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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
 (Coram: Hellen Obura, Stephen Musota & Percy Tuhaise, JJA)

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CRIMINAL APPEAL NO. 0294 OF 2015
(Arising from Criminal Appeal No. 12 of 2015)
(Arising from Anti-Corruption Criminal Session Case No. 12 of 2012)

AYESIGA SULUMAN **APPELLANT**

VERSUS

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UGANDA **RESPONDENT**

JUDGMENT OF COURT

Introduction

This is a second appeal in which the appellant is challenging the decision of the High Court (Lawrence Gidudu J) delivered on the 8th day of September, 2015 which upheld the decision of the lower court in which the appellant was convicted of the offence of abuse of office and causing financial loss contrary to sections 11 and 20 of the Anti-Corruption Act respectively.

Background to the Appeal

The facts as found by the trial Magistrate are that between 1st March, 2010 and 31st December, 2010, the appellant while employed as Senior Accounts Assistant by Kyegegwa District Local Government knowingly caused financial loss to the State of Ushs. 37,747,301/= being forest revenue collected at Kyegegwa District. The prosecution called ten witnesses to prove its case, whereas the appellant gave sworn evidence and never called any other witness. The trial Magistrate found the appellant guilty on both counts and convicted him. He then sentenced him to 2 years imprisonment for the offence of causing financial loss and 1

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5 year imprisonment for the offence of abuse of office. Both sentences were to run consecutively. She further ordered the appellant to pay half of the loss occasioned to the District Local Government.

Being dissatisfied with this decision, the appellant filed an appeal in the Anti-Corruption
10 Division of the High Court at Kololo on 3 grounds. The appellate Judge heard the appeal and dismissed it hence this 2nd appeal.

Grounds of Appeal

- 15 1. *That the learned appellate Judge erred in law when he based on uncorroborated and a disputed exhibits P.32, and receipt No. 077 to convict the appellant on offences of abuse of office and causing financial loss.*
2. *The learned appellate Judge erred in law when he based on exhibit P.32 and receipt No. 077, whose authorship is denied by the appellant, to convict him on offences of abuse of office and causing financial loss.*
- 20 3. *The learned appellate Judge erred in law when he failed to judiciously evaluate the evidence on record as a whole and in so doing arrived at a wrong decision to uphold the appellant's conviction on the offences of abuse of office and causing financial loss.*
4. *The learned Appellate Judge erred in law when he made a finding that the appellant failed to supervise the deceased, 1st accused person Byamukama Simon and in so doing he abused*
25 *his office and is responsible for causing financial loss.*
5. *The appellate Judge erred in law when he selectively considered evidence of PW1 against that of PW7 to fault the appellant.*
6. *The learned appellate Judge erred in law when he relied on hearsay evidence of PW1 Twinomugabe Abel to corroborate the evidence of DW1.*
- 30 7. *The learned appellate Judge erred in law when he relied on the evidence of the deceased co-accused to uphold the erroneous conviction of the appellant on the same evidence.*

5 8. *The learned appellate Judge erred in law when he ignored material contradiction of reports P. Exhibit 22 and P. Exhibit 24 and 25 to selectively consider the latter over the former.*

Representations

At the hearing of this appeal Mr. Wamimbi Emmanuel represented the appellant while Mr.
10 Wycliffe Mutabule Senior Inspectorate Officer represented the respondent. At the commencement of the hearing, counsel for the respondent raised an objection in which he pointed out to this Court that grounds 2-6 of the appeal are on mixed law and facts and yet this is a 2nd appeal which ought to be argued on points of law only. He prayed that those grounds be expunged. Conversely, counsel for the appellant informed court that he intended
15 to merge grounds 1& 2, grounds 3,4,5,6, & 7 together and then argue ground 8 separately. He sought to be granted leave to merge the grounds which this Court allowed and the respondent's objection was overruled. Grounds 3,4,5,6, & 7 were consolidated to form one ground which reads;

20 *"The learned appellate Judge erred in law when he without caution considered the evidence of DW1, Byamukama Simon against that of the appellant's co-accused."*

Case for the Appellant

Counsel submitted on grounds 1 & 2 that the appellate Judge did not address himself on the law relating to contested documents as contained in section 43 of the Evidence Act. He
25 argued that there was no handwriting expert's opinion relating to the contested documents namely; Exhibit P.32 and Receipt No.077 (carbon copy). Further that the appellate Judge did not warn himself of the need to have an expert's opinion on the contested documents.

On the consolidated grounds, counsel referred to the authority of ***Baingana John Paul vs Uganda, CACA No. 008/2010*** which states the principle for relying/admitting evidence of an
30 accused person against a co-accused. He argued that DW1 was an accused person and

5 thus it was in error for the appellate Judge to take his evidence which exonerates him and is against the appellant as a co-accused. Counsel prayed that the appeal be allowed, conviction quashed and the orders collapsed.

On ground 8, counsel submitted that the learned appellate Judge erred when he ignored major contradictions of reports contained in P. Exhibit 22 and P. Exhibit 24 & 25 and
10 selectively considered the latter over the former. He added that the report at page 131 mentioned the officers who caused the loss but it did not include the appellant although the appellant as a cashier was said to be responsible. Further that, the author of the report stated at pages 319-320 that he did not see the appellant causing any losses. He referred to the case of ***Twehangane Alfred vs Uganda, CACA No. 139/2001.***

15 Counsel also faulted the appellate Judge for selectively treating the prosecution evidence and giving more weight to that which did not favor the appellant while giving no weight to those that exonerated him. He also contended that the financial analysis was conducted by an unqualified person.

20 **Case for the Respondent**

On grounds 1 & 2, counsel submitted that the appellate Judge put all the evidence to fresh scrutiny and came to his own conclusion. On the consolidated grounds, counsel contended that the authority of ***Baingana John Paul vs Uganda (supra)*** relates to a confession but in this case there was no confession since it was an accomplice evidence which only requires
25 corroboration but may not even be corroborated according to section 132 of the Evidence Act. Counsel added that evaluation of evidence relating to P. Exhibit 22 was done at page 60 while P. Exhibit 24 was an analysis of the record of revenue and not an architect's report as the document speaks for itself. Further that the analysis of the record regarding the person who banked and the amount banked was done at page 162. He pointed out that less money

5 was banked than what was received because there was evidence that what was receipted by the appellant was less than what he banked.

As regards ground 8 on contradictions, counsel submitted that there were no contradictions of reports as explained by the appellate Judge at pages 58 and 59 of the court record. He therefore prayed that the appeal be dismissed.

10 **Court's Consideration**

It is trite law that as a second appellate court we are not expected to re-evaluate the evidence or question the concurrent findings of fact by the lower courts. In ***Kakooza Godfrey vs Uganda, Criminal Appeal No. 03 of 2008 (SC)***, the Supreme Court held that where two lower courts have reached concurrent findings of fact a second appellate court can only
15 interfere in those concurrent findings if it is satisfied that the two courts were grossly wrong and/or applied wrong principles of the law. *Also see: Areet Sam vs Uganda, SCCA No. 20/2005.*

On grounds 1& 2, the appellant faults the appellate Judge for not addressing himself on the law relating to contested documents as contained in section 43 of the Evidence Act which
20 provides as follows;

“When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to the identity of handwriting or finger impressions, are relevant facts. Such persons are called experts.”

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The contested documents are Exhibit P.32 which is the document giving authorization for transportation of timber from Kyegegwa District to Kampala and Receipt No.077 (carbon copy) which is a general receipt from Kyegegwa District Local Government of 30% tax from forestry.

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5 The question of admissibility of a piece of evidence be it oral or documentary, basically depends on whether it is relevant to the issue before the court. Exhibit P.32 which was tendered in by the prosecution was for purposes of proving that the amount of money indicated on the movement permits and the receipts issued was higher than what was indicated in the District record as revenue received. Thus showing an understatement of revenue which explains the charges brought against the appellant. However, the appellant denied being the author of the receipt in issue which bears a signature in his name.

Before we proceed to resolve this ground, we wish to emphasize that the offences which the appellant was convicted of are abuse of office and causing financial loss. Specifically, for the offence of causing financial loss, the ingredients to be proved include inter alia; doing an act or omission knowing or having reason to believe that such an act or omission will cause financial loss. The argument on issuance of forged receipt, in our view, falls under the offence of false accounting, which the trial Magistrate found had not been proved against the appellant. Therefore, under the offence of causing financial loss, it is immaterial whether or not it was the appellant who issued the false receipt, since by virtue of his position, he was charged with the duty of ensuring that no loss occurred to the District, and an omission to do that made him liable. In his re-evaluation of evidence, the appellate Judge found that there was evidence on record showing that indeed loss occurred and that the appellant was a signatory to the documents adduced to prove this.

Be that as it may, we shall determine counsel's arguments on grounds 1 and 2. Counsel argued that there was no handwriting expert's opinion relating to the contested document and neither did the appellate Judge warn himself of the need to have an expert's opinion on the contested documents.



5 We accept counsel for the appellant's submission that no handwriting expert was called to verify that the signature on the forged receipt belonged to the appellant. Section 66 of the Evidence Act provides thus;

10 *"If a document is alleged to be signed or have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be his or her handwriting."*

On the other hand, Section 72 (1) of the same Act provides for the comparison of signature with the one which is to be proved. Proof of handwriting may be done by an expert witness as per section 43 of Evidence Act or by person acquainted with the handwriting of the author as per section 45 of Evidence Act. However, court may as expert of experts make findings on
15 handwriting without a handwriting expert's opinion. **See: Premchandra Shenoji & another vs Maximov Oleg Petrovich; Supreme Court Civil Appeal No. 9 of 2003.**

In that case, a question arose as to who had authored a hand written Fax message admitted as Exhibit PE.8. Both the trial court and this Court found that it was the 1st appellant who authored it, though he denied sending it. Its authorship and authenticity were also strenuously
20 contested as no evidence of a handwriting expert was brought in this regard. The two courts were alive to this fact, and Berko, JA who wrote the lead judgment of this Court referred to certain factors which corroborated the hypothesis that Exhibit PE. 8 came from the 1st appellant and nobody else. These included the 1st appellant's experience in jewelry that was mentioned in Exhibit PE.8 and in his testimony; the 1st appellants' experience of eight years
25 in Uganda that was mentioned in the Fax letter and in his testimony; and the specific request for US dollars 200,000 made in the Fax letter which was the sum of money sent by the respondent. Upon being dissatisfied with this Court's decision, the appellant appealed to the Supreme Court, and Oder JSC (as he then was) having reproduced the relevant part of the

5 1st appellate court's decision, found that this Court could not be faulted since it had carried out its duty as the first appellate court to re-evaluate the evidence on record, subsequent to the Supreme Court upheld the trial court's finding that the 1st appellant authored Exhibit PE.8.

We observe from the above decision that this Court and the Supreme Court upheld the decision of the trial court which was based on the other evidence on record to convict the
10 appellant, in the absence of a handwriting expert's opinion.

Similarly, in the instant case, at page 5 of his Judgment, the appellate Judge upheld the findings of the learned trial Magistrate that it was the appellant who authored Receipt No.077. He stated as follows;

15 *"The evidence from the investigation clearly puts the matter of illegal receipts at the doorstep of the appellant. DW1 was firm on this and I believe him that he would receive receipt books whether genuine or false from the appellant. It was not in DW1's line of duty to answer for revenue collection. His employment was to ensure that people who harvest forest produce pay 30% levy. The submission that he was the source of financial loss is not supported by
20 evidence. The evidence of DW1 is corroborated by the evidence of PW1 and PW10 in material particulars regarding the source of the receipt books and the role of the appellant as the accounts officer responsible for the revenue collection and banking. Failure to adduce the evidence of Tumwesigye the payee of receipt number 077 was with respect not fatal to the entire case. The loss was much bigger than the value of 290,000/= which appears on
25 receipt 077. That receipt was just a single aspect of the case. There was other ample evidence to sustain the charges."*

From the above decision, we find that the 1st appellate Judge did not address himself on the law relating to contested documents as contained in section 43 of the Evidence Act. However,
30 according to the Supreme Court decision of **Premchandra Shenoji & anor vs Maximov Oleg**



- 5 ***Petrovich (supra)*** which we have cited above the court may make findings on a contested handwriting or signature without a handwriting expert's opinion and may proceed to convict an accused person basing on the other evidence on record. In this case, we agree with the trial Judge that there was other ample evidence to sustain the charge. In the premises, we do not find merit in grounds 1& 2 and they thus fail.
- 10 On the consolidated grounds, the appellant faults the appellate Judge for relying/admitting evidence of DW1 (Byamukama Simon) against his co-accused, the appellant. Section 132 of the Evidence Act provides that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.
- 15 In a criminal trial, a witness is said to be an accomplice if he participated as a principal or an accessory in the commission of the offence. One of the clearest cases of an accomplice is where the witness has confessed to the participation in the offence or has been convicted of the offence either on his own plea of guilty or on the court finding him guilty after trial. However, even in the absence of such confession or conviction a court may find on the
- 20 strength of the evidence before it at the trial that a witness participated in the offence in one degree or another. Clearly, where a witness conspired to commit or incited the commission of the offence under trial, he would be regarded as an accomplice. A Judge must therefore, warn himself and the assessors of the danger of acting on an accomplice's evidence without corroboration. However, failure to warn himself of the necessity for corroboration is not fatal
- 25 to an accused's conviction if the Judge made a finding that the evidence was corroborated.
See: Nasolo vs Uganda [2003] 1 EA181 (SCU).

5 not mandatory under our Evidence Act, it is always required as a matter of judicial practice. Secondly, a court wishing to rely on uncorroborated accomplice evidence should caution itself and the assessors on the dangers of relying on such evidence before convicting the accused. However, this rule of caution only applies where the testimony of the accomplice has been found to be trustworthy. These two judicial practices have recently been reiterated
10 by this Court in **Salongo Senoga Sentumbwe vs Uganda, Criminal Appeal No. 03 of 2014 (SC)**.

In the instant case, the learned appellate Judge observed as follows regarding the evidence of DW1.

15 *"In this case, there is no evidence to suggest that DW1 was an accomplice. In fact, the prosecution should have used DW1 as a prosecution witness in regard to the source of the illegal receipt books and the fact that all banking was by the appellant as revenue staff. Clearly to me DW1 was not an accomplice. He was wrongly joined on the charge sheet. Be that as it may, the evidence of PW1 and PW10 supports DW1's testimony in regard to the source of the receipt books and the responsibility for banking collections. There was ample
20 evidence to support the charge of causing financial loss and abuse of office by the appellant. He cannot run away from it. The third ground fails with the result that the appeal is dismissed. The judgement and orders of the trial court are upheld."*

From the above quotation, the appellate Judge categorically put it that there was no evidence on record to suggest that DW1 was an accomplice and in any event, his evidence was
25 corroborated by PW1 and PW10 and as such there was no need for caution. Even if it was uncorroborated, section 132 of the Evidence Act would still come to aid as it does not bar a court from relying on such evidence to subsequently convict a co-accused. On the authorities we have cited herein above, and in light of the evidence on record, it is our finding that it was

5 safe for the trial Magistrate to convict the appellant basing on the evidence of DW1. We therefore cannot fault the appellate Judge for upholding the trial Magistrate's decision.

Ground 8 relates to contradictions of reports P. Exhibit 22 and P. Exhibits 24 & 25. The appellant faults the trial Judge for selectively considering them. The law relating to contradictions and inconsistencies is well settled that when they are major and intended to
10 mislead or tell deliberate untruthfulness, the evidence may be rejected. If, however, they are minor and capable of explanation, they will normally not have that effect. **See: Okecho Alfred vs Uganda, SC Criminal Appeal No. 24 of 2001; Alfred Tarjar vs Uganda, Criminal Appeal No. 167 of 1969 (EACA).**

P. Exhibit 22 is the original report dated 14/03/2010, made by Kiiza Stella, PW8, the Chief
15 Finance Officer, which indicated a loss of Ushs. 47,481,727/= out of which Ushs. 43,941,630/= arose from the permits issued without receipts and Ushs. 3,540,096/= arose as a result of under declared revenues.

P. Exhibit 24 is a report in the form of a loose minute made by PW9, Ibanda Fredrick which indicated a loss of Ushs. 43,406,601/= between 26/3/2010 and 30/4/2011. The declarations
20 were Ushs. 3,356,503/= which were a result of the receipts issued by the sector Accountant, the appellant. That figure was a result of the difference between the amounts on the movement permits and the amounts on the receipts issued. He stated that the rest of the report contained more details of how revenue was received and banked and undeclared.

Similarly, P. Exhibit 25 is a subsequent report made by PW9 on 24/08/2011 and addressed
25 to Mr. Ntale Francis the Regional Inspectorate Officer, after retrieving bank statements for the general fund account of the District and analyzing the revenue banking from records obtained from the forest and accounts department. In that report, PW9 found that between 31/3/2010 and 1/07/2011, a sum of Ushs. 54,819,000/= was banked in respect of the forest revenue



5 collected between 26/3/2010 to 30/4/2011, which reduces the total loss of forest revenue from Ushs. 43,406,601 as initially reported in P. Exhibit 24 to Ushs. 37,750,101/=.

The appellate Judge at pages 4-5 of his judgment stated as follows;

10 *“The evidence of PW8, the CFO which attributes the loss to DW1 is very suspect and was rightly ignored by the trial magistrate. PW8 was tasked to investigate the loss of revenue together with PW1 among others. She chose to avoid PW1 and wrote a subjective report exonerating her staff in the finance department and shifted the blame to DW1 as if he was responsible for revenue collection yet he was just assisting the appellant to do his job. But in any case PW8 notes in her report (exhibit P22) that illegal receipts were in supply and that the appellant used to do under banking meaning he was even banking less...*

15 *I have already expressed my views on PW8. She was not a credible witness. Her report lacks the transparence she was required to have. It was not the report of the whole committee. It was subjective and partial. While it finds loss in revenue, it deflects it to DW1 yet it was the appellant's job to collect and bank revenue.”*

We note from the above conclusion of the appellate Judge that he took into consideration P. Exhibit 22 which he discredited for the reasons stated in the above quoted part of his judgment. In arriving at this conclusion, the appellate Judge considered the evidence of PW1, PW5, PW9, PW10 and DW1 which indicated that the appellant as the Senior Accountants Assistant was responsible for the revenue collection and banking including usage of receipt books which made him liable for the loss. The appellate Judge also noted that both PW9 and PW10 having investigated the accounts of the District found that it had lost Ushs. 37,750,101/= and not Ushs. 47,481,727/= as reported by PW8. Further that the defence counsel in his submissions also conceded that there was actual loss of money worth Ushs. 37,750,101/=.

5 With this evidence on record, we find consistency regarding the sum of Ushs. 37,750,101/= as the amount of forest revenue that was lost by the District and as such we agree with the appellate Judge that PW8's report (P. Exhibit 22) was written to exonerate the appellant from blame and instead implicate DW1 as the culprit. In our well-considered view, we find that the appellate Judge properly dealt with the inconsistencies in P. Exhibit 22 against P. Exhibit 24
10 & 25 and rightly considered the latter over the former. In the result we find no merit in this ground and it thus fails.

On the whole, we find no merit in all the grounds of this appeal and we accordingly dismiss it.

We so order.

15 Dated at **Kampala** this 13th day of June, 2019



Hellen Obura

JUSTICE OF APPEAL



20 Stephen Musota

JUSTICE OF APPEAL



Percy Tuhaise

JUSTICE OF APPEAL

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