



CRIMINAL COURT

**THE HON. MR. JUSTICE
LAWRENCE QUINTANO**

Sitting of the 19th September, 2011

Number 1/2011

The Republic of Malta

Versus

Austin Uche

And

Kofi Otule Friday.

Preliminary Pleas

The preliminary pleas filed by both defendants were set for hearing on the 14th June 2011.

The Court heard submissions made by both the defence and the Prosecution.

Preliminary Pleas filed by Kofi Otule Friday.

By a note filed on the 14th February 2011 the applicant submitted the following:

(a) the inadmissibility of Pascal Okafor and Tony Johnson as witnesses since they are allegedly accomplices in the crimes by which the accused is indicted;

(b) that there is no evidence to substantiate the two counts by which he is indicted.

Defence Lawyer for Kofti Otule Friday submitted that in the case 'The Republic of Malta versus Brian Vella' the Criminal Court had held that one could consider two persons as co-accused even though their cases were being dealt with in separate proceedings if these persons could have been arraigned together. Both Tony Johnson and Pascal Okafor decided to implicate Kofi Otule Friday in the crimes they had admitted as committing. So these two witnesses could have been considered as co-accused.

Pascal Okafor has already been sentenced and hence the plea is being withdrawn as far as this witness is concerned.

The Prosecution submitted that this is why they were insisting that the case 'The Republic of Malta' against Tony Johnson should be heard before the case against these two accused. The Prosecution also submitted that in the case referred to by the Defence Lawyer the 'accomplice' gave evidence in court after the case against the accomplice had been decided.

The Prosecution also added that the law does not say that the evidence of an accomplice is inadmissible. Actually the section runs as follows:

'Section 639 of the Criminal Code provides:

(3) Where the only witness against the accused for any offence in any trial by jury is an accomplice, the Court shall give a direction to the jury to approach the evidence

of the witness with caution before relying on it in order to convict the accused.'

This subsection was introduced by Act XVI of 2006 and replaced the old subsection(3).

Now the facts of this case took place in August 2009 three years after the introduction of this subsection.

The Prosecution argued that hence the submission made by the defence lawyer should not be endorsed by the Court.

The Court notes that the defence has withdrawn that part of the plea which refers to Pascal Okafor, the Court is not considering this part of the defence plea.

The defence also objects to the witness Tony Johnson as he is an accomplice. The Court notes that as the law now stands an accomplice may still be summoned to the witness stand. Then the Court has to give a special direction to the jury. So the Court is not accepting this part of the plea raised by the defence. If, on the other hand, the defence actually means that Tony Johnson should be a co-accused, then section 636(b) of Chapter 9 applies:

'(b) that he was charged with the same offence in respect of which his deposition is required, when impunity was promised or granted to him by the Government for the purpose of such deposition.'

This subsection has been interpreted as follows:

'Ir-regola dedotta a contrario sensu mill-artikoli 636(b) tal-Kap 9 tirrendi inammissibbli bħala xhud persuni akkużati bl-istess fatt li bih hu akkużat l-appellant u li l-proċeduri kontra tagħhom ikunu għadhom pendent.' (Court of Criminal Appeal: *'Il-Pulizija versus R.Sciberras'* 6th February 1992).

So the Court is deciding this part of the defence plea as follows:

(a) If proceedings against Tony Johnson are still pending at the time of the trial by jury of the defendant, then this person cannot be produced as a witness.

(b) If proceedings against Tony Johnson are over at the time of the trial by jury of the defendant, then this person may be produced as a witness by the Prosecution.

The second plea.

As to the second plea, this is a matter for the jury to decide and not for the judge before whom the plea is being submitted. Hence the Court is dismissing this plea.

Preliminary Plea filed by Austin Uche

The applicant, who was defended by a different lawyer at the time when the Note of pleas was filed on the 16th February 2011, submitted as follows:

‘that there is no evidence to substantiate the counts by which he is indicted.’

The other two pleas are not actually preliminary pleas but a reference to the witnesses he intends to be produced.

The Court notes that the plea filed by Mr Austin Uche is substantially the same as the second one submitted by Mr Friday. The Court is dismissing this plea for the same reason given in the paragraph dealing the second plea of Mr.Friday.

< Final Judgement >

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