



MALTA

CRIMINAL COURT

**HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 5 th October, 2004

Number 15/2004

The Republic of Malta

Vs

Winnie Wanjiku Kanmaz

The Court,

Having seen the bill of indictment no. 15/2004 against the accused Winnie Wanjiku Kanmaz wherein she was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that Winnie Wanjiku Kanmaz, had been on a visit to Malta on the 10th November, 2003. Two months before, she had been approached by an Arab man by the name of Abedi with a view to importing drugs into Malta. At the time she had been offered four hundred US Dollars together with another three thousand nine hundred US Dollars to be given to her by the person to whom she was supposed to hand over the drugs in Malta.

The plan between her and Abedi was to the effect that she had to swallow a hundred pieces, or capsules, containing heroin, but since she was suffering from a bleeding throat, she only managed to swallow sixty four capsules.

Further instructions given to her by Abedi were that she had to declare that she was coming to Malta in order to study English. Abedi arranged matters for her in this sense, but she undertook to obtain the necessary Visa and the relative documentation for hotel and school accomodation. Abedi was the one who decided in which hotel she was to stay.

Once lodged in the hotel, she had to proceed to see how to pass the capsules she had swallowed. Thereafter, she had to call Abedi in Istanbul in order to arrange for her to meet the local contact person. Indeed, in her address book of her mobile phone, she had Abedis number, being 5552681169.

The realization of such association between Winnie Wanjiku Kanmaz and Abedi was at the stage of almost reaping full dividends when, fortunately, it was abruptly and timely disrupted by members of the Maltese Police.

Heroin is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Winnie Wanjiku Kanmaz was not in possession of any valid and subsisting import authorization granted in pursuance of said law.

By committing the above mentioned acts with criminal intent, Winnie Wanjiku Kanmaz rendered herself guilty of conspiracy to trafficking in dangerous drugs in breach of the provisions of the Dangerous Drugs Ordinance.

Wherefore, the Attorney General, in his aforesaid capacity, accused Winnie Wanjiku Kanmaz of being guilty of having, with another one or more persons in Malta, and outside Malta, conspired for the purpose of committing an

offence in violation of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), and specifically of importing and dealing in any manner in heroin, and of having promoted, constituted, organized and financed such conspiracy.

Demanded that the accused be proceeded against according to law, and that she be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (LM1000), and of not more than fifty thousand Maltese Liri (LM50,000), and the forfeiture in favour of the Government of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14(1)(5), 15A, 20, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(c)(d), 22(f) and 26 of the Dangerous Drugs Ordinance (Chap. 101) and in sections 23 and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

2) After the Attorney General premised in the Second Count of the Bill of Indictment that in pursuance and execution of the association and conspiracy alleged under the first count, Winnie Wanjiku Kanmaz had been in Istanbul, Turkey, some time in the beginning of September of the year 2003. There, as planned and agreed upon between them, she came into contact with a certain Abedi. Abedi had, in the meantime, bought as much heroin as could be bought in Istanbul with a large amount of American Dollars.

Some time in the month of November of said year 2003 Abedi made one final contact with Winnie Wanjiku Kanmaz in order that the latter take material possession of the heroin, swallow them in different capsules, measuring five centimetres each in length, as agreed beforehand between them with the ultimate aim of importing it into Malta. Such contact took place at a Hotel in Istanbul. It was there that she meticulously swallowed

the heroin in different packets in order to bring them to Malta.

Winnie Wanjiku Kanmaz was, on the tenth November of said year 2003, on the flight number KM743, being an Air Malta airliner covering a scheduled route from Istanbul, Sofia and on to Malta. She arrived at approximately quarter past seven in the morning carrying normal luggages. While she was anxiously waiting to be cleared by Customs Officials, her behaviour raised suspicions in some Customs Officials. These, together with Police Officials, proceeded to affect a personal search and it was then that they realised that Winnie Wanjiku Kanmaz had imported to Malta a substantial amount of heroin.

Heroin is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Winnie Wanjiku Kanmaz was not in possession of any valid and subsisting import authorization granted in pursuance of said law.

By committing the above mentioned acts with criminal intent, Winnie Wanjiku Kanmaz rendered herself guilty of the importation of a dangerous drug into Malta.

Wherefore, the Attorney General, in his aforesaid capacity, accused Winnie Wanjiku Kanmaz of being guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (heroin), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, when she was not in possession of any valid and subsisting import authorization granted in pursuance of said law.

Demanded that the accused be proceeded against according to law, and that she be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (LM1000), and of not more than fifty thousand Maltese Liri (LM50,000), and the forfeiture in favour of the Government of the entire immovable and movable property in which the offence

took place as described in the bill of indictment, as is stipulated and laid down in sections 10, 12, 14, 15A, 22(1)(a)(1B)(2)(a)(l)(3A)(d) and 26 of the Dangerous Drugs Ordinance (Chap. 101) and in sections 23, 17(b) and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen the joint application filed by the Attorney General and the accused of the 4th October, 2004, whereby in terms of Section 453A(1)(2) of the Criminal Code they submitted that, in the eventuality of the accused pleading guilty to the counts of the bill of indictment, the punishment which should be imposed upon her should be that of imprisonment for a period of nine (9) years and a fine (multa) of nine thousand Maltese Liri (LM9,000) apart from other sanctions and consequences which are mandatory upon conviction in terms of the provisions of Chapters 31 and 101 of the Laws of Malta, and whereby they requested that this Court should sentence the accused to said punishment;

Having seen the minute whereby the accused declared that she was renouncing to any time limit in her favour and that she had no objection to her case being heard and decided today;

Having seen that in today's sitting the accused, in reply to the question as to whether she was guilty or not guilty of the charges preferred against her under the two counts of the Bill of Indictment, stated that she was pleading guilty thereto;

Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed her a short time to retract it, according to Section 453 (Chap. 9);

Having seen that the accused being granted such a time, persisted in her statement of admission of guilt;

Declares the accused, namely Winnie Wanjiku Kanmaz guilty of both counts in the Bill of Indictment, namely of:

1. having, in the two months prior to 10th November, 2003, with another one or more persons in Malta, and outside Malta, conspired for the purpose of committing an offence in violation of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), and specifically of importing and dealing in any manner in heroin, and of having promoted, constituted, organized and financed such conspiracy as stated in the first count of the Bill of Indictment;

2. on the 10th November, 2003, meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (heroin), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, when she was not in possession of any valid and subsisting import authorization granted in pursuance of said law as stated in the second count of the Bill of Indictment;

Having heard submissions of Defence Counsel regarding the plea in mitigation;

Having considered ALL the submissions of defence counsel which are duly recorded and in particular – but not only – the following, namely that the accused had been caught in a cobweb and when she realized that she was going to be used to traffic drugs to Malta she had tried to back out of the venture but then had to accept although she did this reluctantly and was very sorry for what had happened. In fact she pleaded guilty at the first opportunity and admitted her wrong doing;

Having also considered that prosecuting counsel declared that he had nothing further to add to the contents of the joint application;

Having seen the minute entered by the prosecution to the effect that the accused is to benefit from the application of Section 29 of Chapter 101 of the Laws of Malta;

Having also heard the evidence of the accused whereby she declared that she was prepared to give evidence against the person who supplied her with the drugs in Turkey if he were ever to be tried in a Court in Malta;

Having seen the minute entered in the records of today's sitting whereby the Prosecution and Defence agreed that the first count of the Bill of Indictment is, for purposes of punishment, to be considered as having served as a means for the commission of the offence under the second count of the Bill of Indictment, according to Section 17 (h) of Chapter 9 of the Laws of Malta (vide "Ir-Repubblika ta' Malta vs. Mansour Muftah Nagem" [30.10.2002] ; "Ir-Repubblika ta' Malta vs. Ahmed Esawi Mohamed Fakri" and others)

Having considered that the punishment laid down by law for the offences of which the accused had been declared guilty is life imprisonment together with a fine of not less than LM1000 and not more than LM50,000;

Having also considered however that according to section 492 (1) of the Criminal Code whenever, at any stage prior to the empanelling of the jury, the accused pleads guilty to an offence attracting the punishment of life imprisonment, the Court may, instead of said punishment, award a sentence of imprisonment for a period ranging between eighteen and thirty years;

Having also considered that according to section 22(2)(a)(i)(aa) of Chap. 101 of the Laws of Malta , when the Court is of the opinion that, having regard to the offender's age, his previous conduct, the quantity of the medicine and the quality of the equipment or material involved and all the other circumstances of the offence, life imprisonment is not warranted, the Court may sentence the person so convicted to a term of imprisonment of not less than four years and

not more than thirty years together with the fine above mentioned.

Having considered both local and foreign case law regarding the plea in mitigation of punishment when the accused person files an early plea of guilt and in particular **“Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”** [24.2.1997] (Criminal Court); **“Ir-Repubblika ta’ Malta vs. Mario Camilleri”** [5.7.2002] (Court of Criminal Appeal); **“Il-Pulizija vs. Emmanuel Testa”** [17.7.2002] (Court of Criminal Appeal) and others) as well as **BLACKSTONE’S CRIMINAL PRACTICE** (Blackstone Press Limited 2001 edit);

On the other hand having considered that, as stated in BLACKSTONE’S,
“Where an offender has been caught red handed and a guilty plea is inevitable, any discount may be reduced or lost (*Morris* [1998] 10 Cr. App. R. (S) 216; *Landy* [1995] 16 Cr. App. R. (S) 908)”

Having also on the other hand considered the quantity (611.634 grams), the quality (heroin) and the purity (31%) of the dangerous drugs imported into Malta in sixty-four (64) capsules by the convicted person, on the 10th November, 2003;

Having considered the havoc that the importation and distribution of such drugs would have caused on the local market had it not been intercepted by Customs and the Police and that the convicted person abused of the hospitality extended to her by Maltese society as visitor to this Island by using such visit to further her criminal ends ;

Having seen other cases decided by this Court where the facts of the case were somewhat similar - though obviously never identical - for the purpose of maintaining a desirable degree of uniformity in punishment;

Having seen Sections 9, 10,10(1) 12, 14, 14 (1)(5), 15A, 20, 22 (1)(a), (2) (a)(i)(aa), (f) (1A) (1B) 2 (a) (i)

(3A)(c)(d), 26 and 29 of the Dangerous Drugs Ordinance (Chap.101); and Sections 17(h), 23, 453A(1)(2), 492 (1) and 533 of the Criminal Code, as well as sections 5(2)(b) and 15 of the Immigration Act;

Whereas for all the above reasons the Court is satisfied that the sanction and punishment agreed to by the Prosecution and the Defence can be legitimately imposed upon the conviction of Winnie Wanjiku Kanmaz of the offence to which she has pleaded guilty, agrees with the imposition of such sanction and punishment and upholds such request, according to Section 453A(1)(2) of the Criminal Code;

Condemns said Winnie Wanjiku Kanmaz to a term of imprisonment of nine (9) years and to a fine *multa* of nine thousand Maltese Liri (LM9,000), and, if this fine is not paid within fifteen days from today, orders that such fine is to be automatically converted into a further period of twelve (12) months imprisonment according to law and further orders that she pays the sum of two hundred and forty Maltese Liri and forty six cents (LM240.46c), being the total court expenses incurred in this case, according to Section 533 of Chapter 9 of the Laws of Malta within fifteen (15) days from today ;

Furthermore orders that all objects related to the offences and all monies and other moveable and immovable property pertaining to said person convicted should be confiscated in favour of the Government of Malta;

Furthermore the Court is issuing a Removal Order against the person convicted and orders that she is to be deported from these Islands in terms of Sections 5 (2) (b) and 15 of the Immigration Act, as soon as she has served her term of imprisonment and paid the said fine or else served the further term of imprisonment, should such fine be converted into a further term of imprisonment;

Finally the Court orders the destruction of all drugs under the direct supervision of the Deputy Registrar of this Court duly assisted by Court Expert Mario Mifsud, unless the Attorney General informs this Court within fifteen days from today that said drugs are to be preserved for the purposes of other criminal proceedings against third parties and, for this purpose, the Deputy Registrar should enter a minute in the records of this case reporting to this Court the destruction of said drugs.

< Final Judgement >

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