



## **Criminal Court**

Hon. Judge Giovanni M. Grixti, LL.M, LL.D.

### **Bill of Indictment No. 2/2015**

**The Republic of Malta**

**Versus**

**Theophilus Nwadike  
Omissis**

Today, 10<sup>th</sup> September, 2020

The Court,

Having seen the charges brought against the accused Theophilus Nwadike, holder of Maltese Identity Card number 0045120A and against Omissis, holder of Maltese Identity Card number X, by means of Bill of Indictment No. 2 of the year 2015 whereby the Attorney General in the First and only Count premised :

That the accused Theophilus Nwadike and Omissis, both of them irregular migrants from Nigeria, met in Valletta, Malta, in the year Two Thousand and Ten (2010), and quickly became friends. Among the numerous conversations between them, the idea of making some 'easy money' cropped up, and the accused Theophilus Nwadike convinced the accused Omissis that he had

overseas contacts through whom they could start importing to subsequently sell or deal in the dangerous drug Heroin in Malta.

That the accused Theophilus Nwadike and Omissis agreed to start importing the dangerous drug Heroin in Malta to eventually sell or deal in it, and therefore devised a plan and conspired with people overseas, including a certain 'Daniel', to this effect.

That the meticulous agreement agreed and planned beforehand between the accused Theophilus Nwadike and Omissis and the overseas supplier by the name of 'Daniel' was, in a nutshell, that just over a kilo of Heroin be concealed in a pair of shoes, which pair of shoes a courier would wear and come to Malta. The courier – a Spanish national by the name of Justo Ernesto Bellver Bayo – had to pick up the shoes containing the drugs from a place in Amsterdam, wear them, go to the airport, and catch flight number KM 397 to Malta. Once safely in Malta and past Customs, Justo Ernesto Bellver Bayo had to destroy the sim card of his mobile phone, buy a new sim card, and call 'Daniel' so that the latter would give him detailed instructions as to when and where to meet the accused Theophilus Nwadike and Omissis to consign the drugs to them. For his job to courier the drugs to Malta, the accused Theophilus Nwadike and Omissis would give Justo Ernesto Bellver Bayo the sum of two thousand Euros (€2,000). The accused Theophilus Nwadike and Omissis would then sell or deal in those drugs.

That it so happened that on the Seventeenth (17th) day of the month of June of the year Two Thousand and Ten (2010) Drug Squad Police were informed by Customs officials at the Malta International Airport that a Spanish national had been stopped

at the airport in Malta at approximately 15:30 hrs after his arrival on flight KM 397 from Amsterdam, the Netherlands on suspicion that he might be carrying drugs. This Spanish person resulted to be Justo Ernesto Bellver Bayo, holder of Spanish Identity Card number 48589478T. Upon further investigation it resulted that the said Justo Ernesto Bellver Bayo was carrying the aggregate amount of one thousand one hundred twenty seven point nine grams (1,127.9g) of the dangerous drug Heroin, which drug was hidden in his shoes. Analysis by the court-appointed expert showed that this drug had a purity of twenty-six point seven per cent (26.7%), and a street value of fifty one thousand five hundred and eighty three Euros (€51,583).

That Justo Ernesto Bellver Bayo agreed to participate in a 'controlled delivery' operation in terms of law and as authorised by the Inquiring Magistrate, so as to enable the Police to apprehend the individuals to whom the drug he was carrying was destined. In a nutshell, the 'controlled delivery' consisted of a Police Officer – PC 1183 Oliver Borg – 'impersonating' Justo Ernesto Bellver Bayo. Bayo was receiving instructions on his phone from the overseas supplier, which information he was relaying to the Police. These instructions were then carried out by PC 1183 Oliver Borg, impersonating Bayo.

That according to the instructions received by Bayo, Bayo had to walk to the playing-field in Birżebbugia, where a dark-skinned man wearing a baseball cap would approach him and make a sign to him. PC 1183 Oliver Borg, impersonating Bayo, walked to the playing-field in Birżebbugia, as per instructions, where he was approached by a dark-skinned man wearing a baseball cap who made a sign to him. This man was the accused Omissis. PC 1183 asked the accused Omissis, in

Spanish, for the money, and the accused Omissis, thinking that PC 1183 was Justo Ernesto Bellver Bayo, told him to sit down on a bench and wait for his friend who was coming with the money.

That indeed, Omissis's friend, the accused Theophilus Nwadike, approached the scene, but, sensing that something was 'fishy', fled the scene by quickly scrambling onto an oncoming bus. Both the accused Theophilus Nwadike and Omissis were arrested. On the person of the accused Theophilus Nwadike, the Police found two thousand Euros (€2,000) in cash.

That by committing the above-mentioned acts with criminal intent, the accused Theophilus Nwadike and Omissis rendered themselves guilty of illegally conspiring for the purposes of selling or dealing in a dangerous drug (Heroin) in these Islands in breach of the provisions of the Dangerous Drugs Ordinance, (Chp. 101 of the Laws of Malta);

Wherefore, the Attorney General, in his aforesaid capacity accuses Theophilus Nwadike and Omissis of being guilty of, on the eighteenth (18<sup>th</sup>) day of the month of June of the year Two Thousand and Ten (2010) and during the previous weeks, having 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 against the provisions of the Dangerous Drugs Ordinance, (Chp. 101 of the Laws of Malta), and specifically of selling and dealing in any manner in the drug Heroin, and having promoted, constituted, organised and financed such conspiracy.

Demands that the accused be proceeded against according to law, and that Theophilus Nwadike and Omissis each be

sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand, three hundred and thirty Euros (€ 2,330) but not more than one hundred and sixteen thousand, five hundred Euros (€116,500), and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in respect of which the offence was committed and as described in the Bill of Indictment, as is stipulated and laid down in Articles 9, 10(1), 12, 14, 15A, 20, 22(1)(a), 22(1)(f), 22(1A), 22(1B), 22(2)(a)(i), 22(3A), 22(3BA) and 26 of the Dangerous Drugs Ordinance (Chap. 101 of the Laws of Malta) and in Articles 17, 23 and 533 of the Criminal Code (Chp. 9 of the Laws of Malta) or to any other punishment applicable according to law to the declaration of guilt of the accused.

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

Having seen that during today's hearing the accused Theophilus Nwadike, in reply to the question as to whether he was guilty or not guilty of the charge proffered against him under the only count of the Bill of Indictment, accused registered a plea of guilt;

Having then warned the accused in the most solemn manner of the legal consequences of such plea and allowed him ample time to retract it and this in accordance with Article 453 of Chapter 9 of the Laws of Malta;

Having seen that the accused, after being granted such time, and after confirming that he had been allowed sufficient time to

consider his plea; that he fully understood the charges proffered against him; that he was fully aware of the punishments prescribed by the law for the charges proffered against him and that the he was fully aware of the consequences of the application signed by his legal counsel together with the Attorney General and that the signature on the said application was made under persisted in his statement of admission of guilt;

In consequence whereof, this Court declares Theophilus Nwadike guilty of the only count in the Bill of Indictment, namely that :

On the eighteenth (18<sup>th</sup>) day of the month of June of the year Two Thousand and Ten (2010) and during the previous weeks, having 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 against the provisions of the Dangerous Drugs Ordinance, (Chp. 101 of the Laws of Malta), and specifically of selling and dealing in any manner in the drug Heroin, and having promoted, constituted, organised and financed such conspiracy.

Having seen articles 22(1)(a), 22(1)(f), 22 (1A), 22(1B) of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta.

The Court is of the opinion that the sanction and measure proposed in the joint application as aforesaid in this case should be upheld and that there is no reason to proceed with the trial of the cause and, therefore, having explained to the accused the consequences of his request, condemns the said Theophilus Nwadike to a term of imprisonment of eight (8) years and the

imposition of a fine (multa) of twenty five thousand Euros (€25,000) which punishment is that requested and agreed to by the parties and which fine (multa) shall be converted into a further term of imprisonment of one year according to Law, in default of payment within the time prescribed by law.

Furthermore in terms of article 533 of Chapter 9 of the Laws of Malta condemns the said Theophilus Nwadike to pay the sum of one thousand and twenty eight Euros point twenty two cents (€1,028.22) being half the sum total of the expenses incurred in the appointment of court experts in this case [namely report by PC Arthur Borg, Dr Martin Bajada, Dr Alexandra Mizzi, Dr Martin Bajada, Dr Kathleen Grima, Dr Martin Bajada, PC 1525 Patrick Farrugia and PS 964 Robert Scicluna] in terms of Article 533 of Chapter 9 of the Laws of Malta;

Moreover in terms of the said Chapter 101 orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which Theophilus Nwadike has been found guilty and all other moveable and immovable property belonging to the said Theophilus Nwadike unless the Attorney General shall by means of a note filed in the Registry of this Court within fifteen days from today request the stay of the forfeiture of the property of Mr Theophilus Nwadike involved in the crime due to it being requested in proceedings against other accused.