



**CRIMINAL COURT**

**THE HON. MR. JUSTICE  
LAWRENCE QUINTANO**

Sitting of the 21 st January, 2013

Number 25/2012

**The Republic of Malta  
Vs  
Izuchukwu Nwakaeze**

**The Court,**

Having seen the bill of indictment no. 25/2012 against the accused Izuchukwu Nwakaeze [holder of ID card number 48327A] wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that on the twenty third (23<sup>rd</sup>) day of October of the year two thousand and nine (2009) and during the previous days and weeks, Izuchukwu Nwakaeze (hereinafter referred to as “NWAKAEZE” or the “accused” as the case may be) decided to start dealing, offering, supplying and importing

drugs illegally into the Maltese Islands in agreement with others.

In fact on the dates abovementioned, the accused NWAKEZE conspired and agreed with other persons, namely a certain Upo whose real name is Innocent (or Inusend), and whom the accused claims to be his relative, to illegally deal in and import from Spain to the Maltese Islands a quantity of the drug cocaine (circa 440.11 grams) (hereinafter referred to as the “drug consignment”).

The accused and Upo agreed that this drug consignment was to be exported from Spain and imported into Malta by a woman [that later resulted to be a certain Brigitte Annemarie Malwal (hereinafter referred to as “Malwal”)] who was to travel from Spain to Malta by air, and once in Malta this woman was to meet the accused and deliver to him the drug consignment. Both the accused and Malwal communicated with the said Upo via their respective mobile phones. It resulted that Upo’s phone number was found both in the mobile phone of the accused and in that of Malwal (in whose mobile phone Upo’s number is listed under “name unknown”).

The accused and Upo agreed about the mode of action as to how this drug consignment was to reach Malta and eventually how it was to be dealt with in Malta following its arrival. They agreed about the route that this drug consignment was to take (Valencia, Barcelona, and Girona in Spain to Malta); the packing and/or means of concealment (the drug cocaine was to be packed in capsules, later to be ingested and swallowed by Malwal, with one such larger capsule being inserted in her vagina) and/or the means of transport (partly by car, partly by bus and partly by air travel) which was to be used in order for this quantity of the drug cocaine to be illegally brought and imported into Malta and this in order for the said drug to be eventually dealt with illegally within the Maltese Islands.

The accused agreed and planned with the said Upo that he was to meet Malwal outside the Topaz Hotel in Bugibba/St. Paul's Bay, Malta in order for him to collect the drug consignment from her for its eventual trafficking and distribution in the Maltese Islands.

In execution of the said plan on the 22<sup>nd</sup> October 2009, Malwal boarded the Ryan Air flight FR9012 leaving from Girona, Spain destination Malta, carrying inside her body and in her vagina a total of 31 capsules filled with the said quantity of the drug cocaine in order to eventually deliver the said drug to the accused. However, the Malta Police Force managed to intervene in due time before this amount of drug cocaine managed to reach its intended final destination in the Maltese Islands, namely to the respective consignee of the said drug cocaine who was to be NWAKAEZE.

The Police managed to apprehend Malwal after her arrival in Malta in her room at the Topaz Hotel in Bugibba/St. Paul's Bay. There they found twelve capsules and one larger capsule. From there Malwal was escorted to Mater Dei Hospital where she continued to pass the remaining capsules. It transpired that MALWAL was carrying circa 440.11 grams of the drug cocaine with a purity of circa 42.3% (as determined later by the Court appointed expert). The street value of this drug as determined by the Court appointed expert amounted to circa thirty three thousand four hundred and forty eight Euro (€33, 448).

Malwal informed the Police that Inusend (Upo) instructed her to deliver the drug consignment to a black man, wearing a black shirt and carrying a back pack. She eventually agreed to provide the necessary assistance to the Police in order for them to carry out a controlled (drug) delivery in terms of Law.

Neither Upo nor the accused knew at that stage that the Police had apprehended Malwal and they continued communicating with each other in order to continue executing their plan to deal in drugs in Malta.

The following day, that is on the 23<sup>rd</sup> October 2009 the Police instructed Malwal to carry out her original assignment, that is, to deliver the drug consignment to the accused under Police supervision. As soon as she went out of the hotel she saw the accused standing across the street and as soon as she approached him he told her to follow him. After walking for some distance the accused asked Malwal what was in the bag, where Malwal replied that the bag was for him and proceeded to hand over the bag to the accused. In the process, the Police arrested both Malwal and the accused.

The drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

By committing the abovementioned acts with criminal intent, NWAKAEZE rendered himself guilty of conspiracy to deal in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused NWAKAEZE of being guilty of having, on the twenty second (23<sup>rd</sup>) day of October of the year two thousand and nine (2009) and during the previous days and weeks with criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in a drug (cocaine) in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or by promoting, constituting, organizing or financing such conspiracy, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta of the

entire immovable and movable property of the accused, as is stipulated and laid down in articles 2, 9, 10(1), 12, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilty of the accused.

2) After the Attorney General premised in the Second Count of the Bill of Indictment that on the twenty third (23<sup>rd</sup>) day of October of the year two thousand and nine (2009), NWAKAEZE had in his possession the resin obtained from the plant cannabis.

That soon after that the accused was arrested he was taken to Police headquarters where the Police searched and found on his person a bunch of keys matching flat door Solair Flat Block C Flat 15B, Gwiebi Street, St. Paul's Bay, wherein he habitually resided. A search was conducted therein and the Police elevated a number of objects including a laptop, two mobile phones, a piece of luggage and a substantial amount of money. There was a locked room in the flat that was accessed to by the Police after using one of the keys that formed part of the bunch of keys found on the person of the accused at the Police Headquarters. While searching in a wardrobe the Police found a grey jacket and in one of the pockets of this grey jacket they found a number of pieces of cannabis resin. NWAKAEZE was therefore knowingly and illegally in possession of the resin obtained from the plant cannabis.

The drug cannabis is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

Consequently by committing the abovementioned acts with criminal intent, NWAKAEZE rendered himself guilty of being in possession of a dangerous drug (cannabis) as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta,

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused NWAKAEZE that on the twenty third (23<sup>rd</sup>) October of the year two thousand and nine (2009) and in the previous days, in Malta, and with criminal intent, rendered himself guilty of being in possession of a dangerous drug (cannabis) as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term of not less than twelve (12) months but not exceeding ten (10) years and to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (€465.87) but not exceeding twenty three thousand two hundred ninety three Euro seventy three cents (€23,293.73) as is stipulated and laid down in article 8(a) and 22(1)(a)(2)(a)(ii) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, articles 17 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta and of regulations 2, 9 and 16 of the Internal Control of Dangerous Drugs Rules, Government notice 292 of 1939 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 on the twenty third (23<sup>rd</sup>) day of October of the year two thousand and nine (2009), NWAKAEZE reviled, or threatened, or caused a bodily harm to a person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent intimidated or unduly influenced him in the discharge of such duty.

That while Malwal was handing over the decoy bag to the accused the Police intervened and tried to arrest the accused. However, the accused resisted the arrest thus compelling the Police to use reasonable force to restrain him down on the floor, put his hands behind his back and handcuff him. In fact, during the scuffle, the accused tried

to run away twice; on the second occasion the accused even pushed PS1174 Adrian Sciberras to the wall. As a result, PS1174 suffered, amongst other injuries, scratches on his right shoulder.

Consequently by committing the abovementioned acts, NWAKAEZE rendered himself guilty of having reviled, or threatened, or caused a bodily harm to a person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent intimidated or unduly influenced him in the discharge of such duty,

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused NWAKAEZE that on the twenty third (23<sup>rd</sup>) October of the year two thousand and nine (2009), in Malta, rendered himself guilty of having reviled, or threatened, or caused a bodily harm to a person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent intimidated or unduly influenced him in the discharge of such duty as specified under Article 95 of the Criminal Code, Chapter 9 of the Laws of Malta, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term of not less than twenty (20) days and not more than nine (9) months and to a fine as is stipulated and laid down in Article 95(1)(3) and 221(1) and 222(1)(c) of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilty of the accused.

4) After the Attorney General premised in the Fourth Count of the Bill of Indictment that on the twenty third (23<sup>rd</sup>) day of October of the year two thousand and nine (2009), NWAKAEZE assaulted or resisted by violence or by active force not amounting to public violence, a person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority.

That while Malwal was handing over the decoy bag to the accused the Police intervened and tried to arrest the accused. However, the accused resisted the arrest thus compelling the Police to use force to restrain him down on the floor, put his hands behind his back and handcuff him. During the scuffle, the accused tried to run away twice; on the second occasion the accused even pushed PS1174 Adrian Sciberras to the wall.

Consequently by committing the abovementioned acts, NWAKAEZE rendered himself guilty of having assaulted or resisted by violence or active force not amounting to public violence, a person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused NWAKAEZE that on the twenty third (23<sup>rd</sup>) October of the year two thousand and nine (2009), in Malta, rendered himself guilty of having assaulted or resisted by violence or active force not amounting to public violence, a person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority as specified under Article 96 of the Criminal Code, Chapter 9 of the Laws of Malta, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term of not less than four (4) months but and not exceeding one (1) year as is stipulated and laid down in article 96(a) of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilty of the accused.

5) After the Attorney General premised in the Fifth Count of the Bill of Indictment that on the twenty third (23<sup>rd</sup>) day of October of the year two thousand and nine (2009), NWAKAEZE caused slight injuries on the person of PS 1174 Adrian Sciberras.

That while Malwal was handing over the decoy bag to the accused the Police intervened and tried to arrest the accused. The accused resisted the arrest, and at a certain point had even tried to run away, even though the Police had identified themselves as Police Officers. The Police were thus compelled to use reasonable force to restrain him down on the floor, put his hands behind his back and handcuff him. During the scuffle PS1174 Adrian Sciberras suffered a number of slight injuries. In fact, he twisted his left finger whilst he was trying to handcuff the accused; he injured his right knee whilst he tried to restrain the accused from running away and in the process of so doing he and the accused fell on the floor; and he also scratched his right shoulder when the accused pushed him to the wall in an effort to run away for the second time.

Consequently by committing the abovementioned acts, NWAKAEZE rendered himself guilty of having caused slight injuries on the person of PS 1174 Adrian Sciberras who was a public officer or was lawfully charged with a public duty or is or was an officer or employee of a body corporate established by law and the offence was committed because of that person having exercised his functions,

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused NWAKAEZE that on the twenty third (23<sup>rd</sup>) October of the year two thousand and nine (2009), in Malta, rendered himself guilty of having caused slight injuries on the person of PS 1174 Adrian Sciberras who was a public officer or was lawfully charged with a public duty or is or was an officer or employee of a body corporate established by law and the offence was committed because of that person having exercised his functions as specified under Article 221(1) and Article 222(1)(c) of the Criminal Code, Chapter 9 of the Laws of Malta, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term

of not less than twenty (20) days but not exceeding six (6) months as is stipulated and laid down in article 221(1) and 222(1) (c) of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilty of the accused.

6) After the Attorney General premised in the Sixth Count of the Bill of Indictment that on the twenty third (23<sup>rd</sup>) day of October of the year two thousand and nine (2009), NWAKAEZE disobeyed the lawful orders of an authority or of a person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever.

That while Malwal was handing over the decoy bag to the accused the Police intervened and tried to arrest both Malwal the accused. The accused resisted the arrest, and at a certain point had even tried to run away, even though the Police had identified themselves as Police Officers. As a result, the Police were compelled to use force to restrain him down on the floor, put his hands behind his back and handcuff him.

Consequently by committing the abovementioned acts, NWAKAEZE rendered himself guilty of having disobeyed the lawful orders of an authority or of a person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused NWAKAEZE that on the twenty third (23<sup>rd</sup>) October of the year two

thousand and nine (2009), in Malta, rendered himself guilty of having disobeyed the lawful orders of an authority or of a person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever as specified under Article 338(ee) of the Criminal Code, Chapter 9 of the Laws of Malta, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of detention as is stipulated and laid down in Article 7(2)(a), 12 and 338(ee) of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilty of the accused.

### **First Plea – Nullity of the Third, Fourth and Fifth Counts**

Having seen the note of the accused submitting the following preliminary pleas :

- i. The nullity of the Third, Fourth and Fifth Counts of the Bill of Indictment due to the fact that all these three different Counts are based on the same alleged facts and moreover the Third and Fifth Counts of the Bill of Indictment effectively contain the same accusation.
- ii. The nullity of the Third and Fifth Counts of the Bill of Indictment since the consequences are not based on what emerged from the evidence collected by the Court of Magistrates (Malta) as a Court of Criminal Inquiry in this case. In actual fact in his evidence reported at pages 137 to 139 of the records of the inquiry, PS 1174 Adrian Sciberras stated that the injury suffered in his hand was not intentional.
- iii. The nullity of the statement of accused exhibited at pages 8 to 10 of the records of the inquiry and the impropriety of adducing in evidence the same statement and whatsoever accused may have verbally told the police during the investigation stage since the adducing in evidence of this statement and/or whatsoever he may

have said during the investigation stage was made and/or said by him without having previously been offered any form of legal assistance and consequently the adducing in evidence of the statement of accused and/or whatsoever he may have told the police would impinge on his right to a fair trial which right is enshrined and protected in article 39 of the Constitution of Malta and in articles 6(1) and 6(3)(c) of the European Convention for the Protection Human Rights and Fundamental Freedoms.

The defence submits that the facts of these three counts are identical while the third and the fifth counts contain the same accusation.

The Court notes that the facts refer to what happened on the 23rd October 2009 while the defendant was being arrested. The defendant resisted the arrest and as a result the Police had to use reasonable force to control him while PS 1174 Adrian Sciberras suffered scratches on his right shoulder.

The facts as narrated in the third count are repeated in the fourth count and in the fifth count but in each of the three counts the Attorney General made a different accusation. In the Third Count the Attorney General charges the accused with a breach of article 95 of the Criminal Code, in the Fourth Count the Attorney General charges him with a breach of article 96 of the Criminal Code and in the fifth count with a breach of articles 221(1) and 222(1)(c) of the Criminal Code.

Considers

Now, according to the Criminal Law Notes of Professor Mamo, Part 1, page 151, it is possible that

‘one and the same fact constitutes an offence under two or more provisions of the law or, in other words, where the same ‘fact’ violates two or more provisions of the law so as to give rise to various grounds of incrimination.....’

It is entirely at the discretion of the Attorney General to issue different charges having a common basis of facts if these, in his view, lead to different breaches of the law. No article falling under any of the sections 588 – 602 regarding the Bill of Indictment prohibits the Attorney General from drawing up a Bill of Indictment in this way.

After the verdict of the jury, it is entirely up to the judge to decide on the penalty, bearing in mind section 17 of the Criminal Code.

As far as the third and the fifth counts are concerned, the Articles cited are not identical even though the Attorney General refers 'to the bodily harm inflicted on a person lawfully charged with a public duty.' In the third count the AG refers to the more serious crime under article 95 whereas in the fifth count the Attorney General refers to slight bodily harm. The jury may return verdicts of guilty or not guilty under both articles or a guilty verdict under one article and a not guilty verdict under the other one. The judge will address the jury on the elements of the crimes contemplated on all the counts and then it is up to the jury panel to deliver their verdicts.

There is absolutely no nullity in having different counts in the Bill of Indictment which have the same facts as a basis.

Hence the Court is rejecting the first plea submitted by the defence.

**The Second Plea – Nullity since the consequences are not based on what emerged from the evidence.**

The defence submits that on pages 137 to 139 of the records of the inquiry, PS 1174 Adrian Sciberras stated that the injury he suffered in his hands was not intentional. The Court examined the pages identified by the defence and is reproducing the following excerpts from pages 138 and 139 of the records:

Informal Copy of Judgement

'Lawyer: When you say he hurt your fingers, how did it happen?

Witness: I handcuffed him and when I tried to hit his hands together and handcuff the other, he pulled his hand away and I had the handcuff in my hand and my hand got caught in the handcuffs.

Lawyer: This happened behind his back.

Witness: Yes, of course.

Lawyer: So he did not know what was happening really at that stage when he pulled his hand.

Witness: We told him we were police officers. He already had one handcuff in his hand, so I think he knew.

Lawyer: But I am referring to the accident of your fingers. It happened behind his back when he pulled his hand.

Witness: Of course.

Lawyer: Would you say that it was an intentional injury to hurt you in your hand?

Witness: It was not intentional. He resisted the arrest'

The defence is submitting that once the alleged victim himself says that the accused had no intention to injure him, then the third and fifth counts are null.

Considers:

The Court of Criminal Appeal (Superior) and the Criminal Court have always held that at this stage the accusatory part in the Bill of Indictment should be reflected in the narrative part. It is then up to the jury panel to decide whether during the proceedings there was sufficient evidence to support the charge in the Bill of Indictment. Once the narrative part in the Bill of Indictment and the

accusation tally, then the requirements laid down in section 589(c)(d) of the Criminal Code are satisfied.

Hence the Court is rejecting the second plea.

### **The Third Plea – the statement and any conversation between the police and the accused.**

The defence submitted that the statement made by the accused and ‘whatsoever’ he may have told the police would impinge on his right to a fair trial.

Has considered

### **The Facts as they appear in the Statement**

The statement of the accused (pages 51 and 52) was made on the 23rd October 2009. He was duly cautioned. In the statement, the accused admits that he had smoked cannabis the day before the statement. He also said the Upo was a relative from Nigeria. He did not know whether Upo was a drug dealer. On the day he was arraigned the accused was on his way to the workplace. He denied attacking the Police when he was arrested near the Topaz hotel and added that he was unaware that the persons involved were police officers. In the last part of the statement, the accused explained how he came to be in possession of €2910 and confirmed that Upo had called him several times during the last twenty four hours. He denied that Upo had informed him that a particular lady was going to have drugs in her bag. He also denied that he was carrying a backpack to put the drugs in it.

This summary of the statement does not reveal any incriminating statement barring an admission to smoking cannabis. Otherwise the accused denied the ‘contents’ of the main charges.

### **The Law**

Furthermore, sections 658 to 661 of the Criminal Code have never been amended since they became part of

Chapter 9. So the validity of a statement taken in accordance with the law still stands. The last judgment of the Constitutional Court on this point – ‘Stephen Muscat versus the Attorney General’ – delivered on the 8th October 2012 overturned a decision of the First Hall of the Civil Court which had decided that the statement should be left out altogether. The Constitutional Court held that one has to examine the admissibility of a statement made by an accused on a case by case basis.

### **The decision about the Statement**

**So, as far as the statement made on the 23rd October is concerned, this Court is rejecting the third plea of the defence.**

### **Whatever the accused told the Police**

The defence did not indicate any paragraphs or any pages where the accused may have said something to the Police which may incriminate him.

### **The Facts**

The Court examined what several police officers stated on the witness stand including the prosecuting inspector (Mr Johan Fenech) (pages 48, 65 and 141), PC 733 Joyce Galea (page 121), PS 1174 Adrian Sciberras (page 68) and PC 1319 Matthew Xuereb. None of these witnesses for the Prosecution referred to any words spoken by the accused which could in any way be considered as incriminating.

### **The Decision about ‘whatsoever the accused told the Police’**

**Hence the Court is also rejecting this second part of the third plea.**

**The Court’s Conclusion about the Third Plea s a Whole.**

Informal Copy of Judgement

**The Court is rejecting both parts of the third plea of the accused.**

**< Final Judgement >**

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