



**CRIMINAL COURT**

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

Sitting of the 30 th January, 2013

Number 58/2010

Bill of Indictment number 58/2010

The Republic of Malta

VS

Tony Johnson  
[holder of identity card no. 52516(A)]

Today, the 30th January 2013

The Court,

Having seen the bill of indictment number 58/2010 whereby the Attorney General in the name of the Republic of Malta declared that:

**First Count**

That on the twenty sixth (26<sup>th</sup>) day of August of the year two thousand and nine (2009) and during the previous

**weeks TONY JOHNSON decided to start dealing, offering, supplying and distributing drugs illegally in the Maltese Islands in agreement with others.**

In fact, on the dates above mentioned TONY JOHNSON conspired and agreed with a certain Kofi Otule Friday and Austin Uche to sell, supply and distribute to a third person in Malta an amount of the drug cocaine (approx. 1 kg). From this drug deal the accused was to receive a monetary compensation of two thousand euros (2,000) from Kofi Otule Friday. **In execution of this conspiracy the accused agreed to provide all the necessary assistance for this illegal activity to take place, which activity causes untold harm to Maltese society and an illegal financial gain to the accused, which financial gain was at the basis of this conspiracy.**

In execution of these pre-concerted plans, on the 26<sup>th</sup> of August 2009 the accused agreed to meet and he actually met Kofi Otule Friday at St. Pauls Bay, Malta and whilst there Kofi Otule Friday gave the accused fifty-nine (59) capsules filled with the drug cocaine. Later that day after his meeting with Kofi Otule Friday, the accused went to the Marsa Open Centre to meet his other friend Austin Uche. According to their plans, the accused and Austin Uche were then going to meet another person who agreed to buy the kilogram of cocaine in possession of the accused for around twenty thousand euros (€20,000).

Fortunately, Police Officers from the Drug Squad, knowing that an illegal activity will take place, were observing the area of Ghajn Dwieli, Paola and stopped and arrested both the accused and Austin Uche who were in a car. When effecting this arrest Police Officers noticed a dark bag near the accused and this bag was taken for further analysis. The accused admitted with the Police that this bag was his. In fact, it transpired that this bag contained a total of 949.13 grams of cocaine with its purity calculated at 33.7%. The total street value of this amount of drugs as established by the Court-appointed expert is of €72,134. This consignment of drugs was the subject matter of the abovementioned conspiracy.

TONY JOHNSON was not authorized to be in possession of such dangerous drug in terms of Law.

The drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance.

By committing the abovementioned acts with criminal intent, TONY JOHNSON rendered himself guilty of conspiracy to trafficking in the dangerous drug cocaine in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta or by promoting, constituting, organizing or financing such conspiracy.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused TONY JOHNSON of being guilty of having, on the twenty sixth(26<sup>th</sup>) day of August of the year two thousand and ten (2009) and during the previous weeks with criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in drugs (cocaine) in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or by promoting, constituting, organizing or financing such conspiracy, and 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 and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta 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 articles 2, 9, 10(1), 12, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A,

and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

### **Second Count**

That within and during the same context of place, time, facts and circumstances mentioned in the preceding count of this bill of indictment, that is to say on the twenty sixth (26<sup>th</sup>) day of August of the year two thousand and nine (2009) and during the previous weeks, **TONY JOHNSON decided to start trafficking, supplying, procuring and distributing dangerous drugs (cocaine) to other persons in the Maltese Islands.**

In fact on the dates above mentioned the accused was informed by his friend Austin Uche that he knew a person in Malta who wanted to buy a kilogram of the dangerous drug cocaine. Knowing that Kofi Otule Friday had cocaine for sale, the accused TONY JOHNSON, in agreement with both Kofi Otule Friday and Austin Uche offered to supply, procure and distribute this amount of cocaine to this third party. For his involvement in this drug deal TONY JOHNSON was to receive a monetary compensation of two thousand euros (2,000) from Kofi Otule Friday. On the 26<sup>th</sup> of August 2009 the accused met Kofi Otule Friday in St. Pauls Bay, Malta and whilst there Kofi Otule Friday gave the accused fifty-nine (59) capsules filled with the drug cocaine. Later that day after his meeting with Kofi Otule Friday, the accused went to the Marsa Open Centre to meet his other friend Austin Uche. According to their plans, the accused and Austin Uche were then going to meet a third person who agreed to buy the kilogram of cocaine in possession of the accused for around twenty thousand euros (€20,000).

Fortunately, Police Officers from the Drug Squad, knowing that an illegal activity will take place, were observing the area of Ghajn Dwieli, Paola and stopped and arrested

both the accused and Austin Uche before the amount of cocaine in possession of TONY JOHNSON was supplied, sold and distributed to other persons in Malta. When effecting this arrest Police Officers noticed a dark bag near the accused and this bag was taken for further analysis. The accused admitted with the Police that this bag was his. In fact, it transpired that this dark bag contained a total of 949.13 grams of cocaine with its purity calculated at 33.7%. The total street value of this amount of drugs as established by the Court-appointed expert is of €72,134.

The drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance.

By committing the abovementioned acts with criminal intent, TONY JOHNSON rendered himself guilty of supplying or distributing, or offering to supply or distribute the dangerous drug (cocaine) in Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused TONY JOHNSON of being guilty of having, on the twenty sixth (26<sup>th</sup>) day of August of the year two thousand and nine (2009), with criminal intent, supplied or distributed or offered to supply or distribute the drug cocaine in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

And 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 and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents

(€116,468.67) and 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 articles 2, 9, 10(1), 12, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

### **Third Count**

That within and during the same context of place, time, facts and circumstances mentioned in the preceding counts of this bill of indictment, that is to say on the twenty sixth (26<sup>th</sup>) day of August of the year two thousand and nine (2009) and during the previous weeks the accused TONY JOHNSON in agreement with others decided to start dealing, supplying and distributing cocaine in Malta. Police Officers from the Drug Squad, knowing that an illegal activity will take place, were observing the area of Ghajn Dwieli, Paola and stopped and arrested both the accused and Austin Uche. When effecting this arrest, the Police Officers noticed a dark bag near the accused and this bag was taken for further analysis. In fact, it transpired that this dark bag contained a total of 949.13 grams of cocaine with its purity calculated at 33.7%. The total street value of this amount of drugs as established by the Court-appointed expert is of €72,134. The accused admitted with the Police that this bag was his.

**TONY JOHNSON was therefore knowingly and illegally in possession of 949.13 grams of the drug cocaine while in the Maltese Islands which drug was found under circumstances denoting that it was not intended for his personal use.**

The drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance.

Consequently by committing the abovementioned acts with criminal intent, TONY JOHNSON rendered himself guilty of being in possession of a dangerous drug (cocaine) as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused TONY JOHNSON of being guilty of having, with criminal intent, of being in possession of a dangerous drug (cocaine) as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove

that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use; and 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 and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and 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 articles 2, 9, 10(1), 12, 22(1)(a)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of regulations 2, 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

The Court having seen the note verbal of the sitting of the sitting of the twenty-first (21st) of November two thousand and twelve (2012) whereby the accused pleaded guilty to the charges proffered against him and heard evidence and submissions on the admissibility or otherwise of article 29 of Chapter 101 to the benefit of the accused;

Considers:

That on the twenty-sixth (26th) of August two thousand and nine (2009) during a Drug Squad operation, accused Tony Johnson was arrested at a crime scene. Investigations initially concerned Austin Uche only. After



his arrest, accused Tony Johnson assisted the police and it was through him that charges could be levied against Austin Uche and Kofi Friday, another person involved in the alleged trafficking of drugs.

Initially the police requested that the accused should benefit from section 29 of Chapter 101 but later during compiliatory proceedings, accused Tony Johnson changed his version and put all the blame on Koffi Friday, exonerating Austin Uche completely. It was then that the police decided to withdraw the benefit. However, it was through the efforts of Tony Johnson that the police arraigned Tony Uche and later Kofi Friday. Inspector Ronald Theuma told the Court that it was through the efforts of Tony Johnson that the police arraigned Austin Uche and without the co-operation of the accused the police would not have had enough evidence to arraign Uche. During the search at Koffi Friday's residence a sock was found similar to the one found on Tony Johnson during his arrest, which sock contained drugs.

The accused voluntarily gave his evidence. If he didn't, the police would have fallen on the sworn statement of the accused which the police believed to be the truth since it tallied with the information the police had had beforehand.

It is to be said that the police had no information whatsoever on the accused Tony Johnson and Koffi Friday and the operation was intended to arrest only Austin Uche. When the accused was found to be in the company of Uche, he was also arrested and it was through the accused that the police came to know of the part Koffi Friday was playing in this traffic organization.

The accused gave his evidence before the Court and stated that he confirmed the evidence on oath given before Magistrate Edwina Grima. During that session the accused gave further information but admitted that later during compiliatory proceedings he retracted. No satisfactory explanation was given as to why the accused changed his version. He claims that he was not feeling well whilst releasing the statement and claims that the

statement was dictated to by the inspector and it was not true that Austin Uche was his friend.

Considers:

That during the submissions on punishment the Defence argued that the accused had entered a guilty plea immediately. He co-operated with the police who arraigned Koffi Friday exclusively on what the accused had told them. Therefore section 29 should apply because accused never changed his version as regards Koffi Friday. The accused did what he could but did not want to give false evidence against another person. He claims that he did not have the assistance of a lawyer during the early stage of his arrest and was not feeling well. Whatever the case, the accused entered a guilty plea during arraignment, which was the earliest stage at which a guilty plea could possibly be entered. When the law speaks of "helping the police," it refers to exactly what the accused did, in which case, on a balance of probability, he had helped the police in at least arraigning Koffi Friday.

The Attorney General on the other hand argued that during the early stages of the investigation the accused co-operated with the police and they did recognize that he should benefit from the application of section 29. However, this was before the accused gave evidence in Court when he retracted and gave a completely different version. This means that the accused credibility is now tainted and this could have a very serious effect on the outcome of proceedings both against Austin Uche and against Koffi Friday.

Considers:

On the basis of this evidence the Court is satisfied that during the initial stages of the proceedings the accused was instrumental in the arraignment of Koffi Friday and Austin Uche. The police only had information on the latter and could only arraign Koffi Friday and Austin Uche on the evidence and information supplied by the accused. It is not without good reason, therefore, that at that stage

the police had requested that the accused benefit from section 29. However, during compulsory proceedings, when evidence was given under oath, the accused retracted his position as regards Austin Uche but kept it as originally tendered with regards to Koffi Friday.

Inspectors Ronald Theuma and Johann Fenech made it quite clear that without the co-operation and information given by the accused, the police would not have been able to arraign Austin Uche and Koffi Friday, the latter, being totally unknown to the police.

This Court feels, therefore, that even though the accused retracted part of the evidence and may have compromised the proceedings with regard to Austin Uche, he did not do so with regard to Koffi Friday, who still faces proceedings where the accused is expected to continue giving his evidence. In this case, therefore, this Court feels that accused should benefit from section 29 of Chapter 101, but only to one degree and not take the full benefit of two degrees.

This Court, therefore, after considering the above, and having seen articles 2, 9, 10(1), 12, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(a), 24A, and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code, finds the accused Tony Johnson guilty of having on the twenty-sixth (26th) day of August of two thousand and nine (2009) and during the previous weeks, with criminal intent, with one or more persons in Malta, or outside Malta, conspired for the purposes of selling or dealing in drugs (cocaine), in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), or by promoting, constituting, organizing or financing such conspiracy. This in accordance to the first count of the bill of indictment.

Also finds the accused guilty of having on the twenty-sixth (26th) day of August of two thousand and nine (2009) with criminal intent supplied or distributed or offered to supply or distribute the drug cocaine in breach of the provisions

of the Dangerous Drugs Ordinance of Chapter 101 of the Laws of Malta. This in accordance with the second count.

And finally, in accordance with the third count, the Court finds accused guilty of having with criminal intent of being in possession of a dangerous drug (cocaine) as specified in the first schedule of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of an import or export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs and was not otherwise licensed by the President of Malta or authorized by the internal control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use according to a medical prescription as provided in the said regulation and this in breach of the 1939 regulations on the Internal Control of Dangerous Drugs as subsequently amended by the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) and which drug was found under circumstances denoting that it was not intended for his personal use.

Having seen that the first two charges served as a means whereby the accused was in possession of the dangerous drug (cocaine) as specified in the third charge;

Having seen that accused entered a guilty plea during the initial stages of the arraignment against him;

And having seen that the accused should benefit from section 29 of Chapter 101, but only to one degree.

Wherefore, condemns accused to a term of imprisonment of nine (9) years and to a fine of thirty thousand Euro (€30,000) which fine is to be converted into a term of imprisonment according to law if not paid within fifteen (15) days of this judgement.

Informal Copy of Judgement

The Court also orders the destruction of all the drugs seized in this case under the direction and supervision of the Registrar of the Criminal Court unless the Attorney General files a note within fifteen (15) days requesting that the drugs be used as evidence in another case pending before the courts.

**< Final Judgement >**

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