



CRIMINAL COURT

**THE HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 24 th September, 2009

Number 7/2009

**The Republic of Malta
Vs
Benedict Nyumah**

The Court,

Having seen the bill of indictment no. 7/2009 against the accused Benedict Nyumah wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that on the fifteenth (15) March of the year two thousand and seven (2007), Drug Squad police were informed by customs officials at the Malta International Airport that a person of Liberian Nationality had just arrived in Malta from London by air and was suspected of carrying illegal drugs as a body packer, consequent

to the suspicions which his behaviour raised to Police and customs officials upon his arrival.

That it transpired from the investigations that on the (15) March of the year two thousand and seven (2007) and during preceding weeks, the accused Benedict Nyumah, decided to start illegally trafficking in cocaine. The accused had conspired with other persons to body-pack the drugs concerned so as to pass on the illegal substance to another individual upon his arrival in Malta. The accused would receive a considerable amount of money for such service rendered. In execution of this conspired plan, the accused Benedict Nyumah was instructed to swallow sixty eight (68) capsules consisting of cocaine before travelling to Malta on the fifteenth (15) March of the year two thousand and seven (2007) with the intention to deal in the drug carried as planned. Fortunately the accused was arrested by the police on the date of his arrival that is on the fifteenth (15) March of the year two thousand and seven (2007) in the abovementioned circumstances. In fact following the necessary medical intervention, pursuant to the necessary analysis carried out by forensic experts, it resulted that the capsules swallowed consisted of cocaine in the aggregate amount of seven hundred eighty eight point fifty eight grams (788.58grams), which drug is considered as an illegal substance in accordance with our Law, and which substance found in the person of the accused, carries the total street value of fifty five thousand and two hundred and sixty Euro (€55,260).

By committing the abovementioned acts with criminal intent, the accused Benedict Nyumah rendered himself guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance (chapter 101 of the Laws of Malta) , or of promoting,

constituting, organising or financing the conspiracy.

Wherefore, the Attorney General, in his capacity, accused Benedict Nyumah of having on the 15th March 2007 and in preceding weeks, been guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy; demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(f)(1A) (1B)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 9 of the 1939 Regulations for the Internal Control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

2) After the Attorney General premised in the Second Count of the Bill of Indictment that owing to the nature of the circumstances which took place on the fifteenth (15) March of the year two thousand and seven (2007) and during the preceding weeks, as indicated in the first Count of this Bill of Indictment, as well as on the basis of an admission of the accused himself, it transpired that the accused wilfully and knowingly travelled to Malta from London by air, whilst carrying throughout the whole trip, an illegal drug which later on was analysed as cocaine and which substance is illegal in

accordance with our law. The accused gave his full consent to taking the flight concerned, having also paid for the flight himself, whilst being fully aware of the purpose and the contents of the numerous capsules which he had swallowed and which he was body-packing so as to bring same to Malta. Effectively if the customs officials and the Drug Squad Police failed to notice the accused, the contents of these capsules would have been transferred to third parties in Malta and would have likely been trafficked for financial gain.

The accused was not in possession of any licence or authorisation issued under the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), which authorised or permitted in any way the importation of the dangerous drug concerned by the accused.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Benedict Nyumah was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

By committing the abovementioned acts with criminal intent, the accused Benedict Nyumah rendered himself guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

Wherefore, the Attorney General, in his capacity, accused Benedict Nyumah of having on the 15th March 2007 and in preceding weeks, been guilty of meaning to bring or causing to be brought

into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law; demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 10(1), 12, 14, 15(A), 20, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d), and 26 of the Dangerous Drugs Ordinance and regulation 9 of the 1939 Regulations for the Internal Control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

3) After the Attorney General premised in the Third Count of the Bill of Indictment that having imported on the fifteenth (15) March of the year two thousand and seven (2007) into Malta, the dangerous drug cocaine in breach of the provisions of Chapter 101 of the Laws of Malta, as described under the first and second count of this Bill of Indictment, Benedict Nyumah, consequent to the suspicions which his behaviour raised to Police and customs officials, was physically and personally searched and X-rayed and sixty eight (68) capsules containing an aggregate of seven hundred eighty eight point fifty eight grams (788.58grams) of cocaine, were found in his person, and which substance carries the total street value of fifty five thousand and two

hundred and sixty Euro (€55,260). The accused himself admitted that these drugs were intended for trafficking which amount in itself is indicative that the illegal substance was too great to be intended merely for personal use.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Benedict Nyumah was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

By committing the abovementioned acts with criminal intent, the accused Benedict Nyumah rendered himself guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply in that such possession was not for the exclusive use of the offender.

Wherefore, the Attorney General, in his capacity, accused Benedict Nyumah of having on the 15th March 2007 and in preceding weeks, been guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply same in that such possession was not for the exclusive use of the offender; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro

(€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 9 of the 1939 Regulations for the Internal Control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

Having seen the application filed by the said accused on the 15th September, 2009, whereby he declared that he was filing a guilty plea for the charges brought forward in his regard in the above referred to Bill of Indictment ;

Having seen that in today's sitting the accused, in reply to the question as to whether he was guilty or not guilty of the charges preferred against him under the three counts of the Bill of Indictment, stated that he was pleading guilty thereto ;

Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed him a short time to retract it, according to Section 453 (Chap. 9);

Having seen that the accused being granted such a time, persisted in his statement of admission of guilt;

Now therefore declares Benedict Nyumah guilty of all three counts in the Bill of Indictment , namely of

having on the 15th March, 2007 at Malta International Airport , been guilty :-

1. of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), or of promoting, constituting, organising or financing the conspiracy;
2. of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law;
3. of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply in that such possession was not for the exclusive use of the offender.

Having heard submissions of Defence Counsel and of Counsel for the Prosecution regarding the plea in mitigation for the purposes of punishment;

Having heard the evidence of Superintendent Norbert Ciappara who testified that in this case accused should benefit from the provisions of section 29 of Chapter 101.

Having considered in the accused's favour:-

1. the fact that he admitted his involvement and knowledge of the drug importation of 68 capsules consisting of cocaine in the amount of 788.58 grams., possession and conspiracy to traffic in drugs at a very early stage of the Police investigations;

2. his admission of guilt before this Court at the first available opportunity , namely upon being served with the Bill of Indictment ;
3. as well as the fact that his criminal record in Malta is clean; and
4. that section 29 of Chapter 101 is applicable in his case.

Having on the other hand considered that: -

1. the accused had offered his services for the illegal importation into these Islands of a very substantial consignment of cocaine , i.e. 788.58 grams of cocaine of a purity of 66% with a street (retail value) value in the region of Euro 55,260, with the dire consequences that this would have caused among the local population had it not been intercepted by the Customs and the Police at the Airport ;
2. that he did this purely for financial gain, as results from his statement to the police;
3. having also considered that the punishment should also serve as a deterrent to like-minded persons who are involved in similar operations of drug importation and trafficking in these Islands ;

Having considered the relevant case law of our Courts and of foreign courts regarding pleas in mitigation of punishment in cases of an admission of guilt at an early stage of the proceedings;

Having seen Sections 9, 10(1) 12, 14, 15A, 20, 22(1)(a)(2)(a)(f)(1A) (1B)(2)(a)(i)(ii)(3A)(a)(b)(c)(d), and 26 of the Dangerous Drugs Ordinance (Chap.101); Regulation 9 of the 1939 Regulations for the Internal Control of Dangerous Drugs (L.N. 292/1939) and Sections 17, 20, 22, 23, 23A, 26, 31, 492 and 533 of the Criminal Code ;

Having considered that the Prosecution and Defence agreed that, for purposes of punishment, the First and Second Counts of the Bill of Indictment regarding the

crimes of conspiracy and importation respectively, should be absorbed in the offence of unlawful possession of drugs under circumstances which indicate that said drugs were not intended for the exclusive use of the offender, contemplated in the Third Count of the Bill of Indictment as they served as a means to an end for the commission of the offence under the said Third Count of the Bill of Indictment in terms of Section 17 (h) of the Criminal Code (Chap.9) ;

Now therefore condemns the said Benedict Nyumah to a term of imprisonment of ten (10) years, and to the payment of a fine (multa) of thirty five thousand Euros (€35,000), which fine (multa) shall be converted into a further term of imprisonment of eighteen (18) months according to Law, in default of payment ;

Furthermore condemns him to pay the sum of One thousand five hundred and fifty seven Euros and thirty eight Euro cents (€1557.38) being the sum total of the expenses incurred in the appointment of Court Experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Furthermore, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Benedict Nyumah ;

And finally orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out by the chemist Mario Mifsud, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that said drugs are required in evidence against third parties.

Informal Copy of Judgement

< Final Judgement >

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