

THE REPUBLIC OF UGANDA
IN THE LEADERSHIP CODE TRIBUNAL OF UGANDA AT KAMPALA
IN THE MATTER OF THE LEADERSHIP CODE ACT 2002
LCT APPLICATION NO. 001/2022

INSPECTORATE OF GOVERNMENT:..... APPLICANT
VERSUS
JAMES TUKAHIRWA:..... RESPONDENT

CORAM: 1. Hon. Dr. Roselyn Karugonjo-Segawa, Chairperson
2. Hon. Asuman Kiyingi, Deputy Chairperson
3. Hon. Jane Okelowange, Member
4. Hon. Didas Bakunzi Mufasha, Member
5. Hon. Joyce Nalunga Birimumaaso, Member

DECISION

Introduction

- [1] The Applicant filed an application under S.3A (c) of the Leadership Code Act and Rule 9 of the Leadership Code Tribunal (Practice and Procedure Rules) 2021 against the Respondent for breach of S.12 B of the Leadership Code Act alleging abuse of public property.
- [2] The Applicant is a constitutional body with the mandate to enforce the leadership code of conduct and investigates breaches of the Leadership Code Act. The Respondent is a Senior Assistant Secretary/Transport Officer at the Ministry of Health.

Brief Facts

- [3] The agreed facts at the scheduling conference were as follows:

The Respondent breached the Leadership Code of Conduct in particular S.12B of the Leadership Code Act when he used the Ministry of Health vehicles Registration Numbers UG 6945M and UG 6646 M for personal use. The vehicles were meant to support the COVID-19 response. The Respondent said that he thought the vehicles

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were part of the welfare scheme of the Ministry of Health. The Respondent used the said vehicles to transport building and construction materials to his private sites in Kyegegwa, Kazo, Ntungamo districts and Munyonyo, Kampala. The said vehicles, building materials and a sum of UGX 28,245,000 were seized by the Applicant on the 14 December 2021. The Respondent admitted that he had indeed breached the Leadership Code of Conduct and was willing to pay and make good the damage that he had caused to the said vehicles. He was willing to pay UGX 22,500,000, a sum which was arrived at by both the Applicant and Respondent at the scheduling conference. The only issue for determination by the Tribunal was the kind of punishment to the Respondent.

Representation:

- [4] The Applicant was represented by Mr. Daniel Achato and Ms. Rebecca Naomi Nalweyiso from the Inspectorate of Government while the Respondent was represented by Mr. Fred Ruhindi of Messrs Ruhindi and Co. Advocates.

Resolution of the matter:

- [5] Counsel for the Applicant relying on S.12 B of the Leadership Code Act argued that the Respondent be dismissed from service or demoted and the portfolio of Transport Officer be removed from him. In the alternative, he should be retired in public interest.
- [6] The Respondent prayed for leniency as a first time offender and requested for a warning or caution.

The issue for determination therefore is *the nature of punishment and remedies available to the parties.*

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Applicable Law

[7] S. 12 B of the Leadership Code Act provides:

Abuse of public property

- (1) *A leader or a public officer shall protect and preserve public property under his or her personal use and shall not use such property or allow its use for any other purpose other than the authorised purpose.*
- (2) *In this section "public property" includes any form of real or personal property in which the Government or public body has ownership; a plant, equipment, leasehold, or other property interest as well as any right or other intangible interest that is purchased with public funds, including the services of contractor personnel, office supplies, telephones and other telecommunications equipment and services, mails, automated data, public body records, and vehicles.*
- (3) *A leader or public officer who knowingly misuses or allows public property entrusted to his or her care to be misused, abused or left unprotected shall make good the loss occasioned to the property and the value of the property or damage to the property shall constitute a debt from the leader or public officer to the Government or public body concerned.*
- (4) *Notwithstanding the provisions of subsection (3), a leader or public officer who knowingly misuses or allows public property entrusted to his or her care to be misused or abused or left unprotected may, in addition to the sanctions under that subsection be-*
 - (a) *Warned or cautioned;*
 - (b) *Demoted; or*
 - (c) *Dismissed from office.*

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- [8] At the scheduling conference, the Respondent admitted misusing and abusing government vehicles Reg. No. UG 6495M and 6646M which he put to personal use by ferrying building materials to his personal construction sites in Kyegegwa, Kazo, Ntungamo districts and Munyonyo in Kampala. He said this was a regrettable mistake and an error of judgement that he would never repeat and asked for forgiveness.
- [9] In view of this admission of guilt Counsel for the Applicant invited the Tribunal to impose the maximum penalty for the breach and have the Respondent dismissed from public service. Counsel for the Respondent invited the Tribunal to exercise lenience in view of the Respondent's plea of guilty that saved court's time, his remorsefulness and the fact that he was a first offender in his 32 years of public service. Having failed to agree on the appropriate penalty, the Tribunal asked both Counsel to make written submissions on the matter which they did. We take note of the useful authorities brought to the Tribunal's attention.
- [10] We wish to note at this point that the Leadership Code Tribunal is created by Article 235A of the Constitution and established by the Leadership Code Act, Act 17 of 2002 as amended, to support the fight against corruption by adjudicating and determining punishment for breaches of the Leadership Code of Conduct. The Code stipulates the minimum standards of conduct and behavior for all leaders and public officers. Establishment and operationalization of this Tribunal is a culmination of decades-long protracted process and struggle by Ugandan citizens to hold all leaders and public officers accountable. As the inaugural Tribunal we are very much alive to this important national responsibility and public expectation. We shall be fair and just, but firm in punishing breaches of the Code as stipulated in the law. We strongly believe that this is what is required to send a clear message to all, that public offices and assets are a trust from the people and should be used to render required services to the public as authorized under the law and not for personal gain.

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[11] If abuse of public property as in the instant case goes unpunished it will promote impunity and help the corruption cancer to grow. It is this concern that has guided the stringent approach by courts when sentencing in corruption cases and which will guide the Tribunal as well.

[12] In the case of **John Kashaka and Others HCT-00-AC-SC 0047-2012** after taking note of the mitigating factors in sentencing like the accused's remorsefulness, being first offenders and of advanced age; and the need to have rehabilitative, restorative and corrective sentences, Her Lordship Justice Bamugemereire states:

"Bearing the above in mind I have equally taken note of the public outcry against corruption, tempering this with the need to act fairly and yet firmly..."

Her Lordship goes on to quote Professors Arnold Heidenheimer & Michael Johnson (2011) [73] about corruption in Asiatic Countries as follows:

"Corruption thrives in an environment where opportunities to money and resources abound in abundance, where there is easy access to such funds and resources. Corruption thrives where the probability for detection is low. Corruption multiplies where there is low risk of punishment. The above statements are true about corruption in Uganda today...."

"Consequently, the judiciary cannot afford to be permissive to high-ranking public officials as lenient sentences are a mere slap on the wrist and this attitude only exacerbates corruption."

[13] The same stance was reiterated by Justice Gidudu in **Uganda Vs Jimmy Lwamafa and 2 others HCCs No. 9/2015** where his Lordship stated the following;

"...The enactment of the Anti-Corruption Act 2009 coupled with the setting up of the Anti-Corruption Division of the High Court meant that an infrastructure had been established with a loud message that corruption is a risky business. I am therefore going to impose sentences that reflect the balancing of applying justice

with not just mercy in favor of the convicts but also with firmness to fight corruption in society. Balancing the mitigating and aggravating factors which have been brought to my attention by both sides and considering the need to punish corruption as a serious offence, I impose the following sentences..."

- [14] The Leadership Code Tribunal as part of the judicial infrastructure established to combat corruption is in full agreement with the above principles well stated by their Lordships. We note, however, that the above two cases were full blown criminal trials over billions of shillings of Government money lost in corruption and went on for a long time as the accused never pleaded guilty.

Relying on the above cases, Counsel for the Applicant invited the Tribunal to impose the maximum penalty provided for under section 12B (4) of the Leadership Code Act and have the Respondent dismissed from public service to send a strong message that corruption was a risky business. In the alternative, Counsel invited the Tribunal to sentence the Respondent to a demotion and to have the Transport portfolio removed from him. On his part, Counsel for the Respondent invited us to pass a lenient sentence of a warning or caution on grounds that the Respondent had pleaded guilty to the breach, was a first offender, didn't waste courts time and resources, and had agreed to pay UGX 22,500,000 to make good the loss occasioned to the government property arising out of the misuse/abuse.

- [15] Paragraph 44(d) of the **Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions** requires this Tribunal to take the offender's plea of guilty into account, among other factors, while imposing a sentence for corruption or a corruption related offence as in the instant case. In **Uganda Vs Muhwezi & 3 Others Criminal Case No.557 of 2007**, Alice Kaboyo's plea of guilty on four counts which included theft, abuse of office, causing financial loss, forgery and uttering false documents was accepted as a mitigating factor which court considered before passing sentence.

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[16] In the case of **Uganda Vs Hussein Hassan Agade & 13 Others HCCS No. 0001 of 2010** where the accused were charged with terrorism and other serious offences punishable by death, two of the accused, Nsubuga Edris and Mugisha Mohammood pleaded guilty to the offences of terrorism and conspiracy to commit acts of terrorism respectively. In sentencing the two, His Lordship Justice Alfonse Chigamoy Owiny-Dollo Judge of High Court, as he then was, accepted the plea of guilty as a mitigating factor and passed sentence. He stated the following:

*'The convict herein was, on his own plea, found guilty on three counts of the offence of terrorism. Mandatory death sentence has since been outlawed in Uganda; accordingly, at most, he is only liable to suffer death in accordance with the provisions of the section of the law he has been indicted under. To exercise my discretion to determine the sentence which is best suited for the circumstances of this case. I am under duty to act judiciously; and in this, I am fortunate to be guided by a well-trodden field of authorities. Punishment is the age-old aim in sentencing, although there are other principles in play alongside it. Societal deterrence is the principal purpose of punishment; and to achieve this, the sentence imposed must be commensurate with the gravity of the offence committed, and for which the accused has been convicted; (per Ssekandi Ag. J. (as he then was) in **Uganda Vs. Solomon Odaba & Anor, Crim Revision No. 275 of 1974**. However, as was elucidated by the South African Constitutional Court in the multiple murder case of **The State Vs. Makwanyane & Mchunu (CCT3/94)**, [1995] ZACC 3, [1996]2 CHRLD 164, the trial Court must identify mitigating and aggravating factors in each case.'*

The purpose for which punishment is usually imposed, which the Court listed as deterrence, prevention, reformation, and retribution must be weighed against any subjective factor which might have influenced the criminal conduct of the accused; and imposing of such heavy punishment as the death sentence should only arise in the most exceptional cases where: - "there is no reasonable prospect of reformation and the object of punishment would not be properly achieved by any other sentence.....

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"One of the relative theories of punishment (the so called purposive theories) is the reformatory theory, which considers punishment to be a means to an end, and not an end in itself-that end being the reformation of the criminal as a person so that the person may, at a certain stage, become a normal law abiding and useful member of the community once again. The person and personality of the offender are the point of focus rather than the crime, although the crime is, however, not forgotten. And in terms of this theory of punishment... the offender has to be imprisoned for a long period for the purpose of rehabilitation....It is therefore clear from this that in certain cases, courts should focus on giving the convict space for reformation; but without losing sight of the crime committed. In determining which of the two rivaling principles, which both enjoy universal application to varying degree, Court should pursue, each case must be considered in the light of its own facts and circumstances..."

The learned Honorable Justice further stated;

"....where an accused, of his or her own volition, genuinely comes out and confess guilt, this is the clearest manifestation of contrition. It does require a lot of courage and soul searching to do so. And indeed, the Court would be hard pressed to show leniency to such a person by not imposing the ultimate punishment...."

To buttress the above point the Honorable Justice quotes with approval the Sierra Leone case of *Prosecutor v Monina Fofana & Others* stating:

"An accused's acknowledgement of responsibility can be a mitigating circumstance in sentencing because it makes an important contribution to establishing the truth, and thereby an accurate and accessible historical record. Moreover, such an acknowledgement of responsibility may.... set an example for other persons to make the same moral choice, and alleviate the pain and suffering of the victims. Further, acknowledgement is part of the rehabilitative purpose of sentencing, and therefore an accused who

acknowledges responsibility can properly be credited with a reduced sentence (emphasis mine).....”

“In assessing the appropriate sentence, the obligation of the Court is, therefore to impose sentences that reflect the revulsion of [society] to such crimes as those for which the accused have been convicted, after taking into consideration all factors that may be considered, legitimately, in mitigation as well as in aggravation (emphasis mine)”.

- [17] Though the above decision arose out of capital criminal offences not directly related to corruption as the cases earlier cited above, the Tribunal finds the principles on the plea of guilty as a mitigating factor in sentencing very well stated and binding. We therefore exercise the discretion given to the Tribunal under S. 12 B (4) of the Leadership Code Act as amended with the above in mind.

The Tribunal does not accept the Respondent’s explanation that he was under the mistaken belief that his misuse of government vehicles meant for COVID19 relief support and contributed by the public was part of the welfare scheme of the Ministry of Health. He is an experienced senior official who knew or ought to have known better. This was a breach of trust by an officer who was supposed to be an example to others as a supervisor.

- [18] The Tribunal also notes with concern that the Respondent by his own admission and the testimony of the drivers on record which the respondent confirmed to be true, misused the vehicles in question a number of times. That this abuse was repeatedly committed but not detected, corrected and/or punished by the Ministry of Health as required by the Public Service Standing Orders 2021, points to a weakness in the internal control systems of the Ministry which in the Tribunal’s view should be addressed urgently.

The leadership of the Ministry has a duty to ensure that the public resources and assets put at their disposal to ensure public health of Ugandans are put to the intended task and purpose and not abused for private gain in the manner the

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Respondent did. A similar call goes to the leadership of the Public Service as whole.

[19] We have heard the arguments of both the Applicant and Respondent and evaluated the evidence on record. We note that the Respondent admitted the breach, was willing to make good the damage, expressed remorse and did not waste the Tribunal's time. However, abuse of government property is a serious breach. In the current case, a caution or warning might appear like a slap on the wrist.

[20] In conclusion, taking into account the circumstances of this case and all the above, the Tribunal rejects the Respondent's prayer to be warned or cautioned as punishment. We view such a caution or warning as too lenient and a mere "slap on the wrist". The Tribunal has however taken into account the plea of guilty by the Respondent which saved the Tribunal's time and resources, his remorsefulness, agreement to pay UGX 22,500,000 to make good the loss occasioned by his abuse of the Government vehicles and the fact that he is a first offender with a 32-year public service record. For these reasons the Tribunal finds that a demotion is appropriate in the circumstances.

DECISION

[21] The Leadership Code Tribunal therefore makes the following orders.

- 1) The Respondent pays **UGX 22,500,000=** to make good the loss and damage caused to the Government trucks abused and misused. This money should be deposited on the Inspectorate of Government Asset Recovery Account with Bank of Uganda.
- 2) That the Respondent be demoted henceforth.
- 3) The seized vehicles should be returned to the Ministry of Health and the building materials be returned to the Respondent.

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- 4) The seized cash of UGX. 28,245,000= be returned to the Respondent less UGX 22,500,000= in (1) above.
- 5) The Respondent pays costs of this application.

Dated and delivered at Kampala this20..... Day of April 2022.

.....*Karugonjo*.....

HON. DR. ROSELYN KARUGONJO-SEGAWA
CHAIRPERSON

.....*Asuman*.....

HON. ASUMAN KIYINGI
DEPUTY CHAIRPERSON

.....*Okelowange 20/04/22*.....

HON. JANE OKELOWANGE
MEMBER

.....*Didas*.....

HON. DIDAS BAKUNZI MUFASHA
MEMBER

.....*Joyce 20/4/22*.....

HON. JOYCE NALUNGA BIRIMUMAASO
MEMBER

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