

Court Of Criminal Appeal

Hon. Mr. Justice Dr. Giovanni M. Grixti LL.M., LL.D.

Sitting of the 10 September 2015

Criminal Appeal Nr. 381/2015

The Police

Inspector Darren Buhagiar

Vs

Ben Chidi Nwaeke

The Court:

Having seen the charges brought against the appellant Ben Chidi Nwaeke, holder of Nigerian passport bearing number A00114485, charged with having:

On the 9th of July, 2015 or on the 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 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 the judgement proffered by the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 10th July, 2015, whereby upon the defendant's plea of guilt on the first and second charge, condemned him to a term of imprisonment of

seven months and the Court abstained from taking cognisance of the third charge after the latter was withdrawn by the prosecution;

Having seen Ben Chidi Nwaeke's appeal application, presented in the registry of this Court on the 21st July, 2015, whereby he requested this Court to modify and vary the appealed judgement, in that whilst confirming the part of the judgement appealed from dealing with his guilt, cancels it in so far as the penalty inflicted upon him is concerned, and instead inflict upon him a punishment which will not include an effective prison sentence.

Having heard the submissions of defence counsel to the appellant and the attorney general;

Having seen the records of the case;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by the Court.

Having considered:

That from the records of the case, appellant Ben Chidi Nwaeke was arraigned under arrest before the Court of Magistrates (Malta) on the 10 of July 2015 and charged with the aforesaid crimes for which he registered a plea of guilt with respect to the first two charges regarding possession and use of a forged document. Following the withdrawal of the third charge by the prosecution, the said Court abstained from taking further cognisance thereof and proceeded by condemning the appellant to a term of imprisonment of seven months in respect of the first two charges;

That this appeal is limited to the punishment meted out by the First Court in that appellant felt aggrieved by the imposition of an effective term of imprisonment of seven months and requested in lieu thereof a punishment which does not include an effective term of imprisonment;

Having considered further that it is an established principle that this Court should not upset the discretion exercised by the First Court in its application of punishment unless it is beyond that stipulated by the applicable law and there is nothing to indicate that it should have been lesser than the meted punishment (vide *Il-Pulizija vs Maurizio Massimiliano* among others). Applicant, however, is of the opinion that the First Court was not correct in basing its judgement on a 2009 judgement of the Court of Appeal in the case *The Police vs David Abekunle et* (9.6.2009) in that since then then punishment in a number of cases regarding similar charges did not import an effective prison term. Applicant made reference to the then latest judgement given by the Court of Magistrates (Malta) in the names *The Police vs Gloria Ilaho* of the 14 July 2015.

It is to be noted that all judgements referred to by the First Court and the appellant regard similar facts to the case under examination. It is also pertinent to note that the charges for which the appellant was found guilty entail a punishment of imprisonment from six months to two years in respect of the first charge (art. 5 Chapter 61 of the Laws of Malta) and seven months to one year in respect of the second charge (article 189 of Chapter 9);

The Court examined all judgements cited by the First Court and the appellant and finds no reason to upset the discretion exercised by the said Court of Magistrates. The considerations made by this Court in the *Abekunle* case cited *supra* were again made clear in the case *The Police vs Issouf Yigo* decided on the 14 July 2009 and the main preoccupation of the Court in both cases was the importance of preserving border security and that breach thereof is a very serious offence. The First Court also considered a judgement of the Court of Criminal Appeal in the names *The Police vs Oredia Isaal* decided on the 26 March 2015 also on similar offences which affirmed the serious nature of such charges deemed as an abuse of the system. In the opinion of this Court not only has the passage of time not changed the seriousness of the offences under examination but quite on the contrary, border security and breach

thereof, has as of late become even more important. In this particular case, as in the others herein cited, the accused was found in possession and making use of a forged document, a residence permit card, purporting to be issued by another State which in the opinion of this Court is a serious crime in itself and ancillary to the threat of border security. The First Court imposed an effective prison term in its minimum taking into consideration an early plea of guilt and therefore such punishment is within the parameters of the applicable law.

For these reasons, this Court dismisses the appeal and confirms the judgment as delivered by the First Court.