



Criminal Court

Hon. Madam Justice Consuelo Scerri Herrera, LL.D., Ph.D.

The Republic of Malta

vs

Izuchukwu Morgan Onuorah

Today, 28th March, 2023,

The Court,

Having seen the application filed by Izuchukwu Morgan Onuorah on the 23rd January 2023 where *in breve* the applicant filed an application in terms of Article 449(1) of the Criminal Code. This Court's by means of a decree dated the 22nd November, 2022, authorised the accused to bring forward the preliminary plea related to the lack of accreditation of the laboratory where the alleged drug was analysed. The accused submitted that the accreditation of a laboratory is a technical process to certify that a laboratory produces credible results which can be relied on as evidence, and in default, such evidence should not be admissible. Therefore, the accused is asking for the removal from the proceedings of the analysis, the conclusions of the same chemist report, his testimony and any direct, indirect or ancillary reference made to it.

Having seen the reply filed by the Attorney General on the 16th February, 2023 where *in breve* he objected to the applicant's request due to the fact that scientist Godwin Sammut conducted his analysis meticulously and in accordance with international

standards and recommendation. To date there exists no obligation on Malta for such analysis to be conducted in an accredited laboratory. Mr Sammut was appointed by the Court and according to law. The applicant never raised any issue on said expert and/or on the laboratory where the analysis was conducted. The Attorney General stated that even though the applicant has the right to oppose the credibility of said analysis, such action cannot be made at this stage but during the celebration of the trial by jury. The analysis was carried out according to law and thus cannot be deemed as inadmissible evidence.

Considers:

The first Article of the Council Framework Decision 2009/905 JHA on Accreditation of forensic service providers carrying out laboratory activities dated 30th November 2009¹ stipulates that:

'The purpose of this Framework Decision is to ensure that the results of laboratory activities carried out by accredited forensic service providers in one Member State are recognised by the authorities responsible for the prevention, detection and investigation of criminal offences as being equally reliable as the results of laboratory activities carried out by forensic service providers accredited to EN ISO/IEC 17025 within any other Member State.

This purpose is achieved by ensuring that forensic service providers carrying out laboratory activities are accredited by a national accreditation body as complying with EN ISO/IEC 17025.'

The Council Framework Decision mentioned above was transposed to Maltese law by means of Subsidiary Legislation 460.31 on the 29th March, 2016. Moreover, Article 2 of the Council Framework Decision and Article 3 of the aforementioned Subsidiary

¹ Corresponding to Article 4 of Subsidiary Legislation 460.31.

Legislation both provide that **the framework decision shall apply to laboratory activities resulting in DNA-profile and dactyloscopic data, both of which have nothing to do with drugs analysis.** When scientist Godwin Sammut testified before this Court on the 24th March, 2021² he confirmed this when asked by the defence why the laboratory was not accredited:

*'There is no obligation till to date 2021 jigifieri for the government to accredit any forensic laboratory except for the council decision which states that DNA profiles and dactyloscopic data. The council decision I am referring to in 2009/905/JHA of the 30th November, 2009 which implements and sets out criteria for the government follow this council decision. I have performed a search with the European Union and Malta is in line with this council decision. In fact n 14th May, 2020 the European Union issued a security union to Belgium and Greece who were the only two states from the European Union which had not yet fully transposed and implemented this European Commission decision. **However, Malta is in line with this decision, there is no obligation for the Government of laboratory to accredit their laboratory, except for DNA and fingerprints which Malta is line with.'***

On the other hand, the applicant is emphasising that the drug analysis was not in conformity with the Council Framework Decision 2009/905 JHA, Subsidiary Legislation 460.31 and the international standards EN ISO/IEC 17025. The latter can be considered as a mechanism which establishes whether forensic laboratories are operating in a competent manner, resulting in credible results and this to promote confidence in the work done by the same laboratories.

Furthermore, the applicant is now complaining that the drug found was analysed by scientist Godwin Sammut in a laboratory which at the time was not accredited

² Fol. 191 et seq. of the acts of the proceedings.

according to law and therefore such analysis and report are not compliant with the regulations and international standards mentioned above. This Court would like to emphasise here that even though these proceedings have been ongoing for over ten (10) years, and Godwin Sammut's report was presented to Court on the 10th March, 2010, the applicant never contested the conclusions of the report or complained about its inadmissibility.³

Furthermore, Article 6 of Subsidiary Legislation 460.31 clearly stipulates that: '*This Order is without prejudice to legal provisions concerning the judicial assessment of evidence*'. In this manner the admissibility of evidence which must be proved by means of forensic analyses carried out by scientist Godwin Sammut shall be done within the terms of penal law.⁴ Moreover, Dr. Godwin Sammut, as it has already been stated, conducted forensic examinations on the alleged drugs. He did not carry out any forensic examinations on DNA profiles and dactyloscopic data.

For these reasons, the Court is rejecting the applicant's request to remove from the acts of the proceedings the testimony of the chemist, his report, together with any direct, indirect or ancillary reference to it.

Dr. Consuelo Scerri Herrera
Judge

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Adrian Micallef
Deputy Registrar

³ See also **Christopher Bartolo vs l-Avukat tal-Istat** decided by the First Hall Civil Court (Constitutional Jurisdiction) decided on the 22nd June, 2021.

⁴ See also decree of the Criminal Court of Appeal Onor. Per Judge Dr. Edwina Grima LL.D. Appeal no: 6/2014 in the names **Il-Pulizija (Spettur Johann Fenech) -vs- Mario Buhagiar**, dated 26th June, 2020.