COURT OF CRIMINAL APPEAL

The Hon. Dr. Antonio Mizzi LL.D., Mag. Juris (Eu Law)

Appeal no. 523/2014

The Police

v.

Osita Anagboso Obi

son of Mike, born in Nigeria on the 23rd June, 1973, holder of Nigerian Passaport number AO1624272

This, thirtieth (30) day of September , 2015

The Court,

Having seen the charges proffered against the appellant Osita Anagboso Obi before the Court of Magistrates (Malta), namely:

With having on these Islands between the 10th and 11th March, 2010 -

1. committed an act of money laundering by:

a) Converting or transferring property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

b) concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or

suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

c) acquiring of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

d) retaining without reasonable excuse of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

e) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of section 41 of the Criminal Code;

f) acting as an accomplice within the meaning of section 42 of the Criminal Code in respect of any of the matters or activities defined in the above forgoing sub-paragraphs (i), (ii), (iii), (iv) and (v).

2. In these Isalnds, between the 10th and 11th March 2010, at about 2100 hours and 1200 hours respectively, at the Malta International Airport, Gudja, failed to declare to the Comptroller of Customs, that he was carrying a sum equivalent to €10,000 or more in cash, whilst entering and leaving these Islands [Malta], in breach of Article 3 of Legal Notice 149 of 2007 (Cash Controls Regulations, 2007) of the External Transactions Act (Chapter 233 of the Laws of Malta).

The Court was requested to attach in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and further to prohibit the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property in terms of section 22A of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, of section 5(1)(a)(b) of the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, as well as to issue orders as provided for in sections 5(1) and 5(2) of the same Act and of section 23A of the Criminal Code, Chapter 9 of the Laws of Malta.

The Court was requested that in case of guilt, apart from imposing the punishment according to law, to order the forfeiture of all the exhibited objects.

The Court was requested to apply section 533(1) of the Criminal Code with regard to the expenses incurred in the appointment of experts.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 9th December, 2014, by which, the Court, after having seen section 3 of Chapter 373 of the Laws of Malta, regulation 3 of Subsidiary Legislation 233.07 and section 17 of Chapter 9 of the Laws of Malta, found the accused guilty of the charges proffered against him and condemned him to four years imprisonment, from which any period which the accused was kept under preventive custody in relation with these proceedings must be deducted, and to the payment of a fine of twenty thousand Euro (€20,000) which must be paid within one (1) year, which fine shall be converted to a further term of imprisonment if it is not paid within one (1) year. The accused was condemned to pay the sum of €1372.82 representing expenses incurred in the appointment of experts in this case which payment is to effected within one (1) year and failure to pay such amount shall also be converted to a term of imprisonment.

The Court ordered the seizure of the money involved in favour of the Government of Malta. The 5 x €50 notes which are forged are to be handed over to the Central Bank of Malta so that the necessary action can be taken. Also, the Court ordered the forfeiture of all exhibited objects.

Since it has transpired from the expert's report following the order of the freezing of assets that the accused does not have any movable or immovable property there cannot be an order of seizure in favour of the Government of Malta.

Having seen the application of the accused Osita Anagboso Obi filed on the 19th December, 2014, wherein he humbly prayed this Court to change and vary the judgment delivered on the 9th December, 2014 by the Courts of Magistrates (Malta) as a Court of Criminal Judicature in the case The Police vs Omissis and Osita Anagboso Obi by confirming the guilt of appellant in having failed declare to the Comptroller of Customs

the amount of €22,000 on entering Malta and thus order the relative confiscation of funds according to law and revokes and annuls the rest of deciding part of the judgment in so far as the other charges are concerned, namely the charge of money laundering and the charge of having failed to declare to the Comptroller of Customs the amount of €31,492 on exiting Malta and acquits him of these charges, and as well as revoke all the penalties (custodial and financial) imposed upon him and revoke the confiscation of funds imposed upon him, and as well as revokes the order on appellant to pay the experts' expenses in the amount of €1372.82, and in case that this Honourable Court decides to confirm his guilty with regards to the above mentioned charges of which he humbly asked his acquittal to impose upon him a penalty which is more reasonable in the circumstances of the case.

That the grounds of appeal of the accused consist of the following:

1. Appellant was found guilty as charged in the Charge Sheet, as later modified to include the word "suspicion" in the first three paragraphs of the charge of money laundering. This means that appellant was found guilty of both having imported cash and exported cash in excess of €10,000 without declaring the excess, as well as of the crime of money laundering in the amount of €31,492, including the amount of Euro €22,000 which he had brought with him into Malta from abroad. This may be clearly concluded from the decision of the Court of First Instance which with regards to the second charge (import/export of cash) stated that, "The accused has been found with Euro 31,492 which were undeclared with the Comptroller of Customs when he was leaving Malta. Upon entering Malta the accused stated that he had Euro 22,000 which amount was also undeclared. Thus this charge has been proven by the Prosecution". Since the Court based its decision on what accused had told the Police it is obvious and crystal clear that the Court should also have concluded that for the purpose of the charge of money laundering accused had only to answer only in so far as the amount of €9500 is concerned. It is said, and it's true that one cannot at the same time eat the cake and keep it in his hands.

2. In so far as the charge of money laundering is concerned, since in the Charge Sheet all the possible material prohibited acts were included, and since accused was charged both with having committed the crime as a principal and as an accomplice and as

well as both with having committed the crime in its completed form and in its attempted form, when accused was found guilty as charged it meant that accused was found guilty of having committed all the material acts which the law prohibits and also that at the same time accused was found guilty of being a principal and an accomplice of the offence and also that at the same time he had completed the offence and had attempted it. In its judgement delivered on the 29.11.99 in the case Ir-Repubblika ta' Malta vs John Vella, the Court of Criminal Appeal, stated amongst others that, "Din hija ligi (Prevention of Money Laundering Act) straodinarja li tintroduci kuncetti fis-sistema nostrana u li tirrekjiedi applikazzjoni bl-akbar skruplu u attenzjoni biex ma tigix reza fi strument ta' ingustizzja, iktar reminixxenti taz-zmienijiet ta' l-inkwizizzjoni minn dawk tal-era moderna tad-drittijiet tal-bniedem." In view of this dictum of the Honourable Court of Criminal Appeal, the least an accused found guilty of the crime of money laundering by a professional judge/magistrate expects, is that the judgement condemning him to imprisonment specifies exactly of which of the different material acts which the law prohibits he was exactly found guilty of having committed and as to whether he was found guilty as a principal or as an accomplice as well as to whether he was found guilty of the crime in its completed form or in its attempted form. This may also be necessary for the purpose of arriving at a just punishment.

3. Although the Court of first instance had attempted to explain the different provisions of the law relating to the crime of money laundering it concentrated only on that part of the law which in certain cases imposes an obligation on the accused to prove the legitimate origin of the money with which he has been charged of having laundered or tried to launder, the law says more than that exposed in the judgment which is being appealed from in this application. Besides, the local jurisprudence quoted in this judgement was based on jurisprudence where the money in question belonged to the accused (Ir-Repubblika ta' Malta vs John Vella decided by the Court of Criminal Appeal in its superior jurisdiction and Il-Pulizija vs Paul Borg decided by the same Court in its inferior jurisdiction), and which jurisprudence in turn served as the legal basis for the judgements in the case Il-Pulizija vs Carlos Frias Mateo decided in the first instance by the Court of Magistrates as a Court of Criminal Inquiry and later by the Court of Criminal Appeal in its inferior jurisdiction, in which case also accused claimed that the money he was accused of laundering belonged to him, in this case it resulted from the evidence that

the money which accused has been found guilty of laundering was handed to him by someone else.

4. In so far as the law is concerned, in the first place it must be emphasized that the Prevention of Money Laundering Act did not shift the burden of the Prosecution to prove beyond reasonable doubt the guilt of the accused onto the accused to prove that he is innocent. The Prosecution, even in the case of a charge under the Prevention of Money Laundering Act, still carries on its shoulders the burden of proof of guilt of the accused beyond reasonable doubt. Secondly, the Prosecution must prove a nexus between the property object of the charge and an underlying criminal activity. It has been held that the level of proof which the Prosecution needs to reach in so far as the nexus is concerned is that on a *prima facie* basis. In turn this level has been held to mean something between the level of proof on the level of possibility and the level on a balance of possibilities. If the Prosecution reaches this level of proof with regards to the nexus between the property in question and an underlying criminal activity, then the law burdens the accused to prove the licit origins of the property concerned. However, since proof of a fact is required, and since the Prevention of Money Laundering Act did not change anything in so far as to the level of proof a defendant must reach in proving a fact is concerned, the level that an accused must reach is that on a balance of probabilities. However, even in the case that the accused does not succeed to prove the licit origins of the money on the level of balance of probabilities, the Prosecution still needs to prove beyond reasonable doubt that the accused had committed at least one of the prohibited acts either as a principal or an accomplice, that he had committed the crime in its completed or attempted form, that he had the necessary mens rea to commit the crime as well as that when committing the prohibited acts he knew or at least suspected that the property in question originated directly or indirectly from an underlying criminal activity.

5. Whilst 'knowledge' is easily understood, our Courts tried to explain what the legislator meant by 'suspicion'. In the case The Police vs Carlos Frias Mateo, the Court of Magistrates (Malta) sitting as a Court of Criminal Judicature, in its judgement of the 5.08.11, quoting from the English Criminal Court of Appeal judgment in the case Regina vs Hilda Gonmdwe Da Silva, stated that, "The word suspect means the defendant must think that there is a possibility, which is more than fanciful, that the relevant fact exists. A

vague feeling of unease would not suffice". This explanation was approved of by the Court of Criminal Appeal in the same case in its judgment delivered on the 19.01.12.

6. Even if it is incumbent on an accused to prove a fact it does not necessarily mean that he has to give evidence in Court as seems to have been the thinking of Court of First Instance in this case. In actual fact it will suffice if the accused discharges this burden by proving, on a balance of probabilities, such fact by basing himself, for example, on evidence adduced by the Prosecution, including previous verbal or written statements made and/or released by the accused.

7. In the present case the Prosecution needed to prove beyond reasonable doubt that the accused is guilty of the offence of money laundering, and if so, at least for the purpose of punishment, about which amount. What evidence did the Prosecution produce in this case with regards to this offence *vis-a-vis* the appellant?

8. The Prosecution proved that on waiting to depart from Malta appellant had in his possession the amount of €31,492. It had also proved that on arriving in Malta, accused had in his possession the amount of €22,000. Both facts were accepted by the Court of First Instance in finding accused guilty of the second offence charged. The Prosecution also proved that accused had spent the night at the house of Austin Eze who, it claimed, had some time before helped out a Maltese national with contacts regarding dangerous drugs. It also had proved that accused was investigated in Germany on the grounds of illegally dealing in not insignificant quantities of drugs. However, this remained only an allegation since accused was never found guilty of facts contained in such claim. Furthermore, accused was never given an opportunity by the German authorities to at least give his version and/or explanation to them as what they claimed was found in a place allegedly belonging to appellant. No proof was forthcoming that the place where the German authorities found dangerous drugs actually belonged to accused or that he had sole possession of it. Furthermore, in so far as a reference to telephone calls was made, no proof was forthcoming as to what was said and by whom and who heard it. The fact that the allegations were made by German judicial authorities do not diminish the requirements under our law under the rules of evidence.

9. Do the above mentioned facts lead to the conclusion beyond reasonable doubt that accused is guilty of the crime of money laundering in Malta in the amount of €31,492 as decided by the Court of First Instance?

10. According to our law the material act (actus reus) of the crime of money laundering consists in the conversion or transfer, in the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership or in the acquisition, possession or use of property or in the retention without reasonable excuse, of property when such property was the derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity.

11. Did the Prosecution prove beyond reasonable doubt that appellant committed any of the above mentioned acts?

12. Did the Prosecution prove a nexus, at least on a *prima facie* basis, between the money which accused had in his possession and an underlying criminal activity with regards to the money handed to him by Austin Eze?

13. Did the Prosecution prove beyond reasonable doubt, on the part of accused, knowledge or at least suspicion, not just a mere one but at least one which is more than fanciful, that the money handed over to him by Austin Eze derived or originated directly or indirectly from criminal activity?

14. Did the Prosecution prove beyond reasonable doubt that the material act (actus reus) done by appellant had the special purpose mentioned by the law, that is to say, of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity?

15. In so far as the money itself is concerned, it must be stated that the Prosecution did not prove beyond reasonable doubt that the whole amount of €31,492 found in the possession of appellant at the Malta International Airport originated in Malta. Indeed, the Court of First Instance came to the conclusion that appellant had brought the amount of

€22,000 from abroad so much so that appellant was also found guilty of the second charge which comprised not only exportation of cash but also importation of cash. The Prevention of Money Laundering Act does not extend the jurisdiction of Maltese Courts to crimes which may have been committed abroad. Furthermore, the period claimed by the Prosecution during which the crime had been committed by accused is tied to a specific date, namely the 10th and 11th Match 2010. This period cannot be extended to before or after because it was with regards to this specific period that appellant was charged. Therefore it is reasonable to conclude that this case, in so far as money laundering is concerned, must necessarily revolve on the amount of €9500 which appellant received from Austin Eze and regarding which claim the Prosecution did not bring any evidence at all to rebut. This is based on the evidence adduced by the Prosecution itself.

16. In so far as the crime of money laundering regarding the amount of €9500 is concerned, appellant could not bring any proof on the legitimacy or otherwise of the money. However, the Prosecution cannot be said to have proved, at least on a *prima facie* level, a nexus between this amount and an underlying criminal activity. Only the proof of a nexus at least on a *prima facie* basis would put an obligation on appellant to prove on a balance of probabilities the licit origin of the money. As the Criminal Court of Appeal had said in the above quoted case Ir-Repubblika ta' Malta vs John Vella (decided on the 29.11.99), quoted in several other judgements amongst them Il-Pulizija vs John Borg decided by this Honourable Court on the 6.10.03, "Mhux kull akkwist, mhux kull konversjoni ta' trasferiment ta' propjeta', mhux kull habi jew wiri ta' propjeta' necessarjament jammonta ghal money laundering, ANKI JEKK l-AKKUZAT IKUN KRIMINAL INKALLIT". And further on in the same judgment we find that, "allura ghandu jkun impellenti u necessarju li jigi deskritt b'mod inekwivoku n-ness bejn l-attivita' kriminali u l-allegat money laundering". The fact that it could be shown that Austin Eze had some time before helped out a Maltese national with contacts abroad regarding dangerous drugs activity does not necessarily mean that Austin Eze was involved locally in dangerous drugs, which the Court of First Instance has remarked was the underlying criminal activity on which the Prosecution was basing its whole case. Furthermore, from the evidence produced it emerged that appellant did not know Austin

Eze before he met him in Malta for a few hours during the night between the day of his arrival and the day of his departure from Malta.

B. Whereas the grievances of applicant in so far as he was found guilty of the crime of having failed to declare to the Comptroller of Customs a sum of €10,000 or more is concerned are manifest and clear and consist of the following:

1. It must be said that this charge is based on article 3 of the Cash Control Regulations (A.L. 149 of 2007) and made under the External Transactions Act (Chapter 233 of the Laws of Malta).

2. Whilst it may be said that appellant was proved to have failed to declare to the Comptroller of Customs the amount of €22,000 on entering Malta, however the penalty in this case, as established by law, is the confiscation of any amount above €10,000.

3. In so far as the charge relating to a failure to have declared to the Comptroller of Customs the amount of €31,492 on exiting Malta, it must be stated that article 3 of the regulations does not specify the exact moment (punctum temporis) in which one has to declare the amount of €10,000 or more to the Comptroller of Customs when exiting Malta. It says that in such case one has to make such declaration on the appropriate form. It further states that any amount over the amount of €10,000 shall be confiscated if one is found guilty of having failed to declare as above mentioned.

4. In view of the legal maxims, "Ubi lex non distinguit nec nos non distinguere debemus" and that criminal law has to be interpreted restrictively, one may reasonably conclude that a person who is obliged to make such declaration has the right to do so until at least the moment that he is going out of the terminal building to board the flight. Therefore when appellant was approached and arrested he was still in time to make the required declaration. No evidence was adduced of when his flight left and how long before the flight was going to leave that he was arrested. And once appellant was not allowed to leave Malta due to having been arrested, he was no longer obliged to make any written declaration at all.

C. Whereas the grievances of applicant in so far as the penalties inflicted upon him are concerned are manifest and clear and consist of the following:

1. Even in case this Honourable Court deems that the Court of First Instance was correct in finding accused guilty as charged, the term of four years of imprisonment to which he was condemned is a heavy one indeed. In this regard appellant wishes to make reference to the case Republic of Malta vs Eduardo Navas Rios in which case the Court of Criminal Appeal considered that a term of three years and ten months imprisonment and a fine (multa) of ten thousand euro after accused was found guilty in a trial by jury of the crime of money laundering were sufficient.

2. The Court of First Instance had condemned appellant to pay all the experts' expenses incurred in connection with this case even those incurred only with regards to the other co-accused. This is besides the fact that certain other expenses were made also in connection with the other co-accused and certain expenses were not only futile but also could have easily been anticipated by the Prosecution to be futile. How can one ask the Court to appoint an expert to make a report on the assets which accused may have had in Malta when the Prosecution knew all along that accused had only come to Malta on the occasion when he was arrested and where prior to his arrest he had stayed in Malta only for a few hours?

Having seen the records of the case.

Having seen the updated conviction sheet of the defendant.

Now therefore duly considers.

From the evidence produced it results that the accused arrived from Berlin on an Air Malta flight in the evening of the 10th March, 2010. The Police had been tipped that the accused could have come here to conclude a drug deal. He took a taxi to the Tower Palace Hotel and he was picked up by car from in front of the hotel by a certain Austin Eze. From there the two men went to a bar in Paceville. They stopped there and had some drinks. Later, they went to Birkirkara where Austine Eze has his residence. The

following morning, that is the 11th March, 2010, at around 11.00 a.m. left the apartment and went to the airport. The appellant was seen leaving the apartment with a different luggage. The appellant checked in his flignt which was to take him to Madrid via Ryan Air. He passed the security checks with no problems but once inside the restricted area, after some time, he was approached by a customs officer and the police. They asked him to check his luggage and the sum of €31,492 was found in his luggage. In a nutshell these are the facts of this case.

The appellant released three statements to the police, according to law. His second statement released on the 12th March, 2010 is the pertinent one to this case. In his statement he tells the investigating officer that he was sent to Malta by a man from Ghana, described as the brother of a certain Apen. He was told to deliver the sum of €22,000 in Spain, and he was give a contact number for this purpose. However, first he had to travel to Malta to meet somebody (Austine Eze). Then he had to make his way to Madrid. He stated that on arrival in Spain he was to be given the sum of €500. The appellant accepted this offer because he was in need of money. In Malta, Austine Eze Gave him a further €9,500 to be delivered in Spain.

From the evidence produced it results that the appellant was given the Malta - Madrid ticket by Austine Eze but this ticket had not been bought in Malta.

Another interesting point that arises from the evidence produced is that PC1372 Alan Cutajar testified that the appellant told him that he knew that the money he was carrying ws coming from drug business and he also stated that he knew that the man from Ghana used to send people to other countries carrying drugs. He also stated that he had not mentioned this in his sttement. PC1349 Ranier Agius was also present during this incident. He gave evidence in the sense that the appellant knew that the money was not for business in Malta but for onward consignment in Madrid. As a matter of fact he was told by his handlers abroad what to say in case the police became suspicious. He also stated that he was afaid of the people abroad.

The appellant stands charged that he committed an act of money laundering not only by knowing of certain facts but also if he suspects that what he was carrying is derived

directly or indirectly from or are the proceeds of criminal activity. Reference is her made to the judgement delivered by the Court of Criminal Appeal in its superior jurisdiction in the case: 'Ir-Repubblika ta' Malta v. John Vella' decided on the 26th November, 1999 where it called for great caution in the application of this law. However, Chapter 373 of the Laws of Malta has been amended several times and today the concept of 'suspicion' has been added to this chapter of the Laws of Malta. Naturally, this has widened considerably the applicability of the concept of money laundering. Actually, today it is quite draconian. Nevertheless, the prosecuting officer has to bring evidence to this effect and it is only after the evidence has been produced then the accused party must prove the origin of the funds or other property which was in his possession. The concept of 'suspicion' was discussed by the English Court of Appeal, on the 12th July, 2006, in the case 'R. v. Hilda Gondwe Da Silva'. The relevant part of the judgement is the following:
"What then does the word 'suspecting' mean in its particular context... It seems to us that the essential element in the word 'suspect' and its affialites, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice".

It is evident that the appellant appears to have had no knowledge of the origin of these funds, both those given to him in Berlin as well as those given to him in Malta. He had a suspicion, which is enough for the coming into operation of this law. The law as drafted does not require the suspicion to be clear or grounded on specific facts or based upon reasonable grounds. Continuing the judgement above quoted:
"... the prosecution must prove that the defendant's acts of facilitating another person's retention or control of the proceeds of criminal conduct were done by a defendant who thought that there was a possibility, which was more than fanciful, that the other person was or had been engaged in or had benefitted from criminal conduct."

A second English case is 'K Ltd v. National Westminster Bank Plc [2006] EWCA Civ 1039. This was a civil case relating to suspicion and money laundering, where it was held:
"... the existence of suspicion is a subjective fact. There is no legal requirement that there should be reasonable grounds for suspicion."

In the light of the above it isevident that the prosecution has reached its level of proof necessary on a 'prima facie' level. For the level of proof necessary reference is made to the following judgements of our Courts, namely:
Il-Pulizija v. Paul Borg, decided on the 6th October, 2003 per Mr. Justice Joseph Galea Debono sitting in this Court;
Il-Pulizija v. Carlos Frias Mateo, decided on the 19th January, 2012 per Mr. Justice Michael Mallia sitting in this Court.

Consequently, from an analysis of the evidence produced it results quite clearly that the appellant was acting as an accomplice within the meaning of section 42 of the Criminal Code. It is also evident that in the circumstances the appellant had to produce evidence which should have convinced this Court that the monies in his possession were of a legitimate source. As a matter of fact, the appellant had released a statement to the police where he informed them that he was to receive €500 for his services. In this day and age one wonders why the man from Ghana wanted to use a courier and not utilize the services of a bank or any other financial institution which can operate in more than one country for the legitmate transfer of funds.

The appellant has based many of his arguments on the fact that the prosecution has to prove its case beyond reasonable doubt. There is no doubt that this concept is enshrined in our criminal law. However, in this case we are dealing with a special law enacted to counter the surge of organized criminal activity, whereby assets (movable or immovable) obtained in an illicit, illegal or criminal manner are put back in our economy in a legal manner. This law is very clear in that if the prosecution reach a certain level of proof then it is up to the accused to prove otherwise.

The appellant has made an argument that since the charge specifies a specific period, the only monies that can be considered as money laundered relate to the amount given to him in Malta. With all due respect, one cannot agree with such a statement. The appellant was in possession of the monies which originated from abroad and one cannot argue that in such a case, since the monies were given to him prior to the date of his arrival in Malta, then those monies cannot be considered at all. In this context it is pertinent to note that when the appellant was arrested prior to his departure, it transpired that he was carrying a

second sum which was given to him here in Malta. The argument is based on the fact that Chapter 373 of the Laws of Malta does not extend the jurisdiction of Maltese Courts to crimes which may have committed abroad. However, it must be poined out that the appellant was found with monies in excess of those permitted by law which can be exported and hence the jurisdiction of the Courts is extended in such a way to discover the origin of such funds.

Consequently, with reference to the first charge proffered against the accused/appellant this Court confirms the judgement of the first Court and rejects the appeal of the appellant Osita Anagboso Obi with the exception that the appellant is not guilty of the charge marked (e) and consequently declares that he is not guilty of that offence.

With reference to the second charge proffered against the appellant, namely that relating to the infringement of Chapter 233 of the Laws of Malta it is being argued that one has no time limit within which the passenger has to notify the customs official that he is carrying in excess of the limit laid down by law. It is the considered opinion of this Court that it is reasonable to argue that once you enter the restricted area after having cleared the security gates one must make his way to the relevant office, which is indicated in the airport terminal, and do what has to be done. In this particular case, the flight to Madrid is a Schengen flight and so no one passes through passport control. In the case of non-Schengen flights one can argue that since the passenger has not gone through passport control then one is at liberty to go the relevant office whenever he wants but prior to clearing passport control. As a matter of fact this office is situated before passport control for non-Schengen flights. Hence, this part of the appeal application cannot be upheld.

The appellant is stating that he has been condemned to pay all the experts' expenses even those incurred only with regards to the otther co-accused. This statement is incorrect because the first Court condemned him to pay only those expenses relative to the appellant, namely, those relative to the discovery of his assets in Malta.

With regrds to punishment, this Court will be makin an adjustment which it considers just in view of the fact that the appellant collaborated with the police.

Consequently, this Court does not uphold the appeal of Osita Anagboso Obi with the exception that this Court does not find him guilty of the first charge marked with the letter (e) and sets him free of that charge. With reference to the term of imprisonment of four (4) years, this Courts annuls and revokes this term of imprisonment and instead condemns him to a period of imprisonment of two (2) years. The rest of the judgement is hereby confirmed.