



MALTA

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
MIRIAM HAYMAN**

Sitting of the 16 th October, 2014

Number. 1044/2009

**The Police
Inspector Yvonne Farrugia
Inspector Pierre Grech**

VS

Charity Ofame Ovbiagele, 23 years old, daughter of Anthony Ovbiagele and Eunice nee' Omorunazoje, born Afuze, Nigeria on the 23rd July, 1986, residing at 26, Violette, Triq l-Imghazel, Naxxar, holder of Nigerian passport number A1992841 and Maltese identity card number 26826A;

The Court;

Having seen charged proffered against the above-mentioned **Charity Ofame Ovbiagele**, who was charged of having, on the night between the 3rd October, and the 4th October, 2009 and during the previous weeks, on these Islands, with several acts committed, even if at different times and which constitute violations of the same provisions of the Law, and are committed in pursuance of the same design:

- a. Had in her possession the drug heroin specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when she was not in possession of an import or an export authorisation, issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when she was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to her for her personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for her personal use;
- b. Carried out acts of money laundering by:
 - i. Converting or transferring property knowing or suspecting that such property is derived directly or indirectly from or the proceeds of criminal activity or

- from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
- ii. Concealing or disguising the true nature, source, location, disposition, movement, right with respect of, in or over or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - iii. Acquiring property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from act or acts of participation in criminal activity;
 - iv. Retaining without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - v. Attempting any of the matters or activities defined in the above foregoing sub-paragraph (i, ii, iii and iv) within the meaning of Article 41 of the Criminal Code;
 - vi. Acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i, ii, iii, iv & v).

Be it premised that due to amendments effected in the Money Laundering Act, Chapter 373 of the Laws of Malta, these charges were amended very late in the course of the proceedings, to include and mirror such charges (vide folio 798).

Seen also the Counter Order remitted by Attorney General in regards of Chapter 373 of the Laws of Malta **only** (emphasis of the Court).

Seen also that Defence Counsel had minuted that Prosecution was being exempted from bringing forward again all evidence that had already been compiled before the said amendment to the charge was effected.

Seen that in the examination of the accused, Charity Ofame answered that she was not guilty of the charges proffered against her.

Seen all the evidence of the case gathered.

Considers:

That in order to determine the issues at hand, the Court will examine the salient evidence brought to her.

Thus **Inspector Yvonne Farrugia** testified about a Nigerian national by the name of Atinuke Ugoyi who was leaving (attempting she said) to leave Malta for Brussels, who had in her possession the sum of twenty nine thousand eight hundred and fifteen Euros (€29,815) of which twenty thousand Euros (€20,000) of them were divided in two parcels, sealed with tape and hid in her trousers. It was established through further police investigations that this Nigerian national who had connections with drug traffickers, in her belongings had a business card of Ivy Property Sales situated at 254, Main Street, Mosta was found. On the back of this card was a hand-written address of 26, Violette, Triq l-Imghazel, Naxxar and the name of Charity.

The Inspector continued to add she thus proceeded herself to the said Naxxar address and since no one opened, the landlord himself – Oliver Grech, was contacted. Grech informed them that Flat 7 was in fact rented out to a certain foreigner by the name of Charity showing them the contract in this regard, signed by Charity Ofame for four hundred twenty Euros (€420) monthly. He gave them the contact number of Ofame and a dark skinned male in whose company she was often seen. On trying both numbers, both were switched off. He later informed them that Ofame worked at the Seabank in Mellieha from where she was duly arrested for further investigations.

She was also informed that a dark skinned male had, on viewing the police near Triq l-Imghazel residence, evasive manoeuvres with his vehicle. He resulted to be a certain Ferdinand Onovo who was already charged in Court on drug possession. Thus police conducted a search at his residence, wherein clothes of the brands D&G, Cavalli, Just Cavalli, Armani, Brut etc, were seized. She added no explanation was given by Onovo regarding the provenance. She added that a Magisterial Inquiry ensued and Dr Martin Bajada was appointed to examine lap tops and mobiles seized.

A further search was carried out and at accused's flat. She also failed to give an adequate explanation for the objects therein present and seized.

In the same flat in the kitchen cupboards, a transparent plastic bag was found containing a substance suspected to be drugs.

With regards to the objects seized, she testified that these consisted of expensive objects - branded clothing, shoes, handbags, and belts.

On her arrest, she asked the Police Inspector to fetch underwear from her bedroom, wherein the branded items were found.

She added that from her investigations, it transpired that she was a university student and worked at Seabank to cover her university fees. She further added that besides the clothing and accessories, the police found in Ofame's flat, a flat screen television, two lap tops and recently bought appliances.

Ofame never gave any explanation to the police with regards to the provenance of the objects.

In a second statement, Ofame told the police some of the items seized were given to her by Onovo.

From further investigations it resulted to Inspector Farrugia, that Ofame's only income was from her part-time job at the Seabank.

She exhibited the first statement released by Ofame as Dok CO; the second statement as Dok CO1; two receipts of the belongings seized as Dok CO2 and Dok CO3; the business card found on Atinoke Ugoyi as Dok CO4; two other documents seized from Naxxar as Dok CO5.

Questioned about the brown substance found in the search, she said that in the same kitchen where the bag was found, normal kitchen scales were also located.

In cross-examination she agreed that no drugs were found on the lady arrested at the airport. She agreed that the said lady knew Ofame as a friend. She also denied having met Charity during her last stay in Malta, but times before, though she said that the airport lady had changed her version about the time she had met Charity. She confirmed that this woman had in fact informed them Ofame was extraneous to the money found.

She confirmed that in Ofame's flat, apart from branded items, no money was found. She had in her possession three hundred seventy Euros (€370) with which accused said she was going to pay university. Inspector also confirmed that her flat, apart from the items seized, was bare of silver, gold paintings, or

similar items. She also confirmed that Ofame told the police that the branded items were gifts given to her. She agreed with Defence Counsel that Ofame had been living in Malta for the last six (6) years. She also agreed that accused had been living with her mother a few months before. She did not check if Ofame received a stipend as a student, though she did confirm Ofame had a part time work at the Seabank and also as a film extra.

As premised, accused released two statements. Though accused was of a young age – twenty-three(23) on their release, given the caution at Law, she chose to answer and showed no signs of vulnerability, duress or coercion. She was fluent and seemed to have understood her rights very well.

Thus, in line with recent judgments handed down by the Court of Appeal, in the names “*Pul vs Robert Busuttill*” dated 20th February, 2014; and “*Pul vs Omar Psaila*”, dated 20th June, 2014, the Court deems both statements as admissible.

In the first statement, Dok CO folio 41, Ofame said that she had been in Malta for six (6) years. She stated she came to visit her mother and ended up staying here. She attended Sixth Form at the Higher Secondary and then started another course of Business Management at the University of Malta, called EIE. She said she worked part-time at the Seabank, Mellieha, having started there a year or two before, adding she also worked as a film extra. She said that this did not give her big money earning in hundred and thousands.

She did not answer to the question whether her wage from Seabank was directly deposited at the bank, admitting she had a bank account with Bank of Valletta.

She confirmed that flat mentioned was hers as were the items found therein and seized. She did not answer to the question if she personally rented the flat, even shown the flat agreement.

Asked whether the clothes and shoes found therein belonged to her, now she chose not to reply - obviously as was her right. She replied to knowing Onovo's children. She answered that the three hundred seventy Euros (€370) in her possession where intended to pay University; that the course cost three thousand Maltese Liri (Lm3,000.00) which she was paying by instalments, two thousand Maltese Liri (Lm2,000.00) of which she had already paid up.

She stated that she called Atinuke Aunty as a sign of respect. With regards to a certain Henry, she stated he as a Nigerian.

With regards to brands, she said she loved brands but could not afford them all the time, saying Ferdinand bought those (the branded clothes) for her, in her opinion to show off. She added she had met Ferdinand at the Square in Bugibba and from then onwards he started buying her the branded clothes and shoes.

She denied handing a sum of money to Ugoyi.

In the second statement, asked if she knew a certain Morgan she stated that she also knew him from Bugibba, even before knowing Ferdinand. She however denied having a relationship with the former, saying she however liked Ferdinand.

She now said that Ferdinand did not give her all the branded items found in the flat, however she confirmed the items were given to her by men as presents.

She confirmed getting Dixan from her mother so as to 'conserve' that is, save money.

PC 1305 Silvio Zammit on being shown both statements, confirmed accused was given the caution according to Law.

He recognized Charity Ofame and confirmed her signature on the second statement, having refused to sign her first one.

The police officers involved in the arrest and the search that led to this Court case testified accordingly.

Thus **WPS 249 Marouska Debattista** testified that on the 2nd October, 2009 at 4.00pm, Customs Official at the Malta International Airport called at their office requesting assistance since a Nigerian national, later identified by the name of Atinuke Ugoyi was leaving Malta in possession of excess money to the amount of twenty-nine thousand eight hundred and fifteen Euros (€29,815). The Police Sergeant continued to testify that a business card was found in her possession and which at the back thereof was written the address 26, Violette, Triq l-Imghazel, Naxxar. Obtaining a search warrant, a search was attempted at such premises which were closed. The police were informed by the landlord that it was hired to a certain Charity. The landlord of the premises was a Mr Grech. The witness was instructed to stay at a fixed point with the said premises, together with PS 1270. They were informed by the landlord that Charity was normally seen with a dark skinned male driving a white jeep. Thus it occurred that whilst on the said fixed point, she did see a dark skinned man driving a white jeep who slowed down to park, but according to her, seeing police officers close to the residence, actually drove at a speed away. The man was recognised to be a Ferdinand Onovo. The witness was thus instructed to proceed to the latter's residence and the search resulted in the finding of branded clothes and accessories. All these items were seized. The witness was also involved in a search at accused's residence from where branded clothes and accessories were seized. Electronic items

were also seized from this residence, as also receipts of items bough in her name and a brown substance found in a plastic bag in a kitchen cupboard.

According to witness, all items seized were handed over to the Scene of the Crime Officers (SOCO). She was shown the items (or photos thereof), seized, and recognized the objects in question as well as the statement released by Ofame and her signature. She confirmed the receipts seized, one for the cash sale of eight hundred forty Euros (€840), one relating to hair, another a chit from Telestar, another a Just Cavalli bag having the outlet price of two hundred and three Euros (€203). She recognized other items and receipts seized, as also photos of jewellery and clothes seized from Ofame's apartment.

Under cross examination of importance to the merits of the case, excluding questions made with regards to Onovo's situation, having established that Onovo's residence was bare, the witness did confirm that no male clothing was found in Charity's apartment.

PC 1372 Alan Cutajar also testified that together with Inspector Farrugia he proceeded to Onovo's residence and a search was therein effected, wherein the branded clothes, shoes and jewellery were found. A lap top and internet key and four mobile phones were also found and seized. He participated in the search at Ofame's residence and again branded items were seized, together with a flat screen television and a packet containing a brown powder suspected to be heroin.

He was also shown Dok JC and confirmed the photos of the items seized, distinguishing between photos taken at Ofame's residence from those taken at Onovo's residence.

He did also confirm under cross examination that the kitchen scales were found together with other kitchen utensils.

PC 143 Stephen Grech effected, together with PC 1148, Charity's arrest from the Seabank Hotel.

PS 239 Joseph Caruana as a SOCO appointed by the Inquiring Magistrate as a photographer, confirmed his report Dok JC containing two hundred twenty-four (224) coloured photos taken in Charity Ofame's residence and at Inspector Farrugia's office.

Be it premised - and this is being pointed out by the Court for clarification, that in fact Dok JC portrays contents found in accused's residence and also those found in Onovo's residence.

PC 1253 Fredrick Brincat also nominated by the Inquiring Magistrate as a SOCO collected from accused's residence the bag of white powder therein found. He testified he handed over the same to Godwin Sammut (vide Dok FB folio 99).

Godwin Sammut, as an appointed analyst, concluded, after having examined the said white powder:

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- a. *“No illicit drugs were found in the extracts taken from the brown powder which is in the exhibit labelled as 385_09_01. The total weight of the brown powder is **235.03grams**. Although no illicit drugs were found in the brown powder, the brown powder contained a mixture of Caffeine and Paracetamol. Although these are not controlled by Law, both of these substances are commonly used as cutting agents with Heroin;*
- b. *No illicit drugs were found on the swabs taken from the weighing balance.”*

(Vide Dok GS folio 85)

PC 1525 Patrick Farrugia presented the lifters gathered from the found scales and the bag containing the powder. He said he collected prints only from the kitchen scale.

Mr Joseph Mallia, appointed to compare such prints with those of accused, deposed that no such positive comparison resulted, Dok JM folio 556, positive prints belonging to the accused that is.

Inspector Mario Haber testified with regards to the Nigerian passport held by accused, saying that it was valid till the 26th October, 2013 (Dok MH).

Dr Martin Bajada, on his part, in execution of his task, presented his report as Dok MB, folio 671 wherein in completion of this task, he examined all mobile phones seized, lap tops, and internet keys.

Under cross examination he testified with regards to the task granted by this Court to value the items photographed in Dok JC1, being the branded clothes and accessories. He confirmed that these were not counterfeit items.

He first deposed that some items still had a price tag attached to them so the task here was very conclusive, although he agreed that he could not determine whether that was a sale price. In the case of the other items, he determined the price by seeking through internet the actual price for the branded items, considered their retail price and worked out the average. Obviously, he agreed he was not in a position to determine whether the items in question were bought or donated. Neither was he in a position to determine the sale price of the said items.

He further added that he did not consider whether the items were bought on sale price or were factory soiled or out of fashion.

On his part, **Dr Joseph Mifsud** presented the compodium of assets and liabilities in respect of the accused, Dok JM. His conclusion read:

“3.1 Flus depozitati f’banek

Irrizulta li l-imputat Charity Ofame Ovbiagele m’ghandha l-ebda kont bankarju fil-banek li joperaw f’Malta

3.2 Vetturi u Ingenji

Charity Ofame Ovbiagele m’ghandhix vetturi registrati f’isimha u lanqas ghandha licenzja tas-sewqan.

3.3 Proprjeta’ immobbli u garanziji

Irrizulta li l-imputat Charity Ofame Ovbiagele ma akkwistat jew ittrasferixxiet l-ebda proprjeta’.

3.4 Krediti

Irrizulta li l-imputa Charity Ofame Ovbiagele mad-Dipartiment tat-Taxxi Interni, u dan wara ricerka li saret fir-return tas-sena 2008”

Translated, it resulted that accused had no accounts with banks that operated in Malta; had no vehicles registered in her name; had no and had never acquired any immovable property; had no credit with the Commissioner of Income Tax.

Evidence was also brought forward by the Prosecution regarding the accused's residence permit, her income (this besides the actual compodium already referred to), and her studies in Malta.

Michael Grech testified as the Assistant Principal at the Department of Citizenship and Expatriate Affairs. He informed the Court that on the 17th June, 2008, Ofame applied for a residence permit as a student at the European Institute of Education. The permit was issued on the 15th December, 2008 and was valid until the 30th September, 2008. He continued that on the 3rd August, 2009 she submitted another application for her residence, this time purporting to stay with her mother. He said her mother had such status as she had been residing in Malta for a number of years – at least since 2003. He continued that on the 7th December, 2009, the Department received a police report wherein Inspector Haber informed the Department that accused had been working as a waitress at the Seabank and also as an extra on various films. He thus continued that her residence permit was thus cancelled since she necessitated a work permit. He stated that on her residence permit she cited an address at Luqa, however the information received from the Immigration Department showed she resided at 26, Violette, Triq l-Imghazel, Naxxar. He explained the residence permit would be automatically cancelled if the original purposed for its issue (in this case

residing with a third country national holder of a uniform residence permit), ceased to exist.

He exhibited in this regard Dok MG1 (folio 381).

Thus in line with this witness, **Joseph Mizzi, the Director of Department of Citizenship and Expatriate Affairs**, explained that the residence permit in favour of accused had been cancelled due to breach in the condition - not living with her mother, explaining that thus Ofame had violated Article 11 of the Immigration Regulations. He confirmed Ofame had violated the conditions, because she now lived at a separate address.

He agreed that Charity thus had a valid residence permit from the 9th August, 2009 till 2010. The permit, as witness agreed, was issued because her mother was a long-term resident in Malta. He exhibited Dok MB1, explaining all these conditions.

Her mother, a certain **Eunice Omorunazoje**, was called to testify (by Defence), in her bail bond deposit reduction application. In this hearing, accused's mother testified she would be the one depositing the bail bond, that her daughter had no money, that before the case happened she often asked her for money because what her daughter earned from her part-time was not enough. She further added - that is witness, that she had no monies deposited in any accounts.

According to evidence tendered by **Jennifer Debono**, testifying on the mother's employment permit, then Eunice Omorunazoje, worked full time within the Ministry of Social Policy as a state enrolled nurse.

In connection with this, **Stephen Fabri** and **Robert Farrugia** gave evidence in relation to accused's studies.

Stephen Fabri representing the University of Malta informed the court that Ofame had applied to join the Junior College in 2004 but had not been accepted.

In 2006 she joined the B Commerce Course but withdrew immediately therefrom, thus she was no longer registered as a student with the local University (Dok SF exhibited at folio 107).

Robert Farrugia testified representing the European Institute of Education (EIE). He exhibited Dok RF – the acceptance letters after Ofame's application within the same institute. She entered a three year course BA Honours in Business Administration, Dok RF1 folio 127.

Ofame was to pay hundred Maltese Liri (Lm100.00) monthly and it results that she always honoured her payment exhibiting Dok RF2 (folio 138), in this regard to prove various payments.

After having finished her course, she asked and received an extension to finish her thesis, Dok RF4.

The witness explained that Ofame was granted a concession to pay her tuition in instalments. She was not entitled to any stipend.

With regards to any monies perceived by Ofame during her stay in the Maltese Islands, **Margaret Drury on behalf of the Mediterranean Film Studios**, exhibited accused's FS3 with regards to defendant for the years 2007 and 2009, presented as Dok MD (folio 4701 – 473). These documents showed that Ofame had earned from this occupation the sum of eighty-two Euros and twenty cents (€82.20) and one hundred seventy-seven Euros and three cents (€177.03).

Dr Arthur Azzoaprdi, testifying on behalf of Medera Forex Services, a company licensed to operate money transfers under the nomenclature of Western Union. He deposed that Charity Ofame Ovbiagele had effected three transactions to Russia – the first dated 22nd July, 2008, to the amount of one thousand Euros (€1,000); another dated 1st of November, 2008 to Nigeria to the amount of one hundred seventy Euros (€170); and the third transaction on the 15th October, 2008 again destination Algeria to the amount of one hundred eighty Euros (€180). All transactions were effected in the branch of PDK Financial Services in Qawra as a subagent.

Armand Galea, an employee of the Rotunda Ltd, shown document CO5, confirmed it was a receipt issued by the shop Rotunda, as also the guarantee form for a microwave bought on the 27th August. He remembered that the person who bought these items was a dark person and well built. He confirmed it was a cash sale.

The Nigerian national whose arrest at the airport triggered these investigations, a certain **Atinuke Ugoyi** given a caution against self incrimination decided not to testify.

On his part, **Ferdinand Onovo** duly and similarly cautioned, testified. He remembered that Ofame on seeing the apartment, told him it was good and that he should help her because she did not trust the landlord. He insisted Charity paid and he just counted the money. Once Charity paid the landlord he left the premises. He gave evidence the amount paid was one thousand two hundred Euros (€1,200). He confirmed on seeing Dok JC that the items shown from pages 7 to 22 were in fact his and that they were seized from his

house. He insisted that they belonged to him and said he had been buying them these last ten years that he had been living in Malta - some presents from his wife. He insisted the lap top was a present to his wife.

He indicated some as presents he himself received, photo at page 16 and the photo at the page the items on page 17, that on page 19.

He recognized Charity's apartment and the photos from page 23 till page 64. He confirmed he had seen Charity wearing some of them. He indicated the items on page 40 and said he had bought the items therein shown for Charity, as in the case of the shirt on photo 45. He confirmed also having bought the television for Charity.

Later on he added, again after being repeatedly cautioned, that accused was his friend he had known for four to five months. He confirmed he gave her presents - a Just Cavalli Jeans, a Bulgari perfume, a television set – here referring to Dok CO5 at folio 54.

He denied entering in any contract of lease but accepted he did see the apartment before Ofame rented it. He answered he did not know who paid the agent.

Claire Micallef, the actual agent with Ivy Property Sales Ltd Malta, recognized the accused saying that after having received a phone call from someone called Charity, she met her on the 24th August, 2008 at 2.00pm near the Naxxar Church. She followed her to the apartment in the company of a male who once entering the apartment, asked the agent a number of questions about the place with regards to price, the functioning of the oven and the washing machine. He also asked her for a price reduction. The rental amount with the landlord was agreed to the amount of four hundred twenty Euros (€420) monthly. She said that when the contract was

signed together with the landlord, the male present the day before also attended. The contract was signed, according to the witness, by the owner Oliver Grech and accused for the rental of apartment Violette, Number 7. She recognized the lease agreement exhibited. She confirmed the business card exhibited confirming she gave Charity a same business card. In cross examination, she answered that the concerned apartment being new was only rented once before the examined occasion. She confirmed that the business card actually referred to her sister's business, usually handed out to clients.

Oliver Grech – the apartment's owner, recognized the lease agreement entered with Charity Ofame. He testified he did not receive the rent money from Charity but from a man. He later confirmed he received the money from Ferdinand Onovo present in Court (vide Court verbal folio 221 *tergo*).

Inspector Pierre Grech and Inspector Johann Fenech were witnesses to Defence.

Inspector Pierre Grech confirmed that a Bill of Indictment had been presented against Ferdinand Onovo, filed at folio 845. He did confirm the charges proffered were related to another two persons - Jano and Aulis. Proceedings against these last two had according to the Inspector been determined. He confirmed that it was a related conspiracy to the charges filed against Onovo; as also that Aulis and Janno were involved in a controlled delivery that lead to Onovo; and on his part Onovo assisted the police so that yet another person was apprehended.

He confirmed that at the time of the said investigation, Ofame's name was never mentioned.

Inspector Johann Fenech confirmed he was involved in a search conducted in Onovo's apartment on the 21st August, 2011. He confirmed the police seized from here a substantial amount of cash stored in the sofa and twenty-two thousand eight hundred and thirty Euros (€22,830) in a wardrobe. This search was according to the Inspector conducted on the 21st August, 2011. He said that at that time no evidence resulted linking Onovo to any drug dealing.

He further continued that Onovo had shown him he bet on games and won a large sum of money frequently. He confirmed Charity Ofame did not figure in this investigation. He confirmed lap tops and mobile phones were seized from Onovo's residence but no branded clothes.

He did confirm that all items seized from Onovo in this search were in fact handed back to him.

On a Court order, both a legal copy of the Bill of Indictment issued against Onovo and a judgment handed down by the Criminal Court in the case "*Republic of Malta vs Aulis Zopp et*" were exhibited.

All evidence being determined, a note of submissions was presented by the Prosecution, Defence on its part chose to submit its closing points orally and a short note of submissions.

Considers:

That Charity Ofame Ovbiagele has been charged under two main legislations: Chapter 373 Money Laundering, and aggravated possession of heroin under Chapter 101 of the Laws of Malta; as also being an accomplice in the said crimes

or attempting any of the above under Chapter 9 of the Laws of Malta.

Premises primarily that in examining the records of the case to determine the merits, the Court notes that though both Orders necessary for the continuance of these proceedings were issued by the Attorney General under Chapter 101 and 373 of the Laws of Malta, at the earlier stage addressing the competence to an Inquiring Court, at the determination of the evidence addressed by the Prosecution only one Counter Order was sent to the Court for summary proceedings, thus placing the Court in an untenable position of two different competences in the same case. The only Counter Order present in the records of the case is that under Chapter 373 that is the Prevention of Money Laundering Act.

The Court, also conscious of the conclusion reached by the Pharmacist analysing the regarding substance found - no illegal material as scheduled in Chapter 101 of the Laws of Malta, made recourse to case law to resolve the anomaly created.

The said results would have led to an acquittal on the first charge. No material possession of the drug heroin resulted, as no such drug was found: the substance resulting to be a cutting agent.

Reference is here made to a judgment handed down by the Criminal Court of Appeal in the names “***Police vs Anthony Joseph Portelli***” dated 22nd December, 2006. In this case, accused was charged *inter alia* under both Drug Law 31 and Chapter 101 respectively. However, at the stage of adjournment for judgment it was noted that Attorney General had failed to remit the Counter Order under Chapter 101 of the Laws of Malta. The Court of Appeal in such a situation

concluded that Attorney General, once case had been effectively adjourned for judgment, therefore Defence had concluded in case, had in fact renounced to the original charge proffered under Chapter 31 of the Laws of Malta, and no other legal redress could be entertained.

The Court as presided is aware that in similar situations it took a different line to that above referred. It is of the opinion that such mistakes or '*lapsus calami*' should not be construed as a renouncement to any charges.

As long as Defence is granted all the faculties at Law to re-address defence issues, at least by the Court of First Instance, a renouncement to charge must, according to this Court, be very clean and unequivocal and not an implicit one!

In this case, the Court is however very satisfied to use the argument of a charge being renounced to, once Attorney General and Prosecution were or should have been aware of the conclusions of Pharmacist Mario Mifsud.

Therefore the Court is considering that Attorney General has renounced to the charge under Chapter 101 of the Laws of Malta, accused is not the answer to the same and this issue is thus disposed of.

The other charges to be examined are those raising from the Article 2 of Chapter 373 of the Laws of Malta.

Archbold, in considering the crimes in issue and referring to "The Process of Crime Act 2002", refers to it as "*The process by which the proceeds of crime are converted into assets which appear to have legitimate origins so that they can be retained permanently or recycled into further criminal*

enterprises.” (Archbold : Criminal Pleading : Evidence and Practice 2012 page 2475)

Jonathan Herring, in Criminal Law Text, Cases and Materials (Oxford, Third Edition), refers to this crime simply as one of dishonestly releasing a wrongful credit (page 536).

Commonly and for a better understanding of the crime, riddled with intricate complexities, the money laundering offence has been divided into three stages: placement, layering, and integration. Each stage supposedly necessary and culminating in converting illegal monies, filtering them through a system of transactions and barter so that the true nature of their provenance – crime, is concealed, purporting to show thus a clean image.

Our Law, Chapter 373 of the Laws of Malta, defines at length what constitutes money laundering in Article 2 thereof, establishing the very definition of it as the crime itself, without however mentioning the three stated stages.

Our Courts have also established that the three elements – placement, layering and integration, are not *per se sine qua non* elements necessary for the crime to exist, establishing that these stages were but a general description of the crime in question, for better understanding of the lay person sitting in a Trial by Jury. The Criminal Court reiterated further that thus the Prosecution need not, according to Law, prove the intention in each and one of these stages.

This short summary reflects the main points raised by the Court of Appeal in the judgment “*Police (Insp Angelo Gafa’) vs Carlos Frias Mateo*”, wherein the Court is here cited to have said this:

“Kif ben qalet tajjeb l-Ewwel Qorti diversi awturi jaqsmu l-process tal-hasil ta’ flus fit-tlett stadji imsejha “placement”, “layering” u “integration”. Dawn l-istadji gew imfissra b’mod konciz mill-Qorti tal-Magistrati. Pero` mill-bidunett ta’ min jipprecisa, li dawn l-istadji huma biss deskrizzjoni generali tal-process tal-hasil tal-flus. Hija skola ta’ taghlim li nholqot sabiex gurija tkun f’posizzjoni aktar felici sabiex tifhem l-intricci u l-kumplikazzjonijiet li jinvolve dawn it-tip ta’ reati. Ghalhekk il-qasma tal-process tal-hasil ta’ flus f’dawn it-tlett stadji hija wahda generali u bl-ebda mod dogmatika. Fil-fatt awturi ohrajn jikkritikaw din il-klassifikazzjoni minhabba li tissemplifika wisq is-sitwazzjoni u f’hafna kazijiet ma hiex riflessjoni veritjiera ta’ dak li realment ikun qed jigri. Ghalhekk dawn l-istadji ghandhom jittiehdu biss bhala punto di partenza u bhala deskrizzjoni generali tal-process tal-“money laundering” b’mod flessibbli tant li ma hux rikjest li l-prosekuzzjoni trid tipprova l-intenzjoni f’kull wiehed u wahda minn dawn l-istadji. Dan qiegħed jingħad fid-dawl ta’d-definizzjoni ta’ “money laundering” li nsibu fit-tieni artikolu tal-Kap. 373 kif ukoll ir-reati kkontemplati fl-artikolu 327, 328 u 329 tal-Att tal-Parlament Ingliz “Proceeds of Crime Act 2002” fejn analizi tagħhom ma tirrikjediex li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti “placement”, “layering” u “intergration” bil-propjeta`.”

The said case was decided on the 19th January, 2012.

The Prosecution however, even though albeit aided by various amendments effected in Chapter 373 of the Laws of Malta, still has to prove a nexus between the underlying criminal offence from where the dirty money originated or derived and the proceeds of the crime itself.

This principle is very well explained in another judgment handed down by the Criminal Court in the case “*Republic of Malta vs John Vella*” decided on the 9th November, 2007:

“L-Avukat Generali jista’ jakkuza persuna bir-reat ta’ money laundering minghajr ma jkollu sentenza ta’ kundanna ta’ dak li jkun qed jigi allegat li huwa l-attivita’ kriminali sottostanti. Certament pero, ikun x’ikun il-kaz, jekk l-Avukat Generali jiddeciedi li jakkuza lil xi hadd b’money laundering irid jindika n-ness bejn l-attivita’ kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverzjoni ta’ trasferiment ta’ proprjeta’, mhux kull habi jew wiri ta’ proprjeta’ necessarjament jammonta ghal money laundering. Din hi Ligi straordinarja li tintroduci kuncett radikali fis-sistema nostrana u li tirrikjedi applikazzjoni bl-akbar skuplu u attenzjoni biex ma tigix reza fi strument ta’ ingustizzja, iktar reminixxenti taz-zminijiet tal-inkluzjoni minn dawg tal-era moderna tad-drittijiet tal-bniedem.”

The proof underlying offence is regulated by Article 2(2)(a) of Chapter 373 that reads:

“A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity.”

Therefore, the Prosecution are aided, to an extent, in proving the necessary nexus either by circumstantial evidence or any other evidence, but not necessarily a conviction that establishes the underlying offence.

It does remain incumbent on the Prosecution to proof this.

This Act also regulates the defence of this crime. Article 3(3) of Chapter 373 reads:

“In proceedings for an offence of money laundering under this Act the provisions of article 22(1C)(b) of the Dangerous Drugs Ordinance shall mutatis mutandis apply.”

Whilst Article 22(1C)(b) of Chapter 101 of the Laws of Malta reads:

“In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.”

It therefore transpires that for a charge of money laundering to be proven successfully, the Prosecution must proof the nexus between the criminal activity and the proceeds thereof. On its part, Defence here - also to the level of probability, has to explain the licit provenance of the monies or proceeds.

As premised, the charges brought against Ofame were amended to reflect the 2007 amendments, these concerning the knowledge of the provenance of the proceeds.

The Law in Article 2 of Chapter 373 of the Laws of Malta, speaks of the knowing or having suspicion that the property,

proceeds concerned are a derivative of an illegal operation, an underlying offence, of dirty money to use common parlance.

The point in issue here is what constitutes knowledge or suspicion, the formal mental element necessary so that this crime is constituted. Whilst the word ‘knowledge’ may present less problems because it is more overt and obvious, one either knows of a fact or not, the element of suspicion is more volatile to understand. It would be apt to consider these two elements more in depth.

Guidance is here sought by reference to Money Laundering Offences: The Law Society, Chapter 5, 2013, October Practice Notes. This extract refers to the POCA but can help us understand the mental elements necessary under our Legislation. To keep in mind is that our Chapter 373 speaks only of knowledge and suspicion, whereas the POCA speaks of three elements including that of a “reasonable grounds for suspicion” this within the limitations hereunder outlined:

“5.3 Mental elements

The mental elements which are relevant to offences under Part 7 of POCA are:

- *knowledge*
- *suspicion*
- *reasonable grounds for suspicion*

These are the three mental elements in the actual offences, although the third one only applies to offences relating to the regulated sector. There is also the element of belief on reasonable grounds in the foreign conduct defence to the money laundering offences. A person will have a defence to a principal offence if they know or believe on reasonable

grounds that the criminal conduct involved was exempt overseas criminal conduct.

For the principal offences of money laundering the prosecution must prove that the property involved is criminal property. This means that the prosecution must prove that the property was obtained through criminal conduct and that, at the time of the alleged offence, you knew or suspected that it was.

For the failure to disclose offences, where you are acting in the regulated sector, you must disclose if you have knowledge, suspicion or reasonable grounds for suspicion; while if you are not in the regulated sector you will only need to consider making a disclosure if you have actual, subjective knowledge or suspicion.

These terms for the mental elements in the offences are not terms of art; they are not defined within POCA and should be given their everyday meaning. However, case law has provided some guidance on how they should be interpreted.

5.3.1 Knowledge

Knowledge means actual knowledge. There is some suggestion that wilfully shutting one's eyes to the truth may amount to knowledge. However, the current general approach from the criminal courts is that nothing less than actual knowledge will suffice.

5.3.2 Suspicion

The term 'suspects' is one which the court has historically avoided defining; however because of its importance in English criminal law, some general guidance has been given. In the case of Da Silva [1996] EWCA Crim 1654, which was prosecuted under the previous money laundering legislation, Longmore LJ stated:

'It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.'

There is no requirement for the suspicion to be clear or firmly grounded on specific facts, but there must be a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation.

The test for whether you hold a suspicion is a subjective one.

If you think a transaction is suspicious, you are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. You may have noticed something unusual or unexpected and after making enquiries, the facts do not seem normal or make commercial sense. You do not have to have evidence that money laundering is taking place to have suspicion.

It is only by examining all the facts of the case presented to the Court, that one of these three elements can be proved. Obviously by knowledge transcends any suspicion.

The facts show that Charity Ofame by her own admission had been in the Maltese Islands for six years before she released

the statements in 2009, although the witness representing the Citizenship and Expatriate Affairs testified that she was in fact granted a residence permit, on the basis that her mother lived in Malta in 2008.

It further resulted that later on she went off to live on her own before this Court case, at the very flat in Naxxar where the search was effect.

Oliver Grech – the lessor, gave information to the police about the locality where Charity worked and that she was frequently seen in the company of a coloured man who drove in a white jeep. This was in fact the information received by the police that established the initial connection with Charity and Onovo.

Onovo was seen by the police leaving the vicinity of Ofame's residence. A search followed in both their residences and the seized items photographed in Dok JC.

Two salient facts also resulted concerning the lease, though denied by Onovo. Mr Grech, the lessor, testified he received the rent money (initially) from the same Onovo.

The estate agent Clarire Micallef was clear in her deposition that the apartment was initially viewed by Onovo and Ofame, but it was Onovo who bargained the lease due, questioned the functioning of the appliances. She described him as a dark skinned gentleman.

Though Ofame admits a friendship in her statement with Onovo, she falls short to admitting an intimate relationship. The undertones of such were frequently addressed by the Defence. The Court is convinced that in fact the relationship between Ofame and Onovo was very much more than just a friendship and moved to an intimate level.

Regarding the branded items seized, some from Onovo's apartment, it resulted that Onovo admitted to buying only some of the items found in Charity's possession. On her part in her statement, Charity admitted to loving branded items; that she could not afford them (folio 45). She admitted to owning the branded items found and said that they were bought by Onovo, going so far as indicating she did receive presents from men.

In her second statement, she altered her version, now saying that some of the branded items were given to her by Onovo.

Another connection with the accused, very much play down by Defence, was that to the Nigerian national stopped at the airport in possession of in excess of twenty-nine thousand Euros (€29,000), divided in two packets. It was this search and investigation of this Nigerian female that led to Charity Ofame since Ugoyi was found also in possession of a business card on which were written in ink accused's name and address. On her part, accused admitted to knowing this Ugoyi so much so that she even called her Aunty and received a phone call from her inquiring about her well-being.

Coincidentally the visiting card found was one used by the mentioned estate agent Claire Micallef, albeit issued in Micallef sister's name!

It also resulted that accused was of very meagre dire financial means, at times in the opinion of the Court even struggling, were she not supported. This is reflected in the compodium of assets itself. Moreover, Charity herself admitted to being money tight, going so far as acquiring washing detergent from her mother in her words to conserve money due to the fact

that she paid her tuition in monthly instalments of one hundred Maltese Liri (Lm100.00).

Her mother herself, although giving evidence regarding the reduction of the deposit, informed the Court that her daughter was of tight means, so much so she often asked her mother for money. It also resulted that Ofame was only in part time employment with the Seabank and earned two meagre sums in her participation as an extra in films.

Another fact established was the packet of powder found in Ofame's kitchen - a very isolated packet in an otherwise unused kitchen cupboard, actually stored away from kitchen utensils, even the scales!! (vide photos 09 CA2 00202_03_06_07, folios 59 and 60, Dok JC).

A packet however that though missing actual drugs contained a strange concoction of caffeine and paracetamol mixed together and commonly used as a cutting agent with heroin!! A non-negligible amount please note of 235.03 grams!!

All this established, the exercise remains to determine what Ofame knew or had a good solid suspicion about Onovo's activities.

Prosecution deposed that Onovo was well known to them due to charges brought against him regarding conspiracy to import drugs. A legal copy of the Bill of Indictment was in fact presented in the records of the case.

It resulted also proofed that Onovo earned money from bets and owned a house in Malta. No proof of any employment was entered in the records of the case.

It also resulted - always with regards to Onovo, that a later investigation yielded no evidence against Onovo with regards to drugs or money laundering, due to monies and branded objects found in his possession. Note also must be made to the way said monies were in fact stored! However, note must also be made that no proceedings were taken against Onovo for this incident.

It also resulted that in neither investigations against Onovo, the first one culminating in the issue of the above-mentioned Bill of Indictment, involved or in any way concerned the accused.

It is the proceeds from these alleged criminal activities on the part of Onovo and possibly others, that is the alleged underlying criminal activity from where the questioned proceeds in Ofame's possession are supposed to be derived.

Though no conviction has been reached and might not, the Prosecution and Attorney General certainly have sufficient reasonable grounds to believe Onovo's involvement, otherwise the Bill of Indictment would certainly not have been presented. Albeit, the charges proffered in the Bill of Indictment precede the charges under examination by a year. It would also seem from the records of the case, again Dok JC, that Mr Onovo, regardless of any Court case or Freezing Order, still enjoys a degree of affluence as is still collecting for his wife and himself branded items, even though his house is devoid of silver and antiques as pointed out by Defence, and has certainly in his possession sofa and wardrobe and a considerable amount of money.

Two questions in this exercise remain to be answered: did the accused know or suspect the provenance of the monies that

bought her the branded items and electronic equipment, and paid her rent? Secondly, did she provide a reasonable explanation as to the provenance of the items mentioned to satisfy Article 22(1C)(b) of Chapter 101 of the Laws of Malta?

The above-quoted reference from the Law Society underlines very well what Charity Ofame must have understood and was familiar with, concerning Onovo and/or others. The elements required at Law imply an understanding of a situation, one to a further and deeper degree than the other, since as seen a suspicion is enough.

Certainly, drug cases in Malta are given a considerable amount of media prominence. The very date of the Bill of Indictment shows that the Inquiry against Onovo lasted for about four years, so he was a constant presence in our Courts.

The Court also considers very relevant accused's knowledge of the Nigerian female arrested at the Airport carrying the twenty-nine thousand Euros (€29,000), or so. This lady was so familiar with Charity she actually phoned her up, presumable to check about her well-being, and also carried her name and address about! Charity went so far as out of respect calling her Aunty!

Charity was, as it resulted, so close to Onovo that she sought his counsel on the rent - actually initially paid by him, and received from him various expenses gifts, others she claims to have bought herself.

Another point that irks the Court is the transfer by accused of one thousand Euros (€1,000) to Russia, when she could barely make her ends meet!

Yet another ambiguous fact is the very isolated cutting agent found in her kitchen cupboard! Why would a young lady as is Miss Ofame store such a strange object in her kitchen cupboard, very well isolated from her other kitchen utensils?? Why indeed!

Be it premised also at this stage that the Court here is only examining the knowledgeable suspicious element in relation to Charity Ofame, and nothing should be construed and/or understood as pointing any guilty towards others!

Considers:

On examining the crimes and elements of Money Laundering, Article 2(2)(a) of the Act was referred to due to the fact that even circumstantial evidence can point out to prove the underlying activity. The Court believes enough evidence, when considered together in their totality, go to show this activity as well as providing Charity Ofame with a very wide spectrum to better understand that the monies buying her brands and electronics were a result of dubious dealings.

The Defence made much of the fact that these were merely gifts, and that this young lady had merely been guilty of receiving such through a relationship with a married man. The truth is a lot of young girls are beguiled by expensive high market gifts, but much depends how these are acquired!

Considers further:

The Court believes that all the delineated circumstances lead to point out to one conclusion: that Charity Ofame had more than a good suspicion of the provenance of the proceeds that

actually bought the goods in her possession - this also considering that certainly neither nor her mother, could afford them, considering their very limited wages. Her liaisons, and most especially the possession of a cutting agent, direct the Court to such a belief. Therefore, finds her guilty of the Money Laundering charges proffered, this after having seen Article 2(1)(b), 2(2A), 2(3); Chapter 373 of the Laws of Malta, and Section 22(1)(C)(b) of Chapter 101 of the Laws of Malta.

Acquits her from the first charge of the aggravated possession of heroin for reasons above-premised;

Acquits her also from the attempt under Section 41 and of acting as an accomplice under Section 42 – both of Chapter 9 of the Laws of Malta, since the Court considers that in the first case the actual crime itself was completed and never attempted, and considers that Charity Ofame was a main player in the retention of the converted proceeds, not an accomplice.

Considers further:

In examining the judgments to be handed down - the appropriate one, the Court considered a judgment handed down by the Court of Appeal per Judge Galea Debono in the names “*Repubblika ta’ Malta vs Maria Abela*” of the 29th March, 2007. Here, in examining the leniency of a judgment handed down in a money laundering case, the Court of Appeal dealing with the discretion afforded in the punishment under Chapter 373 of the Laws of Malta, proposed certain guidelines such as the amount of monies involved, and the repetition of the offence. The Court also spoke about a margin of

proportionality to be allowed for possible future judgments to be imposed that might carry graver or heavier amount of proceeds. The Court also considered benefits that may be applied in a judgment to favour the accused: the more obvious ones as the state of the conviction sheet, an early admission, or/and co-operation with the investigating authorities. The judgment itself in fact said:

“Illi meta giet introdotta il-ligi dwar il-“money laundering” fil-1994, il-legislatur stabilixxa l-pieni karcerarji w pekunjarji massimi applikabbli ghall-ksur tal-istess ligi bla ma iffissa minimi. Halla f’ idejn il-Qrati ukoll jekk japplikawx biss multa jew piena karcerarja jew iz-zewg pieni flimkien. Konfrontata b’ din id-diskrezzjoni hekk wiesgha fil-piena li tista’ tigi applikata, il-Qorti trid fl-ewwel lok tara tapplikax piena karcerarja jew wahda pekunjarja jew it-tnejn flimkien u mbaghad tiddeciedi il-kwantum f’ kull kaz.

L-ahjar u l-aktar kriterju stabbli li din il-Qorti tista’ tuza bhala gwida hu certament l-ammont li jkun involut fl-ezercizzju ta’ “money laundering” minn kaz ghall-kaz. Fattur iehor hu il-frekwenza jew ir-ripetizzjoni tar-reati. Pero’ wiehed irid janticipa li jista’ jkun hemm reati li skond dawn il-kriterji jistghu ikunu aktar gravi jew ghax l-ammonti involuti ikunu akbar jew ghax l-incidenza taghom tkun ripetuta u jkun kaz ta’ reat kontinwat. Ghalhekk fl-applikazzjoni tal-piena wiehed irid bil-fors ihalli margini li tkun tirrispekkja certa proporzjonalita’ fl-eventwalita’ futura li tkun trid teroga piena ghal reati aktar gravi kemm ghal dak li jirrigwarda ammont kif ukoll l-incidenza w kontinwita’ tar-reat.

Umbaghad wiehed irid jara kif dan jista' jigi effettwat minn attenwanti bhal ma huma il-fedina penali tal-hati, l-ammissjoni bikrija, ko-operazzjoni mall-awtoritajiet investigattivi u cirkostanzi ohra li normalment jittiehdu in konsiderazzjoni fl-ikkalibrar tal-pieni."

Thus the Court, after having seen the already quoted Sections, considering that Charity Ofame never or at any stage in time cooperated with the police, considering that her involvement was a result of wrong company, her love of expansive items which she could ill afford or not at all, considering that this young girl/woman acting very immaturely has however obtained a degree whilst in Malta which she seemed so flippantly ready to throw away, also considering especially her young age, and her clean conviction sheet.

Decides not to inflict a custodial punishment but to award her a non-custodial prison sentence in its full, thus sentences her to two(2) years suspended for four(4) years, after having seen Section 28 Chapter 9 of the Laws of Malta;
Seen also Section 533 of Chapter 9 of the Laws of Malta all the legal expenses incurred to the amount of four thousand four hundred and eighty-eight Euros and nineteen cents (€4,488.19).

Orders the destruction of drugs exhibited and marked as KB356.2009;

And objects KA 155.2011 seized are forfeited in favour of the Government of Malta.

< Final Judgement >

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