



MALTA

**COURT OF MAGISTRATES (MALTA)**  
**AS A COURT OF CRIMINAL JUDICATURE**  
**MAGISTRATE DR.**  
**JOSETTE DEMICOLI**

Sitting of the 9 th December, 2014

Number. 242/2010

**The Police**  
**[Inspector Raymond Aquilina]**  
**[Inspector Jesmond J. Borg]**

**VS**

**Omissis**  
**Osita Anagboso Obi**

Case Number: 242/2010

Magistrate Dr. Josette Demicoli LL.D.

**Today Tuesday 9<sup>th</sup> December, 2014,**

The Court,

Having seen that **Omissis** and Osita Anagboso holder of Nigeria Passport Number AO 1624272

Were charged both:

With having on these islands between the 10<sup>th</sup> and 11<sup>th</sup> March 2010, in the Maltese Islands,

1. committed an act of money laundering by:

- a) Converting or transferring of 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;
- b) concealing or disguising the true nature, source, location, disposition, movement, rights 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;

c) acquiring 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;

d) retaining without reasonable excuse of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

e) attempting any of the matters or activities defined in the above forgoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;

f) 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 forgoing sub-paragraphs (i), (ii), (iii), (iv) and (v).

Accuse Omissis alone of:

2. Whilst in Malta aids, abets, counsels or procures the commission in any place outside Malta of any offence punishable under the provisions of any corresponding law in force in that place, or who with another one or more persons conspires in Malta for the purpose of committing such an offence, or does any act preparatory to, or in furtherance of, any act which if committed in Malta would constitute an offence against this Ordinance

Accuse Osita Anagboso Obi alone of:

3. In these Islands, between the 10<sup>th</sup> and 11<sup>th</sup> March 2010, at about 2100hours and 1200 hours respectively, at the Malta International Airport, Gudja, failed to declare to the Comptroller of Customs, that he was carrying a sum equivalent to €10,000 or more in cash, whilst entering and leaving these Islands [Malta], in breach of Article 3 of Legal

Notice 149 of 2007 (Cash Controls Regulations, 2007) of the External Transactions Act (Chapter 233 of the Laws of Malta);

The Court was requested to attach in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and further to prohibit the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property in terms of article 22A of the Dangerous Drugs Ordinance Chap 101 of the Laws of Malta, of Article 5(1)(a)(b) of the Prevention of Money Laundering Act, Chapter 373 as well as to issue orders as provided for in Articles 5(1) and 5(2) of the same Act and of article 23A of the Criminal Code Chap 9 of the Laws of Malta.

Having seen the order of the Attorney General issued in terms of section 3(2A)(b)(c) of Chapter 373 of the Laws of Malta.

Having seen the Attorney General's consent for the commencement of proceedings against the accused in terms of Regulation 3(6) of Subsidiary Legislation 233.07.

Having heard the witnesses and the oral submissions of the parties.

Having seen the acts of the proceedings.

Having considered

The facts of the case are the following: Obi Osita Anagboso, a Nigerian national, arrived in Malta on the 10<sup>th</sup> March 2010 on an AirMalta flight

KM377 from Berlin at around 2100hours. Inspector Jesmond Borg testified<sup>1</sup> that the Drug Squad Police were informed that the accused was going to travel to Malta from Germany and he was suspected to be carrying money to be used in a drug deal. When the accused arrived in Malta he was carrying a hand luggage ( a black fabric bag) attached to his shoulder. His movements were followed by the Police and it was noticed that from the airport he caught a taxi to Sliema front just in front of the Tower Palace Hotel. A few minutes later a red Citroen C3 car bearing Registration No. KAK 717 picked him up and drove him to the 'Blue Hawaian' in Paceville where they stopped and had a couple of drinks. At about 11pm of the same evening, that is 10<sup>th</sup> March 2010, the accused was seen entering the same red vehicle together with the driver of the Citroen C3. They drove to B'Kara Valley and stopped near McDonald's and after about 15 minutes they went to St Mary Flats, Flat 2, Antonio Galea Street, Birkirkara which resulted to be the residence of Austine Eze who is also facing criminal charges which are still pending. The car was registered in Eze's name. It results that the accused had phoned Eze and that he had slept at Eze's flat overnight.

In the following morning, that is, on the 11<sup>th</sup> March 2010 at about 11am both the accused and Austin Eze left the apartment, entered inside the vehicle and proceeded towards Malta International Airport near McDonald's. The accused was noted leaving the residence carrying a blue luggage instead of the one he came with on his arrival and after leaving the vehicle he walked towards the Malta International Airport. At about 11.45am the accused checked with the Ryanair flight FR5383 to Madrid and checked in the luggage. He went through the security measures and whilst waiting at the boarding gate he was stopped both by the Drug Squad personnel and the customs officials to search inside his luggage. The amount of €31,492 was found which amount was not declared with the Malta Customs. Thus, the accused was immediately arrested and the money seized.

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<sup>1</sup> On the 29<sup>th</sup> March 2010

The accused released a statement after having consulted with a lawyer. In the first statement the accused told the Police that he worked as a freelance clothing seller and his profit from such activity per month was approximately €400 to €600. He stated that he booked his flight two days before and confirmed that he had one black hand luggage. He stated that in this luggage he had clothes and money which amounted to approximately €31,000. He said that when he arrived in Malta at around 2100hrs, he took a taxi and asked a taxi driver to take him to a hotel. The driver took him to a hotel near the sea but the hotel had no available rooms. Then, he continued to state that he met a British girl near the Beach and she took him to a hostel and so he stayed there for the night. He said that he paid about €30 and spent €40 in taxis expenses. As for the morning of the 11<sup>th</sup> March 2010 he stated that he went around to shop for a bag and he phoned his brother in Spain to ask him if he contacted a tile seller and his brother invited him to go to Spain to go to buy tiles together. So, he stated that he went to the airport by taxi at around 11:45am. His brother booked his flight from Spain. The accused stated that the reason for his visit in Malta was for tiles and that he brought the money from Nigeria. Such money belonged to his family business dealing on tiles in Nigeria. He stated that the amount of money carried from Nigeria to Germany was €60,000 which money was not declared with the German authorities. He also stated that he has been living in Germany since 1999.

In the second statement the accused stated that he was sent from Germany to Malta by a Ghana national, whom he met in Germany through a certain Apen, to deliver money to Spain via Malta. The Ghana man, who was never identified in these proceedings, told the accused that as soon as he arrived in Spain he would earn €500. The accused stated that he was given €22,000 to deliver to Malta, was given the name of a hotel and was told that he was going to meet Austin Eze and in fact was given the latter's contact number. In fact, Eze picked him up and after having a drink in Paceville went to Eze's flat and slept straightaway. In the morning the accused stated that Eze gave him €9,500 in order to take them to Spain.

The money was mixed together and Eze gave him the blue luggage and accused also stated that Eze gave him a ticket to travel to Spain. He stated that he accepted to deliver the money because he was in need to earn money and he was told that with this money they wanted to buy tiles from Spain.

In these proceedings, Inspector Victor Aquilina testified<sup>2</sup> that during the year 2009 the Drug Squad Police was informed from the Dutch counterpart regarding a Maltese national who was caught carrying drugs in Holland and was convicted to 5 months imprisonment. Inspector Aquilina investigated this Maltese national, a certain John Joseph Debono, and on the 11<sup>th</sup> March 2010 he sent for him and Debono released a written and signed statement which was also confirmed on oath in front of a Magistrate.

John Joseph Debono<sup>3</sup> testified that he met Austin Eze months before and the latter had asked him to go to Holland and import drugs for him which were destined for abroad and told him that he would earn €5,000. The witness accepted. On the 24<sup>th</sup> April 2009 he went to Holland where he met some people and came back to Malta. Then, he went again to Amsterdam to meet some people. Eze gave him a two-way air ticket to go from Madrid to Argentina. He also gave him €200 to exchange into Argentinian currency. When he arrived in Argentina he exchanged money, went to buy a mobile line and went to the address given to him by Eze. On the last day, Eze's friend called him and agreed to meet and he gave him 49 capsules which he had to swallow and the following day he had to leave for Holland. When he arrived in Holland he was arrested. He was convicted to 5 months imprisonment. He testified that Eze's car was a red citroen C3 KAK 717. He confirmed his sworn statement and with regards to JB1 he stated that the handwriting with addresses belongs to Austin Eze who wrote them in front of him.

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<sup>2</sup> Sitting of 19<sup>th</sup> July 2010

<sup>3</sup> Sitting of 21<sup>st</sup> July 2010

Inspector Norbert Ciappara<sup>4</sup> testified that on the 10<sup>th</sup> March 2010 the Police had reliable confidential information that a Nigerian was travelling from Germany to Malta possibly being a money courier and they knew that this person was called Obi. He was monitored on his arrival and placed under surveillance. He met another Nigerian resident in Malta who was subject to police investigations on drug-related offences. The accused spent the night with Eze and the following morning Eze drove Obi to Malta International Airport and as soon as the accused was leaving departure lounge to embark on an aircraft on a flight from Malta to Spain he was stopped, searched and found to be carrying considerable amount of money. When this information was shared with the German authorities witness was informed that following a search which was carried out in Obi's residence they had found drugs.

Letters Rogatory from the German authorities read that from the investigations carried out from such authorities gave reason to believe that Osita Anagboso Obi was involved in drug dealing in the Federal Republic of Germany. Telephone monitoring revealed that the accused was travelling as a drug trafficker via Malta to Spain when he was arrested in local proceedings. When the German authorities got to know that he was arrested in Malta the accused's apartment in Halle was searched by order of the Halle District Court. Amongst the various items seized were not insignificant quantities of cocaine and marijuana as well as other items of packaging/portioning equipment. They also sent an official expert opinion on the items seized.

Having considered

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<sup>4</sup> Sitting of 19<sup>th</sup> July 2011

The Money Laundering Act became part of our law on the 23<sup>rd</sup> September 1994. there were various amendments introduced particularly by means of Act XXX1 of 2007 and Act VII of 2010. These were significant amendments in the sense that before 2007 what the law required to be proven was the knowledge on behalf of the offender of money laundering. Following the amendment there was the introduction of the word suspicion. Moreover, in 2010 article 2(2a) of Chapter 373 of the Laws of Malta was amended and now the prosecution not only it does not have to prove that there was a conviction in respect of the underlying criminal activity but also there is not the necessity to establish precisely which underlying criminal activity. This last amendment cannot find its application in this particular case because the charges refer to March 2010 whilst the amendment came afterwards.

The Criminal Court of Appeal had the opportunity to analyse in detail the onus of proof which burdens the parties in money laundering cases. In fact in the case in the names of *Il-Pulizija vs Carlos Frias Mateos* decided on the 19<sup>th</sup> January 2012 the Court held that:

*Ma hemmx dubju illi r-reat ta' money laundering huwa wiehed mir-reati l-aktar difficili u delikati biex jigu nvestigati. It-teknika u s-sofistikazzjoni tal-mod kif il-flus jigu girati u jinbew mill-provenjenza llecita taghhom jaghmluha kwazi mpossibli illi l-investigaturi jsibu tracca tal-provenjeza tal-flus. Kien ghalhekk illi f'dawn ic-cirkostanzi l-ligi tal-Money Laundering Kap 373 ipoggi l-oneru fuq dak li jkun illi huwa jipprova ghas-sodisfazzjon tal-Qorti l-provenjenza lecita tal-flus illi jkunu nstabu fuqu. Dan il-bdil ta' l-oneru tal-provi m'hijjex wahda kapriccjuza u kif qalet il-Qorti fil-kawza "Il-Pulizija vs John Vella" "din hi ligi strordinarja li tintroduci kuncetti radikali fis-sistema nostrana u li tirrikjedi applikazzjoni fl-aktar skruplu u attenzjoni biex ma tigix reza xi sturment ta' ngustizzja, aktar*

*reminixxenti taz-zminijiet ta' l-inkwizzjoni minn dak ta' l-era' moderna tad-drittijiet tal-bniedem. . . .”.*

*Il-Qorti qieghda taghmel dan il-pronuncjament fl-isfond tad-dispost ta' l-Artiklu 2(2)(a) u l-Artiklu 3(3) tal-Kap 373 tal-Ligijiet ta' Malta illi ghandhom jinqraw fid-dawl ta' l-Artiklu 21(1c)(b) tal-Kap 101 tal-Ligijiet ta' Malta li jstipulaw li l-Avukat Generali jista' jakkuza persuna bir-reat ta' “money laundering” minghajr ma jkollu xi sentenza b'referenza ghal xi offiza precedenti. Ma dan kollu, jibqa` l-fatt illi l-Avukat Generali ghandu jipprova n-ness bejn il-flus jew il-propjeta u l-attivita kriminali li tkun generat dawk il-flus.*

*Dwar il-livell ta' prova li jinkombi fuq l-Avukat Generali, l-Qorti taghmel referenza ghall-kawza “Il-Pulizija vs Paul Borg” deciza mill-Qorti ta' l-Appell Kriminali fis-sitta (6) ta' Ottubru ta' l-2003. F'din il-kawza l-Qorti kienet qalet illi meta l-Avukat Generali jakkuza lil xi hadd bl-offiza ta' money laundering taht il-Kap 101 tal-Ligijiet ta' Malta, l-Avukat Generali ghandu jipprova “prima facie” n-ness bejn il-flus jew il-propjeta u l-attivita kriminali li tkun generat dak il-flus jew propjeta. Minn ezami u qari akkurat ta' din id-dispozizzjoni din il-Qorti thoss li una volta li l-prosekuzzjoni tiddeciedi li tipprocedi skond l-Ordinanza Kap 101 u mhux taht id-dispozizzjonijiet tal-Kap 373 ossia l-Att tan-1994 kontra “Money Laundering”, fejn l-attivita kriminali sottostanti tista' tkun varja u tirreferi ghall-ksur ta' diversi ligijiet kif indikat fit-tieni skeda ta' l-istess Att, irid almenu jigi “prima facie” pruvat li l-akkuzat ikun qed jagixxi bi hsieb li jahbi jew jikkonverti flus jew ir-rikavat ta' flus u jkun jaf jew ikollu suspett li dawk il-flus ikunu miksuba bhala rizultat ta' ksur ta' xi dispozizzjoni ta' l-Ordinanza Kap 101 u dana qabel ma tiskatta l-inverzjoni ta' l-oneru tal-prova fuq l-akkuzat.”*

*F'din il-kawza, l-appellat qed jigi akkuzat bil-ksur ta' provvedimenti tal-Kap 373 tal-Ligijiet ta' Malta izda dan il- Kap jaghmel referenza wkoll ghall-Artiklu 21(1c)(b) tal- Kap 101 tal-Ligijiet ta' Malta li wkoll jitfa' l-piz li juri l-origini lecita tal-flus, propjeta jew rikavat fuq il-persuna akkuzata. Ghalhekk, dan il-livell ta' prova "prima facie" japplika kemm ghall-persuna li tkun akkuzata b'money laundering taht il-Kap 101 kif ukoll taht il-Kap 373. Issa, peress illi l- Artiklu 2(2)(a) ta' l-istess Att jezimi mir-responsabilta' l-prosekuzzjoni illi tipprova xi htija precedenti in konnessjoni ma xi attivita` kriminali, kull ma ghandha tipprova l-prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal-persuna li ma kienux konformi ma l-istil ta' hajja tal-persuna, liema prova tkun tista' tigi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-prosekuzzjoni m'ghandix tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kienu illegali. Kull ma trid tipprova huwa fuq grad ta' "prima facie" illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta' dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, jkun imiss lill-akkuzat sabiex juri illi l-origini tal-flus ma kienx illegali.*

*Forsi f'dan l-istadju ikun opportun illi jigi kwalifikat il-prova "prima facie" u fiex din tikkonsisti.*

*Ikkunsidrat*

*Hu ben saput illi l-Qrati generalment jirrikonoxxu erba' tipi ta' prova, dak li huwa possibli, l-probabbli, minghar dubju dettat mir-raguni u c-certezza. Izda l-prova "prima facie" hija wzata mill-Magistrat Inkwirenti meta jirredici l-Process Verbal u l-Magistrat Istruttur fl-gheluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta' prova illi tidhol bejn il-possibli u l-probabbli.*

*L-awtur Blackstone (At D 6.21) jghid fost affarijiet ohra, "Thus, the standard of proof the prosecution are now required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer." Il-probabbli huwa l-livell uzat f'proceduri civili. Ghalhekk skond dan l-awtur "prima facie" huwa anqas minn hekk u jista' jigi definit bhala "a case to answer", haga li ghandha tigi nvestigata aktar fil-fond."*

Thus taking into account the proof produced by the prosecution in this case was this *prima facie* level attained? Was there a case to answer?

Having considered

It is evident that the Prosecution is stating that the underlying criminal activity is drug-trafficking.

The following results from the acts of this case:

The accused is a Nigerian national who had been living in Germany since 1999. On the 11<sup>th</sup> March 2010 he was arrested at the Malta International Airport having on him €31,500. The accused in his statement dated 11<sup>th</sup> March 2010 stated that he was a freelance clothing seller. During his examination without oath in Court he declared that he works as a brick layer, construction work. The accused stated in his first statement that the €31,000 were his and belonged to family dealings in tiles and that he had brought from Nigeria to Germany the amount of €60,000 which amount was not declared with the German authorities.

In the first statement the accused states that he came to Malta for 'tiles'; in the second statement he states that he left Germany to Spain via Malta because in Malta he had to meet Eze. He was told that the money was for 'tiles'.

It results that the accused bought his ticket to Malta on the 08<sup>th</sup> March 2010 and that as soon as he arrived in Malta he contacted Austin Eze. The latter went to pick him up, they went for a couple of drinks in Paceville. Subsequently, they drove to Birkirkara valley and met a Maltese couple near McDonald's and after about fifteen minutes they went to Eze's residence where the accused slept overnight. Hence, it is more than evident that the accused did not even book a hotel where to sleep overnight because he knew that he had to meet Eze and sleep at his residence.

It results that the accused travelled to Malta with a black hand luggage but when leaving Eze's apartment in the morning he carried a blue luggage instead.

The accused at first stated that the money came from family dealing in Nigeria and then in the second statement declared that Euro22,000 were given to him by a Ghana national (who was never identified) and the rest of the amount, i.e. Euro9,500 were given to him by Eze whilst in Malta.

The accused stated in his statement that the ticket for the Ryanair flight to Madrid was bought by his brother in Spain in the first statement; then in the second statement stated that Eze gave him the ticket.

It results from testimony produced (Joe Bugeja on the 26<sup>th</sup> January 2011) that the Ryanair flight ticket to Madrid was purchased in Malta.

It also results from Debono's testimony that Eze gave him the necessary contacts with people involved in drugs and this for a drug deal. It is true that although Debono testified that he has been condemned for drug trafficking in Holland for five months imprisonment no such judgement was filed in the acts of this proceeding and from the Letters Rogatory from the Netherlands the information on Debono given was that he was arrested in 2009 on suspicion of drug trafficking. However, Debono's testimony has been corroborated in various manners – it results from documents exhibited by Ronald Cilia (21<sup>st</sup> March 2011), security and compliance officer with Fexco Financial Services representing Western Union Money Transfers, that on the 23<sup>rd</sup> March 2009 Eze sent via western Union the amount of Euro100 to John Joseph Debono at The Hague. This shows undoubtedly a link between Debono and Eze. Debono stated that Eze offered to pay him Euro5,000 to import drugs for him which were destined for abroad.

At this stage it is important to refer to the expert's conclusion, Joseph Mallia (13<sup>th</sup> June 2011) who reported that:

*'After document JBI (two slips of paper containing addresses), document JB17 (grey business card of Austin Eze containing address at the back) and documents OA1, OA2 handwriting samples of Osito Anagboso Obi and AE1, AE2 handwriting samples of Austine Eze, as deposited on the 2<sup>nd</sup> May 2011, were thoroughly examined and all the necessary photographic enlargements and comparisons were carried out, the undersigned concludes the following:*

- 1. The writing contents as written on documents JB1 (two slips of paper containing addresses) and documents JB 17 (grey business card of Austine Eze containing address at the back), were compared with the hand writing samples of Osito Anagboso Obi marked as documents AO1 and AO2, with negative results.*
- 2. The writing contents as written on document JB1 (two slips of paper containing addresses) and document JB17 (grey business card of Austine Eze containing address at the back), were compared with the hand writing samples of Austine Eze marked as document AE1 and AE2 and it resulted that several characteristic points were identical and positively compared.*

These documents JB1 are the documents referred to by Debono when he explained that it was Eze who provided him with addresses which he had to go to when in Argentina. Debono stated that when in Argentina Eze's friend called him and when they met he was given 49 capsules which he had to swallow and the following day he left for Holland.

It has also been confirmed that a Citroen C3 Registration number KAK 717 (Norbert Buhagiar – 27<sup>th</sup> October 2010) was being leased to Austine Eze every month starting from the 21<sup>st</sup> October 2008 till the 28<sup>th</sup> February 2010.

Mention must also be made at this stage to the Letter Rogatory from German authorities who have already been referred to previously.

Another point which must be mentioned is that in one of the mobiles seized from Eze's possession, two Sms's from a number 346340119848 dated 10<sup>th</sup> March 2010 (thus same day when the accused arrived in Malta) whereby he was informed of the time or arrival of the Berlin flight to Malta and the place where they had to meet, ie. New Tower Palace Hotel Sliema.

The accused in his statement stated that this Ghana man gave him the Euro22,000 for tiles and he would be paid Euro500. However, even if the Court had to believe this is true (which it doesn't), it is extremely hard to believe that the accused had no suspicion that what he was doing was illegal. Who would not suspect that such an amount of money was totally legal when there are so many financial institutions which facilitate the transfer of money? The Court is not ignoring at this stage what was stated in *Pulizija vs John Vella* namely *“Mhux kull akkwist, mhux kull konverzjoni ta' trasferiment ta' proprjeta', mhux kull habi jew wiri ta' proprjeta' necessarjament jammonta għall-money laundering, anki jekk l-akkuzat ikun criminal inkallit (sottolinjar tal-Qorti. Din hi ligi straordinarja li tintroduci kuncetti radikali fis-sistema nostrana w li tirrikjedi bl-akbar skruplu w attenzjoni biex ma tigix reza fi strument ta' ingustizzja, iktar reminixxenti taz-zmenijiet tal-inkwizizzjoni minn dawk tal-era moderna tad-drittijiet tal-bniedem”*.

Moreover, it does not result that he went to try to look for tiles. On the contrary, it has been proven that during his very short stay in Malta (not even 24 hours) the accused met with Eze and stayed with him all the time. It has also been proven that the accused himself has ties with drugs and so does Eze.

That it is to be emphasised that the charge of money laundering brought against defendant is based on Chapter 373 of the laws of Malta and not Chapter 101. In the latter case the prosecution must necessarily show a link between the assets being laundered and some criminal activity prohibited under Chapter 101. In the former case (i.e. an offence under Chapter 373) what the prosecution must show is a link between the laundered assets and an offence listed in either the first or second schedule of the said Chapter 373 which however also include traffic in narcotic drugs and psychotropic substances.

That it must also be emphasised that what must be shown for the prosecution to satisfy its onus is a link between some criminal activity and the assets in question. This has been affirmed by the Court of Criminal Appeal in the case *Republic of Malta vs John Vella*<sup>5</sup> when it said:

*“...l-Avukat Generali jista’ akkuza persuna bir-reat ta’ money laundering minghjar ma jkollu sentenza ta’ kundanna ta’ dak li jkun qed jigi allegat li huwa l-attivita kriminali sottostanti.... Certament pero ikun x’jkun 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”.*

In fact, at this point the Court refers once again to what was stated by the Court of Criminal Appeal in the case in the names of *Pulizija vs Carlos Frias Mateo*:

*“Fl-isfond ta’ dwn il-provi, l-Qorti hija sodisfatta li l-prosekuzzjoni wriet illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini tal-flus kif ukoll li l-flus li nstabu fil-pussess tieghu ma kienux konformi mal-istil ta’ hajja tieghu. Dan lahqitu fil-livell ta’ prova “prima facie” u b’hekk skatta l-inverzjoni tal-provi fuq l-appellat sabiex huwa juri lill-Qorti l-provenjenza lecita tal-flus illi nstabu fuqu.”*

That once the prosecution satisfied this onus, in terms of article 22(1C)(b) of Chapter 101 of the Laws of Malta which applies to proceedings for an offence of money laundering by application of article 3(2A)(3) of Chapter 373, the burden of proof then shifts on defendant who has the onus of showing the lawful origin of the money in question. Defendant produced no such evidence. The accused did not testify and did not produce any evidence. Thus, he has not

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<sup>5</sup> Decided on the 29.11.1999 and quoted in *Police vs Paul Borg* (Court of Criminal Appeal in its inferior jurisdiction 06.10.2003).

even tried to explain from where the money originated and it as proven that such an amount did not reflect his way of life. In fact he declared that he was in need of money.

The Court thus believes that all the delineated circumstances lead to point out to one conclusion: that Anagboso had more than a good suspicion of the provenance of the proceeds of the money in his possession.

Therefore, finds the accused guilty of the Money Laundering charges proffered.

The accused is also being charged with breaching the Cash Controls Regulations namely Regulation 3 of Subsidiary Legislation 233.07. This regulation lays down:

*“3. (1) Any person entering or leaving Malta, or transiting through Malta and carrying a sum equivalent to €10,000 or more in cash shall be obliged to declare such sum to the Comptroller.*

*(2) The obligation to declare any such sum as in subregulation (1) shall not be fulfilled unless such person has completed the applicable form, appearing in the Schedule, and has handed in such form to the Comptroller when entering or leaving Malta, or transiting through Malta.*

*(3) Where any cash has not been declared as provided in subregulation (1), the Comptroller shall seize the undeclared amount in excess of €10,000, or the whole amount when the cash is indivisible.*

*(4) A person who makes a false declaration for the purpose of these regulations or who does not fulfil the obligation to declare such sum in terms of subregulation (2), shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) equivalent to twenty-five per centum of the value, represented in local currency on the date of entry or leaving Malta or transiting through Malta, by the cash carried, but in any case not exceeding a fine (multa) of forty-six thousand and five hundred and eighty-seven euros and forty-seven cents (46,587.47).*

*(5) The court shall, besides the punishment to which it may sentence the person convicted of an offence under subregulation (4), order the forfeiture in favour of the Government of the undeclared amount in excess of €10,000, or the whole amount when the cash is indivisible.*

*(6) No criminal proceedings for an offence under these regulations shall be commenced without the consent of the Attorney General.”*

The accused has been found with Euro31,492 which were undeclared with the Comptroller of Customs when he was leaving Malta. Upon entering Malta the accused stated that he had Euro 22,000 which amount was also undeclared.

Thus this charge has been proven by the Prosecution.

At this point, mention must be made of the fact that the Registrar of the Criminal Courts has filed an application from which it results that out of the amount seized from the accused, when he was arrested, there were 5 x €50 notes which were forged.

Since the accused has been found guilty of money laundering the whole amount involved must necessarily be confiscated.

That in so far as the penalty to be meted out is concerned the Court considered on the one hand the gravity of the offences of which defendant is being found guilty and the amount of money involved.

For these reasons the Court, after having seen section 3 of Chapter 373 of the Laws of Malta, regulation 3 of Subsidiary Legislation 233.07 and article 17 of Chapter 9 of the Laws of Malta, finds the accused guilty of the charges brought against him and condemns him to four years imprisonment from which any period which the accused was kept under preventive custody in relation with these proceedings must be deducted and to the payment of a fine of twenty thousand Euro (€20,000) which must be paid within one (1) year which fine shall be converted to a further term of imprisonment if it is not paid within one (1) year. Accused is also being condemned to pay the sum of €1372.82 representing expenses incurred in the appointment of experts in this case which payment is to effected within one (1) year and failure to pay such amount it shall also be converted to imprisonment.

The Court orders the seizure of the money involved in favour of the Government of Malta. The 5 x €50 notes which are forged are to be handed over to the Central Bank of Malta so that the necessary action can be taken. Also, the Court orders the forfeiture of all exhibited objects.

Since it has transpired from the expert's report following the order of the freezing of assets that the accused does not have any movable or immovable

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property there cannot be an order of seizure in favour of the Government of Malta.

**< Final Judgement >**

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