THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 0323 OF 2015

ERNEST ENZAMA :::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA :: RESPONDENT

CORAM: HON. LADY JUSTICE MUSOKE ELIZABETH, JA

HON. MR. JUSTICE STEPHEN MUSOTA, JA

HON. LADY JUSTICE PERCY NIGHT TUHAISE, JA

JUDGMENT OF THE COURT

This is a second appeal from the decision of the High Court of Uganda, Anti-Corruption division, delivered on 1st October, 2015 by Muhanguzi, J. (as he then was), which, in exercise of its appellate jurisdiction dismissed the appellant's appeal against his conviction for the offence of corruption.

Brief Background.

On 24th April, 2015, the appellant was convicted for the offence of corruptly offering gratification contrary to section 2 (b) and section 26 (1) of the Anti-Corruption Act, 2009, by Her Worship Susanne Okeny, a Magistrate Grade One attached to the Anti- Corruption Division in Criminal Case No. 41 of 2014. He was thereafter sentenced to a term of imprisonment of 12 months. The appellant was dissatisfied with the said decision and appealed to the High Court Anti-Corruption Division, which, on 1st October, 2015, dismissed the appeal and confirmed the trial court's conviction and sentence.

Being dissatisfied with the decision of the High Court Anti-Corruption Division, the appellant lodged this appeal in this Court on the following grounds:

"1. The appellate Judge erred in law when he held that the offence of corruptly offering gratification was proved against the appellant beyond reasonable doubt.

2. **The appellate judge erred in law when he failed to properly re-evaluate the evidence on record and thereby arrived at a wrong decision and conclusion.**
3. **The appellate judge erred in law when he held that the appellant received a fair trial."**

Representation

At the hearing of the appeal, the appellant was self-represented, while, Ms. Nabatanzi Diana and Mr. Luteete Micah, both Senior State Attorneys from the Inspectorate of Government, jointly represented the respondent. This Court granted permission to the parties to file written submissions which were accordingly adopted.

Appellant's Case

The appellant opted to argue grounds one and two together, submitting that the learned first appellate Judge did not appropriately re-evaluate the evidence adduced for the state in the trial Court. He contended that the evidence adduced by the prosecution witnesses did not reveal his motive to bribe PW2, Aruho Joab, the officer from the Inspectorate of government whom it was alleged he had corruptly offered to bribe. To support this, he pointed out that the alleged motive for him to offer gratification, according to PW2's testimony, was to procure PW2 to interfere with investigations relating to accountability for NUSAF 2 funds in his favour and yet he had earlier been cleared of wrong doing by the Local Government Public Accounts Committee. He then urged this Court to find that there was no motive to offer PW2 a bribe at the material time.

Furthermore, that the learned first appellate Judge, like the trial magistrate, relied on contentious evidence to support the finding of the trial Court that the appellant had offered to corruptly pay PW2 money in the circumstances. He cited the evidence accepted by the courts below that

on 1/11/2013, he offered to take PW2 to Centenary bank to pay him money to close the case; or that he had asked for a meeting with PW2 at Sure Deal Restaurant where he paid PW2, Shs. 200,000/= (Two Hundred Thousand Uganda Shillings) in order to compromise investigations against him. The appellant contended that he had disputed that evidence in the two courts below, and maintained that it was PW2, who arranged for the meeting to take place at the said Restaurant because PW2 was very busy and could not conduct the meeting at his office; and that while at the restaurant, he did not give PW2 any money, but instead it was PW2 who took money from an envelope in a notebook where he had kept it before taking it to the bank. He emphasized that the first appellate Court had failed in its duty to properly evaluate the above evidence.

The appellant further faulted the learned first appellate Judge for failing to find that the contradiction in the amount of money alleged to have been offered by him to PW2 was major. He indicated that there were two different exhibit slips all purportedly detailing the amount of money he had offered to PW2; P EX.4 showed that he had offered Shs. 220,000/= (Two Hundred and Twenty Thousand Uganda Shillings) while PEx.5 showed that he had offered Shs. 200,000/= (Two Hundred Thousand Uganda Shillings). The appellant submitted that this was not an arithmetical error, but rather, a ploy by PW3, Akwanya Bernard, the arresting officer, to manipulate the exhibits, and, that the variance in the quantum of money he allegedly offered to PW2 raised doubt as to his guilt.

Further, that the learned first appellate Judge had erred when he failed to properly evaluate evidence of a frame up instigated by PW2 against him. He referred Court to the testimony of PW2, who had testified that he bribed PW1, Paul Ejang, his supervisor. The appellant stated that this had rendered PW2, a witness with very little credibility whose testimony should never have relied been on.

Respondent's case

Counsel supported the findings of the first appellate court, submitting on grounds 1 and 2, that the learned first appellate Judge was alive to his duty to re-evaluate the evidence presented before the trial court and had

satisfactorily discharged that duty. He added that the appellant had dwelt on matters of fact in his submissions in this appeal, instead of focusing on matters of law, as should be the case on a second appeal, which was intended to waste this court's time.

On ground 3, counsel submitted that the appellant was afforded a fair trial by the learned trial Magistrate and that the learned first appellate Judge was justified to so find. In counsel's view, the key elements of a fair trial like presumption of innocence, adequate time and facilities for the preparation of his defence, right to legal representation, as provided under Article 28 of the Constitution had been accorded to the appellant. Counsel then invited this Court to dismiss this appeal and uphold the appellant's conviction and sentence.

The appellant's rejoinder.

The appellant re-iterated his earlier submissions, urging this Court to find that there had been a miscarriage of Justice occasioned upon him; and that this Court should deem it fit to set aside his conviction and sentence.

Resolution by this Court.

This is a second appeal and the duty of this Court in the circumstances is well settled. Section **45 (1)** of the **Criminal Procedure Code Act, Cap. 116** provides that:

> **"Either party to an appeal from a magistrate's court may appeal against the decision of the High Court in its appellate jurisdiction to the Court of Appeal on a matter of law, not including severity of sentence, but not on a matter of fact or of mixed fact and law."**

On a second appeal, this Court is only concerned with matters of law and not matters of fact or mixed law and fact. In **Areet Sam vs. Uganda, Supreme Court Criminal Appeal No. 20 of 2005**, the Court observed that:

> **"...it is trite law that as a second appellate court we are not expected to reevaluate the evidence or question the concurrent findings of facts by the High Court and Court of Appeal. However, where it is shown that they did not evaluate or reevaluate the evidence or where they are**

proved manifestly wrong on findings of fact, this court is obliged to do so and ensure that justice is properly and truly served."

In Tito Buhingiro vs. Uganda, Supreme Court Criminal Appeal No. 08 of 2014, the Court held that a failure by the first appellate Court to rehear the case on appeal by reconsidering all the materials which were before the trial Court and make its own mind amounts to an error of law.

The principles discussed in the above cases are applicable, with the necessary modifications, to the present appeal. We have to determine whether the first appellate Court discharged its duty to rehear the case by reconsidering all the materials before the trial Court. These were the grounds of appeal raised in the first appellate Court:

1. **The learned trial Magistrate erred in law and fact in finding and holding that the offence of corruptly offering gratification was proved against the appellant beyond reasonable doubt.**
2. **The trial Magistrate did not properly evaluate the evidence on record thereby arrived at a wrong decision and conclusion.**
3. **The appellant did not get a fair trial.**

We observe that the learned first appellate Judge was alive to the ingredients of the offence in question and went at great length to re-appraise the evidence concerning each ingredient. After re-appraising the evidence, he agreed with the findings of the learned trial Magistrate that the appellant had offered monetary gratification to PW2 in exchange for him to compromise inquiries into alleged failure by the appellant to account for NUSAF funds and the loss of Government motorcycle, which PW2 was investigating; and that the appellant had refused to record his statement from the IGG's office and instead arranged to meet PW2 at Sure Deal Restaurant, where he gave the gratification money, Shs. 200,000/= (Two Hundred Thousand Uganda Shillings) to PW2. The learned first appellate Judge also found that any inconsistencies in the prosecution evidence were minor and did not go to the root of the matter.

The thrust of the appellant's submissions is that the learned first appellate Judge did not appropriately re-appraise the evidence. We are unable to accept that submission, because, basing on the record, the learned first appellate Judge re-appraised the evidence and the judgment of the trial Court and came up with concurrent findings with the learned trial Magistrate as noted above.

In **Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1997**, the Court observed as follows:

> **"Once it has been established that there was some competent evidence to support a finding of fact, it is not open, on second appeal to go into the sufficiency of that evidence or the reasonableness of the finding. Even if a Court of first instance has wrongly directed itself on a point and the court of first appellate Court has wrongly held that the trial Court correctly directed itself, yet, if the Court of first appeal has correctly directed itself on the point, the second appellate Court cannot take a different view. R. Mohamed Ali Hasham vs. R (1941) 8 E.A.C.A. 93.**
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> **On second appeal the Court of Appeal is precluded from questioning the findings of fact of the trial Court, provided that there was evidence to support those findings, though it may think it possible, or even probably, that it would not have itself come to the same conclusion; it can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law: R. vs. Hassan bin Said (1942) 9 E.A.C.A. 62.**

We have not been persuaded that the learned first appellate Judge failed to reappraise the evidence before him. On the contrary, the evidence of PW2, Aruho Joab, which was corroborated by the evidence of PW1, Paul Ejangu, as well as the testimony of PW3, Akwanya Bernard and PW4, Avako Teddy proved that the appellant offered some gratification to PW2 to compromise investigations against him.

We are, therefore, faced with the concurrent findings of fact by the two courts below, that the appellant offered gratification to PW2 in exchange for him to compromise certain investigations in the appellant's favour. As highlighted in **Areet Sam (Supra)** and **Kifamunte (supra)** cases, the second appellate court is, save for exceptional cases, precluded from interfering with the concurrent findings of the trial court and the first appellate court.This is not such an exceptional case. We, therefore, find no basis for questioning the concurrent findings of fact by the trial court and the first appellate court because they were supported by the evidence on record. In the premises, grounds 1 and 2 must fail.

Ground 3 pertains to whether the appellant was granted a fair trial by the trial court. The appellant did not specifically canvass this ground in his written submissions, but it was the respondent's submission that the

appellant was granted a fair hearing during the trial in the trial court. The learned first appellate Judge concluded thus on the question of a fair trial at page 160 of the record:

> **"...The prosecution adduced evidence beyond reasonable doubt against the appellant and his conviction was based on the strength of the prosecution case and not on the weaknesses of the defence. The appellant, in my view, was afforded and did avail himself of all the elements of a fair trial. I see no merit in this ground of appeal and accordingly reject it.**
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> **The witnesses produced before court were credible, their evidence was cogent and corroborative. I therefore find that the trial Magistrate correctly evaluated the evidence on record and availed the appellant all elements of a fair trial."**

The appellant did not point out instances whereby his right to a fair trial was violated during the trial. From the record, we too, are unable to find any. We, therefore, agree with the above observations of the learned first appellate Judge and in the premises, ground 3, too, hereby fails.

As a result, this appeal must fail, and is hereby dismissed.

We so order.

Dated at Kampala this ..25th.. day of ..June.. 2019.

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Elizabeth Musoke
Justice of Appeal

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Stephen Musota
Justice of Appeal

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Percy Night Tuhaise
Justice of Appeal