

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

**MAGISTRATE
DR. RACHEL MONTEBELLO**

Case Number 328/2021

**The Principal Immigration Officer and the Commissioner of Police
(Inspector Frankie Sammut)**

-Vs-

JAINABA KANDEH

Today, 15th February 2022

The Court,

Having seen that **JAINABA KANDEH**, Gambia National, 40 year old daughter of Ndea and Adam, resident at Msida, holder of Italian Passport Number MC0039903, born at Dimara, Gambia, on 14/6/1980 was arraigned and charged:-

1. with having on the 24th May 2021 and in the previous months in Malta, committed several acts, even if t different times, which constitute violations of the same provision of the law, and were committed in pursuance of the same design, with the intent to make any gain whatsoever aided, assisted, counselled or procured any other person to enter or to attempt to enter or to leave or

attempt to leave or to transit across or to attempt to transit across, Malta in contravention of the laws thereof or, in Malta or outside Malta, conspired to that effect with any other person. In terms of Chapter 9 Art. 18 and Chapter 9 Art 377A of the Laws of Malta.

2. Also with having on the 24th May 2021 and in the previous months in Malta, committed several acts, even if at different times, which constitute violations of the same provision of the law, and were committed in pursuance of the same design, with the intent to male any gain whatsoever aided, assisted counselled or procured for 2 year old minor Mariam Bamba, 6 year old minor Keita Orokia holder of Police number 19II-026 and her mother Kaddy Bamba holder of Police number 19II-025 to leave or attempt to leave or to transit across or to attempt to transit across, Malta in contravention of the laws thereof or, in Malta or outside Malta, conspired to that effect with any other person. In terms of Chapter 9 Art 18 and Chapter 9 Art 337A of the Laws of Malta.

3. Also with having on the 24th May 2021 and in the previous months in Malta, committed several acts, even if at different times, which constitute violations of the same provision of the law, and were committed in pursuance of the same design without lawful authority aided or assisted any person to land or attempted to and in Mata, or to reside in Malta, contrary to the provisions of this Act, or any to land or attempt to land, or to reside in, or to leave any other State contrary to the law on entry, residence and exit of that State, or conceals or harbours any person whom he knows, or has reasonable ground for believing, to be in Malta contrary to the provisions of this Act. In terms of Chapter 9 Art 18 and Chapter 217 Art 32 (1)(a) of the Laws of Malta.

4. Also for having on the 24th May 2021 and in the previous months in Malta, while having in her possession a document issued by a competent authority,

that is a Nigerian passport number A11089593, an Italian residence permit number 577879 issued in the name of Ekomaye Success, had transferred this document to another person or received this documents which was transferred to her by another person in terms of Chapter 61, Sec. 3 of the Laws of Malta;

5. Also charged with having on the 24th May 2021 and in the previous months in Malta, while having in her possession a documents issued by a competent authority, that is a Nigerian passport number A11089594, and an Italian residence permit number 332902 issued in the name of Antony Tina, had transferred to her by another person or received this document which was transferred to her by another person in terms of Chapter 61, Sec. 3 of the Laws of Malta.

The Court is requested, in pronouncing judgement to condemn the person convicted, to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the employment of any expert or referee, in terms of Sections 533 of Chapter 9 of the Laws of Malta.

Having seen that during the hearing of 8th June 2021 the proceedings were ordered to be conducted in the English language after having heard that the accused does not speak or understand the Maltese language but understands the English language;

Having heard the Prosecuting Officer read out the charges and confirm them on oath;

Having heard the accused plead not guilty to the charges during her examination in terms of Article 392 of the Criminal Code;

Having heard the testimony of the witnesses brought by the Prosecution and having seen the evidence adduced;

Having seen that on the 25th November 2021 the Attorney General after having examined the records of the proceedings, decided to send the accused for trial before this Court as a Court of Criminal Judicature, in terms of Article 370(3)(a) of the Criminal Code, for the crimes indicated the following provisions of Law:-

- Article 337A of Chapter 9 of the Laws of Malta;
- Article 3 of Chapter 61 of the Laws of Malta;
- Article 32(1)(a) of Chapter 217 of the Laws of Malta;
- Articles 17 and 31 of Chapter 9 of the Laws of Malta;
- Articles 532A; 532B and 533 of Chapter 9 of the Laws of Malta.

Having heard the accused plead guilty as charged during the hearing of the 14th February 2021;

Having heard the accused confirm her guilty plea even after having been afforded time to reconsider her admission of guilt and to consult again with her lawyer and after having explained to the accused the consequences of her guilty plea, the seriousness of the crimes with which she is charged with having committed and the punishment attached to each of the charges brought against her;

Having heard the oral submissions of the Prosecution and defence counsel as to the punishment to be meted out upon the accused's admission of guilt;

Having seen that the case was adjourned for today for delivery of judgement;

Having considered;

That in the light of the above plea of guilt which guilty plea was made voluntarily, expressly and unconditionally, the Court is satisfied that the accused is to be found guilty of the charges brought forward against her.

For purposes of determining the punishment, the Court took note of the fact that the although the formal admission to the charges was registered at a relatively late stage of the proceedings, after the Prosecution brought forward all witnesses and other evidence and after the appointed experts reported back to the Court with their findings, it is also true that the accused had already admitted her guilt in the statement that she released during Police interrogation. Indeed it results that the accused co-operated fully with the Police during their investigations and apologised for her actions. She also has a clean criminal record.

However at the same time, the Court cannot but take into account the serious nature of the crimes committed by the accused and the fact that she ultimately took advantage of vulnerable immigrants seeking a better life in another country; this by demanding and receiving from them payment of substantial sums of money to assist them to illegally leave Malta and enter Italy. Moreover, it is the Court's view that the accused's actions and the crimes that they constitute, collectively and individually undermine not only national security interests but also the immigration authorities' intensive efforts in the enforcement of border control measures, which are made consistently more difficult by the ever-increasing volume of illegal immigration.

In view of the above, and having regard to the circumstances of the case, including the nature and the seriousness of the crimes committed, the Court is of the opinion that the punishment that is to be inflicted should reflect the gravity of the crimes and their repercussions both to the victims and to society in general, while taking into account also the character of the offender, her early confession and the remorse she has shown for her crimes.

The Court finally, cannot fail to observe that the first and second charge are identical in that they both reproduce the wording of the offence under Article 337A of Chapter 9 of the Laws of Malta, without any distinction between them as to the date, time and place of commission and also the passive subject of the offence. In the Court's view, the first charge is evidently superfluous since the unidentified persons who the

accused aided, assisted, counselled or procured to leave or attempt to leave Malta for the purposes of the first charge, are those persons who are specifically mentioned by name in the second charge, that is, Mariam Bamba, Keita Orokia and Kaddy Bamba.

It must also be pointed out that the principle of formal concurrence of offences and punishments is applicable in respect of the second and third charge since evidently, the same facts violate different provisions of the law, that is Article 337A of the Criminal Code and Article 32(1)(a) of Chapter 217 of the Laws of Malta, respectively. Consequently, it is only the punishment for the graver offence that should be inflicted.

For all these reasons, the Court abstains from taking cognisance of the first charge and after having seen the relevant provisions of Law, that is Articles 17, 18, 31 and 337A of Chapter 9 of the Laws of Malta, Article 3 of Chapter 61 of the Laws of Malta and Article 32(1)(a) of Chapter 217 of the Laws of Malta, finds JAINABA KANDEH guilty, upon her own admission, of all other charges brought against her and condemns her to a punishment of two (2) years' imprisonment.

For the purposes of Article 22 of Chapter 9 of the Laws of Malta, any time prior to today during which the offender has been in prison for the offences for which she is being presently convicted and sentenced, shall count as part of the term of imprisonment under this sentence.

For the purposes of Article 533 of Chapter 9 of the Laws of Malta, the Court condemns JAINABA KANDEH to the pay unto the Registrar of the Court the sum of five hundred and sixty eight Euro and eighty eight cents (€568.88)

representing the costs incurred in connection with the employment in the proceedings of court experts¹.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**

¹ Dr. Steven Farrugia Sacco – Dok. SFS1, fol. 93.