



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

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 11th July, 2013

Number. 1164/2011

**Police
(Inspector Geoffrey Azzopardi)**

vs

Lucky Omeregie

The Court,

Having seen the accused Lucky Omeregie 22 years old, son of Omeregie and Rose, born in Nigeria on the 1st December 1988 and residing at No 78, Abela Str, Sta Venera and Police no 06BB-017 was arraigned before it and charged with having:

In the months preceding the 20th October 2011 in Malta:

1. Without lawful authority used or had in his possession any document required for the purposes of the Immigration Act which is forged;

2. forged, altered or tampered with any passport or used or had in his possession any passport which he knew to be forged, altered or tampered with

3. Made used or attempted to make use of a passport issued to any other person.

The Court was humbly being requested to investigate the case according to Law.

Having seen all the acts of the proceedings including the Attorney General's consent dated 21st October 2011 (exhibited a folio 28 & 29 of the proceedings) for this case to be treated summarily.

Having heard that the accused declares that he has no objection that this case is heard summarily.

Having heard all evidence submitted in this case.
Having seen the Note of Final Submissions filed by the Prosecution.

Having seen that the Defence did not file its Note of Final Submissions within the time limit prescribed by law.

Having considered :

The facts of this case are briefly as follows. On the 20th October 2010 the accused who had arrived in Malta in 2006 as an illegal immigrant went to the Department of Citizenship and Expatriate Affairs and presented a Nigerian passport number A 4089485¹ in order to have a residence permit sticker affixed to the said passport after he had previously applied for a residence permit on the basis of marriage to a Maltese citizen. The passport in question was presented for the first time when the accused called at the said department after being informed that the residence permit sticker was ready for collection since during the processing stage he had submitted different documentation. When the Citizenship

¹ Vide passport inserted at folio 24 of the acts of the proceedings.

employee received the passport in question he immediately suspected it to be counterfeit² and the Police were immediately alerted and they started their investigations. The Police were able to establish that the bio data page on the passport was forged³ and the accused was arraigned in Court accused with ***“In the months preceding the 20th October 2011 in Malta 1) without lawful authority used or had in his possession any document required for the purposes of the Immigration Act which is forged; 2) forged, altered or tampered with any passport or used or had in his possession any passport which he knew to be forged, altered or tampered with and 3) made use or attempted to make use of a passport issued to any other person;”***

The accused chose to give evidence in these proceedings during a sitting held on the 12th October 2012 and he had also given a statement to the Police⁴ whereby he said that the passport in question was sent to him by his brother from Nigeria and he had received it five months before he presented it to the Citizenship Department. He was not able to explain why the passport was not sent to him earlier since it indicated that it had been renewed in 2008. The accused also said that in Nigeria it was possible to renew a passport without being physically present in the country and he made this statement in reply to the question as to how the passport could have been issued in 2008 when he had been in Malta since 2006. The accused also stated that he had not sent any recent photos to his brother for the purpose of renewing the passport. He also said that his first passport was issued about twelve years before and said that he had come to Malta without a passport. The accused maintains that the falsification was carried out by the same Nigerian authorities that issued the passport and that he did not

² Vide testimony of CEA official Louis Xuereb at folio 163 in the acts of these proceedings.

³ Vide evidence of WPC 286 Terry Dimech at folio 30 et sequitur of the acts of the proceedings.

⁴ Inserted at folio 13 and 14 of the acts of the proceedings.

know that the passport was false and did not have anything to do with the falsification.

Having considered :

The Court deems that the Prosecution has managed to prove that the accused is guilty of the charges brought against him to a level of beyond reasonable doubt since it has brought forward evidence that the accused submitted a forged passport to the Maltese authorities for the purpose of having a residence permit sticker affixed to it. The Court does not believe the explanations given by the accused primarily because the accused said that he was not asked to endorse his signature on any application form and yet the new passport was issued with a signature which the accused subsequently confirmed to be his. The Court also finds it difficult to understand how the Nigerian authorities had any reason to issue a forged passport especially since the accused himself stated that it is possible in the said country to have a passport renewal without actually being physically present there. The accused is therefore going to be declared guilty of the first and second charge brought against him. He is not going to be found guilty of the third charge since it is not clear whether the said passport was actually issued to a third person.

For the purpose of determining the applicable punishment the Court took into consideration the fact that the accused has a clean criminal record and it deems that in the circumstances it should apply the provisions of Section 28A of the Criminal Code.

For the abovementioned reasons and after having seen Section 32 (1)(f) of Chapter 217 of the Laws of Malta, Section 5 of Chapter 61 of the Laws of Malta and Section 17 of the Criminal Code the Court finds the accused guilty of the first(1) and second(2) charge brought against him and condemns him to eighteen(18) months imprisonment which in terms of Section 28A of Chapter 9 of the Laws of Malta are being suspended for a period of two(2) years from today. The Court declares the accused not guilty of

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the third(3) charge brought against him and consequently acquits him from the said charge.

< Final Judgement >

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