



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

**MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA**

Sitting of the 9 th January, 2008

Number 1314/2006

The Police
(Inspector Anthony Portelli)

VS

Azecukwu Prince Okeke

The Court,

Having seen the charges brought against the accused,
with having:

1. at the Law Courts on the 7th December 2006 and on the previous day, with intent to harm Inspector Carmelo Magri, or other person, accused such person or other person before a competent authority with an offence of which he knew such person or persons to be innocent as per Article 101 of Chapter 9 of the Laws of Malta;

2. during the same period and circumstances, fraudulently caused any fact or circumstance to exist, or to appear to exist, in order that such fact or circumstance may afterwards be proved in evidence against Inspector Carmelo Magri, or other persons, with intent to procure such other person or persons to be unjustly charged with or convicted of any offence, as per Article 110 of Chapter 9 of the Laws of Malta;

3. During the same period and circumstances, breached the conditions in terms of Article 22 of Chapter 446 of the Laws of Malta that were imposed on him by a Court sentence dated 1st April 2005 delivered by Magistrate Dr Miriam Hayman whereby he was found guilty of an offence and conditionally discharged for a period of three years.

Having seen the note of the Attorney General requesting that the case be heard summarily to which the accused did not oppose;

Having heard all witnesses produced to testify;

Having seen all the acts and records of the proceedings;

Having heard final submissions;

Considers:

That besides being charged with breaching conditions in terms of Article 22 of Chapter 446 accused is charged under Article 101, 110 and 252 of Chapter 9. With reference to the first two mentioned articles, which respectively relate to the calumnious accusation and the fabrication of false evidence, the constituent elements which forge the first of these crimes consist in: (a) the accusation of an offence made to a competent authority; (b) the intent to harm the person accused; (c) the knowledge on the part of the accuser of the innocence of the person accused. In the case of the crime of the fabrication of false evidence, its constituent elements,

consist in the existence of a fact or circumstance which is fraudulently made to exist or appear to exist which may be proved in evidence against that other person coupled with the intent that that other person be unjustly charged with or convicted of that offence. Both crimes have a certain affinity between them and may subsist irrespectively whether the person unjustly accused is convicted or even charged with the offence.

In this case it transpires that proceedings against the accused were commenced on the order of the presiding magistrate in separate proceedings before this court as differently presided after that accused legal counsel had put a question to the prosecuting officer, Inspector Carmelo Magri, in which the Inspector was asked if he would confirm that those proceedings were on-going because a certain Mifsud had approached him and offered him compensation. From the relative court decree exhibited at folio 13 it transpires that that court had insisted with the accused whether he was confirming the allegation, that is, that the Prosecuting Officer had been offered a sum of money in order that proceedings be commenced against him.

That with all due respect this Court cannot but express its concern that a question which on the face of it defending counsel was entitled to ask had to culminate in the present legal action against the accused. If at all, in this Court's opinion, the allegation concerned Mifsud and could not have been taken to impute any irregular behaviour on the part of the Inspector regarding whom this Court affirms his uprightness and irreproachable integrity.

Having said this the Court must now consider if the calumnious accusation for which the accused is charged can subsist in relation to the said Mifsud. In other words the Court has now to decide whether the words which accused attributes to have been uttered by Mifsud can

amount to the crime being discussed in relation to Mifsud on the strength of the charge sheet. In this context the Court points out that a calumnious accusation must be about a criminal offence meaning that it must refer to a fact which the law characterises as a criminal offence. However reprehensible, mischievous or injurious the accusation, if it does not refer to a criminal offence, then no criminal action under this article (i.e 101) can be prosecuted successfully. In the case in question the accusation is in fact perceived to refer to a criminal offence, namely, that of bribing or attempting to bribe a police officer. The said Mifsud denies having said the incriminating words attributed to him by the accused when testifying before this Court. The accused chose not to testify but from his statement released to the Police he affirms: i. that he does not believe that Inspector Magri was bribed; ii. that the words said to him by Mifsud were: “you see what I can do to you. I am the king of Malta. I am the biggest Mafia in Malta and every inspector is afraid of me and I walk together with the inspectors...I tell them what to do. I give them money and if they don't want to collect the money I make a bomb in their car”.

That it is not for this Court to say who of the accused and Mifsud is stating the truth. This Court is concerned only to judge upon the charges brought against the accused referable to calumnious accusation, the fabrication of false evidence and the defamation that are alleged to have been committed on the 7th December 2006 and “on the previous day” at the Law Courts in Valletta.

That having expressed its belief that the crime of calumnious accusation does not result on the evidence which is before this Court, neither it would appear that there are grounds for the subsistence of the other crimes. To this end the Court frankly does not detect any fact or circumstance which substantiates the crime of fabrication of false evidence, nor is this Court finding any proof which sustains the crime of defamation and this not only on the lack of publicity which is a sine qua non requirement for this crime to exist.

Informal Copy of Judgement

Consequently it finds the accused not guilty of the crimes brought against him and acquits him of the charges brought against him.

< Final Judgement >

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