



**The Court of Criminal Appeal**

**His Honour the Chief Justice Joseph Azzopardi**

**The Hon. Mr. Justice Joseph Zammit McKeon**

**The Hon. Madame Justice Edwina Grima**

**Today the 30th January 2019**

**Bill of Indictment No : 8/2017**

**The Republic of Malta**

**v.**

**Racheal Fred**

**The Court :**

**1.** Having seen the bill of indictment bearing number 8 of the year 2017 filed against appellant Racheal Fred, wherein she was charged with having on the 20<sup>th</sup> December 2014 and during the previous weeks before this date:

- i. With criminal intent with another one or more persons in Malta or outside Malta conspired for the purposes of selling or dealing

in a drug in these Islands (Cocaine) against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), or having promoted, constituted, organised or financed such a conspiracy.

- ii. With criminal intent, imported or caused to be imported or taken any steps preparatory to importing the dangerous drug (Cocaine) into Malta, and this in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta).
- iii. Having been in possession of a dangerous drug (Cocaine), with criminal intent, as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when she was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of Part III of the Ordinance, and when she was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to her for personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and **which drug was found under circumstances denoting that it was not intended for her personal use.**

2. Having seen the judgment of the Criminal Court of the 2<sup>nd</sup> March 2018 wherein all the preliminary pleas put forward by appellant were

rejected, however in terms of article 599(1) of the Criminal Code ordered, with reference to the first preliminary plea, that the correct name of accused, namely RACHEAL FRED be inserted instead of any other designation, in all the records of the case including the bill of indictment.

**3.** Having seen the appeal application filed by accused Racheal Fred on the 9<sup>th</sup> March 2018 wherein she requested this Court to revoke that part of the preliminary judgment of the Criminal Court dated the 2<sup>nd</sup> March 2018 whereby it rejected the second (2<sup>nd</sup> ), third (3<sup>rd</sup> ), fourth (4<sup>th</sup> ), fifth (5<sup>th</sup> ) and sixth (6<sup>th</sup> ) preliminary plea of the applicant, and instead accede to such pleas and consequently order the expunging of the documents and/or acts as indicated in the appeal application.

**4.** Having seen the reply of the Attorney General of the 17<sup>th</sup> September 2018.

**5.** Having heard oral submissions by the parties.

**6.** Having seen the minutes of the hearing of the 14<sup>th</sup> November 2018 wherein the determination of the appeal filed by accused was put off for judgment for today's hearing.

**7.** Having seen all the acts of the case.

## **Considers :**

**8.** That appellant has registered her exception to the judgment delivered by the First Court and this with regard to the determination of the second to the sixth preliminary pleas put forward to the bill of indictment filed against her, which pleas were rejected as unfounded by the First Court. The said pleas refer to the filing of the *proces-verbal* before the Court of Magistrates as a Court of Criminal Inquiry during the committal proceedings, and the translation of the said document carried out by court-appointed translator Dr. Daniela Mangion.

**9.** It is appellant's firm view, in the two grievances put forward in the appeal application, that in the first place the acts of the inquiry relating to the *in genere* are vitiated by the mere fact that when the Attorney General transmitted the acts of the *proces-verbal* to the Court of Criminal Inquiry, and this so as the said acts form part of the evidence to be compiled during the committal proceedings against accused in terms of article 550 of the Criminal Code, in the note filed by the Attorney General on the strength of which the *proces-verbal* was transmitted to the court, the nomenclature of the Court, was erroneously indicated as the 'Court of Magistrates as a Court of Criminal Judicature' instead of 'a Court of Criminal Inquiry'. During the compilation stage however accused does not point out this procedural error to the court.

**10.** Secondly, since proceedings were conducted in the English language, and since the *proces-verbal* had been drawn up by the inquiring magistrate in the Maltese language, the Court of Criminal Inquiry ordered that the said document be translated into the English language and appointed Dr. Daniela Mangion as official translator. The translation was duly carried out and filed under oath before the Court wherein the note

filed by the Attorney General to which the *proces-verbal* was annexed was translated as having been filed before the Court of Criminal Inquiry and not as originally filed. Appellant therefore is of the view that even the said translation is vitiated and inadmissible as evidence since it is not a faithful translation of the original document.

**11.** In its judgment the First Court rejected the pleas subject to appeal by stating that :

**From the records of the sitting of the 28th April, 2015 it results that the Court registrar entered a note indicating that the relative 'proces' verbal' was received and the Court ordered its translation in the English language. Consequently, taking into account the foregoing, it is the opinion of this Court that even though a mistake has been made in the nomenclature of the Court this mistake does not render the 'proces verbal' inadmissible. The correct Court received the correct 'proces verbal' and continued throughout to utilize it as part of the evidence brought against the accused....**

**The fourth, fifth and sixth preliminary pleas refer to the fact that when Dr. Daniela Mangion translated the aforementioned 'proces verbal' (folio 165 et seq. And not folio 127 et seq.) she indicated the Court as "...a Court of Criminal Inquiry". It is obvious that the correct translation would have been "...a Court of Criminal Judicature". It would appear that the translator realized that a mistake had been done and automatically corrected it. The accused did not indicate to this Court that there have been other inaccuracies in the translation bar what has been stated above. In the best of hypothesis it is only that particular page which could have been declared inadmissible. However, this Court does not agree with the submissions of the accused**

## Considers :

**12.** It must be stated at the outset of this Court's considerations, with regard to the first grievance, that the law lays out the procedure to be followed once the records of the *proces-verbal* are concluded by the Inquiring Magistrate and are then transmitted to the Attorney General<sup>1</sup>. The transmission of the acts by the Attorney General back to the Court is to be made in terms of subsection 4 to article 569 of the Criminal Code by means of a note to be filed "**in the Court of Magistrates**", without the necessity for the Attorney General to be sub-poened to exhibit such records. In fact the acts of the *proces-verbal* are then exhibited by the Court Registrar during the compilation stage before the Court of Magistrates as a Court of Criminal Inquiry. This procedure was followed and adhered to in the current proceedings against appellant, the *proces-verbal* being transmitted by the Attorney General to the Court of Magistrates, which document was then exhibited before the correct court and proceedings by the deputy registrar, thus rendering any plea regarding the inadmissibility of the said document as evidence in the case as entirely unfounded.

**13.** Not only but article 597(4) of the Criminal Code clearly lays out that any defect in the record of the inquiry, other than those indicated in this disposition of the law, may not be brought forward by the person accused saving any plea regarding evidence gathered during the compilation which is not according to law.

**"The indictment cannot be impugned on the ground of any defect in the record of inquiry, nor can the accused demand that, on the ground of any such defect, the trial on the said**

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<sup>1</sup> Article 569 of the Criminal Code

**indictment be not proceeded with, unless such defect consists in the total absence of the report of the Police officer or of the examination of the accused or of the order committing the accused for trial, or in the refusal of the court of criminal inquiry, without just cause, to hear the evidence produced by the accused; saving always the right of the accused and the Attorney General to oppose the production, at the trial, of any act tendered in evidence which is not according to law."**

**14.** However, when matters relating to the inadmissibility of evidence are raised by the parties before the Court, these must be based on a specific violation of a provision of the law. The accused in no manner whatsoever contests the validity as evidence of the *proces-verbal* as compiled by the Inquiring magistrate, the said *proces-verbal* having been drawn up according to law. However accused takes the line that this was filed before the wrong court and not therefore in the compilation proceedings. It is the firm opinion of this Court, however, that this does not vitiate the probative force of the said document, and in no manner does it vitiate the validity of the evidence it purports to bring forward, the contents of which were never put into issue by accused in her preliminary pleas. Moreover, as already pointed out, the acts of the *in genere* were presented in court not by the Attorney General but by the court registrar during the hearing of the 28<sup>th</sup> April 2015 before the Court of Criminal Inquiry assigned to hear the compilation of evidence against accused. The minutes of the Court of Magistrates as a Court of Criminal Inquiry of the 28<sup>th</sup> April 2015 read as follows:

**"Deputy Registrar exhibited proces-verbal bearing number 275/15 drawn up by Magistrate Dr. Josette Demicoli regarding 'importazzjoni ta' droga minn passiggiera ta' nazzjonalita Nigerjana fl-20 ta' Dicembru 2014<sup>2</sup>"**

**15.** Furthermore the fact that Dr. Daniela Mangion translated erroneously and unfaithfully the note of the Attorney General does not

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<sup>2</sup> Vide fol.107 of the acts of the compilation proceedings

render null and void the translation of the whole document. In the worst case scenario it is only *that* note which is vitiated by an incorrect translation. Appellant did not contest the correct translation of the said *proces-verbal*, as rightly pointed out by the First Court in its judgment.

**16.** Furthermore the validity of all the acts found in the compilation proceedings are attested to by the counter signature of the Magistrate presiding the Inquiry, wherein article 396 points out that:

**Every document produced in the course of the inquiry shall be counter-signed by the magistrate, and a record of such production shall be entered on the document itself by the registrar or the officer acting in his behalf.**

**17.** This Court has examined all the acts of the proceedings including the *proces-verbal* under contestation, and these documents are all counter signed according to law.

**18.** In its judgment of the 28th May 1998, in the names "**Ir-Repubblika ta' Malta vs. Francis Cassa**" the Criminal Court stated:

**"Proprjament ma hemmx zewg qorti, fis-sens ta' Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali u Qorti tal-Magistrati bhala Qorti Istrutturja . L-Artikolu 367 huwa car dwar dan: hemm qorti wahda – Qorti tal-Magistrati – ghall-Gzira ta' Malta u qorti ohra ghall-Gzejjer t' Ghawdex u Kemmuna. Kull wahda minn dawn ghandha zewg attribuzzjonijiet: bhala qorti ta' gudikatura kriminali ghar-reati ta' kompetenza taghha u bhala qorti istrutturja ghar-reati ta' kompetenza superjuri."**

**19.** Although the correct nomenclature for the Court of Magistrates presiding over an inquiry is "as a Court of Criminal Inquiry", and when reference is made to the Court of Criminal Judicature, the Court of Magistrates assumes a different function and competence, however the Court remains one and the same, that being the Court of Magistrates,



albeit carrying out its function as a court of compilation of evidence rather than as a court with judicial decision making powers. Moreover there is no doubt that the document was filed during the compilation of evidence in the case brought forward against appellant, the Court having delivered its decree *prima facie* with the acts subsequently remitted to the Attorney General in terms of article 405 of the Criminal Code. In a similar case before this Court, as otherwise presided, wherein the evidence of the witnesses was entered also in the Court of Magistrates under the wrong nomenclature, it was decided :

**“il-qofol tal-kwistjoni hi jekk jistax jinghad li dawk id-deposizzjonijiet inghataw fil-kors ta’ l-istrutturja li saret fil-konfront ta’ Simon Xuereb dwar reati li huma l-bazi tal-Att ta’ Akkuza (ara Artikolu 435, Kap. 9). Issa, minn ezami tal-attijiet tal-kumpilazzjoni jirrizulta car li saret il-procedura istrutturja regolarment. L-istrutturja nbdiat bir-rapport mahluf ta’ l-ufficjal prosekutur u bl-ezami ta’ l-imputat fis-26 ta’ April, 2001 – rapport u ezami li ma kinix mehtiega li kieku l-procedura ma kinix dik istrutturja. Wara li nstemghu diversi xhieda, il-Qorti Inferjuri, fil-10 ta’ Mejju, 2001 iddecidiet li kien hemm provi bizzejjed biex l-imputat jitqiegħed taht Att ta’ Akkuza u bagħtet l-atti ossia attijiet lill-Avukat Generali (ara fol. 209) – haga li ma kinix issir li kieku dik il-Qorti kif presjeduta minn dik il-Magistrat ma kinix qed tagixxi bhala Qorti Istrutturja. Id-diversi noti ta’ rinviu ta’ l-Avukat Generali gew indirizzati lill-Qorti tal-Magistrati (Malta) bhala Qorti Istrutturja; d-diversi verbali li bihom dik il-Qorti kienet tibghat l-atti lura lill-istess Avukat Generali wara li tkun għamlet dak minnu mitlub – inkluz l-aħhar verbal f’dan is-sens li jinsab a fol. 660 – kollha jinvokaw l-Artikolu 405 tal-Kodici Kriminali, artikolu li japplika biss meta l-Qorti tal-Magistrati tkun qed tagixxi fl-attribuzzjoni tagħha ta’ Qorti Istrutturja. Ma jistax għalhekk ikun hemm l-icken dubju li d-deposizzjonijiet kollha li hemm inseriti fl-attijiet tal-kumpilazzjoni li gew depozitati fir-registru flimkien ma’ l-Att ta’ Akkuza (Art. 590(2), Kap. 9) huma deposizzjonijiet li ttiehdu fil-kors ta’ l-istrutturja anke jekk dawn kollha jew kwazi kollha għandhom bhala intestatura referenza għall-Qorti tal-Magistrati bhala Qorti ta’ Gudikatura Kriminali. Jizdied jinghad fl-aħhar nett li ma hemmx dubju wkoll li l-istrutturja saret fil-konfront ta’ l-**

**appellant odjern u li fl-Att ta' l-Akkuza l-Avukat Generali dahhal biss akkuzi li johorgu mill-kumpilazzjoni li saret fil-konfront ta' l-istess Xuereb. L-aggravju ta' l-appellant f'dan ir-rigward qieghed ghalhekk jigi respint.<sup>3</sup>"**

**20.** Having made these observations, however, this Court finds the grievance as unfounded since as already pointed out the *proces-verbal* was exhibited in the Court of Magistrates carrying out its functions as a court of criminal inquiry by the deputy registrar, the validity of which document was countersigned by the same court. The subsequent translation carried out by Dr. Daniela Mangion, also does not vitiate the content of the translation of the actual document brought as evidence being the said *proces-verbal*, appellant not contesting the translation of the document, but rather of the note of the Attorney General, which note does not have any probatory value but is filed only for the sake of procedural correctness.

**For these reasons, the Court dismisses the appeal entered by Racheal Fred from the judgment of the Criminal Court of the 2<sup>nd</sup> March 2018, and orders that the records be forthwith sent back to that Court for the case to proceed according to law.**

**His Honour the Chief Justice Joseph Azzopardi**

**The Hon. Mr. Justice Joseph Zammit McKeon**

**The Hon. Madame Justice Edwina Grima**

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<sup>3</sup> Court of Criminal Appeal, ir-Repubblika ta' Malta vs Simon Xuereb 22/04/2004. Vide also Ir-Repubblika ta' Malta vs Simon Xuereb and ir-Repubblika ta' Malta vs Antonio Barbara – Criminal Court 05/01/2004 (15/2003 and 17/2003 respectively)

