MALTA

# COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE -- ACTING PRESIDENT**
**DAVID SCICLUNA**

**THE HON. MR. JUSTICE**
**ABIGAIL LOFARO**

**THE HON. MR. JUSTICE**
**JOSEPH ZAMMIT MC KEON**

Sitting of the 20 th June, 2013

Number 16/2009

**The Republic of Malta**

**v.**

**Morgan Ehi Egbomon**

**The Court:**

**1.** This is a decree regarding appellant's challenge to Hon. Madam Justice Abigail Lofaro in terms of article 510(1) of Chapter 9 of the Laws of Malta. According to appellant, when the Hon. Madam Justice Lofaro was presiding the First Hall of the Civil Court in its Constitutional Jurisdiction, she had decided that the claim made by

appellant before that Court that article 3(3) of the Prevention of Money-Laundering Act and article 22(1C)(b) of Chapter 101 of the Laws of Malta are in violation of the Principles of article 6 of the Convention on Human Rights, could only be so made after the exhaustion of all ordinary remedies.

**2.** Now, in terms of article 734(1)(d)(ii) of the Code of Organisation and Civil Procedure, rendered applicable by articles 510(2) and 446(2) of the Criminal Code, a judge may be challenged or abstain from sitting in a cause:

**"if he had previously taken cognizance of the cause as a judge or as an arbitrator:**

**Provided that this shall not apply to any decision delivered by the judge which did not definitely dispose of the merits in issue or to any judgment of non-suit of the plaintiff".**

**3.** Appellant exhibited a copy of the relevant judgement in the names **Morgan Ehi Egbomon vs Avukat Generali** delivered on the 14th October 2010. From that judgement it appears that appellant had requested a declaration that articles 3(3) and 3(2A) of Chapter 373 of the Laws of Malta and article 22(1C) [as to whether paragraph (b) or paragraph (d) of that subarticle was unclear] of Chapter 101 of the Laws of Malta infringe his right to a fair trial and to the presumption of innocence in terms of article 6(1)(2)(3) of the Convention on Human Rights.

**4.** The Attorney General pleaded that appellant had not exhausted ordinary remedies and, moreover, that proceedings before the Criminal Court had not yet commenced and so the application was premature.

**5.** In its judgement the First Hall of the Civil Court, referred to the relevant provisions of the Convention and the Constitution, and quoted authors and case-law and decided to accept the Attorney General's first two pleas and dismiss appellant's application. In reaching its decision that Court stated:

**“Illi ghalhekk ma huwiex indikat illi l-ewwel Qorti tezercita s-setghat taghha sakemm kienu, jew huma jew ghadhom miftuhin ghar-rikorrent rimedji ohra adegwati fil-parametri tal-ordinament gudizzjarju, kemm dawk ordinarji permezz ta' appell kif ukoll dawk straordinarji permezz ta' ritrattazzjoni.**

**“Illi kif tajjeb issottometta l-intimat Avukat Generali, kif jirrizulta mill-istess rikors promotur, ir-rikorrenti jinsab akkuzat quddiem il-Qorti Kriminali u il-Qorti Kriminali ghadha sal-lum ma bdietx tista il-kaz tieghu.**

**“Illi l-Qorti tara illi sabiex tista tiddeciedi dwar allegazzjoni ta’ nuqqas ta’ smigh xieraq hemm bzonn illi taghmel apprezzament tal-process kriminali kollu. Il-Qorti tosserva illi ir-rikorrenti lanqas biss ma esebixxa kopja legali tal-proceduri tal-kumpilazzjoni illi huwa ghadda minnhom u kull ma ressaq bhala prova kienu biss l-att ta’ l-akkuza u l-istqarrija illi huwa irrilaxxja lill-pulizija.**

**“Illi ghalhekk il-Qorti ma ghandha l-ebda mezz sabiex tara xi provi tressqu matul il-kumpilazzjoni u kif giet kondotta id-difiza tar-rikorrenti matul il-kumpilazzjoni. Ghalhekk certament ma tafx jekk kienux applikati fil-konfront tieghu certi presunzjonijiet u jekk u kif inqaleb f’certu aspetti l-oneru tal-prova.**

**“Illi kif inhu risaput, fi process kriminali hemm inferenzi li jistghu joperaw f’certi cirkostanzi u f’certi limiti skond il-ligi.**

**“Illi jezistu wkoll sitwazzjonijiet fil-Ligi Kriminali fejn l-oneru tal-prova jigi spustat fuq min jallega l-ezistenza ta’ fatt.**

**“Illi kif diga intqal, il-Qorti ma tafx kif gew kondotti il-proceduri matul il-kumpilazzjoni u wisq anqas ma taf kif ser jigu kondotti il-proceduri quddiem il-Qorti Kriminali, peress illi l-process kriminali ghadu lanqas biss inbeda quddiem dik il-Qorti u ghalhekk il-Qorti**

**ma tistax tiddetermina kif u taht liema cirkostanza operaw, jew setghu joperaw ir-regoli illi ir-rikorrenti qieghed jilmenta dwarhom.**

**"Ghalhekk il-Qorti tara illi huwa certament prematur illi tistharreg il-lanjanzi tar-rikorrenti f'dan l-istadju u dan l-argument jghodd aktar u aktar ghall-allegazzjoni tar-rikorrenti illi huwa ma ghadux prezunt innocenti."**

**6.** From a reading of said judgement it is therefore quite evident that the First Hall did not decide the merits of the application before it. Consequently this Court cannot see how it can be said that it had decided the merits of the appeal presently before it. Indeed, appellant's pleas are (1) that the First Count of the Bill of Indictment is null and void as it does not indicate the antecedent offence which could give rise to money-laundering, and (2) that as to the Second Count the Attorney General is charging on the basis of regulations that were subsequently repealed and the principle *nullum crimen sine lege* should therefore apply.

**7.** For these reasons there are no grounds at law for appellant's challenge to Madam Justice Abigail Lofaro, and consequently his challenge is dismissed.

**< Final Judgement >**

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