



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 24 th May, 2013

Number. 562/2011

**Police
Inspector Graziella Muscat**

vs

Evangeline Silos Hernandez Cauchi

The Court,

Having seen that the accused Evangeline Silos Hernandez Cauchi of 56 years, daughter of Lamberto and Pacienca nee' Briton, born Philippines on the 11th Octobert 1954 and holder of Maltese ID card number 26441A and Philippine passport number GG458067 was arraigned before it and charged with having:

As wife of Francisco C. Hernandez, during the subsistence of a lawful marriage with the said Francisco C. Hernandez on the 19th August 2003, having in these

Islands, contracted a second marriage with Ronald Cauchi.

Having seen all documents and records of the proceedings including the note filed by the Attorney General (folio 69) dated 16th November 2011 whereby he transmitted acts and records of the preliminary investigation to be heard and decided as by this Court as a Court of Criminal Judicature and whereby he deemed that from the preliminary investigation there might result an offence or offences under the provisions of:-

- a. articles 196 of Chapter 9 of the Laws of Malta;
- b. articles 23, 23A and 533 of Chapter 9 of the Laws of Malta.

Having seen that on the 26th January 2012 (*at folio 70*) the accused answered that she had no objection that her case is heard by summary proceedings and decided by this Court as a Court of Criminal Judicature.

Having heard all evidence brought forward by the parties.

Having heard the final submissions made by the Defence Counsel;

Having considered:

The facts of this case are briefly as follows. In March 2008 an anonymous letter was sent to the Public Registry¹ informing them that the accused who was a Philippines citizen had contracted marriage in Malta with a Maltese citizen whilst she was still married to Francisco Hernandez. The accused had married the said Francisco Hernandez in the Philippines in 1978² and three children were born from the said marriage. The accused came to Malta in December 2001 and lived with her cousin Ermelinda Mendoza Lewis for a while but she then met Ronald Cauchi through an advert in a newspaper and

¹ Document filed at folio 18.

² A copy of the relative marriage certificate is filed at folio 14 of the acts of these proceedings.

after living together for a short while they eventually got married on the 14th August 2004³. Before getting married the accused presented a death certificate⁴ to the Public Registry whereby it was indicated that her husband Francisco Hernandez had died on the 7th September 2002. The Police started investigating the alleged case of bigamy after the anonymous letter mentioned above was forwarded to them by the Director of the Public Registry. The accused was interrogated by the Police⁵ whereby she informed them that her husband had abandoned the matrimonial home in 1994 because he was having an affair with another woman and she had brought up the children on her own. She said that she had come to Malta in 2001 and lived with her cousin for a while until she met Ronald Cauchi. She explained further that in September 2002 her daughter Maria had informed her that her husband Francisco Hernandez had died of a heart attack. She confirmed that in August 2004 she had married Ronald Cauchi and was still happily married to him. She also stated that since coming to Malta in December 2001 she had gone twice to the Philippines to visit her children. The accused also informed the Police that she no longer spoke to her cousin in Malta because they had argued.

In the course of these proceedings the Police exhibited a set of emails⁶ exchanged with the Interpol in the Philippines whereby information as to whether Francisco Hernandez was dead or alive was requested. The Philippine authorities were also requested to provide an original death certificate of the said Francisco Hernandez. After a series of reminders the Interpol in the Philippines sent a reply to the Maltese Interpol informing them that no records of the mentioned subject's death were found. The Maltese authorities sent a scanned copy of the death certificate which had been submitted by the accused to the Public Registry in Malta and asked them to verify whether the said certificate was genuine or not and also asked them to provide any form of documentation which

³ Relative marriage certificate is filed at folio 15.

⁴ A copy is inserted at folio 16.

⁵ The relative statement is exhibited at folio 11 and 12 of the acts of these proceedings.

⁶ Inserted at folio 22 to 31.

proved that Francisco Hernandez was still alive. Further to this latter request the Maltese Interpol received the following reply:-

“This pertains to your request to carry out necessary inquiries to determine if that attached scanned certificate of Death of Francisco Serna Hernandez is genuine or not.

Please be informed that on 04 September 2010, the National Statistics Office (NSO) verified the death record of Mr. Francisco Serna Hernandez and it yielded negative result.”

In these proceedings the accused is being charged with having committed the offence of bigamy contemplated in Section 196 of the Criminal Code. The Prosecution is basing its case against the accused on the content of the emails received from the Interpol in the Philippines as well as on the documents exhibited at folio 36 to 40 of these proceedings which documents consist of an invitation to the wedding of the accused's daughter held in December 2009 whereby the names of both the accused and her husband are indicated as well as photos allegedly taken at the said wedding whereby the accused appears with a man who the Prosecution are alleging is the accused's husband.

The Court deems that in this case the Prosecution failed to produce sufficient evidence indicating on a level of beyond reasonable doubt that the accused's previous husband Francisco Hernandez is still alive and that the accused knew that he was alive at the time she contracted marriage with Ronald Cauchi. The Court deems that the documents filed by the Prosecution cannot be considered to prove beyond reasonable doubt that the accused's husband is still alive. First and foremost the copies of the emails exhibited by the Prosecution are not authenticated and the Court cannot therefore verify where and from whom the replies contained therein mails are coming from. Furthermore no evidence was brought forward indicating that the death certificate provided by

the accused to the Public Registry in Malta was false and this Court could not fail to note that the accused was not charged with having made use of a false document. This obviously indicates that the Prosecution cannot prove that the accused was aware that her husband was not dead at the time she contracted marriage to Ronald Cauchi in 2004. The Court could also not fail to note that the Prosecution did not file letters of request whereby the relevant authorities in the Philippines could certify that Francisco Hernandez was still alive. This Court considers that the Prosecution failed to bring forward the best evidence in this case as it is obliged to do and therefore the accused cannot be found guilty of the charge of bigamy brought against her. This Court cannot find the accused guilty on the basis of emails where the authors of the said emails are unknown. This Court cannot find the accused guilty when there is no evidence that the death certificate relating to her husband is false. This Court cannot find the accused guilty of the offence of bigamy when it is not morally convinced that the accused was aware that her husband was not dead at the time of contracting her second marriage to Ronald Cauchi.

For the abovementioned reasons the Court declares the accused as not guilty of the charge brought against her and consequently acquits her from the said charge.

< Final Judgement >

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