



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

**MAGISTRATE DR.
CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 29 th March, 2007

Number 1166/2006

**Police
Inspector Joseph Agius
v**

PASKA OCAFOR

The Court

Having seen that the accused **PASKA OCAFOR** aged eighteen years, son of Gibra and Patrizia born Nigeria on the 19th August 1987 in possession of refugee tag number 06DD-015 temporarily detained at Safi Barracks was arraigned before the Court and charged with having:

1. on the 4th November 2006, at 10.00 hours at Safi Barracks tried to escape from custody and attacked and resisted by violence Lance Bombardier Aaron Testa and Gunner Alexander Camilleri, persons

lawfully charged with a public duty when in execution of the law or a lawful order issued by a competent authority;

2. With having on the same day and circumstances made injuries of slight nature on the person of Lance Bombardier Aaron Testa as certified by Doctor David Fenech of the Floriana Health Centre;

3. For having on the same day and circumstances made damages on the uniform of Lance Bombardier Aaron Testa to the detriment of the Government of Malta.

The Court saw all the documents exhibited in the acts of these proceedings in particular the consent given by the Attorney General dated 6th November 2006 so that the case will be dealt with summarily if no objection is forthcoming from the accused.

Having seen that the accused had no objection to his case being dealt with summarily.

Having heard all the witnesses brought forward by the Prosecution, as well as the accused give evidence voluntarily.

Having heard both parties make their oral submission on the 16th March 2007.

Having considered that:

Inspector Joseph Agius took the witness stand on the 20th November 2006 and explained that on the 4th November 2006, at about 13.00 hours he was informed by PS 827 Edward Grech that a certain Paska Ocafor, an 18 year old Nigerian had tried to escape from custody and while doing so, he injured slightly Lance Bombardier Aaron Testa and Gunner Alexander Camilleri. He brought the accused to his office and asked him about the incident and the same confessed that in fact he had tried to escape but under the pretence that he was going to try to go to another section of the barracks, and not to leave the barracks. He stated that whilst doing so, he was a little

bit aggressive and hit the officers mentioned. The accused had also stated that while he was trying to resist, he also tore the trousers of one of the officials but he stated also that this was unintentional. The accused had also confessed also that some days prior to this incident, he had escaped from the open-centre and was caught at Marsa detention centre. The witness exhibited the statement of the accused which was marked as document JA 1 [fol 13] and the report drawn up by Lance Bombardier Aaron Testa on the 4th November 2006 and presented to the police which was marked as document JA 2 [fol 15].

Lance Bombardier Aaron Testa took the witness stand on the 20th November 2006 and stated that on the day in question at about 10.00 hours he was escorting some refugees out of their compound, and one of these refugees bearing number 06DD-15 started running away from him. He stated that he ran after him and told him to stop but he kept on running and he only managed to reach him near the warehouse. It transpires that he was the accused present in court. The detainee stopped over there and the witness told him to go back. At that moment in time, the accused attacked him, tore his uniform and hit him on his left rib. In the meantime, the witness said he informed the driver what had happened and the driver approached him and together they tried to convince the accused to go back to the compound. The witness recalled that the accused got hold of a broom and started hitting him with it.

Then he was subsequently accompanied to the polyclinic and was examined by Doctor David Fenech from the Floriana Health Centre. He stated that he still feels the injury to date. The witness confirmed the medical certificate exhibited at fol 3. Asked if there was any other incident whereby the accused tried to escape from the compound, the witness stated that there was but he was not involved in that incident.

Under cross-examination on the 21st February 2007, [fol 51] the witness stated that the accused hit him on his left side of his body and even punched him and that

subsequently got hold of a broom and attacked him with it. He said the accused initially was furious, ran in the direction of the warehouses where there were the brooms. He said the incident took place more than fifty meters away from the warehouses. He said that when the accused ran away, he had nothing in his hands and that he followed him immediately telling him to stop and when he caught up with him he grabbed him by his shirt.

Gunner Alexander Camilleri took the witness stand on the 20th November 2006, and explained how on the 4th November 2006, at about 10.00 hours, whilst on duty as a driver at Safi Barracks, he received a call from Lance Bombardier Aaron Testa that one of the detainees had tried to escape. He immediately proceeded to the site in question where Lance Bombardier Aaron Testa was running after a detainee and this was in the direction of the warehouse. The witness confirmed that the accused present was the same person who had tried to escape and who attacked Lance Bombardier Aaron Testa on the day in question. He said he tried to apprehend the accused however the accused got hold of a broom and came to blows with him and tore his uniform. The witness said he tried to convince the accused to go back to his quarters however he insisted to remain there. He also recollected that once before the accused was caught at the Marsa Open Centre trying to escape.

Under cross-examination on the 21st February 2007 [fol 48] the witness stated that he was not present when the incident broke out initially and that he only knew what was happening when he received a telephone call that an aggressive person had tried to escape and he saw the accused the first time when he was next to the warehouses, next to the main gate. He said the accused had already found himself on the runway. He saw the accused running, the soldiers following him and he followed them in his car. He confirmed that there are about five hundred meters from block C where the accused was originally, to where he was subsequently apprehended near the warehouses. He said that when he arrived the accused was already in the hands of the other

soldiers. He confirmed that the accused picked up a broom from a distance of about fifty to a hundred meters away from the warehouses. He confirmed that the incident took place between the runway and the warehouses, where the skips are kept together with some brooms. He also confirmed that the accused kept on going from one place to another and another detainee came out to calm the situation. The accused also resisted arrest on being handcuffed.

In confrontation between Gunner Alexander Camilleri and the accused, the accused said the witness [Gunner Alexander Camilleri] was not saying the truth. The accused said it was true he was running away from block C but this he was doing since he had no bed and since his belongings were near the warehouse.

Gunner Alexander Camilleri stated that it was not true the accused had his belongings in the warehouse since the mattress and pillow which were given to him, were given to him in Block C and in fact are still there today.

The accused stated that at no time did he run away and he only went from block C to the warehouse where his belongings were. He agreed that he resisted being handcuffed and not wanting to go back to Block C. He stated that the officer hit him on his teeth with the handcuffs. He denied getting hold of a broom, though there were brooms in the vicinity.

WPC 228 Mary Anne Scicluna took the witness stand on the 20th November 2006 and stated that on the 4th November 2006, while stationed at Zurrieq Police Station she received a telephone call from Lance Bombardier Aaron Testa stating that a detainee had tried to escape whilst he tried to apprehend him. She exhibited the police report which was marked as document PS.

Enrico Camilleri took the witness stand on the 22nd December 2006 and stated that he occupied the post of Lance Bombardier with the Armed Forces of Malta. He exhibited an invoice issued by the Armed Forces of Malta which indicate the damages caused to the uniform which

is valued to the sum of LM8.74, which document was marked as Dok U [fol 33].

PS 827 Edward Grech took the witness stand on the 27th December 2006, and stated that on the 4th November 2006, at about 13.00 hours whilst on duty at the Zejtun Police Station, was informed from the police station at Zurrieq that Lance Bombardier Aaron Testa informed them that the accused had tried to escape from custody. Lance Bombardier Aaron Testa also alleged that he tried to run after him and that the accused resisted his arrest and consequently he suffered slight injuries as a result of the misbehaviour of the accused. The witness exhibited his report as dok S 1 fol 35].

The accused Paska Ocafor gave evidence on the 17th January 2007 and stated that on the 4th November 2006 he was detained at Safi Barracks and confirmed that he was found outside and was taken back to Block C in Safi. At that moment in time he was complaining with the soldier that he had no mattress, no bed and no blanket. He said he had told him that if he were to be kept there, he should be provided with those necessities. The soldier told him that he should speak to the officer in charge. He said that he stayed there for more than seventy two hours in a pair of shorts and a shirt and was feeling cold and told them to take him to house one where he had his bed.

Then a soldier came up to him and he told this soldier that he was going back to hall number one [1], as he was feeling cold and not to catch a cold, he ran from block C to the camp. Then the soldier phoned and told somebody that he had tried to escape from block one. Then another soldier came up to him asking him if he was the one who had tried to escape from block one and he told him to go back. The accused went on to say that he told this soldier he was not prepared to go back unless he was provided with a blanket and a bed. Then this soldier tried to handcuff him and he refused and the soldier became aggressive with him in that he broke his two front teeth and squeezed him to the floor and they started struggling whilst his mouth was bleeding. Then another soldier told

him to follow him to block C and that they were to report the case to the officials the following Monday so that he would be taken back to block one.

The accused said that he told this officer that he was scared to follow the soldiers as they had already injured him but finally he went with them. He went on to say that he told the soldiers who escorted him, that he was injured in that he had his two front teeth bashed and that his shoulder was injured and thus asked him if he could be seen by a doctor. After a while the soldier came back and took him to the police station handcuffed. Later he was taken to Hal Far instead of taking him to see a doctor.

The next day he was interrogated by the police where he explained to them that when he was on the floor, Gunner Camilleri had held him down to the ground and held him there. He tried to save himself from this situation, so he clasped to Gunner Alexander Camilleri's back pocket and tore his uniform.

Under cross-examination he said that the prosecution was right in saying that he had previously tried to escape from the detention centre and was caught in Marsa. He denied having tried to escape on three occasions and instigating his friends to do the same. He said that he only wanted to go back to where his belongings were.

He denied trying to beat the soldiers with a broom stick and stated he never was in possession of it. He said his two front teeth were broken not missing. He said he was beaten up by soldiers inside the block and was dragged out of the office when his two teeth were broken. He said that there were more than six officers in the office at the time and that the officers who testified were not there on the day in question. However, later on in the same testimony, he said that Gunner Camilleri had lied to him in saying that he was being taken to see a doctor when in fact he was not taken there, but to the police station. The person who broke his front teeth was Lance Bombardier Aaron Testa and it was Gunner Alexander Camilleri who removed the teeth from the ground. The soldier started beating him because he refused to go back to block C.

He said he was suffering from epileptic fits and the doctors had told him not to expose himself to so much cold. He denied having attacked anybody and stated that he was not aggressive with the soldiers. They were the soldiers who were aggressive with him by pinning him down to the floor. He denied that he had broken his own teeth with the handcuffs and that he was also violent when he was residing at the Marsa open-centre.

Considerations:

This case undoubtedly rests on the credibility of the evidence that was heard by the Court. In that it carefully has to make an examination as foreseen by section 657 of Chapter 9 of the Laws of Malta to be able to appreciate what each witness said, why he said what he said and what was the reason for saying it, whether it was the truth or whether such witness had an ulterior motive for saying what he said. This Court, unlike others, is lucky as to have lived the criminal trial and witnessed all the evidence that was brought forward over the past four months. The Court dealt with this case speedily because the accused was never granted bail.

It transpires from examination of the acts of these proceedings, that the accused is primarily charged with three crimes in particular that of attacking, resisting and disobeying lawful orders given to him by a person entrusted with a public duty in terms of section 96.

Secondly he is charged with causing injury of a slight nature to the person of Lance Bombardier Aaron Testa as certified by Doctor David Fenech and thirdly with causing voluntary damage to government property.

There is no doubt that the accused tried to escape custody, for one reason or other, the accused stated that he did this because he was left without clothes for a period of time which exceeded seventy two [72] hours and he felt that his request to be transferred to another part of the barracks was not been adhered to.

There is however, no doubt that the accused was aggressive in his approach, in that he ran off and had to be apprehended by the army officials. It also results that the accused was involved in a scuffle with the army personnel and as he says, the tried to resist his arrest. He stated that when on the ground he held to the uniform of Lance Bombardier Aaron Testa and pulled him by the back pocket which uniform evidently tore. It is true that the situation was one of a storm in a tea cup but it is also proven that the accused was aggressive with the army personnel as in fact can be evidenced by the medical certificate issued by Doctor David Fenech.

It is however also true that the army personnel were rough with the accused and in the light of the incident that happened in Court during the last sitting, orders the Commissioner of Police to investigate them too.

The Court saw the relevant acts of the proceedings and examined the conduct sheet of the accused and allegedly from the proceedings, it might appear that the accused was already found guilty of running away from police custody, but there seem to be no conviction registered in this conduct sheet in this regard and so such comment is being disregarded.

The Court took note of the small damage caused to the uniform of Lance Bombardier Aaron Testa as confirmed by the evidence given by Enrico Camilleri on the 22nd December 2006 which damage amounted to LM8.74.

In the circumstance, and in the light of the above, the Court, having seen sections 96, 221, 325(d) of Chapter 9 of the Laws of Malta, declares that it **finds the accused PASKA OCAFOR guilty of the charges brought forward against him and condemns him to a comprehensive term of imprisonment of four [4] months.**

< Final Judgement >

Informal Copy of Judgement

-----END-----