



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**Magistrate Dr. Neville Camilleri
B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.**

**The Police
(Assistant Commissioner Dennis Theuma)**

vs.

Uchena Anya

Number: 1307/2010

Today the 16th. of March 2021

The Court,

Having seen the charges¹ brought against the accused **Uchena Anya**, twenty-eight (28) years old, son of Isaac and Nnenna, born in Aba State Nigeria on the 12th. of January 1982, residing in Malta at 'Ersilia Court', Block A, Flat 2, Triq Salvu Busuttil, San Ġwann, holder of Identity Card Number 46248A

charged with having on the 3rd. of November 2010 and during the preceding three years in the Maltese Islands:

¹ A fol. 3 et seq.

1. conspired with another one or more persons on these Islands or outside Malta for the purpose of selling or dealing on these Islands the dangerous drug (cocaine) in breach of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or promoted, constituted, organised or financed such conspiracy for the importation of the dangerous drug (cocaine) in breach of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta);
2. imported, or caused to be imported, or took steps preparatory to import the dangerous drug (cocaine) in Malta in breach of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta);
3. had in his possession the drug (cocaine) specified in the First Schedule of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised 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 (GN 292/1939) to be in possession of the mentioned drugs and failed to prove that the mentioned drugs was supplied to him for his personal use according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) which drug was found in circumstances denoting that it was not for his personal use;
4. been in possession of the whole or any portion of the plant cannabis in terms of Section 8(d) of the Chapter 101 of the Laws of Malta;²

² In the charge sheet (*a fol. 3 et seq.*) this charge is numbered with the number three (3), yet in this judgment it has been numbered with the number four (4).

5. committed an act of money laundering by:
- (a) converting or transferring property knowing 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 that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - (c) acquiring 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;
 - (d) retaining, without reasonable excuse, of property, knowing that the same was derived or originating directly or indirectly, from criminal activity, or from an act or acts or participation in criminal activity;
 - (e) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (a), (b), (c) and (d) within the meaning of Article 41 of the Criminal Code;
 - (f) acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (a), (b), (c), (d) and (e) within the meaning of Article 41 of the Criminal Code,

(This in breach of Section 3 of the Prevention of Money Laundering Act – Chapter 373 of the Laws of Malta).³

³ In the charge sheet (*a fol. 3 et seq.*) this charge is numbered with the number four (4), yet in this judgment it has been numbered with the number five (5).

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 Article 22A of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) and of Article 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 Articles 5(1) and 5(2) of the same Act and of Article 23A of the Criminal Code (Chapter 9 of the Laws of Malta).

The Court was also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta as regards to the expenses incurred by the Court appointed experts.

Having seen the documents exhibited and all the acts of the proceedings, including:

- (a) the Procès Verbal Number 759/10 drawn up by Magistrate Dr. Audrey Demicoli containing the Sworn Statement of Attila Somlyai (*a fol. 35 et seq.*);
- (b) the certified true copy of Procès Verbal Number 736/10 drawn up by Magistrate Dr. Gabriella Vella regarding "*sejba ta' kapsoli kontenenti droga misjuba fuq il-persuna ta' Attila Somlyai ta' nazzjonalita' Rumena mal-wasla tiegħu fl-Ajruport Internazzjonali ta' Malta fis-26 ta' Novembru 2010*" (*a fol. 344 et seq.*) and
- (c) the certified true copy of Procès Verbal Number 756/10 drawn up by Magistrate Dr. Antonio Mizzi containing the Sworn Statement of Attila Somlyai (*a fol. 352 et seq.*).

Having seen the Order of the Attorney General in terms of Article 3(2A) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) (Doc. "DT 4" - *a fol. 15*) wherein the Attorney General ordered that the accused be tried in the Criminal Court.

Having seen the Order of the Attorney General in terms of Article 22(2) of the Dangerous Drugs Ordinance (Chapter 101 of the Laws

of Malta) (Doc. "DT 5" - *a fol.* 16) wherein the Attorney General ordered that the accused be tried in the Criminal Court.

Having seen that this case had been assigned to this Court as currently presided on the 30th. of June 2015 (*a fol.* 770a *et seq.*).

Having seen that, during the sitting of the 15th. of October 2015 (*a fol.* 780), both the Prosecution and the defence exempted this Court as currently presided from re-hearing once again all the witnesses who had already been heard by this Court as diversely presided before this case was assigned to this Court as currently presided.

Having seen the Counter-Order of the Attorney General (*a fol.* 881-882) dated 3rd. of January 2018 in terms of Articles 22(2) and 31 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) and Article 3(2A)(b)(c) of The Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) wherein the Attorney General ordered that the accused be tried before the Court of Magistrates (Malta) as a Court of Criminal Judicature.

Having seen that, during the sitting of the 7th. of February 2018 (*a fol.* 884), the Court brought to the attention of the Prosecution and of the defence the Counter-Order of the Attorney General referred to in the preceding paragraph, during which sitting the defence informed the Court that the accused did not object for this case to be heard and tried summarily.

Having heard, during the sitting of the 4th. of April 2019, the testimony of the accused given by him voluntarily (*a fol.* 890 *et seq.*).

Having heard, during the sitting of the 30th. of May 2019 (*a fol.* 903), the defence request that a Social Inquiry Report regarding the accused be drawn up, which request was acceded to.

Having heard, during the sitting of the 16th. of January 2020, the testimony given by Probation Officer Charisse Boffa (*a fol.* 907 *et seq.*) and having seen the Social Inquiry Report (Doc. "SB 1" - *a fol.* 909 *et seq.*) drawn up by her.

Having heard, during the sitting of the 24th. of November 2020 (*a fol.* 928), the defence declare that the accused had no further witnesses to bring forward in these proceedings.

Having seen the written Note of Submissions filed by the Prosecution on the 8th. of January 2021 (*a fol.* 930 *et seq.*).

Having seen the written Note of Submissions filed by the defence on the 23rd. of February 2021 (*a fol.* 937 *et seq.*).

Having considered

That reference will be made to the most salient testimonies heard and to the documents exhibited during these proceedings.

That, during the sitting of the 15th. of December 2010, **WPC 127 Carmen Gauci** testified (*a fol.* 110 *et seq.*) saying that on the 7th. of December 2010 at about 10.00am while she was waiting in front of of Hall 9 to testify in the case of Attila Somlyai who was arrested with capsules and was ready to make a controlled delivery as a result of which the Police arrested Ikechukwu Stephen Egbo, she noticed the two same women who were present before for the Court sitting of the mentioned Egbo specifying that they were with the accused in this case. She says that after a few minutes, Attila Somlyai was escorted to Hall 9 and she saw the accused looking at him and then stood up and left Court. She says that she entered Hall 9 and asked Prosecuting Officer Theuma to ask Attila Somlyai if he recognised someone in Court and then Inspector Theuma told her that Attila Somlyai had recognised the Nigerian guy (i.e the accused in this case) who was sitting in front of Hall 9 and that he was the same person who was with Ikechukwu Stephen Egbo the first time he came to Malta with the drugs. She said that the accused was arrested in Valletta at around noon later that day and that he was with the same two women she mentioned before. She says that these women were Vanda Granek and a certain Tunde.

WPC 127 Carmen Gauci testified also during the sitting of 1st. of February 2011 (*a fol.* 172 *et seq.*) and apart from testifying on the

same lines she had testified on the 15th. of December 2010, this time she made reference to Hall 7 and not to Hall 9.

That, during the sitting of the 15th. of December 2010, **PS 1220 Chris Baldacchino** also testified (*a fol. 113 et seq.*) saying that on the 26th. of November 2010 a Romanian guy by the name Attila was arrested at the airport. He says that on the 27th. of November 2010 he was at Roma Hotel in Sliema with Attila since a controlled delivery was being carried out. He says that Attila told him that in October he came to Malta and did the same thing where he handed over the capsules to two African guys and said that Attila also told him that he was waiting for a call to go outside of the hotel. He testifies that at about 5.00pm Attila received a call, went out of the hotel and a certain African guy named Stephen was arrested. He says further that on the 7th. of December 2010 he was in Court with WPC 127 and he observed that the accused looked at Attila when Attila passed in front of him and then the accused went out of Court. He says that the accused was later arrested in Valletta.

That, during the sitting of the 15th. of December 2010, **Prosecuting Officer the then Inspector Dennis Theuma** also testified (*a fol. 116 et seq.*) wherein he exhibited the statement released by the accused, which statement was marked as Doc. "DT" (*a fol. 118 et seq.*).

Prosecuting Officer Dennis Theuma testified also (*a fol. 159 et seq.*) during the sitting of the 1st. of February 2011 saying that on the 26th. of November 2010 late in the evening a Romanian national by the name of Attila Somlyai arrived in Malta on a flight from Dusseldorf. He says that since the mentioned Somlyai looked suspicious, it was decided that he be further investigated. He explains that PS 1220 C. Baldacchino assisted by PC 777 Chris Ebejer, PC 323 Cedric Buhagiar and WPC 237 Antonella Vella went to the Malta International Airport to assist in this procedure. He says that Attila Somlyai was taken to Mater Dei Hospital and recounts what he told him. He explains that Attila Somlyai agreed to help the Police to carry out a controlled delivery and that the Inquiring Magistrate Dr. Gabriella Vella, apart from nominating a number of experts to assist her in the Inquiry, also authorised the controlled delivery. He testifies that a controlled delivery was

staged at the Roma Hotel and a certain Ikechukwu Stephen Egbo, a Nigerian national, was arrested. He says that eventually both Attila Somlyai and Ikechukwu Stephen Egbo were arraigned separately in Court.

He further testifies that on the 7th. of December 2010 during a Court sitting in front of the then Magistrate Dr. Miriam Hayman, both Attila Somlyai and Ikechukwu Stephen Egbo had their first hearing at the Law Courts and when both of them were inside the hall, he (Theuma) was informed by WPC 127 Carmen Gauçi that a Nigerian national who was accompanying the female partner of Ikechukwu Stephen Egbo reacted in a very suspicious manner on seeing the Romanian courier. He says that he immediately requested Magistrate Dr. Miriam Hayman to be authorised to speak to Attila Somlyai and when he spoke to him, Somlyai confirmed that the other Nigerian who was present for the case of Ikechukwu Stephen Egbo was the other Nigerian to whom he (Attila Somlyai) had handed over a number of capsules in October in front of Roma Hotel. As a consequence, the other Nigerian guy was later arrested. He was with his girlfriend Vanda Granek and with Ikechukwu Stephen Egbo's wife, i.e. Tunde. He also says that in the meantime Attila Somlyai released a third statement which he later confirmed on oath before Magistrate Dr. Audrey Demicoli in which he confirmed that in October 2010 when he came to Malta the first time with the twenty-four cocaine-filled capsules, the accused was present and assisted Ikechukwu Stephen Egbo during the drug deal.

He testifies that from further investigations carried out by the Drug Squad Police in the forty-eight hours preceding the arraignment of the accused, it was established that the accused had sent overseas using Western Union money transfer an excess of forty thousand Euros (€40,000) over a period of three years, which monies were sent to various individuals of Nigerian origin in various countries, including Spain, Holland and Nigeria. He adds that it was established that the accused arrived in Malta as an illegal immigrant about five years before and most of his employment history "*is anything but official*" (a fol. 163). He says that the accused was eventually arraigned in Court and charged with various

charges. During his testimony he made reference to a number of documents which already formed part of the acts of the case and recognised same and exhibited also a number of other documents.

That, during the sitting of the 19th. of January 2011, **WPC 237 Antonella Vella** testified (*a fol. 135 et seq.*) saying that on the 26th. of November 2010 they went to Malta International Airport where the customs had stopped a Romanian national named Attila Somlyai because it was suspected that he was carrying foreign bodies inside him. She says that PC 777 and PS 1220 took him to hospital and they verified that Attila Somlyai had capsules inside him. She says that PS 1220 and herself went to the Roma Hotel and they made a check-in on Attila Somlyai since he was going to co-operate with the Police. She says that on the 27th. of November 2010 they went to Roma Hotel, a controlled delivery was carried out and a certain Stephen Egbo was arrested.

That, during the sitting of the 19th. of January 2011, **PS 1086 Johann Micallef** also testified (*a fol. 137 et seq.*) saying that on the 26th. of November 2010 a certain Attila Somlyai was apprehended at Malta International Airport carrying drugs. He says the mentioned Attila Somlyai did a controlled delivery as a result of which on the 27th. of November 2010 a certain Stephen Egbo was arrested in the vicinities of Roma Hotel in Sliema. He says that whilst doing the controlled delivery, he was present with Attila Somlyai and Attila Somlyai told him that some time earlier he came to Malta and met two Nigerians to whom he had passed a parcel suspected to be drugs. He explains that on the 7th. of December 2010 whilst waiting for the Court hearing of Attila Somlyai in front of Hall 7, WPC 127 saw suspicious movements by the accused (Uchena Anya) and after she informed Inspector Theuma, they were given instructions to arrest the accused as a consequence of which the accused was later arrested.

During cross-examination asked whether during the controlled delivery he was in a hotel room or outside, he said that he was in both and says that he was with Attila Somlyai. To the question how much time he spent with Attila Somlyai in the hotel room, he says that he passed around ten hours with him and confirms that

the hotel was the Roma hotel. He testifies that there were other police officers and that even a translator was present in the room and says that several calls were made which were all initiated by another person. He says: "At that time I was given the impression that someone had to come and pick up the package. Last time, it was, he was telling me, it was two Nigerians and at some point, Attila told me in his broken English that it will be the same persons as last time" (a fol. 144). He confirms that after this, he (PS 1086) went outside to observe the arrival of whoever was to come to collect the packet and to apprehend the person who came to collect the drugs. He says that he was observing in the vicinity of Roma Hotel specifying that he was on the promenade opposite. He testifies that he observed other Nigerians passing on the promenade but none of them stopped and also says that he observed a lot of persons that have criminal records with the Police. He says that he was looking for two Nigerians in particular, confirming that he was looking for persons of a dark colour. He confirms that he identified one person in particular who he says was not the accused. He also confirms that he followed a person who crossed the street from the promenade to the Roma Hotel during which time Attila Somlyai was on the outside of the mentioned hotel. He says that he saw Stephen Egbo who he had observed crossing the promenade towards Attila Somlyai and then arrested Stephen Egbo. He confirms that at no point did he see the accused in the vicinities whilst this operation was happening.

That, during the sitting of the 19th. of January 2011, **PC 323 Cedric Buhagiar** also testified (a fol. 152 et seq.) saying that on the 26th. of November 2010 they took Attila Somlyai to Mater Dei Hospital where it was certified that he had foreign bodies inside him. He also says that on the 27th. of November 2010 Attila Somlyai was escorted to the Roma Hotel where a controlled delivery was taking place and that during the process Stephen Egbo was arrested.

That, during the sitting of the 1st. of February 2011, **Ronald Cilia** testified (a fol. 166 et seq.) and when he was shown Doc. "RC" (a fol. 21) he says that this document relates to transactions sent by Uchena Anya holder of Identity Card Number 46248, which search was made from the 1st of January 2008 up to the 13th. of December

2010 from which it resulted that Uchena Anya made five transactions for the total sum of €3169.87. As far as Doc. "RC 1" (*a fol. 22 et seq.*) is concerned, he says that this relates to other transactions sent by Uchena Anya from the 1st. of January 2008 to the 13th. of December 2010 for the total sum of €45,620.33.

That, during the sitting of the 11th. of February 2011, **Audrey Ghigo** on behalf of HSBC Bank Malta plc testified (*a fol. 176 et seq.*) saying that she had been asked to make a search on bank accounts in the name of Uchena Anya holder of Identity Card Number 46248A. She confirms that she had exhibited Doc. "AG 1" (*a fol. 55 et seq.*), Doc. "AG 2" (*a fol. 80*), Doc. "AG 3" (*a fol. 81 et seq.*), Doc. "AG 4" (*a fol. 83 et seq.*) and Doc. "AG 5" (*a fol. 107*) and testifies regarding the same documents.

That, during the sitting of the 11th. of February 2011, **George Cremona** (Principal Officer at the Social Security Department) also testified (*a fol. 179 et seq.*) saying that he was asked to give evidence regarding Uchena Anya holder of Identity Card Number 46248A and says that the mentioned individual is registered under the Social Security Act with the number B43860287 and says that he was in receipt of injury benefit for some period during the year 2009 and that presently he is not in receipt of any benefit. He says that Uchena Anya received €77.72 and €19.43. He was shown Doc. "GC" (*a fol. 51 et seq.*) and Doc. "GC 1" (*a fol. 53*) and confirms that these documents relate to the Uchena Anya mentioned earlier in his testimony.

That, during the sitting of the 11th. of February 2011, **Jennifer Debono** (Senior Executive at the ETC Corporation) also testified (*a fol. 182 et seq.*) and when she was shown Doc. "JVB" (*a fol. 54*) she says that she verified the employment history of Anya Uchena holder of Identity Card Number 46248A which indicates that he worked as a machine operator with Float Glass Ltd from the 26th. of September 2008 to the 31st. of December 2009. When asked if she had any records of employment prior to 2008, she replies in the negative. She also replies in the negative to the question as to whether there were any records of Anya Uchena's employment

following the termination of his employment with Float Glass Limited.

That, during the sitting of the 11th. of February 2011, **Romuald Attard** on behalf of Bank of Valletta plc also testified (*a fol. 185 et seq.*) saying that he carried a search in the accounts of Uchena Anya holder of Identity Card Number 46248A and that no accounts had been found.

That, during the sitting of the 11th. of February 2011, **Joseph Gauci** (Principal Officer at the Inland Revenue Department) also testified (*a fol. 187 et seq.*) and whilst saying that searches were carried out regarding Uchena Anya holder of Identity Card Number 46248A, he says that from the information it results that the mentioned Uchena Anya is registered with the department but he never sent any claims.

That, during the sitting of the 11th. of February 2011, **PC 323 Cedric Buhagiar** also testified (*a fol. 189 et seq.*) saying that on the 26th. of November 2010 customs officers stopped Attila Somlyai at the airport and that the mentioned Somlyai was escorted to hospital for a chest x-ray where it resulted that he had capsules inside his body and during their watch he excreted seven capsules. He says that the following day, Attila Somlyai was escorted to the Roma Hotel for a controlled delivery and that Stephen Egbo was arrested.

That, during the sitting of the 11th. of February 2011, **WPC 149 Ruth Sammut** also testified (*a fol. 191 et seq.*) saying that on the 27th. of November 2010 she was duty first wacth at Mater Dei Hospital with Attila Somlyai. She says that PC 323 and PC 777 handed over to them thirty-five capsules. She says that during her shift, Attila Somlyai excreted another twenty-five capsules.

That, during the sitting of the 11th. of February 2011, **PC 1099 Charles Farrugia** also testified (*a fol. 193 et seq.*) saying that on the 27th. of November 2010 he was fixed point at Mater Dei Hospital with Attila Somlyai and at 5.00am they took handover from PC 777 and 323 the amount of thirty-five capsules and during the shift time, Somlyai excreted another twenty-five capsules.

That, during the sitting of the 17th. of May 2011, **Scientist Godwin Sammut** testified (*a fol. 230 et seq.*) where he presented a copy of his report in the Inquiry regarding the finding of capsules containing a substance suspected to be illicit drugs on Attila Somlyai on the 27th. of November 2010. The report was marked as Doc. "GS" (*a fol. 232 et seq.*) and the following conclusions were reached:

(a) "Cocaine was found in the extracts taken at random (20 in total) from the white powder which are in the exhibit labelled as 476_10_01. The total number of capsules was 60 while the total weight of the white powder is 582.46 grams and the purity of cocaine in the powder is approximately 38%. Cocaine is controlled by Chapter 101 of the Laws of Malta under the First Schedule of Part 1.

(b) The price in euros per gram of cocaine is €76. The total weight of cocaine in this case was 582.46 grams which gives a total value of €44,266.96".

That, during the sitting of the 17th. of May 2011, **PS 612 Theo Vella and PS 36 Sergio Azzopardi** also testified (*a fol. 247 et seq.*) saying that on the 27th. of November 2010 they were informed by Inspector Dennis Theuma that a Magisterial Inquiry was being held in connection with a drug-related case. They testify that on the same date they went to Mater Dei Hospital where they were handed over sixty capsules containing suspected drugs, which on the same day were handed over to Scientist Godwin Sammut. They exhibited their report which was marked as Doc. "TV" (*a fol. 249 et seq.*).

That, during the sitting of the 17th. of May 2011, **Anthony Cutajar** also testified (*a fol. 256 et seq.*) saying that on the 26th. of November 2010 he was duty at Malta International Airport and whilst monitoring passengers arriving on a flight from Dusseldorf with his colleague Neville Cesareo they stopped a Romanian national by the name of Attila Somlyai and that nothing irregular resulted from a search on his person and in his luggage. He says that Inspector Dennis Theuma was informed and that Attila Somlyai was eventually escorted by PS 1220.

That, during the sitting of the 4th. of August 2011, **Stephen Cachia** on behalf of Transport Malta testified (*a fol. 277 et seq.*) saying that from a research on vehicles registered in the name of Uchena Anya holder of Identity Card Number 46248A, it transpired that the mentioned individual has a vehicle Kia Avella bearing registration number DAI 608, colour blue and that the same vehicle had been registered on his name since the 16th. of February 2010. He exhibited a document regarding same which was marked as Doc. "SC" (*a fol. 279 et seq.*).

That, during the sitting of the 4th. of August 2011, **Alphonse Cauchi** on behalf of AirMalta also testified (*a fol. 281 et seq.*) saying that on the 26th. of November 2010 Attila Somlyai travelled to Malta from Dusseldorf on flight number KM 353. He says that the same Somlyai travelled again to Malta on the 29th. of October 2010 on KM 539 from Budapest and that on the 3rd. of November 2010 he left Malta for Vienna on flight number KM 512. He exhibited documents which were marked as Doc. "AC" (*a fol. 283 et seq.*).

That, during the sitting of the 4th. of August 2011, **Mario Mizzi** on behalf of Malta Institute for Finance Computer Science also testified (*a fol. 287 et seq.*) saying that he had been working with the company from the 6th. of June 2011 and says that he does not know the accused but specifies that the accused had attended two courses: one which he ended and the other one not. He exhibited a document regarding his testimony which was marked as Doc. "MM" (*a fol. 291 et seq.*).

That, during the sitting of the 16th. of September 2011, **Dr. Cristina Mintoff** testified (*a fol. 298 et seq.*) where she exhibited a discharge letter (Doc. "CM" - *a fol. 301 et seq.*) of Attila Somlyai from the Surgical Department at Mater Dei Hospital. She says that the mentioned Somlyai was admitted to Mater Dei Hospital on the 26th. of November 2010 because he had ingested pellets and that he was discharged on the 27th. of November 2010 once he passed them.

That, during the sitting of the 16th. of September 2011, **Maria Barbara** on behalf of Roma Hotel also testified (*a fol. 304 et seq.*) saying that from her records it resulted that Attila Somlyai stayed at

the mentioned hotel for five nights, specifically from the 29th. of October 2010 till the 3rd. of November 2010 and that he went again on the 26th. of November 2010.

That, during the sitting of the 24th. of January 2012, **Dr. Martin Bajada** testified (*a fol. 379 et seq.*) where he informed the Court that his appointment was extended by the Court. He exhibited his report which was marked as Doc. "MB 1" (*a fol. 385 et seq.*).

Dr. Martin Bajada also testified (*a fol. 848*) during the sitting of the 23rd. of March 2017 where he presented as Doc. "MB 1" (Loose Envelope) a true copy of his report together with a CD which forms part of the same report.

Dr. Martin Bajada also testified (*a fol. 856*) during the sitting of the 15th. of June 2017 where he presented as Doc. "MB 1" (*a fol. 857 et seq.*) a true copy of his report filed in the case **The Police vs. Ikechukwu Stephen Egbo**.

That, during the sitting of the 7th. of March 2012, **Attila Somlyai** testified (*a fol. 416 et seq.*) saying that he had been to Malta twice (once in October 2010 and once in November 2010) to bring cocaine in his stomach by swallowing it. He says that whilst he was in Amsterdam the person with whom he used to work in drugs told him to come to Malta to bring drugs since this person had some friends in Malta who would buy the drugs from him. He says that he does not know the name of this person but says that he was a man having black skin colour. He says that he had the number of his boss saved in his mobile and that his boss in Amsterdam gave him drugs in capsules, he put them in the food, swallowed them and came to Malta directly by plane from Dusseldorf after going to Dusseldorf by train from Amsterdam. He says that he did this on both occasions when he came to Malta and that the travelling expenses were paid by his boss who told him to stay at Roma Hotel whose reservation was made by his boss and which was also paid by his boss. Asked how many capsules he was carrying when he first came to Malta he replies thirty. He says that he was meant to get six hundred Euros (€600) from his boss's friend. Asked what is the name of his boss's friend he says that he does not know and

says that his boss had told him that he had to meet his friend in his hotel room at the Roma Hotel. He says that his friend's boss was supposed to take the drugs from him, that he would be waiting in front of the hotel in a car and he was supposed to go down and deliver the capsules. He says that his friend's boss was alone in the car with blue colour. When asked if he would recognise him, he replies in the affirmative and when he was asked if this person was in the Court room, he replied in the negative.

When he was asked about the second time he came to Malta, i.e. in November 2010, he says that the friend of his boss gave him the drugs to bring to Malta to give them to his friend who is the same person as in October 2010. He says that the skin colour of his friend is black. He testifies that the second time he came to Malta he brought sixty capsules of cocaine and says that he was not told how much he was going to get paid. He confirms that when he came to Malta in November 2010 he accepted to co-operate with the Police. Asked about the instructions he was given by his boss regarding the delivery in November 2010, he says that he was told to come to Malta, to go to the Roma Hotel and wait for the friend.

He says that in November 2010 from the airport he was taken to hospital and then they went to Roma Hotel and then he told the Police that the person was waiting for him. Asked how he knew this, he replies that the boss in Amserdam phoned him on his mobile and told him that the friend will be waiting for him. He says that apart from himself and the Police, in the room there was also the translator. He says that the boss told him to get out of the room and go downstairs because the person would be waiting for him, so he went downstairs, went to the supermarket with this person, the person realised that there was the Police and he started running to the car and the Police ran after him and caught him. He says that he saw the car but says that he did not see the colour and says also that he did not see anyone in the car. He says that he went back to Roma Hotel and when his boss called him and asked him what happened, he says that he told him that did not know and that his friend got scared and just ran away. Asked about the last instructions given to him by the boss before leaving the hotel, he says that the boss told him to go to toilet, take the capsules out,

clean them, put them back in the food, swallow them again and take them back to Amsterdam. When he was asked if when he came to Malta on both occasions in 2010, whether he made any phone calls to anyone, he replies in the negative. He says that he only received calls from the boss.

He confirms that he was then arraigned in Court and when asked regarding what happened in December 2010 whilst in Court, he says that whilst waiting outside the Court Hall, he noticed the black friend of his boss who he says was on his own, doing nothing. He said that he (Attila) spoke to no-one and confirms that Prosecuting Officer Theuma had spoken to him (to Attila) and says that he had told the Prosecuting Officer that that person was the person whom he (Attila) was supposed to deliver the drugs to. He confirms that this black friend of his boss was the one who was in the car and says that the person's name is Stephen and that he has his number in his mobile phone.

Asked by the Court as diversely presided, *"So you did you indicate a person by the name of Stephen?"* (a fol. 429), he replies: *"Because he says that there two persons before"* (a fol. 429). He says that both persons are black and says that one of them is the accused Uchena Anya. Asked how he knows the accused, he says that he knows him by name from prison. He also says that he met the accused for the first time in prison in Malta. Then he says, through the interpreter: *"Yes he knows him from before is the one from the car as the friend of the boss"* (a fol. 430). Asked about October 2010, he says that there were two persons and confirms that he went inside a blue car and says that on the driver's seat there was not the accused but the other person and says that the accused was outside walking. He specifies that the accused was outside the car on his own waiting for him and asked what happened then, he says: *"They went together him and the accused went to the car and went in the car and delivered the capsules"* (a fol. 431). He specifies that he (Attila) delivered the capsules to the driver named Stephen who is not present in Court who gave him the money. Asked if he (Attila) had spoken to the accused when he was outside the car, he says that he told him: *"Ok. Thank you"* (a fol. 432). He says that the accused was fifty meters away from the car and when they were walking together, the accused spoke to

him in English which he did not understand but made him gestures from which he understood to be quick and that they ended up in the car. He says that once he handed over the drugs, the two persons stayed in the car and then drove away and he went back to the hotel. He says that Stephen was driving the car.

He was shown statement marked as Doc. "DS 1" (a fol. 43) on which statement he recognises his signature. When he was told that whereas in his testimony he mentioned a blue colour, in the statement he says it was white, and asked if he remembers what was the colour, he replies through his interpreter: *"He does not know white, blue, probably white, he does not know the colour of the car may be white, may be blue but probably white"* (a fol. 434). When he was told that in the statement he said that the accused was driving the car and that in his testimony he said that the accused was not driving the car, he says that the truth is that Stephen was the driver. When asked by the Court as diversely presided: *"But why did you tell the other Magistrate something different? In other words, why did you lie under oath?"* (a fol. 434), he replies through his interpreter: *"He is saying Stephen was driving the car"* (a fol. 434). When asked by the Court as diversely presided why he was lying under oath, he replies that he does not know. Asked again who was driving the car, he replies that Stephen was. Again he was asked by the Court as diversely presided who was driving the car and he replied that the accused was. Asked by the defence why an hour ago he said that the driver was Stephen, through his interpreter he replies: *"He is saying that he does not speak Romanian very well and he got mixed up"* (a fol. 435). He testifies: *"The truth is that the accused here was the driver"* (a fol. 435). When asked by the Court as diversely presided why he had lied before, he replied that he is afraid of the driver, whom he says is the accused (a fol. 436), and of Stephen. He says that he is afraid of Stephen because he fears that when he will finish his sentence, he will be killed. Asked by the Court as diversely presided: *"Why he told us a different story today?"* (a fol. 436), through his interpreter he replies: *"Because he did not understand, because he speaks Hungarian very good"* (a fol. 436). He says that he is from Romania and that he speaks Hungarian because in that part of the country they speak Hungarian. He testifies: *"Stephen spoke to him and the accused was the driver"* (a fol. 437). He also specified that

there were two persons in the car and that in Romania they drive on the other side. On Doc. "AS" (a fol. 439), he showed that whereas the accused was behind the steering wheel, on the passenger's seat there was Stephen and that he (Attila) was behind the passenger's seat.

Attila Somlyai continued giving his testimony during the sitting of the 31st. of October 2012 (a fol. 515 et seq.) and says that he was given sixty capsules by the black man who told him he had to come to Malta and that there will be two persons waiting for him here in Malta. He says that he swallowed all the capsules, says that he did not know what type of drug it was and says also that he did it because he needed money. He says that he was to receive fifteen Euros (€15) for each capsule and that he had no room booked at Roma Hotel and that when he arrived, he booked the room, he paid for the room from the money the black man gave him, who he says gave him two hundred Euros (€200). When asked who was going to pay him for the capsules, he says that two persons were supposed to wait for him in front of the Roma Hotel. He says that the black man phoned him when he was in the hotel and told him there were two persons waiting for him in front of the hotel. Asked how he would recognise these persons, he says that in November he would recognise them because in October 2010 he was already here in Malta.

When reference was made to November, he says: "*And then he went down, he saw the man and he started walking with him. He was sitting on a bench in front of the sea. And then as he got downstairs, the Nigger phoned him again to ask him: "Can you see the man? He is sitting down there. He is the one that you already met in October"*" (a fol. 523). He confirms that he did see him and that he recognised him. Asked to look around the Court Hall and asked if could see the dark-skinned person who was on the bench, he first replies in the affirmative and when he was told that he was being asked about November, he replies in the negative. He says that the name of this dark-skinned person who was on the bench is Stephen, saying that he does not know the surname. Asked how he knew him before November, he replies that in October he met him and also says that in October the black man named Stephen was waiting for him sitting in a car. He

says that this Stephen got up and started walking towards him (Attila), Stephen looked at him (Attila) and continued walking and he (Attila) walked behind him, then Stephen entered a shop, Attila followed him and even the Police followed, but in the shop it seemed that Stephen noticed that something was not as he was expecting it to be and so he started running out from the shop, the Police ran after him (Stephen) and they caught him.

He says that he was then charged in Court and that on one occasion when he was in court, he recognised the accused Uchena Anya as being the person whom he (Attila) met in October when he came to Malta and says that he (the accused) was the driver in a blue white car which was about fifty or sixty meters away from the Roma Hotel.

Asked by the Court as diversely presided: *"Did he first see the car or the two people in front of the hotel?"* (a fol. 528), he replies: *"The two men in front of the hotel"* (a fol. 528). When he was asked who were the two men, he replies that whereas one of them was the accused Uchena Anya, the other was Stephen. He says that when he saw these two men, they approached him and he started walking with them towards the car. When asked to describe the car, he says that it was: *"blue, small car, sort of rounded with rounded corners"* (a fol. 529). He says that the car had five doors. Asked why he said *"blue and white before?"*, he replies: *"He remembers more blue now"* (a fol. 529). He says that the vehicle was a manual car and that he was still holding the bag whilst walking towards the car. He says that they sat inside the car, that the accused Uchena Anya was on the right behind the steering wheel, Stephen was on the passenger seat and that he (Attila) was sitting at the back more to the left but sort of in the middle. He says that he showed the capsules to Stephen, then handed them over to Stephen, and Stephen gave him six hundred Euros (€600). He says that they drove him to the hotel and that Uchena Anya was driving the car, he got out of the car, phoned the black man who told him that in three days he was going to send him a plane ticket and then he travelled back by plane to Amsterdam. This happened in October 2010.

He testifies that in November he was again offered fifteen Euros (€15) per capsule and that the black guy gave him one hundred Euros (€100) as spending money. When he was asked whether when he swallowed the capsules in the hotel in Amsterdam in October there were other people as there were in November, he says that in November there were persons from Romania and mentions a couple of names and that in October there were a certain Nikolai and a certain Csaba Fazakas. Asked what Fazakas was doing at the hotel, he says that he was doing the same as him but says that Fazakas was sent to another country but does not know where since he (Attila) left before.

When asked about October 2010, he says that he came from Amsterdam and confirms that he met two dark-skinned persons: one of them identified as Stephen and the other being the accused. He confirms that Stephen spoke to him and when asked if there was any conversation between any of the three of them, through his interpreter he replies: *"In the car nobody spoke. Only Stephen and Attila"* (a fol. 535). Asked by the Court as diversely presided, whether the accused spoke to him when he met him and Stephen, he replied in the negative and says that the accused was only the driver of the car. He says that the accused spoke to Stephen in a language that he (Attila) did not understand.

Attila Somlyai continued giving his testimony during the sitting of the 10th. of January 2013 (a fol. 562 et seq.) and when asked about the vehicle he had mentioned, he says that he remembers it was an Opel and when asked if he is sure, he replies that he is not totally sure and later during his testimony he says that it was either an Opel or an Oltcit. He says that it is a five-door car and asked about the colour, he replies that it was blue and then specifies that it was light blue.

Attila Somlyai continued giving his testimony during the sitting of the 18th. of February 2014 (a fol. 695 et seq.) and when he was shown nine photos numbered from one to nine (a fol. 686 et seq.) and asked to try and recognise or identify the vehicle he was mentioning in the other sitting, he chose photo number two (a fol. 687). He testifies that in his opinion the colour of the car was blue but says

that he cannot remember the brand of the car and says that it was either Volkswagen or Opel.

Attila Somlyai continued giving his testimony during the sitting of the 15th. of June 2017 (*a fol. 864 et seq.*) and whilst confirming that he remembers testifying in these proceedings, he also confirms that when he testified in these proceedings he still had pending criminal proceedings against him. He confirms that now his case has been decided and that he has no further criminal proceedings against him. Asked if he wanted to change or add anything to what he had already testified in these proceedings against Uchena Anya, he replied in the negative.

That, during the sitting of the 10th. of January 2013, **Inspector Johann Fenech** testified (*a fol. 559 et seq.*) saying that on the 23rd. of April 2011 a certain Csaba Fazakas was arrested at Malta International Airport after approximately two kilos of cocaine were found in his bag. He says that it resulted that Csaba was born in Romania and had a Romanian passport. He says that during the time Csaba was under arrest, he (Inspector Fenech) was aware that he had a son abroad also named Csaba Fazakas and says that there were several contacts by sms's and by calls between the two during the time Csaba was under arrest. He says that Csaba Fazakas had told him that his son was calling him and smsing him because a controlled delivery was underway which did not succeed.

That, during the sitting of the 27th. of November 2013, **Imelda Fede** testified (*a fol. 624 et seq.*) where she exhibited as Doc. "ME" (*a fol. 626 et seq.*) a translation into English Language of the Letters Rogatory (*a fol. 615*) executed by the Judicial Authorities of the Kingdom of Spain.

In Doc. "ME" (*a fol. 626 et seq.*) it results that **Csaba Fazakas (Junior)** testified that he was born on the 25th. of May 1971 and that he does not know who Attila Somlyai is. He says that he has never been to Malta and says that the only time he left Romania was through Amsterdam and from there he went to the Gran Canarias. Asked whether he knows Uchena Anya, Csaba says that he does not know him and that does not know anyone in Malta. Asked if he has

heard of a black Nigerian man by the name of Uchena, he answers in the negative and says that he does not know him.

That, during the sitting of the 4th. of March 2014, **Csaba Fazakas** (Senior) testified (*a fol. 699 et seq.*) saying that he has a son called also Csaba Fazakas. He says that his son is in jail in Spain. When asked how he knows Somlyai, he says that he met him in prison in 2011. Asked: "*Did you ever tell [...] Mr. Somlyai Attila or speak to Mr. Somlyai about your son and tell him that he is in prison?*" (*a fol. 701*), he replies in the affirmative. He confirms that he told Attila that he has a son who is in prison.

That, during the sitting of the 10th. of December 2014, **André Azzopardi** testified (*a fol. 748*) whereby he formally exhibited as Doc. "AA" exhibit number KB153/2011 consisting of a white packet containing documents 473/10/01 to 473/10/02, which exhibit was exhibited in the case **The Police vs. Attila Somlyai**.

That, during the sittings of the 17th. of November 2011, 10th. of April 2014, 2nd. of July 2014 and 15th. of October 2015, **Ikechukwu Stephen Egbo** testified (*a fol. 317 et seq., a fol. 706 et seq., a fol. 725 and a fol. 781*) and when he was duly cautioned since he had a criminal case pending against him, he chose not to tender evidence.

That, during the sitting of the 15th. of February 2016, **Neville Cesareo** testified (*a fol. 793*) saying that he is a customs officer at the Customs Department. He says that on the 26th. of November 2010 he was night duty at Malta International Airport and that a certain Attila Somlyai who had just arrived from Dusseldorf on flight number KM 353 was stopped. He says that Somlyai's luggage was scanned and was even submitted to a personal search which searches resulted in the negative. He says that Inspector Dennis Theuma was informed and that two police officers were sent and they took the mentioned Somlyai with them to the Police Headquarters and that later they were told that Somlyai was taken for an abdominal x-ray which resulted positive as he was carrying drug capsules in his stomach.

That, during the sitting of the 15th. of February 2016, **PS 1174 Adrian Sciberras** also testified (*a fol. 794*) saying that his colleagues had apprehended a certain Attila Somlyai as a consequence of which on the 27th. of November 2010 Attila Somlyai was involved in a controlled delivery which was being effected at the Roma Hotel. He says that he learnt that Attila Somlyai received instructions to go out from the hotel and he (PS 1174) was outside the hotel and started following Attila as soon as he exited the hotel. He testifies: *"He went out from the Roma and went uphill not towards the sea but opposite the sea. He went there, turned on the left in an alley and entered in that alley there was the Tower Supermarket. He entered the Tower Supermarket, I stayed outside the supermarket and PS 1086 went after him in the supermarket"* (*a fol. 794*). He says that later he saw PS 1086 coming out of the supermarket following another man of dark complexion who later was identified as being Stephen Egbo and he (PS 1086) made him (PS 1174) a sign to help him cause the person he who was following was the suspect. He says that they managed to stop Stephen Egbo near Joinwell in Tower Road, Sliema. He says that he followed instructions given by PS 1086 because he was the one who saw contacts between Stephen Egbo and Attila Somlyai.

That, during the sitting of the 21st. of March 2016, **PS 659 Jeffrey Hughes** testified (*a fol. 800*) where he exhibited his report marked as Doc. "JH 1" (*a fol. 801 et seq.*) regarding the recovery of a substance suspected to be drugs on Somlyai Attila on the 27th. of November 2010. He says that after examining several pieces of plastic which he retrieved from Court, no finger prints were developed from the document in question.

That, during the sitting of the 21st. of March 2016, **PC 777 Chris Ebejer** also testified (*a fol. 811*) saying that on the 26th. of November 2010 he was working night watch and says that they were given instructions to go to the airport to observe passengers arriving on flight number KM 353 from Dusseldorf. He says that a certain Attila Somlyai was stopped where it was decided that he be taken to hospital for an x-ray to check if he was carrying any foreign bodies in his stomach. He says that the x-ray resulted in the positive and that they had to wait until the Somlyai passed the capsules. He says that at about 5.00am he was changed by other

colleagues and later on that day, i.e. on the 27th. of November, he was instructed to go to Roma Hotel in Sliema because Attila Somlyai wanted to co-operate in a controlled delivery. He says that he (PC 777) was in Somlyai's room and at some moment Somlyai was contacted by someone and was told to go downstairs into the street because someone had arrived for the capsules. He testifies that whilst Somlyai was downstairs, he (Somlyai) was instructed to walk towards the Tower Supermarket and then he (PC 777) was informed that PS 1086 had arrested a certain Stephen Egbo who had made contact with Attila Somlyai.

That, during the sitting of the 19th. of July 2016, **Dr. Maria Cardona** testified (*a fol.* 825) saying that following her appointment to carry out a report regarding the assets of the accused, she had compiled her report and presented it to Court. She confirms that this report is the one contained in a blue Arch-Lever File (Doc. "MC").

That, during the sitting of the 30th. of August 2016, **John Coppini** (Manager at the Valletta Branch of W & J Coppini Financial Services) testified (*a fol.* 829) and when he was asked whether he can recognise any signature after being shown pages 140 to 160 of Doc. "MC" (Arch-Lever File), he says that he can recognise his signature.

That, during the sitting of the 17th. of November 2016, **Adrian Petrilla** testified (*a fol.* 837) and when he was shown Doc. "DS 1" (*a fol.* 43) he says that had translated from the English Language to the Romanian Language what Attila Somlyai was being asked and confirms that this was a statement released by the same Somlyai. When he was shown page numbers from 361 to 367 he once again said that he had translated from the English Language to the Romanian Language and vice-versa the statements contained in these pages and says that he recognises his signatures on all pages.

That, during the sitting of the 29th. of November 2017, Deputy Registrar **Alexia Attard** testified (*a fol.* 878) where she confirmed on oath true copies of Procès-Verbal Number 736/10 relating to drugs found on the person of Attila Somlyai (*a fol.* 344 *et seq.*) and of Procès-Verbal Number 756/10 relating to the testimony of Attila

Somlyai (*a fol. 352 et seq.*), which photocopies she says were made from the proceedings **The Police vs. Ikechukwu Stephen Egbo**, which was being heard by Magistrate Dr. Miriam Hayman.

That, during the sitting of the 4th. of April 2019, the accused **Uchena Anya** testified voluntarily (*a fol. 890 et seq.*) saying that he has been in Malta since 2006 and that he came by boat as an immigrant. He says that he worked at several places after being released from detention and says that he worked at Float Glass Company, Valletta Glass and that now he is working in Bugibba. He confirms that during the period between 2009 and 2011 he worked regularly and earned money and asked how much he earned, he says about seven hundred (700) or eight hundred (800). He also says that he did some other work and even overtime. Asked if he knows Attila Somlyai who testified in these proceedings, he replied in the negative. When asked what he says about the fact that Attila explained that he (accused) was involved in a drug dealing where he (accused) was also present, he replies: *"I never deal with I don't know Attila"* (*a fol. 891*). He says that he has never been involved in any drug dealing. Regarding Stephen Egbo, he says that they lived together in an apartment and when he was asked if they were friends, he says that were not properly friends but they lived together. Asked if he ever spoke with Stephen Egbo about any drugs, he replies in the negative. He says that now he is working as a bartender and that he works regularly. To the question: *"During the case, there are a lot of transactions whereby you used to send money via Western Union to various people, what can you say about those transactions if you remember anything?"* (*a fol. 892*), he replies: *"I can remember some transactions I make even to my continent some of the money is not mine cause some people had them to send the money because I have..."* (*a fol. 892*). Asked to repeat, he says that some persons who did not have a valid document, would go to him, gave him the money so that he could send money on their behalf via Western Union to their parents. He says that in this case the money was not his. He confirms that there were some transactions which were sent by his money. Asked who are the persons who used to send money, he replies: *"I can't remember because most of them they made when I used to find a job in Marsa nobody's staying at Marsa over there so they would come with me I don't know them"* (*a fol. 893*). He confirms

that he did send money to his family members and mentions his brother Isaac Ekeoma. He confirms that he used to send him money from the money he earned here in Malta to help him and his family

During cross-examination, he confirms that he was arrested in 2010. Asked if he was working all the time during the four years he was in Malta before he was arrested, he replies in the affirmative. He says that he got paid on average seven hundred Euros (€700) and says that sometimes he used to make overtime. Asked if he was living on his own or with someone and what were his expenses during those four years, he replies: *"I don't make much expenses because, no I don't make much expenses cause sometimes I work even on Sundays with somebody else apart from working with Float Glass"* (a fol. 895). He confirms that he did pay rent to the landlord and asked how much rent he paid roughly in a month, he says around three hundred and twenty Euros (€320). He says that it was a two-bedroom apartment and the rent was shared between two and hence he personally paid one hundred and sixty Euros (€160). When asked how much would he quantify the expenses regarding food and other needs, he replies: *"In a month may be seventy because we share by two because we cook together"* (a fol. 896). He confirms that he bought a car for one thousand and eight hundred Euros (€1800) and that he paid eight hundred Euros (€800) as deposit and that the remaining one thousand Euros (€1000) were paid by him slowly.

Prosecution: *"Now, your lawyer asked you about some money you sent to various countries including Spain, Nigeria, Bulgaria, Copenhagen, Dubai, United Arab Emirates, Holland and India."*

Accused: *"Sorry I don't send money in India. I never send money in India."*

Prosecution: *"Its all down black on white exhibited in the acts of the case from the Fex Serv so it's there [...] so in the document exhibited in the acts of the case from the pen-drive we found on you when we stopped you, there were all these transactions and there was one*

particular transaction to your brother Isaac Gods Will Ekeoma and not one but actually over two years in less than two years you sent him twenty thousand Euros, can you explain please? [...] I just would like to know how you managed?" (a fol. 897).

Accused: *"I told you before, some of the money that I sent is not mine. Some people would tell me to send money to send money to them and sometimes I send money to my brother and my brother then collect it to my brother is not that all the money I sent is mine" (a fol. 898).*

When he was asked if even the twenty thousand Euros (€20,000) he sent to his brother was not his, he replied that he did not send twenty thousand in two years. He says: *"some people they don't trust even they will talk "can you give to your brother maybe after someone will come and collect it from your brother?""* (a fol. 898). When asked to confirm that what he is saying is that the twenty thousand was not his money but it was money given to him by others who told him to send to his brother, he replies: *"Yes always know here some immigrants don't have the contact of their parents they cannot given some people I still have the money until they look at their parents or their family members they can tell me this because from the sea we came none of us had any documents"* (a fol. 898-899). He confirms that the money his brother was receiving from him was given to him (the accused) by others in Malta and the role of his brother was to give that money to their family. He says that his brother was a bank employee. He confirms that he (the accused) speaks very good English and when he was asked if he understands a bit of Hungarian, he replies in the negative. Asked if Stephen Egbo understood Hungarian, he replies in the affirmative because he lives in Hungary. He says that he and Stephen Egbo are not from the same region in Nigeria and says that they are not neighbours but says they hail from the same tribe and they speak the same language. He says that he met Stephen Egbo about two or three months before he (the accused) was arrested. He says that the first time he met Stephen Egbo was in Msida where they used to make telephone calls and Stephen Egbo told him that he was looking for a house and he (the accused) told him

that a friend of his was leaving and when this friend leaves, he (the accused) would tell Egbo.

He confirms that when he was arrested he was in the company of two Hungarian ladies. He says that one of them is his wife Vanda Granek and the other is Tunde, Stephen Egbo's wife. To the question: *"So how did you communicate with Vanda because I don't recall that she understood English?"* (a fol. 901), he replies: *"She does not understand English but Steve that is the most important we are living together because I know through Steve and his wife they all translate but she understand but she can't speak"* (a fol. 901). He says that he has never been to Hungary. To the question as to how he met his wife, he says that he knows Vanda through Tunde. He says that he had a Kia Avella. When asked if before he was arrested he had ever been to Sliema with his car, he replies in the affirmative and says that he went with Vanda, Tunde and Stephen Egbo because they wanted to translate the marriage certificate. When he was asked if Stephen Egbo had ever asked him to take him somewhere with his car, he replies that normally, if he has time, he would take him. He says that he never saw Attila Somlyai.

That, during the sitting of the 16th. of January 2020, **Probation Officer Charisse Boffa** testified (a fol. 907 et seq.) where she exhibited the Social Inquiry Report (Doc. "SB 1" - a fol. 909 et seq.) drawn up by herself. She says that according to the Malta Police criminal records, the accused is of clean conduct and says that the accused informed her that he has another pending case regarding similar charges. She says that the accused explained to her that he came to Malta in June 2006 due to troubles in his home country and that at this point in time he has limited contact with his family since he has been in Malta for a number of years. She says that the accused has two daughters: one in Nigeria and one in Hungary and that he keeps contact with his family through social media. She also says that the accused has been in a stable relationship for the past five years and that they live together in an apartment in Xemxija where she carried out a home visit. She also says that the accused works as a store-keeper on a full-time basis and says that this is confirmed from the Jobs Plus records. She testifies that the accused affirmed that he occasionally drinks and that he used to

smoke cannabis however he no longer makes use of any illicit substances. She says that all urine tests carried out at the department resulted in the negative for the substances of cocaine, heroin, amphetamine and cannabis.

Having considered Legal Considerations Regarding the Level of Proof Required

That the Prosecution is bound to bring forward evidence so that the Court can find the accused guilty as charged. **Manzini**⁴ notes the following:

“Il così detto onero della prova, cioè il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osseruit”.

In the Criminal field the burden of the Prosecution is to prove the charges beyond reasonable doubt. With regards to the defence, enhanced by the presumption of innocence, the defence can base or prove its case even on a balance of probabilities meaning that one has to take into consideration the probability of the version recounted by the accused as corroborated by any circumstances. This means that the Prosecution has the duty to prove the tort attributable to the accused beyond every reasonable doubt and in case the Prosecution does not prove this element of tort, the Court has the duty to acquit the accused.

That the following principles, as clearly outlined by the Constitutional Court in its judgment of the 1st. of April 2005 in the case **The Republic of Malta vs. Gregory Robert Eyre et**, must be applied:

“(i) it is for the Prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the Prosecution, to prove or disprove certain facts, he need only prove or disprove that fact or those facts on a balance of probabilities; (iii) if

⁴ **Diritto Penale** (Vol. III, Chapter IV, page 234, Edition 1890).

the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the Prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence.”

That **Lord Denning** in the case **Miller vs. Minister of Pension**⁵ explained what constitutes “proof beyond a reasonable doubt”. He stated:

“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing shall of that will suffice”.

Having considered Legal Considerations Regarding Circumstantial Evidence

At law the position in Malta relative to circumstantial evidence that can lead to a conviction was analysed in various judgments, including **Il-Pulizija vs. Abdellah Berrad et** decided by the Court of Magistrates (Malta) on the 19th. of May 2014 where the main principles were outlined as follows:

⁵ 1974 - 2 ALL ER 372.

“Huwa minnu wkoll kif rapportat aktar ‘l fuq li fl-Artikolu 638(2) tal-Kapitolu 9 ix-xieħda ta’ xhud wieħed biss, jekk emnut minn min għandu jiġġudika fuq il-fatt hija biżżejjed biex tagħmel prova sħiħa u kompluta minn kollox, daqs kemm kieku l-fatt ġie ppruvat minn żewġ xhieda jew aktar. Għalhekk jispetta lill-Qorti tara liema hija l-aktar xhieda kredibbli u vero simili fiċ-ċirkostanzi u dan a bażi tal-possibilita’. Huwa veru wkoll li l-Qorti għandha tqis provi ċirkostanzjali jew indizzjarji sabiex tara jekk hemmx irbit bejn l-imputat u l-allegat reat. Dan qed jingħad għaliex għalkemm huwa veru li fil-kamp penali l-provi ndizzjarji ħafna drabi huma aktar importanti mill-provi diretti, pero’ hu veru wkoll li provi ndizzjarji jridu jiġu eżaminati b’aktar attenzjoni sabiex il-Ġudikant jaċċerta ruħu li huma univoċi.

*Fil-fatt il-Qorti hawnhekk tagħmel riferenza għall-sentenza mogħtija mill-Qorti tal-Appell Kriminali fil-hmistax (15) ta’ Ġunju, 1998 fil-kawża fl-ismijiet **Il-Pulizija vs. Joseph Lee Borg**, fejn kien ġie ritenut li provi jew indizzji ċirkostanzjali għandhom ikunu univoċi, cioè mhux ambigwi. Għandhom ikunu ndizzji evidenti li jorbtu lill-akkużat mar-reat u hadd iktar, anzi l-akkużat biss, li hu l-ħati u l-provi li jiġu mressqa, ikunu kompatibbli mal-preżunzjoni tal-innocenza tiegħu. Illi għalhekk huwa mportanti fl-isfond ta’ dan il-każ li jiġi ppruvat li kien l-imputat biss li għamel dak li ġie akkużat bih u għalhekk il-Qorti sejra tikkonsidra kwalunkwe prova possibilment ċirkostanzjali li tista’ torbot lill-imputat b’mod univoku bir-reati addebitati lilu. Fil-fatt kif ġie ritenut fis-sentenza mogħtija mill-Qorti tal-Appell Kriminali fis-sitta (6) ta’ Mejju, 1961 fil-kawża fl-ismijiet **Il-Pulizija vs Carmelo Busuttill**: “Il-prova ndizzjarja ta’ spiss hija l-aħjar prova tal-volta hija tali li tipprova fatt bi preċiżjoni matematika”.*

Illi huwa veru li fil-kamp penali, il-provi ndizzjarji ħafna drabi huma aktar importanti mill-provi diretti. Hu veru wkoll li l-provi ndizzjarji jridu jiġu eżaminati b’aktar attenzjoni sabiex wieħed jaċċerta ruħu li huma univoċi.

Archbold fil-ktieb tiegħu Criminal Practice (1997 Edition Para 10-3) b'riferenza għal dak li qal Lord Normand fil-każ Teper vs. R (1952) jgħid:

“Circumstantial evidence is receivable in Criminal as well as in Civil cases; and indeed, the necessity of admitting such evidence is more obvious in the former than in the latter; for in criminal cases, the possibility of proving the matter charged by the direct and positive testimony of eye witnesses or by conclusive documents much more than in civil cases; and where such testimony is not available. The Jury is permitted to infer the facts proved other facts necessary to complete the elements of guilt or establish innocence. It must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another [...]. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there is no other co-existing circumstance which would weaken or destroy the inference”.

*Illi din hija eżattament il-pożizzjoni hawn Malta, kif fil-fatt giet konfermata b'sentenza mogħtija mill-Qorti tal-Appell Kriminali nhar d-disgħa ta' Jannar, 1998 fil-kawża fl-ismijiet **Il-Pulizija vs Emanuel Seisun**.*

Din il-Qorti tħoss u tgħid li provi ċirkostanzjali huma bħal katina li tintrabat minn tarf għal tarf, b'sensiela ta' għoqiedi li jaqblu ma' xulxin u li flimkien iwasslu fl-istess direzzjoni.

Il-Qorti hija rinfaccjata b'zewg verżjonijiet ta' kif seħħet il-ġrajja [...]

Għalhekk m'hemmx dubju li l-Qorti hija rinfaccjata b'zewg verżjonijiet dijametrikament opposti għal xulxin għalkemm ingħad sa minn dan l-istadju bikri tas-sentenza jidher li l-imputati li ġew investigati a tempo vegine tal-investigazzjoni baqgħu konsistenti fil-verżjoni tal-fatti tagħhom sa meta xehdu l-Qorti viva voce minn jeddhom hames snin wara l-incident.

Illi għalhekk m'hemmx dubju li kollox jiddependi fuq il-kredibilita` tax-xhieda u dan billi bħala Ġudikant il-Qorti għandha tqies l-imġieba, il-kondotta u l-karattru tax-xhieda, tal-fatt jekk ix-xhieda għandhiex mis-sewwa jew hiex kostanti u ta' fatturi oħra tax-xhieda tiegħu u jekk ix-xhieda hiex imsaħħa minn xhieda oħra u tac-ċirkostanzi kollha tal-kaz u dan ai termini tal-Artikolu 637 tal-Kapitolu 9 tal-Liġijiet ta' Malta. [...]

*Huwa minnu, kif gie allegat mid-difiża, li jekk il-Qorti hija rinfaccjata b'zewġ verżjonijiet konflingenti għandha tillibera, stante li tali konflitt għandu jmur a beneficju tal-imputat, pero' huwa veru wkoll kif gie deciz mill-Qorti tal-Appell Kriminali fidsatax ta' Mejju, 1997 fil-kawża fl-ismijiet **Il-Pulizija vs Graham Charles Ducker**:*

"It is true that 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 circumstances of the case, dismiss one version and accept as true the opposing one."

Having considered

That on the 26th. of November 2010 a Romanian national by the name of Attila Somlyai arrived in Malta on a flight from Dusseldorf. It results that Somlyai was carrying capsules in his stomach and that the mentioned Somlyai agreed to help the Police to carry out a controlled delivery. When this controlled delivery was staged, Nigerian national Ikechukwu Stephen Egbo was arrested. Both Attila Somlyai and Ikechukwu Stephen Egbo were arraigned and charged in Court. It results that on the 7th. of December 2010 when both Attila Somlyai and Ikechukwu Stephen Egbo had their first hearing at the Law Courts, WPC 127 Carmen Gauci noted a Nigerian national (who later resulted to have been the accused) reacting in a very suspicious manner on seeing the Romanian courier, i.e. Attila Somlyai. When WPC 127 Carmen Gauci noted this, the accused was accompanying two women, one

of them being the female partner of Ikechukwu Stephen Egbo. WPC 127 Carmen Gauči informed Prosecuting Officer Theuma, the mentioned Theuma immediately requested authorisation from Magistrate Dr. Miriam Hayman to speak to Attila Somlyai and when he spoke to him, Somlyai confirmed that the accused was the other Nigerian who accompanied Ikechukwu Stephen Egbo when he (Attila Somlyai) handed over the capsules in October 2010. The accused was arrested later on that day and eventually he was charged in Court of several charges which will be considered separately below, to which charges the accused pleaded not guilty.

As regards the statement (Doc. "DT" - *a fol. 118 et seq.*) released by the accused on the 8th. of December 2010, the Court, whilst making reference to the Note of Submissions filed by the Prosecution (*a fol. 930 et seq.* - precisely *a fol. 934*) and to the Note of Submissions filed by the defence (*a fol. 937 et seq.* - precisely *a fol. 944*), notes that the said statement will be declared as being inadmissible and this in accordance with both local and European jurisprudence.

The First (1st.) Charge
(Conspiracy):

That Article 22(1)(f) of Chapter 101 of the Laws of Malta states the following:

“Any person -

[...]

(f) who with another one or more persons in Malta or outside Malta conspires for the purposes of selling or dealing in a drug in these Islands against the provisions of this Ordinance or who promotes, constitutes, organises or finances the conspiracy,

shall be guilty of an offence against this Ordinance”.

That Article 22(1A) of Chapter 101 of the Laws of Malta states:

(1A) The conspiracy referred to in paragraphs (d) and (f) of the preceding subarticle shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons”.

That in the judgment **The Republic of Malta vs. Steven John Caddick et** decided on the 6th. of March 2003, the Court of Criminal Appeal (Superior Jurisdiction) held the following:

“As pointed out by appellants, the First Court correctly stated that the three elements that had to be proved for the crime of conspiracy to result were the agreement between two or more persons, the intention to deal in drugs and the agreed plan of action; and, as also correctly stated by the First Court, “it is irrelevant whether that agreement was ever put into practice”. [...]

This Court believes that the position at law was in fact misstated by the First Court, as although it is true that for the crime of conspiracy to subsist it does not have to be proved that the agreement was put into practice, the converse is not true, that is that evidence of dealing does not necessarily point to a conspiracy.

Under our law the substantive crime of conspiracy to deal in a dangerous drug exists and is completed “from the moment in which any mode of action whatsoever is planned or agreed upon between” two or more persons (Section 22(1A) Chapter 101). Mere intention is not enough. It is necessary that the persons taking part in the conspiracy should have devised and agreed upon the means, whatever they are, for acting, and it is not required that they or any of them should have gone on to commit any further acts towards carrying out the common design. If instead of the mere agreement to deal and agreement as to the mode of action there is a commencement of the execution of the crime intended, or such crime has been accomplished, the person or persons concerned may be charged both with conspiracy and the attempted or

consummated offence of dealing, with the conspirators becoming (for the purpose of the attempted or consummated offence) co-principals or accomplices. Even so, however, evidence of dealing is not necessarily going to show that there was (previously) a conspiracy, and this for a very simple reason, namely that two or more persons may contemporaneously decide to deal in drugs without there being between them any previous agreement”.

That in the judgment delivered by the Criminal Court on the 5th. of January 2004 in the case **Ir-Repubblika ta’ Malta vs. Simon Xuereb**, the Court held the following:

“Issa skond il-ġurisprudenza kostanti tal-Qrati tagħna l-elementi kostituttivi tar-reat ta’ assoċjazzjoni kontemplat fil-Kap. 101 dejjem ġew ritenuti li huma erba’ u senjatament: 1. iż-żmien li fih ikun sar ir-reat; 2. li jkun hemm mill-inqas persuna oħra, kienet minn kienet f’Malta jew barra minn Malta, li tkun involuta, 3. sabiex tiġi traffikata d-droga; u 4. li jkun hemm il-ftehim dwar il-mod kif din id-droga ser tiġi traffikata. It-traffikar għandu definizzjoni wiesgħa u din tinkludi mhux tfisser kwalsiasi moviment ta’ droga minn id għal id kemm versu korrispettiv kif ukoll b’mod gratuwitu. U ma hemmx għalfejn elementi oħra bħal per eżempju prova li d-droga tkun effettivament għaddiet minn id għal id jew li ġiet importata, għax anki semplici offerta hija biżżejjed”.

That reference ought also to be made to the judgment in the names **The Republic of Malta vs. Steven John Lewis Marsden** decided by the Court of Criminal Appeal on the 2nd. of November 2009 where the Court held the following:

“Furthermore, as **Timothy Jones** and **Michael Christie** point out in the second edition of **Criminal Law**⁶:

“Proof of the agreement essential to a criminal conspiracy will generally be inferential. Sometimes overt acts will

⁶ Greens Concise Scots Law (Edinburgh), 1996, page 140, paras. 7-46 to 7-48.

have been committed by some or all of the accused, but this will not always be the case. But even if there have been some such overt acts, the existence of *mens rea*, in the form of an agreement and commitment to the criminal purpose of the conspiracy, will have to be proved by inference. For example, if a group of men is apprehended wearing masks and carrying weapons while sitting in a car outside a bank, there is a clear inference to be drawn that there is an agreement to rob the bank. The group is unlikely to be there for any other purpose.

Lord Justice-Clerk Grant pointed out to the jury in **H.M. Advocate v. Wilson, Latta and Rooney** (1968):

“You won’t often get eye-witnesses of the agreement being made or eavesdroppers who actually hear it being made. Accordingly, in many cases it is a question of judging from the acts of the alleged conspirators whether in fact there was a conspiracy between them in pursuance of which they are acting.”

The evidence derived from such decisional process will not always be as unambiguous as the example in the previous paragraph. An individual who may appear at an early stage of the ‘conspiracy’ to be involved might not be firmly committed. This problem is raised in a crucial form by the absence of any requirement of proximity such as is to be found in the law of attempt.

The cynical view of proof in conspiracy cases would be that the apparent difficulty in proving the agreement is to the advantage of the Prosecutor. There is the danger that in stressing to the jury that a conspiracy can be proved inferentially, the Judge may neglect to emphasise the necessity of proof *per se*”.

The Court has taken cognizance of the lengthy testimonies Attila Somlyai has given in these proceedings before this Court as diversely presided in which testimonies Attila Somlyai gave specific

details as to what he had done when he came to Malta the first time in October 2010 and later in November 2010. The Court also took note of the statements confirmed on oath by the same Attila Somlyai in front of Magistrate Dr. Audrey Demicoli (*a fol. 35 et seq.*) and Magistrate Dr. Antonio Mizzi (*a fol. 352 et seq.*).

The Court notes the specific details Attila Somlyai gave concerning the amount of capsules he had swallowed in October and in November 2010, where he had swallowed them, who was present when he swallowed them, who was giving him instructions, how he travelled to Malta, what he had to do once in Malta, to whom he had to deliver these capsules, how much he was going to get paid and so on.

The Court also notes that at one point when Attila Somlyai was giving his evidence in front of this Court as diversely presided, Attila Somlyai said that it was Ikechukwu Stephen Egbo who was driving the car and when he was once again asked who was driving the car, he once again replied the same. Later he says that the accused was driving the car and confirms same when he was asked the same question again and says that before he said that Ikechukwu Stephen Egbo was driving the car because of fear. On Doc. "AS" (*a fol. 439*) it clearly results where the accused was sitting in the vehicle concerned.

Although the accused was arrested only after he had been to Court on the day when the cases against Attila Somlyai and Ikechukwu Stephen Egbo were going to be heard and after he had been noticed by WPC 127 Carmen Gauçi who informed the Prosecuting Officer Theuma, the Court notes that notwithstanding the fact that at first Attila Somlyai did not mention the accused to the question outlined in the previous paragraph, yet the Court has no doubt whatsoever that when Attila Somlyai said that the accused was in the car behind the steering wheel he was actually saying the truth.

From the report (Doc. "GS" - *a fol. 232 et seq.*) drawn up by Scientist Godwin Sammut regarding the finding of sixty capsules on Attila Somlyai on the 27th. of November 2010 it results that cocaine was

found in these capsules and the total weight of the white powder was 582.46 grams with a total value of a total value of €44,266.96.

In addition to what has been outlined above, the Court has no reason to doubt the veracity of the various testimonies given by Attila Somlyai, both in front of this Court as diversely presided and in the Sworn Statements released by him and which form part of these proceedings.

Considering that the accused was arrested in 2010 and considering that he had been in Malta since 2006, the Court notes that the accused is not credible when in his cross-examination he is asked how much he was being paid in employment before he was arrested when this is compared to the money he had transferred to various countries abroad via Western Union. The accused is also not credible when he says that he used to send money (for example twenty thousand Euros (€20,000)) to his brother who was a bank employee saying that this money was given to him by others and specifies that the role of his brother was to give the money to the families of the persons who had given him the money. The accused reiterates that the money he sent was not his. He is not credible. Considering the accused's employment, the Court considers the amounts which result to have been transferred as being exorbitant.

The accused insists of his innocence and in the Note of Submissions (*a fol. 937 et seq.*) the defence argues that Attila Somlyai has, amongst others, given various versions of facts and that these versions vary a lot. The Court notes that although the accused insisted on his innocence, nonetheless he did not manage to refute the evidence brought forth against him as he did not produce any evidence to disprove that of the Prosecution. Although he did testify in these proceedings, yet, after considering all the acts of the proceedings in their entirety and apart from questioning the credibility of the testimony of the accused, the Court notes that the accused did not for instance produce any witness in his defence. It must be noted that the evidence of Somlyai was corroborated by the evidence of the police officers who were involved in the investigations, including those who were engaged in the controlled delivery.

Somlyai clearly testified that Ikechukwu Stephen Egbo was the same person to whom he had delivered drugs on a previous occasion in October 2010. He also described how and why he could identify him as being the same consignee both in October 2010 and in the controlled delivery in November 2010. At the same time, Somlyai indicated the accused in these proceedings as having also been present with Ikechukwu Stephen Egbo.

That, after considering what has been outlined above, the Court notes that the accused's version that he was never involved in any drug dealing is not credible.

After the Court has taken cognizance of all that has been outlined above and after considering what results from the acts of the case, the Court notes that all these point to the direction of the accused in the sense that he was involved in this conspiracy and knew what had happened, what was going to happen, what was planned to happen and who was involved. It clearly results that a detailed plan to import drugs in Malta was in place, who had to meet who, how, where, and that Attila Somlyai had to get paid. It results that there was an agreement between two or more persons to import drugs in Malta and that the accused was actively involved.

That, after considering what has been outlined above and after considering what is required to prove the first charge brought against the accused, as outlined in the judgment **Ir-Repubblika ta' Malta vs. Simon Xuereb** here-above quoted, the Court is satisfied that these elements have been proven. Hence, the first charge brought against the accused has been sufficiently proven and the accused will be found guilty of the said charge.

The Second (2nd.) Charge
(Importation or Caused to be Imported or Took Preparatory Steps to Import):

The Court, to avoid repeating the considerations already outlined above regarding the first (1st.) charge brought against the accused, whilst making reference to them, notes that there is no doubt that the second (2nd.) charge brought against the accused has also been

sufficiently proven since it results that the accused played a role in causing the importation of drugs and hence he will be found guilty of the said charge.

The Third (3rd.) Charge
(Aggravated Possession of Cocaine):

The Fourth (4th.) Charge⁷
(Possession of the Plant Cannabis):

After considering all the acts of the case and after considering that further above in this judgment it was declared that the statement (Doc. "DT" - *a fol. 118 et seq.*) released by the accused was declared as being inadmissible, the Court notes that both charges under examination do not result in any way and hence the accused will be acquitted from the third (3rd.) and the fourth (4th.) charges brought against him.

The Fifth (5th.) Charge⁸
(Money Laundering):

The Court makes reference to the judgment delivered on the 19th of January 2012 in the names **Il-Pulizija vs. Carlos Frias Mateo** where the Court of Criminal Appeal noted the following:

“Din il-Qorti fliet bir-reqqa s-sentenza tal-Qorti tal-Maġistrati li hija waħda studjata u fiha l-elementi kollha tar-reat ta’ *money laundering* inklużi l-ġurisprudenza riċenti in materja. Hemm qbil f’hafna punti bejn l-argumenti tal-Qorti u dawk ta’ l-Avukat Ġenerali kif ukoll tad-difiza, iżda l-Avukat Ġenerali jidhirlu illi fuq il-provi illi kien hemm il-Qorti kellha tkun konvinta li l-appellat kellu x-xjenza u kien hemm in-ness bejn l-attività’ kriminali sottostanti u l-imputat u dana permezz taċ-ċirkostanzi kollha dwar dan il-kaz.

⁷ In the charge sheet (*a fol. 3 et seq.*) this charge is numbered with the number three (3), yet in this judgment it has been numbered with the number four (4).

⁸ In the charge sheet (*a fol. 3 et seq.*) this charge is numbered with the number four (4), yet in this judgment it has been numbered with the number five (5).

Hawnhekk qiegħda d-diverġenza prinċipali. L-ewwel Qorti qalet fost affarijiet oħra illi l-imputat ma kellu l-ebda obbligu jagħti spjegazzjoni tal-provenjenza tal-flus fl-istadju ta' l-arrest tiegħu *"izda biss quddiem il-Qorti huwa kien obligat jipprova l-provenjenza legittima tal-flus u dana biss wara li jiġi stabbilit mill-Prosekuzzjoni n-ness bejn l-attivitá tat-traffikar u l-imputat..."*. Din id-dikjarazzjoni hija waħda korretta. Il-Prosekuzzjoni għandha l-obbligu li tistabilixxi n-ness bejn l-attivitá tat-traffikar u l-appellat. Il-Qorti pero' donnha kienet qed tippretendi illi din il-prova tal-Prosekuzzjoni kellha tkun sal-livell ta' mingħajr dubju dettat mir-raġuni, haġa li l-Prosekuzzjoni qed tghid illi ma tagħmilx sens għax jekk il-Prosekuzzjoni tipprova l-każ tagħha mingħajr dubju dettat mir-raġuni, allura għalfejn timponi l-obbligu fuq l-appellat illi jispjega u jagħti ġustifikazzjoni tal-provenjenza tal-flus? Jekk il-Prosekuzzjoni tipprova sa dak il-livell, ir-reat huwa ppruvat u ma hemmx għalfejn isir aktar, izda mhux dak kien l-iskop u l-ispirtu tal-Liġi.

Ikkunsidrat

Ma hemmx dubju illi r-reat ta' *money laundering* huwa wieħed mir-reati l-aktar diffiċli u delikati biex jiġu nvestigati. It-teknika u s-sofistikazzjoni tal-mod kif il-flus jiġu ġirati u jinħbew mill-provenjenza lleċita tagħhom jagħmluha kważi mpossibli illi l-investigaturi jsibu traċċa tal-provenjenza tal-flus. Kien għalhekk illi f'dawn iċ-ċirkostanzi l-liġi tal-*Money Laundering* Kap. 373 ipoġġi l-onoru fuq dak li jkun illi huwa jipprova għas-sodisfazzjon tal-Qorti l-provenjenza leċita tal-flus illi jkunu nstabu fuqu. Dan il-bdil ta' l-onoru tal-provi mhijiex waħda kapriċċjuza u kif qalet il-Qorti fil-kawża **Il-Pulizija vs John Vella**: *"din hi liġi straordinarja li tintroduċi kuncetti radikali fis-sistema nostrana u li tirrikjedi applikazzjoni fl-aktar skruplu u attenzjoni biex ma tiġix reża xi strument ta' ngustizzja, aktar reminixxenti taż-żminijiet ta' l-inkwiżizzjoni minn dak ta' l-era moderna tad-drittijiet tal-bniedem. . . ."*

Il-Qorti qieghda tagħmel dan il-pronuncjament fl-isfond tad-dispost ta' l-Artiklu 2(2)(a) u l-Artiklu 3(3) tal-Kap. 373 tal-Liġijiet ta' Malta illi għandhom jinqraw fid-dawl ta' l-Artiklu 21(1c)(b) tal-Kap. 101 tal-Liġijiet ta' Malta li jistipulaw li l-Avukat Ġenerali jista' jakkuża persuna bir-reat ta' *money laundering* mingħajr ma jkollu xi sentenza b'referenza għal xi offiża preċedenti. Ma dan kollu, jibqa` l-fatt illi l-Avukat Ġenerali għandu jipprova n-ness bejn il-flus jew il-proprjeta' u l-attivita' kriminali li tkun generat dawk il-flus.

Dwar il-livell ta' prova li jinkombi fuq l-Avukat Ġenerali, l-Qorti tagħmel referenza għall-kawża **Il-Pulizija vs. Paul Borg** deċiża mill-Qorti ta' l-Appell Kriminali fis-sitta (6) ta' Ottubru ta' l-2003. F'din il-kawża l-Qorti kienet qalet illi meta l-Avukat Ġenerali jakkuża lil xi hadd bl-offiża ta' *money laundering* taht il-Kap. 101 tal-Liġijiet ta' Malta, l-Avukat Ġenerali għandu jipprova *prima facie* n-ness bejn il-flus jew il-proprjeta' u l-attivita' kriminali li tkun generat dak il-flus jew proprjeta' "*minn eżami u qari akkurat ta' din id-dispożizzjoni din il-Qorti thoss li una volta li l-Prosekuzzjoni tiddeċiedi li tipproċedi skond l-Ordinanza Kap. 101 u mhux taht id-dispożizzjonijiet tal-Kap. 373 ossia l-Att tan-1994 kontra Money Laundering, fejn l-attivita' kriminali sottostanti tista' tkun varja u tirreferi għall-ksur ta' diversi liġijiet kif indikat fit-tieni skeda ta' l-istess Att, irid almenu jiġi "prima facie" pruvat li l-akkużat ikun qed jaġixxi bi ħsieb li jaħbi jew jikkonverti flus jew ir-rikavat ta' flus u jkun jaf jew ikollu suspett li dawk il-flus ikunu miksuba bħala riżultat ta' ksur ta' xi dispożizzjoni ta' l-Ordinanza Kap. 101 u dana qabel ma tiskatta l-inverżjoni ta' l-onoru tal-prova fuq l-akkużat".*

F'din il-kawża, l-appellat qed jiġi akkużat bil-ksur ta' provvedimenti tal-Kap. 373 tal-Liġijiet ta' Malta iżda dan il-Kap. jaġmel referenza wkoll għall-Artiklu 21(1c)(b) tal-Kap. 101 tal-Liġijiet ta' Malta li wkoll jitfa' l-piż li juri l-origini leċita tal-flus, proprjeta' jew rikavat fuq il-persuna akkużata. Għalhekk, dan il-livell ta' prova *prima facie* japplika kemm għall-persuna li tkun akkużata b'*money*

laundering taht il-Kap. 101 kif ukoll taht il-Kap. 373. Issa, peress illi l-Artiklu 2(2)(a) ta' l-istess Att jezimi mir-responsabilta' l-Prosekuzzjoni illi tipprova xi htija precedenti in konnessjoni ma' xi attivita' kriminali, kull ma għandha tipprova l-Prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal-persuna ma kienux konformi ma l-istil ta' ħajja tal-persuna, liema prova tkun tista' tigi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-Prosekuzzjoni m'għandhiex tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kienu illegali. Kull ma trid tipprova huwa fuq grad ta' *prima facie* illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta' dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, jkun imiss lill-akkużat sabiex juri illi l-origini tal-flus ma kienx illegali.

Forsi f'dan l-istadju ikun opportun illi jiġi kwalifikat il-prova *prima facie* u fiex din tikkonsisti.

Ikkunsidrat

Hu ben sapat illi l-Qrati generalment jirrikonoxxu erba' tipi ta' prova, dak li huwa possibli, l-probabbli, mingħajr dubju dettat mir-raġuni u ċ-ċertezza. Izda l-prova *prima facie* hija wżata mill-Maġistrat Inkwirenti meta jirredigi l-Proċess Verbal u l-Maġistrat Istruttur fl-gheluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta' prova illi tidhol bejn il-possibli u l-probabbli.

L-awtur **Blackstone** (At D 6.21) jgħid fost affarijiet oħra, "*Thus, the standard of proof the Prosecution are now required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer*". Il-probabbli huwa l-livell użat f'proċeduri ċivili. Għalhekk skond dan l-awtur *prima facie* huwa anqas minn hekk u jista' jiġi definit bħala "*a case to answer*", ħaga li għandha tigi nvestigata aktar fil-fond.

Fil-kuntest tal-provi illi l-Proskuzzjoni gabet f'dan il-każ, intlaħaq dan il-livell ta' *prima facie*? Kien hemm "a case to answer"?"

Apart from considering that the accused will be found guilty of the first (1st.) and the second (2nd.) charges brought against him, the Court notes that reference ought to be made to the various transfers of money made by the accused as testified by Ronald Cilia (*a fol. 166 et seq.*) and to the documents he made reference to (Doc. "RC" - *a fol. 21* and Doc. "RC 1" - *a fol. 22 et seq.*). From Doc. "RC" (*a fol. 21*) it results that from the 1st. of January 2008 till the 13th. of December 2010 Uchena Anya made five transactions for the total sum of €3169.87. As far as Doc. "RC 1" (*a fol. 22 et seq.*) is concerned, this relates to various other transactions sent by Uchena Anya from the 1st. of January 2008 to the 13th. of Decembert 2010 for the total sum of €45,620.33.

Apart from this, the Court further notes that in its Note of Submissions (*a fol. 930 et seq.*) the Prosecution was correct in saying that after the testimony of the accused is examined it ought to be noted that when the accused was asked specific questions regarding the various transactions effected through Western Union, the replies given by him to such questions regarding some of these transactions does not justify the frequency of the transfers. The Court also agrees with the Prosecution that the accused was also not in a position to explain a number of the more consistent transactions. From the compendium of assets (Doc. "MC" - Arch-lever file) filed by Dr. Maria Cardona it results that the accused did not have any significant movable and immovable assets, apart from the vehicle made reference to in the compendium.

The Court further notes that according to the employment history of the accused (Doc. "JVB" - *a fol. 54*), the accused was only employed on a full-time basis as a machine operator with Float Glass Ltd from the 26th. of September 2008 to the 31st. of December 2009. Both before and after this working stint there is no official reference to any form of employment. The Court agrees with the Prosecution when, in its Note of Submissions, the Prosecution submitted that there is not even any relevant documentation or

correspondence from the Inland Revenue Department regarding Uchena Anya's fiscal status. Despite all this, the Court, whilst noting that the amount of money transferred abroad by the accused amounted to around €49,000 across Europe and Africa, also makes reference to the considerations under the first (1^{st.}) charge and once again notes that the accused was not credible when he testified that the money he transferred abroad was not his!

Since the Court will find the accused guilty of the first (1^{st.}) and the second (2^{nd.}) charges brought against him, when considering the money laundering charge under examination and after considering what has been outlined above and after considering what is required to prove the money laundering charge brought against the accused, the Court is satisfied that the elements required to be proven have in actual been proven. Hence, the money laundering charge brought against the accused has been sufficiently proven and the accused will be found guilty of the said charge.

Having considered

That it results that all the charges brought against the accused, except for the one regarding aggravated possession of cocaine and the one regarding simple possession of cannabis, have been sufficiently proven.

With regards to the punishment to be inflicted against the accused, the Court will be taking into consideration various factors, including, on one hand, his clean conviction sheet (Doc. "DT 6" - *a fol.* 17) and, on the other hand, the serious nature of the charges brought against him and which have been successfully proven by the Prosecution.

Therefore, the Court, for the above-mentioned reasons, whilst finding the accused not guilty of the third (3^{rd.}) and the fourth (4^{th.}) charges brought against him (i.e. of aggravated possession of cocaine and of simple possession of cannabis) and hence acquits him from the said charges,

after having seen and considered

Articles 15A(1), 22(1)(a), 22(1)(f) and 22(2)(b)(i) of Chapter 101 of the Laws of Malta,

Article 3(1) of Chapter 373 of the Laws of Malta,

and

Article 17(b) of Chapter 9 of the Laws of Malta,

finds the accused Uchena Anya guilty of the remaining charges, i.e. of the first (1st), second (2nd), and fifth (5th) charges brought against him (i.e. of conspiracy, importation/caused to be imported, and money laundering) and condemns him to a period of nine (9) years imprisonment and to the payment of a fine (multa) of ten thousand Euros (€10,000).

After having seen and considered Article 533 of Chapter 9 of the Laws of Malta, the Court condemns the accused to pay the amount of one thousand, seven hundred and sixty-three Euros and eleven cents (€1763.11) within a period of three (3) months from today which amount represents the costs incurred solely in connection with the employment of experts in this case.⁹ The Court will not condemn the accused for the payment of the expenses relating to the translation into English Language (Doc. "ME" - *a fol. 626 et seq.*) of the Letters Rogatory executed by the authorities of the Kingdom of Spain.

The Court orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out as soon as possible under the direct supervision of the Court Registrar who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that the said drugs are required in evidence against third parties.

⁹ Dr. Martin Bajada (€406.16) (Doc. "MB 1" - *a fol. 387 tergo*); Dr. Maria Cardona (€1185.85) (*a fol. 1* of Doc. "MC"- Arch-Lever File); Dr. Martin Bajada (€171.10) (first page *tergo* of Doc. "MB 1" - Loose Envelope).

Finally, the Court orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which the accused has been found guilty and other moveable and immovable property belonging to the said Uchena Anya.

Dr. Neville Camilleri
Magistrate

Ms. Alexia Attard
Deputy Registrar