THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO.104 OF 2011

5

MUGISHA GREGORY..................................APPELLANT

VERSUS

UGANDA..RESPONDENT

10 *(Arising from Anti-corruption Division HCT-CRIM-150-2010)*

CORAM: (C. Barishaki, H. Obura, S. Musota, JJA.)

15 **JUDGMENT OF THE COURT**

Introduction

This is an Appeal against the conviction and sentence of the High Court of Uganda, Anti-Corruption Division at Kampala, *(Hon. Catherine Bamugemereire, J)* dated 08th May, 2011 in Criminal Case
20 No.10 of 2010.

Background

The background to this Appeal is that the Uganda Police Standards Unit received a complaint concerning a United States Treasury
25 Cheque No. 231003027462 of the face value of $114,300.79 in the names of Nyakundi Bayes, which had primarily been recovered by the Financial Fraud Unit, headed by the appellant. The complaint was that the cheque had been cashed in Nairobi on 14th June 2010 when the Police Standards Unit immediately set out to investigate the
30 said complaint. When the appellant was asked about the whereabouts of the cheque, he led his superiors to his office where he handed over to them a polythene bag with some items including the said cheque. The cheque in his possession was found to be false with no cancelled stamp. The appellant was accordingly arrested and

was tried and convicted of offences of Neglect of Duty c/s 2(i) of the Anti-Corruption Act and Uttering a False Document c/s 351 and 347 of the Penal Code Act and sentenced to a term of imprisonment of three and two years respectively, to run concurrently. Being dissatisfied with the decision of the learned trial Judge, the appellant lodged this Appeal.

Grounds of appeal

The grounds of the Appeal in the Memorandum of Appeal are as follows:

1. The Learned trial Judge erred in law and fact in invoking S.39 of the Trial on Indictments Act to call George Ndyanabangi as a Court witness, handing him over to the prosecution to examine and relying on his evidence to convict the accused when the prosecution and defense cases had been closed.
2. The learned trial Judge erred in law and fact when she failed in her duty to evaluate the evidence thereby occasioning a miscarriage of justice
3. The learned trial Judge erred in law and fact when she found that the appellant investigated the file ref. GEF/013/2010 together with DSGT Okurut
4. The learned trial Judge erred in law and fact to hold that the offense of Neglect of duty c/s 2(i) of the Anti-Corruption Act is a strict liability offense.
5. The learned trial Judge erred in law and fact to convict the appellant on the principle of vicarious liability
6. The learned trial Judge erred in law and fact in treating the offense of neglect of duty at the level of negligence in civil cases
7. The learned trial Judge erred in law and fact in convicting the appellant on the basis of the weakness of his case rather than on the strength of the prosecution's case
8. The learned trial Judge erred in law and fact in holding that it is the duty of every police officer to meticulously and jealously

store exhibits and convicting the appellant for failure to store the exhibits

9. The learned trial Judge erred in law and fact in relying on accomplice evidence of D/SGT Okurut in absence of corroboration
10. The learned trial Judge erred in law and fact when she convicted the appellant on the basis of his superiority in rank in the police force not on his guilt. (Sic)

Representation

At the hearing of the Appeal, the appellant was represented by Mr. Kabega Macdusman, while the respondent was represented by Mr. Vincent Wagona, Principal State Attorney.

Appellant's submissions

Counsel for the appellant argued grounds 6, 4, 8 and 10 together, grounds 2 and 5 together and grounds 1 and 9 separately.

While arguing ground 1, counsel submitted that whereas the court may call or recall a witness at any stage of the trial under Section 39 of the Trial on Indictments Act that recall is only where it appears to the court that the witness is essential to the just decision of the case. He observed that the 1st count on which the appellant was convicted was Abuse of Office citing that he, being employed by the Uganda Police Force and as the investigating officer, in the performance of his duties, neglected to act as required by his employment and also failed to take care of and ensure the safe custody of an exhibit, a US treasury cheque. Counsel submitted that the charge as it was read under the Anti-Corruption Act is Neglect of Duty. He referred Court to Section 15(b) of the Penal Code Act which provides that subject to any express provisions in this Code or any other law in force in Uganda, criminal responsibility in respect of rash, reckless or negligent acts, shall be determined according to the principles of English law.

Counsel pointed out that the learned Judge came up with the right principle by quoting a case to the effect that except in cases of strict liability, criminal justice requires, beside the act, that there must be a guilty mind which is *mens rea* and thus the appellant must have been proved to have had the required intention or knowledge. Counsel stated that the interpretation which is most favored must be adopted. He referred to the case of **Sweet v Parsley (1970) A.C P.132** where Court held at page 23 that in the absence of a clear indication in the Act that an offence is intended to be an absolute offence, it is necessary to go outside the Act and examine all the relevant circumstances in order to establish that this must have been the intention of Parliament.

He thus stated that Section 2 of the Anti-Corruption Act states that a person commits the Offence of Corruption if he or she does any of the following acts and Section 2(1) provides for Neglect of Duty. It was counsel's argument that the section did not spell out the ingredients of that offence and that being so, the learned Judge in an attempt to discuss neglect of duty, resorted to cases of strict liability. He referred to page 8 of the Judgment where the learned Judge stated that the basic objective standard is whether the accused fell short of the standard required of a reasonable person and court went on to state that it was incumbent to examine whether the conduct of the appellant in the handling of the cheque in question fell short of the standard of care expected of an officer at the level of seniority of Detective Assistant Superintendent of Police.
It was his submission that by adopting this kind of standard, the trial Judge went ahead and imposed a strict liability standard like that which applied to civil, rather than criminal, cases. He contended that the learned Judge came up with a theory to support her assumption when she held at page 9 that it is the duty of every police officer to meticulously and jealously store exhibits and watch over these the way a mother hen watches over her young. She went ahead to hold

that a Superior Officer takes single-point responsibility if he is involved in the investigation of a matter with junior officers.
Counsel cited the case of **Okethi Okale v Republic (1965) EA 555** where the Court held that in every criminal trial a conviction can only be based on the weight of the actual evidence adduced and it is dangerous and inadvisable for a trial judge to put forward a theory not canvassed in evidence or in counsel's submissions.
To counsel, the learned Judge was wrong to have come up with this kind of finding leading to the conviction of the appellant. He added that it was erroneous to find that because the appellant was more senior, therefore, he was culpable.

In regard to grounds 2 and 5, counsel contended that it is the principle that in any trial, evidence must be evaluated both for the prosecution and the defence before court comes up with any conclusions. He stated that apart from simply stating what PW1, 2,3,4,5 and 6 said in court, there is no evaluation of which witness' evidence was believed or disbelieved. He argued that if the trial Judge had carefully examined all the evidence, she would have come to the conclusion that Okurut Richard, PW1 was not a remorseful and reliable witness.

On ground 9, Counsel submitted that there is a wealth of authorities regarding the evidence of an accomplice never to be relied upon unless there is ample corroboration of the same since such evidence can be fabricated. He contended that even if there was corroboration, the evidence of PW1 was so unreliable that no amount of corroboration could cure it. He cited instances in PW1's testimony where he was asked whether he knew a one, Alau, from the American Embassy and he said he did and later when the witness was asked in cross-examination, he said that he did not know Alau yet Mr. Alau testified that he knew PW1 before the case because they had attended the corporal training course together and were working in the same department of Special Branch though in different stations. Counsel

referred to the case of **Efurasi Ndyayakwa & 2 others v Uganda C.A. Criminal Appeal No.2 of 1977** where court held that where a witness has shown himself to be untruthful in material issue, no amount of corroborated evidence can render it safe to rely on this evidence.

It was his submission, therefore, that this evidence was so untruthful that no amount of corroboration could sustain it. To him, since the conviction was premised on PW1's evidence, upon its collapse, the whole case collapses. He argued that if the trial Judge had considered all the inconsistencies, she would have come to the conclusion that his evidence was most unreliable.

He invited this Court to exercise its duty to re-appraise the evidence as he had endeavored to show, and conclude that there was no evidence worth depending on to convict the appellant since the court relied basically on PW1's evidence. He prayed that court be pleased to hold so and to quash the conviction and set aside the sentence.

Respondent's Submissions

In reply, counsel for the respondent submitted with regard to ground 1 that the trial Judge had found that the calling of witness Ndyanabangi was essential to the just decision of the case when she stated that she felt that his story was important. To counsel, the fact that the witness was led by the prosecution did not cause any prejudice to the appellant as there was an opportunity to cross-examine him which opportunity was exercised by defence counsel.

Counsel argued grounds 4, 8 and 10 concurrently and submitted that whereas the learned trial Judge discussed the principles of strict liability, negligence and the carrier's liability, she did not apply them to the instant case in reaching her decision except for those for negligence with regard to which, he contended that the learned trial Judge properly applied the principles.

He argued that principles of negligence in civil liability do apply to criminal cases with one addition that for criminal liability, the level

of negligence is higher and in most cases it has been described as the close negligence test.

He referred to the case of **R v Adomako [1994] 3 ALL ER 79** and stated that in terms of *mens rea*, there are two categories of criminal cases, that is, those that can be proved on the basis of *mens rea* and those that can be proved on the basis of negligence. To counsel, one can prove a case of neglect either as *mens rea* or as a negligence offence.

Counsel pointed out that the learned trial Judge stated that in order to establish criminal liability, it must be shown that the breach was as gross or reckless as to render the action criminal. To counsel, the trial Judge was applying the gross-negligence test where she stated that for negligence to attract punishment, it should be such carelessness at a scale or magnitude so gross as to be deemed criminal.

He stated that basing on the trial Judge's finding that an officer who does not recognize the risk or gross value of high value financial instruments such as cheques and does not take vigorous steps to ensure safety of exhibits may be actually described as grossly negligent, even if there was no *mens rea,* the appellant would still be convicted on the basis of gross-negligence which makes negligence criminal.

On ground 2, counsel submitted that the gist of the prosecution case as gathered from the entirety of the evidence of PW1 and PW4 was that it was always the appellant who had custody of the cheque except for a short while when it was taken to the American embassy. More so, that although PW1 was the Investigating Officer, that particular cheque was excluded from the exhibits on the instructions of the appellant who handed it over to him.

On evaluation of evidence, it was counsel's submission that the evaluation that the learned trial Judge was doing cannot be looked at in isolation from the evidence she had already outlined and which clearly brought out the role of the appellant in relation to that cheque.

Counsel argued that it was a question of style for the Judge to outline the evidence and then discuss the law.

Counsel further contended that although the learned trial Judge had PW1 as an accomplice based on the closeness of his activity and the 5 instructions from the appellant, strictly, PW1 could not be described as an accomplice because there was no evidence to show that he was a principal offender within the meaning of Sections 19 and 20 of the Penal Code Act. He added that he could not even be considered a conspirator under Sections 390,391 and 392 of the Penal Code Act.

10 It was counsel's further submission that corroboration is looked for in respect of evidence of an accomplice not as a matter of law but as a matter of practice. To him, the courts are entitled to convict even on the basis of uncorroborated testimony of an accomplice. He observed that corroboration is provided by PW4 regarding the time 15 when the investigations had started relating to the missing cheque which was supposed to be in the custody of the appellant and the witness said that the exhibits, including the impugned cheque, were in his office at CPS and the appellant himself acknowledged that it was he who was in custody of that cheque all along.

20 Concerning the inconsistencies pointed out by counsel for the appellant in PW1's evidence, counsel for the respondent argued that these were minor. He stated that the witness, although he kept referring to himself as Investigating Officer, he explained that the cheque, as far as he was concerned, was not an exhibit in this case 25 because it had been excluded from what he was handling. He explained that when he handed over the cheque, he was merely handing over a cheque and not an exhibit because this did not belong to him as it had been taken over by the appellant. He explained that he used a rough paper initially but he would afterwards have to enter 30 it into the exhibit slip book which is the official record and which he did.

Counsel also pointed out that on the contention that the witness only handed over the cheque yet he handed over other things, counsel stated that when asked further, PW1 explained that the passports

were also taken and that he had been referring to the cheque only because the other exhibits were not relevant on the issue.

On the criticism based on the fact that the witness claimed not to know Okurut, counsel submitted that even Okurut himself stated in 5 his testimony that he knew PW1 but they worked at different stations. To counsel, it did not follow that because the other witness knew PW1 before, therefore it necessarily meant that PW1 also knew him.

To counsel, the learned trial Judge was right to rely on the evidence 10 of PW1 and more so, this was corroborated regarding the possession of the cheque by the appellant. He thus stated that when this honorable Court sits to re-evaluate the evidence, it should find no difficulty in finding that the case of neglect by the appellant in handling the cheque was based on the principle of gross negligence 15 rather than *mens rea* which applies to criminal law. In his view, criminal negligence was proved beyond reasonable doubt, and the learned Judge was entitled to convict the appellant on the basis of the authorities that she applied and the evidence as a whole. He prayed that the appeal be dismissed and the conviction and sentence 20 upheld.

Submissions in rejoinder

In rejoinder, counsel for the appellant submitted that the cases cited by counsel for the respondent do not apply to the case before Court. 25 He stated that particularly in the case of **Adomako** (supra), it is a case of manslaughter based on reckless negligence by an atheist and the ingredients of the offence are clearly stated. He pointed out that in this case, Section 2(1) states that a person commits the offence of Corruption regarding any of the following; neglect of duty and the 30 ingredients of these are not spelt out. He argued that these being unmentioned, court cannot impose them on the appellant and say that he can be convicted because he was grossly negligent. He noted that when an accused is charged, it is important for him/her to know the ingredients of the offense with which he is charged. He argued

that because these have not been mentioned, that is why the principle in the case of **Sweet v Parsley** (supra) must apply.

He also submitted that once a court finds that there is need for a particular witness to be called, it is the duty of that court to put specific questions to such a witness for the court to answer the lingering doubt it may have but not to give this witness to the state to lead when in fact the state had already said that they did not need him. To counsel, the learned Judge put herself in the arena and tried to bolster the prosecution case.

Counsel argued that the learned Judge did not indicate in her Judgment whether she believed the testimony of PW1 or whether she found that there had been corroboration. In counsel's view, the Judge gave a narrative of PW1's testimony and only alluded to the dangers of acting on uncorroborated evidence. He observed that nowhere did the Judge consider the inconsistencies in the witness' evidence and as to how it could be possible that PW1 said he did not know PW2 and yet PW2 stated that they were together in training. To counsel, PW1 had a motive to lie and it was no wonder that he was an accused before turning into a witness. He thus prayed that court be pleased to quash the conviction and set aside the sentence.

Court's consideration of the Appeal

This is a first appeal and as such this court has a duty to re-evaluate all the evidence adduced at the trial and make its own inferences on all issues of law and fact. This is a legal requirement under **Rule 30 (1)** of the Judicature (Court of Appeal Rules) Directions. See also **Kifamunte Henry vs. Uganda Supreme Court Criminal Appeal No. 10 of 1997, Pandya v R [1957] E.A 336, Okeno v Republic [1972] E.A 32.**

The appellant raised ten grounds of appeal in his Memorandum of Appeal. Counsel for both parties addressed the issues as shown in the submissions. For purposes of clarity, court will handle all the issues in the order in which the parties argued them.

Ground 1

This ground faults the trial Judge for having summoned George Ndyanabangi as a Court witness under Section 39 of the Trial on Indictments Act Cap 23 when the prosecution and the defense cases had been closed.

S.39 of the provides that;

> *(1) "The High Court may, at any stage of any trial under this Act, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined, and the court shall summon and examine or recall and re-examine any such person if his or her evidence appears to it essential to the just decision of the case.*
>
> *(2) The advocate for the prosecution or the defendant or his or her advocate shall have the right to cross-examine any such person, and the court shall adjourn the case for such time, if any, as it thinks necessary to enable the cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness"*

From the above provision, it is evident that the trial court has the powers to summon a witness that it considers necessary to assist it in meeting the ends of justice in the case before it. This person need not have been on the list of any party as a witness but during the hearing, his/her name or involvement may need further understanding in the interest of justice in the case and hence the need to call him/her to testify.

In such a case, the problem would arise where the defense or whichever party is opposing such a witnesses' appearance is not given an opportunity to cross-examine the witness. That would

amount to abuse of the principles of fair hearing and an accused's right to cross-examine any witness testifying against them.
In the instant case, the learned trial Judge found it important to invite Detective AIP Ndyanabangi, PW7, to help court obtain his story
5 since his name was mentioned several times during the testimony of PW1 and the appellant.

Our interpretation of the above provision is that the trial court may call a court witness strictly for clarification of any existing evidence
10 but the trial court must guard against descending into the arena to solicit for the evidence that supports any of the parties or to create an alternative story to the existing versions.

A careful study of the Record of the Proceedings at the trial shows
15 that when court invited the witness, the trial Judge asked the prosecution to lead him after which she asked the defence counsel to cross-examine the said witness. Whereas the trial judge may have considered it necessary to call PW7 under section 39 of the Trial on Indictments Act, the approach she took was akin to soliciting
20 evidence either to help the witness clear his name which had been mentioned many times during the trial of the case or to assist the prosecution to strengthen its case against the appellant which, could lead to a conviction of the appellant.

25 That state of affairs connotes an assistance to the prosecution to improve its case against the appellant. A court of law should never give the impression of siding with one party against another in the proceedings before it.
The trial Judge held on page 5 of the judgment that;
30 ***"Court on its volition called Detective George Ndyanabangi. This was in the hope that this witness would clear the discrepancy as to who had possession of the exhibits at the time PSU members went to visit the accused. The evidence of Ndyanabangi who appeared forthright and***

truthful, much to the discomfort of the accused. His evidence was in utter contrast much to the assertions of the accused."

5 In essence, the trial Judge evaluated the evidence of D/P Ndyanabangi alone against the appellant. That would go against the principles of natural justice relating to fair hearing in the case of the appellant. The right to a fair hearing is non-derogable under Article 44(c) of the Constitution. The trial Judge saw the need to call that 10 witness and therefore, there was no justification for asking the prosecution to lead the witness in evidence more so, when the prosecution itself had indicated that it did not consider the witnesses' evidence necessary.

15 It is our considered view that by inviting PW7 and giving him to the prosecution for examination, Court was re-opening the prosecution case that had already been closed. Further, although the defence was given an opportunity to cross examine the witness, that opportunity was, in the particular circumstance of this appeal, more of a 20 formality. This, in our view, was not proper.
Ground 1 therefore succeeds.

Grounds 2, 4, 6 and 8

These grounds are on Criminal responsibility of the appellant. We 25 note that criminal law requires that an accused must have had *mens rea* or a guilty mind, the intention to commit the crime.
Although the appellant should be faulted for not letting PW1 enter the cheque in the exhibit slip, PW1's failure to enter the cheque as an exhibit and then make record of its movements, in our view, 30 should not solely be blamed on the appellant.
Paragraph 19(h) of the schedule to the Police Act, Cap 303, Laws of Uganda provides:

"A police officer is guilty of neglect of duty if he or she-omits to make any necessary entry in any official book or

document, or omits to make or send any report or return which is within his or her line of duty to make or send."

The trial court convicted the appellant of the offence of Neglect of duty on the premises of the act/omissions of his junior officer. This, in our view, was an error by the trial Court. The appellant should not have been convicted on the basis of his junior's failure to perform his duties and as such, the prosecution did not prove their case against the appellant beyond reasonable doubt.

Before we take leave of these grounds, we must note the inconsistencies and contradictions in the evidence of PW1. He did not enter the cheque into the exhibits book on the instructions of the appellant and later testified that he actually entered it on a separate paper. Considering the fact that PW1 was initially a co-accused, it is most probable that he manipulated his testimony to implicate the appellant and his evidence should not have been heavily relied on in convicting the appellant.

We must note that there were a number of procedural irregularities that we must, as a first appellate court, point out. Section 82 (1) of the Trial on Indictments Act provides that;

"82. Verdict and sentence.
(1) When the case on both sides is closed, the judge shall sum up the law and the evidence in the case to the assessors and shall require each of the assessors to state his or her opinion orally and shall record each such opinion. The judge shall take a note of his or her summing up to the assessors."

From the record, the proceedings on 16/5/2011 show that the trial judge omitted summing up notes to the assessors. At the point of summing up notes to the assessors, the trial judge requested the assessors to state their names and their opinions. Section 82(1) above makes it mandatory for the trial Judge to sum up the evidence

in the case to the assessors. Failure to do so renders the trial a nullity. In the case of **Byaruhanga Fodori Vs Uganda COA Criminal Appeal No. 24 of 1999**, it was held that ***"we must hasten to add that we do not condone the failure of trial courts to strictly adhere to the provisions of the Trial on Indictments Act regarding the assessors."***

Further, the trial judge did not read out the charge and the particulars of the offense to the appellant as required by law under **section 60** of the **Trial on Indictment Act**.

Section 60 of the TIA provides that;

> ***"The accused person to be tried before the High Court shall be placed at the bar unfettered, unless the court shall cause otherwise to order, and the indictment shall be read over to him or her by the chief registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court; and the accused person shall be required to plead instantly to the indictment, unless, where the accused person is entitled to service of a copy of the indictment, he or she shall object to the want of such service, and the court shall find that he or she has not been duly served with a copy."*** (Emphasis ours)

The trial Judge simply said;
"Ok that is right. This court is informed by the Director of Public Prosecutions that you detective Inspector Constable of police Mugisha Gregory are charged with the following offence Neglect of Duty as the first count contrary to section 2(1) of the Anti-Corruption Act 2009..." and read out the facts to court. This, in our view, was an irregularity that cannot be ignored by this court.

In addition, during plea taking, the learned trial judge entered an omnibus plea of not guilty to all the counts as pleaded to by the appellant. After reading out the facts as stated above, the appellant responded;

> *"A1: My Lord it is not true*
> *COURT: In the second count which is of Abuse of Office?*
> *A1: My Lord it is not true.*
> *COURT: In the third count?*
> *A1: My Lord is not true.*
> *COURT: In the last count of uttering a false document?*
> *A1: My Lord it is not true*
> *COURT: A plea of not guilty is entered on all counts."*

The case of **Adan Vs Republic (1973) E.A 445** set out the procedure in recording the plea of guilty as follows;

> ***"That the charge and the particulars of the offence should be explained to the accused, in the language that he/she understands.***
> ***That the plea should as far as possible be recorded in the words of the accused.***
> ***That in the event of a plea of guilty the fact should be stated to the accused, and he/she should be granted an opportunity to respond.***
> ***That if an accused disputes the facts of the charge a plea of 'Not guilty' must be entered.***
> ***Where there is more than one accused jointly charged, the plea of each should be recorded separately.***
> ***And if a charge or indictment contains several counts the accused must be asked to plead to them separately.***
> ***In the event that an accused does not change his/her plea, a plea of guilty should be entered and a conviction***

recorded and after mitigation and facts relevant to sentence are taken the sentence can be meted out."

The requisite procedure was not followed by the trial judge. Also at the close of the prosecution case, the trial Judge, in her ruling on a case to answer, informed the appellant of his rights which is contrary to section 73 (2) of the Trial on Indictments Act. Under section 73(2) of the TIA, the trial judge informs the accused/appellant of his rights at the opening of the defence case. Owing to the above, grounds 2, 4, 6 and 8 of the memorandum of appeal succeed accordingly.

Ground 7

We now proceed to resolve ground 7 which however, has been touched on while resolving the above grounds. Ground 7 faulted the learned trial Judge for convicting the appellant on the weakness of his case instead of the strength of the prosecution case. We add that no evidence was adduced to prove that the appellant was aware that the cheque he was uttering was false yet the learned trial Judge convicted him as such when she stated that: ***"He knew that the cheque was false and went ahead to present it. That was guilty knowledge."*** Consequently, the trial judge convicted the appellant not on the strength of the prosecution case but on the weakness of the defence. Ground 7 succeeds.

Ground 9

This ground faults the trial Judge for relying on accomplice evidence of D/SGT Okurut in the absence of corroboration. An 'accomplice' is defined in Osborn's Concise Law Dictionary, 8th Edition at page 6 as:

> ***"any person who, either as a principal or as an accessory, has been associated with another person in the commission of any offence. The evidence of an accomplice is admissible, but the judge must warn the jury of the danger of convicting on such evidence unless corroborated, and if this warning is omitted a conviction will be quashed."***

The learned trial Judge, in her decision observed that the evidence of PW1 would be treated with caution because of the closeness of the activities conducted by the witness and the instruction handed down to him by the appellant. She also warned herself of the dangers of convicting an accused on the uncorroborated testimony of an accomplice. PW1 testified that the accused took the cheque from and did not return it to him until the American Embassy Official needed to see it. In addition, that he did not record the movement of the cheque on the request of the appellant which in essence makes him an accomplice.

The position of the law as regards evidence of an accomplice and the requirement for its corroboration has been discussed in numerous decisions of the Supreme Court and of this Court and it is now well settled. These authorities stem from the case of **R vs. Baskerville [1916] 2 KB 658**. The guiding rules relating to corroboration as derived from the case are that:-

1. ***It is not necessary that there should be independent confirmation in every detail of the crime related by the accomplice. It is sufficient if there is a confirmation as to a material circumstance of the crime.***

2. ***The confirmation by independent evidence must be of the identity of the accused in relation to the crime, ie confirmation in some fact which goes to fix the guilt of the particular person charged by connecting or tending to connect him with the crime. In other words, there must be confirmation in some material particular that not only has the crime been committed but that the accused committed it.***

3. ***The corroboration must be by independent testimony, that is by some evidence other than that of the accomplice and therefore one accomplice cannot corroborate the other.***

5 4. ***The corroboration need not be by direct evidence that the accused committed the crime', it may be circumstantial.***

Corroboration means independent evidence and as such the evidence does not have to be a kind which proves the offence against the accused.

10

From the evidence on the record, PW1 clearly fits the above description of an accomplice. He was the Investigating Officer, he handled the exhibit, in the form of the US Cheque in the most unsatisfactory manner including failure to keep a proper chain of the 15 movement of the exhibit on the pretext that the appellant told him not to do so. He later admitted he knew the US Cheque was an exhibit and that is why he, although he first recorded it in on a rough paper, he later recorded it in a proper exhibit slip. These were grave contradictions and inconsistencies but also untruthful yet from the 20 evidence on record, the appellant was convicted on the uncorroborated testimony of PW1 which, in our view, was an error by the learned trial Judge. We find in the affirmative on the ground.

Ground 10

25

On ground 10, the appellant contends that the trial Judge convicted him on the basis of his superiority in rank in the police force. The trial Judge held that;

"There are two schools of thought concerning criminal 30 negligence. The first contends that subjectivity must be employed where variable standards are applied as to what a reasonable person would have done and the circumstances of these variable standards would then be used to establish what standard of liability can or might

be imposed on a senior police officer as opposed to a junior police officer and as further contrasted with a man on a street or one who was not aware of the risk of his action. It should be noted that "Neglect of Duty" presupposes that the higher standards are imposed on a person who has special knowledge in a particular field."

From the above observation, it is clear that the appellant was found guilty on grounds of his seniority for the negligence occasioned by his junior. And as already stated above, the cheque changed hands for a number of days, unrecorded, and as such, it could have been taken by any of the other persons who handled it. We find that the prosecution failed to prove, beyond reasonable doubt, that the appellant neglected his duty and issued a false document.
Ground 10 succeeds.

In the final result, we find that this Appeal should succeed. The Judgement of the trial Court is set aside and the conviction and sentence of the appellant by the learned trial Judge quashed and set aside.

Dated at Kampala this 17th Day of June 2019

Hon. Justice Cheborion Barishaki, JA

Hon. Justice Hellen Obura, JA

Hon. Justice Stephen Musota, JA