

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
ANTI-CORRUPTION DIVISION
HOLDEN AT KOLOLO

CRIMINAL APPEAL 3 OF 2023

DAWSON TAYEBWAAPPELLANT

VRS

UGANDARESPONDENT

BEFORE GIDUDU, J

JUDGMENT

The appellant, an Ag. Water Officer of Sembabule District, was jointly charged and tried with one Sseruyange Ramadhan Ag. Planner of the for **Causing Financial Loss C/S 20(1) of the ACA, 2009 as amended; Abuse of Office C/S 11 of the ACA, 2009 as amended and Forgery C/S 342 & 347 of the PCA, Cap 120.**

They were both convicted and sentenced to 3 years and 2 years' imprisonment on different counts to run concurrently. They were also prohibited from being employed in Public Service for ten years. Each was ordered to refund **UGX. 13,210,130=** to the district. He appeals against the conviction and sentence.

The brief facts as accepted by the trial magistrate are that the appellant while acting as water officer originated a requisition in the names of PEHAN CONSTRUCTION LIMITED dated 4th September, 2014 for payment of UGX. 49,500,000= for construction of Ferro cement tanks at selected homesteads in the district.

The requisition was manipulated by attaching payment certificates and other documents which had been used to pay an earlier claim by the same company under contract SEMB551/WKS/11-12/00024. The requisition was forwarded by the appellant and endorsed by the

CAO/ Accounting officer for payment of a reduced sum of UGX. 28,106,660= to tally with the payment certificates and measurement sheets attached for alleged work done.

5 After payment was effected to the company, one Sseruyange, the district planner called Ikulu Peter, the proprietor of the company and informed him that 26,400,000= had been wired to his company account by error. He asked Ikulu to pay him the money on his personal account. Ikulu wrote cheque number 663 in the names of Sseruyange Ramadhan for 26,300,000= which Sseruyange collected
10 in person from Ikulu's home in Rakai.

A whistle blower reported this fictitious payment to the Inspectorate of Government. After investigations, the appellant and Sseruyange were charged and tried.

15 The appellant denied any wrong doing. His defence is that the payment was legitimate because PEHAN CONSTRUCTION LIMITED had done the work which he supervised and they were entitled to payment.

20 He denied making the requisition letter of 4th September, 2014. He contended that the letter was written by Namata Scholastica who is MD of PEHAN CONSTRUCTION LIMITED and wife to Ikulu who is the proprietor of the said company. He accused Namata (PW7) and Ikulu Peter (PW5) of being dishonest for denying work which their company executed.

Seven grounds of appeal were filed which I summarise below:

- 25 1. The learned trial magistrate erred in law and fact when he relied on the requisition letter to convict the appellant of forgery.
2. The learned trial magistrate erred in law and fact when he failed to properly evaluate evidence which led to a wrong conclusion that the appellant had caused financial loss of UGX.
30 26,420,260.
3. The learned trial magistrate erred in law and fact when he failed to properly evaluate evidence which led to a wrong conclusion that the appellant had caused financial loss.

4. The learned trial magistrate erred in law and fact when he held that the appellant was guilty of forgery.
5. The learned trial magistrate erred in law and fact when he convicted the appellant on contradictory and inconsistent evidence.
6. The learned trial magistrate erred in law and fact when he imposed a harsh and excessive sentence.
7. The learned trial magistrate erred in law and fact when he imposed an order of refund of UGX. 13,210,130=

M/S Tumwesigye Humphrey and Ssematengo Abubakar represented the appellant whilst Ms. Nantabazi Diana from the Inspectorate of Government appeared for the respondents.

Grounds 1 and 4 were argued together and so was grounds 2 and 3. The rest of grounds 5, 6 and 7 were argued separately.

Grounds 1 and 4.

The complaint was in relation to the charges of forgery of the requisition letter of 4th September 2014 for which the appellant was found guilty of forgery in count 3. Mr. Tumwesigye criticized the trial magistrate for admitting “**exhibit P4**” which contains the said letter without the testimony of the handwriting expert.

The handwriting expert report is contained in “**exhibits P13 and P14**” which were admitted without the testimony of the expert who examined the signatures of the appellant and Namata (PW7). He argued that the Investigating Officer, PW8, Hillary Anzikujuruni, was not competent to testify about the results of the handwriting expert report because he was not privy to its making.

Be that as it may, the report complained of states that Namata PW7 was the likely author of the signature on the requisition letter of 4th September, 2014. He relied on section **64(5) of the Evidence Act** for the proposition that the author of the document is the best witness to tender it. He asked court to find that the charges of forgery against the appellant were not proved.

Grounds 2 and 3

These two are essentially one ground. The complaint is that there was no proof of the charges of causing financial loss against the appellant. Mr. Tumwesigye submitted that since the handwriting report points
5 to Namata (PW7) as the person likely to have signed the requisition the letter of 4th September, 2014, it means that she and not the appellant was responsible for any loss that may result from that request.

He also pointed out that PW2, Ndagire, an accountant of the district
10 testified that it is Sseruyange who presented the offending request for money yet in the judgment, the trial magistrate attributed this action to include the appellant.

Ground 5.

The complaint here relates to what Mr. Tumwesigye called
15 inconsistencies between the evidence of PW5 and PW7. He argued that whereas PW5 stated that the cheque was issued to Sseruyange, PW7 stated that it was issued to Sseruyange for work done. He did not explain further.

Ground 6

20 Counsel complained that the sentence of three years' imprisonment is excessive because the appellant did not commit any crime.

Ground 7.

The complaint relates to the order of refund which counsel called unfair because evidence of PW5 and PW7 is that the money was given
25 to Sseruyange by cheque which he deposited in his personal account. It would be unfair to ask the appellant to contribute to the loss when did not share in it there being no proof of a conspiracy.

He asked court to allow the appeal, quash the conviction and set aside the sentence and orders of the trial court.

30 In reply Nantabazi Diana, learned counsel from the Inspectorate of Government opposed the appeal. She submitted that the appellant as head of the water department in Sembabule abused the authority

of his office using a bogus requisition letter of 4th September, 2014 to lay a false claim against the district- his employer.

Grounds 2 and 3.

5 Ms. Nantabazi submitted the fraud was facilitated by the appellant who attached documents from a former executed contract ref. **SEMB551/WKS/11-12/00024 (exhibit P2)** to the bogus requisition in **"exhibit P4"**. A bogus contract ref **SEMB551/WKS/11-12/00025** was used to justify the payment in **"exhibit P4"**.

10 She submitted further that PW3, Geoffrey Tumuheirwe, a senior procurement officer, Sembabule, denied the existence of **SEMB551/WKS/11-12/00025** which was cited in documents attached to the bogus requisition in **"exhibit P4"**.

On the participation of the appellant, she submitted that he endorsed the bogus requisition by forwarding it to be considered for payment.
15 Indeed, the payment was effected.

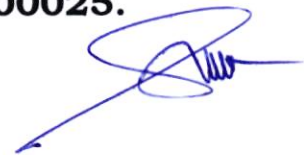
Grounds 1 and 4.

On the issue of forgery, Ms. Nantabazi submitted that the absence of the testimony of the handwriting expert did not affect the prosecution case because the court is the final expert after considering all other
20 evidence on record. She referred to the Kenyan case of **Kimani V Republic (2000) 2 EA 417** for that proposition.

It was her view that the trial magistrate considered evidence of PW5 and PW7 to find that the letter dated 4th September, 2014 was forged because PW7 denied signing it and PW5 denied doing any work under
25 any contract for the money paid.

Ms. Nantabazi argued that since the appellant in his defence insisted that work was done by PW5's company and justified payment, it means he is culpable since the contractor denied performing it. By his defence, the appellant owned up for payment made on a non-
30 existent contract- **SEMB551/WKS/11-12/00025**.

Ground 5



On inconsistencies, she was of the view that the complaint was not justified so as to generate a response.

Ground 6.

She asked court to maintain the sentence because it had not been demonstrated that it was based on a wrong principle, or that it was excessive or was arrived at after considering irrelevant matters. It was her view that since the maximum sentence on count one was 14 years' imprisonment, the sentence of 3 years' imprisonment was very fair.

Ground 7.

Ms. Nantabazi supported the imposition of a compensation order contending that magistrates are empowered under **section 197 of the MCA, Cap 16** to order compensation. She submitted that since Sembabule paid for non-existent work which the appellant justified, then he should pay.

She asked court to dismiss the appeal and confirm the judgment and orders of the trial magistrate.

In rejoinder, Mr. Tumwesigye insisted that the work was done and the appellant prepared the measurement sheets which were attached to **exhibit P4** but denied forwarding it for payment.

As a first appellate court, my duty is to submit evidence to fresh and exhaustive examination to reach my own decision. This duty was expounded in a passage cited in the famous of **Dinkerrai Ramkrishan Pandya v R [1957] 1 EA 336** at page 338 as follows:

"A Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the judge with such other materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong . . . When the question arises which witness is to be believed rather than another, and that question turns on manner and

demeanour, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the court has not seen."

In other words, the appellant is entitled to a rehearing of the case by way of re-evaluation of evidence by the first appellate court.

I will resolve the appeal in the order the grounds of appeal were presented.

Grounds 1 and 4.

The appellant was accused of **forgery C/S 342 and 347 of the PCA, Cap 120**. He denied authoring the offending letter of request for funds dated 4th September, 2014. Two arguments were fronted to support his denial. The first was that the handwriting expert was not called as a witness to explain his findings on the signature of the author of the contested letter **C/S 64(5) of the Evidence Act**. The second was that the handwriting report states that Namata, PW7, is the likely author of the letter.

Section 64(5) of the Evidence Act, Cap 6 provides thus:

"In case (g) of subsection (1), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents".

PW8, the Investigating officer told court during his testimony that he submitted signatures of the appellant and that of PW7 to the handwriting expert for an opinion to determine who authored the letter of 4th September, 2014. Mr. Sebuwufu who examined the letter and wrote a report did not testify. Instead, the trial magistrate asked the appellant who was unrepresented to look at the report and raise

any objections if any. The appellant looked at it and said the following:

5 *"I have the concern that some of the documents were not disclosed to us at the time of disclosure. But of the interest (sic) is about picking sample signatures I have no objection, we can proceed"*

In response, the prosecutor said:

"The documents were indeed for picking of sample signature and hand writing to help hand writing reach a complete decision. Their content will not be used in relation to the matter at hand"

10 The magistrate then noted the following:

"From the submission of the state and A1 the documents are not disputed, they are therefore agreed documents and court will only rely on the attachment for the purpose stated by the state and agreeable to the accused" They were marked **P13(a), P13(b) and P14**.

15 With respect this was the most causal procedure adopted by court to admit documents of a technical nature such as a handwriting expert report. If the contents were not to be relied upon as the state attorney told court, then they should have been placed on record for identification only until the handwriting expert returns from his
20 training at Kyankwanzi to tender them in evidence. Without relying on their contents, the documents were useless because the opinion of the expert was in the contents.

Did the magistrate rely on the handwriting expert report to convict the appellant of forgery? If he did, then obviously he acted in error.
25 At pages 12 and 13 of the judgment, the trial magistrate resolved the issue of forgery. He did not make reference to the hand writing expert report. Instead he relied on evidence of PW1, CAO, PW3, senior procurement officer, PW5, the contractor, PW6, chairperson contracts committee and PW7, the alleged requester of the money on
30 behalf the contractor. All these witnesses denied the existence of a contract ref. **SEMB551/WKS/11-12/00025**. They insist that the contractor had done work under contract ref. **SEMB551/WKS/11-**

12/00024 (exhibit P2) and was paid. No further contract was given to PEHAN CONSTRUCTION LIMITED to warrant another payment.

The trial magistrate held that the forged documents were found with the appellant so he must have been the one who forged them. With respect, there was no evidence as to the originator of the request in absence of evidence of a handwriting expert to verify the signature of the requisition. It was important to establish who signed the requisition. Considering that the report, though improperly admitted places the signature to the hand of PW7, it was, therefore, improper to find the appellant to be the author. If the expert had testified and the magistrate found no basis for his conclusions about Namata, then he would have been justified to look elsewhere for evidence, if any.

In **Kimani v Republic** [2000] 2 EA 417 (CAK) Courts are the final expert as shown from the passage below:

“Though the courts must give proper respect to the opinions of experts, such opinions are not binding on the courts. Such evidence must be considered along with all other available evidence, and the court would be entitled to reject it if the expert opinion is not soundly based. *Dhalay v R* criminal appeal number 10 of 1997, *Ndolo v Ndolo* CA 128/95 followed”.

Since the handwriting expert did not testify and his report was improperly admitted in evidence, there was no credible evidence to convict the appellant of forgery. If the court admits the report, the appellant is acquitted of forgery because the report exonerated him, if the court does not admit the report still the appellant is not guilty of forgery for lack of evidence.

Having reviewed the evidence on record, I find that there was no proof beyond reasonable that the appellant authored the requisition for money. There was no justification for finding the appellant guilty on count three. Evidence was wanting and poorly adduced to say the least. Upon receiving the handwriting expert report, the prosecution should have amended the charges to drop count three. This was not

done and any attempt to defend it is to act against the weight of evidence. Grounds 1 and 4 succeed.

Grounds 2 and 3.

5 The gist of these two grounds is that there was no proof that the appellant caused financial loss. There were two reasons advanced for this argument. The first is that the handwriting expert report points to Namata, PW7 as the likely author of the requisition for the money. Secondly, evidence of PW2, the accountant is that the forged documents were delivered by one Sseruyange who was accused
10 number two at the trial.

Ms. Nantabazi countered this argument by submitting that whilst it is clear from evidence of the CAO, PW1; the procurement officer, PW3; the contractors, PW5 and PW7; and the chairman contracts committee, PW6, that there was no contract to justify payment of
15 UGX. 26,420,250=, the appellant supports the payment insisting work was done by the company belonging to PW5 and PW7.

The appellant argued that there was an extension of the original contract but PW5 and PW7 insist that there was no extension because they performed contract ref. **SEMB551/WKS/11-12/00024**
20 **(exhibit P2)** and got paid **UGX. 49,664,624=** and moved on.

The appellant admits supplying the measurement sheets which he signed and were attached to the claim based on the suspected requisition in **exhibit P4**. It is strange that the appellant insists that a company did a job which it denies. All witnesses from Sembabule
25 local government deny that there was work to be paid for. Even the contractor through its directors denies doing any additional work to merit payment. It is the reason they returned the money by cheque to Sseruyange.

The trial magistrate when faced with this dilemma resolved it thus at
30 page 7 of his judgment.

“According to the requisition for payment for work done dated 4th September, 2014 allegedly signed by Namata Sciatica who DW1 referred to as PW7 Namata Scholastic the Director of Pehan

construction limited, forwarded by the same DW1 recommending payment for shs. 28,106,660= out of shs. 49,500,000= to Pehan construction limited DW1 minuted that, **'the details were as per attached payment certificate and measurement sheets'**. These measurement sheets were signed off by himself-Dawson Tayebwa (DW1) in addition, the attachment to the requisition included an activity report in regard to No. SEMB551/11-12/00025 dated 14th April 2014 addressed to the District water officer by Dawson Tayebwa(DW1) in the capacity of the County water officer as he then was. The conclusion of the report was that **'Generally the quality of the construction work is satisfactory....I would recommend that payment for the work so far done is paid to the contractor MS Pehan construction limited'.**"

Clearly, the trial magistrate connected the appellant to the charge of causing financial loss for preparing measurement sheets and preparing an activity report for non-existent work. The report cites a non-existent contract ref. SEMB551/11-12/00025 which PW3, a senior procurement officer testified that it is non-existent.

A review of the evidence adduced from Sembabule local government officials weighed against evidence of the appellant reveals obvious forgeries in the requisition of 4th September 2014 and all its attachments. They are not defensible. No contract can be performed without an award from the contracts committee and without a file in the procurement office of the district.

The appellant supplied documents such as measurement sheets and an activity report to facilitate a bogus claim. He even forwarded it with a specific figure to be paid- UGX 28,106,660=. This was paid less withholding tax which brought it to UGX. 26,420,250= Any attempts by the appellant to run away from this transaction is futile. It would not have been paid if the appellant was not part of it.

The finding by the trial magistrate that he and Sseruyange were criminally liable is supported by abundant evidence on the record. The prosecution proved beyond reasonable doubt that the appellant and Sseruyange knowingly or had reason to believe that by causing

the processing of this bogus payment, Sembabule district would suffer a financial loss. PW5, the contractor who was paid was emphatic during his testimony at page 30 as follows:

“Payment of 26,000,000 wasn’t a genuine claim, when I received the money I sent it back through giving it to Sseruyange. I wrote a cheque in the name of Sseruyange and the money can be reflected on the bank statement of A/C 6010000862 from Centenary Branch(sic)” This statement renders futile any

justifications by the appellant. The payment was a total loss to the district. The complaint in grounds two and three was not justified. The participation of the appellant in the crime is documentary by way of supplying measurement sheets for a non-existent job and writing an activity report where there was no activity. The charges in count one were proved beyond reasonable doubt. Grounds 2 and 3 fail.

Ground 5.

The complaint here relates to what Mr. Tumwesigye called inconsistencies between the evidence of PW5 and PW7. He argued that whereas PW5 stated that the cheque was issued to Sseruyange, PW7 stated that it was issued to Sseruyange for work done. He did not explain further. There was no credible submission on this complaint. What learned counsel attempted to bring out as an inconsistent was not. PW7 insisted at page 47 that the company did not do any work for the 26 million paid. This money was paid back through Sseruyange. Ground 5 fails.

Ground 6

The sentence of three years’ imprisonment was said to be excessive because the appellant did not commit any crime. I have already after reviewing evidence on record found that the appellant committed the crime of causing financial loss in count one. The only reason for challenging the sentence was that the appellant was not guilty of any crime. Having found that he did commit the crime when disposing of grounds two and three, I rest the matter here.

Ground 7.

This related to the order of compensation against the appellant for UGX. 13,210,130=. It was submitted that since the money was paid to Sseruyange he should be the one to refund it. It was further submitted that there was no proof of a conspiracy between the appellant and Sseruyange in sharing the money so as to justify a contribution of the refund by the appellant.

Ms. Nantabazi cited **section 197 of the Magistrates' Court Act, Cap 16** to justify the compensation order. Magistrates are empowered to compensate the victims of crime under **section 197 of the MCA, Cap 16**. The law provides thus:

197. Order for compensation for material loss or personal injury.

(1) When any accused person is convicted by a magistrate's court of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable.

The offence of causing financial loss does not require that the person found guilty of causing financial loss must have shared the money.

The offence is complete once a person knowingly or having reason to believe that act or omission will cause financial loss. Where the money ends, is immaterial.

On the evidence adduced, Sembabule Local Government was defrauded of **UGX. 26,420,250=**. The appellant facilitated the transaction by supplying documents to justify the payment. His action caused loss. It was deliberate. The order to compensate is justifiable under **section 197 of the MCA, Cap 16**. Ground 7 fails.

In conclusion, the appeal partly succeeds on grounds 1 and 4 but substantially fails on the rest of the grounds for the reasons given above. The conviction of forgery on count three is quashed. The conviction on counts one and two are upheld. The sentence on those two counts stand. The order of compensation is upheld.



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Gidudu Lawrence

JUDGE

15th June, 2023