



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

**MAGISTRATE DR.  
ANTONIO MICALLEF TRIGONA**

Sitting of the 10 th January, 2008

Number 479/2007

The Police  
(Inspector Angelo Gafa'

VS

Jean Jacques Fuentes

The Court,

Having seen the charges brought against the accused  
with having:

1. in these Islands in May 2004 exported military equipment from Malta to the Republic of the Ivory Coast without authorisation by the Director responsible for Trade;
2. on behalf of the Comptroller of Customs charged with having also in these Islands, in same period and

under same circumstances, with the intent to evade any prohibition and or restriction of Customs, or under other laws, was in any way knowingly concerned in the exportation of a combat aircraft, the exportation of which is subject to restrictions or to the observance of any conditions;

3. also for having in these Islands, in same period and under same circumstances, in order to gain any advantage or benefit for himself or others, in a document intended for a public authority, knowingly made a false declaration or statement or gave false information;  
The Court being requested that in pronouncing judgment sentences accused to the payment of costs incurred in connection with the employment in the proceedings of any expert in terms of Article 533 of Chapter 9 of the Laws of Malta.

Having seen the note from the Attorney General (folio 143) that from the compilation proceedings there might result an offence (or offences) under the provisions of:

- a. Regulations 3 and 10(1) of Legal Notice 269 of 2001 (S.L 365.14);
- b. article 62(1) of Chapter 37 of the Laws of Malta;
- c. article 188 of the Criminal Code;

the records being consequently retransmitted to this Court in order for it to decide on the guilt or otherwise of the accused in the absence of opposition on the part of the said accused and provided that the Court hears any further evidence produced by the Police.

Having heard the prosecuting officer declare that he had no further evidence to produce;

Having heard the accused declare that he had no objection and was consenting that the case be decided by this Court

Having seen at folio 54 the letter of request by the Comptroller of Customs to the Commissioner of Police that criminal proceedings be instituted in his name against

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the accused in terms of Article 62(l) of Chapter 37 of the Laws of Malta;

Having heard all the evidence produced including that of the accused under oath;

Having seen and examined the records and all the documents of these proceedings;

Having heard prosecution's and defence final submissions;

Having examined the final notes presented by the defence and the prosecution;

Considers:

1. the Court believes that for a better appreciation of the charges which accused is facing it should start by stating the facts which have given rise to these proceedings. The facts can be summarised as follows:

- that it transpires from evidence given by the prosecuting officer that investigations by Malta Customs into the case started on July 17, 2003, upon receiving notification from the corresponding UK body, concerning a Strikemaster aircraft, having British registration, which was said to be kept in a hanger in Safi belonging to NCA International Limited;
- that the notification from the UK Customs specified that the aircraft was in Malta awaiting dismantling for onward shipment to the Ivory Coast where, it was said, it would be rearmed with heavy machine guns and bombs to be utilised in the internal conflict afflicting that country;
- that Customs Malta acted with alacrity and on the next following day visited the hangar in question where they identified the aircraft in question which still carried the livery of the New Zealand Air Force and had inscribed on it its registration number which read NZ 6361;

- that in September 2004 an NCA official informed Customs Malta that the aircraft had been shipped by its owner in a forty-foot container adding that it was the accused who supervised the export;
- that subsequent investigations by Customs Malta established that the export was effected on May 24, 2004, or thereabouts, with NCA appearing as exporter and declarer on the apposite export documents, which fact was subsequently clarified by the investigating Police Officers, who on contacting the shippers, Tri-Star Freight Services, were informed that they had dealt and received instructions exclusively from the accused and that NCA appeared on the export documents only because the company which owned the aircraft, and of which the accused was sole director, was foreign registered and had no seat in Malta. Shippers also confirmed that the entire shipping operation was carried out for the accused acting for Strikemaster Films Limited which company had settled all dues;
- that the facts outlined above find confirmation in documents exhibited in the records of the case from folio 25 to folio 50, from which, at folio 28, there is a detailed exposition of events which had resulted from investigations carried out by Customs Malta and confirmed by its compiler;
- that the documents to which reference is made also attest to the fact that the aircraft was disassembled and its various components exported in two separate containers which were sealed and inspected by Customs officials who, it appears, gave their fiat for the exportation to go ahead;

2. that it is useful to refer at this stage to the fact that the charges relate to one aircraft, that having registration number NZ6361 shown in photographs exhibited folio 77, and also, that in terms of the note of transmission of the proceedings to this Court, as presided, the accused is charged with breaching Regulations 3 and 10(1) of Legal Notice 269/2001 (S.L 365.13) supplemented with offences under Article 62(1) of Chapter 37 (The Customs Ordinance) and Article 188 of the Criminal Code.

According to the above cited Regulations all exports of items listed in the First Schedule thereto are made conditional to an authorisation from the Director responsible for trade and, in default, are made liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand lira. The items, reference which is made in the aforementioned schedule, refer to military equipment which for purposes of these proceedings include 'aircraft' and 'civil aircraft' as therein defined.

According to Article 62(I) of the Customs Ordinance the offence consists in the export or the attempt to export or in knowingly aiding or abetting the exportation of any article the exportation of which is subject to the payment of export duty, or to any restrictions or to the observance of any conditions, without the payment of duty or of any such restrictions or conditions.

According to Article 188 of the Criminal Code the crime consists in whosoever, in order to gain any advantage or benefit for himself or others, in any document intended for any public authority, knowingly makes a false declaration or statement, or gives false information.

4. that evidence shows that the aircraft, the subject of these proceedings, was dismantled on the instructions of the accused and its component parts shipped to the Ivory Coast. Accused attests that while all the parts were exported they could not wholesome be reassembled to form an aircraft that could fly. Moreover there is sufficient evidence to show that the aircraft was registered as a civil aircraft and deemed to be so by the competent UK aviation authorities. The prosecution has not disproved this fact. Nor has the prosecution shown that the aircraft was armed or that it could possibly be turned into a combat/military aircraft. In this Court's opinion the fact that the aircraft was intended to train Ivorian air force cadets is of no consequence and does not on its own translate the aircraft into a military one. Nor can the document

exhibited at folio 39 be taken as irrefutable proof as to its contents. In referring to just one innuendo contained in the write-up, possibly the one most damaging to the accused, not only was this denied but sufficient evidence was produced attesting to the aircraft as being a civil aircraft.

5. that what has been stated in the last paragraph is relevant to the issue in dispute between the prosecution and the defence which is primarily that whether the aircraft was a military or a civil one. This constitutes the focal point of these proceedings.

6. that on consideration of the relevant legislation, namely “The Military Equipment (Export Control) Regulations” and the enabling law under which the Regulations were made, that is Chapter 365, the Court has concluded that export restrictions requiring the permission of the Director of Trade were not required in this case. There is no doubt in this context that the exporter for the purposes of the Regulations was the accused. Despite this, however, it does not seem to this Court that an aircraft in its grammatical or technical sense was exported. What was exported were aircraft parts that nowhere does it result where “specially designed or modified for military use”. And, not only is there no proof to this effect, but as testified by the Customs Officer who physically inspected the containers in question the contents inside were visibly “civil aircraft parts” and no “arms” were seen in the containers (vide folio 80). Reference is here also made to the testimony at folio 123 of another customs officer who, on a question whether there was any prohibition to export parts of an aircraft, stated that “the prohibition lies only with regards to military aircraft, whether whole or in part”. Moreover, the document at folio 43 confirms the authorization by Customs to the export.

7. that considering the second charge which refers to the breach of the Customs Ordinance, on the considerations

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of this Court and its conclusions as explained above, it necessarily follows that as no prohibited items were exported, there is no breach of the Ordinance.

8. that there is absolutely nothing which sustains the third and final charge based on Article 188 of the Criminal Code.

9. that consequently it finds the accused not guilty and acquits him of the charges brought against him.

**< Final Judgement >**

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