



## **CRIMINAL COURT**

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

Sitting of the 13 th January, 2010

Number 6/2009

**The Republic of Malta  
Vs  
John Udagha Omeh**

### **The Court,**

Having seen the bill of indictment no. 6/2009 against the accused John Udagha Omeh wherein he was charged with:

**1) After the Attorney General premised in the First Count of the Bill of Indictment that John Udagha Omeh, on the 9<sup>th</sup> December 2007, whilst at the airport in another country, namely Lome Airport in Togo, waiting for his connection flight to Malta, via Tripoli, agreed with Simon Oko to take to Malta a luggage containing cocaine. This drug was to be trafficked in Malta illegally. In execution of their agreement, John Udagha Omeh and Simon Oko planned that as**

soon as John Udagha Omeh found accommodation in Malta, he was to phone back on a given number and a person in Malta was to further contact him and collect the said luggage.

That on the 9<sup>th</sup> December 2007, at about 8.15 pm, John Udagha Omeh arrived in Malta on flight no. KM697 from Tripoli carrying said luggage so as to execute his agreement with Simon Oko. Fortunately, the Police, in collaboration with the Customs Officers, disrupted this association by apprehending John Udagha Omeh at the Malta International Airport and upon investigation found two bags wrapped in plastic and containing white powder suspected to be cocaine hidden under a false bottom in one of his luggage bags. Upon further investigation it was found that the bags were containing 3021.9 grams of Cocaine with a purity of 61.2%.

By committing the abovementioned acts with criminal intent, John Udagha Omeh rendered himself guilty of conspiracy to trafficking in dangerous drugs in breach of the provisions of the Dangerous Drugs Ordinance, (Cap. 101 of the laws of Malta).

Wherefore, the Attorney General, in his aforesaid capacity accused John Udagha Omeh of being guilty of having, with another one or more persons in Malta or outside Malta, conspired for the purposes of selling or dealing in a drug in these Islands against the provisions of the Dangerous Drugs Ordinance, (Cap. 101 of the Laws of Malta), and specifically of importing and dealing in any manner in the drug Cocaine, and having promoted, constituted, organised and financed such conspiracy.

Demanded that the accused be proceeded against according to law, and that John Udagha Omeh be sentenced to the punishment of

imprisonment for life and to a fine of not less than two thousand, three hundred and thirty Euros (€ 2,330) but not more than one hundred and sixteen thousand, five hundred Euros (€116,500), and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in respect of which the offence was committed and as described in the Bill of Indictment, as is stipulated and laid down in Articles 9, 10(1), 12, 14, 15A, 20, 22(1)(a)(f)(1A) (1B)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta) and in Articles 23 and 533 of the Criminal Code (Cap. 9 of the Laws of Malta) or to any other punishment applicable according to law to the declaration of guilt of the accused.

2) After the Attorney General premised in the Second Count of the Bill of Indictment that in pursuance and execution of the association and conspiracy alleged under the First Count above, John Udagha Omeh carried a large luggage bag concealing 3021.9 grams of Cocaine with a purity of 61.2%, with a street value of approximately €229,664.00, under a false bottom in his luggage with the intention of importing such cocaine and handing it over to a third party in Malta. In fact, on the 9<sup>th</sup> December 2007, the said cocaine was imported into Malta by the accused illegally. Fortunately, the Police Officers in collaboration with the Customs Officers, apprehended John Udagha Omeh as he was leaving the arrivals area within the Malta International Airport and seized the drugs found in the luggage bag carried by the accused, thus stopping delivery to his associates in Malta, of the drug.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta). John Udagha Omeh was not in possession of any valid and subsisting import authorization granted in pursuance of the

**Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta).**

**By committing the abovementioned acts with criminal intent, John Udagha Omeh rendered himself guilty of the importation of a dangerous drug into Malta.**

**Wherefore, the Attorney General, in his aforesaid capacity, accused John Udagha Omeh of being 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 (Cap. 101 of the Laws of Malta) when he was not in possession of any valid and subsisting import authorization granted in pursuance of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta).**

**Demanded that the accused be proceeded against according to law, and that John Udagha Omeh be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand, three hundred and thirty Euros (€ 2,330) but not more than one hundred and sixteen thousand, five hundred Euros (€116,500), and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in respect of which the offence was committed and as described in the Bill of Indictment, as is stipulated and laid down in Articles 9, 10, 12, 14, 15A, 20, 22(1)(a), (f), (1B), (2)(a)(i), (3A) (a),(b),(c),(d) and 26 of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta), in Regulation 4 of the 1939 Regulations on the Internal Control of Dangerous Drugs (LN 292 of 1939) and in Articles 17(b), 23 and 533 of the Criminal Code (Cap. 9 of the Laws of Malta) or to any other punishment applicable according to law to the declaration of guilt of the accused.**

**3) After the Attorney General premised in the Third Count of the Bill of Indictment that following the illegal importation of dangerous drug cocaine on the 9<sup>th</sup> December 2007 into Malta as alleged under the Second Count, in breach of the provisions of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta), the Police in collaboration with the Customs Officers effected a search on the luggage bags that were being carried by John Udagha Omeh on his entry to Malta and such search revealed that the accused had in his possession illegally 3021.9 grams of Cocaine with a purity of 61.2%, with a street value of approximately €229,664.00, hidden under a false bottom in his luggage. This large amount of drugs was intended for the illegal trafficking in Malta.**

**Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta). John Udagha Omeh was not in possession of any valid and subsisting import or possession authorization granted in pursuance of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta).**

**By committing the abovementioned acts with criminal intent, John Udagha Omeh rendered himself guilty of the offence of possession of a dangerous drug into Malta, under such circumstances that such possession was not for the exclusive use of the offender.**

**Wherefore, the Attorney General, in his aforesaid capacity, accused John Udagha Omeh of being guilty of knowingly having been in 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 (Cap. 101 of the Laws of Malta) when he was not in possession of any valid and**

**subsisting import or possession authorization granted in pursuance of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta); so, however, that such offence was under such circumstances that such possession was not for the exclusive use of the offender.**

**Demanded that the accused be proceeded against according to law, and that John Udagha Omeh be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand, three hundred and thirty Euros (€ 2,330) but not more than one hundred and sixteen thousand, five hundred Euros (€116,500), and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in respect of which the offence was committed and as described in the Bill of Indictment, as is stipulated and laid down in Articles 9, 10, 12, 14, 20, 22(1)(a),(2)(a)(i), (3A)(a),(b),(c),(d) and 26 of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta), in Regulation 8 and 9 of the 1939 Regulations on the Internal Control of Dangerous Drugs (LN 292 of 1939) and in Articles 23, 17(b) and 533 of the Criminal Code (Cap. 9 of the Laws of Malta) or to any other punishment applicable according to law to the declaration of guilt of the accused.**

**Having seen the jury's verdict of today's date whereby by seven (7) votes in favour and by two (2) votes against, they found the accused guilty of all the three Counts of the bill of indictment.**

**Now therefore, this Court declares the accused, namely John Udagha Omeh guilty, namely of having :-**

**1. on the 9<sup>th</sup> December, 2007, with another one or more persons in Malta or outside Malta, conspired for the purposes of selling or dealing in a drug in these Islands against the provisions of the Dangerous Drugs Ordinance, (Cap. 101 of the Laws of**

**Malta), and specifically of importing and dealing in any manner in the drug Cocaine, and having promoted, constituted, organised and financed such conspiracy, and this according to the First Count of the Bill of Indictment;**

**2. on the 9<sup>th</sup> December, 2007, brought or caused 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 (Cap. 101 of the Laws of Malta) when he was not in possession of any valid and subsisting import authorization granted in pursuance of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta), and this according to the Second Count of the Bill of Indictment;**

**3. on the 9<sup>th</sup> December, 2007, knowingly having been in 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 (Cap. 101 of the Laws of Malta) when he was not in possession of any valid and subsisting import or possession authorization granted in pursuance of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta); so, however, that such offence was under such circumstances that indicated that such possession was not for the exclusive use of the offender.**

**Having considered ALL submissions made by defence counsel which are duly recorded and in particular – but not only – the following :**

**1. that accused had a clean conduct sheet as was verbally confirmed in the course of the sitting by Inspector Aquilina himself;**

**2. that he was kept in preventive arrest for just over two years;**

**3. that although section 29 of Chapter 101, technically speaking, did not apply to his case, accused had offered his assistance to the Police in the attempted controlled delivery held on the 10<sup>th</sup> of**

December, 2007 and the fact that nobody called to pick up the drugs, was outside the accused's control;

4. that he gave his full co-operation to the Police;
5. he did not object to the forcing of the lock of the luggage bag;
6. that he was a Nigerian national who would now be incarcerated in a Maltese prison and far away from his family which was in financial straits;
7. and that as stated in his letter attached to the application dated 10<sup>th</sup> September, 2008, he was making a plea for mercy.

Having considered prosecuting counsel's submissions that :

1. article 29 of Chapter 101 was not applicable in this case as no actual prosecution could be conducted against third parties on the basis of the information supplied by the accused;
2. that, in any case, accused always denied his involvement in the drug deal, so one could never be sure if he had actually given the correct information to the Police;
3. However, and more importantly, the case was a very serious one in view of the considerable amount of drugs involved of a purity above average and the peril it would have created in Maltese society had the drug not been intercepted at the airport.

Having considered the gravity of the case.

Having considered 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. Accordingly it is being made expressly clear that no punishment is being awarded for the offences included in the first two Counts of the Bill of Indictment.



**In this case the Court cannot but take a very serious view of the considerable amount of drugs which accused imported into Malta with a total street retail value of €229,664.00 which would have been one of the largest consignments of cocaine imported into Malta in any one go. This, in the Court's view, should militate in favour of a punishment much closer to the maximum of life imprisonment than the minimum of four years imprisonment allowed by law in terms of article 22 (2)(a)(1) and proviso (bb) of Chapter 101 of the Laws of Malta.**

**Now therefore, after having seen Sections 9, 10, 10,(1), 12, 14, 15A, 20, 22(1)(a)(f)(1A)(1B)(2)(a)(i) proviso (bb)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance (Chap. 101 of the Laws of Malta), Regulations 4, 8 and 9 of the 1939 Regulations on the Internal Control of Dangerous Drugs (LN 292 of 1939) and articles 17(h), 23 and 533 of the Criminal Code (Chap. 9 of the Laws of Malta) condemns said John Udagha Omeh to a term of imprisonment of twenty (20) years, and to a fine *multa* of seventy thousand Euros (€ 70,000) which fine shall be automatically converted into a further term of imprisonment of two (2) years according to law, if it is not paid within fifteen days from today and further orders that he shall pay the sum of one thousand nine hundred and nineteen Euros and forty two cents (€1919.42) being the court expenses incurred in this case according to Section 533 of Chapter 9 of the Laws of Malta within fifteen (15) days from today;**

**Furthermore orders that all objects related to the offence and all monies and other moveable and immovable property appertaining to the person convicted shall be confiscated in favour of the Government of Malta ;**

**Finally, the Court orders the destruction of all drugs exhibited in this case under the direct supervision of the Deputy Registrar of this Court duly assisted by Court Expert Mario Mifsud, unless the Attorney**

Informal Copy of Judgement

**General informs this Court within fifteen days from today that said drugs are also to be preserved for the purposes of other criminal proceedings against other third parties and, for this purpose, the Deputy Registrar should enter a minute in the records of this case reporting to this Court the destruction of said drugs.**

**< Final Judgement >**

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