



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
DOREEN CLARKE

Sitting of the 10 th July, 2015

Number 1/2015

The Police
(Inspector Darren Buhagiar)

VS

Ben Chidi Nwaeke

The Court

Having seen the charges against Ben Chidi Nwaeke of 35 years of age, of Nigerian Nationality, so of Ben Chidi and Ogbonne, born in Lagos, Nigeria on the 11th of September, 1979 and residing in Malta and holder of Nigerian Passport bearing number A00114485;

Charged with having on the 9th of July, 2015 or previous days in these islands or somewhere else, forged, altered or tampered with a document, that is a French residence permit card bearing number IZ525TSS4 issued on the name Ben Chidi Nwaeke or used or had in his possession same document, which he knew to be forged, altered or tampered with;

And charged also with having on the same date, time and circumstances committed any other kind of forgery, or have knowingly made use of any other forged documents mentioned above;

Charged also with having on the same date, time and circumstances forged any document or true copy of a document or an entry made in pursuance of this act.

Having seen that the defendant admitted the first and second charges brought against him in so far as these refer to the possession and use of forged documents, and that he confirmed this admission of guilt even after having been given time to reconsider his plea.

Having seen that the Prosecuting officer withdrew the third charge and declared that the first and second charges were being based only on the possession and use of a forged document.

Having seen the documents filed by the prosecuting officer.

Having heard the submissions regarding the penalty to be meted out.

Having considered

That defendant admitted the first and the second charge brought against him in so far as they refer to possession and use of a forged document; these are consequently sufficiently proven. These two charges were in fact based solely on the possession and use of forged documents.

That the third charge was withdrawn by the prosecuting officer; the Court will consequently abstain from taking further cognisance of this third charge.

With regards the penalty to be meted out the Court took into consideration the nature of the offences of which the defendant is being found guilty. In this regard reference should be made to the judgement given by the Court of Criminal Appeal in the case *The Police vs David Abekunle et* (decided on the 9th June 2009) where it was said that:

it considers border security to be a very important and a very serious matter, and that any attempt to bypass, breach or otherwise circumvent such security by means which are illegal must consequently be regarded as a very serious offence. It is true that, as learned counsel for the appellants has ably shown, the Inferior Courts have, on a number of occasions, dealt with relatively similar cases with a suspended prison sentence. This Court, however, is of the view that such sentences cannot possibly serve as an effective deterrent against attempts to gain access to Malta and/or to the European Union illegally. This Court is of the view that, as a general rule, such cases should be met with a prison sentence with immediate effect, and that, always as a general rule, anything short of an immediate prison sentence amounts to taking a very myopic view of the whole issue of border security. The Inferior Courts should resist the temptation to deal

lightly with such cases simply because the accused pleads guilty upon arraignment...

This principle has been consistently followed by both inferior and superior courts. In fact in a much more recent judgement, also given by the Court of Criminal Appeal¹ the Court said that

.... travelling with false documents or documents belonging to a third party is a very serious crime indeed and impinges on the security of the State. Previous judgements always imposed an effective prison term when people are found guilty of abusing the system and this Court feels that the Magistrates Court was right when it imposed an effective prison terms.

This Court too is of the opinion that it should impose an effective prison term. However in view of the fact that the defendant admitted at the earliest stage of the proceedings and in view of his clean conviction sheet the Court feels that it should impose the minimum term allowed by Law.

Wherefore the Court whilst abstaining from taking further cognisance of the third charge brought against defendant, after having seen sections 189 of Chapter 9 of the Laws of Malta and section 5 of Chapter 61 of the Laws of Malta find defendant guilty of the first two charges brought against him in so far as these refer to the possession and use of a forged document and condemns him to seven months imprisonment.

¹ In the case *The Poilce vs Oredia Isaal* decided on the 26th March 2015.

< Final Judgement >

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