

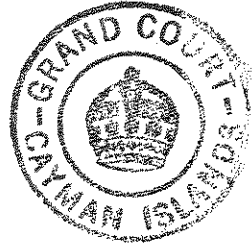
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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5 INDICTMENT NO: 0105/2012
6

7 THE QUEEN

8 V
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10 ELVIS KESLEY EBANKS
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14 **Appearances:**

**Mr. Trevor Ward, Deputy DPP for the
Crown**

**Ms. Amelia Fosuhene of Stenning &
Associates on behalf of the Defendant**

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20 **Before:**

The Hon. Mr. Justice Malcolm Swift (Actg.)

21 **Heard:**

3rd March 2014

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26 **RULING**

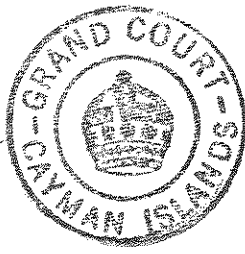
27 **ON MR. AUTOR AS INTERPRETER TO TRANSLATE THE EVIDENCE**
28 **OF THE PROSECUTION WITNESS MR. FERRERAS**
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- 30 1. Mr. Autor is a highly qualified servant of the Cayman Government. He is also
31 Philippine born and educated and so speaks fluent Tagalog which is the native
32 language of the witness Mr. Ferreras. Mr. Autor has spoken to Mr. Ferreras and
33 determined that there are no dialect issues between them. Mr. Autor has
34 considerable experience of the use of the English language and is, in my
35 assessment, formed after seeing and hearing him in court in an initial investigation I
36 conducted in order to ensure that Mr. Autor understood the court process and his
37 role in it, a fluent English speaker. In the course of that investigation, Mr. Autor
38 satisfied me that his command of both languages was virtually total, that he is a

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very intelligent man well capable of heeding my detailed instructions to him concerning his role in the process and someone who was mindful of the need to make sure that the evidence of Mr. Ferreras was translated accurately, unemotionally and impartially by interpreting both the questions and his answers precisely.

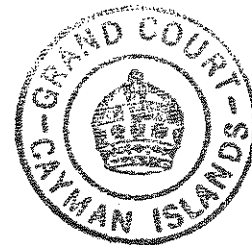
2. The Defence argues that Mr. Autor should not be used as the interpreter for the witness. They argue that, in the light of our past experience in this case, namely, of a first trial being stopped because the interpreter became emotionally affected by the witness's answers and a second trial stopped because the interpreter was not translating the evidence accurately, the court should not sanction the use of another interpreter, Mr Autor, who on his own free admission, has no previous experience of interpreting in a formal context or in previous court proceedings. The Defence argument is that the court should use what they describe as an 'official court interpreter' by which I understand them to mean someone who has qualified as an interpreter by formal examination or testing and experience or someone on a National Register of Interpreters such as the National Register of Professional Service Interpreters in the United Kingdom. Perhaps in an ideal world, the courts of every jurisdiction should have easy access to such a register. However, this is not an ideal world and such a register does not exist here in the Cayman Islands.



1 3. The options are clearly stark. Either an interpreter qualified to the extent the
2 Defence suggests should be brought here from a jurisdiction where 'official court
3 interpreters' can be located or the court should, with proper and adequate
4 safeguards, authorize the use of interpreters who have the necessary fluency in the
5 language spoken by the witness even if that interpreter has no previous official or
6 court experience.

7 4. I note that it is always open to the Defence to employ an interpreter of their own if
8 they are in any reasonable doubt as to the credentials, bona fides or abilities of the
9 interpreter authorized by the court. Legal aid can be granted for such a purpose if
10 there are grounds for the grant although it is doubtful whether in this case such
11 grounds exist to challenge the credentials, bona fides or abilities of Mr. Autor save
12 to suggest a lack of practical official experience on his part. In such circumstances
13 I doubt that Legal Aid would be properly extended for that purpose unless some
14 suggestion arose that Mr. Autor's performance was falling short of the necessary
15 standards to be expected of him.

16 5. The Defence also argues that the interests of the Defendant are paramount in a
17 criminal trial together with the need to ensure that he has a fair trial both of which
18 should be at the forefront of the considerations underlying any decision I make. I
19 agree.

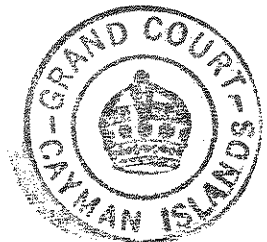


1 6. The authorities cited to me by both sides (*Regina –v- Iqbal Begum*¹ and *Cuscani –*
2 *v- United Kingdom*²) do no more than demonstrate that guiding principle. I also
3 note the very important distinction to be drawn between the role of an interpreter
4 who has to translate the evidence on behalf of a Defendant (and therefore must be
5 experienced in simultaneous translation) and one who translates for a witness and
6 who needs only to translate consecutively. I am perfectly satisfied that Mr. Autor
7 has the ability and skill to do the latter with the necessary accuracy.

8 7. The Defence has drawn to my attention the UK National Agreement on
9 Arrangements for the Use of Interpreters, Translators and Language Service
10 Professionals 2007 dealing principally with arrangements to provide proper
11 interpretation services for Defendants charged with criminal offences. That
12 Agreement has in fact been revised in 2011, but not in a way which affects these
13 issues. However I accept that the right to a fair trial includes the requirement that
14 the evidence called by the Crown should be given through an interpreter who
15 performs his function correctly and accurately. The 2007 Agreement as amended
16 also required that every interpreter should be registered with one of the recognized
17 UK registers (NRPSI, CIOL, ITI or ACPI). In the United Kingdom, even the
18 2007/2011 Agreements were called into question more recently when the House of
19 Commons Judicial Committee reported in 2012-13 on Interpreting and Translation
20 Services provided by an approved supplier Applied Language Solutions whose
21 ability to perform its contract had been called into question. However it seems to
22 me that I do not have to become embroiled in the problems experienced in the UK
23 involving the provision of interpreting services for the reasons that follow.

¹ 1991 93 Cr App R 96

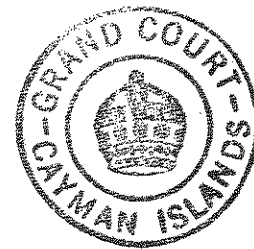
² 2003 36 EHRR 2



1 8. It is noteworthy that, even in the UK, as the 2007/2011 Agreement makes clear, it is
2 permissible for the Court to use an alternative resource when a registered interpreter
3 in a particular language is unavailable for whatever reason.

4 9. I have, as both parties agree, a discretion which I must exercise to ensure that, so far
5 as I have a hand in making it possible, the Defendant has a fair trial. I must also
6 keep in mind the interests of the public in seeing justice done reasonably promptly
7 and of the witness who is now facing his third attempt to complete his evidence and
8 who was, it was apparent to me, under some stress resulting from the previous
9 adjourned trial.

10 10. I take into account the absence of any official register of interpreters or, it seems, of
11 any organisations (other than Consulates and the like) responsible for the delivery
12 of interpretation services here in the Cayman Islands. Almost inevitably, if the
13 Defence suggestions were correct, it would be necessary in most cases requiring
14 interpreters to import such qualified and registered persons from another
15 jurisdiction.



1 11. It seems to me that it is inevitable that, where resources are scarce, our Courts will
2 have to employ the best interpreters available locally even if they are not registered
3 members of organisations specializing in the provision of such services or even if
4 they do not have previous experience of interpreting in an official or court context.
5 The Court is able, in most instances where it is proposed to use an unregistered
6 interpreter without any or with limited prior experience, to investigate the abilities
7 and skills of the candidate and satisfy itself of his/her credentials and suitability to
8 act. This is basically what has been done in this case. I have seen Mr. Autor's
9 impressive curriculum vitae, his answers to the questionnaire devised by the parties
10 and I have heard him answer my own questions in court. I am completely satisfied
11 that Mr. Autor is a suitable person to act as the interpreter for Mr. Ferreras but I am
12 also satisfied that his involvement in the trial will not in any way cause that trial to
13 be unfair to the Defendant.

14 12. The Judge who conducts this trial will of course keep the position under review.

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17 **Dated this the 3rd day of March 2014**

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22 **Honourable Mr. Justice Malcolm Swift (Actg.)**
23 **Acting Judge of the Grand Court**

