

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

MAGISTRATE DR MIRIAM HAYMAN LL. D.

Kumpilazzjoni 458/01

**The Police
(Sp. Sandro Zarb)**

vs

**Gladys Owie, 25 years, Nigerian national,
Daughter of Felix and Mary, born at Benin
City on the 04/03/76 of unknown passport.**

Today 15th May, 2002.

The Court,

Has seen the charge against the abovementioned Gladys Owie that on the 5th August, 2001 and the previous days as a person who embarked or disembarked from Malta, made or caused to be made a false return, false statement or false representation and/or furnished the Principal Immigration Officer with false information by presenting the Principal Immigration Officer with a Travelling Document of Spain, which document bears number 00013908 (Chap 217 Sec 32 (c)).

And charged also with having on the same dates and circumstances in Malta, knowingly made use of a forged document being the above mentioned document (Chap. 9 Sec 189),

And charge her also with having on the same dates and circumstances in Malta, forged, altered or tampered with a passport or used or had in her

possession a passport which she knew to be forged, altered or tampered with. (Chap. 61 sec 5).

Has seen the consent of the Attorney General that the case be tried with summary proceedings.

Has seen that the accused had no objection for summary proceedings.

Has seen the acts of the case.

Has heard the witnesses.

Has heard oral submissions.

Considers,

Accused Gladys Owie has been charged with the violation of article 32 (c) of Chapter 217, article 189 of Chapter 9, article 5 of Chapter 61 and articles 14 and 15 of Chapter 217.

From the facts of the case, the Court considers that it is safe to deduce that Miss Owie's arrival in Malta transcends legality. Inspector Sandro Zarb gave evidence of the fact that on the day of the accused's arrival, 27th July, no ship had so arrived from Sicily as claimed by the accused, nor had a Nigerian National reached through legal channels our shores. But Miss Owie, as rightly pointed out by defence counsel in his oral submissions is not charged with illegal entry on our island. The main charges brought against her concern the validity or otherwise of her travelling document and special residence permit supposedly issued to accused by the Spanish authorities.

Prosecution's main evidence with regards to the authenticity of these abovementioned documents is mainly resting on two documents exhibited in the records of the case. Dok GO2 is a photocopy of a fax transmission from the Ministry of Interior (Spanish) to the Maltese Police Special Branch. The same document is attested as a true copy of the original by the Inspector Zarb. The other document, Dok EC, exhibited by Eric Cachia is also a fax transmission or copy thereof.

Both documents mentioned establish that Miss Owie's travelling documents and special residence permit are false or have been tampered with.

It is a sine qua non condition to reach proof beyond a reasonable doubt by the prosecution, unless a shift in the burden of proof is otherwise contemplated by the law. Rules of evidence determine the standard degree and admissability of evidence documentary or oral that must be produced in Court to attain such degree of proof. As premised the main evidence tendered by Prosecution to sustain its case, that is to prove the falsity of Miss Owie's were two fax transmissions. The authenticity of these documents was not proved or disproved by any expert in the field. The applicability of section 628 of COCP to the Criminal law of evidence (vide sec 520 (b) of Chapter 9) also renders both documents as inadmissible. Furthermore, Dok GO2 exhibited by Inspector Zarb, though attested as a true copy of the original, does not conform with the requisites enlisted in section 636 of the COCP in that it does not clearly transpire from Inspector Zarb's evidence who is the "we" (a fol 11) who received the same fax, or who holds the original fax, one questions why such was not exhibited in Court.

The Court, considering that the case under examination is of a criminal nature, premises that interpretation in the criminal field is of a more restrictive nature. Thus the standard of proof necessary must logically be of such a degree as to leave no moral doubt in the mind with regard to the accused's guilt.

The Court does not consider that such degree of proof has been reached by the prosecution albeit putting into doubt the legality of Miss Owie's entry in Malta.

The position of the Court is moreover ascertained taking into consideration that Dok EC purports to be a reply based upon, and here the Court has but to stress the upon, solely on fax copies of the travelling document and residence permit. Such that the actual fax transmission refers to the viewing of the original residence permit or a very good copy thereof, so that proper verification can be made.

The above premised the Court considers that no sufficient evidence was brought forward to sustain the charges deduced against Gladys Owie and acquits her from the said charges.

Magistrate Dr Miriam Hayman LL. D.