



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 13 th June, 2013

Number 35/2009

The Republic of Malta

v.

Augustine Elechukwu Onuchukwu

The Court:

This is a decree pursuant to a note presented by appellant on the 30th January 2013 wherein he made reference to a decision given by the European Court of Human Rights on the 22nd January 2013 in the case **Camilleri vs Malta (application number 42931/10)** which decided that article 120A(2) of the Medical and Kindred Professions

Ordinance (Chapter 31 of the Laws of Malta) runs contrary to article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In his note, appellant pointed out that said article 120A(2) is similar, if not identical, to article 22(2) of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) under which he was sent for trial by the Attorney General and was processed, convicted and sentenced by the Criminal Court. Appellant stated that “[c]onsequently, according to the abovementioned decision, the fundamental right of appellant under article 7 of the Convention which prevents him from being found guilty of a criminal offence on account of an act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed; and prevents him from being subjected to a heavier punishment than the one that was applicable at the time the criminal offence was committed, has been breached and consequently his trial, conviction and sentence, the object of his appeal, should be deemed null and void.” Appellant submitted that should this Court deem itself unable to take cognisance of this “very serious matter and/or rule on the matter, a reference should be made to the First Hall of the Civil Court in its Constitutional Jurisdiction for its decision on the subject matter.”

In his reply the Attorney General submitted that appellant’s request at this stage of the proceedings can be considered frivolous and vexatious in that in the circumstances of this particular case, the criteria on the basis of which the Attorney General based his decision to refer appellant’s case to the Criminal Court and the particular circumstances thereof were clear to appellant from the very start, and even before criminal proceedings were instituted against him.

Now, by means of a judgement delivered on the 12th June 2011, the Criminal Court, after having seen the verdict whereby the jury by seven votes in favour and two votes against found the accused guilty of both counts of the bill

of indictment, declared the said Augustine Elechukwu Onuchukwu guilty of having:

1. on the night between the 20th and 21st April, 2008, and during the previous days, weeks and months, 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 (heroin) 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 this according to the First Count of the Bill of Indictment;

2. on the night between the 20th and 21st April, 2008, with criminal intent, rendered himself an accomplice with Efosa Efionayi in the act of importation or exportation, or in the causing of importation or exportation, or in the act of taking any steps preparatory to importing or exporting, any dangerous drug (heroin) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta by in any way whatsoever knowingly aiding or abetting the perpetrator of the crime (Efosa Efionayi) in the acts by means of which the crime is prepared or completed and by inciting or strengthening the determination of another (Efosa Efionayi) to commit a crime (illegal importation of the dangerous drug heroin into Malta) or by promising to give assistance, aid or reward after the fact, or in the taking of any steps preparatory to the importation of a dangerous drug (heroin) into Malta and this according to the Second Count of the Bill of Indictment.

The said Augustine Elechukwu Onuchukwu appealed against said verdict and judgement and requested that this Court cancel and revoke the majority guilty verdict returned by the jury against him and the decision of the Criminal Court of the 12th June 2011 against him thereby ordering that a "Not Guilty" verdict be registered in this case and subordinately, in the eventuality that this Court refuses his appeal against guilt, that it reforms the punishment inflicted upon him by the Criminal Court ensuring that a more appropriate one is inflicted in the

circumstances of the case and that at any rate it cancels the order regarding the payment of the Court experts' fees. His grievances as stated in his application of appeal are (1) that during the trial before the Criminal Court there was a wrong interpretation and/or wrong application of the law which could have had a bearing on the jury's verdict; (2) that the jury returned an incorrect majority verdict of guilt with regards to the First and Second Counts of the Bill of Indictment because appellant was wrongly convicted on the facts of the case; (3) that, without prejudice and subordinately to the abovementioned two principal grounds of appeal, the prison term and the fine (multa) inflicted upon appellant are excessive in the circumstances of the case and the order to pay for the experts' fees is not one according to law.

Submissions were made on the 31st May 2012, but before judgement could be pronounced, this Court was recomposed and further submissions were heard on the 15th January 2013. The case was put off for judgement but the abovementioned note was presented on the 30th January 2013.

This Court must point out that the ordinary remedies open to appellant have still not been exhausted. Indeed this Court is still in the process of deliberating upon the appeal which he has lodged against his conviction.

Consequently, and in the circumstances of this particular case, while it fails to see how it can rule that appellant's trial, conviction and sentence could be deemed null and void, it deems that the constitutional issue raised is vexatious in terms of article 46(3) of the Constitution and consequently dismisses appellant's requests.

< Final Judgement >

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