



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 16 th February, 2012

Criminal Appeal Number. 155/2011

**The Police
(Insp. Geoffrey Azzopardi)**

Vs

Festus Ighodaro

The Court,

Having seen the charge brought against the defendant Festus Ighodaro before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having in the months prior to the 18th March 2011 in these islands :

1. escaped from a place of custody in breach of Articles 151 and 160 of Chapter 9 of the laws of Malta;
2. embarked from Malta without a passport and without furnishing the Principal Immigration Officer and prescribed information and such other information as the Principal Immigration Officer may have deemed proper to require, in terms of Article 28 of Chapter 217 of the Laws of Malta

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 18th March, 2011, by which, after that Court had seen sections 17, 151 and 160 of Chapter 9 of the Laws of Malta and Sections 28 and 32 of Chapter 217 of the Laws of Malta, found the accused guilty of the charges brought against him and condemned him to four (4) months imprisonment with effect from date of judgement.

Having seen the application of appeal filed by appellant the

Attorney General on the 23rd March 2011, wherein he requested this Court so that after considering all the arguments already put forth and also any other arguments that will be brought up during the appeal proceedings, subsequently prays this Court to vary the mentioned judgement by :

- a. confirming that part of the judgement whereby the accused was found guilty of the charges brought against him whilst
- b. revoking the part of the judgement where the accused was awarded the punishment of 4 months imprisonment and consequently proceed to prescribe a punishment in accordance with the law.

Having seen the records of the case.

Now duly considers.

That the grounds of appeal of appellant can be briefly summarised as follows:-

That the punishment awarded by the inferior Court, is, by reason of its quality or quantity, different from that prescribed by law for the offence for which the party convicted has been sentenced and is hereby lodging the present appeal in terms of Articles 413(1)(b)(iii) and 413(1)(c) of the Criminal Code.

That the first charged proffered against the appelled refers to Article 151 and Article 160 of the Criminal Code.

That in view of the above and in view of the admission of guilt with regard to the first charge brought against the appealed the punishment that had to be awarded by the Court of Magistrates (Malta) as a Court of Criminal Judicature should not be of less than 6 months imprisonment.

That this was not the only charge brought against the appealed Ighodaro and in fact, the second charge brought against him relates to Article 28 and 32 of the Immigration Act (Cap. 217 of the Laws of Malta).

That the Immigration Act, on the other hand, does not provide a minimum period of imprisonment in case of the abovementioned charged.

That therefore, given the due considerations made by the Court of Magistrates (Malta) as a Court of Criminal Judicature, the minimum punishment which could have been awarded in this case was that of 6 months imprisonment and therefore, the punishment of 4 months imprisonment imposed by the Court of Magistrates (Malta) was manifestly below the minimum stipulated by law.

Considers:

This is an appeal by the Attorney General who felt aggrieved because of the fact that the punishment awarded by the first Court is by reason of its quality or quantity different from that prescribed by Law for the offence for which the accused had been convicted.

The accused was originally charged with having on the 18th of March 2011 escaped from a place of custody in breach of Articles 151 and 160 of the Criminal Code and embarked from Malta without a passport and without furnishing the principle Immigration officer, the prescribed information, as the said officer, may have deemed proper to require in terms of Article 28 of Chapter 217 of the Laws of Malta. To this charge, the accused pleaded guilty and on the same day 18th March 2011 the Court of

Magistrates as the Court of Criminal Judicature, proceeded to pass judgement on the accused who was awarded a term of imprisonment of four months. The Attorney General is stating that this term is below the minimum prescribed by Law, which according to Article 151 mentioned in the summons; “on conviction a person shall be liable to imprisonment of a term of not less than six months but not more than one year”.

Considers:

That on the admission of guilt, the Court has no other choice other than to pass judgment unless it results that the accused did not understand the nature of the charge, or that it was not his intention to admit to the charge, or that according to the facts the Court realizes that he should not be found guilty of a crime (Police versus Martin J. Camilleri, Court of Criminal Appeal 20th January 1995). None of these caveats are applicable to this case. On being asked whether the accused was guilty of the crime being charged, he admitted to this guilt and the Court passed judgment.

However, this judgment has to be in conformity with the Law and according to the Article above mentioned 151 of the Criminal Code, the first Court could not have awarded a lesser punishment than six months imprisonment. This Court therefore, feels that the Attorney General is right in his submissions and the appeal should be upheld.

Consequently, whilst upholding the appeal, the Court confirms that part of the judgment, whereby the accused was found guilty of the charges brought against him and revokes that part of the judgment where the accused was awarded the punishment of four months imprisonment and instead awards a punishment of six months imprisonment.

< Final Judgement >

Informal Copy of Judgement

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