



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

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 12 th April, 2013

Number. 418/2009

**The Police
(Inspector Bernard C.Spiteri)**

vs

Peter Ohaka

The Court;

After having seen that the accused Peter Ohaka, 27 years old, son of Lilifidelis and Bernardette nee' O'Mnyeuwue born in Nigeria on the 31st December 1981, residing in Malta at Hawfinch Court, Flat 3, St. Anthony Street, San Gwann and holder of identity card number 21407(A) was arraigned before it and charged with having:

On these islands on the 28th April 2009 at around 2.15p.m. and the weeks before, in Karin Grech playing field, Naxxar Road, San Gwann and in other places in these Islands by means of several acts, committed at different times in pursuance of the same design and which constitute violations of the same provisions of the law:

1. By lewd acts defiled a minor, JT, in breach of Article 203(1) of Chapter 9 of the Laws of Malta.
2. By any means, instigated, encouraged or facilitated the defilement of minor JT in breach of Article 203(A) of chapter 9 of the Laws of Malta.
3. Also with having during the same day, time and place committed an offence against decency or morals, by an act committed in a public place or in a place exposed to the public.
4. Charge him also with having during the same day and time and place, in a public place exposed himself naked or indecently dressed.
5. Also further being charged with becoming a recidivist with various sentences of the Court of the Magistrates of Malta and Court of Appeal, which sentences have become definite and cannot be altered.

Having seen all the acts of these proceedings including the Attorney General's consent (at folio 10) for this case to be dealt with summarily.

Having seen that on the 30th April, 2009 (at folio 13) the accused answered that he had no objection that his case be heard summarily and decided by this Court as a Court of Criminal Judicature.

Having heard all evidence submitted in this case.

Having heard the final submissions made by the Prosecution and the Defence Counsel.

Having considered:

The facts of this case relate to a report¹ made by MA and LT on the 28th April 2009 that at around 2.15pm of the same day while their children J (8 years old) and M (7 years old) were playing on the seesaw at the San Gwann playing field in Naxxar Road, San Gwann J saw a coloured man in the doorway of the public toilets and this man had his private parts exposed and he was also masturbating. J told M who was sitting opposite her on the seesaw and had his back to the public toilets not to look and explained to him what she was seeing and when the man walked off M managed to catch a glimpse of the man but he did not actually see him doing anything. The children ran to their mothers who were in the Bocci Club close to the playing field but when the latter came out they did not see anyone there. However when LT spoke to two women who were talking on the doorstep of a house situated next to the playing field they confirmed to her that they had seen a coloured man walking by. The children's' mothers went to the San Gwann Police station which is very close to the playing field and filed a report and after some time they were called to the Police Station again and asked to accompany their children so that they could identify a man who had been arrested in relation to the offences which they had reported. From the evidence brought forward by the Prosecution it transpires that when the report was lodged the Police immediately suspected that it could have been the accused because he had been previously charged with similar offences and he lived in San Gwann and they therefore went to his house and asked him to accompany them to the San Gwann Police Station. The two children did not identify the accused immediately as the person they had seen at the swings. Three attempts were made for JT to identify the accused and she finally said that she was recognising his clothes. MA did not identify the accused immediately but he subsequently confirmed that the accused was the same man he had glimpsed at the swings.

Both the minors gave evidence during these proceedings by means of video conferencing (the relative

¹ A copy of the relative report is inserted at folio 7 of the acts of these proceedings.

transcriptions are inserted at folio 22 et sequitur of the acts of these proceedings). JT explained what she had seen and said that she had not seen the man's face because his head was down and she explained that she had noted that the man was wearing a white t-shirt with writing on it and three quarter trousers and that he had spiky hair. She also said that she had noted the same man doing similar things a week before but she had not told her mother because she was embarrassed. J confirmed that she had not identified the man shown to her at the San Gwann Police Station and after he had been shown to her three times she said that she recognised his clothes. The minor explained that her difficulty in identifying the man was owed to the fact that she had never seen his face. MA explained that he had identified the man shown to him at the Police Station but he had done so after some time had elapsed. He also stated that he had not seen the man doing anything because J had told him not to look but he had caught a glimpse of the man whilst the latter was walking away from the swings.

The accused chose to give evidence during these proceedings during the sitting held on the 4th October 2010 whereby he explained that on the day in question he had gone to the San Gwann primary school to pick up two of his children from kindergarten. He said that he had gone to school by car and accompanied by his wife and they arrived at the school at 2.00pm and he had gone in the school through the gates while his wife waited outside in the car with their youngest child. The accused explained that he had spent a considerable amount of time in the school that day because his youngest son J was not in the classroom when he had gone to pick him up and so he went to pick up his other son A and when he went back to J's classroom the latter was still not there and so he sent his other son to fetch him from the bathroom and meanwhile he stayed talking to the teacher. The accused said that he then went out to the car with his children and they then went home and fed the children and made them have a nap when the Police knocked at the door and told him to accompany them to the Police

Station. The accused explained that he had spent around twenty minutes in the school and said that they had arrived home at around 2.30pm. The accused denied that he had gone to the swings that day. The accused's version of events was confirmed by his wife Gemma who gave evidence during the sitting held on the 13th June 2011 as well as by Carmen Camilleri and Gemma Calleja (who both gave evidence on the 1st February 2011). The latter two witnesses stated that they were the accused's sons' teachers and they remembered that on the day in question the accused had come to pick up his children at 2.00pm. Gemma Calleja confirmed that J was not in class when the accused arrived and that it had taken some time to locate him because he had gone to the bathroom and so the accused sent his other son to fetch him and he remained in the classroom chatting to her. Both teachers said that they had taken note of these things because around two days after the alleged incidents the accused's wife had turned up at school and requested them to take note of these facts so that they would remember them if summoned in court to give evidence.

After having seen all the evidence produced by the Prosecution and the Defence in this case the Court deems that the Prosecution cannot be deemed to have proven beyond reasonable doubt that the accused was the coloured person the children saw at the swings. The Court is of the opinion that the identification process carried out by the Police is unsatisfactory because the children were shown only one person and a proper identification parade was never carried out. Moreover it transpired that the children still did not identify the accused immediately as the person they had seen at the swings and this notwithstanding that he was the only person shown to them. Moreover J admitted that she had identified the man solely on the basis of the clothes he was wearing and that she had never seen his face. On the other hand the boy despite saying that he had identified the man after some time also said that he had only caught a sideways glimpse of the said man while the latter was walking away from the swings. Even though both children identified the accused when they gave evidence the Court

Informal Copy of Judgement

is not satisfied that this identification leaves no room for doubt. When one considers that the accused managed to prove on a balance of probabilities that at the time that the alleged incidents occurred he was at school picking up his children the Court considers that it cannot be deemed that the Prosecution has managed to prove beyond reasonable doubt that the accused was indeed the coloured man that J and M saw at the swings.

For the abovementioned reasons the Court declares the accused not guilty of the charges brought against him and consequently acquits him from the said charges.

The Court is hereby ordering the ban of the publication of the names of the minors involved in any means of communication whatsoever.

< Final Judgement >

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