



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tat-2 ta' Ottubru, 2013

Numru. 938/2012

**The Police
(Inspector Roderick Agius)**

Vs

**Chinonso Jude Okeakpu son of the late Emmauel and
Maria nee' Ezedo, born in Nigeria on the 10th August
1979 holder of ID Card no. 51171A and residing at 104,
Palm Court, Flat 1, B'Kara Road, San Gwann, Malta**

The Court,

Having seen the charges brought against the accused Chinonso Jude Okeakpu wherein he was charged: with having on the 20th August 2012 at about one o'clock in the morning (01:00hrs) at Qormi or/and in Malta, without the intent to kill or to put the life of Musah Karim (I.D.47468A) in manifest jeopardy, caused injuries of greivous nature, on the person of Musah Karim, of permanent debility of the health or any permanent functional debility of any

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organ of the body, or any permanent defect in any part of the physical structure of the body as certified by Dr. Mario Cilia Med Reg no.1749.

Also that at the mentioned time, place and in the same circumstances insulted and threatened Musah Karim by words.

Also that at the mentioned time, place and in the same circumstances wilfully disturbed the public good order or the public peace.

Also that at the mentioned time, place and in the same circumstances wilfully committed a crime in the period of a conditional discharge, sentence given by Dr. J. Padovani LL.D on the 11th April 2012 which same sentence is final and cannot be changed.

Having seen the documents exhibited.

Having heard the evidence.

Having seen the articles of law sent by the Attorney General of the 4th April 2013.

Having heard the accused declare that he does not object to the case being tried summarily by this Court.

Having heard submissions by the parties.

Considers,

That it transpires from the note of the Attorney General of the 4th April 2013, that the accused is being charged mainly with causing grievous bodily harm on the person of Musah Karim as envisaged in articles 214, 216 and 218 of the Criminal Code.

Professor Mamo in his Notes on Criminal Law has this to say with regards to this section of the law which speaks about the crime of bodily harm:

“The fact that the law in defining this crime merely excludes the specific intent of wilful homicide, and does not mention positively any other criminal intent, does not mean that an intent is not necessary.” He continues: “But the intention required is merely the *animus nocendi*, the generic intent to cause harm without requiring necessarily an actual intention to do the particular kind of bodily harm which, in fact, ensues. In other words, it is not essential that the intention was to produce the full degree of harm that has actually been inflicted. ... Therefore, in the case of bodily harm, if the intent of the doer is to injure, he will answer for the harm actually caused in application of the principle, *dolus indeterminatus determinatur ab exitu*. In a judgment delivered by the Court of Criminal Appeal (in its inferior jurisdiction) in the case *The Police vs Emanuel Zammit*, the Court stated: “*Jekk l-intenzjoni ta’-agent tkun li jaghmel hsara, zghira kemm hija zghira dik il-hsara li jkollu f’-mohhu li jaghmel, hu irid wiegeb ghall-konsegwenzi kollha li effettivament jirrizultaw bhala konsegwenza diretta ta’-ghemil tieghu.*”¹

Thus if the intention of the perpetrator was to cause harm to his victim, he will have to answer to the actual harm that result from his actions even if his intention was to cause slight injuries to his adversary.

Considers further,

From the evidence gathered during these proceedings it results that the accused was having marital problems with his wife Gianella-Marie Okeakpu at the time of the incident. His wife was having an affair with injured party Musah Karim. It transpires from the acts that accused was objecting to the fact that his children of five and four years were in the company of his wife’s partner. On the night of the incident, accused contacted his wife insisting that he pick them up after work. In fact upon finishing work, accused discovered that his wife had taken their children to her partner’s apartment in Qormi. He therefore arrived at Qormi and phoned his wife telling her that he was

¹ Judgment delivered on the 30th March 1998

waiting outside the apartment close to injured parties car and insisted that he take the children with him. His wife and injured party exited the appartement carrying the children. From this point forward there is a conflict in the evidence given by injured party and accused and this because whereas injured party states that he was assaulted by the accused who caused various injuries in his face and fingers when he bit him, accused on the contrary affirms that it was injured party who attacked him first and he retaliated by biting at Musah's face and hand in the collusion that ensued.

Although injured party states that he suffered injuries in this fight, however he produces no medical certificate to substantiate his claim. After the incident both parties went to the Qormi police station to file a report, with accused arriving at the station first, followed by injured party and accused's wife. The police officers present at the police station who received their respective reports testify that injured party had blood on his face and hands and that he was about to faint prompting the police officers to phone for an ambulance which arrived shortly afterwards and took injured party to hospital for medication. Although they all state that accused had blood on his shirt, however they all agree that they saw no visible injuries on his body apart om slight scratches. The police report states also that accused produced a medical certificate by a Dr. Ivan Micallef who certified that he could not certify the nature of the injuries suffered by accused and this in spite of the fact that accused states that he was punched and bitten by injured party.

On the contrary, injured party suffered injuries of a greivous nature as results from the report filed by court-appointed medico-legal expert Dr. Mario Scerri. The expert concludes:

“That the scar described on the left side of the forehead of Karim Musah is the result of a laceration inflicted as a result of blunt trauma. This scar is inconspicuous and barely visible from talking distance;

That the scar described on the left side of the face is a result of a laceration which might have been produced as a result of a bite mark. This lesion is visible from talking distance and remains as a permanent mark on the face.

That the scar described on the base of the left thumb might be the result of a bite and is barely visible from talking distance.²

The conclusions reached by the medico-legal expert substantiate the version given by injured party who states in his testimony that he was approached by accused whilst he was still carrying accused's child, who then started beating him and bit him on his face and thumb. He states that after this he put the child down and a struggle ensued.

There is no doubt as transpires from the testimony of accused himself, that accused was angry at his wife since in his opinion she was not leading an exemplary life and taking care of his children. He was adamant that she did not meet her partner in the presence of his children, something which his wife did against his wishes. Consequently, when on that evening he managed to contact his wife and found out that his children were in a flat in Qormi belonging to her partner, he decided to rush to this apartment to take away his children even though it was very late at night. The Court has no doubt that accused was in a very agitated state of mind and consequently was furious when he saw his wife's partner approaching him with his child in his arms. In fact in his statement released to the police, accused states that he warned injured party to stay away from his children and after that they started fighting³. Consequently the Court finds that accused assaulted injured party and caused injuries of a greivous nature as reported by Dr. Mario Scerri. Since the injury suffered by injured party on his face will remain a permanent scare consequently this falls

² Report of Dr. Mario Scerri at folio 59 et. Seq of court records.

³ Vide statement of accused at folio 9 and 10 of police records.

within the parameters of article 216(1)(b) of the Criminal Code.

Considers further,

That from the note of the Attorney General it results that accused is also facing contraventional charges laid down in articles 339(1)(e) and 338(dd) of the Criminal Code. Whilst the first section of the law refers to contraventions against the person, the other regards those affecting public order. With regards to the first contravention indicated by the Attorney General regarding the utterance of insults and threats, it must be stated that it does not result from the acts that accused uttered any insults or threatened injured party. This results from the testimony of both parties as well as from the original police report lodged by both parties against each other. Consequently the accused will be acquitted from this charge.

Finally with regard to article 338(dd) of the Criminal Code, it results amply proven that accused and injured party were involved in a scuffle in the middle of the road and very late at night and this in front of two very young children. Consequently there is no doubt that accused is in breach of this section of the law and consequently will be found guilty of this contravention.

That in considering the punishment to be inflicted the Court will have to take into consideration the fact that accused committed the crime he is being found guilty of in this judgment during a probation period imposed on him by a judgment delivered on the 11th April 2011. However, accused is a father of two children who are under his care and custody and committed this crime since he thought it was in his children's best interest to remove them from the presence of his wife's partner.

Consequently, the Court after having seen sections 214, 216(1)(b), 338(dd) of Chapter 9 of the Laws of Malta, whilst acquitting accused from the second charge, finds him guilty of the rest of the charges brought against him, however in view of the above made considerations and

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after having seen Section 7 of Chapter 446 of the Laws of Malta places accused under a Probation Order for a period of three years from today.

The Court warns accused with consequences according to law if he were to commit another crime during this probation period or if he were to breach the Probation Order imposed on him by means of this judgment.

After having seen Section 23 of Chapter 446 of the Laws of Malta and sections 225 and 226(1)(b) of Chapter 9 of the Laws of Malta condemns accused to a fine of one thousand euro (€1000).

After having seen Section 533 of Chapter 9 of the Laws of Malta condemns accused to pay to the Registrar of Courts the sum of €250.92.

Finally after having seen Section 383 of Chapter 9 of the Laws of Malta binds accused to hold the peace with Musah Karim under a penalty of €1000 for a period of one year from today.

< Sentenza Finali >

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