THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

CRIMINAL APPEAL NO.77 OF 2011

DAVID CHANDI JAMWA ..... APPELLANT

VERSUS

UGANDA .....RESPONDENT

(Appeal from the decision of the High Court of Uganda of the Honourable Justice John Bosco Katutsi, given at Kampala on the 3rd day of March 2011 in Criminal case No. 87 of 2010 in the Anti-corruption Division of the High Court.)

CORAM: HON. JUSTICE S.B.K. KAVUMA, DCJ

HON. MR. JUSTICE RUBBY AWERI OPIO, JA

HON. MR. JUSTICE KENNETH KAKURU, JA

JUDGMENT OF THE COURT

This appeal arises from the decision of Hon. Justice John Bosco Katutsi J in High Court Criminal Case No. 87 of 2010 at the Anti-corruption Division of the High Court dated 3rd May 2011, in which the appellant was convicted of causing financial loss contrary to Section 20 of the Anti-corruption Act and sentenced to a term of imprisonment of 12 years and barred him from holding any public office for 10 years after serving the sentence.

The appellant was acquitted by the same court of the offence of abuse of office contrary to Section 11 of the Anti-corruption Act (ACA).

The respondent had filed a separate appeal against the appellant's acquittal on count one. When the appeal came up for hearing the two appeals were consolidated. The appellant's appeal has been treated as a cross appeal in this Judgment.

At the hearing of this appeal **Mr. David F.K Mpanga** appeared for the appellant, who was present in person, while **Mr. Rogers Kinobe** appeared for the respondent.

The appellants' grounds of appeal are set out in his memorandum of appeal as follows:-

1. ***The Learned Trial Judge erred in law when he held that the Appellant could be convicted of the offence of causing financial loss contrary to Section 20 of the Anti-Corruption Act 2009:***

2. ***The Learned Trial Judge erred in law and fact when he failed to evaluate the evidence and apply it to the law of the offence of Causing Financial Loss under Section 20 of the Anti Corruption Act 2009;***

3. ***The Learned Trial Judge erred in law when he applied a test unknown to criminal law to convict the Appellant; and***

4. ***The Learned Trial Judge erred in law and in fact when he sentenced the Appellant to a prison term of 12 years and barred him from working in the public service for 10 years after his sentence.***

The respondent's cross appeal states that:-

> ***"The learned trial Judge erred in law and in fact when he failed to properly evaluate the record and apply it to the***

law of the offence of Abuse of office contrary to Section 11 of the Anti-corruption Act 2009."

Mr. Mpanga learned counsel for the appellant chose to argue grounds 1, 2 and 3 together and ground 4 in the alternative. He then dealt with the issues raised in the cross appeal in re-joinder.

In respect of ground 1learned counsel submitted that Section 20 of the Anti-corruption Act repealed and replaced the old Section 269 of the Penal Code Act (Cap 120). That Section 20 of the Anti-corruption Act 6 of 2009 (ACA) creates the offence of causing financial loss which was the offence the appellant was charged with in Count 2 and of which he was convicted.

He contended that Section 20 of the Anti-corruption Act was not a straight re-enactment of the old Section 269 of the Penal Code Act as there were significant amendments to that section.

He contended that whereas the offence of causing financial loss remains capable of being committed by the same class of persons namely, any person employed by the government, a bank, a credit institution, an insurance company or a public body, the manner in which the offence may be committed was varied.

He contended the Section 20 only criminalizes acts and not omissions. That whereas under the repealed Section 269 of the Penal Code Act the offence then was for *doing any act or omission knowing or having reason to believe that such act will cause financial loss,* Section 20 of ACA now restricts the offence only to acts done.

Again he contended that in the amended and reinstated Section 20 of ACA insurance companies, public bodies, customers of banks or credit institutions are not within the definition of the offence of causing financial loss.

He submitted that the appellant having been charged with the offence of causing of financial loss on account of being employed by National Social Security Fund (NSSF) and doing an act which he knew or had reason to believe would cause loss, he was charged with an offence that is no longer known in law as it does not fall within the ambit of Section 20 of the Anti-corruption Act.

Learned counsel further submitted that no evidence was adduced by the state to prove that the appellant knew or had reasonable cause to believe that financial loss would be caused to government, Bank or credit institutions. That indeed no such loss was caused.

He asked court to uphold the appeal on this ground.

On ground 2, counsel submitted that the learned trial Judge erred in law and in fact when he failed to evaluate the evidence and apply it to the law of causing financial loss under section 20 of Anti-corruption Act.

Counsel contended that the learned trial Judge failed to adequately expound on the elements of the offence of causing financial loss.

Those elements, he stated, were set out in the case of ***Kassim Mpanga vs Uganda (SCCA No.30 of 1994)***. He stated them to be the following:-

1. *That the appellant was a person employed by the NSSF a public body.*

2. *That in the performance of his duties as Managing Director of NSSF he sold government bonds before the maturity dates to Crane Bank.*

3. *That he knew of had reason to believe that that act would cause loss to NSSF.*

4. *That the said act caused loss to NSSF.*

Counsel contended that failure to set out the above elements by the learned Judge resulted into an erroneous decision. Further, that the appellant did not have knowledge or reason to believe that his acts were going to cause loss and indeed no loss was caused to NSSF.

He submitted that although the appellant signed the letter which authorized the sale of treasury bonds before their maturity date, the actual transfer of the ownership of the bonds was not done by him, but by the Bank of Uganda.

He contended that the evidence on record by one Kaboyo, a Director of Bank of Uganda, was to the effect that Bank of Uganda considers any sell of bonds before maturity date as a legitimate exercise. That it is an option always available to the bond holder. In any event he submitted, there was no complaint by NSSF of loss of any funds and none was found by the internal auditor. He asked Court to uphold this ground.

On ground 3 of the appeal, learned counsel faulted the learned trial Judge for having introduced and applied to the case a test unknown to criminal law. That of a '*nosy and intelligent on looker*' as a basis for convicting the appellant. By doing so counsel contended, the learned trial Judge had applied to the case a different burden of proof different from the standard burden upon which the prosecution must prove its case, that is proof beyond reasonable doubt. As authority for this proposition he cited the case ***Woolmington v. DPP (1935) AC 462 AND Okethi OKale and others v. Republic [1965] E.A 555***. He prayed for the appeal to be allowed on this ground.

On ground 4 counsel submitted that the sentence of 12 years imprisonment which is only 2 years below the maximum penalty

was complied with an order barring the appellant from holding public office for a period of 10 years after conviction was unlawful and harsh. He asked court to set it aside.

In reply Mr. Kinobe, opposed the appeal. He submitted that the appellant concedes that the sale of government treasury bonds in issue had taken place before their maturity date.

He contended that the appellant had authorized the sale of the 3 year old bonds only a few weeks before their maturity which act resulted into a loss of shs. 3.1 billion shillings.

He submitted that under Section 4 of NSSF Act, the appellant had a duty to emphasize maximization of profit for the fund.

He submitted further that the evidence of PW1 Kaboyo was to the effect that the amount of money to be yielded from treasury bonds upon maturity is known to the purchaser at the time of purchase.

That whenever bonds are sold before maturity they yield less than they would have yielded upon maturity. He submitted that the whole transaction was irregular and did not follow procedure. That for example PW3, the Chief Investment Officer of NSSF, signed a letter on 5th October signifying his consent to the sale of the bonds which letter was a prerequisite to the appellant's decision to sell the bonds.

However, the appellant by that date had already authorized the sale of the bonds two days earlier. That the investment Analyst's letter of 4th October was a postmortem as the appellant had already communicated to the secondary dealer, Crane Bank Ltd, suggesting that bonds be sold at shs. 36 billion instead of 39 billion shillings. The mandate to Crane Bank had been give on 3rd October 2007.

That the Standard Chartered Bank was the duly appointed primary dealer of NSSF and that it ought to have carried out the sale of the

bonds and not Crane Bank which was not the primary dealer. This, counsel contended, would have ensured value for money. That Crane Bank which at first presented itself as a dealer and therefore an agent of NSSF ended up being the purchaser. Counsel contended that the appellant by his sole action in breach of the NSSF Act, the policies and regulations of the fund, led to the loss of sh.3.1 billion. The fund he contended had a lot of money on its accounts and there was no need to liquidate the bonds at the time, since there was no urgency for cash.

That the bonds had been in existence for more than two years and selling them just a few weeks before maturity was an arbitrary act that caused loss to NSSF. That the decision was in breach of policy, procedure and regulations of NSSF and that it resulted into loss to the fund.

Finally counsel contended that the sentence was lawful and that it was neither harsh nor excessive in the circumstances of the case.

Mr. Kinobe went on to submit on the cross appeal. He contended that the Judge having found as he did on the issues, he ought to have convicted the appellant on count one for abuse of office. That a conviction on count two for causing financial loss was a consequence of abuse of office.

He asked court to dismiss the appeal and to uphold the cross appeal.

We have listened carefully to the submissions of both counsel. We have also carefully read the record of appeal and the authorities cited by both counsel.

Both counsel made lengthy submissions which we have not found necessary to reproduce in detail. What we have set out above is the gist of those arguments.

This being a first appellate court, it has a duty to re-evaluate the evidence and come to its own finding on all issues of fact and law. See:- ***Fr. Narcensio Begumisa & others vs Eric Tibebaga (Supreme Court Civil Appeal No. 17 of 2002.*** (Unreported), see also Rule 30 (1) of the Rules of this Court.

It was contended for appellant that the offence of causing financial loss on account of being employed by NSSF (a public body) or doing an act which the appellant knew or had reason to believe would cause financial loss to NSSF (a public body) does not fall within the ambit of the Section 20 of the Anti-corruption Act. According to counsel for the appellant, this is so, because under Section 20 of Anti-corruption Act, the offence applies to loss caused to only a limited class of institutions, namely;- government, banks and credit institutions. That causing financial loss under Section 20 does not extend to loss caused to insurance companies, public bodies and customers of Banks as was the case under the repealed Section 269 of the Penal Code Act.

Section 20 (1) of Anti-corruption Act stipulates as follows:-

> ***"2.0. Causing financial loss.***
>
> ***(i) Any person employed by the Government, a bank, a credit institution, an insurance company or a public body, who in the performance of his or her duties, does any act knowing or having reason to believe that the act or omission will cause financial loss to the government, bank, credit institution."*** (Emphasis added).

It appears clearly to us that the first part of this section creates a category of persons who may be charged with the offence of causing financial loss. These are persons employed by:-

(i) Government

(ii) A Bank

(iii) A Credit Institution

(iv) An Insurance Company

(v) A Public Body

The meaning of the section is plain and clear, that, any person employed by any of the institutions set out above who *"does any act"* having reason to believe that, the act or omission will cause financial loss, commits an offence.

What appears to be in contention is the category of institutions to which loss is caused. For the appellant it is contended that the Section applies only when the loss is caused to government, a bank or a credit institution and does not extend to insurance companies or public bodies.

We accept the argument of learned counsel for the appellant that insurance companies and public bodies were left in the latter part of the section. However, we have found nothing to suggest that the omission was deliberate or that it gave the section a complete new meaning or interpretation from the repealed Section 269 of the Penal Code Act. It appears to be a question of draftsmanship and style.

Section 20 of ACA when construed *ejusdem genesis* would clearly include loss caused to an insurance company or a public body. Construing it otherwise would be absurd as a person employed by an insurance company or public body would be the one most likely expected to cause financial loss to that institution and not someone employed elsewhere.

On the other hand a person employed by an insurance company or public body would not ordinarily be expected to cause financial loss

in the course of his employment to the body or institution with which he is not employed.

The last sentence in the Section states :- "*loss to the government, bank, credit institution*". The fact that the word *"and"* is omitted between the word *"bank"* and the word *"credit institution"* and instead between the two words there is a comma is an indication that the list of institutions was not exhaustive hence the need to construe the section *ejusdem genesis* as to give it a proper meaning and effect.

Counsel for the appellant's interpretation of the section though ingenious, is not tenable. We accordingly reject it. It is our finding that Section 20 applies to persons employed by government, a bank, a credit institution, insurance company or public body. We also find and hold that it relates to loss caused by any of the foretasted categories of institutions including an insurance company and a public body.

Since NSSF is a body established by an Act of Parliament with which the appellant was employed, we find that the appellant was properly charged under Section 20 of ACA.

We also find no merit in Mr. Mpanga's argument that Section 20 criminalizes only acts and not omissions. Whenever the words "acts or omission" are used together, the word omission is obliviously only added for emphasis and for avoidance of doubt and *ex abundantai cautela* because under Section 2 of the Interpretation Act (CAP3) the word and expression 'act' as defined includes and extends to illegal omissions.

Section 2(a) of the Interpretation Act stipulates as follows:-

2 (a) "'act' used in reference to an offence or civil wrong includes a series of acts and words which refer to acts done extend to illegal omissions". (Emphasis added).

Therefore, the word act in Section 20 of ACA includes omission. So the words "or omission" do not create a separate or alternative offence.

Ground 1 of appeal therefore fails.

It is contended for the appellant on ground 2 that the learned trial Judge failed to evaluate the evidence and apply it to the law of the offence of causing financial loss under section 20 of the Anti-corruption Act.

It was submitted for the appellant that the elements necessary to sustain a conviction for the offence of causing financial loss were set out by the Supreme Court in the case of ***Kassim Mpanga vs Uganda*** (Supra).

The appellant contends that evidence adduced against the appellant was not sufficient to prove the those elements which have been set out earlier in this Judgment

That the evidence clearly pointed to the fact that the appellant did not have knowledge or reason to believe that his acts were going to cause financial loss to NSSF, his employer, and that in fact there was no evidence that loss had indeed been caused.

The appellant was indicted with the offence of causing financial loss contrary to Section 20 of the Anti-corruption Act.

The particulars of the offence were set out in that indictment as follows:-

"PARTICULARS OF OFFENCE

DAVID CHANDI JAMWA between September 2007 and November 2007, in Kampala District, being a person employed in a public body namely, NSSF in the capacity of

Managing Director, in the performance of his duties, sold off several Government bonds held by NSSF (bond issue No's FXD '6/2005/2, FXD 2/2005/3, FXD 4/2005/03, FXD 4/2005/3/R) before their maturity dates to Crane Bank at prices below their then discounted value (computed market worth) Causing an unfavourable price variance of UG.5hs 2,757,616,821, which acts he knew or had reason to believe would cause and did cause financial loss to NSSF of Ug. 2,757,616, 821/="

The particulars of the offence set out above are to a large extent undisputed by the appellant. The appellant contends that there was no evidence adduced to prove that he had knowledge that the act of selling the bonds in question before their maturity date would cause financial loss to his employer NSSF. He also contends that in fact no financial loss was caused, as a result of the sale of the said bonds.

In the alternative, that a decision to sell the bonds before this maturity date was a collective decision and as such it was not his act alone. That it was a business decision taken in good faith and that the decisions resulted into profit and not loss to the fund.

The learned trial judge in his evaluation of evidence found that the appellant, on 3rd October 2007 as Managing Director of NSSF, had written to Crane Bank Ltd giving it the mandate to sell 3 year old Government treasury bonds held by NSSF whose face value was shs.39,468,500,000/=.

A day later on 4th October 2007 the appellant approved a request to sell the same bonds at shs. 36,777,739,894/= through Crane Bank. The bonds were eventually sold, before their maturity date to Crane Bank Ltd.

The learned trial Judge found that this act by the appellant of authorizing the sale of bonds before their maturity caused NSSF his employer financial loss. The bonds in issue were purchased as an investment. The investment was to accrue in form of guaranteed interest. The amount to accrue upon maturity was known at the time of purchase and was well known to the appellant at the time he authorized the sale. The appellant was well aware that by selling the bonds before maturity his employer NSSF would realize less money that it would have, upon their maturity.

NSSF had in 2007 purchased the 3 years bonds in issue at shs. 34,999,847,382/= and was guaranteed to realize shs.39,468,800,000/= after a period of 3 years. The bonds were about to mature. There were remaining with only 23 to 145 days to maturity when they were sold at shs.36,747,739,894/=.

The variance between the amount realized from the discounted sale and the guaranteed price was found by learned trial judge to be shs. 2,721,060,016/=, he found this to be what constituted loss to NSSF.

The appellant contends that there was no loss as the price at which the bonds were sold was still higher than that at which they were bought.

We are in total agreement with the learned trial Judge that the sale of the said bonds before their maturity date occasioned financial loss to NSSF. Even if there was justification for the sale and we have found none, the sale of bonds before maturity would still have constituted a loss to the holder.

Circumstances may require that a bond holder sells before maturity. That in itself does not take away his/her loss. Such loss may be justifiable or may make business sense depending on the circumstances of each case. Nonetheless it remains a loss.

The appellant was very much aware that the sale of the bonds before their maturity would occasion loss but he authorized the sale anyway.

From the evidence of Kaboyo, a Director with Bank of Uganda, we find that bonds are sold and purchased below their value before maturity and upon maturity they return to their full face value. The appellant was therefore at all times aware that the sell would occasion loss to NSSF on one hand but on the other hand, the purchaser in this case Crane Bank, would get the full value upon maturity in just a few days from the date of sale.

We agree with the holding of the learned trial Judge that the variance between the price obtained by NSSF upon the sale of bonds before their maturity date and their guaranteed price upon maturity constituted loss. Financial loss is not defined by any law as far as we could ascertain.

Black's Law Dictionary 6th Edition (West Publishing Co. 1990) defines loss as follows:-

> ***"Loss is a generic and relative term, it signifies the act of losing or the thing lost. It is not a word of limited, hard and first meaning and has been held to be synonymous with or equivalent to 'damage' damages, deprivation, detriment, injury and privation. It may mean expenses exceeding costs, actual loss, bad and un-collectable accounts, damages, a decrease in value of resources or increase in liabilities, depletion, destruction, destruction of value, deprivation, destruction. Failure to keep that which one has or thinks he has, injury, ruin, shrinkage in value of estate or properly, state or fact of being lost or destroyed that which is gone and cannot be recovered or that which is withheld or that which a party is***

disposed, un-intentional parting with something of value."

The above definition was used by the High Court of Ghana in a similar case *The Republic versus Ibrahim Adam and others Suit No.FT 2/2000 (unreportesd0 Per. AFREH (JSC)*

Describing the meaning of the term financial loss the learned Judge had this to say.

"The word is not a term of art and should be given its ordinary meaning.

In Mallam Ali Yusuf Isa vrs. The Republic (supra) Amonoo-Monney J. A. said:"Counsel for the appellant submitted that the expression 'financial Loss' in the section has not been defined. Surely, the expression 'financial loss' is not a term of art and one does not need any profound erudition or a course in macroeconomics to understand it. I venture to say that 'financial loss' just means 'financial loss'. A recourse to any English dictionary will remove any lingering difficulty of comprehension or understanding. The words 'The State incurs a financial loss' postulate a result, the end-product of an anterior or antecedent activity (or inactivity); and from the wording of the Section a causative human factor or activity brings about, or produces, or is responsible for, or is the reason for, the result or the event. The Chambers Dictionary 1993 gives us one of the meanings of the word 'incur', 'to suffer', and also states as one of the meanings of suffer, 'TO BE THE OBJECT OF AN ACTION."

The accused persons contend that there is no loss because everybody agrees the project is feasible and viable and with good management will make enough profit to repay the loan or whatever the Ghana Government has paid under the guarantee. In their testimonies they went into great detail to show why as an

investment the project is not a loss and called at least two witnesses to back their contention.

In reaction to this contention the prosecution has argued that the defence arguments that the state has lost nothing and that sums involved can be recovered are completely misguided and totally groundless. The issue is not whether a "world class mill" has been installed but that the first class mill bears a tag far less in value and costs than the accused would have the whole world believe.

I agree with the prosecution that the issue is not whether the state can recover the sums involved or a world class mill has been installed but whether the state, has suffered a financial loss in the sense of having been made to pay more than the project actually cost.

In my opinion the fact that a project is viable and profitable does not mean parties interested in it cannot suffer loss as a result of the misappropriation or misapplication of some of its resources by its officers or employees. If a company or the state is made to spend a Hundred Million Cedis (¢100,000,000.00) on a project which actually cost Fifty Million Cedis (¢50,000,000.00) it has been deprived of Fifty Million Cedis (¢50,000,000.00). And it is no defence or consolation that at the end of the day the project will make a profit.

As I have already said the word loss should be given its ordinary meaning of damage, deprivation, detriment, injury or privation and it is not necessary for me to consider whether the project is viable and will make profit if properly managed."

We agree with the reasoning of the learned Judge in the above decision and we adopt it.

As already stated the fact that the bonds were sold at a price higher than the purchase price does not take away the loss. The loss incurred because the sale was below the guaranteed price at maturity.

We find that the variance between the guaranteed price of the bonds upon maturity and the price upon which they were sold constituted loss as defined above.

We find that NSSF was by the act of the appellant deprived of the money the bonds would have fetched upon maturity and we hold so.

Unlike the offence of abuse office, the offence of causing financial loss does not have to result from an arbitrary act. There was no duty therefore to prove that the appellant had acted against any established policy or regulation or that he had acted arbitrarily. The offence was sufficiently proved when evidence was adduced to prove that the appellant knew or had reason to believe that his act would cause financial loss to his employer a public body.

The appellant attempted to show in his defence that the money realized from the sale of the bonds was invested elsewhere and that it yielded profit. We are not in the least convinced by that argument. There is no evidence to suggest that such investments could not have waited until the maturity date of the bonds. Had the appellant waited until the bonds matured, he would still have invested that money the way he said he did and at that time more money would have been available to him to invest. Even with that investment, NSSF still made a loss as it would have realized more money from those investments had the appellant not rushed to sell the bonds before their maturity date.

We agree with the learned trial Judge that the offence of causing financial loss was sufficiently proved against the appellant.

We find that the learned trial Judge properly evaluated the evidence and came to the correct conclusion.

Ground 2 therefore fails.

The appellant contends in ground 3 that the learned trial judge applied a test unknown to criminal law to convict the appellant.

With respect, we do not agree that the appellant was convicted on the basis of the test of a *"nosy and intelligent on-looker"* that was set out by the trial Judge in his judgment.

That was simply an analogy and a matter of style and language of judgment writing. The evidence upon which the appellant was convicted was well set out in the learned trial Judge's decision. As already stated, all the evidence was well evaluated and was sufficient to sustain the conviction with or without the test or analogy of the *nosy and intelligent on-looker*. We find the argument of learned counsel for the appellant in respect of this ground misconceived and we reject it.

We find no merit in this ground and we accordingly dismiss it.

The last ground is in the alternative and it concerns sentence.

It is contended by the appellant that the learned trial Judge erred in law and in fact when he sentenced the appellant to prison for a period of 12 years and barred him from working in public service for 10 years after his sentence. This ground as it appears in the memorandum of appeal has already been set out earlier in this Judgment.

Sentencing is the discretion of the trial Judge. This court cannot interfere with a sentence imposed by a trial Judge unless it is apparent that the Judge acted on a wrong principle or over looked a material factor or the sentence is illegal. This Court may also

interfere where the sentence is manifestly harsh and excessive in the circumstances of the case.

See; **James S/o Yoram versus Rex (1950) 18 EACA 147, Ogalo s/o Owoura Versus Regina (1954) 24 EACA 270, Kizito Senkula versus Uganda (Supreme Court Criminal Appeal No 214 of 2001), Kiwalabye Bernard versus Uganda Supreme Court Criminal Appeal No. 143 of 2001"** and more recently this Court discussed the instances upon which it can interfere with the sentence in **Ssemanda Christopher and another versus Uganda (Court of Appeal) Criminal appeal No. 77 of 2010).**

We have not found anything in this case to suggest that the learned trial Judge acted upon a wrong principle or over looked any material factor.

Clearly ground 4 of appeal is not in respect of severity of sentence but rather concerns only its legality. This court has power to reduce a sentence if it considers that the sentence is manifestly harsh or excessive. It has not been alleged in this ground that the sentence is harsh or excessive. In this case, we have not been called upon to find so. Had that been the case we would probably have been inclined to reduce the sentence. Since its severity is not a subject of this appeal, we shall not interfere with the sentence. It is contended that the sentence is illegal.

The sentence of 12 years imprisonment for the offence of causing financial loss is perfectly legal and we hold so.

That sentence does not include the sanction of barring the appellant from holding a public office for 10 years after completion of service of the sentence. This sanction is imposed by the law under Section 46 of ACA and follows as a consequence of conviction. Court has no discretion in this matter, it cannot impose it, remove it or vary it.

Section 46 of the Anti-corruption Act states as follows:-

46 "Disqualification

A person who is convicted of an offence under section 2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21, 22,2324 and 25 shall be disqualified from holding a public office for a period of ten years from his or her conviction."

The Judge was simply stating what the law is and he cannot be faulted for doing so. We accordingly uphold the sentence.

This ground therefore fails.

The respondent in this matter filed a cross appeal contending that the learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record and apply it to the offence of abuse of office.

This ground of appeal as set out in the memorandum of appeal appears to be too general.

It does not specifically state the grounds of objection to the decision appealed from and does not specify the points of law or fact which are alleged to have been wrongly decided.

We would have been inclined to strike it out on that account alone as it offends the provisions of Rule 66 (2) of the Rules of this Court.

However, the appellant raised no objection to it and both counsel went on to submit on it in detail.

Our own understanding of the above cross appeal is that the learned trial Judge having found on the evidence as he did, he ought to have convicted the appellant on count one in respect of the abuse of office.

The appellant was indicted on count one as follows:

"COUNT ONE: STATEMENT OF OFFENCE

ABUSE OF OFFICE Contrary to Section 11 of the Anti-Corruption Act.

PARTICULARS OF OFFENCE

DAVID CHANDI JAMWA between September 2007 and November 2007,inKampala District, being a person employed in a public body, namely National Social Security Fund (NSSF) in the capacity of Managing Director, did in abuse of his office, arbitrary acts prejudicial to the interests of NSSF when he sold off several government bonds held by NSSF (bond issue No's FXD 6/2005/2, FXD2/2005/3,FXD4/2005/03,FXD 4/2005/3/R) before their maturity dates to Crane Bank at prices below their then discounted value (computed market worth) Causing an unfavourable price variance f UG.shs 2,757,616,821."

As already stated earlier in this judgment before a court convicts any person under Section11 of the Anti-Corruption Act for the offence of abuse of office, it must be satisfied by the evidence that the accused abused his/her office when he/she committed an arbitrary act, prejudicial to the interest of his employer. In this particular case the arbitrary act was stated to be the sale of bonds before their maturity date, to Crane Bank Ltd causing unfavorable price variance to the prejudice of NSSF

Evidence required to prove count one, abuse of office and count two causing financial loss over lap. What is peculiar to count one, is that the act must have been an arbitrary one.

The prosecution set out to prove that the act of selling the bonds before maturity was unreasonable and arbitrary. The appellant contended that it was a collective act authorized by the Minister and done in good faith in the normal cause of business.

We have already held earlier in this judgment that the appellant was at all times aware that the sale of the bonds before their maturity date would result in loss to NSSF his employer.

That in itself is not sufficient to sustain a conviction on count one as the learned trial Judge correctly held.

In order to sustain a conviction on count one, the manner in which the act was done is what is pertinent.

There is evidence on record to show that the appellant mandated that the sale of the bonds on 3rd October 2007 before the request to sell them had been received from the investment analyst. That letter requesting for permission to sell was written on 4th October 2007. By then the appellant had already received a suggestive price from Crane Bank which was by coincidence the same as that arrived at by the investment analyst.

That the appellant mandated Crane Bank to sell the bonds on behalf of NSSF. In doing so, the appellant by-passed Standard Chartered Bank, the NSSF's registered primary dealer. There was evidence that Standard Chartered Bank would either have objected to the sale of secured a better price.

The bonds were sold to the cheapest buyer, Crane Bank Ltd, which bank had first presented itself as secondary dealer and as such as an agent of the bond holder NSSF. There was an apparent conflict of interest in favour of Crane Bank to the detriment of NSSF which the appellant ought to have known. The treasury bonds had been purchased in 2005 through a resolution of NSSF's Investment

committee, however the sale was single handily authorized by the appellant without the committees resolution.

The treasury bonds were sold a few days to their maturity date at a time when the NSSF was in no need of liquid cash. The evidence on record is that NSSF had a lot of liquid cash on its accounts and was not in need of the money at the time the bonds were sold. At all material time the price of the bonds upon maturity was well know to the appellant and was guaranteed.

Although the Minister had advised the Board to raise money in the financial year 2007/2008, there is no evidence that at the time the bonds were sold in October 2007, NSSF was in such dire need of money that it could have not wait for a few weeks for the bonds to mature. The evidence on record is to the contrary.

We find that the appellant therefore abused the authority of his office when he acted the way he did as already outlined above.

We find that there was sufficient evidence on record to prove that the appellant acted arbitrarily when he authorized the sale of the bonds in question before the maturity date and we hold so.

We would accordingly uphold the cross appeal and convict the appellant on count one.

Taking into account the circumstances of this case, and the fact that corruption in public office has raised to unpredicted proportions we would impose a deterrent sentence.

However, there are mitigating factors in favour of the appellant. He is still a young man capable of reform. He is a first offender. He has no personal criminal record and the offence did not involve personal violence.

We now sentence the appellant to 4 years imprisonment on count one to run concurrently with the 12 years sentence imposed by the trial court on count two which we have already upheld.

Dated at **Kampala** this.....15th..... day of ...January...~~2015~~ 2018

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HON. S.B.K. KAVUMA, DCJ
JUSTICE OF APPEAL

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HON. RUBBY AWERI OPIO
JUSTICE OF APPEAL

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HON. KENNETH KAKURU
JUSTICE OF APPEAL