THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NUMBER 0065 OF 2012

IMERE DEO ..... APPELLANT

VERSUS

UGANDA ..... RESPONDENT

(An appeal arising from the decision of the High Court by his Lordship Hon. Mr. Justice P. K. Mugamba on the 16th Day of September, 2011 in Criminal SC No. 72 of 2011 in the Anti Corruption Court at Kololo)

Coram: Hon. Justice Remmy Kasule, JA

Hon. Justice Eldad Mwangusya, JA

Hon. Justice F.M. S. Egonda Ntende, JA

JUDGMENT

The Appellant, IMERE DEO was indicted and tried before the High court of Uganda for the following offences.

Count I **STATEMENT OF OFFENCE**

Corruption C/S 2 (a) of Anti corruption Act 2009

PARTICULARS OF THE OFFENCE

Imere Deo, between October 2010 and April 2011 at Crested Towers Kampala, in the Kampala District, directly solicited Shs100,000,000/= for the benefit of himself in exchange of reducing tax from Shs.1,019,878,753/= to Shs.230,000,000/= during the audit of Lubmarks investment Ltd.

Count 2 **STATEMENT OF OFFENCE**

Corruption C/S 2 (d) of Anti Corruption Act 2009

PARTICULARS OF THE OFFENCE

Imere Deo, on the 4th day of April, 2011 at Crested Towers, Kampala, in the Kampala District received Shs5,000,000 for the benefit of himself in exchange of reducing tax liability of Lubmarks Investment Ltd from Shs1,019,878,753 to Shs230,000,000/=

Count 3 **STATEMENT OF OFFENCE**

Abuse of office contrary to section 11 (i) of the Anti Corruption 2009

PARTICULARS OF THE OFFENCE

Imere Deo between October 2010 and April 2011 at Crested Towers Kampala in the Kampala District being a Supervisor with Domestic Tax department of Uganda Revenue Authority (URA) a body corporate in which government has shares did an arbitrary act to wit, solicited for Shs100,00,00/= received Shs5,00,000/= and reduced tax position from Shs1,019,878,753 to Shs230,000,000/= which is prejudicial to the interest of the employer (URA) in abuse of authority of your office.

At the conclusion of the trial the Appellant was convicted on only the second count and acquitted on counts one and three. He was sentenced to three years imprisonment. He appeals against both the conviction and sentence. He sets forth the following grounds of appeal:-

1. The Learned trial Judge failed to consider properly evidence before him.

2. The Learned trial Judge erred in fact and Law when he concluded that the prosecution proved beyond reasonable doubt that the accused received gratification for his benefit in exchange for reducing tax liability for a tax payer.

3. The trial Judge erred in fact and Law when he wrongly took "*...judicial notice of a stratagem evolved in the heady days of the Amin error and perfected during the early eighties...*" and wrongly applied it in this case.

4. The trial Judge erred in fact when he found the evidence of the accused captured on page 7 of the Judgment not contested but in contradiction concluded that he did not believe the story of the accused, without any supporting evidence.

5. The trial judge erred in fact and Law when he convicted the accused of receiving a gratification when he had earlier concluded that he is not satisfied the prosecution proved beyond reasonable doubt that the accused solicited for Shs100,000,000/ and when he acquitted him of the offence of abuse of office, one of the particulars of which was receipt of Shs.5,000,000/= as gratification.

6. The trial Judge erred in fact and in Law when he convicted the accused of Corruptly Accepting Gratification of Shs5,000,000/= C/s 2 (d) of the Anti Corruption Act 2009.

7. The trial Judge erred in Law when he sentenced the accused /appellant to 3 years imprisonment.

The Appellant was represented by **MR. CHARLES DALTON OPWONYA** who had also represented him at the trial. The respondent was represented by MR. **PETER MULISA** and **MS. LYDIA KARAMI** both Counsel from the Uganda Revenue Authority.

At the commencement of the trial, Counsel for the Appellant abandoned Ground 1 of the Appeal after realizing that it offended **Rule 66 (2)** of the Court of Appeal Rules which stipulates as follows:-

> **"The memorandum of Appeal shall set forth concisely and under distinct heads numbered consecutively, without argument or narrative, the grounds of objection to the decision appealed against, specifying, in the case of a first appeal, the points of the law or fact or mixed law and fact and, in the case of a second appeal, the points of Law, or mixed Law and fact, which are alleged to have been wrongly decided, and in a third appeal the matters of law of great public or general importance wrongly decided."**

We have reproduced the rule in this judgment because numerous Appellants and their Counsel have repeatedly and persistently flouted it.

The consequence of none compliance with the rule is dismissal of the ground of appeal because it would be incompetent. Appellants and their Counsel should take heed and always ensure compliance with the rules of this Court.

The brief background to the appeal was that the Appellant was a Supervisor in the Domestic Taxes Department of the Uganda Revenue Authority. He worked together with **ALICE KOMUHANGI** (PW2), an auditor and **CHARITY KASIGAZI** (PW3), a revenue officer I. In October 2010 they were assigned to go out and

audit Lubmarks Investments Limited where SEBYALA KIWANUKA (PW7) is one of the Directors.

As a result of the audit, the Company's Tax Liability was assessed at Shs. 1,091,878,753 termed as a tentative Tax Computation. **Mr. SEBYALA KIWANUKA** disputed the assessment and he requested for more time to look for more records. He was given the time. In the meantime both PW2 and PW3 proceeded on their annual leave. On return from her leave PW2 found that the Appellant had revised the Tax Liability from Shs1,019,878,753 to Shs 230,000,000/=. She asked him how that had come about and he replied that the tax payer had provided more records which he reviewed and came up with that figure. When she asked him to avail her the records on which he had relied to revise the figure he replied that he had already returned them to the tax payer who had travelled out of the country. But according to SEBYALA the reduction was as a result of negotiations between him and the Appellant who offered to reduce his liability if he paid him a sum of Shs.100,000,000/=. PW7 reported to **JENIPHER NYAKWERA TUMWESIGYE** (PW4) who in turn referred him to IRENE MBABAZI IRUMBA (P5) who contacted Police investigators attached to URA who set up a trap leading to the arrest of the Appellant.

The trap was executed by **PATRICK OBURU** (PW9) and **TANGA OGEMA** (PW10) both of whom are Police Officers attached to the Uganda Revenue Authority. The Appellant was arrested after receiving Shs5,000,000/= from PW7 whom he met in his car at a Parking lot at Crested Towers.

The details of the trap will be discussed when a re-evaluation of the evidence for the prosecution is done in view of the assertion by the Appellant that the whole case was a frame up by PW7 and officers in the Uganda Revenue Authority who harboured a grudge against him because of his rapid rise in the ranks of the organization.

In his defence given on oath, the Appellant described his role in the assessment of Lubmarks Tax liability but denied having solicited or taken a bribe to revise the tax from Shs1billion to Shs230 million. He described PW7 as a difficult person who during the course of the tax audit had threatened to take him to a safe house where nobody would trace him. He testified that when he went to meet PW7 at the Crested Towers Parking Yard, PW7 had called him to pick some documents related to the investigations and not a bribe. He was forced at gun point to stuff an envelope in his socks but he did not know that the envelope contained money. He suggested that he had been set up by PW7, a tax evader, because he was following up the case of tax evasion. His co-workers in URA, who were envious of his rapid promotions had also participated in framing him up.

In his submissions Mr. Dalton Opwonya argued grounds 2,3,4 and 5 together. These grounds are in relation to the conviction of the Appellant. Ground 6 which is related to the sentence was argued separately.

On the conviction of the Appellant Mr. Opwonya invited Court not to rely on the evidence of any of the prosecution witnesses because none of them had been credible. He in particular attacked PW7 whom he described as a tax evader who was uncooperative because he had, for over two years, refused to release some documents (contracts) connected to the work he had done for Presidents Office, KCCA and others, and he had decided to teach Appellant a lesson for being tough on him in the investigation of his tax liability. He defended the Appellant's action to collect documents from PW7 in a car park because a diligent officer would collect documents from wherever they are found or availed. He invited Court to find as credible the Appellant's version of the story that when he met PW7 in his car he had threatened him with a gun and forced him to receive an envelope, whose contents he did not know, and had been forced to stuff it in his socks. He also invited Court to believe the Appellants testimony that he had been set up by his workmates in the Uganda

Revenue Authority because although he had joined after they had joined, he had risen and had become their superior. He also submitted that after a finding by the trial Judge that there was no solicitation for a bride, there was no basis for the finding by the trial judge that the Appellant received a bribe.

On sentence, Mr. Opwonya submitted that the trial judge did not take into account the mitigating factors before passing a sentence of three years imprisonment without the option of a fine. The mitigating factors were that appellant is a first offender, married with a wife who does not work and they have two very young children to look after. He is also disabled. He was stated to be a brilliant man who could have continued to serve his country if given another chance.

In his submissions Mr. Mulisa Peter, Counsel for the Respondent, stated that the trial judge had properly evaluated the evidence before him before coming to the conclusion that the Appellant had received Shs5,000,000/= which was a bribe.

According to counsel, PW7's tax liability was under investigation and the Appellant had demanded for a sum of Shs.100,000,000/= to reduce the liability from a sum of over Shs1 billion to a sum of Shs.230,000,000/= and the testimony of PW5, PW7, PW9 and PW10 clearly established that the Appellant had received Shs5,000,000/= which was found on him after his arrest. He invited Court to believe the prosecution version of the story of how the trap was set up and how the Appellant was netted after receiving the money. He invited Court to dismiss the Appellant's claim that he had been set up by PW7 who also forced him to received an envelope whose contents he did not know and stuff it in his socks. He also invited Court to dismiss the Appellant's claim that he was a rising star in the organization and his colleagues had framed him up to bring him down.

On sentence Counsel submitted that the Appellant had not indicated that the sentence was excessive given that the maximum provided under the law is ten years imprisonment and the trial Judge considered all the mitigating and aggravating factors before arriving at the sentence that he imposed. He further submitted that given the position of trust the Appellant held, the sentence was meant to send a signal to other Public Officials to desist from the vice of corruption.

In a brief reply, Mr. Opwonya reiterated his earlier submissions that when the Appellant received the envelope containing shs5,000,000/= he did not know that the envelop contained money because PW7 had called him to collect documents. He also submitted that the wife of PW7 who was in the car should have been called by the prosecution to describe what happened in the car and the failure to call her should draw an adverse inference thus weakening the prosecution case.

As a first Appellate Court this Court is required to review and re-evaluate the evidence adduced before the trial Court, and reach its own conclusions, taking into account that the Appellate Court does not have the same opportunity as the trial Court to hear and see the witness testify and assess their demeanor (see Rule 30(i) (a) of the Court of Appeal rules and the cases of ***Pandya Vs R (1957) E.A 570 and Henry Kifamunte Vs Uganda Supreme Court Criminal Appeal* No 10 of 1997.**

The prosecution produced ten witnesses, and in view of the Appellant's assertion that the case was a frame-up the roles of the witnesses will be reviewed to determined as to whether the claim of a frame-up is valid. The Appellant made his defence on oath and called his wife as witness.

JOYCE KAWESA KIKULWE (PW1) testified that she was a human Resource Officer at URA and knew that the Appellant joined the URA on 16th January

2006 and at the time of his arrest he was a Supervisor Domestic Taxes Department. PW1 played no role in the arrest of the Appellant.

KYOMUHANGI ALICE (PW2) and **CHARITY KASIGAZI** (PW3) investigated the tax liability of PW7 with the Appellant. The Appellant headed the team which came up with a tentative assessment which the tax payer disputed. The tax payer promised to produce more records to support his case. Both these witnesses proceeded on Leave in December, 2010 leaving the Appellant with the investigations. When PW3 returned from her leave she had been transferred to another unit. She played no further role in the investigations. PW2 found that the Appellant had made a revised tax computation of about Shs.230m and she asked the Appellant how he had arrived at the figure. The appellant told her that the tax payer had provided more records. She asked him for the records he had relied on and he told her that the records had been returned to the tax payer who had travelled out of the country. Incidentally when the Appellant was allegedly pestering PW7 for payment of the bribe, PW7 had one time told him that he was in India and, according to the evidence of PW2, the Appellant seems to have believed him. So apart from having participated in the initial investigations in the tax liability of PW7, PW2 never played any role in the arrest of the Appellant whom she left with the investigations when she proceeded on leave and only interacted with him when she returned from her leave and tried to find out how he had arrived at a figure of Shs230,000,000/=

JENNIPHER NYAKWERA TUMWESIGYE (PW4) was only introduced to PW7 by a friend to whom PW7 had revealed that the Appellant was soliciting for a bribe. All she did was to give PW7 a telephone contact of her Superior, one **ANNET KOMUNTALE BELINDA** (PW6) who together with Police Officers set up a trap in which the Appellant was netted.

IRENE MBABAZI IRUMBA (PW5) was an Ag. Manager, Kampala Central, Uganda Revenue Authority. She was the Appellant's Supervisor. In April 2011 she was in her office when she saw four people including the Appellant who was already under arrest. The Appellant was asked to remove everything he had in pockets. He removed keys and an ID from his pockets and an envelope containing shs5,000,000/= from his socks. The money tallied with the serial number already listed by Mr. OBURU and his team of Police Officers who had arrested the Appellant. The Appellant was asked where he had got the money and he said he had got it from Sebyala. He did not give the reason why he had received money from Sebyala.

BELINDA ANNET KOMUNTALE (PW6) was a manager, Central service office URA, Kampala. She was compliance Manager. She, among other things, handled queries, inquiries, complaints and feedbacks. She received a query/complaint from Sebyala pertaining to how the auditors were handling his audit and in particular the Appellant's suggestion that he would reduce his liability from shs1billion to around shs200 million if he paid him shs100 million. She in turn reported to the Commissioner Domestic Taxes Department and the management team.

The roles of all the six witnesses from the Uganda Revenue Authority who testified for the prosecution have been set out because the defence, throughout the trial were suggesting that these witnesses framed up the Appellant because they were envious of his rapid promotion. But from PW2 and PW3 who did the audit with him and the rest of the witnesses who handled the complaint from PW7 including PW5 who saw the Appellant after his arrest, none of them can be said to have gone out of her way to put the Appellant in trouble. None of them can be said to have led the Appellant to the trap which was laid by the other prosecution witnesses as will be shown in this judgment. Whatever role each one played was in the normal course of one's duties and the Appellant

has only himself to blame if he fell into temptation that led him into a trap and not any of the prosecution witnesses from the URA.

The question now is, whether the Appellant solicited for the shs100m from PW7, whom we were invited not to believe because of his profile as a tax evader and a difficult character who, one time, threatened that he would take the Appellant to a safe house where nobody would find him.

SEBYALA KIWANUKA (PW7) was proprietor of Lubmarks Investments Limited, a Company whose tax liability was the subject of investigations by the Uganda Revenue Authority. The audit was carried out by the Appellant together with (PW2) and (PW3). The investigations Team asked for documents to assist in their work and the documents were provided. A series of meetings were held at both his offices and at the URA office, Crested Towers. The Audit team came up with a figure of about Shs1billion which his Company disputed. Later the Appellant made a proposal to reduce the liability to Shs.230million if PW7 paid him a sum of Shs100million. PW7 was not comfortable with this proposal and he told PW4 about it. PW4 referred him to PW5 who introduced him to **PATRICK OBURU** (PW9) and **TANGA OGEMA** (PW10) who met him at his offices at Ntinda where the plan to catch the appellant was hatched. PW7 was given Shs.5million in denominations of 20,000/= and arranged to meet the Appellant at the parking at Crested Towers. The meeting was in PW7's car.

Unknown to the Appellant the Police Officers were in the vicinity and saw him enter the car. On entering the car PW7 told the Appellant that he had raised Shs.5 million and he would pay the rest in installments. He handed over an envelope containing Shs.5million and drove off. The time was between 1:00 p.m. and 2:00 p.m.

D/W Asst AIP TAKALI JAMILA (PW8) obtained a charge and caution statement from the Appellant in which he admitted having met PW7 whom he

found in his car. He also admitted receiving Shs5million which he had not solicited for. It was later found on him.

D/IP PATRICK OBURU (PW9) is a Police Officer seconded to the Uganda Revenue Authority. On 1st April 2011 he together with **TANGA OGEMA** (PW10) went to the Officer of PW7 from where the Appellant allegedly solicited a bribe. They decided to lay a trap. Shs. 5million in 20,000 notes was arranged. The serial numbers of the notes were recorded and the notes photocopied. The money was put in a Khaki envelope and given to PW7. They headed for the Crested Towers Parking Yard opposite Serena Hotel. PW7 showed them where he was going to park his motor vehicle Reg. No. UAN 077G, Mark II Saloon. PW7 was with his wife in the vehicle. The Appellant was described as a dark man walking with a limp as a result of disability. He stationed himself near an MTN booth from where he saw the Appellant entering PW7's vehicle. He stayed in the vehicle for about 10 minutes and then walked away. He was intercepted as he was heading towards a boda boda stage. He was asked about his identity which he gave. PW9 also introduced himself and asked the Appellant to accompany him to the office of the Commissioner Domestic Department where he was searched and Shs.5million found stuffed in his socks. When he was asked about the money he replied that someone had deceived him and given it to him. He was arrested and taken to CPS where he was detained.

D/IP TANGA OGEMA (PW10) was together with (PW9) when the trap was set up. He saw the Appellant enter PW7's motor vehicle and saw him when he came out of the vehicle. He witnessed the arrest and search of the Appellant from whom the money they had marked and photocopied was recovered.

Apart from the Appellant, whose defence we have already stated, the appellant called his wife **SCOVIA AKIA** (DW2) who testified that she had lived with the Appellant for three years and they had two children. Sometime in April 2011 she had tried to ring her husband's phone but it was off. Later on at about

7:00 p.m. she saw him with four other people who took his lap top with them. He parked his car and was taken away. She found him at Jinja Road Police Station the following day. In her testimony she talked about someone who had been threatening her husband. She stated as follows:-

> ***"Earlier he had told me that someone had threatened to take him to a place he could not be found. He told me about it in February 2011. I had seen that person he told me about when he came home as a visitor during January.***
>
> ***The visitor came during evening hours and I made tea which the visitor refused. I heard him telling DW1 to co-operate on three occasions. I did not sit with them"***

The defence did not have any kind words for PW7 who had raised the complaint that the Appellant has asked him for Shs100million to revise his tax liability from Shs1billion to Shs230million . The Appellant, supported by his wife, testified that PW7 had threatened to make him disappear. The Appellant described PW7 as a difficult man who has evaded paying taxes and the URA, had, for a long time, failed to recover any documents from him. The Appellant testified that when he went to PW7's car he had gone to pick documents and not money.

We find the appellant's version of the story unbelievable. The investigations into the tax liability of PW7 had been conducted by the Appellant together with PW2 and PW3. When PW2 returned from her leave and found that the figure had been revised from Shs.1billion to Shs.230million she asked the Appellant as to how he arrived at the figure of shs.230million. His response was that the tax payer had produced more documents. She asked him for the documents and he told her that he had returned them to the tax payer. So the question that PW7 had refused to release the documents never arose. A question was raised as to why the Appellant went to pick the documents from a car park.

The explanation from his Counsel was that a diligent officer would pick documents from anywhere. This is difficult to believe especially when the tax payer is a difficult person, like PW7 was described to be, and had threatened to make the Appellant disappear. The Appellant also testified that he was threatened with a gun and forced to stuff the envelope containing money in his socks, but if the Appellant entered the car to pick the documents as promised by PW7 and there was no suggestion that he refused to receive them, there would be no need to force him to take them and stuff them in his socks. We believe that the Appellant simply fell into a trap set by PW9 and PW10 and when he went to PW7's car the arrangement was that he was going to pick money from PW7. He might not have known the exact amount PW7 had prepared for him, but when PW7 handed over the envelope he informed him that it contained Shs5million. He stuffed the envelope in his socks when he knew its contents and hence the finding by the trial judge, which we agree with that he received a gratification which established the ingredients of the offence.

We shall briefly comment on the evidence of the wife of the Appellant who testified as DW2. She testified that PW7 had visited their home in January and in February and that her husband told her that he had been threatened by him. So between November 2010 when the investigations into the tax liability of PW7 started up to April 2011 when he was arrested the Appellant was in constant touch with PW7 which is consistent with PW7's own testimony that he was constantly pestered by the Appellant to pay him a bribe. The visit of PW7 to the home of the Appellant and the arrangement to meet in the car shows that the relationship between the Appellant and PW7 had gone beyond the official level to the extent that PW7 could visit his home, whatever the reason. Contrary to the assertion by the Appellant that PW7 had threatened to make him disappear, they had a cordial relationship. The assertion that PW7 threatened the Appellant to make him (appellant) disappear was in our view, an afterthought on the part of the Appellant and his wife, DW2.

The other matter raised by the Appellant was that in view of the finding by the trial Court that there was no solicitation, the finding that there was gratification was erroneous. The finding of the Court on this issue was as follows:-

> ***"On the evidence on record I am not satisfied the prosecution has proved beyond reasonable doubt that the person at the other end of the line mentioning Shs100,000,000/= was accused. Neither PW9 nor PW10 knew the accused let alone the sound of his voice. No evidence was led to show he spoke to PW7 save the evidence of PW7 himself. Furthermore the amount of money being asked for by the person on the line was Shs100,000,000/= and no evidence was led, if indeed prosecution evidence of involvement of accused is to go by , why it was he came to accept Shs5,000,000/= instead of Shs100,000,000/=. I am not satisfied the prosecution has proved beyond reasonable that accused ever solicited for Shs100,00,000/= as alleged."***

The evidence of PW7 who had been given Shs5million for the purpose of the trap was recorded as follows:

> ***"They gave me 5,000,000/= of Shs20,000 denominations. So I dropped to Crested Towers parking where we used to meet below Serena Hotel and PATRICK and TANGA were within the surrounding. Deo came to my car and I told him that I was almost getting all the Shs100,000,000/= but I would be able to pay Shs5million at that time then the Shs65,000,0000/= after 2 to 3 days, then the balance I would either pay in installment or at once within seven days. I agreed to call back, I gave him and drove out."***

The finding of the trial judge refers to a phone conversations in which the Appellant is alleged to have talked to PW7 within the hearing of PW9 and PW10 before the trap was set. But the solicitation was not through this telephone conversation. The trap was arranged on the strength of the complaint by PW7 to PW6. The Shs5,000,000/= was raised for the purpose of laying the trap and not meant to meet the whole amount solicited. The evidence of PW7 resolves the issue as to why the Appellant accepted Shs5,000,000/= when he had asked for Shs100,000,000/=. When the Appellant accepted Shs5,000,000/= he expected the balance which PW7 promised to pay.

As a first Appellate Court we are entitled to make our own finding of fact after re evaluation of the entire evidence. On the evidence available it is clear that the Appellant had solicited for Shs100m but only received Shs5million which was used to trap him. The fact of solicitation was, therefore, established and the transaction was completed when the Appellant received the money which was the subject of Count II.

It does not follow that because the Appellant was acquitted on Count I he had to be acquitted on Count II. As rightly pointed out by Mr. Muliisa the two offences are distinct and independent of each other. There can be solicitation without gratification and vice versa. The court could have convicted on both Counts because there was both solicitation and gratification and as we have indicated we see no reason why the trial Judge did not convict on both Counts. As there was no cross appeal we will not interfere with the order of acquittal on the first Count but we uphold the conviction on the second Count.

On sentence the criteria for interference with sentence by an Appellate Court is well stated by the Supreme Court of Uganda in the case of ***Kiwalabye Bernard Vs Uganda (supreme Court Criminal Appeal No 143 of 2001)*** (unreported) where it was stated as follows:

"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 the 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 or where a trial court ignores to consider an important matter or circumstance which ought to be considered while passing sentence or where the sentence is wrong in principle."

We shall follow the above criteria A sentencing hearing was conducted. After submitting that the offence for which the Appellant was convicted attracts a maximum sentence of ten years or a fine not exceeding 240 currency points the prosecution prayed for a deterrent sentence preferably custodial such that Public official should learn to respect their offices. This was after stating that the country is crippled by corruption "where the convicted persons take it as a right to obtain money meant for the government for their own selfish interests.

On the other hand the defence counsel prayed for a lenient sentence on the consideration that the convict was a first offender had a young family of a wife and two young children who were entirely dependent on him. It was stated that he was remorseful.

On his part the appellant stated that he was sorry for what had happened. He was disabled man who is also hypertensive. He prayed for a non custodial sentence.

The sentence was pronounced in the following words:-

"The convict has been found guilty of the corruption offence of receipt. He was to have received shs100,000,000/= and deny the Ugandan tax payer colossal amount of money. I need not say more about the tendency sadly permeating in

our society. I accept the convict is a young man who should take care of his family but he should bear the punishment imposed which should carry meaning. He is a first offender, I agree so I should take that into account just like I must take into account the maximum punishment available under the law.

Having considered everything including family concerns I sentence the convict to 3 years, imprisonment."

On the criteria stated in the authority of **KIWALABYE BERNARD** (supra) we do not find that, given the maximum sentence of ten years, a three year sentence was manifestly excessive or so low as to amount to a miscarriage of justice. Before arriving at the sentence, the trial judge considered all there was in form of mitigation or aggravation of sentence and there is nothing that would warrant interference with the discretion of the trial judge and we decline to interfere with the sentence.

Accordingly the appeal against both the conviction and sentence is dismissed with the result that the appellant will serve the sentence of 3 years imprisonment.

Dated at Kampala this .....19th..... day of ..January..2015

Hon Mr. Justice Remmy Kasule,
JUSTICE COURT OF APPEAL

Hon Mr. Eldad Mwangusya,
JUSTICE COURT OF APPEAL

Hon. Mr. Justice F. M. S. Egonda Ntende,
JUSTICE COURT OF APPEAL