



## **QORTI TA' L-APPELL KRIMINALI**

**S.T.O. PRIM IMHALLEF  
VINCENT DE GAETANO**

Seduta ta' l-1 ta' Ottubru, 2003

Appell Kriminali Numru. 69/2003

**App. No. 69/03**

**The Police**

**v.**

**-- omissis --**

**Vivien Hazel Akharele Enahoro**

The Court:

This is an appeal from a judgement delivered by the Court of Magistrates (Malta) on the 24 April, 2003 against Vivien Hazel Akharele Enahoro. The said Enahoro was originally charged together with John sive Jean Agius on several counts connected with possession and trafficking of cocaine, but after she entered a plea of guilty late in the proceedings – on the 1 April, 2003 – the prosecution, on the 9 April, 2003 requested a separation of proceedings, and this was duly allowed by the first court.

The charges preferred against appellant Enahoro were that in these Islands on the night of the 20<sup>th</sup> and 21<sup>st</sup> November, 2002 and during the preceding ten months, although at different times and committed in pursuance of the same design, she (1) conspired with one or more persons in Malta or outside Malta for the purpose of selling or dealing in a drug (cocaine) in Malta in violation of the law; (2) supplied or distributed, or offered to supply or distribute the drug cocaine to persons or for the use of other persons in violation of the law; (3) had in her possession the drug cocaine in breach of the law, which drug was found in such circumstances indicating that it was not intended for her exclusive use; and (4) with having on the night of the 20<sup>th</sup> and 21<sup>st</sup> November, 2002 and during the preceding five months imported or caused to be imported, or taken any steps preparatory to importing any dangerous drug (to wit cocaine) into Malta in violation of the law; the first court was also requested to order that appellant be declared a prohibited immigrant and to order her removal from these Islands.

Pursuant to appellant's plea of guilty, entered as aforesaid, the Inferior Court, on the 24 April, 2003 delivered its judgement, wherein it found the said Enahoro guilty as charged and sentenced her to three (3) years imprisonment (from which period is to be deducted the time spent in preventive custody) and to a fine of two thousand liri (Lm2000); moreover that court also declared the accused an illegal [recte: prohibited] immigrant and ordered her removal from these Islands according to law after she serves her prison sentence. Finally that court ordered that the illegal substances seized by the police and exhibited in the course of the proceedings be confiscated and destroyed but only after the proceedings against co-accused Jean Agius have been definitely determined.

By means of an application filed on the 6 May, 2003, Vivien Hazel Akharele Enahoro appealed from the judgement of the 24 April, 2003, and requested that this Court revoke that judgement. Her grievances are three. In

the first place she claims that she registered a guilty plea because she was under the impression that the charge of “trafficking”, that is the second charge (number 2, above) had been withdrawn by the prosecution, which charge was in any case, according to appellant, an alternative charge or count to that of conspiracy (number 1); appellant therefor contends that her guilty plea was not valid and was vitiated. The second grievance is to the effect that before the first court she had requested that that court hear the evidence of the doctors responsible for her psychiatric treatment, but these had not been heard. Finally she complains that the punishment was excessive.

The Court does not think that it should waste time with the first and second grievances, which are manifestly unfounded. Appellant was at all times assisted by counsel before the Inferior Court. In particular during the sittings of the 1 April, 2003 – when she first changed her plea to one of guilty to “the charges brought against her” (see fol. 156) – and during the sitting of the 9 April, 2003 when reference was again made to her guilty plea, she was assisted by Dr. Peter Fenech. There is nothing in the record of the case to suggest that there was some “misunderstanding” as to this plea, or that there was some intention on the part of the prosecution to withdraw the second charge. Nor has evidence been produced to substantiate in the slightest way appellant’s allegation that she pleaded guilty by mistake. As to the third ground of appeal appellant seems to be forgetting that each of the charges brought against her – and there was nothing alternative between the first and the second charges, nor was there any formal or ideal concurrence between any of the charges preferred – carried a maximum punishment of ten years imprisonment and a minimum of six months imprisonment, while the pecuniary punishment ranges from a minimum of two hundred liri to a maximum of five thousand liri. Had the first court applied – which it should have applied, but did not – the provisions of Section 17 of the Criminal Code regarding the concurrence of offences and punishments, and of Section 18 as far as the continuous nature of some of the offences charged is concerned, the punishment would no doubt have been

higher than that actually awarded. considering the nature and amount of the drug involved, the punishment awarded by the first court was on the low side of the scale.

As for the second grievance, it is true that the minute of the sitting of the 9 April, 2003 refers to Dr. Peter Fenech's "request that the local medical consultants under whose care Enahoro is during her stay in Malta be brought up (*sic!*) as witnesses in lieu of pleas of punishment (*sic!*)". For some reason which is not at all clear, this request appears to have been dismissed by the first court, because counsel for Enahoro and the police prosecuting officer immediately proceeded to make oral submissions, and the case was put off for judgement to the 24 April. Since these "local medical consultants" should have been heard by the first court – their evidence cannot be ruled out *a priori* as irrelevant for purposes of punishment – this Court, at the sitting of the 26 September, 2003, allowed defence counsel's request to have these "local medical consultants" give evidence. In fact appellant produced only one medical consultant, to wit Psychiatrist Dr. Joseph Spiteri, who gave evidence on the 29 September, 2003. This Court, having examined his evidence, finds absolutely no reason to vary in any way the punishment awarded by the first court.

For these reasons, the appeal is dismissed and the judgement of the first court confirmed.

The Court orders that the record of the case be transitted forthwith to the Court of Magistrates (Malta) so that the proceedings against co-accused Agius can proceed according to law.

**< Sentenza Finali >**

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