

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CRIMINAL APPEAL NO 0079 OF 2011**

**(Arising from Judgment of His Lordship JB Katutsi at the High Court of Uganda  
at Kampala in Criminal Session No. 0031 of  
2010, dated 3.03.2011)**

**BIREETE SARAH ::APPELLANT**

**VS**

**UGANDA:.....RESPONDENT**

**CORAM: HON. MR. JUSTICE REMMY KASULE, JA**

**HON. LADY JUSTICE SOLOMY BALUNGI BOSSA, JA HON. MR. JUSTICE CHEBORION BARISHAKI, JA**

## JUDGMENT

The accused was indicted for Abuse of Office (Count 1) contrary to S. 11(1) and Embezzlement (Count 2) contrary to S. 14 (a) (iii) of the Anti- Corruption Act, 2009 respectively. She was convicted on both counts and sentenced to 5 years imprisonment on Count 1 and 10 years imprisonment on Count 2. Both sentences were to run concurrently. She was further disqualified from holding any public office for a period of 10 years upon release and ordered to refund US Dollars 70,160.00. Being dissatisfied with the conviction and sentences, the Appellant appealed to this Court.

The facts giving rise to the Appeal are as follows; On Count 1, it was alleged that the accused(now the appellant) between February and May 2009 in the Kampala District being a person employed by the Ministry of Foreign Affairs/National Co-ordination Mechanism of the International Conference at the Great Lakes Region as conference coordinator, did an arbitrary act prejudicial to the interests of her employer by diverting Government funds amounting to US Dollars 114,160,00 to a private account at the Tropical Bank , Kampala Road branch in the accounts of Great Lakes Youth League.

On Count 2, it was alleged that the Accused between February and May 2009 in the Kampala District being a person employed by the Ministry of Foreign Affairs/National Co-ordination Mechanism of the International Conference at the Great Lakes Region as conference coordinator, embezzled US Dollars 114,160, the property of Uganda government to which she had access by virtue of her office.

The prosecution case, as accepted by the trial Judge, was that in 2004, the accused was employed by the Ministry of Foreign Affairs /National Co-ordination Mechanism of the International Conference at the

Great Lakes Region (ICGLR) as Conference Coordinator. Uganda was one of the member states that comprised the (ICGLR) and contributing to its operations. In 2009 Uganda over paid its contribution by a sum of US Dollars 114,160, which was sent back to Uganda by the secretariat. In or around April 2009 the Ministry of Foreign Affairs received a letter purporting to be coming from ICGLR secretariat based in Bujumbura, Burundi dated 22<sup>nd</sup> April 2009 claiming that the remitted sum was a grant for Uganda National Coordination Mechanism (NCM) for payment of salaries and office administration. This was contrary to the earlier communication to the effect that the remitted sum was a surplus.

Investigation into the matter revealed that:

- a) The 22<sup>nd</sup> April 2009 letter was a forgery
- b) Another letter was purportedly written by the National coordinator to ICGLR secretariat requesting for the refund of US Dollars 114,160 and that the sum be deposited on account No.00010172403 in the names of the Great Lakes Youth League in Tropical Bank. This was also a forgery.
- c) The said amount of US Dollars 114,160 had indeed been credited to the said account.
- d) and the accused had withdrawn all the money on account no.00010172403 save for USD 2000 that was still on the account for the accused, it was contended that she had never been an employee of the Uganda Government or at all. She further contended that the charges against her were misconceived and untenable in law. In the alternative, she denied any allegation of theft on her part or at all. She was tried, convicted and sentenced as stated above. She appealed to this court.

At the hearing of the Appeal, the Appellant was represented by Geoffrey Nangumya on private brief while Alice Komuhangi Kawuka, Senior Principal State Attorney, represented the Respondent.

Counsel for the Appellant made two applications; one seeking for leave of court to file a supplementary memorandum amending the grounds stated in the memorandum of appeal and the second was to re-organize the record. Counsel for the Respondent objected to the applications on the grounds that Counsel for the Appellant had had sufficient times to amend the memorandum and re-organize the record. However, Counsel for the Appellant had not yet filed in court the supplementary memorandum and had not served a copy of the same on Counsel for the Respondents In the interest of justice, court allowed the appellant's counsel to amend the grounds orally. Counsel for the Appellant withdrew ground 1 and substituted it with a new ground and amended ground 2.

The grounds of appeal as amended are as follows;

***1. That the learned trial Judge exhibited a lot of bias throughout the trial and this led to the appellant being unjustifiably convicted and sentenced.***

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***2. The learned trial Judge misdirected himself on the law and fact relating to the employment***

*status of the Appellant.*

- 3. That the learned trial Judge erred in law when he convicted the appellant of the offences of abuse of office and embezzlement without proof of the essential ingredients and the participation of the Appellant in commission of the offences.**
- 4. The learned Trial Judge erred in law when he failed to properly evaluate the prosecution and defence evidence on record and thereby came to wrong conclusions.**
- 5. The sentences in both counts were harsh and excessive and the orders that followed were too harsh and unjustified and should be quashed and sentences set aside.**

Counsel for the Appellant submitted that the learned trial Judge exhibited a lot of bias throughout the proceedings, which led to conviction, and sentence of the appellant unjustly. He pointed out the following instances:

- i) The events of 23<sup>rd</sup> November 2010 when the trial Judge asked the accused about getting her file from her former Lawyer which she answered in the negative. He cancelled her bail on the ground that she was engaging in delaying tactics. Counsel for the appellant described the conduct of the trial Judge as “descending from the bench and entering into the proceedings” which according to him was a clear sign of bias towards the appellant.
- ii) When the trial Judge interjected during the testimony of PW10 for referring to the accused person as Madam Sarah. Counsel for the appellant interpreted that to mean that the accused person was not worthy of being called by any title conferred by the British Empire.
- iii) When the trial Judge said that PW10 was not the right person to answer the question of who to charge. It was Counsel for the appellant’s contention that this showed that the trial Judge had already formed his mind as to who had to be charged and that he no longer wanted to listen to anything more.
- iv) When the trial Judge denied the defence an opportunity to submit on a no case to answer the appellant’s counsel submitted that the said refusal shut out the defence in presenting their case and as such, it gave the impression that Court had already decided the case even before conclusion of the proceedings.
- v) As to the manner in which the trial Judge reinstated the appellant’s bail, Counsel for the appellant submitted that bail was reinstated without listening to the application made by counsel for the accused and that it took unnecessarily too long keeping the accused in jail
- vi) Counsel for Appellant submitted that the trial Judge introduced evidence, which was not part of the record, in his judgment.

Regarding ground 2, Counsel for Appellant submitted that the evidence led showed that the accused person was neither an employee of the International Conference of Great Lakes Region

nor of the Government of Uganda/Ministry of Foreign Affairs during the period the offences were committed. He relied on the Pact **[Exhibit 6]** and the Appellant's contracts of employment referred to as R65, R66, R70 in support of his submission.

Regarding ground 3, it was Counsel for Appellant's submission that the appellant was never found to have participated in any of the acts that led to the loss of the alleged monies. She was only found to have sent the letter authored by Ambassador Mugume (PW7), the Permanent Secretary Ministry Of Foreign Affairs to the secretariat in Bujumbura requesting for refund of the monies and that letter was exhibited. He relied on the case of **Uganda VS Kitembo Moses and 3 Ors High Court Criminal case No. 22 of 2014** to support his submission. He further submitted that PW7 did not deny his signature on the letter but denied its contents. He found it awkward that the Ambassador proceeded to use 40,000 US dollars (80million shillings) that was received by the Ministry of Foreign Affairs as a result of the purported letter without knowledge of the source.

Regarding ground 4, Counsel for Appellant submitted that the trial Judge failed to evaluate the evidence in the following ways;

- i) By continuing to refer to the letter of 22<sup>nd</sup> April 2009 and finding that it was a forgery and yet it was not on record
- ii) By finding that the money alleged to have been stolen by the accused/appellant was remitted for salaries, yet the money had been remitted as Uganda's contribution to the Great Lakes offices
- iii) By finding that the money had earlier been sent back, yet the money was sent back after the letter requesting for it was received by the Secretariat in Bujumbura
- iv) By finding that the letter requesting for the money was a forgery and then holding that Uganda Government lost money in Bujumbura. His contention was that the money was not property of the Government of Uganda

It was therefore his submission, that had the trial Judge properly evaluated the entire evidence before him; he would not have found the appellant culpable of any offence.

Regarding ground 5, Counsel for Appellant submitted that the sentences in both counts were harsh and excessive and were unjustified in the circumstances and should be quashed and set aside. He submitted that the trial Judge ought to have considered the gravity of the offence and the participation of the appellant. He further submitted that, if at all the appellant was to be convicted, she should have been convicted of some lesser offence and she shouldn't have been sentenced as if she was the principal perpetrator.

In reply, Counsel for Respondent supported the conviction by the learned trial Judge on both counts and the sentences. She argued ground 2, 3, 4, 1 and then 5 in that order.

On ground two concerning the appellant's status of employment, Counsel for the Respondent submitted that the contention of the respondent is not that the appellant was a government official but rather that she was a person employed in a public body. The appellant was employed in a government undertaking at the time the offences were committed by virtue of the Pact **[Exhibit 6]**. Counsel further submitted that by implication, there was a contract of service between the Appellant and the National Coordination Mechanism. This is because most of the prosecution witnesses testified that the Appellant was a Conference Coordinator for the National Coordination Mechanism for Uganda. The appellant herself admitted to being the Conference Coordinator and she indicated the same in her correspondences while occupying that office. The appellant also attended an activity as part of the Ugandan delegation and signed on a payment voucher as such.

Counsel for Respondent did not deny that Friends to the Great Lakes Region were paying the appellant, but her contention- was that they were giving support to the Government of Uganda for it to be able to continue with the undertaking. She further contended that the reason why the appellant couldn't in her individual capacity ask for payment from the Friends to the Great Lakes Region when there was a delay was because support was intended for the Government of Uganda and not to her individually. It was her further submission that it is wrong for the appellant to be an employee of the National Coordination Mechanism when it is convenient for her and totally dissociate herself when it is not convenient for her. Regarding ground 3, Counsel for Respondent submitted that the arbitrary act for the offence of abuse of office was the email that the Appellant generated and upon which Uganda's surplus contribution to the International Conference of the Great Lakes Region (ICGLR) was sent. It was her submission that Ambassador Mugume totally disassociated himself from the content of the letter that was attached in the said email. It was her further submission that the act of asking for the money to be put on the appellant's private account was prejudicial to the interests of the National Coordination Mechanism.

As regards the offence of embezzlement, Counsel for Respondent submitted that the Appellant withdrew the money from the account (Great Lakes Youth League). She contended that by virtue of the office that the appellant held to wit; Conference Coordinator of the ICGLR, she accessed this money and she knew where the money was or where it went because the money was on an account which she had control over though she was not a signatory.

Regarding ground 1, Counsel for Respondent submitted that there was no bias on the part of the learned trial Judge and if there was any bias, it did not occasion any miscarriage of justice to the appellant.

The sentences handed to the Appellant are legal sentences and not harsh in the circumstances. The Appellant held an office that was very instrumental in ensuring proper coordination within the Great Lakes Region including holding the image of the Government. What was done in this case was very bad for the Government. As such, the sentence was therefore, appropriate and the compensation order was justified.

In rejoinder, Counsel for the appellant submitted that the National Coordination Mechanism (NCM) was

directly under the office of the Permanent Secretary who was not appointed by any instrument and so he assumed the role of the National Coordinator. There was no proof that the President asked the Permanent Secretary of Ministry of Foreign Affairs to be the National Coordinator and neither was it provided for under the Pact.

Counsel further submitted that there was a misconception about the appellant's role, which was defined by the Pact. The appellant was working as a volunteer of the Great Lakes Youth League to assist the National Coordinator because she was available.

Therefore, that the Appellant being referred to as an employee of a public body should not arise at this point because she was charged, convicted and sentenced as a Ministry of Foreign Affairs employee.

The e-mail in question should not be seen in its own context because the appellant sent it after meetings were held in Nairobi and Addis Ababa in respect of refunding the money to Ministry of Foreign Affairs.

It was counsel's submission that the status of the appellant and the evidence that was availed before the trial Judge did not at all point to the appellant as the person who was liable for the offences of which she was convicted.

This being a first appeal, this Court has a duty under **Rule 30 (1) (a)** of the Rules of this Court to re-appraise the evidence adduced at trial, draw inferences of fact and come to our own conclusion. See also **Kifamunte Henry v Uganda SCCA No 10/1997** and **Bogere Moses v Uganda SCCA Nol/1997**. We shall resolve the grounds of Appeal in the order they were argued.

On ground 1, **Black's Law Dictionary, 6<sup>th</sup> Edition** defines bias as **a predisposition to decide a cause or an issue in a certain way, which doesn't leave the mind perfectly open to connection.** Article 28(1) of the Constitution enjoins Courts of law to administer justice with impartiality in other words, without bias.

The test to be applied in determining whether a judicial officer is biased was set out in the case of **GM Combined Ltd v AK Detergents (U) Ltd Supreme Court Civil Appeal No. 19 of 1998** where Justice Oder cited with approval the case of **Exparte Barnsley and District Licensed Valuers Association (1960) 2 QBJ 169** where it was held thus:

*“In considering whether there was a real likelihood of bias; the court does not look at the mind of the justice himself or at the mind of the Chairman of the tribunal or whoever it may be who sits in a judicial capacity, it does not look to see if there was a real likelihood that he would or did, in fact favor one side at the expense of the other. The court looks at the impression which he would give to other people. Even if he was impartial as could be, on his part, then he should not sit. And if he does sit, his decision cannot stand. Never the less there must appear to be a real likelihood of bias. Surmise or conjecture is not enough. There must be circumstances from which a reasonable man would think it likely or probable that the justice or chairman as the case may be would think it likely or probable that the court will not inquire whether he did in fact favor one side unfairly. Suffice is that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right minded people go away thinking: The Judge was biased.”*

Also in *Local ball (UK) Ltd v Bay Field Properties Ltd and Another 2000 QB*, it was held that;

*“Any Judge who allows any judicial decision to be influenced by partiality or prejudice deprived the litigant of the important right to which we have referred and violates one of the most fundamental principles underlying the administration of justice wherein any particular case the existence of such partiality or prejudice its actually shown the litigant has irresistible grounds for objecting to trial of the case by that Judge or for applying to set aside the judgment.”*

Regarding the events of 23<sup>rd</sup> November 2010, when bail was cancelled, we have looked at the record of proceedings of the previous hearing date of 5<sup>th</sup> of November, 2010. Counsel for the accused informed court that she did not know how to proceed without the file although she had made efforts for it to be prepared and had obtained the record of proceedings, which were not endorsed. Court asked counsel how many days she required to get the file. The trial Judge was quick to add that the date had to be close because he was going on leave and the case had to be completed within the following week. It was counsel who suggested 23<sup>rd</sup> November, 2010 which court allowed because the trial Judge was alive to the fact that she had to represent her client effectively but told her to be mindful of court's interests. When the matter came up on 23/11/2010, the file was not there and the trial Judge said **“Do you know that 1 do not entertain delaying tactics. Bail is cancelled I will hear this case on Monday the 29<sup>th</sup> November 2010.”** It was unfortunate that the Judge made such

a decision because there was no indication that counsel for the accused was not ready to proceed and was seeking for an adjournment. His decision was influenced by the fact that he wanted to hear the case before proceeding on leave supposedly to avoid delay.

We are therefore, of the considered view that his action was not influenced by any preconceived negative opinion against the accused and did not amount to bias.

***Regarding the trial Judge's interjection during PW 10's testimony for referring to the accused person as "Madam Sarah", he stated; "You see you have to learn that the word madam is not simply used like that it is a pledge it is conferred by the British Empire so that it is not say Madam so and so. You can say Miss or Mrs not madam. "***

**Thesaurus Dictionary** defines madam to mean a polite term of address to a woman, originally used only to a woman of rank or authority.

We note that it was unnecessary for the Judge to make such a comment, in our view; the comment was intended as a point of information. It did amount to bias. Further, when PW7 was being cross examined, he referred to the accused as Madam Sarah Bireete and the trial Judge did not interject. We therefore conclude that there was no evidence of bias.

Regarding the Judge's comments on whom to charge, it is trite that the Director of Public Prosecutions is the organ that decides which charges to prefer against a suspect. The investigating Officer's role is limited to investigating the case. We therefore find that the trial Judge's comments did not amount to bias.



On the issue of a submission of no case to answer, it is trite law that prior to placing an accused person to his/her defence, the Prosecution is required to have established a *prima facie* case against such accused person. In the present appeal, counsel for the accused sought for the court's guidance on submission on no case to answer and the trial Judge advised him in these terms;

***“Counsel I want to assure you that you know sometimes it is better to make a conclusion that it was better to go on to the logical conclusion then you can reserve oral submissions in the final submissions so that we don't waste time because from what I have seen you might be having your reasons to submit I will not deny you that duty can't you incorporate that in your final submissions?. Counsel answered; “My Lord I can”.***

***So my finding at this stage is there is a prima facie case so it is supposed to be for the accused to say something in her defence if she so elects.”***

From the foregoing, we find that the trial Judge did not deny the accused an opportunity to submit on a no case to answer. Rather, he asked counsel if he could incorporate it in his final submissions which counsel answered in the affirmative. The law makes it mandatory to submit on a no case to answer when court considers that there is no sufficient evidence against the accused. **S.73 of the Trial on Indictments Act provides:**

*(1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is no sufficient evidence that the accused or any one of several accused committed the offence, shall, after hearing the advocates for the prosecution and for the defence, record a finding of not guilty.*

*(2) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is sufficient evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each accused person of his or her right —*

*(a) to give evidence on his or her own behalf;*

*(b) to make an unsworn statement;*

*(c) to call witnesses in his or her defence,*

*and shall then ask the accused person, or his or her advocate, if it is intended to exercise any of the rights under paragraphs (a) or (b) and (c) of this subsection and shall record the answer. The court shall then call on the accused person to enter on his or her defence, except where the accused person does not wish to exercise any of such rights, in which event the advocate for the prosecution may sum*

*up the case for the prosecution.*

The import of sub section 2 is that court can exercise its discretion to determine if an accused person has committed a crime based on the evidence of the prosecution witnesses, not on submission of no case to answer. By asking counsel if he could incorporate his response on the issue of no case to answer in his final submissions which counsel answered in the affirmative, the trial Judge cannot be said to have acted with bias and this action did not occasion a miscarriage of justice on the appellant.

In respect of the manner in which the bail was conducted, the record indicates that at the close of Detective Inspector Mugisha Eldard's (PW10) examination in chief, the matter was adjourned to the following day. Counsel for the accused stated **"My lord I had a prayer to make..."** and the Judge responded **"I know okay bail reinstated". Counsel obliged.** The record demonstrates that the learned trial Judge anticipated Counsel's request and granted it. This cannot tantamount to bias especially since it was in the appellant's favor. Bias connotes negative attitude or prejudicial act towards a person. Besides, Counsel was free to let the trial Judge know that he had a different prayer to make, which he did not do.

On the length of time between cancellation and reinstatement of the appellant's bail (23<sup>rd</sup> November, 2010- 29<sup>th</sup> / November /2010), we are unable to accept counsel for the appellant's contention that it was unnecessarily long. It was a period of 6 days. We have perused the record of proceedings and not found anywhere that the accused applied for reinstatement of bail, which the trial Judge refused. The trial Judge could not move himself to reinstate the bail.

Counsel for the appellant abandoned the issue of introduction of new evidence by the trial Judge in his judgment after court advised him that he had raised it as a separate ground of appeal.

On the issue of bias, we find that the trial Judge was not biased and therefore, ground 1 of the appeal fails.

Ground 2, relates to the appellant's status of employment. The appellant maintains that she has never been an employee of Government and was never paid out of the consolidated fund and was therefore, wrongly charged under the Anti-corruption Act. Counsel for the respondent described the appellant as a person employed in a public body. She contended that the appellant was employed in a government undertaking at the time the offences were committed by virtue of the Pact [Exhibit 6]. Counsel for the appellant strongly disagreed with the said contention because the appellant was charged as a person employed by Ministry of Foreign Affairs/National coordination mechanism of the Great Lakes Region. Indeed, a look at the indictment confirms this position.

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It is also important to note that the Anti Corruption Act, 2009 is not only applicable to

Government employees. The long title provides thus:

***“An Act to provide for the effectual prevention of corruption in both the public and the private sector...”***

It is therefore, a misconception to think that one cannot be charged under the Act simply because such a person is not a Government employee.

The trial Judge held that the accused/appellant was a person employed in a public body to wit: Ministry of Foreign Affairs/National coordination mechanism of the Great Lakes Region. His decision was based on the evidence of witnesses who testified that the appellant was the Conference Coordinator of the International Conference Mechanism. The appellant does not agree with this position.

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Anti-Corruption Act defines a **“public body”** to include the Government, any department, services or undertaking of the Government. Thesaurus Dictionary defines an **“undertaking”** to mean *“to contract to or commit oneself to (something) or (to do something)”*. Merriam Webster Dictionary defines an **“undertaking”** as *“a promise or agreement to do or not do something”*

A look at the Pact shows that it is a solemn agreement by member states and it was signed by the President on behalf of Uganda as one of the 11 core member states. Article 27 of the Pact establishes the National Coordination Mechanism to facilitate the Implementation of the Pact in each member state. Article 26 (4) of the same Pact is to the effect that the operating budget of the conference secretariat shall be funded by mandatory annual contributions of the Member States and by resources mobilized from cooperation and development partners of the Great Lakes Region and by any other resources identified by the Conference.

From the foregoing, it is our considered view that the National Coordination Mechanism of the International Great Lakes Region is a Government Undertaking.

Section 2 of the Public Service Act, 2008 defines an **“employee”** to mean a person other than a public officer employed in the public service.

Article 175 of the Constitution provides that:

In this Chapter, unless the context otherwise requires—

- (a) "public officer" means any person holding or acting in an office in the public service;
- (b) "public service" means service in any civil capacity of the Government the emoluments for which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament.

Section 2 of the Employment Act defines an **“employee”** to mean any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the Government of Uganda, including the Uganda Public Service, a local authority or a parastatal organisation but excludes a member of the Uganda Peoples’ Defence Forces.

The same section defines a **“contract of service”** to mean any contract whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship.

From the record of proceedings, PW7 testified that the appellant was recruited in Government service through contract, not Public Service Commission. The appellant testified that she was employed by the Group of Friends to the Great Lakes Region but none of the contracts on record are between her and the said group. From the record, the appellant entered into a contract (**RST 247/454/25**) with the National Preparatory Committee in August 2004 under guidelines sent out by Secretary to the Group of Friends of the Great Lakes Region and its Board of Trustees. The contract was for a period of 5 months and was later renewed for 10 months (December 2005- September 2006). The next contract (**RST/247/454/65**) was between the appellant and the National Coordinator for 9 months (October 2006-June 2007). Its budget was also approved by the Secretary to the Group of Friends and its Board of Trustees. It is important to note that the payments were made by UNDP. From the above, it is clear that the contracts were signed before the Pact came into force but the second contract was still running when the Pact was in force.

There is no other contract after June 2007, however, the appellant continued to work as a Conference Coordinator up to the time she was arrested. She also testified in the trial Court that she was the Conference Coordinator. Her contract of service was implied in the circumstances. For instance, in a Loose Minute dated 31/03/2009, prepared by the appellant, she was part of the Ministry of Affairs delegation for Zone 3 Mission to Sudan, Kenya and Ethiopia, she received the money for the above mission and her per diem on 14/4/2009 through a cheque which bears her signature and name. It is also worth noting that in her communication to the Secretariat, the appellant signed off as the Conference

Coordinator, International Conference on the Great Lakes Region, Ministry of Foreign Affairs. We accept counsel for the respondent's submission that the appellant cannot choose to be an employee at her own convenience.

Counsel for the appellant referred to the appellant as a volunteer, we do not accept that contention because the appellant was being paid for her services. The Cambridge Dictionary defines a volunteer as **"a person who does something, especially helping other people, willingly and without being forced or paid to do it"**

We are further fortified in our decision by a letter dated 22<sup>nd</sup> January 2007 where Ambassador Mugume requested the Secretary to the Board of Trustees, Group of Friends of the Great Lakes Region to avail funds for the **"salary payments of Ms Sarah Bireete"** to enable her carry out her work effectively. We also accept counsel for the respondent's submission that the Group of Friends of the Great Lakes Region were paying the appellant because of their support to Uganda as a member state. Indeed a reading of the Great Lakes Special Fund for the Reconstruction and Development (Exhibit 5) reveals that the Group was established to provide the international community's political, technical and financial support to the core countries and the Secretariat of the Conference. The appellant cannot therefore, isolate the involvement of the Group of Friends in paying her from its support to Uganda as a core member state. On the source of funding for her salary, PW7 testified that a person can be a government employee but funded from a donor project, which was the situation of the appellant. We therefore find that at all material times the appellant was a person employed for the Government of Uganda by virtue of her position as a Conference Coordinator for ICGLR, which a Government is undertaking. Ground 2 of the Appeal fails.

Counsel for the appellant contended in ground 3 that the appellant's participation was never proved. In resolving this issue, we find it pertinent to reproduce the provisions of the law under which the appellant was charged.

S. **11(1)** provides that:

*A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.*

S. **19 (a) (iii)** provides that:

*A person who being an employee, a servant or an officer of the Government or a public body; steals a chattel, money or valuable security to which he or she has access*

*by virtue of his or her office; commits an offence and is liable on conviction to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty six currency points or both.*

*Counsel for the respondent argued that the arbitrary act in count 1 was the email that the appellant generated and upon which Uganda's surplus contribution to the ICGLR was sent. Ambassador Mugume denied the contents of the email attachment but testified that the signature on the letter looked like his. In other words, the appellant forged the letter (Ref RST 247/454/32) dated 13/02/2009, recalling the funds. We find it relevant to refer to the report and testimony of the Handwriting Expert, Samuel Ezati (PW8). In his report, the said letter was Exhibited as R-3. His finding on the report was thus:*

***“The questioned signature on R3 is produced by Fax. They are strong pictorial similarities between the questioned signatures of R-71, R-6 and R-3 and Specimen signature Exhibit b. I cannot make a definite opinion in this case unless the original questioned document before it was faxed is produced”***

During cross examination, he testified;

***“Actually I did not give any opinion on that one. Number four I did not give any opinion...Okay take it that way as you want you see some legal terms I don't know them but I did not pronounce myself on that one”***

From the foregoing, it is clear that the prosecution did not prove the ingredient of arbitrary act beyond reasonable doubt. There was no evidence to show that the appellant forged the said letter. We therefore find that the offence of Abuse of Office was not proved to the required standard of proof of beyond reasonable doubt.

Regarding the ingredient of an act prejudicial to the interests of the National Coordination Mechanism for the offence of Abuse of office, Counsel for the respondent submitted that the prejudicial act was that the appellant asked for the money to be put on her private account. We do not accept her submission because Charles Kapekele Chileya (PW1) who is the Deputy Executive secretary of the ICGLR in Bujumbura testified **“I advised the Uganda government to find private accounts if they want to recall some money from us”**. This advice came after he met with Ambassador Mugume in Nairobi and Kinshasa and discussed about the status of funding. During that meeting, Ambassador Mugume asked if Uganda could use some of the money since the government had not provided funding

for National Coordination activities.

From this testimony, it is clear that it was not the appellant's idea to send the money on a private account. We find that the prosecution did not prove beyond reasonable doubt that the appellant prejudiced the interest of the National Mechanism.

It is therefore our finding that the offence of abuse of office was not proved beyond reasonable doubt and we acquit the appellant of the same.

On the offence of embezzlement, the appellant's sister Kyomugasho (PW9) testified that a sum of 223,245,827/= (114,000 USD) was credited to the account of the Great Lakes Region Youth League of which the appellant was the President. She further testified that she and Patrick Onen signed for the money. The appellant confirmed the above position during cross-examination. The question is, where did the money go?. PW8 testified that it was handed over to the Ministry of Foreign Affairs Cashier, less by 4.5 million shillings. The 4,500,000/= (Four Million, five hundred thousand shillings only) was exhibited by police. The appellant does not exactly say where the money went after withdrawal, she only testified that the acknowledgment forms were at her office but had been stolen during a break in her office. In our considered view, this is an excuse on the part of the appellant for not knowing at all where and how such a colossal sum of money belonging to the Government was expended. The Ministry Cashier, Mwanje Ismail (PW3) testified that he banked 80,000,000/= (Eighty Million Shillings only) for the ICGLR in Bank of Uganda and returned the bank documents to the appellant's office. It was his testimony that all project bank documents were kept separately in her office. When asked about the source of the funds, he denied knowledge but testified that the instructions to bank the money came from the Permanent Secretary's office. Ambassador Mugume (PW8) admits knowledge of the Shs. 80,000,000/= (Eighty Million Shillings only) but testified that the money was brought into the Ministry by the Cashier. He used part of the money for project work and the balance went into ministry work. During cross examination, he testified that he got loose minutes about the contribution on the GTZ guidelines and asked the Under Secretary Mr. Chris Kanya to receive the money but did not verify the source of the funds and later on learnt that it was from Bujumbura.

We are of the considered view that the prosecution proved beyond reasonable doubt that the 114,000 USD being Uganda's surplus contribution to the ICGLR was deposited on the Great Lakes Youth League Account following an email with a letter as an attachment recalling the funds. The appellant was the President of the Youth League and her sister PW8 was a signatory to the account, PW8 withdrew the said money less by 4,500,000 (Four million five hundred thousand shillings only), which police recovered and exhibited. The appellant was aware and participated in the said transactions and admitted to knowing the same. The prosecution proved

beyond reasonable doubt that after the money had been withdrawn from the bank it simply disappeared into thin air and was never passed on to Government. We accordingly uphold the finding of the trial Judge that the appellant was rightly convicted of the offence of embezzlement.

On ground 4, we shall resolve the components of the alleged failure by the trial Judge to evaluate evidence as Counsel for Appellant submitted albeit combining the first three as we find them interrelated.

- i) by continuing to refer to the letter of 22<sup>nd</sup> April 2009 and finding that it was a forgery and yet it was not on record
- ii) by finding that the money alleged to have been stolen by the accused/appellant was remitted for salaries yet the money had been remitted as Uganda's contribution to the Great Lakes offices
- iii) by finding that the money had earlier been sent back yet the money was sent back after the letter requesting for it was received by the Secretariat in Bujumbura

The trial Judge did not make a specific finding to the effect that the letter dated 22<sup>nd</sup> of April, 2016 was a forgery. He noted it as part of the prosecution case.

- iv) by finding that the letter requesting for the money was a forgery and then holding that Uganda Government lost money in Bujumbura. His contention was that the money was not property of the Government of Uganda

The Judge did not make a specific finding that the letter requesting for the funds to be remitted was a forgery though it could be implied from the Judge's choice of words such as “**Her (referring to the appellant) machination and crafty scheming earns her a place among the grander spiders at the centre of the cartel of corruption .**”

We have already made a finding that the prosecution failed to prove beyond reasonable doubt that the letter requesting for a refund of the surplus contribution was a forgery. We find that the trial Judge failed to evaluate evidence in respect of the letter requesting for refund. Ground 4 therefore succeeds in part.

Regarding the question whether the money was Government property or not, we find that it is without a shadow of doubt that the money belonged to government. It is clear from the record of proceedings that the 114,000 USD was Uganda's surplus contribution to the ICGLR.

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On ground 5, the circumstances when an appellate court can interfere with the sentence imposed by a trial Judge are well settled. In the case of **Kyalimpa Edward v Uganda SCCA No 10 of 1995** the



Supreme Court made reference to the case of **R v De Haviland (1983) 5 Cr. App (R)s**  
**109** where it was held that;

***\*An appropriate sentence is a matter for the discretion of the sentencing Judge. Each case presents its own facts upon which a Judge exercises his discretion. It is a practice as an appellate court: this court will not normally interfere with the discretion of the sentencing Judge unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to an injustice<sup>1</sup> [Emphasis mine]***

We have already held that the offence of Abuse of Office was not proved beyond reasonable doubt; we therefore set aside the conviction by the trial court, acquit the appellant of this offence and quash the sentence of 3 years imprisonment. However, on the offence of embezzlement, which carries a maximum sentence of 14 years imprisonment, the appellant was sentenced to 7 years imprisonment. The trial Judge took into consideration mitigating factors before passing the sentence. The sentence is legal and is not manifestly excessive; the compensation order and disqualification from holding public office for a period of 10 years upon release are justified, we decline to interfere with it. Ground 4 therefore succeeds only in part.

In conclusion, we find that the appeal succeeds only in part. The conviction of the appellant of the offence of Abuse of Office is quashed and the sentence is set aside. The conviction and the sentence of the appellant for embezzlement by the learned trial judge are upheld. The appellant should start serving her sentence, her bail pending appeal is cancelled. The orders as to the appellant's disqualification from holding any public office for a period of 10 years upon release and order to refund US Dollars 70,160.00 are upheld.

Before taking leave of this matter, we recommend that the Government of Uganda should streamline matters regarding the management of ICGLR/NCM to avoid such mishaps in future.

Dated this 21<sup>st</sup> day of April 2016

Hon. Mr. Justice. Remmy Kasule, JA

Hon. Lady. Justice. Balungi Bossa, JA



