

QORTI TA' L-APPELL KRIMINALI

IMHALLEF

ONOR. NOEL V. ARRIGO LL.D.

Seduta ta' nhar il-Gimgha, 23 ta' Novembru 2001

Numru

App. numru: 186/00 (G)

Il-Pulizija (Spettur Sandro
Zarb)

vs

Osy Chijioke Emanuel
Nkwocha

Il-Qorti,

Rat is-sentenza tal-Qorti tal-Magistrati (Ghawdex) Gudikatura
Kriminali moghtija bil-linwa Ingliza (sottolinear ta' din il-Qorti)
tal-21 ta' Lulju 2000 li tghid hekk:

“The Court;

Having seen the accusations brought against Osy
Chijioke Emanuel Nkwocha aged 22, Nigerian national,
son of Luke and Anne born at Enugu on the 3rd

December 1977 and holder of passport number C 242415 with having during the past months, without having been granted a residence permit, landed or was in Malta without leave from the Principal Immigration Officer.

Thus the Court is humbly requested that besides awarding the punishment prescribed by law, also declares the mentioned person as a prohibited immigrant and issues a removal order against him in terms of Section 14 of Chapter 217 of the Laws of Malta.

Having heard the evidence under oath;

Finds the accused guilty as charged;

Having seen articles 5, 6, 14 and 15 of Chapter 217 of the Laws of Malta;

Acquits the accused with the condition that he does not commit any other offence within a period of six months from today in terms of article 9 of Chapter 152 of the Laws of Malta;

Declares the accused a prohibited immigrant and orders his immediate removal from these islands in terms of articles 14 and 15 of Chapter 217.”

Rat ir-rikors ta' l-appell ta' l-appellant tal-31 ta' Lulju 2000 maghmul bil-lingwa Maltija (sottolinear ta' din il-Qorti) fejn, peress illi hass ruhu aggravat bis-sentenza ta' l-Ewwel Qorti interpona appell quddiem din il-Qorti fejn, ghar-ragunijiet hemm moghtija, talab lil din il-Qorti tirrevoka s-sentenza tal-Qorti tal-Magistrati fuq imsemmija u tilliberah minn kull imputazzjoni.

Minn hawn 'il quddiem il-proceduri ta' l-appell bdew jinstemghu bil-linwa Maltija (ara verbali tas-17 ta' Novembru u 15 ta' Dicembru 2000 u anke r-rikors ta' l-appellant tad-9 ta' Jannar 2001), minkejja illi x-xhieda li nstemghet fis-seduta tat-12 ta' Jannar 2001 instemghet bil-lingwa Ingliza u dana wara li f'din is-seduta gie verbalizzat: "*L-appellant talab li l-proceduri jinstemghu bil-lingwa Ingliza peress illi huwa ma jifhimx bl-ilsien Malti.*" Effettivament, bil-lingwa Ingliza l-Qorti laqgħet is-sottomissjoni ta' l-Avukat Generali u wara li rat l-Artikolu 428 (3) tal-Kodici Kriminali ddikjarat nulla s-sentenza tal-Qorti tal-Magistrati għar-ragunijiet hemm mogħtija w ordnat li l-kaz jerga' jinstema' quddiemha fil-meritu. Il-proceduri komplew jinstemghu bil-lingwa Ingliza hlief għax-xhieda ta' George Pace mogħtija fid-9 ta' Frar 2001 li giet mogħtija bil-Malti peress illi dan ix-xhud iddikjara illi ma kienx jaf bil-lingwa Ingliza u wara li l-imputat/appellant iddikjara li ma kellux oggezzjoni li dan ix-xhud jixhed bil-lingwa Maltija anke fl-assenza ta' interpretu, dikjarazzjoni minnu magħmulha wkoll fir-rigward tat-trattazzjoni tal-kawza li saret dik in-nhar stess u li għalhekk saret fil-lingwa Maltija.

F'din it-trattazzjoni giet sollevata għall-ewwel darba l-possibbiltà tan-nullità tar-rikors ta' l-appell peress illi dan kien

sar bil-lingwa Maltija filwaqt illi l-proceduri quddiem l-Ewwel Qorti kienu qed isiru bil-lingwa Ingliza. Effettivament b'digriet tal-Qorti tal-Magistrati f'Malta tat-22 ta' Frar 2000 dik il-Qorti kienet ordnat illi l-proceduri jsiru bil-lingwa Ingliza minkejja illi, wara li, skond l-istess digriet l-atti gew trasmessi lill-Qorti tal-Magistrati (Ghawdex), fl-ewwel seduti wkoll il-verbali saru bil-lingwa Maltija kif saru parti mill-atti l-ohra quddiem l-istess Qorti minkejja illi, kif inghad, is-sentenza inghatat bil-lingwa Ingliza f'liema lingwa gie wkoll redatt il-verbal tal-21 ta' Lulju 2000. Il-materja tan-nullita' o meno tar-rikors ta' l-appell giet ulterjorment ittrattata fis-seduta tas-6 ta' April 2001 (li saret bil-lingwa Maltija) fejn Dr. Tonna Lowell ghall-Prosekuzzjoni talab zmien, lilu koncess, biex jaghmel nota bi dritt ta' risposta tal-kontro-parti. Din in-nota saret fl-14 ta' Meju 2001 (bil-lingwa Ingliza!) pero' r-risposta baqghet ma saritx minkejja illi skada t-terminu, anke kif imgedded fis-seduta tal-31 ta' Lulju 2001.

Ikkunsidrat:-

Illi din is-sentenza sejra a tenur ta' l-istess verbal tal-31 ta' Lulju 2001 tkun biss wahda parzjali in kwantu ghall-kwistjoni li giet sollevata fir-rigward tan-nullita' tar-rikors ta' l-appell

peress illi dan sar bil-lingwa Maltija filwaqt illi l-proceduri, skond id-digriet tal-Qorti tal-Magistrati fuq citat, kellhom isiru bil-lingwa Ingliza.

Fl-ewwel nett din il-Qorti tistqarr illi hasset l-istess preokkupazzjoni li hass l-Avukat Generali qabel ma ttratta l-kawza in kwantu ghal f'liema lingwa kellha tinkiteb din is-sentenza konsiderat il-konfuzjoni fir-rigward tal-kwistjoni tal-lingwa f'dawn il-proceduri, konfuzjoni li messha l-Qorti stess ukoll indunat biha precedentement. Il-Qorti pero' dehrilha finalment li s-sentenza kellha tinkiteb bil-lingwa Maltija l-ewwel stante illi r-rikors ta' l-appell sar b'din il-lingwa pero', u ta' aktar importanza, in vista ta' dak li sejjer jinghad aktar tard f'din is-sentenza.

Ikkunsidrat:-

Illi huwa minnu li sa f'tit snin ilu l-gurisprudenza kostanti tal-Qorti ta' l-Appell Kriminali kienet fis-sens illi f'kazijiet analogi ma' dak odjern kienu jwasslu ghan-nullita' tar-rikors ta' l-appell u li din in-nullita' kellha titqajjem mill-Qorti *ex officio* peress illi kienet materja ta' ordni pubbliku. (Hawn jinghad b'lejalta' lejn

I-Avukat Generali li huwa ma nsistiex fuq in-nullita' tar-rikors ta' l-appell pero' semma' l-kwistjoni ta' l-ordni pubbliku).

B'sentenza pero' tal-11 ta' Jannar 1994 fil-kaz "The Republic of Malta vs Martin James Denning" il-Qorti ta' l-Appell Kriminali Superjuri (li l-Imhalled sedenti kien jiffirma parti minnha kif kollegjalment komposta) irriteriet il-principju, fost ohrajn, illi:

“It would not, however, be understandable or logical, if in the application of these rules, a stance is taken which would render a rule intended precisely in the interest of a special category of persons, into one which proves to be unnecessarily prejudicial to it. It is consequently perfectly right and just for these Courts to intervene when this special rule intended for the protection of the rights of a particular category of persons is not observed or is contravened in a way, which even in theory can be prejudicial to such category of persons, precisely because such non observance or contravention intrinsically would run counter to the *raison d’etre* of this special rule. It would be incongruous, however, and illogical, if these Courts were to take the same stand if the failure to observe or the contravention of the same rule comes from the person who has the greatest interest for the observance and application of that rule and in whose main interest that rule has been conceived. In this contest, upholding the Attorney General’s submission would be tantamount to stretching the application of the said rule to an extent which would only serve to defeat the purpose for which the rule owes its existence.”

Din il-Qorti taqbel perfettament ma' dan l-insenjament. Huwa, effettivament, kontro-sens legali li jigi ppenalizzat il-persuna

favur min jezisti provvediment tal-ligi anke jekk dan il-provvediment ikun wiehed ta' ordni pubbliku u ghalhekk din il-materja hija deciza billi l-appellant ghandu jiddikjara jekk iridx illi l-kumpliment tal-proceduri jsirux bil-lingwa Ingliza jew b'dik Maltija filwaqt illi, in vista wkoll tad-dikjarazzjonijiet gia' maghmulha mill-istess appellant matul dawn il-proceduri, l-atti processwali ghandhom jibqghu regolarment parti minn dawn il-proceduri.

ONOR. IMHALLEF NOEL V. ARRIGO LL.D.

Deputat Registratur

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