



CRIMINAL COURT

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 18 th October, 2010

Number 42/2010

**The Republic of Malta
Vs
Mike Diala**

The Court,

Having seen the bill of indictment no. 42/2010 against the accused Mike Diala wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that on the eighteenth (18) April two thousand and nine (2009) and during the previous months, Mike Diala has, whilst in Malta, decided to start selling or dealing in a drug (cocaine) in the Maltese Islands. In pursuance of this design, Mike Diala planned and agreed with a certain Victor Anokwu and a certain George Moses to deal in the dangerous drug cocaine.

The method adopted between them was that **Mike Diala** would obtain the dangerous drugs from the above mentioned two persons and sell them to third parties. **Mike Diala** would, in turn, make a profit from the sale of the mentioned drugs and would also receive payment from Victor Anokwu and George Moses for this activity. As a result of their agreement and illegal plan, **Mike Diala** has, on various occasions, obtained the mentioned dangerous drug cocaine from Victor Anokwu and George Moses.

By committing the abovementioned acts with criminal intent, **Mike Diala** rendered himself guilty, by several acts committed even though committed at different times but constituting a violation of the same provision of the law and committed in pursuance of the same design, of illegally conspiring for the purposes of selling or dealing in a dangerous drug in these Islands in breach of the provisions of the Dangerous Drugs Ordinance, (Cap. 101 of the laws of Malta).

Wherefore, the Attorney General, in his aforesaid capacity accused **Mike Diala** of being guilty of, on the eighteenth (18) April two thousand and nine (2009) and during the previous months, by several acts committed even though committed at different times but constituting a violation of the same provision of the law and committed in pursuance of the same design, having with another one or more persons in Malta or outside Malta, conspired for the purposes of selling or dealing in a drug in these Islands against the provisions of the Dangerous Drugs Ordinance, (Cap. 101 of the Laws of Malta), and specifically of selling and dealing in any manner in the drug Cocaine, and having promoted, constituted, organised and financed such conspiracy.

Demanded that the accused be proceeded against according to law, and that **Mike Diala** be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand, three hundred and thirty Euros (€ 2,330) but not more than one hundred and sixteen thousand, five hundred Euros (€116,500), and the

forfeiture in favour of the Government of Malta of the entire immovable and movable property in respect of which the offence was committed and as described in the Bill of Indictment, as is stipulated and laid down in Articles 9, 10(1), 12, 14, 15A, 20, 22(1)(a)(f)(1A) (1B)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta) and in Articles 18, 23 and 533 of the Criminal Code (Cap. 9 of the Laws of Malta) or to any other punishment applicable according to law to the declaration of guilt of the accused.

2) After the Attorney General premised in the Second Count of the Bill of Indictment that under the same circumstances as the previous Counts of this Bill of Indictment, that is on the eighteenth (18) April two thousand and nine (2009) and during the previous months, **Mike Diala** wilfully and knowingly sold and supplied the dangerous drug cocaine to third parties in Malta. In fact, Mike Diala, on numerous occasions, illegally gave capsules containing the dangerous drug cocaine to third parties. The third parties contacted **Mike Diala** and he would meet them somewhere in Bugibba. **Mike Diala** has no authorisation to deal or traffic in dangerous drugs and such illegal trafficking was made for financial gain.

In fact, upon investigation, **Mike Diala** stated that he sold capsules containing the dangerous drug cocaine on numerous times for the price of €450 - €500. In turn, he would also receive payment from Victor Anokwu and George Moses.

By committing the abovementioned acts with criminal intent, the accused **Mike Diala** rendered himself guilty of, by several acts committed even though committed at different times but constituting a violation of the same provision of the law and committed in pursuance of the same design, having sold or otherwise dealt in an illegal substance (cocaine), without a license by the Minister responsible for Health or without being authorised by these Rules or by authority granted by the Minister responsible for Health to supply the drug mentioned

(cocaine), or without being in possession of an import or export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of Part IV and Part VI of the Ordinance, and without being licensed or otherwise authorised to manufacture the drug or without a license to procure the same.

Wherefore, the Attorney General, in his aforesaid capacity, accused **Mike Diala** of being guilty of having, on the eighteenth (18) April two thousand and nine (2009) and during the previous months, by several acts committed even though committed at different times but constituting a violation of the same provision of the law and committed in pursuance of the same design, supplied or procured or offered to supply or procure an illegal substance (cocaine) to or for any person whether in these Islands or elsewhere, or advertise the drugs for sale, without a license by the Minister responsible for Health or without being authorised by these Rules or by authority granted by the Minister responsible for Health to supply the drug mentioned (cocaine), or without being in possession of an import or export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of Parts IV and VI of the Ordinance, and without being licensed or otherwise authorised to manufacture the drug or without a license to procure the same;

Demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta 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, 15(A), 20, 22(1)(a)(2)(a)(i)(1B)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulations 4 and 9 of the Internal control of Dangerous Drugs Rules, 1939 (Government Notice 292 of 1939), and in Articles 18, 23

and 533 of the Criminal Code (Cap. 9 of the Laws of Malta) or to any other punishment applicable according to law to the declaration of guilty of the accused.

3) After the Attorney General premised in the Third Count of the Bill of Indictment that under the same circumstances as the previous Counts of this Bill of Indictment, that is on the eighteenth (18) April two thousand and nine (2009) and during the previous months, **Mike Diala** was in the illegal possession of the dangerous drug cocaine. The police effected a search at the premises in Tamar Street, St. Paul's Bay, which are under the control of **Mike Diala**, and found therein a total of three (3) capsules containing the dangerous drug cocaine together with a number of sachets containing the same mentioned dangerous drug.

Upon further investigations, it resulted that these mentioned capsules and sachets contained a total of thirty point eighty-eight grams (30.88gr) of the dangerous drug cocaine with the purity ranging from 30% to 39%. The total street value of the drugs found ranges from € 2,068.96 to € 3,236.22.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta). **Mike Diala** was not in possession of any valid and subsisting import or possession authorization granted in pursuance of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta).

By committing the abovementioned acts with criminal intent, **Mike Diala**, by several acts committed even though committed at different times but constituting a violation of the same provision of the law and committed in pursuance of the same design, rendered himself guilty of the offence of the illegal possession of a dangerous drug in Malta, under such circumstances that such possession was not for the exclusive use of the offender.

Wherefore, the Attorney General, in his aforesaid capacity, accused **Mike Diala** of, on the eighteenth (18) April two thousand and nine (2009) and during the previous months, by several acts committed even though committed at different times but constituting a violation of the same provision of the law and committed in pursuance of the same design, being guilty of knowingly having been in possession of a dangerous drug (cocaine) being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta) when he was not in possession of any valid and subsisting import or possession authorization granted in pursuance of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta); so, however, that such offence was under such circumstances that such possession was not for the exclusive use of the offender.

Demanded that the accused be proceeded against according to law, and that **Mike Diala** be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand, three hundred and thirty Euros (€ 2,330) but not more than one hundred and sixteen thousand, five hundred Euros (€116,500), and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in respect of which the offence was committed and as described in the Bill of Indictment, as is stipulated and laid down in Articles 9, 10, 12, 14, 20, 22(1)(a),(2)(a)(i), (3A)(a),(b),(c),(d) and 26 of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta), in Regulation 8 and 9 of the Internal control of Dangerous Drugs Rules, 1939 (Government Notice 292 of 1939), and in Articles 18, 23, and 533 of the Criminal Code (Cap. 9 of the Laws of Malta) or to any other punishment applicable according to law to the declaration of guilt of the accused.

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

Having seen the application filed by the said accused on the 2nd September, 2010, whereby he declared that he was filing a guilty plea for the charges brought forward in his regard in the above referred to Bill of Indictment ;

Having seen that in today's sitting the accused, in reply to the question as to whether he was guilty or not guilty of the charges preferred against him under the three counts of the Bill of Indictment, stated that he 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 him a short time to retract it, according to Section 453 (Chap. 9);

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

Now therefore declares Mike Diala guilty of all three counts in the Bill of Indictment, namely of having:-

1. on the 18th April, 2009 and during the previous months, by several acts committed even though committed at different times but constituting a violation of the same provision of the law and committed in pursuance of the same design, having with another one or more persons in Malta or outside Malta, conspired for the purposes of selling or dealing in a drug in these Islands against the provisions of the Dangerous Drugs Ordinance, (Cap. 101 of the Laws of Malta), and specifically of selling and dealing in any manner in the drug Cocaine, and having promoted, constituted, organised and financed such conspiracy, and this according to the First Count of the Bill of Indictment;

2. on the 18th April, 2009 and during the previous months, by several acts committed even though committed at different times but constituting a violation of the same provision of the law and committed in pursuance of the same design, supplied or procured or offered to supply or procure an illegal substance (cocaine) to or for any person whether in these Islands or elsewhere, or advertise the drugs for sale, without a license by the

Minister responsible for Health or without being authorised by these Rules or by authority granted by the Minister responsible for Health to supply the drug mentioned (cocaine), or without being in possession of an import or export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of Parts IV and VI of the Ordinance, and without being licensed or otherwise authorised to manufacture the drug or without a license to procure the same, and this according to the Second Count of the Bill of Indictment;

3. on the 18th April, 2009, and during the previous months, by several acts committed even though committed at different times but constituting a violation of the same provision of the law and committed in pursuance of the same design, being guilty of knowingly having been in possession of a dangerous drug (cocaine) being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta) when he was not in possession of any valid and subsisting import or possession authorization granted in pursuance of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta); so, however, that such offence was under such circumstances that such possession was not for the exclusive use of the offender, and this according to the Third Count to the Bill of Indictment.

Having considered the guilty plea of the accused after the Court explained to him in clear terms the consequences of his request, now proceeds to pass the sentence indicated to it by the parties as aforesaid.

Having considered that for purposes of punishment, the first and third counts of the Bill of Indictment regarding the crimes of conspiracy and unlawful possession of drugs were not intended for the exclusive use of the offender should be absorbed in the offence of trafficking contemplated in the second count of the Bill of Indictment.

Having considered that accused is entitled to benefit from the provisions of Article 29 of Chapter 101 of the Laws of Malta.

Having heard the submissions of the prosecution and the defence.

Having considered the submissions on punishment by the defence namely, but not exclusively, that accused was found in possession of only 30.88 grms of cocaine in three capsules, that he intended to keep one and sell two capsules. That he was not the mastermind but only a runner and that his cooperation led to the arrest of Victor Anokwu. That he started trafficking eight months before his arrest but interrupted his activities with a period abroad and started again three months before his arrest. That this Court should make use of Article 31 of Chapter 9 of the Laws of Malta where starting off with a twelve year term and applying a 2^o reduction should award a punishment of between 4 and 5 years imprisonment. That reference was made to recent judgements in, more or less similar circumstances, where the award was indeed of a 5 year prison term.

Having considered submissions by the prosecution that accused had been trafficking for eight months before being arrested and according to his admission had trafficked between 1 and 3 capsules a week (p.86) so that the penalty has to reflect this continuity which was the reason why the Attorney General opted for a jury trial instead of summary proceedings before the Magistrates Court. That the 2^o reduction is not mandatory but discretionary and the Court should apply a lower percentage. That reference was made to recent judgements and demanded a prison term of 12 years with a fine of € 35,000.

Having considered that the punishment for all the crimes admitted to by the accused would amount to life imprisonment, that Article 492(1) of the Criminal Code provides that when at same stage before the empanelling of the jury, accused admits to his guilt the Court may instead of the above mentioned punishment award a punishment between eighteen and thirty years;

That what's more, according to the proviso of Article 22(2)(a)(i)(aa) of Chapter 101 when the Court is of the opinion when considering the age of the accused, his previous conduct, the amount of prohibited drug and other circumstances of the case, that life imprisonment would not be appropriate, the Court may award the accused a prison term not less than four years but not more than thirty years and a fine of not less than €2,329.37 and not more than €116,468.67.

Having considered the amount of drugs involved in this case including the amount accused trafficked during the months before his apprehension, his cooperation with the police that led to the arrest of Victor Anokwu and having seen today's note verbal whereby both the prosecution and the defence agreed that accused should benefit from the provisions of Article 29 of Chapter 101.

Having considered on the other hand that this Court cannot ignore the fact that this crime has become an open sore wound in Maltese society and the cause of many a ruin in the lives of so many persons especially youths and that the crime has been committed in spite of the welcome and hospitality extended by the Maltese to visitors to these shores, illegal or otherwise.

Having seen articles 9, 10(1), 12, 14, 15A, 20, 22(1)(a)(f)(1A)(1B)(2)(a)(i) and proviso (aa)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance (Chap.101); Regulations 4, 8 and 9 of the 1939 Regulations for the Internal Control of Dangerous Drugs (L.N. 292/1939) and Articles 18, 23 and 533 of the Criminal Code;

Now therefore condemns the said Mike Diala to a term of imprisonment of seven (7) years, and to the payment of a fine (multa) of twenty thousand Euros (€20,000), which fine (multa) shall be converted into a further term of imprisonment of twelve months according to Law, in default of payment ;

Furthermore condemns him to pay the sum of four thousand one hundred and sixty seven Euros and twenty Euro cents (€ 4167.20) being the sum total of the expenses incurred in the appointment of court experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta, which could be converted to a term of imprisonment according to law.

Furthermore, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Mike Diala.

And finally orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out by the chemist Mario Mifsud, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that said drugs are required in evidence against third parties.

< Final Judgement >

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