



## **CRIMINAL COURT**

**HIS HONOUR THE CHIEF JUSTICE  
VINCENT DE GAETANO**

Sitting of the 23<sup>rd</sup> February, 2010

Number 27/2009

**The Republic of Malta**

**v.**

**Yahye Ceesay**

(Bill of Indictment 27/2009)

To-day, Tuesday 23<sup>rd</sup> February 2010

**The Court:**

Having seen the Bill of Indictment of the 7<sup>th</sup> July 2009 preferred by the Attorney General against Yahye Ceesay (son of Kebba and Butte nee Mane, born in Busuranding, The Gambia, on the 15<sup>th</sup> June 1973 and holder of passport PC230975 issued in The Gambia) whereby the said Yahye Ceesay was charged (1) in count one with having between the months of September 2008 and the

2<sup>nd</sup> October 2008 and during the previous weeks and months conspired for the purpose of selling or dealing in a drug (cocaine] in Malta in violation of the law, or with having promoted, constituted, organised or financed such conspiracy in breach of the said law; (2) in count two, with having between the months of September 2008 and the 2<sup>nd</sup> October 2008 and during the previous weeks and months imported, or caused to be imported, or with having taken any steps preparatory to importing into Malta a dangerous drug, to wit cocaine, in breach of the law; (3) in the third count, with having on the 2<sup>nd</sup> October 2008 been in possession of cocaine in breach of the law under such circumstances denoting that it was not for his personal use;

Having heard, during the sitting of the 16<sup>th</sup> February 2010, the said Yahye Ceesay, duly assisted by counsel Dr Arthur Azzopardi, plead guilty to all the charges preferred against him, in which plea he persisted even after the Court, in the most solemn manner, warned him of the legal consequences of such statement and allowed him a short time to retract it in accordance with Article 453(1) of the Criminal Code;

Having heard submissions by counsel for Yahye Ceesay and by prosecuting counsel on the punishment to be applied in this case; having taken in consideration all the circumstances of the case, including Ceesay's early guilty plea; considers:

The punishment applicable under each count of the Bill of Indictment includes that of life imprisonment. The Court, however, is of the view that such life imprisonment is not appropriate given the circumstances of this case and, in particular, given accused's early plea of guilty and the fact that he is clearly a minor pawn in an otherwise big operation to transport illegal drugs from Spain to Malta. Nevertheless, in spite of the fact that others are effectively exploiting people like accused for their own criminal purposes, the accused, as evidenced by his statement to the police, knew exactly what he was doing, that is, that he was importing illegal drugs into Malta. He must

therefore suffer the consequences. The drugs in question – 227 grams of cocaine – were contained in seven capsules carried in Ceesay's body after having been inserted rectally. Moreover in this case Article 17(*h*) of the Criminal Code is to be applied. What this Court cannot understand is why, given the fact that accused was caught red-handed, he did not plead guilty upon arraignment, which would have meant that he would have benefitted more in terms of the reduction in punishment, apart from the fact that court experts' fees (which ultimately the accused has to pay and which, in default, will be converted into imprisonment) or at least some of them would have been avoided.

The Court, having seen Articles 2, 9, 10(1), 12, 22(1)(a)(f)(2)(a)(i)(3A) of the Dangerous Drugs Ordinance (Cap. 101), regulations 2 and 9 of Government Notice 292 of 1939, and Articles 11, 17(*h*), 22, 23 and 533 of the Criminal Code (Cap. 9), sentences the aforementioned Yahye Ceesay **to imprisonment for ten (10) years and to a fine *multa* of twenty thousand euro (€20,000) which will be converted into a further one (1) year of imprisonment if the said fine is not paid according to law**; the Court is not ordering the forfeiture in favour of the Government in terms of paragraph (d) of sub-article (3A) of Article 22 of Cap. 101 since in all three counts the Attorney General's request is for the forfeiture of the moveable and immoveable property "in which the offence took place as described in the bill of indictment" – a clear reference, therefore, to paragraph (a) of Art. 22(3A), which is not applicable in this case, and not to paragraph (d). The Court further **orders that the accused pay to the Registrar the sum of seven hundred and one euro and twenty-eight cents (€701.28) by way of court experts' fees, and this within one month from the day on which this judgment shall have become final**. Finally, the Court orders the destruction of all the drug involved in this case and exhibited under the authority of the courts unless the Attorney General shall, within three weeks from to-day, indicate by means of a note that the said drugs are required in connection with other proceedings; this destruction is to be effected by the

Informal Copy of Judgement

Registrar and a *process-verbal* detailing the destruction is to be drawn up and exhibited by him in the record of these proceedings.

**< Final Judgement >**

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