THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

CRIMINAL APPEAL 06 OF 2022

ARISING FROM CASE NO. HCT-00-AC-C0-22/2018

Akujjo Rose Mary :: Appellant

Versus

Uganda::Respondent

Judgment

Before Hon. Lady Justice Margaret Tibulya

This is a judgment on an appeal from the judgment and orders of a Magistrate Grade One Court sitting at Kololo. The appellant was convicted of Embezzlement of 90,552,000/=, and was sentenced to 4 year's imprisonment.

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Nine grounds of appeal were laid as follows:

a. The learned trial magistrate erred in law and fact when he failed to properly and entirely evaluate the evidence on the record hence coming to a wrong decision occasioning a miscarriage of justice to the appellant.

b. The learned trial magistrate erred in law and fact when he held that registration and mock fee of UGX 90,520,000/= (Ninety Million fifty two thousand Shillings) were embezzled without evidence that the whole or entire sum was collected, received and embezzled by the appellant, occasioning a miscarriage of justice to the appellant.

c. The learned trial magistrate erred in law and fact when he held that mock fees was embezzled without supporting evidence being adduced by the respondent hence coming to a wrong decision occasioning a miscarriage of justice to the appellant.

d. The learned trial magistrate erred in law and fact when he held that Uganda National Examination's Board registration fees was the property of the school occasioning a miscarriage of justice to the appellant.

e. The learned trial magistrate erred in law and fact when he relied on the evidence of Pw6 (Juliet Kiberu) to determine that the sum of Ug shs 90,520,000/= (Ninety Million fifty-two thousand Shillings) was embezzled by the appellant since it was not paid to Uganda National Examinations Board occasioning a miscarriage of justice to the appellant.

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f. The learned trial magistrate erred in law and fact when he failed to hold that the appellant's employment was illegal due to absence of Board of Governors as required by the law occasioning a miscarriage of justice to the appellant.

g. The learned trial magistrate erred in law and fact when he sentenced the appellant to custodial sentence of 4 years which was harsh and excessive in the circumstances, occasioning a miscarriage of justice to the appellant.

h. The learned trial magistrate erred in law and fact when he failed to consider all the mitigating facts presented by the appellant hence arriving to a wrong decision occasioning a miscarriage of justice to the appellant.

i. The learned trial magistrate erred in law and fact when he ordered that the appellant should not work in a public office for l0 (ten) years from the date of the sentence occasioning a miscarriage of Justice to the appellant.

It is settled law that the role of a first appellate court is to re-appraise the evidence and subject it to an exhaustive scrutiny before drawing its own conclusions bearing in mind that it did not see the witnesses testify, (**Kifamute Henry Vs Uganda (Criminal case No 10/1997**).

The prosecution bears the burden of proof, and must prove all ingredients of each offence beyond reasonable doubt.

Since grounds1, 2 and 3 involve the same complaint that the learned trial magistrate failed to properly and entirely evaluate the evidence, they will be jointly resolved.

The state had to prove that;

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(a) The appellant was an employee, a servant or an officer of the school,
(b) she stole the money in issue,
(c) The money was the property of her employer,
(d) She had access to it by virtue of her office.

The fact that the appellant was an employee of the complainant school was not contested. It was therefore sufficiently proved.

Whether she stole the money in issue.

The state sought to prove that the appellant stole the money on the basis of the following evidence;

Pw1 (Solome Nakato) testified that both the appellant and herself separately collected UNEB registration fees from students. Her evidence that she handed all that she collected over to the appellant was not contested. That the appellant used to collect money from students was testified to by **Pw's 3 to 5 (Namagala Latifa, Bukenya Abdallah and Kasegu Cosma**), who were students of the school, some of whom (**Pw3 and 4**) paid money to her. These witnesses testified that the accused made an announcement at the school assembly that registration fees were to be paid to her. The appellant denied this, but since there is no reason why these students could have told lies against her, their evidence is credible and therefore rightly accepted by the court. They also testified that she used not to issue receipts to students who paid money to her, a fact she does not contest.

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Pw1 (Solome Nakato) prepared a list of the students who paid (**exhibits P.1 and 2),** according to which a total of **sh90,520,000/=** was collected. Since the evidence that the appellant collected part of the money and that whatever Pw1 had collected was handed over to her was not contested, the appellant was the last person to have in her possession the total of **sh90,520,000/=**.

The appellant admitted that "*the candidates for O-level and A-level paid Mock and UNEB fees... The secretary used to keep records of people who paid... The results for O level and A level of 2016 were withheld by UNEB for non-payment of registration fees... I wrote and acknowledged debt we had as a school...*"

By this evidence the appellant admitted that she never submitted the **sh90,520,000/=** to UNEB as she was supposed to have done. **Pw6 (Juliet Kiberu)** who presented demand notes from UNEB and undertakings by the appellant to pay drives this point home.

The appellant claims that she applied the money towards settling school debts to its suppliers and to payment of teachers' salaries. This explanation was however rightly rejected by the learned magistrate (***see first paragraph at page 11 of the lower court judgment***). In the first place, the sh**90,520,000/=** had been paid by the students as UNEB registration fees and was to be sent to UNEB, as opposed to being utilized on school running. Secondly, as was explained by **Pw 7 (Rev Sserunjogi)** and **Pw2 (Juliet Namiiro -the Bursar)**, school running was financed from student school fees. This is evident from the school's Bank statement (**exhibits P13 (a) and (b)** which bears payments to food suppliers and teachers salaries.

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Thirdly and as was rightly noted by the learned magistrate (***see last paragraph of the lower court judgment***), there were no official documents (e.g. at the Bursars office) proving the existence of expenditures from money collected as examination Registration fees. **Pw10 (D/C Tuhumwire),** the investigating officer found no such documents.

The appellant's explanation that she used the money towards settling school debts was therefore rightly rejected, and state evidence rightly believed by the lower court.

Whether the money was the property of the appellant's employer.

The defense's suggestion that the money did not belong to the school is lame. While it is accepted that the money was collected as UNEB registration fees, it could not legally

become UNEB's money until it was handed over to them. This is the reason the school remained indebted to UNEB until alternative funds were remitted to UNEB. Since the money was paid to the school by the students, and since until it got to UNEB it remained the school property, the lower court rightly found that the money was the property of the appellant's employer.

Whether she had access to it by virtue of her office.

The appellant collected the money as the Head Teacher of the school. Clearly, and as the learned magistrate rightly found, she had access to it by virtue of her office.

Upon the exhaustive re-evaluation of the available evidence as I have done, the court finds that;

a. The learned trial magistrate properly and entirely evaluated the evidence on the record and came to a right decision,
b. There was evidence that the entire **UGX 90,520,000/=** (registration and mock fee) was collected, received and embezzled by the appellant as the learned trial magistrate rightly found.
c. The learned trial magistrate rightly held that Uganda National Examination's Board registration fees was the property of the school,
d. The learned trial magistrate rightly relied on **Pw6 (Juliet Kiberu)'s** evidence as corroborated by information from UNEB as to the number of students who were registered to determine that the sum of **Ug shs 90,520,000/=** (Ninety Million fifty-two thousand Shillings) was embezzled by the appellant.

Grounds 1, 2, 3, 4 and 5 of the appeal must therefore fail.

Ground 6.

That the learned trial magistrate erred in law and fact when he failed to hold that the appellant's employment was illegal due to the absence of Board of Governors as required by the law occasioning a miscarriage of justice to the appellant.

The defence argument that the appellant's employment was illegal due to absence of Board of Governors is diversionary, and an attempt to engage the court into a wild goose chase. Suffice it to say that by that argument the defence seems to be advancing a narrative that the appellants conduct is justified by her having been in an illegal employment. The absence of a Board of Governors, even if it were true, would not by any means justify the theft. **This complaint has no merit and must fail as well.**

Grounds 7 and 8 are to be jointly resolved since they relate to the same issue.

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Grounds 7

The learned trial magistrate erred in law and fact when he sentenced the appellant to custodial sentence of 4 years which was harsh and excessive in the circumstances, occasioning a miscarriage of justice to the appellant.

Ground 8

The learned trial magistrate erred in law and fact when he failed to consider all the mitigating facts presented by the appellant hence arriving to a wrong decision occasioning a miscarriage of justice to the appellant.

The court is appreciative of defence counsel who cited relevant jurisprudent on this issue. He cited **Opolot Justine and 1 Vs Uganda**, Criminal Appeal No 31/2014 in which it was held that "*...The appellate court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice.*"

In expounding on this ground, it was argued that the trial magistrate ignored the mitigating factors such as that the appellant has a young breast-feeding child who cannot survive without her. Also that the trial magistrate ignored that fact that the appellant has four children who need care, and that there is no clear explanation why the court did not sentence the appellant to a fine.

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The lower court record however bears the fact that the sentencing master considered all the mitigating factors which were brought to his attention before he executed his sentencing function. The court considered the sentencing guidelines and the submissions presented by both the state and defense, noting that the aggravating factors outweighed the mitigating factors (***see second last paragraph on page 128 of the lower court record***).

The court also considered that the maximum sentence is 14 years or fine of 360 CP or both, but based on the charge and in order to deter other would-be offenders especially school head teachers from committing similar offences, a custodial sentence was considered the most appropriate.

Clearly, any interference with the learned magistrates sentencing decision would run afoul of the principles laid down in the jurisprudence counsel cited. The submission

that any mitigating factors were not considered ignores the Learned Magistrate's reasoning, and is rejected for want of merit. **Both the 7th and 8th grounds of appeal therefore fail.**

Ground 9

The learned trial magistrate erred in law and fact when he ordered that the appellant should not work in a public office for l0 (ten) years from the date of the sentence occasioning a miscarriage of Justice to the appellant.

This complaint ignores the fact that the order complained about is consequential and mandatory under **S.46 of the ACA**. This ground therefore fails for lack of merit, and with it the whole appeal, which is hereby dismissed. The decision and orders of the lower court are upheld. The appellants bail is cancelled. She should continue to serve her sentence.

Hon. Lady Justice Margaret Tibulya

Judge

2nd December 2022.