THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 0485 OF 2016
(Arising from High Court (Anti-Corruption Division) Criminal Appeal No. 0008 of 2016)

MBONEKYEIRWE TOBIAS :::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA :: RESPONDENT

(An appeal from the decision of the High Court of Uganda (Anti-Corruption Division) before Tibulya, J. delivered on 6th December, 2016 in Criminal Appeal No. 0008 of 2016 also arising from Chief Magistrate's Court attached to Anti-Corruption Division Criminal Case No. 0030 of 2014)

CORAM: HON. MR. JUSTICE ALFONSE OWINY-DOLLO, DCJ
HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. LADY JUSTICE PERCY NIGHT TUHAISE, JA

JUDGMENT OF THE COURT

Introduction

The appellant brought this appeal against the decision of the High Court (Tibulya, J.), as a first appellate Court, which had in exercise of its appellate jurisdiction, dismissed his appeal against the decision of the trial Court, and upheld the relevant convictions, sentences and orders.

The trial Court had convicted the appellant of 3 counts, namely; count 1 for Corruptly Soliciting For Gratification contrary to sections 2 (a) & 26 of the Anti-Corruption Act, 2009; count 2 for Corruptly Receiving Gratification contrary to sections 2 (a) & 26 of the same Act; and count 3 for Abuse of Office Contrary to Section 11 (1) of the Anti-Corruption Act, 2009. The trial Court had sentenced the appellant to 3 years' imprisonment, on each of counts 1 and 2 respectively; and to 2 years' imprisonment on count 3, which were to run concurrently. The trial Court also made an order of disqualification from holding public office for 10 years against the appellant.

Brief Background

The appellant, who at the material was a Police Officer at the rank of Detective Assistant Inspector attached to Kabale Police Station, was charged with the corruption related offences indicated earlier. He was tried in the Chief Magistrates' Court attached to Anti-Corruption Division. The charges were read to him, and he pleaded not guilty. At the close of the trial, the trial Court believed the prosecution case, and convicted the appellant as charged. It also imposed the sentences and orders mentioned earlier. The appellant's appeal to the High Court was unsuccessful, and he lodged this appeal to this Court on grounds which were formulated as follows:

> "1. **The learned Judge erred in law when she failed to properly re-evaluate the evidence on record as a whole thereby arriving at a wrong conclusion of convicting the appellant.**
>
> 2. **The Learned Judge erred in law when she held that Prosecution's evidence had placed the appellant at the scene of the crime and disregarded the appellant's defense of alibi thereby arriving at a wrong conclusion.**
>
> 3. **The Learned Judge erred in law when she held that the inconsistencies and contradictions pointed out in the prosecution's case were minor and immaterial to the case thereby arriving at a wrong conclusion.**
>
> 4. **The Learned Trial Magistrate erred in law and fact when he passed a manifestly harsh and severe sentence against the Appellant in the circumstances thereby occasioning miscourage (sic) of justice to the Appellant (sic).**"

The respondent opposed the appeal.

Representation

At the hearing of this appeal, Mr. Alinaitwe Rajab, learned counsel, represented the appellant; while Ms. Diana Nantabazi, a Senior Inspectorate Officer in the Inspectorate of Government, represented the respondent.

Court directed counsel for either side to file written submissions, which they did. We have considered those submissions in the determination of the present appeal.

Appellant's case

Counsel for the appellant argued the grounds in the order they were presented in the memorandum of appeal.

Ground 1

Counsel submitted that the learned first appellate Judge had not properly re-evaluated the evidence on record. He stated the ingredients of the offence of corruptly soliciting a gratification, as follows:

> **"1. That the accused was employed in a public office.**
> **2. That the accused solicited for gratification.**
> **3. That he solicited for money in exchange for an act/omission in the performance of his public functions."**

Counsel conceded that the first ingredient had been proved, but that the other two had not and pointed out that the learned trial Magistrate had made a finding that the solicitation, which was proved against the appellant had taken place between 10/11/2013 and 13/11/2014 both physically and during telephone conversations. He then dwelt on the said phone conversations and contended that the contents of those conversations had not been proved in court, which never had the opportunity to consider whether the appellant had solicited for money as alleged by the prosecution witnesses during the said phone conversations. For that reason, counsel submitted that the learned first appellate Court had erroneously upheld that finding.

Counsel then attacked the evidence of PW1 D/ASP Ariko Simon, and submitted that the trial Court had accepted his evidence, yet the same was mere hearsay. He pointed out that PW1 had testified that he was instructed to take a statement from a one Abe, at the Office of the Inspectorate of Government, who had complained that the appellant had solicited for Ug. Shs. 2,000,000/= from him to drop charges against him. Counsel contended that those allegations were not made to PW1, and that therefore his testimony on the same was hearsay.

Counsel also contended that no evidence was adduced by the prosecution to prove that the appellant had either solicited or received a gratification of Ug. Shs. 500,000/= from Abe Julius or Musinguzi Denis as an inducement to

exonerate Abe Julius of a murder, which the appellant was investigating and in which the said Abe was implicated.

Counsel further contended that while the testimony of PW4, Abe Julius, was relevant to the charges, it fell short of the solicitation envisaged under Section 2 (a) of the Anti-Corruption Act, 2009. He submitted that PW3 and PW4 had testified that the appellant asked for "things" from PW4. He contended that the meaning of things was ambiguous and it was therefore erroneous for the two lower Courts to make an inference that "things" in that context meant money. He suggested that to make the foregoing inference was to abuse the English language, where things do not refer to money.

Further still, counsel submitted that the allegation that the appellant asked PW4 for Ug. Shs. 2,000,000 to drop a charge of murder could not stand because the appellant was not charged with the same. He contended that PW4 was on remand on charges of murder in respect of the case the appellant had handled when he visited the crime scene. However, counsel's submissions in this paragraph, were difficult to comprehend.

Counsel faulted the learned first appellate Judge for not having interpreted the failure by the prosecution to produce a material audio recording in the appellant's favour. It was submitted for the appellant that there was evidence for the prosecution that PW1 and PW2, both officers from the Inspectorate of Government had prepared a tape recorder, which was given to PW3 to be used to record the conversation between him and the appellant. The recording would detail audio evidence of solicitation and receipt of gratification by the appellant. Counsel pointed out that this recording was never tendered in Court because PW3 stated that the recording was unclear and unintelligible. He submitted that it was the duty of the court and not PW3, to ascertain whether the recording was clear or not, which could only be achieved by the court listening to the recording and making a decision afterwards. He asked this Court to make a finding that the conduct of the trial surrounding the tape recorder in issue had created doubt in the prosecution case, and to resolve that doubt in the appellant's favour and acquit him.

All in all, on ground 1, counsel submitted in conclusion that the prosecution had failed to prove the ingredients of the offences of corruptly soliciting and corruptly receiving gratification, and that the first appellate Court had failed to properly re-evaluate the evidence on record. He asked this Court to allow ground 1.

Ground 2.

Counsel faulted the learned first appellate Judge for the manner in which she disregarded the appellant's defence of alibi. He pointed out that the appellant had set up an alibi at the trial. He had testified in his defence that on 13/11/2014, the day of the commission of the offences in issue, he had been instructed by his boss the OC CID Kabale to go and carry out a search in Kigongi. The appellant had booked out of the Station in the Station Diary Book vide SD 35/13/11/2014. He had arrested the suspect at around 11:25 a.m, and had intended to take the suspect to the police station when he escaped. The appellant had pursued the suspect in vain, and when he got to Kabale Police Station, he was informed that IGG officers were looking for him. Counsel contended that the appellant could not be held responsible for what happened at the station while he was away. Counsel also pointed out that the Station Diary Book in issue had been tendered in evidence as Defence Exhibit 1.

Counsel complained that the learned first appellate Judge had given erroneous reasons for rejecting the appellant's alibi. First, that she had made a finding that the alibi was introduced for the appellant at an advanced stage in the trial, and had not been put to the Investigating Officers who had seen the appellant at the scene of crime. Secondly, that it was erroneous for the first appellate Judge to reject the appellant's alibi in reliance on the identification testimony of PW1, PW2 and PW3, yet the said witnesses had not known the appellant prior to the date of commission of the offences in question.

As regards the late introduction of the alibi, counsel submitted that the appellant had raised the alibi early enough albeit indirectly, during the cross examination of PW1, where the said witness was asked whether he had known the appellant before the day in question, to which he said that he

had not. In counsel's view, that evidence from cross-examination was intended to ascertain whether the appellant was at the station, and had successfully set up an alibi.

As regards the identification of the appellant by PW1, PW2 and PW3, counsel maintained that it was an error for the first appellate Judge to reject the appellant's alibi in reliance on the identification testimony of PW1, PW2 and PW3 because those witnesses did not know the appellant prior to the date of commission of the offences in question. For that reason, counsel contended that there was a probability that the witnesses had not been able to notice the appellant, when he returned to the station, which supported the defence case that the appellant had reached the relevant station after chasing the suspect in vain. In addition, counsel contended that PW1, PW2 and PW3 had contradicted each other, as to the colour of the suit which the appellant was wearing on the relevant date. While PW1 and PW2 stated that the appellant was dressed in a navy blue suit, PW3 said that the appellant wore a black suit. Counsel suggested that the contradictions pointed to a deliberate intention by the prosecution witnesses to mislead court about events which they had not perceived.

Counsel further attacked the evidence of PW3, who had stated that he had witnessed PW4 handing over money to the appellant, but had also testified that bullets were fired and he (PW3) had heard another policeman say that the man running away was Mbonekyeirwe Tobias (the appellant). According to counsel, PW3 did not explain why he did not chase after the appellant at that instant in order to intercept him.

Counsel further submitted that the evidence of PW6 ought to have been rejected by the first appellate Court as a hoax. Counsel contended that there was frantic running at the relevant Police Station after a bullet was fired shortly after PW4 had allegedly handed the appellant some money. Counsel pointed out that PW6 had testified that on the fateful day, he ran after a suspected criminal who was fleeing from Kabale Police Station while being pursued by PW1, PW2 and one Nyeko, and on catching up with the suspect, he realized that it was the appellant. However, in counsel's view, if that version of events was indeed true, PW6 would have apprehended the

appellant, and his failure to do so, left a huge possibility that PW6's evidence was false and ought to have been rejected by the lower courts.

In conclusion, he asked the Court to allow ground 2, as well.

Ground 3.

The gist of counsel's submissions on this ground was that the learned first appellate Judge had made an erroneous finding that the contradictions in the prosecution case were minor, yet they were major and went to the root of the prosecution case. He relied on **Nabagala Margret & another vs. Uganda, Court of Appeal Criminal Appeal No. 0014 of 2010**, to state that major contradictions and inconsistencies that go to the root of the matter were fatal to the prosecution's case and the minor ones that could be explained could be ignored.

Counsel submitted that the first contradiction concerned the amount of money which was used in the cash trap against the appellant. Whereas PW1, PW2 and PW3 had testified that the appellant asked for Ug. Shs. 500,000/= from the appellant, PW4, on the other hand testified that the appellant had asked him for Ug. Shs. 100,000/= for a post mortem, then subsequently a bribe of Ug. Shs. 2,000,000/=. PW4 had then further testified that the appellant asked him for 500,000/=. However, counsel maintained that the record did not show the appellant asking for money from PW4, at any time.

Secondly, that there were contradictions, as regards the evidence of negotiation of the bribe to be paid to the appellant. PW1 testified that when he was informed by PW4, that the appellant had solicited for a bribe of Ug. Shs. 2,000,000/=, he told PW3 and PW4 to go and negotiate, with the appellant to accept a final payment of Ug. Shs. 500,000/=, but PW4 had not spoken about the said negotiation as he gave his testimony. The foregoing inconsistency was compounded when, during his testimony, PW4 stated that he had negotiated with the appellant to make an initial payment of Ug. Shs. 500,000/= leaving an outstanding balance of Ug. Shs. 500,000/=, which meant that the appellant had solicited for Ug. Shs. 1,000,000/=, and not Ug. Shs. 500,000/= for which he was charged.

Thirdly, that there was a contradiction in the prosecution case, as regards the source of the money which was used for the cash trap. PW1 had testified that the source of the money was PW2, who had given it to PW4 to forward it to the appellant. While PW2 stated that he received the money in question from PW1, the latter denied handing any money to PW2. Counsel further contended that PW2 and PW1 had contradicted each other, as regards the record for cash trap, in that PW2 stated that the said record was made on 13/11/2014 yet PW1 stated that it was made on 10/11/2014. In counsel's view, the above highlighted contradictions affected the chain of movement of the exhibits and the authenticity of the prosecution evidence.

Lastly, counsel submitted that the testimony of PW7 was riddled with contradictions which pointed to its falsity. PW7 had conducted a search and discovered the money which had been handed to the appellant by PW4 in a shrub or fence of Little Angel's Nursery School, which was near the Police Station. However, counsel contended that PW7 had not stated the people who had seen him make that discovery. In counsel's view, the head teacher or the employees of the said school should have been called as witnesses. Moreover, according to counsel, PW7 had contradicted himself when, on the one hand he testified that he was told by one Corporal Nyeko, about the appellant dropping money in the shrub, and yet on the other hand, PW7 testified that he was told by other people. Counsel contended that the said Corporal Nyeko should have been called as a witness, and the failure by the prosecution in that regard should be interpreted in favour of the appellant.

He asked this Court, to allow ground three, as well.

Ground 4

Counsel complained that the learned trial Judge had imposed a manifestly harsh and excessive sentence on the appellant in the circumstances, and had failed to take into account the following mitigating factors which had been submitted for the appellant that; he was a first offender; he was an officer who had been involved in the administration of justice for a long time, and had played a positive role in society; he was married and had a family to take care of, including other orphans who depended on him; he had been

convicted of offences which did not involve personal violence, and the money he had solicited for was returned to the state.

Counsel contended that the mitigating factors outweighed the aggravating factors which were submitted by the prosecution, namely; the need to protect society; and that the appellant had breached trust put in him by the Government.

Counsel submitted that it was common ground that the prisons and particularly Luzira Government prison are overcrowded, and the courts have adopted an approach aimed at decongesting prisons. He pointed out that the appellant had served four months and one week of the three year sentence imposed on him. He then submitted, that if the appeal against conviction is dismissed by this court, then the appellant should be given a non-custodial sentence, in the form of an option to pay a fine in respect to all the three counts.

Counsel further prayed that this Court finds it fit to vacate the order of disqualification from holding public office of ten years, which was imposed on the appellant. He pointed out that the appellant is a young man of 39 years, who has a family to take care of. He contended that the disqualification order may negatively impact on the appellant's right to work, which would negatively affect his dependents.

He asked the Court to allow this ground 4 as well.

All in all, counsel prayed that the appeal is allowed by this Court. To have the convictions quashed and sentences arising therefrom set aside. In the alternative, that if the convictions are upheld, to set aside the sentences imposed on the appellant and impose a non-custodial sentence.

Respondent's case

Ground 1

Counsel supported the decision of the first appellate Court, and submitted that it had reappraised all the evidence. She contended that the learned first appellate Judge had addressed the ingredients of the offence of corruptly

soliciting a gratification and came to an independent and correct decision that all the elements of the said offence had been proved beyond reasonable doubt.

She further submitted that the first appellate Judge had addressed the appellant's contention about the non-tendering in court of the recordings and phone print outs to back the allegation that it had left gaps in the prosecution case. The learned first appellate Judge had accepted PW3's evidence that the recording was not intelligible and that its production would not have served any useful purpose. The learned first appellate Judge had further correctly observed that there was no law that required soliciting for a bribe be proved by recordings and phone print outs. Moreover, in counsel's view, it was not the duty of the court to ascertain whether the recording was intelligible or not as submitted by the appellant.

Counsel then submitted that the learned first appellate Judge had properly evaluated evidence and found no merit in the appellant's appeal. She asked this court to dismiss ground 1.

Ground 2

Counsel disagreed with the assertions by the appellant that the learned first appellate Judge had injudiciously disregarded his alibi, and contended that it had been rightly rejected. Counsel submitted that the first appellate Court had considered the evidence which placed the appellant at the scene of crime before coming to the decision to reject the appellant's alibi.

Counsel pointed out that the learned first appellate Judge had given clear reasons for rejecting the alibi. First that it was advanced late in the trial, without being put to the investigators who had seen the appellant at the scene of crime. Secondly, that the key identifying witnesses Abe and Musinguzi, who knew the appellant before the commission of the crime, had been able to make an identification of him during day time on the material date. Thirdly, that other independent witnesses like PW5 and PW6 had seen the appellant being pursued from the Police Station shortly after he received money from PW4. In counsel's view, in light of the above evidence, the learned first appellate Judge could not be faulted for having reached the

conclusion that the appellant's alibi had been disproved. She asked this Court to find no merit in ground 2.

Ground 3

On the contradictions alleged by the appellant, counsel submitted that they were rightly considered and addressed by the learned first appellate Judge, who found that some of the contradictions, were not contradictions per se and had only been thought of as such by counsel's misconceptions. The actual contradictions were rightly held to be minor ones, which were adequately explained away by the witnesses. She asked this Court to dismiss ground 3, too.

Ground 4

Counsel submitted that the relevant sentence was imposed on the appellant by the trial Court, in proper exercise of its discretion, and that the first appellate Court had maintained the same because it was not shown that the trial Court had applied any wrong principles. Counsel contended that the first appellate Court had rightly relied on **Nalongo Naziwa Josephine vs. Uganda, Court of Appeal Criminal Appeal No. 006 of 2008**, where it was held that an Appellate Court will not ordinarily interfere with the discretion of the trial Judge unless it is evident that the Judge has acted upon some wrong principles or overlooked some material factor, or that the sentence was manifestly excessive in view of the circumstances of the case. Counsel asked court to dismiss this ground, and maintain the sentences imposed on the appellant by the trial Court.

In conclusion, counsel asked this Court to confirm the decision of the first appellate Court, which had carefully reviewed the evidence on record, and came up with its own decision to maintain the decision of the trial Court.

Resolution of the Appeal

We carefully studied the Court record, and considered the submissions of counsel for either side, the law applicable, the authorities cited, and those not cited which are relevant to the determination of the present appeal. This is a second appeal, and the duty of a second appellate Court has been recently re-iterated by the Supreme Court in **Kamya Abdallah & 4 others**

vs. Uganda, Supreme Court Criminal Appeal No. 0024 of 2015, where it was observed:

> **"This is a second appeal and the duty of the 2nd appellate Court is to determine whether the 1st appellate Court properly re-evaluated the evidence before coming to its own conclusion. Except in the clearest cases where the first appellate Court has not satisfactorily re-evaluated the evidence, the appellate (second appellate) Court should not interfere with the decision of the trial Court."**

The Court further referred to **Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal; No. 0010 0f 1997** where it was held:

> **"On the 2nd appeal, the court of appeal is precluded from questioning the findings of the trial Court, provided that there was evidence to support those findings, though it may think it possible or even probable 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 a finding of fact."**

We shall keep the above principles in mind, as we determine this appeal.

Ground 1

We understood the appellant's complaints in this ground to be against the findings of fact by the first appellate Court. The appellant specifically dwelt on the failure of the first appellate Court to look at phone recording of the conversations between PW4 and the appellant, to ascertain whether or not the appellant indeed solicited for gratification over the phone.

It should be noted that ground one in this appeal was presented verbatim in the first appellate Court. The submissions made in support of the ground in that court were similar. The learned trial Judge reviewed the evidence on record and rejected the assertions by the appellant, and gave reasons for her decision. First, she stated that the phone recording of the solicitation conversation between PW4 and the appellant, was not clear and it was unnecessary to tender it in Court. She then stated that there was no law requiring that the act of soliciting for a bribe could only be proved by recordings and printouts. She observed that the testimony of PW4, that the

appellant had taken PW3 and himself to a vacant room at the police station and asked for things, had proved the solicitation against the appellant.

The appellant submitted that "things" was an ambiguous word and may not have referred to money. We are unconvinced by this assertion, because the testimony of PW4 established that the appellant had earlier asked for money in order to clear him of murder charges. In that context, therefore, the lower courts were right to reach an inference that a reference to things on the fateful day by the appellant, was a reference to money.

We also note that at page 39 of the record, the learned first appellate Judge had this to say:

> **"The argument that since PW3 and 4's evidence is that the appellant solicited for 2,000,000/= and not 500,000/= he cannot be convicted of soliciting for 500,000/= is without merit. It is in evidence that the appellant solicited for 2,000,000/= but the amount received was negotiated up to 500,000/=. The act of solicitation for the money which turned out to be 500,000/= as a result of negotiation, was therefore proved by that evidence."**

In our view, the learned first appellate Judge reviewed the evidence on record and came up with conclusions which were similar to the learned trial Magistrate. In the circumstances, we are faced with the concurrent findings of fact by the two lower Courts that the appellant first met PW4 around the 10th day of November, 2013, when the former was involved in investigations of the murder of a mob justice victim. As PW4, was the L.C. I and also present at the scene, the appellant asked him to either find the perpetrators, or face imprisonment. The appellant told PW4, that he could use the illegal channel of paying Shs. 2,000,000/= and survive the charges. PW4 agreed to look for the money.

The two lower Courts accepted that PW4 reported the said solicitation to the Inspectorate of Government, and a cash trap was set up against the appellant. On 13th November, 2014 PW4 took the cash trap of Ug. Shs. 500,000/= instead of the earlier agreed upon 2,000,000/= to the appellant at Kabale Police Station. He met the appellant and handed him the money, and promised to bring another Ug. Shs. 500,000/= on a later date.

After the appellant was handed the money, he left the Police Station and travelled some distance. As he left, he was pursued by other police officers, and in the process he left the trap money in a shrub fence of a school just outside the police station. He eventually came back to the Police Station, and was questioned by PW1 and PW2, who were officers from the IGG.

Both the lower Courts concluded that the appellant had solicited for and received gratification from PW4. In **Areet Sam vs. Uganda, Supreme Court Criminal Appeal No. 0020 of 2005** it was held that:

> **"...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 High Court and Court of Appeal. However, where it is shown that they did not re-evaluate the evidence or where they are proved manifestly wrong on findings of fact, the court is obliged to do so and to ensure that justice is properly and truly served."**

As a second appellate Court, we have no reason to question the concurrent findings of fact by the trial Court and the first appellate Court, which are brought out by the evidence on record. In our view, this is not a case where there were manifestly wrong findings of fact by the lower courts. For that reason, we find no merit in ground 1, and we dismiss it.

Ground 2

This ground concerns the defence of alibi which was raised by the appellant. While testifying in his defence, the appellant testified that he was away from the crime scene at the material time. He adduced a Station Diary Book to show that he had booked out of the Police Station at the time of commission of the offence in question.

The learned first appellate Judge considered the alibi and rejected it. She observed that the defence had been advanced by the appellant at an advanced stage, and had not been put to the investigators. She further observed that ordinarily, the defence should be advanced earlier enough to give the prosecution time to investigate its truthfulness. She concluded that the late disclosure of alibi had affected its credibility.

We have not found any Ugandan case which extensively considers the issues of delay in disclosure of an alibi. In Canada, however, there is a recognition that failure to disclose an alibi in a timely manner may affect the weight to be given to it. **See: R v S (R.J) 1995 1 SCR 451, 517.** The Supreme Court of Canada emphasized the importance of disclosure of an alibi by the accused in Cleghorn vs The Queen, where it stated;

> **"...proper disclosure of an alibi has two components: adequacy and timeliness. This principle was recently reiterated in R v. Letourneau (1994) 87 C.C.C (3d) 481 (B.C.C.A), where Cumming J.A wrote for a unanimous court at p.532:**
>
> **It is settled law that disclosure of alibi should meet two requirements:**
>
> **(a) It should be given in sufficient time to permit the authorities to investigate: see R v. Mahoney, supra at p. 387, and R v. Dunbar and Logan (1982), 68 C.C.C (2d) 13 at pp. 62-3 ... (Ont. C.A)**
>
> **(b) It should be given with sufficient particularity to enable the authorities to investigate: see R v. Ford (1993), 78 C.C.C (3d) 481 at pp. 505-4...**
>
> **Failure to give notice of alibi does not vitiate the defence, although it may result in a lessening of the weight that a trier of fact will accord it..."**

In **Cleghorn (supra)** the court noted that the rule governing disclosure of an alibi is a rule of expediency intended to guard against surprise alibis fabricated in the witness box which the prosecution is almost powerless to challenge. The Court further observed that:

> **"...the consequence of a failure to disclose properly an alibi is that the trier of fact may draw an adverse inference when weighing the alibi evidence heard at the trial (Russell v. The King, (1936) 67 C.C.C 28 (S.C.C), at p.32). However, improper disclosure can only weaken alibi evidence; it cannot exclude it."**

The Court further commented on what would qualify as proper disclosure of an alibi, and stated that:

> **"...disclosure is proper when it allows the prosecution and police to investigate the alibi before the trial. The criteria of timeliness and adequacy are thus evaluated on the basis of whether a meaningful investigation could have been undertaken as a result of disclosure."**

Turning to the present case, it is not disputable that the explicit disclosure of the alibi in issue was made when the appellant testified in his defence. This was after all the prosecution witnesses had testified, and in our view, it was late and an afterthought. However counsel for the appellant submitted that, the appellant had indirectly disclosed his alibi during the cross-examination of PW1, PW2 and PW3. Counsel contended that the cross examination had established that the three witnesses had never met the appellant before the trial. We cannot accept those submissions, which we find to be misconceived. As was stated in **Cleghorn (supra)**, proper disclosure must be made explicitly and with sufficient particularity before the trial even commences to allow the police to investigate the alibi.

We are further persuaded by the observations of Major, J. in the Cleghorn case that:

> **"The disclosure of an alibi should be given with sufficient particularity to enable the authorities to investigate: see Ford, supra at p.505. In my opinion, three pieces of information are necessary for a sufficient disclosure of an alibi defence: a statement that the accused was not present at location of the crime when it was committed, the whereabouts of the accused at the time, and the names of the witnesses to the alibi: see Mahoney, supra and also R v. Laverty (1977), 35 C.C.C (2d) 151 (Ont. C.A)"**

The appellant did not give sufficient particulars of his alibi, that is; a statement that he was not present at the location of the crime when it was committed, his whereabouts at the time, and the name of the witnesses to his alibi while he cross examined the witnesses. Therefore, the learned first appellate Judge had rightly concluded that the appellant had disclosed his alibi late during the trial. She was also right to draw a negative inference about the matter.

Apart from the appellant's alibi having been raised late, and therefore being regarded as lacking credibility by the learned first appellate Judge. We find that she had rightly considered, and we agree with her that there was sufficient evidence from the prosecution witnesses, which tended to strengthen the prosecution case thereby destroying the said alibi.

The learned first appellate Judge considered the evidence of PW3 and PW4, the key identifying witnesses, and rightly concluded that they had made a proper identification of the appellant at the scene of crime. Both had known him prior to the day he was handed the bribe by PW4, and on the said date, they had ample time to observe and correctly identify the appellant since they sat with him and negotiated the amount to be paid as a bribe. The possibility of mistaken identification was therefore ruled out.

The learned first appellate Judge further considered the evidence of PW5 and PW6 who had seen the appellant being pursued from the Police Station shortly after the commission of the offences in question. She therefore, concluded that the appellant's alibi had been disproved. We have no reason to fault her findings.

We, therefore find no merit in ground 2, and we shall dismiss it.

Ground 3

We find no merit in this ground as well. This ground was presented verbatim before the first appellate court, and argued before it. That Court reviewed all the evidence on record, and concluded that some of the alleged contradictions were not contradictions at all. The first appellate court further concluded that any contradictions in the prosecution case were minor and did not go to the root of the case.

We have no reason to interfere with the conclusions of the first appellate court. As we found earlier, the two lower courts reached concurrent findings that the appellant had solicited for and indeed received gratification from PW4. Any contradictions did not water down those findings.

Ground 3, lacks merit, and is therefore dismissed.

Ground 4

This ground concerned the sentences imposed on the appellant by the trial Court, which were upheld by the first appellate Court. The appellant asked this Court to interfere with the sentences and substitute in their place a non-custodial sentence. It was submitted that the sentences were manifestly harsh and excessive.

It should be noted that imposition of sentences is at the discretion of the trial Court, and ordinarily the appellate courts do not interfere with the sentences imposed unless there is justification. In **Kyalimpa Edward vs Uganda, Supreme Court Criminal Appeal No. 10 of 1995** it was held that:

> **"An appropriate sentence is a matter for the discretion of a sentencing Judge. It is the practice that as appellate court, this court will not normally interfere with the discretion of sentencing unless the sentence is illegal or unless the court is satisfied that the sentence imposed by the trial judge was manifestly excessive as to amount to an injustice."**

The appellant was sentenced, by the trial Court, to 3 years; 3 years; and 2 years imprisonment on the three counts he was convicted of, respectively, the sentences to run concurrently. We observe that the appellant was proved to have solicited for and received illegal gratification of Ug. Shs. 500,000/=. The trial Court reasoned that the appellant deserved the sentences because he had asked for a bribe from a suspected criminal in return to exonerating him, which would frustrate justice.

We hold the considered opinion, that the Ug. Shs. 500,000/=, the amount of money which was received by the appellant was quite a small amount, to warrant the length of the custodial sentence which he received. It is true that corruption in any government body causes suffering to innocent citizens and should be dealt with firmly whenever it arises. In our view, the order of disqualification of the appellant from holding public office for ten years is a firm punishment to keep him away from positions of power, where he would inflict unfair suffering on the citizens like he did with PW4.

Having ordered his disqualification, we think it would have been fairer if the trial Court imposed on the appellant a fine instead of a custodial sentence. Under section 26 of the Anti-Corruption Act, 2009, a fine of up to 240 currency points, equivalent to Ug. Shs. 4,800,000/= could have been imposed on the appellant upon conviction on each of counts 1 and 2. Under Section 11 of the Anti-Corruption Act, 2009, a fine of up to 168 currency points, equivalent to Ug. Shs. 3,360,000/= could have been imposed on the appellant on count 3.

We find that it was harsh to impose a custodial sentence on the appellant in view of the above circumstances. We quash those sentences, and substitute in their place fines as follows:

On count 1, the appellant shall pay a fine of Ug. Shs. 1,000,000/=.

On count 2, the appellant shall pay a fine of Ug. Shs. 1,000,000/=.

On count 3, the appellant shall pay a fine of Ug. Shs. 1,000.000/=.

The order of disqualification from holding public office for a period of ten years from the 26th day of June, 2016 against the appellant is upheld.

Therefore, ground 4 only partially succeeds.

In conclusion, grounds 1, 2 and 3 are dismissed for lack of merit. Ground 4 is partially allowed. It is therefore ordered as follows:

a) We shall uphold the convictions of the appellant by the trial Court on all the three counts, which were upheld by the first appellate Court.

b) The custodial sentences imposed on the appellant by the trial Court upon conviction on the said counts, which were upheld by the first appellate Court are set aside. The appellant shall pay fines of Ug. Shs. 1,000,000/= on each of the three counts instead, totaling to a fine of Ug. Shs. 3,000,000/=.

c) The order of disqualification from holding public office for a period of ten years from the 26th day of June, 2016, the date of his conviction imposed by the trial Court against the appellant is upheld.

We so order.

Dated at Kampala this ..... 18th ..... day of ..... February ..... 2020.

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Alfonse Owiny-Dollo, DCJ

Justice of Appeal

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Elizabeth Musoke

Justice of Appeal

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Percy Night Tuhaise

Justice of Appeal