



MALTA

QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI
MAGISTRAT DR.
MARSEANN FARRUGIA

Seduta tat-3 ta' Dicembru, 2014

Numru. 542/2009

The Police

(Inspector Geoffrey Azzopardi)

vs.

James Babatunde Olaniyan

The Court,

Having seen the charges brought against:

James Babatunde Olaniyan, 45 years, son of David and Ruth, born Oshogbo, Nigeria on the 1st. January 1964 and residing Gawhra Court, Blk C, Flat 5, Triq il-Gifen, St. Paul's Bay, holder of Identity Card Number 35528A

Kopja Informali ta' Sentenza

Charged with having:

1. on the 11th May 2006 in Valletta made any false statement or given any false information, or produced any false document, for any of the purposes of the Identity Card Act, knowing the same to be false;
2. on the 1st. June 2009 and in the preceding months in these islands, 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. on the 1st. June 2009 and in the preceding months in these islands, rendered himself a recidivist in virtue of a sentence delivered by the Magistrates' Court on the 11th November 2004, which sentence is deemed final and cannot be altered.

Having seen the transmission of the Attorney General of the 22nd December 2009,¹ where the Attorney General expressed the opinion that the accused may be found guilty under the following provisions of law, namely:

- (a) in terms of Article 14(2)(b) of Chapter 258 of the Laws of Malta;
- (b) in terms of Article 5 of Chapter 61 of the Laws of Malta;
- (c) in terms of sections 17, 59, 50, 23, 31, 533 of Chapter 9 of the Laws of Malta.

Having heard the accused declare that he has no objection that his case be dealt with and decided by this Court by summary proceedings.

Having heard the witnesses, and having seen all the documents presented and all the other records of the case.

¹ See page 129 of the records of the proceedings.

Kopja Informali ta' Sentenza

Having seen the written notes of submissions of the parties;

This Court makes the following considerations.

The Facts of the Case

1. The accused came to Malta for the first time in 2003 after he travelled as a normal passenger with Nigerian passport No. A 1660593, after having obtained a regular entry visa by the Maltese authorities. On this passport, his date of birth is indicated 1st January 1964, and was valid till the 20th November 2007.² Subsequently, the accused managed to obtain further extensions of his stay in Malta.
2. In 2004, he attempted to go to the United Kingdom with some one else's passport, but was referred back to Malta after being so detected. Consequently he was arraigned in Court and convicted.³
3. On the 29th November 2004 he applied for asylum with the Office of the Refugee Commissioner. At the time he stated that his date of birth was 19th September 1987, and so he was not yet 18 years old, although his passport stated that the date of birth was 1st. January 1964. However the Refugee Commissioner received communications that from a bone age test done on the accused on the 16th May 2005, his age was 19 years plus (19+). On the 20th September 2005, his application for refugee status was declared invalid.⁴
4. For some reason which does not result quite clearly from the records, the accused was subsequently released from detention, and in 2008, he wanted to get married. The Marriage Registrar, asked him, amongst other things for a valid passport. The accused states that he sent his photo and a sample of his signature to Nigeria by post, and they sent him the second

² See passport A at page 22 of the records.

³ See judgement of this Court (presided by a different magistrate) of the 11th November 2004, found at page 23 of the proceedings.

⁴ See evidence of Maria Teresa Galea at page 61 *et seq.* of the records.

Kopja Informali ta' Sentenza

passport by post.⁵ On this second passport, bearing No. A 3562443,⁶ the date of birth of the accused is indicated as being 9th September 1987.⁷ He presented this passport to the Marriage Registrar and got married, and he obtained freedom of movement.

5. In the interim period, he also obtained a national identity card. In his application he indicated that his date of birth is the 9th September 1987.⁸
6. The marriage of the accused broke down, and as a consequence his freedom of movement was cancelled.⁹

Considerations of this Court as regards the guilt of the accused

The two passports were examined by PS 378 Silvan Bonello who works at the National Documents Examination Unit, and from the tests made on them it resulted that the first passport wherein the date of birth of the accused is indicated as being 1964 is genuine, but the second passport, wherein the date of birth of the accused is indicated as being 1987, is genuine, but it has a counterfeit biodata page, which means the page where the information of the bearer is printed, including place and date of birth.¹⁰

These conclusions of PS 378 Silvan Bonello, were confirmed by the expert Dr. Anthony Abela Medici, appointed by this Court. Dr. Abela Medici concluded that the signature on the second passport was not made by the accused but by some other person trying to copy his signature, and this passport has a counterfeit biodata page at page 33 which includes the false signature of the accused.

⁵ See evidence of accused at page 151 of the records.

⁶ See page 22.

⁷ See Passport B at page 22 of the records.

⁸ See evidence of Mary Tanti at page 41 *et seq.* of the proceedings, and the application for the identity card at page 43 of the proceedings.

⁹ See evidence of Ermelinda Zahra at page 107 *et seq.* of the proceedings.

¹⁰ See evidence of PS 378 Silvan Bonello at page 25 *et seq.* of the records, and his report at page 29 *et seq.* of the records.

Kopja Informali ta' Sentenza

The expert was of the opinion that the first passport is genuine in its totality, and the signature of the accused on it is a genuine one as well.¹¹

Hence the Prosecution is submitting that the true year of birth of the accused is 1964, as evidenced in the first genuine passport, and not 1987, as evidenced in the second passport which has biodata page counterfeited.

On the otherhand, the accused, both in his statement and in his evidence, is denying this, and is insisting that his year of birth is 1987, and that the second passport has his true signature. He explains that his parents were killed in Nigeria and he was about 16 years old at the time. He was told that to leave Nigeria, because his life was in danger, but since he was underage, he could not be issued with a passport. But an official in the Immigration Office of Nigeria issued the passport, but changed his year of birth.

As regards the second passport, the accused said that he needed this passport when he wanted to get married, because the marriage registrar requested it. He contacted the Immigration Officers in Nigeria and they told him to send his photo and his signature by post. Then they told him that since he will not collect it personally, he had to scan his picture and his signature. The second passport was sent to him by post.

In all official documents signed by the accused in Malta, he always indicated his year of birth as 1987. It is significant, that when he was asked by the Office of the Refugee Commissioner to produce evidence that he was born in 1987, the accused presented a copy of his birth certificate wherein it is clearly stated that he was born on the 9th September 1987.¹² This certificate has the stamp of the Registrar of Births and Deaths of Lagos Island, Nigeria. If the allegation of the Prosecution is true, then it would mean that the copy of this certificate has been forged as well – something which neither the Prosecution nor the Office of the Refugee Commissioner ever alleged.

¹¹ See evidence of Dr. Anthony Abela Medici at page. 112 of the records, and his report exhibited as Dok AAM at page 114 *et seq.* of the records.

¹² Exhibited at page 76 of the records.

Kopja Informali ta' Sentenza

It is true that from the bone age test exhibited by the prosecution,¹³ carried out on the 16th May 2005, the result was that the accused is over nineteen years (19) old, when according to the accused he was still seventeen (17) years old. However, in the opinion of this Court, this test cannot be conclusive, because as the defence lawyer rightly pointed out, the Prosecution did not bring forward any evidence that the bone density of a Maltese person and that of a Nigerian person are the same. This apart from the fact that the stature and physiomy of a human being may vary from one person to another.

In the light of the above considerations, the Court, fully aware of the state of turmoil unfortunately prevailing in Nigeria, still has a lingering doubt that what the accused has said may be true, that is that he was born in 1987. It is true that according to the expert's opinion the first passport is all genuine, while the second passport has a counterfeit biodata page. But the fact that the first passport is genuine, does not necessarily mean that the data on the biopage of that passport is true. The accused himself said that this passport was issued by the Immigration Office of Nigeria.

In the light of the above, in the opinion of the Court, the Prosecution did not manage to prove the first charge beyond all reasonable doubt.

As regards the second charge, there is definitely no evidence that the accused forged, altered or tampered with the biodata page on the second passport. However, he admits that he used this passport as one of the documents necessary for him to get married, and this passport was in his possession. The question which this Court has to determine is whether the accused knew that the biodata page on this passport was counterfeit.

The accused gave his version of how he obtained this second passport, and this version has been reproduced above. This version was not contradicted by anybody.

In his note of submissions, the Prosecuting Inspector submits that the accused maliciously changed his date and the place of birth in the second passport *"in an attempt to be released from the detention earlier since the false details portrayed him to be a minor."* But this submission is incorrect in two respects. In the first place, when the accused applied for the second passport, he was no longer in

¹³ At page 88 of the proceedings.

Kopja Informali ta' Sentenza

detention.¹⁴ Secondly, the accused applied for the second passport because he needed it to get married, and the passport was issued in April 2007. At that time, the accused was no longer a minor, but he was nineteen (19) years old, if the Court takes the date of birth to be 1987, as the accused is insisting.

In the Court's opinion, the accused version of how he ordered and was issued with the second passport does not indicate a very secure way how Nigerian passports are issued. However, again, in the light of the turmoil which exists in Nigeria, the Court cannot exclude beyond reasonable doubt, that this was actually the way the accused ordered and received his second passport. Obviously, in such circumstances, one cannot exclude that for some reason the passport was issued with a counterfeit biodata page, because someone in the Nigerian Immigration Office had an interest to forge the signature of the accused.

Obviously, the question arises whether the accused was aware that his signature was forged. The accused is insisting that it is his authentic signature. But in the light of the opinion of Dr. Abela Medici, this Court concludes that the signature is forged. But then one has to ask, was it in the interest of the accused to have a passport with his signature forged? The Court cannot think of any plausible reason why the accused should want a passport with his signature forged – especially since as he himself said, he wanted the passport to submit it to the Marriage Registrar, and obviously other public authorities, both in Malta and abroad.

In the light of the above considerations, in the opinion of the Court, the Prosecution did not manage to prove the second charge beyond reasonable doubt.

Since the third charge, that is that the accused is a recidivist, is only relevant, if the accused is found guilty of the first and/or the second charge, the Court cannot find the accused guilty of this charge.

Conclusion

¹⁴ See evidence of the accused at page 149 of the records.

Kopja Informali ta' Sentenza

For these reasons, the Court does not find the accused guilty of the charges proferred against him, and is consequently discharging him from the same charges.

< Sentenza Finali >

-----TMIEM-----