



Court of Criminal Appeal

Hon. Ms. Justice Dr. Consuelo Scerri Herrera LL.D.

Appeal number: 28/ 2019

The Police

(Inspector Edel Mary Camilleri)

(Inspector Robert Vella)

Vs

Nicholas Obaseki

Today the, 12<sup>th</sup> December 2019

The Court,

Having seen the charges brought against Nicholas Obaseki holder of identity card number 135303A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

On the 23<sup>rd</sup> August 2015 and before and after previous dates, in Marsa and other whereabouts on these islands, forged any currency notes or uttered any forged currency notes knowing the same to be forged. This in violation of article 45 of Chapter 204 of the Laws of Malta;

And also on the same date, under the same circumstances, without lawful authority or lawful or reasonable excuse, have purchased or received from any person, or had in his custody or possession, forged currency notes knowing the same to be forged. This in violation of article 46 of Chapter 204 of the Laws of Malta.

And also on the same date, under the same circumstances, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made gain of one hundred euro (€100) to the prejudice of Judith Bakoush (ID: 33691M). And this in violation of articles 308, 309, 310 (1) (c) of Chapter 9 of the Laws of Malta.

And also on the same date, under the same circumstances, was found to be in possession or was under his control any article for use in the course of or in connection with any fraud. And this in violation of article 310BA (1) of Chapter 9 of the Laws of Malta.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 21<sup>st</sup> of January, 2019 whereby the Court, after having seen articles 45 (1) and 46 of Chapter 204 of the Laws of Malta, which provisions today are contained in articles 188B and 188C of Chapter 9 of the Laws of Malta and articles 308 and 310 (1) (c) of Chapter 9 of the Laws of Malta found the accused guilty of the first, second and third charges brought against him and condemned him to two (2) years imprisonment which by application of article 28A of Chapter 9 of the Laws of Malta are suspended for a period of three (3) years. The accused was not found guilty of the fourth charge brought against him and thus he was acquitted from same.

By application of article 533 of Chapter 9 of the Laws of Malta, Nicholas Obaseki was ordered to pay the expenses related to the appointment of Mr Adrian Bonello as expert in these proceedings, upon receipt from the Registrar of the Criminal Court and Tribunals.

The Court ordered forfeiture of the notes exhibited and furthermore ordered that the notes which have been exhibited in the acts of this case (Dok ECM 5) shall be consigned by the Registrar of the Court to a person appointed for such a purpose by the Central Bank of Malta, so that same Bank may destroy or otherwise dispose of in such a manner and under such conditions as it may determine in accordance with article 50 (2) (3) of Chapter 204 of the Laws of Malta.

Having seen the acts of the proceedings;

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

Having seen the appeal application presented by Nicholas Obaseki in the registry of this Court on the 5<sup>th</sup> of February 2019 whereby this Court was requested to **vary** the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature given on 21 January 2019, and this by **confirming** that part of the judgement where the Court of First Instance found the appellant not guilty of the charges brought against him in charge number four (4) and **revoking** that part of the judgement where the appellant was found guilty of the first (1), second (2) and third (3) charges brought against him, and, alternatively, giving a punishment that is more equitable based on the facts and the circumstances of the case.

Having seen the grounds for appeal of Nicholas Obaseki:

That the grounds are clear and manifest and consist in the reason that the Honourable First Court should not have found the appellant guilty of any of the charges deduced against him and thus should have found him not guilty of all the charges proffered against him. Alternatively, the Honourable First Court should have given a punishment that is more equitable to the circumstances of the case.

That the facts of the case are as follows.

Judith Bakoush, who testified that she knew Nicholas Obaseki because he used to go out with her friend<sup>1</sup>, filed a report against the appellant. In this report Bakoush claimed that the day before the appellant had asked her to exchange some money for him – he had given her two (2) counterfeit €50 (fifty euro) notes in exchange for four (4) notes of €20 (twenty euro) and two (2) notes of €10 (ten euro). This had occurred near the Paul and Rocco petrol station in Marsa.

The police had sent for the appellant and informed him of the report that was filed against him. He had immediately denied this. The appellant was kept under arrest and when the Police told him that they were going to search him and his home, he immediately consented. Nothing irregular or suspect was found by the Police.

That, firstly, it seems that at no stage did the prosecution present any CCTV camera recordings showing for a fact that the appellant was ever on site, as claimed by witness Judith Bakoush.

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<sup>1</sup> Testimony of Judith Bakoush given on Wednesday 16 March 2016, page 2

That neither does it appear that any stage did the prosecution present any proof that the fingerprints of the appellant were present on the counterfeit notes.

That when the Honourable First Court mentions “*If he (the accused) said that he had only met her once, were this version to be true, what reason could there be for her to be mad at him?*”, (Page 9 of the sentence being appealed) it seems that said Honourable First Court did not properly appreciate this fact. It seems clear that Bakoush and her friend (the ex-girlfriend of the appellant) created this story in order to get back at the appellant as a form of revenge.

That it seems strange how Judith Bakoush readily had available the number of the appellant if they had only met once. This fact in itself further strengthens the argument of the defence that the same Bakoush and her friend (the ex-girlfriend of the appellant) had set the appellant up and created this story about the appellant out of spite and as a form of revenge for the break-up of their relationship.

That the all round lack of sufficient evidence give rise to serious questions regarding the credibility of Judith Bakoush, a woman well-known at the law courts having a colourful criminal record relating to offences of theft and drug-trafficking amongst others.

That from the above one can safely reach the conclusion that in this case the prosecution did not reach the level required in criminal proceedings, namely that of the proof being beyond any reasonable doubt.

Having heard the oral submissions of the parties during the sitting of the 22<sup>nd</sup> October 2019.

Having seen the updated conviction sheet of the accused presented in the acts of the proceedings, which conviction sheet has no criminal convictions registered on it.

Consider further

On the 24<sup>th</sup> February 2016 Inspector Edel Mary Camilleri gave evidence. She explained that on the 24<sup>th</sup> August 2015 Judith Bakoush had filed a police report indicating that on the previous night being 23<sup>rd</sup> August 2015 she was given counterfeit money from a foreigner whilst at the Paul and Rocco Petrol station in Marsa. She in fact made the report at the Marsa police station and presented the counterfeit money which consisted of two fifty-euro (€50) notes.

She explained to her that between 9.30p.m and 9.50p.m she was at the said petrol station and whilst there she was approached by a Nigerian national and asked her to change some money for him. He gave her two fifty-euro (€50) notes and she gave him in return four twenty-euro notes (€20) and two ten-euro notes (€10).

She told them that the Nigerian national was a certain Nicholas and she also gave them his home number 79338993. She suspected that the money could be counterfeit and that is why she made the report on the morrow being 24<sup>th</sup> August 2015.

The police seized the money and noticed that there were no serial numbers apart from other physical security features which they suspected were missing. She felt that in spite of this one could easily be deceived.

She recognised the accused in court and in fact stated that he spoken to by PS 11 who cautioned him and was duly arrested upon her instructions for further queries to be carried out on her end. She conducted PS 11 to carry out further searches at his home always in his presence and also in his vehicle bearing registration number GBJ 219. However no irregularities were found.

She conducted a search on the MPS system and discovered that there was a CS alert on the (Schengen Territory System) on the SIS Schengen Information System). However, this was related to an immigration procedure because from the information that they had it seemed that the accused had entered Switzerland

illegally. She thus alerted the Immigration police so they could carry on with the necessary verifications on that matter. She however confirmed that he was living with Rita Scicluna at 33A, Vassallo street, Luqa.

She explained that the accused had released a statement which was marked as document EMC1 wherein he stated that he knew that the money was indeed counterfeit.

He chose not to speak with a lawyer prior to releasing his statement and the inspector also exhibited such a waiver which is marked as document EM 2 and the police incident report marked as document EMC 3, the receipt which was given to Judith Bakoush for the counterfeit notes marked as document EMC and the two counterfeit notes ( €50 euros notes) marked as document EMC5.

PS 11 Daniel Zammit gave evidence on the 24<sup>th</sup> February 2016 and confirmed that Judith Bakoush had reported to the Marsa Police station at about 20.15p.m and reported that a foreign national had given her two fake fifty euro notes ( €50) and stated that on the 23<sup>rd</sup> August , 2015 being the day before the report she was at the Paul & Rocco patrol station where a Nigerian national named Nicholas had asked her to change two fifty euro notes for him. Indeed she did and gave him four twenty euro notes and two ten-euro notes (€10). She confirmed that he had known the person and in fact gave them his mobile number. PC 34 made contact with him and later that evening at about 9.50p.m Nicholas Obalseki together with his wife reported at Hamrun police station and he was questioned there. He confirmed that Obalseki told him that it is true he was in Marsa though at no point in time had he spoken with Judith Bakoush. He denied having passed by the patrol station and said that he did not know Judith Bakoush. Being shown the two fifty euro (€50) notes he categorically denied having any knowledge about them He confirmed that he conducted a search on Obalseki's person and inside his car though they gave a negative result

Being shown document EM 3 the police incident report he confirmed the contents therein stated. Being shown document EMC 5 consisting of the two allegedly fake

fifty euro notes he said that these were the two notes that were handed over to the police. He also confirmed that document EMC2 I the waiver signed by the accused. He recognised the accused in court and also document EMC 1 as being the statement released by the same accused.

**PC 1202 Ryan Magro** gave evidence on the 16<sup>th</sup> February 2016 and confirmed that document EMC 4 is the receipt of the two fifty euro notes (€50) that were taken from Judith Bakoush. He in fact confirmed his signature and that of PC 34 and of Judith Bakoush. He confirmed that the report was filed on the 24<sup>th</sup> August 2015 and the money was seized on that same day and passed on to PS 11. Being shown document EMC 5 confirmed that they are the same two fifty-euro notes (€50).

PC 34 George Scicluna testified on the 9<sup>th</sup> March 2016 and confirmed that document EMC 4 is the receipt issued to Judith Bakoush in return for the alleged counterfeit money that was handed over to them consisting of two fifty-euro notes (€50). He confirmed that she had registered a report. They put the money in an envelope, and this was sigilled in front of her and handed over to the Sergeant.

**Judith Bakoush** gave evidence on the 16<sup>th</sup> March, 2016 and confirmed that she had lodged a report on the 23<sup>rd</sup> August 2015 at the Marsa police station at about 9.30p.m. She explained that she had met the accused and stated that she knew him since he used to date her friend and he asked her to cash some money for him, to which she obliged. He gave her from his wallet two fifty-euro notes (€50) and she gave him in exchange four twenty euro notes and two ten-euro notes. She then put them in her purse. Asked if she had other money besides those two notes, she said she did not have any other money besides those notes. The moment she went home and got the money out of her purse she turned to her mother and said that he had conned her "*bellaghomli*."<sup>2</sup> Asked to explain how she realised she was conned, she says that there was a red mark on the part which is white and brown. She said that however the feel was not different to that of usual currency notes. She then went to the police station the following day and made a report and handed over the two notes to them.

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<sup>2</sup> Fol 41 of the process.

She was not aware that the accused had been arraigned on the basis of her report. In fact the police had told her to go to the police station if she sees him and in fact fifteen days prior to her giving testimony she had seen him and went to the police and was informed that Obalseki was in fact brought to court. She confirmed that she had signed a paper when handing over the notes to the police and confirmed that document EMC 4 is signed by her good self.

On the 12<sup>th</sup> June 2017 the witness was once again summoned and asked to see whether she confirms the two bank notes exhibited in court and she said that she did from two marks found on the notes being a sort of circle.

The Court took note of the appointment given to **Adrian Bonello** as a court appointed expert to examine the alleged counterfeit money exhibited in Court and on the 21<sup>st</sup> April 2016, he exhibited his report which is marked as document AB. He also returned the two notes that he examined. He confirmed that the two fifty-euro notes (€50) examined by him do not exhibit the security features found normally on the genuine euro bank notes. The paper used for the documents marked document EMC 5 is not the same as that used on genuine bank notes, the print is not the same as genuine bank notes and the other security features such as the watermark, the security thread, the hologram and the colouring ink are not the same as those found on a genuine bank note. Furthermore he said that there is also the issue of the said serial number which is unique for every note that was not reproduced on these notes.

The accused had released a statement *a tempo vergine* of the investigation, which statement is exhibited in the acts as the proceedings and marked as document EMC 1 a fol. 20 .He stated that he understood the English language and confirmed that he had been living in Malta since July 2013.He said that he was a refugee with an Italian residence permit. He then came to Malta on holiday met Rita Scicluna and married her in Italy. He also has a daughter named Geordi. He stated that he had Nigerian

nationality. Asked if he knew Judith Bakoush, he said no by name though if he were to be shown the lady, he might recognise her. Asked if it is true that the day before he had met Judith and asked her to change two of his notes in that he handed her two fifty euro bank notes (€50) which were false and she gave him smaller denominations and he categorically denies such an allegation and adds "*that it is a lie.*"<sup>3</sup> Being shown the two counterfeit notes he states that it was his first time that he was seeing such notes. Asked if Judith was lying, he replies categorically "*yes*" asked where he was on Sunday at about 9.00p.m. he says he had just left the Di bar in Marsa close to a confectionary. He said that he had passed by the patrol station in Marsa at about 7.00p.m. He confirms that PC 11 had carried out a search on him and in his car though found nothing. Being shown a photo of Judith he says that he knew her as a friend of his ex-girlfriend.

The accused Nicholas Obaseki gave evidence voluntarily on the 4<sup>th</sup> June 2018 and confirmed that he was at home on a Monday and after going home from work he heard the phone ring at about 6.00p.m and asked his wife to pick up the phone since his hands were wet. There was someone from the Marsa police station who told him that it was in his interest to go to the police station for his own good, though at that time he had no idea what was the reason for this. He asked to be given an hour since he had just arrived from work and in fact the police gave him a two hour time frame within which to go. He told him to go by 8.0p.m

He explains that he was very anxious to know what was happening. So he showered fast and went off with his baby and wife by car to the police station. He said that as soon as he got to the police station, he was informed that he was under arrest. So there was a bit of a panic between him his wife and the police person and asked on what grounds was he under arrest.

At about 10.00p. arrived a Sergeant and he was asked if he knew a certain Judith Bakoush. He answered no and was told that someone had made a report about him

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<sup>3</sup> Fol 20 last part of the statement of the accused

regarding false money that was given to her. He denied having did this and asked where he was on the eve and said that between 4.00p. and 8.00pm he was with some friends in Marsa at a bar and then was at home. Asked what time he had left the bar he said that he cannot recall but at about 8.20 or 8.30 p.m. He told them that at that time he was living in Luqa.

He was shown the notes and asked if he had seen them before. He was told that someone had made a report about him with regards to these notes and he asked who the person was, and the Sergeant told him that he could not tell him who the person was. So the Sergeant then called an inspector of police Edel Mary Camilleri from Rabat. He explained that his wife was irked and started telling the police that they could not just tell someone that he is under arrest not explaining the reasons why. At that moment he told his wife to take the baby and go home. The Police told him that they would need to carry out a search at his home and he did not object to it.

They then went to his house and the police carried out a search in his car and in his house though there was nothing suspicious or illegal. He was then accompanied to the depot and spent the night there. He says that the following day at about 1.00p.m Inspector Camilleri arrived picked him up from the Floriana depot and took him to Rabat police station. She took a statement from him She asked him to confirm whether it was true that he had given Judith the false money and he denied it. In fact he said that he did not even know Judith and asked to see her in person to see if he would recognise her. She then showed him a picture of Judith through her compute and he recognised her and said that he had met her on one occasion and knew she was a friend of his ex-girlfriend. Asked if he knew the reason why she did that to him he said he did not know.

He explained that he was then given police bail and had to go to the police station to report on a weekly basis for like two months. He explained that after some time on one occasion he was drinking at a bar in Marsa which is owned by an African guy together with some friends and the police turned up and asked to speak to Nicholas.

He immediately said that he was Nicholas and he was asked to go with the police to identify Judith and there he met Judith again for the second time after having been introduced to her in the year 2013. When he was there in his presence this Judith called his ex-girlfriend though he does not know what was said because they spoke in Maltese.

Considers further

The first court had found the accused guilty of the first, second and third charge and acquitted him from the fourth charge.

The appeal that was presented in this case is based solely on the discretion used by the first court in that the appellant believes that there is not enough evidence in the acts of these proceedings upon which the court can conclude that the accused is guilty of such charges in a 'safe and satisfactory' way. The appellant is not appealing on the legal interpretation that was given to the offences brought forward but solely on the discretion used by the Court of Magistrates with regards to the credibility of the witness.

Considers further

As was held in **Pol vs Charles Victor Edward Cassar**<sup>4</sup> "gie ritenut ripetutamente deciz minn din il-Qorti diversament preseduta w anki kif illum preseduta, "principju fundamentali applikabbli fl-appelli kriminali huwa li l-Qorti ta' l-Appell ma tid-disturbax facilment l-apprezzament tal-provi maghmul mill-Ewwel Qorti, izda taghmel apprezzament approfondit ta' l-istess biex tara jekk l-Ewwel Qorti setghetx, legalment u ragonevolment , tasal ghall-konkluzzjoni li tkun waslet ghalha." (App. Krim. "**Il- Pulizija vs. Joseph Zahra**"<sup>5</sup> "**Il-Pulizija vs. Raymond Psaila et.**"<sup>6</sup> ; "**Ir-Republika ta' Malta vs. George Azzopardi**"<sup>7</sup> ; "**Il-Pulizija vs.**

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<sup>4</sup> Decided by the Criminal court of Appeal on the 29<sup>th</sup> May 2003

<sup>5</sup> Decided by the Criminal court of Appeal on the 10<sup>th</sup> May 2002

<sup>6</sup> Decided by the Criminal court of Appeal on the 12<sup>th</sup> May 1994.

Carmel sive Chalmer Pace<sup>8</sup>; "Il-Pulizija vs. Anthony Zammit"<sup>9</sup> u oħrajn.) Il-Qorti tvarja tali apprezzament jekk tqis li fuq il-provi prodotti quddiem l-Ewwel Qorti u minnha traskritti ma jkunx "safe and satisfactory" li tinstab il-htija addebitata lill-appellanti .

This Court also makes reference to what was held by LORD CHIEF JUSTICE WIDGERY in the case "R. v.Cooper"<sup>10</sup> iWith regards to section s. 2 (1) (a) of the British Criminal Appeal Act, 1968) wherein he held that :-

"assuming that there was no specific error in the conduct of the trial, an appeal court will be very reluctant to interfere with the jury's verdict (in this case with the conclusions of the learned Magistrate) , because the jury will have had the advantage of seeing and hearing the witnesses, whereas the appeal court normally determines the appeal on the basis of papers alone . However, should the overall feel of the case – including the apparent weakness of the prosecution evidence as revealed from the transcript of the proceedings – leave the court with a lurking doubt as to whether an injustice may have been done, then, very exceptionally, a conviction will be quashed." (vide also BLACKSTONE'S CRIMINAL PRACTICE (1991), p. 1392)

In the case "Ir-Republika ta' Malta vs. Ivan Gatt"<sup>11</sup>, the court held that:-

*"Fi kliem iehor, l-ezercizzju ta' din il-Qorti fil-kaz prezenti u f'kull kaz iehor fejn l-appell ikun bazat fuq apprezzament tal-provi, huwa li tezamina l-provi dedotti f' dan il-kaz, tara jekk, anki jekk kien hemm versjonijiet kontradittorji – kif normalment ikun hemm – xi wahda minnhom setghetx liberament u serenament tigi emmnuta minghajr ma jigi vjolat il-principju li d-dubju ghandu jmur favour l-akkuzat u, jekk tali versjoni setghet tigi emmnuta w evidentement giet emmnuta.... , il-funzjoni , anzi d-dover ta' din il-Qorti huwa li tirrispetta dik id-diskrezzjoni u dak l-apprezzament. Biex din il-Qorti, kif del resto gieli ghamlet – tiddisturba l-gudizzju ... , trid tkun konvinta li l-istess ma setghux, taht ebda cirkostanza ragjonevoli, jaghtu affidament lill-versjoni minnhom emmnuta."*

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<sup>7</sup> Decided by the Criminal court of Appeal on the 4<sup>th</sup> February 1989

<sup>8</sup> Decided by the Criminal court of Appeal on the 31<sup>st</sup> May 1991

<sup>9</sup> Decided by the Criminal court of Appeal on the 31<sup>st</sup> May 1991

<sup>10</sup> ([1969] 1 QB 276)

<sup>11</sup> Decided by the Criminal court of Appeal on the 1<sup>st</sup> December ,1994

This is so because the Court of appeal as a court of revision would generally not have heard the witnesses give evidence before her as is the case of the presiding magistrate before the first court but rests its decision on the evidence heard before another court as transcribed in the acts of the proceedings and thus in those cases where credibility is an issue the court at first instance may be in a better position to evaluate such evidence by following the guidelines set out in article 637 of the Criminal code.

However, this does not mean that this court is not in a position to review the acts of the proceedings and examine a fresh what the witnesses would have said to see if there was a safe and satisfactory appraisal of the evidence given. In other words to see their consistency and veracity of what was said by them and see if such evidence was in fact corroborated by other facts.

One must not forget what is stated in section 638 of the Criminal code which provides the following

638.(1) *“In general, care must be taken to produce the fullest and most satisfactory proof available, and not to omit the production of any important witness.*

*(2) Nevertheless, in all cases, the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been proved by two or more witnesses”.*

This further means that the testimony of one witness if believed is enough to constitute proof for the basis of one’s decision. In fact in **Il-Pulizija v. Joseph Thorne**<sup>12</sup>, *“mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal-liberazzjoni tal-persuna akkuzata. Imma l-Qorti, f’kaz ta’ konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali u tasal ghall-konkluzjoni dwar lil min trid temmen u f’hiex ser temmnu jew ma temmnux.”* ( vide also **Ir-Repubblika ta’ Malta vs Dennis Pandolfino et**<sup>13</sup>

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<sup>12</sup> Decided by the Criminal court of Appeal on the 9<sup>th</sup> July. 2003

<sup>13</sup> Decided by the Criminal court of Appeal on the 19<sup>th</sup> October 2006

Thus, conflicting evidence per se, does not necessarily mean that whoever has to judge may not come to a conclusion of guilt, whoever has to judge may, after consideration of all the circumstances of the case, dismiss one version and accept as true the opposing one.

In the light of what was stated above in the case **Repubblika ta' Malta vs. George Spiteri**<sup>14</sup> the court reiterated the following:

*“Huwa principju fundamentali fil-process kriminali li l-ligi tesigi li kull min jrid jipprova xi haga, ghandu jressaq l-ahjar prova, u dan jista' biss jaqa' fuq prova sekondarja kemm il-darba din l-ewwel jew l-ahjar prova mhiex disponibbli”.*

The relevance of such a submission is better explained in **Il-Pulizija vs Matthew Borg**<sup>15</sup> where the following was held:-

*“Illi fid-dawl tas-suespost u cioe' x'inhu l-ahjar prova, il-Qorti tissottolinea li huwa ben saput li l-apprezzament tal-provi ghandu jsir mhux biss b'mod spezzettat w individwali izda l-provi ghandhom jigu analizzati flimkien fl-assjem taghom sabiex wiehed jara x'inferenzi jew interpretazzjoni ragjonevoli u legali jista' jaghti lil daww il-provi hekk interpretati. Ma tistax tinstab htija jew nuqqas ta' htija semplicement fuq analizi ndividwali jew separata tal-provi. Dawn ghandhom jigu kkunsidrati kemm individwalment kif ukoll kompleksivament.”*

In this case the prosecution brought forward the complainant who reported on the 24<sup>th</sup> August 2015 that she was handed over two fifty-euro notes (€50) from the accused. She said that she had recognised him. The police apprehended the accused who turned up at the police station when asked to who in turn denied *a tempo vergine* of this accusation that he in fact had given these two notes to the complainant. He also said that he did not know the complainant though when shown a photo of her recognised her as being a friend of his ex-girlfriend. He also confirmed that he was introduced to her two years before in 2013 and saw her again at the police station when this case was being investigated.

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<sup>14</sup> Decided by the Criminal court of Appeal on the 5<sup>th</sup> May, 2002

<sup>15</sup> Decided by the Criminal court of Appeal on the 10<sup>th</sup> November, 2014

The accused however went a step further and explained to the police where he was on that eve when the complainant said that he handed over to her two counterfeit bank notes. The police well knowing about this alibi did nothing about it.

The complainant in fact although suspected that she was in possession of two false bank notes did not go to the police till the following day till 8.15p.m Thus indicative that she was in no hurry to make such report. She gave no explanation for this delay. On the other hand the accused went to the police station soon after he received his phone call asking to go. He denied the allegations straight away. The police went a step further and carried out a search at his home and in his car which gave a negative result.

The Court makes reference to the case in the names **Il-Pulizja Spettur Trevor Micallef Vs Kieran Vella**<sup>16</sup>with regards to what parameters must it follow in assessing which witness is credible or not and said that “*\_Issa meta l-Qorti tasal biex tghazel bejn verzjoni u ohra, naturalment jittiehdu in konsiderazzjoni id-diversi parametri fosthom il-komportament tax-xhieda biex wiehed jara kemm dak li qed jghidu ghandu mis-sewwa jew le.*

In this case the Court examined the judgment given by the first court and feels that the testimony given by Bakoush is credible because she was consistent whereas the version of events given by the accused were not so convincing in that he states that Bakoush might have reported him because she is mad at him. With all due respect the court may be right in stating that Bakoush was consistent in her evidence but is that enough to say that she was consistent is saying the truth. It is not up to the accused to explain why the complainant chose to make a report against him but it is up to the prosecution to prove that the report made by Bakoush was true, and not only true in that she received two false notes but that it was the accused and no else but the accused that gave her these two notes.

The court states that the accused too was very adamant about his position in that he never gave any notes to Bakoush and that he barely knew her. The prosecution

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<sup>16</sup> Decided by the Criminal court of Appeal on the 6<sup>th</sup> October 2016

brought forward no evidence to disprove this even though it knew this was his version of events from the very beginning before it even in fact arraigned him in court. Bakoush was never asked even though she took the witness stand three times how well or otherwise she knew the accused.

The only supposition in which the first court based its judgment of credibility of the complainant was because the accused did not explain in a solid manner why the complainant chose to report him. With all respect this is not a consideration that should have been taken in this case. The first court should have seen the demeanour of the parties, their consistency in what they said about the alleged transaction, if there were any cameras that got hold of such a deal, if any of them looked shaky in what was said.

In view of the above the court does not feel that the prosecution managed to prove its case beyond reasonable doubt and the court finds that the evidence given against the accused by the complainant is not such that it can conclude that it is safe and satisfactory for her to reach a decision of guilt.

The court thus is upholding the appeal filed by the appellant and whilst confirming that part of the judgment wherein it acquitted the accused from the fourth charge it upholds the appeal of the accused and reforms the appealed judgment in the sense that it is also acquitting the accused from the first, second and third charge.

(ft) Consuelo Scerri Herrera

Judge

TRUE COPY

Franklin Calleja

Deputy Registrar