conceded that respondent Okeke was rightly acquitted of the charge of defamation. Those words, however, do not amount either to a calumnious accusation, and much less to the fabrication of false evidence (also known as real or indirect calumnious accusation) with regard to the said Mifsud.

All told, this Court agrees with the first court that this case was really a storm in a tea cup, and that had the misunderstanding as to what Okeke had actually said to his lawyer Dr Cuschieri been properly clarified during the sitting of the 7th December 2006 (in the proceedings in which Okeke stands charged with aggravated theft), matters would have stopped there.

In the circumstances, this court finds no reason to vary the judgment of the 9th January 2008. The Attorney General's appeal is therefore being dismissed.

⁴ See statement at fol. 24.

⁵ See his evidence

Informal Copy of Judgement

< Final Judgement >

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