



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE
AARON BUGEJA

Sitting of the 6 th May, 2015

Number. 92/2014

Il-Pulizija

vs

Stephen Osei Boateng

The Court after seeing the charges issued against Stephen Osei Boateng holder of identity card number 0044884A whereby he was charged with having on these on these Islands, during the month of January 2014 and in the preceding years, in various parts of Malta, by means of several acts committed by the accused, even if at different times, which acts constitute violations of the same provisions of the law :

1. In order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information;
2. For having on the same dates, time and place committed any other kind of forgery, or knowingly made use of any other forged document, not provided for in article 188 of chapter 9 of the Laws of Malta;
3. For having on the same dates, time and place forged, altered or tampered with any passport or uses or had in his possession any passport which he knew to be forged, altered or tampered with.
4. For having on the same dates, time and place without lawful authority used or had in his possession any document required for the purposes indicated in Chapter 217 of the Laws of Malta, which was forged.
5. For becoming a recidivist, after being sentenced for any offence by a judgment from the Courts of Magistrates (Malta) which judgment has become absolute;
6. The Court was also requested that, in pronouncing judgment or in any subsequent order, sentence the person/s convicted, jointly or severally, to the payment wholly or in part, to the Registrar, of the costs incurred in connection with employment in the proceedings of any expert or referee, within such period and amount as shall be determined in the judgment or order, as per Section 533 Chapter 9 of the Laws of Malta.

Having analysed the documents that were exhibited and all the records of the proceedings;

Having seen that during the examination of the accused in terms of Article 392 and 370(4) of the Criminal Code the accused declared that he found no objection to his case being dealt with summarily.

Having also seen that the Attorney General declared by means of a note exhibited at fol 12 that he granted his consent to this case being dealt with summarily;

Having seen that the accused, in reply to the question posed by the Court in terms of Article 392(1)(b) of the Criminal Code, declared that he was not guilty;

Having heard all the witnesses produced and seen the records of the proceedings;

Having heard the final oral submissions of the Prosecuting Officer and of the Legal Counsel to the accused;

Considers the following :-

That the charges proffered against the accused stem from an inspection carried out by Customs Authorities in relation to a package that was received by the accused containing “international driving documents”. The Police were alerted and a search was carried out in the residence of the accused wherein more documents relating to the alleged sale of these documents in Malta was found. From these documents it transpired that the accused was the agent for Malta to the “International Automobile Driver’s Club”, apparently a private enterprise that issues these “international driving documents”. During the course of the search in the residence of the accused, the Police found also a “State of Sabotage” (SoS) passport that bore the particulars of the accused and his passport sized photograph – however the place of birth of the accused was stated to be Togo, when in actual fact, the accused ex admissis states that he was born in Ghana. Hence the Police charged the accused in Court as stated above.

Considers further that :-

A. The documents retrieved.

The documents found in the possession of the accused fall within the realm of the so called “fantasy passports”. According to information concerning the non-exhaustive list of known fantasy and camouflage

passports, as stipulated by Article 6 the Decision number 1105/2011/EU of the European Parliament and of the Council of the 25th October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list, fantasy passports are “passports” issued by minorities, sects and population groups and identity documents, etc. Issued by private organisations and individuals. They are not issued by officially recognised State authorities. Among the list drawn up by the European Union of fantasy passports one finds – both the International Automobile Alliance, International Translation of Driver’s License (Passport and ID-Card) as well as the “State of Sabotage” “passport”.

These documents are not recognised to be valid travel documents or licences. Hence they are also referred to as “fantasy documents”.

This has also been the position taken by the International Civil Aviation Organisation where during the Technical Advisory Group on Machine Readable Travel Documents, Sixteenth Meeting held in Montreal between the 26 and 28 September 2005 it had already considered these passports as having no value whatsoever as travel documents.

These are not issued by a State or other Organisation recognised at International Law.

B. The main legal principles applicable to this case.

The Maltese Criminal Code does not define “forgery”. It mentions the different manners in which a forgery may be committed. Forgery can take place : -

- (a) when a person counterfeits a document – that is to say makes a false document in whole or in part;
- (b) or when he alters a genuine document.

Maltese case law has established the distinction between material falsehood and ideological falsehood, much in line with principles of Italian Law. In fact, in the judgment delivered by the Court of Criminal Appeal in the case “Il-Pulizija vs Paul Galea” on the 17th October 1997, Chief Justice Emeritus Vincent de Gaetano decided that : -

filwaqt li fil-każ tal-falz materjali d-dokument jiġi ffalsifikat fl-essenza materjali tiegħu, fil-falz ideologiku d-dokument ikun iffalsifikat biss fis-sustanza u cioè` fil-kontenut ideali tiegħu (ara Antolisei, F., *Manuale di Diritto Penale – Parte Speciale II* (Giuffrè, Milano, 1986) p. 604). Fi kliem Manzini (*Trattato*, v. VI, n. 2296, p.829) ikun hemm falsità` materjali meta d-dokument ikun wieħed mhux ġenwin (jiġifieri jew meta l-awtur apparenti ma jkunx l-awtur reali tad-dokument jew meta d-dokument ikun issubixxa alterazzjonijiet wara l-formazzjoni definittiva tiegħu), mentri fil-falz ideologiku, għalkemm id-dokument ikun ġenwin ‘non e` veridico, perche` colui che lo ha formato gli fa dire cose contrarie al vero’. Għall-finijiet tad-dottrina in tema ta’ falsità` ikun hemm dokument

kull fejn hemm kitba, attribwibbli għal persuna identifikabbli, liema kitba tkun tikkontjeni esposizzjoni ta' fatti jew dikjarazzjoni ta' volonta` (Antolisei, F., *op. cit.*, p. 594). S'intendi, b'kitba wiehed ma jifhimx biss is-sinjali alfabetiċi, iżda tinkludi dawk numeriċi, stenografiċi u anke kriptografiċi, basta li dik il-kitba tesprimi ħsieb li jkun jiftiehem minn kulhadd jew minn ċertu numru ta' nies. Il-kitba f'dan is-sens tista' ssir kemm bl-id kif ukoll b'mezzi mekkaniċi, b'mezz indelibbli jew li jista' jithassar, u fuq kwalsiasi mezz li jista' jieħu, imqar temporaneament, il-messaġġ - karta, parċmina, injam, ġebel, ħadid, plastik, ecc.

This crime hits at the public trust, at the institutions giving rise to such documents and that are meant to guarantee public trust.

As a crime, the Prosecution has to prove beyond a reasonable doubt the existence of *dolus*. At common law for the crime of forgery to exist, the intent to defraud was always required. However developments in statute law made specific kinds of forgery - of public documents in particular - subject to the requisite intention to deceive. In continental jurisdictions, once that a person is proved to have wilfully altered the truth by the production of a false or altered document, then the fraudulent intention may be deemed to be presumed, without the need to produce further evidence of it.

Proof of actual prejudice suffered by third parties as a consequence of the production of the false document is not necessary to secure conviction. Actual prejudice or the possibility of causing harm may be

required to be proved when the falsity relates to a private writing. But not so when the falsity relates to public documents.

In the case of forgery of public documents the law aims at punishing the violation of public trust – irrespective of the harm – actual or potential. Public documents are intrinsically apt to create rights or to transfer rights and therefore their forgery is presumed always to cause harm (given the breach of trust that the public attaches to public documents) whether this harm materialised or not. The potential of causing harm is therefore not an essential ingredient of the crime of forgery that has to be proved by the prosecution. In the case of public documents, the crime of forgery exists even where the forged document is null on account of a defect in its form, or because of the non observance of a *sine qua non* formality.

However while the possibility of causing harm or fraud is not a constituent element of the crime of forgery of public documents, the possibility to deceive is deemed to be an essential ingredient in the crime of forgery whether in relation to both private and public documents.

According to Professor Anthony Mamo in his “Notes on Criminal Law”¹ page 160 : “A perfect imitation is not, of course, necessary. But if the manner of executing the forgery is so clumsy that the forgery itself is

¹ Volume 2, Page 160, Revised Edition 1954-1955.

obvious almost 'ictu oculi', then the crime of forgery is negated, although there may be another kind of offence (fraud) (cfr. "Rex vs. L. Cassar", C.C. 18.11.1941). He quotes from Majno adding that :

La falsita' per essere incriminabile, deve avere attitudine ad ingannare: non sara' necessaria l'imitazione perfetta: ma quando il falso sia cosi' grossolano e tale da dovere essere facilmente riconosciuto, non potra', per mancanza di vera e propria lesione delle fede pubblica, applicarsi il titolo di falso, ma soltanto (nei congrui casi) quello della truffa, se per l'ingnoranza o l'incuria della persona presso la quale fu adoperata la scrittura goffamente falsificata l'uso di questo abbia prodotto un danno.

Mamo adds that the document, though made to appear to resemble the true instrument - and though not being an exact replica - must still "be capable of deceiving persons using ordinary observation, according to their means of knowledge".

If through the use of such forged document the victim is deceived, then it is not possible for the defendant to raise the "question of the manner of execution of the falsity". Such that if the false document - even though it were a bad imitation or a gross counterfeit - deceives the intended victim, then the final juridical aim behind the production of this false document would have been reached - and it is futile to analyse further the potential of deceit posed by such a false document.

The object of the falsification has to be material to the public or private writing itself in its external conditions as a document.

C. The SoS passport.

Applying the above principles to the case in question, the Court concludes the following : -

The SoS passport is clearly, and *ictu oculi* a fantasy passport. This document lacks the basic security features common to genuine passports. Though it gives the general impression of a passport document, the possibility of it deceiving the competent immigration or other State authorities is very low. It is clearly a fantasy also because there is and there was no such real and lawfully existing State ever called "State of Sabotage". It cannot be considered to be a camouflage passport proper given that "Sabotage" itself is not a former State that is no longer in existence; nor can it be considered to be a document of a territory which is not internationally recognised.

As the name implies, it is a fantasy passport - a gross and totally fictitious document that, apart from being totally fictitious, cannot reasonably be deemed to be capable of deceiving persons using ordinary observation, according to their means of knowledge.

Moreover this qualifies also in terms of various Italian Court of Cassation judgments commented on by Tullio Padovani in his work “Codice Penale”² wherein it transpires that : “ulteriore conseguenza e’, poi, che la punibilita’ non puo’ considerarsi esclusa quando la falsificazione e’ riconoscibile soltanto a seguito di verifica da parte degli organi di vigilanza...e, in particolare quando sia individuabile unicamente ad un esame attento ed eseguito da vicino...la grossolanita’ della falsificazione deve essere valutata in relazione alle normali condizioni di visibilita’ e leggibilita’ oggettiva a nulla rilevando la mancanza, occasionale o puramente soggettiva di tali condizioni)... E’, poi, pacifico che la inidonieta’ assoluta della falsificazione deve essere valutata con un giudizio a posteriori e, quindi, che la falsita’ grossolana non esclude la punibilita’ qualora abbia, comunque, sorpreso la buona fede dei destinatari.”

Given the above, and the fact that his SoS passport is an evident *ictu oculi* fake and totally invalid as a travel document as sanctioned by EU Law, this Court cannot validly consider it to be a document lawfully **intended** for any public authority. More so when one considers that reasonably, there can be no public authority, worth this name, that can be deceived by a void document of this sort.

Though it purports to be a “passport”, and therefore under normal circumstances, would qualify as a public document, in this particular

² Tomo II, IV Edizione, 2007, Giuffre Editore, page 3063.

case, it cannot be deemed to be a “public” document in as much as it purports to be issued by a totally inexistent and fantasy state – “Sabotage”. The situation would have been different had this document purported to be issued by an existing State or a former State that had a real legal existence in the past. The State of “Sabotage” is totally imaginary, a figment of the imagination. While the document purports to be a public document – that is a document issued by a State – this State is totally imaginary. This Court cannot consider this document to be a “public document”.

Therefore it is possible for the Court to consider the gross fakeness of this document as a gross forgery, therefore excluding criminal responsibility for forgery.³

Furthermore, this document cannot qualify as a passport for the purposes of Chapter 61 of the Laws of Malta which defines "passport" as **including** a certificate of identity, a legally valid identification document or other official document issued for travel purposes by a competent authority. The reason being that as shown above there is nothing real, official or legally valid about this fantasy document and about its origin and its “State” of Issue.

³ See also the case : “Il-Pulizija vs Paul Bonnici” decided by the Criminal Court, (Appeal), on the 30th June 1961 per W. Harding where it was stated that the defence of gross falsification is not applicable in the case of a falsification of a public document. However this case related to an alleged forged driver’s licence (that is a public document) issued by reference to an existing State – and not a grossly false document purporting to be issued by an imaginary and fictitious State.

The same can be said in relation to the definition of “passport” for the purposes of Chapter 217 of the Laws of Malta that defines "passport" as a passport referring to the person who is required to produce the same, furnished with a photograph of such person, which is valid on the date on which the same person seeks entry into Malta and is not due to expire before the proposed date of departure of the same person from Malta, and includes any other similar document establishing the identity and nationality of the person to whom it refers to the satisfaction of the Principal Immigration Officer.

In this particular case the “State of Sabotage” passport was never a valid document as it is not a valid travelling document and could not have been valid on the date in question.

Furthermore, no evidence was brought in this case by Prosecution to prove that this fantasy passport could be considered as “any other similar document establishing the identity and nationality of the person to whom it refers to the satisfaction of the Principal Immigration Officer” – as no representative from the Principal Immigration Office was brought to testify on this matter.

This Court furthermore concludes that once this document is a total fictitious and imaginary document not capable of reasonably deceiving if not “per l’ingnoranza o l’incuria della persona presso la quale fu

adoperata la scrittura goffamente falsificata l'uso di questo abbia prodotto un danno" abovementioned.

Hence any false declaration made in this document by the accused cannot be deemed to be in violation of Article 188 of the Criminal Code.

This Court considers that the Prosecution proved that the accused was in possession of the fantasy document, but it did not prove beyond a reasonable doubt that the accused was using this SoS passport in accordance with its natural intended use. No evidence was brought proving that he presented this document to the competent public authorities as a travel document in order for him to be able to leave or enter the islands, or else as a valid means of identification or that any other particular use was made thereof. Hence the elements of Article 189 of the Criminal Code were also not proved in this case.

Moreover, given the above, and that this document does not qualify as a passport in terms of Articles 2 and 5 of Chapter 61 of the Laws of Malta, then the accused cannot be found guilty of the third charge that is of having 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. This fantasy passport is not a "passport" at all for the purposes of this Law. It is not a travel document, it cannot and could not be considered to be a valid travel document as per EU Law and does

not purport to be a travel document issued by an internationally recognised state or international organisation.

The same reasoning applies in relation to the fourth charge proffered against the accused in relation to the SoS passport found in his possession.

D. The “international driving document”.

The position of the “international driving documents” retrieved from the possession of the accused is, to a certain extent similar to that of the SoS passport. These documents are considered to fall within the category of fantasy passports, as above shown in the information concerning the non-exhaustive list of known fantasy and camouflage passports, as stipulated by Article 6 of the Decision number 1105/2011/EU of the European Parliament and of the Council of the 25th October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list.

Though similar, the position of these documents is not identical to the “SoS passport”. These documents purport to be translations of the

driving licences issued by the native countries of their bearers. The justification provided by the accused is that these translations may be useful for domestic law enforcement or other authorities who would not be conversant with the native languages of the bearers in which languages their respective driving licences would have been issued.

The Court notes that the international driving document that is being referred to in this case is made up of two components – the booklet and the plastic card.

There are two sets of international driving documents that have been exhibited in the records of these proceedings –

- (a) the blue “International Driving Document” – allegedly issued by the International Automobile Driver’s Club, together with its respective plastic card. The plastic card is entitled “International Drivers Document”.
- (b) The white “International Translation of Driver’s Licence” is allegedly issued by the International Automobile Association, Inc”. This document is also accompanied by a plastic card, which is also of a very good quality and very similar to a driver’s licence.

As for the blue “International Driving Document” and attached plastic card, one finds that on the front side of the plastic card there is written, in a conspicuous manner that it is an international driver’s document. Underneath there is written, in smaller type, yet in capital letters in blue

ink over a light blue background that this document is a “translation of foreign drivers license”. At the back the document states that it is an “international drivers document” and underneath, there are, in very small capital letter print written the words : “This card is a translation of the specified’s original license and must be accompanied at all times by a foreign drivers license”. This is a very good quality card that is similar to a driver’s licence that is normally issued by competent government authorities. However, despite this similarity, it does not state that it is a driver’s licence. A normal inspection of this document, not only by a law enforcement or immigration officer, but also by a normal lay person can notice that it is not a licence but a document that purports to be a translation of a foreign driver’s licence. Though the usefulness of this document is questionable, it does not clearly state or purports to be a driver’s licence. Indeed it may fall part of a wider “fraudulent” scheme but the holder can understand easily that this document is not an international driver’s licence, and can easily read that it is a translation of a foreign driver’s licence. The possibility of deception exists, depending on the use that the holder makes of this document that has no legal validity at all.

In both sets of documents, the booklets clearly emulate genuine and lawfully issued international driving licences, such as the ones issued by Transport Malta as shown by the exhibit produced in the records of these proceedings. These documents are made up in a very good format.

However the document that raises most concern to this Court is the white booklet and the attached plastic card issued in the name of a certain Emre Ayae, allegedly a Turkish national, allegedly residing in Malta.

Unlike the other cards produced in evidence in this case, this card does not state that it is an international driver's document, with a clearly written indication that it is a translation of a foreign driver's licence. To the contrary this card purports to be something that in reality is not. It conspicuously states : - clearly, in bold black capital letters, on a light green background that it is an "INTERNATIONAL DRIVER'S LICENSE". This is also repeated in Spanish. This document can easily be passed for a driver's licence as apart from its very good quality imitation of a driver's licence, it deceitfully states that it is an "international driver's license". The possibility of deception is much higher as it can easily and reasonably "be capable of deceiving persons using ordinary observation, according to their means of knowledge". This card can easily pass for a genuine international driving licence by persons inspecting it. Though it does have the words :-

TRANSLATION OF FOREIGN DRIVER'S LICENSE VALID WITH ORIGINAL ONLY

these words are in italics, written in faint light blue-green colours over a background of dark blue. They are in very small inconspicuous print – unlike the highly conspicuous :

INTERNATIONAL DRIVER'S LICENSE

heading, in bold and capitals. In this particular case, this document can, not only be used as a driver's licence but may also be used as a means of identification by the holder with persons who are not immigration or police or other law enforcement officers. This card's possibility of deception is drastically high.

Moreover, when one analyses the documents exhibited in the records of the proceedings, one understands that these documents are aimed to be used not simply as translations of valid driver's licences but can also act as substitutes for genuine driving licences. The advert at fol 161 clearly states that "no test required". Indeed why should one aim at luring customers seeking to purchase a translation of their legal driver's licence by advertising that "no test" will be required? In this context the normal reader understands that here the producer of these documents is referring to driving tests that are normally carried out by national authorities before issuing driving licences. No particular tests are normally required for persons to hold translations of their valid driving licences.

Moreover reference is made both on the booklet as well as in the website (fol 143) to the international Conventions on Road Safety of the United Nations – thus aiming to give these documents an aura of officialdom – like the ones lawfully issued by competent national authorities. Yet there is no need for this aura, should the holder be aiming simply at using these documents as real translations of national driving licences. And what is even more suspicious is that while on the one hand the document refers to be a translation of a foreign driver's licence, yet it still claims to be an **international** driver's licence.

In this particular case, the accused admitted to being the agent for the private enterprise marketing these documents in Malta. He aimed to sell these documents in Malta for profit. However he was not the person who created these documents, but he acted as the intermediary between the foreign private enterprise producing such documents and the Malta based customers, though he received also documents from Italy. The law does not specify what use can be made of a forged document in Malta. Selling and/or transferring and or handing over forged documents to their intended consignees in Malta falls within the parameters of “use” for the purposes of Malta law.

The Court deems that the Prosecution proved beyond a reasonable doubt that the provisions of Article 189 of the Criminal Code have been breached in this case.

Furthermore, the Prosecution failed to prove the fifth charge relating to recidivism brought against the accused due to lack of evidence in support of the same.

Decide :-

Consequently, this Court finds Stephen Osei Boateng not guilty of the first, third, fourth and fifth charges brought against him and is therefore acquitting him therefrom, after having seen Article 189 of Chapter 9 of the Laws of Malta finds the accused Stephen Osei Boateng guilty of the second charge proffered against him and condemns him to four months imprisonment.

Delivered today the 6th May 2015 at the Courts of Justice in Valletta, Malta.

< Final Judgement >

-----END-----