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THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

**CONSOLIDATED CRIMINAL APPEALS NOS 389 OF 2017, 386 OF 2016
AND 369 OF 2016.**

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**(APPEAL ARISING FROM THE CONVICTION AND SENTENCE OF THE
HIGH COURT ANTI CORRUPTION DIVISION DATED 18TH NOVEMBER
2016 IN CRIM CASE NO 0016 OF 2014)**

(CORAM: MUSOKE, MUSOTA AND MADRAMA JJA)

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- 1. NATANGA PATRICK MATEMBU}**
- 2. FREDERICK KWIHIRA RWABUHHORO}**
- 3. NAMOLYA ALEX}**
- 4. NAMBUYA STELLA} APPELLANTS**

VERSUS

UGANDA} RESPONDENT

JUDGMENT OF COURT

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**(Appeal from the judgment of Tibulya J dated 18th November, 2016 in
Criminal Case No 0016 of 2014)**

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This is a consolidated appeal comprising of four separate appeals with each appellant filing separate submission on their grounds of appeal. The four memoranda of appeal of the four appellants arise from the decision of Tibulya J of the Anti-Corruption Division of the High Court. Nantanga Patrick Matembu, the 1st appellant and the 3rd appellant Mr. Namolya Alex appeal against the judgment and orders of Margaret Tibulya J wherein the 1st appellant was convicted of the offences of abuse of office contrary to sections 11 (1); influence-peddling contrary to sections 8 and 26; and fraudulent false accounting contrary to section 23 (b) of the Anti – Corruption

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5 Act as well as forgery and uttering false documents contrary to section 242
and 251 as well as 347 of the Penal Code Act. The 1st appellant and the 3rd
appellant were convicted of preparation to commit an offence contrary to
section 56 (b) of the Anti – Corruption Act. The 1st appellant was sentenced
to 2 years’ imprisonment and ordered to pay compensation to the
10 government of Uganda of Uganda shillings 120,000,000/= while the 3rd
appellant was ordered to pay a fine of Uganda shillings 2,000,000/= and in
default serve a term of imprisonment of 2 years. He was further ordered to
compensate the government of Uganda in the sum of Uganda shillings
20,000,000/=. Being aggrieved with the decision, the 1st and 3rd appellant
15 appealed to this court on 12 grounds of appeal against both conviction and
sentence.

For his part the 2nd appellant was convicted of one count of the offence of
abuse of office contrary to section 11 (1) of the Anti – Corruption Act,
sentenced to 2 years’ imprisonment and ordered to pay compensation of
20 Uganda shillings 120,000,000/= to the government of Uganda. He appealed
to this court on 10 grounds of appeal against both conviction and sentence.

Last but not least to the 4th appellant was convicted of the offence of abuse
of office contrary to section 11 (1) of the Anti – Corruption Act and forgery
contrary to section 342 and 347 of the Penal Code Act and sentenced to 2
25 years’ imprisonment. She was further ordered to pay compensation to the
government of Uganda of Uganda shillings 40,000,000/=. She filed an appeal
in this court on 15 grounds of appeal.

When the appeal came for hearing in November 2019, counsel for the parties
were directed by court to address it in written submissions.

30 Learned Counsel Mr. Ochieng represented the First appellant. Despite having
filed a joint memorandum of appeal with the 3rd appellant, the 1st appellant’s
counsel Mr. Ochieng of Messieurs Ochieng Associated Advocates wrote

5 separate submissions for the first appellant. Secondly, the 2nd and 3rd
appellant wrote a joint submission and were represented by learned counsel
Mr. Mafabi of Messieurs Madibo Mafabi Advocates and Solicitors. Last but
not least, the 4th appellant filed a separate submission and was represented
by learned Counsel Mr. Mafabi of Messieurs Madibo Mafabi Advocates.

10 In the written submissions the grounds of appeal were reduced and some
grounds abandoned. After considering the amended grounds of appeal of
the first appellant, we have allowed the amendment which consolidates the
12 grounds of appeal into three grounds. We find that the respondent was
not prejudiced by the amendment and indeed addressed the court on the
15 merits.

Appeal of the 1st Appellant

The first appellants counsel Mr. Ochieng addressed the court on the
following grounds of appeal:

- 20 1. That the learned trial judge erred in law and fact when she convicted
the appellant of the offences of abuse of office contrary to section 11
(1) of the Anti - Corruption Act, influence-peddling contrary to section
8 and 26 of the Anti - Corruption Act, forgery contrary to section 342
and 327 of the Penal Code Act Cap 120, fraudulent false accounting
contrary to section 23 (b) of the Anti - Corruption Act 2009 (hereinafter
25 referred to as ACA) without proof of the ingredients of the offences
beyond reasonable doubt.
2. That the learned trial judge erred in law and fact when she failed to
properly evaluate the evidence on record, and thus coming to a wrong
conclusion both in fact and in law specifically;
30 (a) When she held that the procurement was delegated to Manafwa
district and not to sub counties/Sub - county.



5 (b) When she held that a Sub - county could not legally procure the seedlings in issue.

(c) When she held that there can be no doubt that the procurement did not take place and that she so finds.

10 3. That the learned trial judge erred in law when she unjustifiably ordered the 1st appellant to pay compensation of 120,000,000/= hence occasioned a miscarriage of justice to the 1st appellant.

Mr. Ochieng addressed the court on grounds 1 and 2 together. He submitted that the gist of the 2 grounds is that the elements of the offences of which the appellant stands convicted were not proved beyond reasonable doubt.

15 With regard to count 1 of the offence of abuse of office contrary to section 11 (1) of the ACA, the appellants counsel referred to the particulars of the offence that the 1st appellant during the month of September 2011 being employed by Manafwa District as the District NAADS Coordinator, in abuse of the authority of his office, did an arbitrary act prejudicial to the interest of
20 his employer when he contravened the procurement laws, regulations and procedure during procurement of the 500,000 coffee seedlings by the District Local Government. He submitted that the particulars of the offence do not disclose the offence of abuse of office and contravened section 25 (c) of the Trial on Indictments Act in as much as the arbitrary act that constitutes the
25 offence was not sufficiently described in order to give the accused person an opportunity to prepare his defence to it. The alleged arbitrary act was generically described as the contravention of procurement rules, regulations and procedures during the procurement of 500,000 coffee seedlings by Manafwa District Local Government. He contended that no specific law is
30 cited in the particulars and no specific regulation and procedures are stated. Therefore, the particulars were not sufficient and the learned trial judge ought to have struck out that charge.

5 Without prejudice, Mr. Ochieng submitted that on the issue of evaluation of
evidence on the count that the learned trial judge rightly stated the
ingredients of the offence of abuse of office which are that the accused was
employed by a public body, that the accused directed to be done an arbitrary
act prejudicial to the interest of the employer and that the accused abused
10 the authority of his office.

With regard to whether the accused was employed by a public body, the
appellant was an employee of the government as the District NAADS
Coordinator and the ingredient is not in dispute.

With regard to the issue of whether the 1st appellant did or directed to be
15 done an arbitrary act which was prejudicial to the interest of his employer, it
is stated that the appellant contravened the procurement laws, regulations
and procedures during the procurement of the 500,000 coffee seedlings by
Manafwa district. Mr. Ochieng submitted that the 1st appellant was not
involved in the procurement of the 500,000 coffee seedlings and this is
20 supported by various testimonies namely the testimony of PW1, PW2, PW3,
PW 19, PW 22, PW9 and PW8. The gist of the testimonies is that the 1st
appellant was required to coordinate and was not one of the people to
procure technologies. He does not sit on the Sub - county procurement
committee. He does not sit in the contract committee meetings. The 1st
25 appellant in his capacity did not sit on the Sub - county procurement
committee and would only be informed of what had transpired. He is not
one of the members to procure technologies at sub counties. The 1st
appellant is not a member or part of the Sub - county procurement
committee and did not participate in the delivery of technologies. Finally, the
30 role of the 1st appellant was only advisory.

For his part, the 1st appellant also testified that he was not involved in
procurement and procurement was handled by Butiru Sub - county. Mr.

5 Ochieng submitted that the 1st appellant could not have contravened procurement laws when he was not part of the procurement committee.

Further Mr. Ochieng submitted that the learned trial judge, in evaluating the evidence of whether the 1st appellant did an arbitrary act, framed 3 issues and invited this court to re-evaluate the evidence concerning these issues.

10 The issues were:

- a) Whether the procurement was in fact delegated to a Sub - county or sub counties.
- b) Whether a Sub - county could legally procure the seedlings in issue.
- c) Whether procurement took place at all.

15 **On whether the procurement was in fact delegated to Sub - county/sub counties.**

The appellants counsel relied on exhibit P10 being a letter in which the Executive Director of NAADS Dr. Joseph Oriokot who testified as PW 19 wrote to the Chief Administrative Officer Manafwa district delegating procurement to the sub counties. Dr. Byekwaso testified that when he was the Acting Executive Director, sub counties were allowed to procure technologies. That procurement of 500,000 seedlings by a Sub - county was in line with NAADS guidelines. That it is the Secretariat which authorised the procurement of 500,000 coffee seedlings worth Uganda shillings 300,000,000/= by the Sub - county and it is the sub counties which did the actual procurement. Further, he testified that the district was not supposed to procure technologies but only provide technical advice to the sub counties to procure. Consequently, the 1st appellant's counsel maintains that it was erroneous for the learned trial judge to hold that procurement was delegated to Manafwa district local government and not to sub counties/Sub - county.

On whether procurement took place at all, the 1st appellant's counsel submitted that exhibit P10 of the notification of tender award under

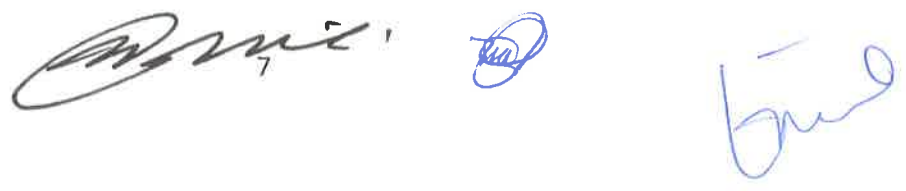


5 delegated procurement has Shisuwabula enterprises which was awarded the contract. This is confirmed by the testimony of PW 8 who testified that the contract was awarded to Shisuwabula enterprises. Further prosecution omitted to procure the testimony of the NAADS Coordinator of Butiru Sub - county Mr. Butoto Christopher when it was important to show whether
10 procurement was carried out or not.

The 1st appellant's counsel submitted that following the omission, it can be inferred that the evidence of the Sub - county NAADS Coordinator of Butiru Sub - county was adverse, to the prosecution case (see **Kato Kyambadde & Another v Uganda; SCCA No 0030 of 2014, Bukenya and others versus Uganda [1972] EA 549 and Nalongo Naziwa Josephine versus Uganda; CACR No 0088 of 2009**).
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The learned trial judge held that the 1st appellant prepared a false verification report and asked PW3 to sign it. He relied on the evidence of PW 4 Namboya Modesta who testified that she was approached by the police in respect of the 500,000 coffee seedlings and they wanted to know whether she went to the field to verify them and her testimony was that she had not visited the field when she had. The appellant's counsel submitted that the said witness confessed to being a liar who clearly told lies to the police during the investigation and hid under the umbrella of protecting the District NAADS
20 Coordinator (DNC). It was therefore erroneous for the learned trial judge to find her to be an honest person. She admitted writing a letter addressed to the Executive Director of NAADS but turned around in her testimony and stated that it was the DNC who wrote the letter. Learned counsel faulted the court for having found the witness to be an honest witness. He prayed that
25 the court rejects the evidence of the witness as that of a dishonest person.
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The 1st appellant's counsel also referred to the evidence of PW4 who stated that she addressed the report to the Executive Director NAADS because it was delegated procurement and it was NAADS Secretariat to pay and the



5 verification report was tendered in court as exhibit P2. The document
however bears the signature of Nambuya Modesta and there is nothing to
show that it was prepared by the 1st appellant. He submitted that it was
impracticable for the 1st appellant to influence his boss, Nambuya Modesta,
to sign a document with false contents. The boss ought to have verified the
10 contents of the documents she was appending a signature to. She is
accountable for the document because it bears her signature. Moreover, she
had testified about her role as the District Production Officer and one of the
roles included quality assurance of agricultural inputs where she was required
to go to the field to visit the nursery operators and check on the quality of
15 the seedlings or to request the nursery operators to bring the seedlings to
one central place for verification which she never did. He submitted that at
the time of signing the verification report, she was aware that she had not
carried out the verification and thereby shifting the blame to the 1st appellant
having influenced her to sign. He prayed that the evidence of PW4 be
20 rejected because she was not a truthful witness.

Further, the learned trial judge held that one of the arbitrary acts of the
appellant was to prompt PW 6 and PW 7 to sign another set of minutes which
were backdated to read 5th of September 2011 to show that they had
awarded the tender to Shisuwabula. He submitted that there were grave
25 contradictions between the evidence of PW 6 and PW 7 as to who procured
them to sign the minutes of 5th September 2011. PW 6 Aggrey Bulolo testified
that Nambuya Stella told them to sign on the attendance list while PW 6
stated that it was the 1st appellant who told them to sign. He relied on **Alfred
Tajar v Uganda EACA Appeal No 167 of 1969** (unreported) and **Kato
30 Kyambadde and Another v Uganda SCCR No 0030 of 2014** for the
proposition that major contradictions and inconsistencies will usually result
in the evidence of the witness being rejected unless they are satisfactorily
explained away. Minor contradictions on the other hand will only lead to

5 rejection of the evidence if they point to deliberate untruthfulness. He prayed that the evidence of PW 6 and PW 7 is rejected.

Further, the learned trial judge found that the 1st appellant contracted the nursery operators and negotiated prices with them and this, she found, was among the arbitrary acts by the appellant. However, the appellant testified
10 that indeed they awarded the contract to Shisuwabula Enterprises and the award letter shows the Sub - county was the one in charge. He testified that it was the Sub - county which handled the procurement.

The learned trial judge further held that there was no value for money and that the beneficiaries denied having received the seedlings. The 1st
15 appellant's counsel submitted that the holding points to the possibility that the seedlings were not even supplied yet the money was released to the contractor and she found that the government suffered prejudice as a result of the appellant's actions. However, the appellant's counsel submitted that the farmers received the seedlings according to signed acknowledgements
20 which were exhibited in court. Further the 1st appellants counsel relied on the evidence of DW 3 Daniel Muwanga who testified as a member of the board of directors of NAADS, that the coffee was distributed and the farmers recorded the seedlings and the nursery bed operators gave out their seedlings to a company, that is Shisuwabula and Mamai. Further, he testified
25 that he visited 28 sub- counties in Manafwa in 3 days. In respect of the 500,000 coffee seedlings, he went to the farmers and asked how much they were supposed to receive and found out that all the beneficiaries received the coffee seedlings. In the premises the 1st appellant's counsel submitted that the government got value for money and that there was no prejudice to
30 the government.

On the issue of whether the 1st appellant abused the authority of his office:



5 The 1st appellant's counsel submitted that the learned trial judge while considering this ingredient stated that the appellant signed, as the District NAADS Coordinator, a fictitious document such as delivery notes and presented fictitious distribution of coffee seedlings in exhibit P10 which was disowned by the Sub - county NAADS coordinators and chairpersons' farmers' forum.

He submitted that the former Sub - county NAADS coordinator Watura Michael testified as PW 8 and stated that in 2011, they received technologies from the Secretariat in November 2011 and received 15,000 coffee seedlings from coffee nursery operator Watenyi Fred.

15 Further and other Sub - county NAADS coordinator testified as PW 9 Khainza Okello who testified that they had received 16,000 seedlings or more than 16,000 seedlings in her Sub - county yet the learned trial judge found that the said witness testified that the seedlings were not supplied. The appellants counsel further referred to the witness testimony of PW 13 Mityeero David the Sub - county NAADS coordinator of Buwabwala Sub - county who testified and acknowledged that 23,200 seedlings were supplied in the Sub - county. Further the learned trial judge relied on the testimony of Mooni Peterson who testified that 20,000 seedlings were received in the Sub - county of Busukuya. The 1st appellant testified that he called for a meeting of stakeholders that they select and prepare commercial farmers to benefit and they agreed on what each Sub - county would get. That he then prepared the distribution list and indicated what each farmer could get and he signed it to ensure that they do not change anything. The 1st appellant further testified that he does not know other signatures but the sub- counties got coffee which was demonstrated above. He submitted that the learned trial judge did not take all this evidence into account when she held that the 1st appellant signed and presented fictitious distribution of coffee seedlings

5 which were disowned by Sub - county NAADS Coordinators and chairpersons' farmers' forum as the DNC.

He submitted that it is trite law that for an accused person to be convicted of an offence, the ingredients of the offence must be proved beyond reasonable doubt. He prayed that the court sets aside the conviction for the
10 offence of abuse of office because the ingredients of the offence were not proved beyond reasonable doubt.

Count 5: Abuse of office

The 1st appellant's counsel submitted that the particulars were that the 1st appellant had on 16th September, 2011 at Manafwa district headquarters
15 being employed by Manafwa as the District NAADS Coordinator Manafwa district, in abuse of the authority of his office, did an arbitrary act prejudicial to the interest of his employer when he falsely certified that 500,000 office seedlings were supplied by Shisuwabula enterprises and received by Manafwa district local government whereas not; an act that is prejudicial to
20 the interest of his employer.

On the question of whether the 1st appellant had done an arbitrary act, the 1st appellant's counsel reiterated submissions on the same issue earlier on, that the beneficiaries actually received the said seedlings and there was no arbitrary act by the appellant.

25 On whether the acts were prejudicial to the interests of the employer of the 1st appellant, the learned trial judge held that the evidence disclosed that the contractor was paid Uganda shillings 300,000,000/= on the basis of the distribution list and by this he caused financial prejudice to the employer.

To prove the payment of Uganda shillings 300,000,000/=: the prosecution
30 relied on documents such as original invoices/demand notes, local purchase orders and the report of the subject matter specialists. PW1 Rehema testified that the undated document exhibit P 10 (a) was not the acknowledgement



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5 of the receipt by the beneficiary farmers. The 1st appellant's counsel further submitted that exhibit P 10 (e) was not among the required documents for payment and therefore was not the basis on which the government paid Uganda shillings 300,000,000/= as found by the learned trial judge.

10 On whether the 1st appellant had abused the authority of his office, the appellants counsel relied on the earlier submissions and prayed that the court be pleased to set aside the conviction on the offence of abuse of office in count 5 since the ingredients were not proved beyond reasonable doubt.

Count 4: Influence peddling contrary to section 8 and 26 of the Anti - Corruption Act 2009.

15 The particulars of the offence were that the 1st appellant in the month of September 2011 in Manafwa district employed by Manafwa district as the District NAADS Coordinator, by improper influence and for his own benefit irregularly secured a tender award for Shisuwabula enterprises for the supply of 500,000 coffee seedlings to Manafwa district local government in
20 contravention of the established procurement procedures.

The appellant's counsel submitted that the learned trial judge stated the ingredients of the offence as follows: that there were established principles and procedures. Secondly, the accused did an act in contravention of those principles or procedures. Thirdly, the act was done as a result of improper
25 influence. Fourthly, the act was done for the benefit of the accused person or for the benefit of a third party.

30 With regard to whether there were established principles and procedures, the learned trial judge found that the procurement was governed by the local government PPDA regulations and the Local Government Act and that the delegation was to the district. The 1st appellant's counsel reiterated his submissions that procurement was to be done by sub- counties and not the district as held by the learned trial judge. Procurement could be handled at

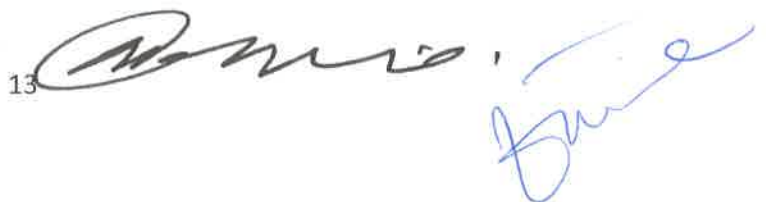
5 Sub - county level as can be discerned from the evidence of PW 8. This is also
discerned from the evidence of PW 14. The learned trial judge found that
Butiru Sub - county did not carry out the relevant procurement process but
the evidence shows that the procurement process was carried out and the
contract awarded to the said Shisuwabula enterprises.

10 On whether the accused did an act in contravention of those principles or
procedures, the learned trial judge held that regulation 17 of the Local
Government PPDA Regulations 2006 provides that procurement should be
handled by district contract committees. That the 1st appellant instructed the
15 Sub - county Chief to handle the procurement according to exhibit P13. The
appellants counsel submitted that it was proper for the Sub - county to
handle the procurement and there was no breach of principles or procedure.
With reference to the evidence of prosecution witness number 7 that the
appellant convinced them to sign and backdate minutes to 5th of September
2019, the testimony of prosecution witnesses' numbers 6 and 7 had grave
20 contradictions and the court should disregard their evidence. Moreover,
there is evidence on record of an award letter exhibit P 10 (g) and the
testimony of DW2 and prosecution witness number 9. In conclusion the
appellant's counsel submitted that the 1st appellant as the District NAADS
Coordinator had nothing to do with the procurement process and could
25 therefore not contravene any procurement principles. He submitted that it
was erroneous for the learned trial judge to find that the 1st appellant
irregularly awarded the contract and thereby contravened procurement
principles.

On whether the act was done as a result of improper influence, the 1st
30 appellant's counsel submitted that the learned trial judge relied on exhibit
P13 where the 1st appellant instructed the Sub - county Chief of Butiru Sub -
county to handle the delegated procurement and there is a letter of
delegation of procurement exhibit P 10 (f). The letter was written to the Chief



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5 Administrative Officer who instructed the District NAADS Coordinator that
the 1st appellant should expedite the process. The 1st appellant acted on
exhibit P10 (I) under the instructions of the Chief Administrative Officer and
wrote exhibit P13 to the Sub - county Chief of Butiru Sub - county to handle
the procurement. In the premises the 1st appellant's counsel submitted that
10 it was erroneous to hold that the appellant influenced the process. He relied
on **Engineer Samson Bagonza versus Uganda Court of Appeal Criminal
Appeal No. 0102 of 2010** where it was held that where the appellant had a
big role to play in the implementation of the contract, there were other
players such as the Permanent Secretary and the Contracts Committee. The
15 appellants counsel submitted that the appellant was simply following
instructions of the Chief Administrative Officer.

He reiterated earlier submissions about the false verification report.

On whether the act was for the benefit of the 1st Appellant or for the benefit
of a 3rd party, the appellant's counsel submitted that there was nothing
20 wrong with Shisuwabula enterprises getting the contract and getting paid
for the work done and as earlier submitted supplies had been made to the
farmers. The 1st appellant's counsel further submitted that before payment
was made, the necessary verification had been made by the Secretariat
according to the evidence of PW1. The beneficiary of the coffee seedlings
25 had to confirm receipt of the goods and services as a prerequisite to the
necessary documents for payment to be made available.

Count 8 forgery contrary to section 342 and 347 of the Penal Code Act.

The 1st appellant's counsel set out the particulars of the offence which were
that the 1st appellant, during the month of September 2011 at Manafwa
30 district local government headquarters in Manafwa district, with intent to
defraud or deceive, forged a distribution list purporting that 500,000 coffee
seedlings were supplied to 30 sub- counties of Manafwa district whereas not.

5 The ingredients of the offence were that a false document was made. Secondly, it was made with intent to deceive or defraud. Thirdly, it was made by the accused person.

On the 1st ingredient of whether a false document was made, the 1st appellant's counsel reiterated earlier submissions with reference to the
10 testimony of various witnesses that the various sub- counties received the coffee seedlings.

On the 2nd ingredient, the 1st appellant's counsel submitted that the learned trial judge found that the intent was to facilitate the fraudulent release of Uganda shillings 300,000,000/= and found that the money was released to
15 Shisuwabula enterprises. The 1st appellant's counsel submitted that there was no dispute that the said money was released to the said company but it was for work done which was the supply of coffee seedlings. The evidence of PW1 and PW21 where that the documents were required and the documents were original invoices, demand notice, delivery notes, acknowledgement of receipt
20 by the benefiting farmers, local purchase orders and the report of subject matter specialist. Exhibit P 10 (a) was not among the documents required for payment and therefore it cannot be said that the said document was used to deceive or facilitate the release of Uganda shillings 300,000,000/= to the beneficiary company.

25 On the 3rd ingredient of whether the document was made by the accused person, the 1st appellant's counsel submitted that the 1st appellant in his defence had testified that he called for a meeting of stakeholders so that they select and prepare commercial farmers to benefit and they agreed on what each Sub - county could get. Thereafter he prepared a distribution list
30 and indicated what each farmer could get and signed it to ensure that they do not change anything. The appellant also testified that he did not know the signatures of other sub- counties which got the coffee seedlings. The purpose of the document was to allocate seedlings to various sub- counties.

5 He was not present at the time of the distribution of the seedlings to the various sub- counties. Neither was the 1st appellant present when they were signing the document. The 1st appellant's counsel further submitted that there was no evidence to show that it was the appellant who forged the signatures in exhibit P 10 (e). The evidence shows that the document was for
10 purposes of showing how many seedlings each Sub - county was supposed to get. The 1st appellant's counsel prayed that the court be pleased to acquit the 1st appellant of the offence of forgery in count 8.

Count 10 forgery contrary to sections 342 and 327 of the Penal Code Act.

15 The 1st appellant's counsel submitted that the particulars are that the 1st and the 4th Appellant, Ms. Nambuya Stella, during the month of September 2011 at Manafwa district local government headquarters, in Manafwa district with intent to defraud or deceive, forged procurement committee minutes dated
20 2nd September 2011 awarding a contract for the supply of 500,000 coffee seedlings to Shisuwabula enterprises to Manafwa district local government purporting that they were minutes of Butiru procurement committee whereas not.

The 1st appellant's counsel submitted that the 3rd ingredient as to whether the false document was made by the accused person was not proved. He
25 submitted that the learned trial judge relied on the evidence of the prosecution witness numbers 6 and 7 who testified that the appellant convinced them to sign a new set of minutes backdated to 5th September 2011 and she agreed with them. He submitted that this does not prove that it is the appellant who forged the minutes of 2nd September, 2011 as the
30 learned the trial judge suggested. He contended that it was speculative and suspicious of the appellant to make that finding. There was no evidence to prove that it is the appellant who forged the alleged minutes and he prayed that this court be pleased to find so.

5 **Count 11: Fraudulent false accounting contrary to section 23 (B) of the Anti – Corruption Act 2009.**

The 1st appellant's counsel submitted that on this particular count, the particulars of the offence are that the 1st appellant in the month of September 2011 at Manafwa district local government headquarters, in
10 Manafwa district, being a servant of Manafwa district local government (in the capacity of a District NAADS Coordinator), with intent to defraud made a false entry in the distribution list to falsely indicate that 500,000 coffee seedlings that had been supplied to 30 counties in Manafwa district, whereas not.

15 The 1st appellant's counsel submitted that the learned trial judge rightly stated the ingredients of the offence which are that the accused must be proved to be a servant or employed as a servant. Secondly, the accused must have been privy to the making of any false entry in any book or document.

On the question of whether the 1st appellant was proved to be a servant or
20 employed as a servant, the ingredient was not in dispute because the appellant admitted that he was the District NAADS Coordinator and therefore was a servant employed by government.

On the 2nd ingredient of the offence as to whether the 1st appellant must have been privy to the making of any false entry in any book or document,
25 the 1st appellant's counsel submitted that the learned trial judge stated that the 1st appellant made false entries in the distribution list exhibit P10 (e). That this was an accountable document in the circumstances of the case.

The appellant's counsel submitted that the documents that were relied on to pay Uganda shillings 300,000,000/= were originally invoices/demand notes,
30 delivery notes, acknowledgement of receipt by benefiting farmers, local purchase orders and the report of subject matter specialist. He submitted that the distribution list was not among the documents on which payment



5 was based and neither was it an accountable document as stated by the learned trial judge. He submitted that the distribution list had no bearing on the payment of Uganda shillings 300,000,000/= as stated above. In any case, several witnesses testified that their sub- counties received coffee seedlings and acknowledged receipt thereof. The appellant's counsel reiterated the
10 submissions about the receipt of coffee seedlings in the testimony of various witnesses such as PW 8, PW 9, and PW 13.

Ground 3: **That the learned trial judge erred in law when she unjustifiably ordered the 1st appellant to pay compensation of Uganda shillings 120,000,000/= hence occasioned a miscarriage of justice to the 1st appellant.**
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The appellant's counsel relied on **Kiwalabye Bernard versus Uganda (Supreme Court Criminal Appeal No. 134 of 2001)** for the principle that an appellate court is not to interfere with the sentences imposed by a trial court which has exercised its discretion on sentence unless the exercise of
20 that discretion is such that it results in the sentence imposed being manifestly excessive or so low as to amount to a miscarriage of justice or where a trial judge ignores to consider an important matter of justice or circumstances which ought to be considered when passing sentence or where the sentence imposed is wrong in principle.

25 The appellant's counsel submitted that there is no evidence anywhere that the appellant benefited from the offences allegedly committed. On the contrary, one Wabomba Michael was charged with obtaining Uganda shillings 300,000,000/= by false pretense and he pleaded guilty to the charge and was convicted on his own plea of guilt. At the hearing of the appeal,
30 there was confusion as to whether Wabomba Michael was sentenced and it was erroneously submitted that he was not sentenced. The record however shows that he was sentenced to a caution. This evidence shows that the learned trial judge based the narrative of Wabomba Michael to convict the

5 1st appellant yet he was not accorded an opportunity to cross examine Wabomba Michael. He contended that this occasioned a miscarriage of justice to the 1st appellant. The learned trial judge stated that the principal offenders were convicted partly as a result of the cooperation of Michael Wabomba.

10 The 1st appellant's counsel submitted that though the narration of the 4th accused person Mr. Michael Wabomba was not specifically mentioned, the passage indicates that it was at the back of the mind of the learned trial judge and it influenced her decision. Further, the 1st appellant's counsel submitted that PW 8, the detective inspector of police confirmed that Shisuwabula
15 enterprises was paid Uganda shillings 300,000,000/= and it was for the supply of 500,000 coffee seedlings. It was paid to the account at Stanbic bank Mbale branch and the account holders withdrew the money. The account holders where Wabomba Michael, Kitsewa Jerry and Akoth. Coffee seedlings were supplied to the whole of Manafwa district meaning that they were
20 actually supplied and there was no loss to the government.

The 1st appellant's counsel relied on **Uganda versus Nantanga Patrick Matembu and others** where the trial judge held that none of the offences involved loss to government funds and there was evidence that the coffee seedlings were supplied at some stage probably after investigation had
25 commenced in an attempt to cover up the accused's tracks. Hence the accused were not charged with the offences like embezzlement and causing financial loss and in those circumstances the prayer for an order of compensation was not tenable.

The 1st appellant's counsel submitted that likewise, a claim for compensation
30 was inapplicable in the circumstances of the appellant's case. Moreover, the learned trial judge held that there was a possibility that the seedlings were not even supplied yet the money was released to the contractor. It showed that the learned trial judge was in doubt and therefore the issue should be

5 resolved in favour of the 1st appellant. The 1st appellant's counsel further submitted that in the absence of a value for money audit report and in view of the glaring prosecution evidence where some witnesses admitted the supply, the court could not with certainty establish how much was supplied and how much was not supplied or how much money was lost at all. Further
10 the 1st appellant's counsel relied on **Wanyaka Samuel Huxley versus Uganda; Court of Appeal Criminal Appeal No. 281 of 2015** where the Court of Appeal held that there must be an audit report to show how much loss was attributed to the acts of the appellant.

The 1st appellant's counsel submitted that it was erroneous considering the
15 glaring gaps in the prosecution evidence for the judge to make a compensatory order. Moreover, the trial judge only cautioned and failed to pass a sentence against Wabomba Michael who pleaded guilty to the offence of obtaining the relevant money.

Lastly, the 1st appellant's counsel submitted that in the case of **Sgt. Baluku Samuel and another versus Uganda; Court of Appeal Criminal Appeal No. 172 of 2011** it was held that compensation was not provided for under
20 section 11 of the Anti – Corruption Act. The said section only provides for forfeiture to government under subsection 2 (1) thereof. He prayed that this court finds that the compensation order was erroneously issued and that this
25 court be pleased to set aside the compensation order.

Reply of the respondent's counsel to the 1st appellant's appeal.

In reply the respondent's counsel submitted that the 1st appellant was convicted of the offence of abuse of office in count 1. Secondly, in count 4 he was convicted of the offence of influence-peddling. Thirdly, in count 5 he
30 was again convicted of the offence of abuse of office. Fourthly, in count 8 he was convicted of the offence of forgery. In count 10 the 1st appellant was convicted of the offence of forgery together with the accused number 5. In

5 count 11 and the 1st appellant was convicted of the offence of fraudulent false accounting. Further in count 9 he was acquitted of the charge of uttering a false document.

It is not in dispute that the 1st appellant was the District NAADS Coordinator for Manafwa district and therefore was employed in a public body.

10 As to whether he did or directed to be done an arbitrary act which was prejudicial to the interests of his employer, the thrust of the reply was that delegation of the procurement was down to the district considering the procurement thresholds at sub- counties which lacked capacity. This is because any sum above Uganda shillings 5,000,000/= was supposed to be
15 handled by the district and there are no regulations and trained personnel at the Sub - county level to handle public procurement (see the testimony of PW1). Further, the respondents counsel submitted that procurement above Uganda shillings 50,000,000/= had to be awarded on competitive basis and had to be approved by the Solicitor General, a fact that was deliberately
20 ignored in the material procurement. The learned trial judge evaluated the evidence and established that the appellant did or directed to be done an arbitrary act prejudicial to the interest of his employer and this was exhaustively contained at pages 4 – 8 of her judgment.

The respondent's counsel submitted that the prosecution witnesses testified
25 that the appellant directed the officials at the Sub - county of Butiru to handle procurement which he knew the Sub - county was not permitted by law and practice to handle and prepared false verification exhibit P 10 (f) and asked PW 4 MS Nambuya to sign it and this prompted PW 6 and 7 to sign other sets of minutes that had been backdated to read 5th of November to escape
30 the long arm of the law knowing that the government of Uganda had suffered prejudice as a result of the actions. The respondent's counsel submitted that the appellant frustrated government efforts to fight poverty and improve the life of farmers at grassroots. The appellant abused authority

5 of his office and subjected Uganda and the intended beneficiaries to chronic poverty. In the premises the appellant was properly and rightly convicted on count 1 on the basis of the documentary evidence and testimonies of the witnesses.

10 Further, the respondent's counsel submitted that the 1st appellant was involved in the procurement process. PW1 testified that the procurement in question was delegated to the district and the District NAADS Coordinator who is the 1st appellant was supposed to coordinate the process. He however decided to coordinate the process by faulting the procedure since he chose to send the procurement to the sub counties knowing that the amount
15 involved was above the threshold and the Sub - county could not handle and in addition the PPDA laws do not apply at the Sub - county level.

20 With regard to count 4 on the offence of influence peddling, the respondents counsel submitted that the evidence discloses that there was established procedure to be followed during procurement under the PPDA Act, the Local Government Act and the Regulations. The respondent's counsel reiterated the submissions that delegation was to the district but the 1st appellant chose to delegate to the Sub - county Chief of Butiru. He reiterated the submissions that any procurement above Uganda shillings 50,000,000/= was supposed to be cleared by the Solicitor General and this was not done in the case.

25 The respondent's counsel further submitted that Regulation 17 of the Local Government PPDA Regulations gives powers of procurement in the district to the District Contracts Committee. The 1st appellant approached the farmers and asked the farmers to contract them to supply seedlings. Therefore, as the District NAADS Coordinator, the 1st appellant used his
30 influence to use wrong procedure of procurement to the 4th appellant and he did the same thing to PW4. The influence is seen from the irregular instructions he gave to the 4th appellant in respect of the procurement of the seedlings.



5 The respondent's counsel submitted that several procurement procedures were intentionally avoided as seen in the testimony of PW2 for selfish gain which was definitely the end result since the money never reached the intended beneficiaries. He submitted that the 1st appellant connived and planned their syndicate for selfish gain by avoiding the proper and
10 established procedures according to the testimony of PW 3 and PW4. The 1st appellant's mission was for personal gain. He wrote the verification report and took it for the signature of the 4th appellant. Counsel prayed that the testimony of the 4th appellant which is self-incriminating should not be ignored. Further the prosecution adduced several other evidence on the
15 record pointing to the guilt of the 1st appellant. The respondent's counsel further submitted that it was not necessary to call the Sub - county NAADS coordinator of Butiru Sub - county since it is clear that this procurement was not even supposed to be pushed to the Sub - county. It was only unfortunately sent there by the appellants as a way to further their fraudulent
20 intention of illegally benefiting from the government project meant to help Ugandans improve their livelihoods. He prayed that the court finds that this court was proved beyond reasonable doubt.

Count 5: Abuse of office by the 1st appellant

25 In reply to the submissions of the appellant's counsel, the respondents counsel submitted that the 1st ingredient of being an employee of government as the District NAADS Coordinator was proved. Secondly it was proved that the 1st appellant worked hard to ensure payment of Shisuwabula enterprises for services done. The appellant falsely certified that 500,000 coffee seedlings were supplied by Shisuwabula Enterprises to Manafwa
30 district local government whereas not. He submitted that this was proved by the testimonies of the intended beneficiaries who testified that they never received the seedlings in question. He relied on the testimonies of PW 6, PW 7, PW8 and PW 13.



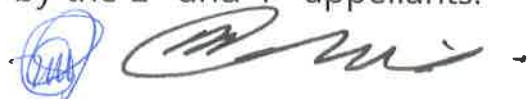
5 **Count 8: Forgery as against the 1st appellant and A 5.**

The respondents counsel reiterated submissions in the lower court that the 1st appellant made the distribution list exhibit P 10 (a) purporting that 500,000 seedlings were supplied to 30 sub- counties of Manafwa district. This was proved by the testimonies of PW 8, PW 9, PW 14, and PW 18. He
10 emphasized the testimony of PW 7 who stated that he had never attended any procurement committee meeting where procurement of 500,000 coffee seedlings was approved. The fact that he did not sign the minutes is confirmed by the testimony of a handwriting expert. On whether the document was made with intent to defraud or deceive, he relied on the
15 payment voucher exhibit P1 and the bank statement of Shisuwabula Enterprises exhibit P8. The coffee seedlings were never supplied to the intended beneficiaries.

On whether the document was made by the 1st appellant, he submitted that the document bears the signature of the 1st appellant and the 1st appellant
20 never denied the signature. The document shows that seedlings were supplied to 30 sub- counties whereas this was not done.

Count 10: Forgery.

The respondent's counsel submitted that the 1st and 4th appellants were rightly convicted and sentenced by the learned trial judge for the offence of
25 forgery of procurement committee minutes dated 2nd September 2011 awarding the contract for the supply of 500,000 coffee seedlings to Shisuwabula enterprises purporting them to be minutes of Butiru Sub - county procurement committee which they knew was completely false. Counsel further relied on the testimony of PW 6 and PW 7 show that the
30 minutes in question exhibit P 11 were completely false. He further relied on the testimony to show that the document was made with intent to deceive or defraud and that the document was made by the 1st and 4th appellants.



5 **Count 11: Fraudulent false accounting.**

The respondent's counsel submitted that the 1st ingredient of being a servant employed as the District NAADS Coordinator was never disputed and was proved. Secondly, on the issue of whether the 1st appellant must have made or been privy to the making of false entries in any book or document, the
10 respondents counsel submitted that the 1st appellant made false entries in the distribution list exhibit P 10 (e). He supported the decision of the learned trial judge on the conviction of the appellant.

Without prejudice, the respondent's counsel submitted that the 1st appellant filed another memorandum of appeal on 20 November 2019 without seeking
15 the leave of court. He prayed that the 2nd memorandum of appeal should therefore be expunged from the court record for being improperly brought before the court.

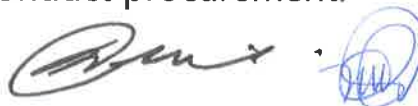
Appeal of the 2nd appellant

Counsel for the 2nd appellant submitted that the 2nd Appellant was indicted
20 under an amended indictment for abuse of office in count 2 contrary to section 11 of the Anti - Corruption Act. The 2nd and 3rd appellants were convicted and sentenced accordingly. Being dissatisfied with the conviction, judgment and sentence, the 2nd appellant appealed to this court on 8 grounds of appeal. The grounds of appeal are:

- 25 1. That the learned trial judge erred in law and fact when reaching her decision that the 2nd appellant was guilty of abuse of office contrary to section 11 of the Anti Corruption Act, she failed or ignored to apply the Anti Corruption Act in determining the ingredients of the offence of abuse of office.
- 30 2. That the learned trial judge erred in law and fact when she failed to apply the Anti Corruption Act in determining the ingredients of the offence of abuse of office allegedly committed by the 2nd appellant in



- 5 the performance of his duties arising from the procurement transaction.
3. That the learned trial judge erred in law and fact when she found and determined that the 2nd appellant in the performance of his duties knew that his acts in the chain of payment of Uganda shillings 10 300,000,000/= for the purchase of 500,000 coffee seedlings would be an abuse of his office.
4. That the learned trial judge erred in law and fact when she convicted the 2nd appellant of the offence of abuse of office contrary to section 15 11 (1) of the Anti Corruption Act 2009 without evidence of proof of mens rea and/or intent to abuse of office.
5. That the learned trial judge erred in law and fact when in reaching her decision to convict the 2nd appellant of abuse of office contrary to section 11 (1) of the Anti Corruption Act 2009 did not consider and evaluate the evidence of the chain of authorisation in effecting 20 payment at NAADS Secretariat.
6. That the learned trial judge erred in law and fact when in reaching her decision that the 2nd appellant was guilty of abuse of office contrary to section 11 (1) of the Anti Corruption Act 2009, she failed and/or ignored to apply the NAADS guidelines.
- 25 7. That the learned trial judge erred in law and fact when she ignored and/or failed to consider and appraise the evidence during cross-examination of Eldad Mugisha and Dr. Byekwaso.
8. That the learned trial judge erred when she misdirected herself and failed to properly construe the evidence before her and erred in fact 30 when she held that:
- a. the 2nd appellant's assignment of the process to the DNC went against the instructions in the delegation letter and the DNC did not have power to conduct procurement.



- 5 b. The 2nd appellant must have been aware that a Sub - county did not have the legal and structural capacity to handle the procurement.
- c. When the appellant forwarded the specified documents to NAADS Secretariat, he was aware that the procurement process
- 10 had not been undertaken per the procurement laws, regulations and requirements.

Counsel submitted that the gist of the grounds of appeal is that the learned trial judge convicted the 2nd appellant for abuse of office in the absence of evidence proving beyond reasonable doubt the 2nd and 3rd elements of the

15 offence and did not properly evaluate the evidence on record. He further proposed that the grounds can be best resolved through one issue namely:

 Whether the learned trial judge erred in law and fact in convicting the 2nd appellant for abuse of office contrary to section 11 of the Anti Corruption Act when there was no evidence to prove beyond

20 reasonable doubt the 2nd & 3rd ingredients of abuse of office.

He submitted that there are 4 ingredients of the offence of abuse of office under section 11 of the Anti Corruption Act which are that:

1. The accused and or appellant must be employed in a public body.
2. The accused's act complained of was arbitrary.
- 25 3. The act was prejudicial to his employer or other person and;
4. The act was in abuse of office.

The 2nd and 3rd appellants counsel submitted that the learned trial judge properly addressed her mind to the ingredients of the offence but wrongly resolved the issues in her evaluation of the evidence. With regard to the 2nd

30 appellant the particulars of offence were that during the month of September 2011, at Manafwa district headquarters in Manafwa district, being employed by the Government of Uganda as the Chief Administrative Officer Manafwa



5 district, in abuse of the authority of his office did an arbitrary act prejudicial to the interests of his employer when he caused the payment of shillings 300,000,000/= to Shisuwabula enterprises allegedly for supply of 500,000 coffee seedlings, knowing that no procurement process was undertaken as per the laws, regulations and requirements.

10 The 2nd appellant's counsel submitted that the 1st ingredient of being employed in the public service or in a public body was not in issue.

The 2nd ingredient of whether he did or directed to be done an arbitrary act prejudicial to the interest of his employer was whether the 2nd appellant caused the payment of Uganda shillings 300,000,000/= for the supply of
15 500,000 coffee seedlings. Secondly whether the 2nd appellant knew that the procurement process had not been undertaken by the procurement laws, regulations and the requirements. Thirdly whether the 2nd appellant to did an arbitrary act. Fourthly whether his actions were prejudicial to the interests of his employer.

20 On the 1st element of causing the payment of Uganda shillings 300,000,000/= to Shisuwabula enterprises for the supply of 500,000 coffee seedlings, the learned trial judge held that the 2nd appellant caused the payment of Uganda shillings 300,000,000/= to Shisuwabula enterprises. On the other hand, PW19 testified that the role of the Chief Administrative Officer in the whole process
25 was through various officers under him to get documents through his officers. The Executive Director is the one who causes payment at NAADS according to exhibit P10 (F) which provides that the NAADS Secretariat to verify the delivery of technologies and any appropriate works before payment can be effected. The 2nd appellant's counsel further relied on the
30 testimony of PW 21 receiving documents stating them and forwarding them to the financial controller for further advice and subsequent payment. That the role of the Chief Administrative Officer was to collect documents from various departments and pass them to NAADS Secretariat. The Executive

5 Director is the one who causes payment to be effected. PW1 testified about the process of payment.

The 2nd appellant's counsel submitted that the evidence clearly shows that the 2nd appellant never caused any payment and the learned trial judge did not properly evaluate the said evidence. His role was simply to collect and forward documents mentioned in exhibit P10 (F) to enable NAADS Secretariat to cause payment. The NAADS Secretariat was supposed to verify the delivery of technologies and any appropriate works before payment is affected. In short, submitting of the specified documents to the Secretariat cannot cause payment if the NAADS Executive Director is not satisfied and the Head Finance and Administration Manager finds the documents submitted inappropriate. In conclusion, the finding of the judge was devoid of evidence

20 **On whether the 2nd appellant knew that the procurement process had not been undertaken according to the procurement rules, regulations and requirements?**

The 2nd Appellant's counsel submitted that PW 21 the acting NAADS Executive Director testified that the respective sub- counties were required to use the NAADS guidelines. The procurement was not exactly to be done in accordance with the PPDA guidelines but the Sub - county procurement was to be done under NAADS specific guidelines. The PPDA refers to procurement by district contracts committee but in order to reach out to farmers, government did approve community procurement method under the NAADS and World Bank also approved the guidelines. The 2nd appellant relies on the testimony of PW1.

30 On whether the 2nd appellant did an arbitrary act, the learned trial judge found that the 2nd appellant instructed the DNC to expedite the process when he was aware that the DNC did not conduct procurement. That as the Chief



5 Administrative Officer, he must have been aware that the Sub - county did not have the legal capacity to handle the procurement before he forwarded the specified documents to the NAADS Secretariat. He was aware that the procurement process had not been undertaken according to the procurement laws, regulations and requirements. The learned trial judge
10 concluded that these were arbitrary acts. However, the learned 2nd appellant's counsel submitted that exhibit P10 (f) specifically stated that the District NAADS Coordinator will coordinate the procurement as per established guidelines. Documents show that the 2nd appellant instructed the 1st appellant on 2nd September 2011 a stranger altered it to read 7th September
15 2011. Further the 1st appellant instructed the 4th appellant on 2nd September 2011 who then instructed the SNC on 5th September 2011. PW 21 testified that the district was not supposed to procure technologies. PW1 testified that sub- counties were supposed to procure technologies and World Bank had its own guidelines and there was no specific requirement for clearance of the
20 contract by the Solicitor General. He relied on exhibit P 15, exhibit P13, exhibit P 10 (c), exhibit P6 and exhibit P 19 and the testimony of defence witness Nabisawa Filo Hilda.

The evidence demonstrates that the 2nd appellant's instruction to the DNC was lawful and the Sub - county had legal capacity to carry out the
25 procurement. Further, the procurement was carried out under the NAADS guidelines and cannot be said to be an arbitrary act by the 2nd appellant. The verification of the forwarded specified documents was supposed to be done by the NAADS Secretariat. The 2nd appellant's counsel faulted the judge for not properly evaluating the evidence when she concluded that the 2nd
30 appellant did an arbitrary act.

Whether the actions of the 2nd appellant were prejudicial to the interests of his employer.

5 The 2nd appellants counsel relied on the testimony of PW8, DW2, DW3 exhibit
P12, exhibit P10 (F) and the testimony of PW1 for the proposition that the
coffee seedlings were supplied and the government suffered no loss. He
submitted that no evidence adduced showed that the government suffered
any material loss. On the contrary the evidence shows that 500,000 coffee
10 seedlings were supplied. Finally, submitting the documents cannot be held
to be an arbitrary act prejudicial to the employer and an abuse of the
authority of his office.

Further, the 2nd appellant's counsel submitted that no evidence was led to
show that the 2nd and 4th appellant's acts amounted to abuse of office. He
15 prayed that the appeal is allowed and the sentence set aside and the
appellant acquitted.

3rd Appellant's appeal

The 3rd appellant's counsel argued grounds 2, 5, 8 & 10 jointly. The grounds
are that:

20 2. That the learned trial judge erred in law and fact when she found the 3rd
appellant guilty of the offence of preparation to commit an offence and
forgery when there was no evidence connecting him to the offence.

5. The learned trial judge erred in law and fact to convict the 1st appellant
with abuse of office in the absence of evidence to prove all the essential
25 ingredients of the offences.

7. The learned trial judge erred in law when she failed to consider and apply
the provisions of the NAADS Guidelines.

8. The learned trial judge erred in law when she ignored and/or failed to
properly evaluate the evidence of PW 25 Dr. Byekwaso saying that the said
30 procurement was in line with the NAADS Guidelines.



5 10. The learned trial judge erred in law and fact when she misconstrued and/or failed to properly evaluate and consider the evidence before her and came to a wrong conclusion of fact and law.

The 3rd appellant's counsel submitted that the State's complaint against the 3rd appellant is that the 3rd appellant in preparation to commit an offence
10 contrary to section 52 (b) of the Anti Corruption Act, during the month of September 2011 in Manafwa district, being the chairman Manafwa district, in preparation to, or in furtherance of commission of an offence of abuse of office assisted the 1st appellant to contravene the procurement procedures, and requirements during the procurement of 500,000 coffee seedlings by
15 Manafwa district local government.

The appellant's counsel submitted that the particulars of the offence offend section 25 (c) of the Trial on Indictments Act in as far as the criminal act complained of is not described and the specific procurement procedure, law or guideline or regulation contravened in order to give the accused an
20 opportunity to prepare himself and give adequate response. No evidence was led to show that the 1st appellant was to conduct the procurement in the instant case in order to be held liable in assisting him.

The appellant's counsel submitted that the evidence of PW 7 mentioned some nursery operators who stated that the 3rd appellant contracted them
25 to supply coffee seedlings on behalf of Shisuwabula enterprises and the learned trial judge believed them. The 3rd appellant's counsel submitted that none of the mentioned nursery operators testified that the 3rd appellant contracted them to supply coffee seedlings. He submitted that contracting nursery operators without prejudice is contract management or execution
30 and no specific contravened provision was cited in the judgment. The 3rd appellants counsel reiterated his earlier submissions that the testimony of PW1 showed that sub- counties were supposed to procure technologies. Further that NAADS has its own guidelines and there is no specific

5 requirement for clearance from the Solicitor General. Further the testimony of PW1 21 that sub- counties were required to use the NAADS guidelines.

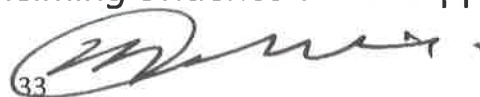
The 3rd appellant's counsel submitted that the 3rd appellant could not have assisted the 1st appellant to contravene the procurement procedure, laws and requirements during the procurement of 500,000 coffee seedlings by
10 Manafwa district local government when it was not applicable.

The 3rd appellant's counsel argued grounds 9 & 10 of the 2nd appellant's memorandum and grounds 11 & 12 of the 3rd appellant's memorandum of appeal jointly under one issue. This issue is whether the learned trial judge erred in law and fact when she ordered the 2nd, 3rd and 4th appellant to pay
15 compensation of Uganda shillings 120,000,000/=, 40,000,000/= and 20,000,000/= respectively to the government.

The 2nd appellants counsel submitted that the appellants were ordered to pay compensation under article 126 (2) (c) of the Constitution of the Republic of Uganda and section 126 (1) of the Trial on Indictments Act. He submitted
20 that section 126 (1) only allows an order of compensation to be made when it appears from the evidence that some person whether prosecutor or witness has suffered material loss or personal injury. He submitted that the prosecution failed to show that government had suffered any material loss or injury.

25 Counsel submitted that there was overwhelming evidence from the prosecution from the summary of the case showing that 303,000 coffee seedlings were supplied.

The 2nd and 3rd appellant's counsel further submitted that PW 8 testified that 303,000 coffee seedlings were supplied. He further relied on the testimony
30 of DW2, DW3, PW 21 and exhibit P12 and reiterated the earlier submissions in relation to the appeal of the 2nd appellant that the government was not a victim. He submitted that the overwhelming evidence of the supply of coffee



- 5 seedlings shows that the government was not a victim of any wrong done by the 2nd and 3rd appellants because it did not suffer any material loss by reason that the order of compensation for the payment of Uganda shillings 120,000,000/= and Uganda shillings 40,000,000/= was an error in law and fact.
- 10 The 3rd appellant's counsel further relied on section 7 of the Anti Corruption Act for the proposition that where a person is convicted of an offence under section 6, the court shall order the person to pay compensation to the aggrieved person. However, section 6 of the Anti Corruption Act deals with diversion of public funds. Counsel further submitted that the 2nd and 3rd
- 15 appellants were never tried for diversion of public funds and the order of compensation was therefore erroneous in law.

He further relied on **Sgt Baluku Samuel and another versus Uganda; Court of Appeal Criminal Appeal No. 172 of 2011** where it was held that compensation was not provided for under section 11 of the Anti Corruption

20 Act. Further that it only provides for forfeiture to government under subsection 2 (1) of the said section. The 2nd and 4th appellants were indicted and convicted under section 11 of the Anti Corruption Act and sentenced to pay compensation accordingly. In the premises counsel submitted that the order for payment of compensation was unlawful and that this court be

25 pleased to set it aside.

In reply, the respondent's counsel submitted that the 2nd appellant who was the Chief Administrative Officer Manafwa district then, and therefore the accounting officer opted to instruct the District NAADS Coordinator to handle procurement according to exhibit P14. He submitted that the District

30 NAADS Coordinator had never been a procuring entity within the meaning of section 3 (b) of the PPDA (Amendment Act 2011). He further pointed out that the 2nd appellant wrote to the NAADS Secretariat requesting for payment to Shisuwabula Enterprises Ltd knowing that he had not exercised

5 his mandate to instruct the contracts committee to handle the procurement
as expected. He submitted that this was a syndicate to cheat the government.
In the premises, the 2nd appellant's actions of instructing the 1st appellant to
handle the procurement denied the Government an opportunity to identify
a genuine supplier to the District contracts committee and therefore led to
10 an unjustified payment of Uganda shillings 300,000,000/= to Shisuwabula
enterprises for no work done at all. The respondent's counsel supported the
judgment of the learned trial judge with regard to the conviction of the 2nd
and 3rd appellants on the count of abuse of office.

In relation to count 6 of preparation to commit an offence as against the 3rd
15 appellant, he submitted that Namolya Alex, the 3rd appellant did an act in
preparation to furtherance of an offence. The 3rd appellant contracted
nursery bed operators to supply coffee seedlings on behalf of Shisuwabula
enterprises and this was confirmed by the testimonies of PW 13, PW 15 and
PW 19. Further submitted that the 3rd appellant joined the 1st appellant to
20 negotiate prices with nursery operators and furthered the offence of abuse
of office with the 1st appellant and was rightly convicted thereof. The
respondents counsel further submitted that the 3rd appellant assisted the 1st
appellant to contravene procurement procedures and this was clearly stated
in the testimony of PW 7. The 3rd appellant is the father of accused number
25 4 who entered a plea of guilty. The said testimony shows that the 3rd
appellant participated in the alleged procurement in respect of sourcing and
negotiating for payments and even took part in the withdrawal of the money
in question as well as availing some documents to justify the procurement.
His actions were meant to help the 1st appellant further the commission of
30 the offence of abuse of office and 3rd appellant was rightly indicted and
convicted. The respondents counsel contends that without the 3rd appellant,
the money in question would never have been accessed by the syndicate of
all the appellants.



5 **Appeal of the 4th appellant:**

The 4th appellant preferred 12 grounds of appeal and Mr. Mafabi submitted that the 12 grounds would be argued jointly. The grounds of appeal are as follows:

- 10 1. That the learned trial judge erred in law and fact when she failed to correctly evaluate the evidence on record as a whole when she convicted the 4th appellant with abuse of office thereby arriving at a wrong conclusion that caused a miscarriage of justice.
- 15 2. The learned trial judge erred in law and fact in not considering the 4th appellants evidence and the exhibits supporting the 4th appellant's case and hence arriving at a wrong conclusion.
3. The learned trial judge erred in law and fact when she failed to find that there was breakage of the chain of movement of the exhibit P 11 thereby relying on it to convict the 4th appellant and thus occasioned a miscarriage of justice.
- 20 4. The learned trial judge erred in law and fact when she failed to correctly evaluate the evidence on record as a whole concerning the forgery of the minutes of 2nd September 2011 thereby arriving at a wrong conclusion.
- 25 5. The learned trial judge erred in law and fact when she held that the minutes of 12th September, 2011 were not produced in court which error led to a miscarriage of justice.
6. The learned trial judge erred in law and fact when she held that Butiru Sub - county did not have authority to procure the coffee seedlings in issue and therefore procurement committee did not award the contract thereby arriving at the wrong conclusion.
- 30 7. The learned trial judge erred in law and fact when she rejected the minutes of 12th September 2011 to be exhibited by the defence thereby causing a miscarriage of justice.



- 5 8. The learned trial judge erred in law and fact when she found that the coffee seedlings were not supplied thereby arriving at a wrong conclusion.
9. The learned trial judge erred in law and fact when she held that the appellant was aware that the procurement committee never sat to
- 10 award the contract to Shisuwabula enterprises thereby reaching a wrong conclusion.
10. The learned trial judge erred in law and fact when she disregarded the NAADS guidelines which were to be used in the procurement process in arriving at her decision and thus occasioning
- 15 a miscarriage of justice.
11. The learned trial judge erred in law and fact when she found and held that the actions of the 4th appellant were prejudicial to the interest of her employer and thereby occasioning a miscarriage of justice.
12. The learned trial judge erred in law when she found that the 4th
- 20 appellant abused her office by doing arbitrary acts which were prejudicial to the interest of her employer and thereby reaching a wrong conclusion.

The 4th appellant's counsel submitted that the gist of the grounds is that the learned trial judge convicted the 4th appellant for abuse of office in the

25 absence of evidence proving beyond reasonable doubt the 2nd and 3rd elements of the offence and without properly evaluating the evidence on record. He further submitted that the above grounds can best be resolved through one issue namely:

Whether the learned trial judge erred in law and fact in convicting the 4th

30 appellant for abuse of office contrary to section 11 of the Anti Corruption Act when there was no evidence to prove beyond reasonable doubt the 2nd & 3rd ingredients of abuse of office?



5 The 4th appellant's counsel submitted that the learned trial judge did not properly evaluate the evidence with regard to the ingredients of the offence of abuse of office as against the 4th appellant. He submitted that the act complained of by the prosecution against the 4th appellant is the issuing of the notification of tender award to Shisuwabula enterprises. The learned trial
10 judge held that the 4th appellant had notorious knowledge of the fact that the procurement process had not been followed and therefore the tender notification was an arbitrary act.

As far as the 1st ingredient of whether the 4th appellant was employed in the public bodies concerned, this was not in dispute because the 4th appellant
15 was employed by a public body namely Manafwa District local government.

On the 2nd ingredient as to whether the 4th appellant did or directed to be done an arbitrary act which was prejudicial to the interest of her employer, counsel submitted that the complaint was that the 4th appellant issued the notification of tender award to Shisuwabula enterprises for the supply of
20 coffee seedlings without following the procurement laws and regulations.

The 4th appellant's counsel submitted that there was no evidence that the 4th appellant issued the notification of tender award to Shisuwabula enterprises for the supply of 500,000 coffee seedlings but there is overwhelming evidence to show who issued the notification of tender award following that
25 process. He submitted that the 4th appellant's duty was simply to sign a prepared and issued notification of tender award whose purpose was to notify the firm that had been awarded the contract and this act of signing a prepared notification of tender award cannot be held to be an arbitrary act. Further the duty of the 4th appellant was to sign the notification of tender
30 award to Shisuwabula enterprises after a series of meetings and the purpose was to communicate to the highest bidder and there is evidence on record to support the submission. He submitted that exhibit P 15 shows that the Sub - county Chief communicated to the prospective service provider

5 notification of the award. Further PW 21 the acting NAADS Executive Director testified that the communication to the highest bidder is by the Sub - county Chief. This is supported by the testimony of PW 8. He further submitted that exhibit P 13 shows that the 4th appellant was instructed and in compliance thereof instructed the Sub - county NAADS coordinator. Further exhibit P 19
10 which is the notification of tender award shows the minutes of 12th September 2011. Exhibit P6 which are the minutes of 5th of September 2011 makes reference to the procurement meeting of 12th September 2011 and shows that the procurement is for several technologies.

The 4th appellant's counsel further relied on the testimony of PW 8, PW 1 and
15 exhibit P 15 for the submission that the sub counties could procure technologies in excess of Uganda shillings 500,000. The 4th appellant's counsel further made reference to the testimonies of DW4, PW3, PW4, PW7, PW8, PW 26 and PW 27 on the question of whether sub counties could procure the goods in question.

20 He submitted that the evidence shows that the 4th appellant signed the notification of tender award after satisfying herself of the sittings of the procurement committee that awarded it. He contended that this cannot be said to be an arbitrary act and prayed that the court finds so.

On the issue of arbitrary act, the learned trial judge from the issue of whether
25 the 4th appellant followed the procurement laws, regulations and requirements. Secondly whether the procurement committee ever sat and awarded the contract. Thirdly whether the 4th appellant was aware that the committee never sat when she signed the document.

The 4th appellant's counsel repeated the submissions of the other appellants
30 that the Sub - county were to use the NAADS guidelines approved by the World Bank. Secondly the evidence of PW 8 shows that the Sub - county Chief is the last person to sign the award but does not participate in the

5 activities leading to the signing of the award. He contended that the learned trial judge failed to evaluate this evidence and therefore arrived at a wrong conclusion.

On whether the procurement committee sat and awarded the contract, the learned trial judge relied on the testimony of PW 6 and PW 7. The 4th
10 appellant's counsel submitted that the evidence of these two witnesses was full of inconsistencies and contradictions and therefore were unreliable. PW6 testified that the 1st appellant told them to convene somewhere at a shop and he met PW 7. On the other hand, PW 7 testified that they met at the saloon of PW 6 where PW6 called him to come. PW 7 testified that he was
15 called on 5th September 2012 and he signed two sets of minutes and in those minutes there was one procurement item.

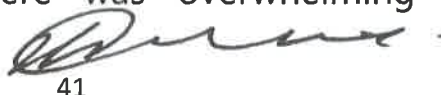
He submitted that the contradictions create serious doubts about the testimony. He pointed out that the minutes contained several items to be procured namely coffee seedlings, fertilisers and others. He contended that
20 prosecution never submitted the minute which had one procurement item and which was dated 5th of September 2011. The testimony of PW 7 was therefore suspect and unbelievable. The prosecution further never produced the chairman of the procurement committee. In the circumstances he submitted that the prosecution's witnesses' attempts to explain the alleged
25 circumstances under which they signed the alleged minutes was an afterthought and there are serious doubts about the truthfulness thereof. He submitted that PW 7 claimed to have signed two sets of minutes which were backdated with one procurement item. The question is why the prosecution never produced both sets of minutes containing one item? Further the Sub -
30 county NAADS coordinator was not produced for fear of being confronted with the truth. He submitted that the learned trial judge did not properly evaluate the evidence and came to a wrong conclusion.

5 On whether the 4th appellant was aware that the committee never sat when she signed the document, the learned trial judge relied on the testimony of PW 7 that the forged minutes of 2nd September 2011 were the ones recovered by investigators during investigations. The latter part of the documents recovered from the district and there is sufficient basis for
10 concluding that the 4th appellant was aware of the existence of their forged state. The investigator testified that the document of notification of tender award was by the 4th appellant and it helped them to demand from Manafwa district all documents related to the minute BTR/NAADS/09/2011 and the documents were availed to them. The minute mentioned is not found in the
15 minutes of 2nd September, 2011 exhibit P11. But is in the minute of 12th September 2011. This is consistent with the notification of tender award which mentions 12th September 2011 and this piece of evidence was not considered by the learned trial judge at all.

The 4th appellant's counsel submitted that the minutes of 12th September
20 2011 existed and the 4th appellant was aware that the procurement committee sat to award the contract for supply of 500,000 coffee seedlings when she signed the notification of tender award. Counsel further submitted that it was disturbing that they left out a key witness, who had prepared the notification of tender award, Mr. Nabende Chris Butoro, the SNC and the
25 chairman and brought dishonest persons in the names of PW 6 and PW 7. In the circumstances, he submitted that no sufficient evidence was adduced to prove beyond reasonable doubt that the 4th appellant signed the notification of tender award and that it was an arbitrary act.

30 **Whether the actions of the 4th appellant were prejudicial to the interests of her employer?**

The 4th appellant's counsel submitted that no evidence of any audit report was tendered to show the loss or damage government suffered. He reiterated submissions that there was overwhelming evidence from



41



5 prosecution witnesses, exhibits and the defence showing that 500,000 coffee seedlings and more were supplied. He relied on the testimony of PW 8, DW2, DW3, PW1, PW21 and exhibit P12.

Whether the 4th appellant abused the authority of her office.

10 The 4th appellant's counsel submitted that no evidence was led to show that the appellant abused the authority of her office. No evidence was adduced to prove the 3rd and 4th ingredients of the offence beyond reasonable doubt. He prayed that the court be pleased to set aside the conviction for abuse of office and acquit the 4th appellant.

Ground 13:

15 That the learned trial judge erred in law and fact when she held the 4th appellant to have forged the minutes of 2nd September 2011 thereby causing a miscarriage of justice.

The 4th appellant's counsel submitted that not a single witness testified in court that the appellant made or forged the minutes of 2nd September 2011. He further submitted that the learned trial judge relied on circumstantial evidence. This was clear from the evidence of PW 6 and PW 7 who stated that the minutes of 2nd September 2011 exhibit P11 were false and that they never attended the procurement meeting of 2nd September 2011 which purportedly awarded the tender to Shisuwabula enterprises. They also stated that they never signed the minutes as portrayed in the document. The evidence shows in exhibit P 19 which is the notification of tender award minutes BTR.NAADS/PRO/09/2011 and mentioned is the minutes of 12th September 2011. The existence of a different minute in the notification of tender award exhibit P 19 to the one in exhibit P 11 is a strong coexisting circumstance which could materially weaken or destroy any inference of the 4th appellant to have made the minutes thereby creating serious doubts and which evidence was not evaluated by the learned trial judge. Counsel further



5 relied on the testimony of PW8 that the Sub - county Chief is the final person to send the award but the said Sub - county Chief does not participate in the activities leading to the signing of the award. Counsel further relied on exhibit P 13 showing that the 4th appellant instructed the SNC on 5th September 2011 and exhibit P6 mentioning the sitting of the meeting on 12th September 2011.

10 Counsel further submitted that there is evidence that the 4th appellant was supposed to sign a notification of tender award and does not participate in the activities leading to the signing of the award. In the premises he submitted that the learned trial judge erroneously relied on circumstantial evidence and further relied on the Supreme Court decision in **Mulindwa**

15 **James v Uganda SCCA No 23 of 2014** for the proposition that in a case depending exclusively upon circumstantial evidence, the court must find before deciding upon conviction that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than that of guilt. The circumstances must

20 be such as to produce moral certainty to the exclusion of every reasonable doubt. The 4th appellant's counsel prayed that we allow ground 13 of the appeal and set aside the conviction of the 4th appellant.

Whether the learned trial judge erred in law and fact when she ordered the 4th appellant to pay compensation of Uganda shillings 40,000,000/= and

25 Uganda shillings 20,000,000/= to the government.

The 4th appellant's counsel submitted that the 2nd appellant was ordered to pay compensation under article 126 (2) (c) of the Constitution of the Republic of Uganda as well as section 126 (1) of the Trial on Indictments Act and section 7 of the Anti Corruption Act. He submitted that article 126 (2) (c) of

30 the Constitution of the Republic of Uganda is subject to the law when the judge makes compensatory orders. The learned trial judge also relied on section 126 (1) of the Trial on Indictments Act (TIA) and section 7 of the Anti Corruption Act (ACA). Section 126 (1) of the TIA permits an order for



43

5 compensation to be made when it appears from the evidence that some
person whether prosecutor or witness has suffered material loss or personal
injury. The 4th appellant's counsel submitted that the prosecution did not
adduce evidence to show that the government was the victim of any wrong
and has suffered any material loss or injury. He reiterated the earlier
10 submissions that the evidence shows that more than 500,000 coffee
seedlings had been supplied.

On the other hand, section 7 of the ACA provides that where a person is
convicted of an offence under section 6, the court shall order the person to
pay compensation to the aggrieved person. Section 6 of the ACA deals with
15 the version of public funds. He submitted that the 4th appellant had never
been tried for diversion of public funds and by reason thereof the order for
compensation of Uganda shillings 40,000,000/= to government was an error
in law and fact. He further relied on **Sgt. Baluku Samuel and another versus
Uganda; Court of Appeal Criminal Appeal No. 172 of 2011** for the
20 proposition that section 11 of the ACA only provides for forfeiture to
government in subsection 2 (1) thereof. The 1st appellant was indicted and
convicted under section 11 of the ACA and sentence to pay compensation
to government. In the premises he submitted that the order for
compensation in the sum of Uganda shillings 40,000,000/= to government
25 was an error in law and fact and ought to be set aside.

In conclusion the 4th appellant's counsel prayed that the conviction and
sentences with respect to the 4th appellant be set aside.

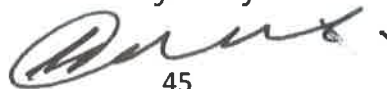
In reply the respondents counsel submitted that it was not in dispute that
the 4th appellant was the Sub - county Chief of Butiru Sub - county in
30 Manafwa district. He supported the decision of the learned trial judge that it
was proved by the prosecution that the appellant issued a notification of
tender award to Shisuwabula enterprises for the supply of 500,000 coffee
seedlings without following procurement laws, regulations and

5 requirements. He submitted that the 4th appellant issued the notification in
the absence of the award procedurally required. He further relied on the
testimony of PW 6 and PW7. He further reiterated submissions that sub-
counties are not among the entities that are supposed to use the PPDA Act
or guidelines or the local governments procurement regulations. Sub
10 counties to not appear in the list of procuring and disposal entities under
section 3 of the PPDA (Amendment) Act 2011 and this was within the
knowledge of the 4th appellant.

On whether the procurement process is supposed to be competitive under
the law, the 4th appellant went ahead to authenticate action that will lead to
15 loss of colossal sums of money meant to improve the livelihood of Ugandans.
He further submitted that the Sub - county lacked the capacity to handle the
procurement in question but the 4th appellant was willing to embrace a
wrong procedure and continue to act arbitrarily which cost the government
money. He further contended that the 4th appellant ought to have brought
20 the issue to the attention of her bosses to correct the error. He contended
that the 4th appellant not only issued an award of tender notification but went
ahead and convinced PW5 and PW6 to sign backdated minutes to cover her
irregular conduct thereby flouting procurement procedures.

With regard to the sentences, the respondents counsel submitted that the
25 sentences of the appellants were appropriate. That a sentence was at the
discretion of the sentencing judge. That this court ought not to interfere with
the sentence unless the sentences are illegal or unless the court is satisfied
that the sentence imposed by the trial judge was manifestly so excessive as
to amount to an injustice. Furthermore, the compensation orders were legal
30 and were not manifestly excessive considering the loss suffered by the
Ugandan farmers in Manafwa district.

The 2nd, 3rd and 4th appellants filed written submissions in rejoinder to the
respondents reply to counts 2 and 6 jointly.



5 We have considered the rejoinder and it reiterates submissions in further support of the of the various appeals and we have considered the evidence referred to in the submissions. It is the duty of this court to re-evaluate the evidence and there is no need to repeat the submissions in this judgment.

Resolution of appeal

10 We have carefully considered the consolidated appeals of the four appellants. The indictment of the appellants in the lower court arises from the same transaction of the supply of 500,000 seedlings to Butiru Sub - county in Manafwa district. Apart from the assertion of the appellants that the charges were not properly laid by not disclosing what regulations were
15 infringed in the charges of abuse of office which charges were levelled against all the four appellants, the rest of the appeal is on whether the ingredients of the offences the appellants were charged with were proved beyond reasonable doubt and calls for a re-evaluation of relevant evidence with regard to the various counts of offences the appellants were variously
20 convicted of. Secondly, the appellants raised a question of law as well as of fact as to whether the compensation ordered was lawful and whether in fact the government suffered any material loss in the procurement of the earmarked 500,000 coffee seedlings.

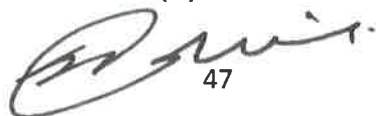
We have carefully considered the submissions of counsel, the judicial
25 precedents cited as well as the applicable law. As a first appellate court, our duty on relevant matters of fact in controversy is to retry them by subjecting the evidence on record to fresh and exhaustive scrutiny and to reach our own conclusions on any factual controversy as directed by Rule 30 (1) (a) of the Rules of this Court. In the exercise of our duty to retry matters of fact by
30 subjecting all the material evidence to fresh scrutiny and drawing our own inferences of fact, we have duly warned ourselves that we have neither seen nor heard the witnesses testify and have made due allowance for that shortcoming (See ratio in **Pandya v R [1957] EA 336, Selle and Another v**

5 **Associated Motor Boat Company [1968] EA 123), Kifamunte Henry v Uganda; SCCA No. 10 of 1997 and Bogere Moses and Another v Uganda, Supreme Court Criminal Appeal No. 1 of 1997** on the duties of a first appellate court).

10 The record in the lower court discloses that the appellants were jointly charged with one Wabomba Michael who was tried as accused number 4. The 1st appellant and the 2nd appellant were described as the District NAADS Coordinator and the Chief Administrative Officer of Manafwa district respectively. The 3rd appellant was the district farmer's forum chairperson of Manafwa district. Wabomba Michael was described as the director of 15 Shisuwabula enterprises and the son of the 3rd appellant. The 4th appellant was the Sub - county Chief of Butiru Sub - county.

The brief facts were that in the financial year 2010/2011, Manafwa district got financial support from the NAADS Secretariat for the purchase of coffee seedlings to be distributed to farmers in sub- counties of Manafwa district. 20 The NAADS Secretariat provided *inter alia* Uganda shillings 300,000,000/= for the procurement of 500,000 coffee seedlings. The procurement was supposed to be handled by Manafwa district local government.

In the facts were that the 1st, 2nd, 3rd and 4 appellants were variously charged in counts 1, 2, 3 and 5 with the offence of abuse of office contrary to section 25 11 (1) of the ACA. In count 4 the 1st appellant was charged with the offence of influence-peddling contrary to section 8 and 26 of the ACA. In count 6, the 3rd appellant was charged with preparation to commit an offence contrary to section 56 (b) of the ACA. In counts 8 and 10, the 1st appellant and the 4th appellant respectively were charged with forgery contrary to 30 sections 342 and 347 of the Penal Code Act. In count 9, the 1st appellant was charged with uttering false document contrary to sections 351 and 347 of the Penal Code Act and in count 11 he was charged with fraudulent false accounting contrary to section 23 (b) of the ACA.



47



5 The learned trial judge considered whether the 1st appellant could not have
contravened the procurement laws, regulations and procedures since the
PPDA Act and Regulations and the Local Government PPDA Regulations were
not applicable to Sub - county procurement of the 500,000 seedlings. This
flowed from a point of law of whether the 1st appellant was involved in the
10 procurement in answer to the complaint that the 1st appellant contravened
the procurement laws, regulations and procedures during the procurement
of 500,000 coffee seedlings by Manafwa district.

The learned trial judge found that 3 sub issues of mixed law and fact are
relevant to the main issue namely:

- 15 a. Whether the procurement was in fact delegated to a Sub - county/sub
counties.
b. Whether a Sub - county could legally procure the seedlings in issue.
c. Whether the procurement took place at all.

The learned trial judge found that the evidence showed that the sub counties
20 had no capacity to procure the technologies in issue. The evidence was that
the threshold at sub counties is below Uganda shillings 5,000,000/= which
she found believable on the ground that it is the position stipulated in the
guidelines (exhibit P 15). Further the learned trial judge considered exhibit P
10 (f) and noted that it has a number of paragraphs i.e. paragraph (c) which
25 states that while procurement is being delegated to the district, it is
important to follow the critical procurement steps and the guidelines for
funds to flow to the suppliers of the technologies. She found that the
paragraph supports the evidence that procurement was delegated to the
district. She further considered the amount involved to reach the conclusion
30 that the amount of Uganda shillings 300,000,000/= was not within the limits
of the ceiling in value for procurement by sub counties. She further found
that the possibility of the accused persons having acted in error or in

5 ignorance is ruled out by the clear evidence of PW2 Esereda Mutiibwa Bakisula and PW 25 Dr. Byekwaso.

From the testimony of PW 1, PW2 and PW 22 and based on the reading of the document exhibit P 10 (f), the learned trial judge concluded that the delegation was made to Manafwa district local government and not to sub
10 counties/Sub - county.

The 2nd issue was whether a Sub - county could legally procure the seedlings in issue.

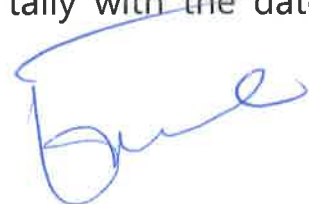
The learned trial judge found evidence that the sub counties did not have the capacity to do so and could only handle procurement of or under Uganda
15 shillings 5,000,000/= . She found that paragraph (b) of exhibit P 10 (f), which was the basis of the action of Butiru Sub - county is about sub counties and not a Sub - county. She found that the delegation to one Sub - county could not have been based on that paragraph and the Sub - county could not legally procure the seedlings in issue.

20 **On whether the procurement took place at all.**

The learned trial judge found that the defence of the appellants was that Butiru Sub - county conducted the procurement and that there was a procurement committee meeting on the issue according to the evidence of the PW6 who saw the procurement committee sitting. The prosecution case
25 on the other hand was that no procurement was done and that all the documents relating to the alleged procurement were forged by or with the participation of the 1st appellant. To reach a conclusion the learned trial judge relied on the testimony of PW4 Modesta Nambuya as well as the testimony of nursery operators who included PW10, PW2, PW 13, PW 15, PW 17, PW23,
30 PW 24 and PW 28 who testified that PW4 never visited their farms and did not verify the seedlings they supplied to the 1st appellant. She also found that the dates on which seedlings were supplied did not tally with the dates



49



5 reflected in the distribution list that was presented by the appellants for payment. Signatures in the distribution list were also disowned. Quantity supplied did not match with those in the exhibited distribution list. The 1st appellant contracted and negotiated prices with nursery operators.

10 The learned trial judge further relied on the testimonies of PW 8, PW 9 as well as exhibit P12 (b) and exhibit P 10 (e). Other testimonies are that of PW 14, PW 18, PW 20 and PW 21 for the proposition that the seedlings were never supplied or received by the beneficiaries.

15 Further the learned trial judge relied on the testimony of PW 6 and PW7 who disowned their signatures or signatures attributed to them in the minutes dated 2nd September 2011 corroborating the testimony of the handwriting expert PW 26. They also stated that the 1st appellant requested them to sign another set of minutes dated 5th of September 2011 to show that they awarded the tender to Shisuwabula enterprises. She believed that the witnesses had no reason to tell lies and believed their evidence. She further
20 found evidence of backdated documents for the process to appear credible. Documents show that seedlings were procured in the March and June 2012 when the district had submitted documents to the NAADS Secretariat on 19th September 2011 purporting to have completed the procurement and delivery of the seedlings to the beneficiaries. There are several other pieces
25 of evidence referred to that we have considered.

We shall consider separately where necessary, the specific ingredients of the offence of abuse of office in count 1 as against the 1st appellant, count 2 as against the 2nd appellant and count 3 as against the 4th appellant.

Whether the appellants breached procurement laws and guidelines.

30 In resolving the above issue, we have considered the statement of offences in relation to the count of abuse of office. Count 1 with which the appellant was charged is the offence of abuse of office contrary to section 11 (1) of the

5 Anti-Corruption Act 2009. The particulars of the offence relate to the 1st
appellant. The material aspect of the particulars is that the 1st appellant in
the month of September 2011 at Manafwa district, being employed by
Manafwa district as the District NAADS Coordinator, in abuse of the authority
of his office, did an arbitrary act prejudicial to the interest of his employer
10 when he contravened the procurement laws, regulations and procedures
during the procurement of 500,000 coffee seedlings by Manafwa district local
government.

With regard to count 2 of the abuse of office contrary to section 11 (1) of the
Anti-Corruption Act 2009 it was alleged in the particulars of the offence that
15 the 2nd appellant was the chief accounting officer of Manafwa district and in
abuse of authority of his office did an arbitrary act prejudicial to the interest
of his employer when he caused the payment of Uganda shillings
300,000,000/= to Shisuwabula enterprises allegedly for the supply of 500,000
coffee seedlings knowing that no procurement process was undertaken
20 according to the procurement laws, regulations and requirements.

In the 3rd count, the 4th appellant was charged with the offence of abuse of
office contrary to section 11 (1) of the Anti Corruption Act 2009. In the
particulars thereof it is alleged that the 4th appellant on 13th of September
2011, being employed by the Manafwa district as the Sub - county Chief of
25 Butiru Sub - county, in abuse of the authority of her office, did an arbitrary
act prejudicial to the interests of her employer in that she issued a
notification of tender award to Shisuwabula enterprises for the supply of
500,000 coffee seedlings without following the procurement laws,
regulations and requirements.

30 The 3 counts all allege breach of procurement laws, regulations and
requirements. The 1st submission of the 1st appellant relates to whether the
offence is clearly described in the count so as to enable the appellants to put
up their defence against it in that there is no specific mention of any



5 procurement law, regulation or requirement which was breached. The main
point of law is whether the charges are vague and prejudiced the defence of
the appellants and ought to have been struck out as such. The main
contention of the prosecution in the lower court was that there cannot be
any procurement by a Sub - county amounting in value to Uganda shillings
10 300,000,000/= since the sub counties threshold in the value of procurement
that could lawfully be done is only Uganda shillings 5,000,000/= or less. The
respondents counsel never cited any laws in support of the contention and
NAADS Guidelines cited do not help.

15 We will start by answering the point of law raised in objection to the count
of abuse of office, that was raised by the 1st appellant's counsel that the
particulars of the offence in the count of abuse of office offended section 25
(c) of the Trial on Indictments Act Cap 23 because it does not specify the
regulations contravened by the appellants. Firstly, there was no objection to
the charge sheet in the trial court. That notwithstanding, the question is
20 whether the appellants have suffered any prejudice from the framing of the
particulars of the offence as stated above. Section 25 deals with the rules for
the framing of indictments and stipulates *inter alia* as follows:

25. Rules for the framing of indictments.

25 The following provisions shall apply to all indictments and, notwithstanding any rule of
law or practice, an indictment shall, subject to this Act, not be open to objection in respect
of its form or contents if it is framed in accordance with this Act—

(a) a count of an indictment shall commence with a statement of the offence charged,
called the statement of offence;

30 (b) the statement of offence shall describe the offence shortly in ordinary language,
avoiding as far as possible the use of technical terms and without necessarily stating all
the essential elements of the offence, and it shall contain a reference to the section of the
enactment creating the offence;

(c) after the statement of the offence, particulars of that offence shall be set out in ordinary
language, in which the use of technical terms shall not be necessary; but where any written

5 law limits the particulars of an offence which are required to be given in an indictment, nothing in this paragraph shall require any more particulars to be given than those so required;

10 The indictment complies with subsection (a) and (b) in that it sets out the statement of offence and describes in ordinary language the statement of the offence.

The question is whether in the terms of section 25 (c) the particulars of the offence were set out in ordinary language avoiding the use of technical words where necessary. Were the particulars of the offence insufficient to describe the offence?

15 The particulars of the indictment of the 1st appellant are that he contravened procurement laws, regulations and procedures during the procurement of the 500,000 coffee seedlings by Manafwa district local government. It was not necessary to set out the procurement laws, regulations and procedures because any person charged with procurement is supposed to know the
20 procurement laws, regulations and procedures. In any case, the 1st appellant's defence is that he never participated in the procurement of the 500,000 coffee seedlings by Manafwa district local government. Section 25 (c) of the Trial on Indictments Act requires setting out the statement of the offence which was clearly set out. Secondly, after the statement of the offence, the
25 particulars of the offence are to be set out in ordinary language. The particulars of the offence were clearly that in the procurement of 500,000 coffee seedlings, the 1st appellant did not follow the procedure for procurement set out in the procurement laws and regulations. It is the duty of the procurement and disposal officers to follow the laws and procedures
30 for procurement. We would in the circumstances hold that it was not necessary to set out the particulars regulations which were contravened because the offence was clearly set out as being the failure to follow the procedure for procurement set out in the procurement laws and regulations in the procurement of 500,000 coffee seedlings. It was sufficient to prove that

5 regular procurement procedure through the designated office was not followed and instead another scheme was executed.

The 2nd defence set out by the 1st appellant is that he did not participate in the procurement. The respondents counsel submitted that the appellant did participate in the procurement by delegating the procurement to Butiru Sub
10 - county according to the testimony of various witnesses.

We have carefully considered the question of whether the procurement was delegated to the Sub - county. The issue does not clearly answer the actual matter in controversy. The actual matter in controversy is whether there can be any participation of the 1st appellant in the procurement as defined by the
15 law because procurement has designated officers inclusive of the contracts committee who are required to participate in the procurement of goods and services as stipulated in the law.

Regulation 3 of The Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006 which is the definition regulation provides
20 that a procuring and disposing entity:

...means a district, city or municipal council as defined by the Local Governments Act;

Secondly, the law is clear that procurement and disposal is carried out by the unit and the process managed by designated persons appointed by the Chief Administrative Officer of a district. The following regulations make it clear
25 that it is essential when charging somebody with the offence of abuse of office by breach of procurement regulations to show that that person has a role to play in the procurement framework of Government or local government and that they abused the authority of that office. What is material for purposes of the analysis in the instant case is whether the 1st
30 appellant had a role to play in terms of the regulations governing procurement to qualify or be liable to be charged with the offence of abuse of office in relation to the duties in the procurement of goods or services in

5 a district or Sub - county as alleged in this case. Several regulations of The
Local Governments (Public Procurement and Disposal of Public Assets)
Regulations, 2006 (hereinafter referred to as the “the local government PPDA
regulations”) demonstrates that procurement is carried out by designated
10 officers and therefore the breach of the procurement laws and regulations
must relate in some way to the role they are expected to play as stipulated
in the law. The following regulations of the Local Government PPDA
Regulations demonstrate this.

15 13. (1) Subject to the provisions of the Act or these Regulations, the accounting officer, the
contracts committee, the procurement and disposal unit, the user department and the
evaluation committee of a procuring and disposing entity shall each act independently in
relation to their respective functions and powers.

(2) An accounting officer or organ of a procurement and disposal entity referred in sub
regulation (1) shall not seek to influence the decisions or activities of the others, except as
permitted under the Act or these Regulations.

20 (3) Every accounting officer or organ of a procurement and disposal entity referred to in
sub-regulation (1) shall ensure that its duty is properly and professionally performed in
accordance with the legal requirements and in order to guarantee independence of action
with the objective of eliminating corrupt or fraudulent practices.

25 (4) Where there is a disagreement between the procurement and disposal organs of the
procuring and disposing entity, the disagreement shall be resolved in accordance with the
procedure provided for under the Act.

14. An accounting officer shall have the overall responsibility for the successful execution
of the procurement, disposal and contract management processes in the procuring and
disposing entity and be responsible for—

30 (a) establishing a contracts committee in accordance with the Local Governments Act and
subject to the provisions of these Regulations;

(b) causing to be established a procurement and disposal unit staffed at an appropriate
level;

(c) advertising bid opportunities;

35 (d) communicating decisions on awards;

- 5 (e) certifying the availability of funds to support the procurement or disposal activities;
- (f) signing contracts for procurement or disposal activities on behalf of the procuring and disposing entity;
- (g) investigating complaints by providers;
- (h) submitting a copy of any complaint and report of the findings to the Authority; and
- 10 (i) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award;
- (j) certifying the availability of funds prior to the commencement of any procurement activities;
- (k) implementing the recommendations of the Authority;
- 15 (l) submitting all reports as required under the Act, these Regulations and as may be required by the Authority;
- (m) submitting applications to the Authority, for any deviations from the procedures in the Act;
- (n) submitting to the Authority a list of providers who have failed to perform their contractual obligations; and
- 20 (o) any other thing prescribed by these Regulations.

25 15. (1) The contracts committee shall consist of five members nominated by the Chief Administrative Officer in the case of a district contracts committee or the town clerk in the case of a municipal contracts committee from among the public officers of the procuring and disposing entity and approved by the Secretary to the Treasury.

 (2) The contracts committee shall seek the services of the district legal advisor in the execution of its work.

30 (3) In assessing a candidate for suitability for appointment to a contracts committee, the Chief Administrative Officer or the town clerk as the case may be shall seek to establish a balance of skills and experience among members to ensure that the contracts committee—

 (a) consists of persons of proven track record of sound judgment;

 (b) has an appropriate level of seniority and experience in decision-making;

- 5 (c) includes persons with experience in at least one recognised professional discipline;
(d) does not have more than two members from one department;
(e) includes experience in the procuring and disposing entity; and
(f) includes experience in public procurement and disposal.

10 (4) The tenure of the members of the contracts committee shall be three years and a member may be reappointed for only one further term.

(5) When reappointing members to a contracts committee, the accounting officer shall consider the need for both continuity and rotation of personnel in the membership of the contracts committee.

15 (6) The accounting officer may appoint a temporary member of the contracts committee, with the prior approval of the Secretary to the Treasury, to replace a permanent member who may be absent for a prolonged period.

(7) The head of the procurement and disposal unit of the procuring and disposing entity, shall be the secretary to the contracts committee.

20 (8) The letter of appointment to be issued to a member of the contracts committee shall be in the form specified in Part A of the First Schedule to these Regulations.

(9) All members of a contracts committee shall, on appointment, sign the Code of Ethical Conduct for Public Officers specified in Part B of the First Schedule to these Regulations.

The 1st appellant is not a member of the contracts committee and presumably has not signed the code of ethical conduct for public officers
25 designated to carry out the procurement of the local government procurement and disposal entity. Secondly, there is no evidence that he was appointed by the Chief Administrative Officer to be a member of any contracts committee or procurement committee. There is no evidence that he is a secretary of the contracts committee. Lastly, what were the duties of
30 the District NAADS Coordinator?

Section 11 of the Anti-Corruption Act is quite clear that the accused has to be a person employed in a public body, a fact which is not in dispute in respect of the 1st appellant. Secondly, it must be shown that he did or

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5 directed to be done an arbitrary act prejudicial to the interest of his or her
employer or of any other person, in abuse of the authority of his or her office.
We need to emphasise the element of *abuse of authority of his or her office*.
Authority of the office must be authority that is wielded by virtue of the
duties assigned to that individual who is accused of the offence. If his role
10 does not include procurement, he technically cannot be guilty of the abuse
of procurement laws or regulations in the procurement of 500,000 coffee
seedlings. He might be guilty of some other offence but the particulars of
the offence of abuse of office in relation to procurement is committed by the
persons involved in the procurement and which persons are bound by the
15 rules and regulations including the ethics stipulated in the law in carrying out
procurement. In the premises, the defence that the 1st appellant was not
involved in procurement in terms of the role of the 1st appellant in any
procurement under the law or regulations has merit.

The learned trial judge further considered the question of whether the
20 procurement was delegated to the Sub - county namely Butiru Sub - county.
We will consider this afresh in the evaluation of evidence. In any case it is
relevant whether the unit had the capacity to carry out the procurement.
Secondly, did the Chief Administrative Officer delegate the procurement to
the Sub - county? Thirdly, did the 1st appellant have authority to delegate
25 procurement to Butiru Sub - county at all?

We shall look at the other elements of the case of the prosecution. The
learned trial judge considered the threshold for the procurement of goods
or services by local governments and particularly by Butiru Sub - county
being in the region of Uganda shillings 5,000,000/= or below. It is the
30 contention that no procurement above the value of Uganda shillings
5,000,000/= can take place in a Sub - county such as Butiru Sub - county and
therefore the procurement of coffee seedlings worth Uganda shillings
300,000,000/= could not lawfully be made.



5 The procurement in issue took place in September 2011 and regulations
cited by the parties seems to relate to the threshold for the execution of
contracts without the legal advice of the Attorney General under the
provisions of Article 119 (6) of the Constitution of the Republic of Uganda.
Particularly, the relevant law that we have been able to establish on the
10 submission is The Constitution (Exemption of Particular Contracts from
Attorney General's Legal Advice) Instrument, Statutory Instrument –
Constitution 12. Regulation 2 thereof provides that an agreement or contract
involving an amount of 50,000,000 shillings or less is exempted from the
application of article 119 (5) of the Constitution. Notwithstanding, the
15 Attorney General has powers to issue directions that any contract in the
amount of 50,000,000 Uganda shillings or less shall be subject to legal advice
by the Attorney General.

In the circumstances of this case, there was no evidence of the advice of the
Solicitor General (the Solicitor General acts on behalf of the Attorney General)
20 being sought and the contract in issue amounted in the value to a total of
Uganda shillings 300,000,000/=. The contract to supply coffee seedlings to
farmers was prima facie awarded to Shisuwabula Enterprises by a Sub -
county on a matter of fact. The point of law is whether the Attorney General
is an advisor of local governments under article 119 (5) of the Constitution.
25 This was considered by the High Court in **Engineers Investments Ltd v
Attorney General and KCCA HCCS No 0331 of 2012** that the Attorney
General is not. Though the decision is not binding on us, the learned trial
judge in that case considered in details the provisions of Article 119 in the
following words:

30 The preliminary objection of the Attorney General is based on Article 119 of the
Constitution of the Republic of Uganda. I particularly consider clauses 3, 4, 5 and 6 of
Article 119 quoted above. The parts of Article 119 of the Constitution which I have
considered to resolve the issue is reproduced hereunder for ease of reference:

"119. Attorney General.

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5

(1)...

(3) The Attorney General shall be the principal legal adviser of the Government.

(4) The functions of the Attorney General shall include the following—

(a) to give legal advice and legal services to the Government on any subject;

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(b) to draw and peruse agreements, contracts, treaties, conventions and documents by whatever name called, to which the Government is a party or in respect of which the Government has an interest;

(c) to represent the Government in courts or any other legal proceedings to which the Government is a party; and

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(d) to perform such other functions as may be assigned to him or her by the President or by law.

(5) Subject to the provisions of this Constitution, no agreement, contract, treaty, convention or document by whatever name called, to which the Government is a party or in respect of which the Government has an interest, shall be concluded without legal advice from the Attorney General, except in such cases and subject to such conditions as Parliament may by law prescribe.

20

(6) Until Parliament makes the law referred to in clause (5) of this Article, the Attorney General may, by statutory instrument, exempt any particular category of agreement or contract none of the parties to which is a foreign government or its agency or an international organisation from the application of that clause."

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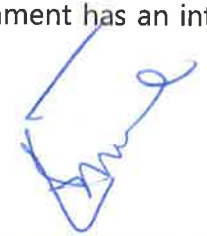
From a plain reading of the above provisions the Attorney General is the Principal Legal Adviser of the Government. The word "Government" has the letter "G" capitalised. I wish to underline the word "Government" for emphasis of the point. Secondly role of the Attorney General under the cited clause 5 of Article 119 is to draw and peruse agreements, contracts, treaties, conventions and documents by whatever name called in which the Government is a party or in respect of which the Government has an interest.

30

I want to emphasise (and italicise) the question as to which are the, agreements, contracts, treaties, conventions and the documents by whatever name called *in which the Government is a party or in respect of which the Government has an interest?*

35

Furthermore, it is provided that no agreement, contract, treaty, convention or document by whatever name called, to which the Government is a party or in respect of which the Government has an interest shall be concluded without the legal advice of the Attorney



5 General subject to cases which the Parliament may by law prescribe. The relevant question
to be answered is who is the Government? The expression "Government" found under
Article 119 has been defined by Article 257 to mean the Government of Uganda. Secondly
a "district council" has been defined to mean a district council established under Article
10 180 of the Constitution. Furthermore, the expression "local government council" means a
Council referred to in Article 180 of the Constitution. It will immediately be noticed upon
perusal of Article 257 of the Constitution that the letter "g" in the word "government" in
the phrase "local government council" is not capitalised. It suggests that it means
something different from the word "Government" found under Article 119 of the
Constitution because it carries the letter "G" which is deliberately capitalised.

15 The second Defendant is a local government council as far as its corporate status is
concerned. It is not "Government". And the question is therefore whether the contract
sought to be impugned under the provisions of Article 119 of the Constitution of the
Republic of Uganda for want of the legal advice of the Attorney General is one in which
the Government is a party or in which the Government has an interest.

20 First of all, the Government is not a party to the contract because the contract was
executed for and on behalf of Kawempe Division which division is a "local government
council" which council has a corporate status. Secondly the government does not have an
interest in contracts of local government. It has no material interests since the allocation
of resources is duly demarcated. Local governments manage their own resources and
25 services. Article 180 (1) of the Constitution of the Republic of Uganda clearly provides that
a local government shall be based on a council which enjoys legislative and executive
powers in its area of jurisdiction. It provides as follows:

"180. Local government councils.

30 (1) A local government shall be based on a council which shall be the highest
political authority within its area of jurisdiction and which shall have legislative and
executive powers to be exercised in accordance with this Constitution.

(2) Parliament shall by law prescribe the composition, qualifications, functions and
electoral procedures in respect of local government councils, except that—..."

...

35 Finally, I would like to refer to the precedents referred to by Counsels in their submissions.
In the case of **Nsimbe Holdings Limited versus Attorney General and Inspector
General of Government Constitutional Petition No. 2 of 2006**, the Constitutional Court
commented on Article 119 (5) of the Constitution and the advice of the Attorney General
about it. The relevant Article provides that "no agreement, contract, treaty, convention or

5 document by whatever name called to which the Government is a party or in respect of
which the Government has an interest, shall be concluded without the legal advice from
the Attorney General." According to the opinion of the Attorney General quoted by the
Constitutional Court, the advice of the Attorney General is mandatory in contracts in which
Government has an interest. The Attorney General also noted that NSSF is a Government
10 body, and the Government had an interest in the joint-venture between Premier
Developments Ltd and Mugoya Construction Ltd. Consequently, it was a requirement for
the joint-venture agreement to be submitted to the Attorney General for legal advice. The
Constitutional Court noted that NSSF is a public company established by statute and
wholly controlled by the Government of Uganda on behalf of workers and beneficiaries.

15 On the basis of the finding that the Government had an interest in NSSF the Constitutional
Court held that the agreement/transaction in question should not have proceeded without
advice of the Attorney General in accordance with Article 119 (5) of the Constitution. They
further held that the agreement was null and void by virtue of Article 2 of the Constitution
which provides that any law or act which contravenes the Constitution is void to the extent
20 of the contravention. In the premises they held that the merger agreement contravened
among others Article 119 (5) of the Constitution and was null and void.

The Constitutional Petition of **Nsimbe Holdings versus Attorney General and another**
(supra) is clearly distinguishable from the facts before this court. In that case it was held
by the Constitutional Court that the Government had an interest in NSSF. It was on the
25 basis of that finding that they held that Article 119 (5) of the Constitution was applicable.
In the case before this court, it cannot be held that the government has an interest in
Kawempe Division Local Council which council is a corporation with decentralised powers.
They can retain their own lawyers to give them advisory services or even employ a district
local government attorney. Secondly a 'local government council' has clearly been
30 distinguished from 'Government' by virtue of the various definitions under Article 257 of
the Constitution. According to Article 256 (1) (r) a "local government council" means a
council referred to in Article 180 of this Constitution" whereas the word "Government"
means the Government of Uganda. I was also referred to the case of **Uganda
Broadcasting Corporation versus SINBA (K) Ltd and three others Court of Appeal
35 Civil Application Number 12 of 2004**. I have carefully considered the judgment and it
does not decide anything about Article 119 (5) of the Constitution. It only addresses the
broad doctrine that once a court of law finds that a contract is illegal, it cannot enforce it.

In the case of **Arnold Brooklyn & Company versus Kampala Capital City Authority and
the Attorney General Constitutional Petition Number 23 of 2013**. The facts of the
40 petition are similar to this case. In that case at the instance of KCCA on the 19th of January
2009 the parties entered into a contract in which the Plaintiff/petitioner was to supply 1540

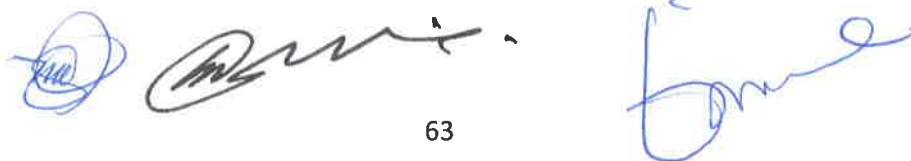
62

5 books of business levy and licenses. The books were duly delivered under the contract on
16th December 2010. On 7th April 2011 KCCA paid to the Petitioner US \$ 83,160.80 leaving
an outstanding balance of US\$ 156,371.52. When the Plaintiff/Petitioner demanded
payment KCCA refused to pay on the ground that the contract was not enforceable. The
Principal State Attorney who appeared in that suit prayed for the issue to be referred to
10 the Constitutional Court for determination.

At the hearing of the reference in the Constitutional Court it was submitted for the
Attorney General that non-compliance with Article 119 (5) of the Constitution is a bar to
payment even if goods have been supplied and consumed. The Principal State Attorney
who appeared also relied on the Local Government Regulations 2006 which stipulates that
15 there shall be no conveying of an acceptance of a contract prior to obtaining approval
from the Attorney General. The Constitutional Court held that the way the questions were
framed would only lead to one answer that contravention of Article 119 (5) of the
Constitution meant that the contract made in disregard of it was a nullity by virtue of
Article 2 of the Constitution. They noted that there was no question for interpretation of
20 the Constitution and the Court had no power to amend the questions referred for
interpretation. They however noted that the issue of whether the advice of the Attorney
General must be given prior to the signing of any agreement, contract, treaty, convention
or document to which Government is a party or whether such advice would be given after
the signing of such an agreement, contract, treaty, convention or document but before
25 such an agreement, contract, treaty, convention or document is concluded was an
important question that needed to be answered. They noted that although the reference
question had been answered, it did not resolve the legal dispute between the parties. For
emphasis the legal dispute was whether the first respondent was liable to pay the Plaintiff
and the question in the reference was framed as:

30 "Whether non-compliance with Article 119 (5) of the Constitution by not obtaining
the advice from the Attorney General in the contract is a bar to payment where
goods and services are supplied, to and consumed by a government entity.

The reference was not meant to determine what a "government entity" is and therefore
the decision is distinguishable. The Constitutional Court was never addressed on the issue
35 of whether Kampala Capital City Authority is "Government" as defined by Article 257 which
definition clearly applies to Article 119 (5) of the Constitution of the Republic of Uganda.
The word "government entity" does not appear in Article 119 (5) of the Constitution. What
appears is the word "Government" and also "where (in the contract) Government has an
interest".



63

5 There is no appellate decision or a decision of the Constitutional Court on whether a local government as provided for under Article 176 and 180 of the Constitution of the Republic of Uganda is "Government" within the meaning of Article 119 (5) of the Constitution of the Republic of Uganda.

10 In this suit and in my ruling there is no question for reference as far as the clear definition of Article 257 of what is meant by "Government" as compared to local government is concerned. The word "Government" under Article 119 of the Constitution means the "Government of Uganda" and therefore it means the Central Government as opposed to a local government.

15 In the premises a local government council has the right to obtain the legal services of a private practitioner or the Attorney General at their sole discretion as Article 119 does not apply to a local government council. In the premises the contract in question in this suit is not null and void by virtue of Article 119 (5) of the Constitution of the Republic of Uganda. Article 119 (5) of the Constitution does not make reference to any agreement, contract, treaty, convention or document by whatever name called, to which a local government is
20 a party or in respect of which a local government has an interest. It only refers to an: "agreement, contract, treaty, convention or document by whatever name called, to which the *Government is a party or in respect of which the Government has an interest*" (Emphasis added).

25 The preliminary objection on the basis of failure to obtain the advice of the Attorney General under Article 119 of the Constitution is overruled.

We agree with the above interpretation that the term "Government" under Article 119 of the Constitution does not refer to local government council and the role of the Attorney General in advising local councils is not mandatory or directed by Article 119 (6) of the Constitution. Moreover, no
30 other law or regulation was cited or availed to us to enable us conclude that there is a ceiling for local government procurement without clearance by the Attorney General.

35 Regarding the delegation of the procurement function for 500,000 coffee seedlings to Butiru Sub - county, the learned trial judge considered the testimonies of Rehema Turyakira Omar PW1 and Joseph Oriokot PW22 on the fact that the delegation of the procurement was made to Manafwa

5 district. We have noted a problem in the numbering of witnesses and have tried to mention them by names and use our own numbering.

Before we even go into the testimonies of witnesses, the case of the prosecution disclosed in the summary of the case before the trial court was as follows. The prosecution intended to prove that Uganda shillings
10 300,000,000/= was earmarked for the procurement of 500,000 coffee seedlings and the procurement was delegated to the Manafwa district local government by the NAADS Secretariat. The delegation was contained in a letter from the NAADS Secretariat to the Chief Administrative Officer (CAO) of Manafwa district. Upon receipt of the letter, the 2nd appellant (who was
15 the CAO) instructed the 1st appellant to expedite the process but the CAO did not bring the procurement need of 500,000 coffee seedlings to the attention of the District contracts committee or any procurement committee of any Sub - county of the district. It was alleged that the 1st appellant contacted the Sub - county NAADS coordinator of Butiru Sub - county for
20 minutes of the procurement committee of the Sub - county and those minutes awarded the tender for the supply of 500,000 coffee seedlings to Shisuwabula enterprises.

Generally, any breach of the procurement laws and regulations, had nothing to do with the envisaged procurement under the Local Government Act if
25 the summary of the case is to be proved through the testimony of prosecution witnesses. The contention of the 1st appellant that he did not participate in the procurement of coffee seedlings has to be put in its proper context. The question is whether there was any procurement of 500,000 coffee seedlings or the disclosure of another offence in which there was a
30 purported procurement not involving the designated officers to initiate such procurement and contract management. It is further significant that the appellants were charged with forgery of documents used in obtaining payment. The particulars of the offence of breach of procurement laws shall



65



5 be further explored in terms of legal doctrine on the established procedure
for procurement of goods and services. We need to point out that the
offence of abuse of office must be proved *inter alia* through establishing that
the accused person did or directed to be done an arbitrary act prejudicial to
the interests of his or her employer or of any other person, in abuse of the
10 authority of his or her office. The authority of the office is therefore material.

We shall consider the entire evidence of the prosecution witnesses generally
against all the appellants and come to our own conclusions on all the
controversies before the trial court.

PW1, Rehema Turyakira Omar testified that she was the Finance and
15 Administration Manager of NAADS Secretariat and her duties included
planning and budgeting for the resources of NAADS. Secondly, she would
follow up disbursements with the Ministry of finance and reported to various
stakeholders. She also reviewed the documents presented for payments in
this case. Prior to June 2014, she was engaged in advising farmers and
20 providing technologies for demonstration purposes. (The term
"technologies" includes agricultural inputs such as fertilizers and improved
seedlings). There were agricultural advisory service providers namely, Sub -
county coordinators and District NAADS Coordinators. She identified a letter
addressed to Manafwa district local government delegating procurement of
25 technologies and addressed to the Chief Administrative Officer Manafwa
district dated 2nd September 2011. She further identified the local purchase
order from Manafwa production department to the director Shisuwabula
enterprises dated 14th of September 2011 in respect of 500,000 coffee
seedlings worth Uganda shillings 300,000,000/= . She further identified a
30 delivery note dated 16th of September 2011 indicating that 500,000 coffee
seedlings were delivered. Lastly, she identified a demand note from
Shisuwabula enterprises addressed to the Chief Administrative Officer of
Manafwa district dated 19th of September 2011 and signed by Wabomba



5 Michael as a director of Shisuwabula enterprises. These documents are crucial in determining the appeal.

We have considered the material documents which include exhibit P2, a letter to the Executive Director NAADS Secretariat Kampala on a verification report on supplies which include item 19 for 500,000 coffee seedlings signed by the
10 chief production officer who is appellant number 4 in this appeal. Exhibit P6 is the document stated to be the minutes of Manafwa district local government Butiru Sub - county dated 5th September, 2011. It purports to be the minutes of the NAADS Procurement Committee that led to the award of the tender to supply coffee seedlings to Shisuwabula Enterprises. In exhibit
15 P 10 (a) there is a request for payment of Uganda shillings 300,000,000/= for the supply of coffee seedlings addressed to the Executive Director NAADS Secretariat Kampala by the Chief Administrative Officer Manafwa district. The document is dated September 2011. Further is attached a demand for payment by Shisuwabula enterprises of Uganda shillings 300,000,000/=
20 addressed to the Chief Administrative Officer Manafwa district through the District NAADS Coordinator (the 1st appellant) and the document purports to have attached a letter of acceptance, delivery note, award letter and prequalification letter. In exhibit P 10 (f) there is a letter from the NAADS Secretariat addressed to the Chief Administrative Officer Manafwa district
25 dated 2nd September 2011 which *inter alia* provides that the NAADS Secretariat will provide some support within its mandate for enterprise development and promotion in the sum of Uganda shillings 418,500,000/=. In that letter it is indicated that the farmers selected to participate should be members of farming groups. Secondly, on the basis of the requests and in
30 liaison with the farmers, sub counties should undertake procurement of the necessary technologies. Paragraphs (c), (d) and (e) of the letter is of particular importance because it states as follows:



5 (c) While the procurement is being delegated to the district, it is important to follow the critical procurement steps and guidelines for funds to flow to the suppliers of the technology materials;

10 (d) the District NAADS Coordinator (DNC) will coordinate the procurement as by established guidelines. The DNC is further advised to ensure that the processes are initiated as soon as possible.

(e) once the procurement process is completed, the documents shall be submitted to the NAADS Secretariat for payment to the supplier (s). The documents to be submitted to the secretariat shall include:

i. The original local purchase orders (LPOs);

15 ii. Verification by subject matter specialists;

iii. Original invoices or demand notes;

iv. Delivery notes;

vi. acknowledgement of receipt by benefiting farmers;

20 The purpose of this letter therefore is to officially communicate to you the decision taken to providing the support requested and; to delegate the procurement function to the district.

You are further advised to expedite the procurement process and submit the funds requests documentation.

25 In exhibit P 10 (g) the notification of tender award indicated it to be under delegated procurement. The notification of tender award is addressed to the director Shisuwabula enterprises by the 4th appellant awarding to Shisuwabula Enterprises the tender to supply 500,000 coffee seedlings at a unit price of Uganda shillings 600 with a total cost of Uganda shillings 300,000,000/=. The letter is dated 13th September 2011.

30 There are some important inferences of fact which can be drawn from the documents admitted in evidence. We first need to refer to the verification report on supplies under delegated procurement, being a letter under the hand of Nambuya Modesta dated 16th September, 2011 and addressed to

5 the Executive Director NAADS Secretariat Kampala through the Chief
Administrative Officer Manafwa district and which stipulates *inter alia* in the
2nd paragraph as follows:

10 The Secretariat requested me to verify the technologies/input on its behalf and I want to
report that I have inspected and verified the supplies. I also confirm that all the
technologies/inputs listed below have been supplied in their rightful quantities and all met
the specification indicated in the Local Purchase Orders. ...

15 Among the items listed as verified is item number 19 which discloses 500,000
coffee seedlings supplied in their rightful quantity. This letter is dated 16th of
September 2011 prima facie gives the impression that the supplies had
already been made. The letter is signed by Nambuya Modesta who testified
as PW 4 and admitted that no supplies had been received by the date of the
letter and the verification report contained false information. Secondly, in
evidence is exhibit P6 dated 5th September 2011 which prima facie discloses
that it is the minutes of the NAADS procurement meeting and the members
20 present are said to be:

1. Patrick Munyanda - Chairman procurement
2. Wabule Mary - Member procurement committee
3. Bwayo Patrick - Chairman S/C farmer's forum
4. Nabende B. Chris
- 25 5. Bulolo Aggrey - Secretary Procurement.

Exhibit P 10 (g) is a letter addressed to the director Shisuwabula enterprises
dated 13th of September 2011 on the subject of the notification of tender
award (under delegated procurement). The letter reads in part as follows:

30 In compliance with section 26 and 57 of the Public Procurement and Disposal of Public
Assets Act (PPDA), No 1 2003 and Regulation 14 (d) of the Local Government Act (LGA),
and NAADS Procurement Guidelines, the Procurement Committee at its sitting on 12th
September, 2011 under Min. BTR.NAADS/PROC/09/2011 awarded you the tender for the
supply of the following items. ...

- 5 While there is controversy as to the date of the meeting disclosed in the document as to whether it could have been on the 2nd September, 2011, it is clear by the *th* after the numeral 2 that its 12th September, 2011 since the numeral 1 before 2 is not very apparent but its form can be faintly seen in exhibit P10 (h).
- 10 We have juxtaposed this against exhibit P11 which purports to be minutes of the NAADS Procurement Committee dated 2nd September 2011. The contested minutes of the meeting has a minute on evaluation of supplier and particularly in minute number BTR/PROC/6/9/011 there is an award of tender to Shisuwabula enterprises to supply 500,000 coffee seedlings at a unit price
- 15 of Uganda shillings 600/= per coffee seedling. These are not the minutes quoted in the award letter exhibit P 10 (g). The award letter reports that the meeting took place on 12th September, 2011. Secondly, the minute is BTR.NAADS/PROC/09/2011. On the other hand, the minute of award dated 2nd September 2011 is BTR/PROC/6/9/11 and is not mentioned in the
- 20 notification of award letter.

Further analysis shows that there are two minutes in evidence on the subject matter of tender award to Shisuwabula enterprises. One is dated 5th September 2011 signed by Bulolo Aggrey and Patrick Munyanda and is admitted as exhibit P6. What is important in the minutes dated 2nd

25 September, 2011 is that it is also signed by Bulolo Aggrey, Patrick Munyanda and Bwayo Patrick. Exhibited for the prosecution are minutes of two meetings bearing two dates. One is dated 5th September 2011 and another 2nd September 2011. The minutes dated 2nd September 2011 is exhibit P11 and signed by Bulolo Aggrey, Patrick Munyanda and Bwayo Patrick. These

30 minutes were disowned by two of the members thereof who testified. These are Bwayo Patrick and Bulolo Aggrey who testified that they signed a backdated document that was backdated to read 5th September 2011 and the meeting in fact never took place as stipulated in the minutes.

5 The defence counsel submitted that Bwayo Patrick and Bulolo Aggrey gave
contradictory evidence on the venue of their meeting where they claimed
they were presented with minutes by the 4th Appellant and the 1st Appellant
and they signed the document in question. Counsel submitted that these two
witnesses should not be believed. What is clear from the document dated 2nd
10 September 2011 exhibit P11 is that it purports to resolve that the committee
directed the Sub - county Chief to issue requests for quotations to three
companies which included Shisuwabula enterprises, Erial Interservices
Limited and Mamayi and Company Ltd. The minutes also prima facie disclose
that the committee resolved that the request for quotations be returned by
15 10 AM on 12th September, 2011 and the valuation and award would be
handled thereafter.

In exhibit P 10 (a) there is a letter by the Chief Administrative Officer
addressed to the Executive Director NAADS Secretariat dated 19th
September, 2011 in which he requested for the secretariat to authorise
20 payment of Uganda shillings 300,000,000/= to Shisuwabula enterprises for
the supply of Arabica coffee seedlings according to supporting documents
attached. The supporting documents include a local purchase order of
Manafwa district local government addressed to the director Shisuwabula
enterprises dated 14th September 2011 for the supply of 300,000 coffee
25 seedlings. Also in evidence is exhibit P 10 (d) dated 19th September 2011 from
Shisuwabula enterprises addressed to the Chief Administrative Officer
Manafwa district through the District NAADS Coordinator Manafwa district
demanding for payment of Uganda shillings 300,000,000/=. The letter
reveals that there was an award to the company for the supply of coffee
30 seedlings to farmers in 30 sub- counties under the NAADS program in the
district. The letter prima facie discloses that attached to it is a letter of
acceptance; a delivery note; award letter and prequalification letter
2011/2012. This supports the testimony of PW1 who testified about the
documents used in obtaining payment.

 71

5 Attached to the letter is a one-page distribution list for coffee seedlings to
30 sub counties prepared by the 1st appellant. It has a list of 30 sub- counties
and against their names is the number of seedlings supplied. Against the
number of seedlings supplied is the signature of a person from each Sub -
county. The total number of seedlings in the grand total is 500,000. Butiru
10 Sub - county which is supposed to have carried out the procurement through
a contractor has against its name 15,000 coffee seedlings in item number 10.
The distribution list is not dated and is signed by the 1st appellant as author.
It is also signed on the face of it by persons from the sub counties.

15 The letter from the Executive Director of NAADS to the Chief Administrative
Officer Manafwa district local government dated 2nd September 2011 has
already been referred to and informs the CAO that there was *inter alia*
support by way of funds in the amount of Uganda shillings 300,000,000/-
earmarked from the NAADS Secretariat for the procurement of 500,000
coffee seedlings for farmers and the procurement was delegated to Manafwa
20 District.

Several coffee seedlings distribution returns were admitted in evidence as
exhibit P12 (a) onwards. These distribution returns were in respect of each
Sub - county. Testimonies of many witnesses disclose that some coffee
seedlings were genuinely received and some were not. Secondly, prosecution
25 evidence shows that about 303,000 coffee seedlings were delivered.
However, some of the testimonies clearly indicated that the deliveries were
made in the year 2012 between April and July 2012. The testimonies
principally show that falsified documents had been filed in the office of the
Chief Administrative Officer of Manafwa district and submitted to the NAADS
30 Secretariat for payment.

The delivery note exhibit P 10 (b) shows a customer's signature dated 16th of
September 2011. The delivery note is by Shisuwabula enterprises. It purports
to be the delivery note for the supply of 500,000 coffee seedlings and is also

5 dated 16th September 2011. The customer's signature in exhibit P 10 (b) is that of the 1st appellant. It shows that 500,000 Arabica coffee seedlings were received in good order and condition from Shisuwabula enterprises. The delivery note is among the documents submitted for the processing of a sum of Uganda shillings 300,000,000/= by the Chief Administrative Officer.

10 Further juxtaposed to the delivery note is a letter dated 2nd September 2011 under the letterhead of the National Agricultural Advisory Services (NAADS) Manafwa district local government written by the 1st appellant to the Sub - county Chief Butiru Sub - county on the subject of delegated procurement. The letter is exhibit P 13. It indicates that Manafwa district local government

15 was allocated additional funding for procurement of technologies under the NAADS programme for the financial year 2011/2012 and the items to be procured included 500,000 coffee seedlings worth Uganda shillings 300,000,000/=. The last paragraph of the letter reads as follows:

20 Given your good performance in previous procurement, your Sub - county has therefore been selected to undertake the procurement process to the level of award of the contracts with the technical guidance of the production department. Please accord it the urgency required given the short rains season ahead of us.

The letter is signed by Natanga Patrick Matambu, the 1st appellant.

25 A lot of other documentation showing particular individuals signing for coffee seedlings were also admitted in evidence but we do not need to go into the specific details.

Other than PW1, several other prosecution witnesses gave an account of the supply of coffee seedlings in this matter. Suffice it to review the brief details of the testimony of several of these witnesses.

30 PW2 Esereda Mutibwa testified that the NAADS Secretariat delegated the procurement to the district under the PPDA Act. She further testified that there is no contracts committee or evaluation committee at the Sub - county



5 level. She stated that the community procurement threshold was Uganda
shillings 5,000,000/= or below. They expected the district to use the Local
Government PPDA Act and regulations thereunder and further that
procurement in the value of Uganda shillings 50,000,000/= and above was
supposed to be cleared by the Solicitor General. She testified that it was
10 wrong for the Chief Administrative Officer to have delegated the
procurement to the Sub - county.

PW 3 Wabweni Andrew, the senior community development officer Manafwa
district testified about the role of the contracts committee and the procedure
which was supposed to be followed. He did not recall the contracts
15 committee handling the particular procurement in issue. He testified that the
accounting officer who is the district administrative officer cannot direct the
contracts committee to award contracts to anybody because they are
independent.

PW 4 Nambuya Modesta, the district production officer Manafwa district
20 testified that she carried out inspections for quality assurance but never
verified the supply of 5000 (must have meant 500,000 according to her
document of verification) coffee seedlings. She testified that the District
NAADS Coordinator (the 1st appellant) requested for verification and she
gave him a verification report. She however did not carry out the stipulated
25 verification and the report is dated 6th of September 2011. She further
testified that the verification was required for payment and the verification
report was admitted in evidence as exhibit. She did not know whether the
coffee seedlings were supplied. She further testified that some nursery
operators were not paid.

30 PW6 Patrick Bwayo, the chairman Butiru farmer's forum testified that he
never attended any procurement meeting for the procurement of 500,000
coffee seedlings in which the contract was awarded to Shisuwabula
enterprises. He disowned the signature in the minutes dated 2nd September

5 2011. He signed the procurement meeting attendance sheet dated 5th September 2011 after the date of the meeting stipulated in the document. He also witnessed the delivery of seedlings by Mai Mai to Butiru Sub - county of 4000 seedlings and it was not by Shisuwabula enterprises.

10 PW7 Mr. Aggrey Bulolo James, secretary procurement Butiru Sub - county testified that the 4th appellant Stella Nambuya called him and he met the chairman procurement Mr. Patrick Muyanda, Christopher Nabende the NAADS coordinator of Butiru Sub - county and Patrick Bayou in the meeting where they signed backdated minutes. He denied his signature in the exhibited minutes of 2nd September 2011. The minutes he signed was dated 15 5th of September 2011 and backdated. They never awarded a tender to Shisuwabula enterprises to supply 500,000 coffee seedlings. It is the 1st appellant who gave him the minutes to sign. He testified that they had handled procurement for Uganda shillings 250,000,000/= and received the seedlings. After he was given minutes of 5 September 2011 by the 1st and 4th 20 appellants to sign. The minutes were admitted as exhibit P5.

PW 8 DIP Mugisha Eldad testified that he carried out investigations and produced the bank statement of Shisuwabula enterprises. He further interviewed Wamomba Michael, a director of Shisuwabula enterprises. Money was paid to the enterprise on 10th October, 2011 in the amount of 25 Uganda shillings 282,000,000/=. The money was 1st drawn on 11th of October 2011 in the sum of Uganda shillings 111,000,000/= by cash cheque. On 13th of October 2011 there was a withdrawal of Uganda shillings 70,050,000/= by the other directors of Shisuwabula Enterprises namely Kitsewa Jerry Otieno. On 20th of October 2011 they withdrew Uganda shillings 17,150,000/=. He 30 further testified about a request for payment by Shisuwabula enterprises of Uganda shillings 300,000,000/=. Basing on the distribution list which had been used, he established that seedlings had been received by the beneficiaries. He moved to 30 sub- counties and some disputed the receipt

5 of the seedlings in the verification documents. The documents were submitted to the secretariat for payment. The documents submitted for payment included the local purchase order, the verification, original invoices/demand notice, delivery note and acknowledgement of receipt of seedlings by farmers. In evidence is the letter in which the Chief
10 Administrative Officer gave instructions to the 1st appellant dated 7th of September 2011 for the 1st appellant to expedite the process of procurement. He further testified that the District NAADS Coordinator (the 1st appellant) did not have a document delegating to Sub - county function of procurement in the particular transaction and instead he obtained a distribution list from
15 the 1st appellant. He further testified that he established in his investigations that nursery operators were contacted by the 1st appellant and the 3rd appellants to this appeal. The delivery note was for the supply of 500,000 coffee seedlings dated 16th of September 2011 on the head note of the District NAADS Coordinator (the 1st appellant. The distribution list has dates
20 up to July 2012. He established that it is the 1st appellant who requested the director of Shisuwabula enterprises to generate documents indicating demand note, bank account details. He testified that the 1st appellant collaborated with Shisuwabula enterprises according to what he established from another person (Director of Shisuwabula Enterprises). According to PW
25 8, the distribution list was a forged one, there was no basis for the notification of award of tender to Shisuwabula enterprises, the district contracts committee should have handled the procurement and the Chief Administrative Officer gave the assignment to the 1st appellant to expedite the process. He testified that the 1st appellant participated in the
30 procurement of the seedlings from nursery bed operators yet payment was made to Shisuwabula enterprises. He further asserted that the nursery operators were still demanding for payment.

In relation to the 2nd appellant, PW8 testified that the problem of the 2nd appellant was that he instructed the District NAADS Coordinator (the 1st

5 appellant) instead of the contracts committee to handle the procurement. The 3rd appellant instructed nursery bed operators to supply farmers on behalf of Shisuwabula enterprises. He noted that the notification of tender award quoted a procurement committee meeting but it is disputed whether the meeting took place at all. He testified that the 4th appellant stated that
10 the 1st appellant instructed her to take on procurement of coffee seedlings. The instructions of the Chief Administrative Officer to the District NAADS Coordinator (the 1st appellant) is dated 5th of September 2011. In cross examination, PW8 further testified that they established that about 303,000 coffee seedlings had been delivered to the farmers and had been planted in
15 the gardens. This was in 30 sub- counties NAADS funded. Further the 1st appellant was not a member of any procurement committee and yet the distribution list was prepared by the 1st appellant. He further clarified that the coffee seedlings supplied amounted to 309,049 coffee seedlings. However, 18 sub- counties did not benefit from the programme.

20 PW9 Mr. Watura Michael Wabwaala, the NAADS coordinator Bahabusi Sub - county testified that he received 15,000 seedlings from coffee nursery operator Mr. Watenyeri Fred and was not able to tell whether the supply was made on behalf of Shisuwabula enterprises.

Similarly, PW10 Rose Khaiza Okello, the Sub - county NAADS coordinator
25 Nalondo Sub - county testified that her Sub - county did not receive any seedlings in 2011. However, they received seedlings in the May 2012 of over 16,000 seedlings. They did not sign the distribution list as purported in the document exhibit P 10 (e). She testified that Shisuwabula enterprises got supplies of coffee seedlings from nursery operators in April 2012. Further that
30 the 1st appellant was not part of the procurement establishment at the Sub - county level. The 3rd appellant was the chairman of the farmer's forum and not involved in procurement.



5 PW11 Tingu Robert testified that he was contacted by the 1st appellant to supply seedlings. He supplied Magale Sub - county. However, he was not paid and he did not supply coffee seedlings to Shisuwabula enterprises.

PW12 Edward Buyera, a farmer testified that they picked coffee seedlings from PW11.

10 Steven Soyi, coffee farmer testified that the 1st appellant instructed him to supply coffee seedlings to sub counties of Nabutola and Nalondo and he had not been paid. He signed the distribution list and did not know Shisuwabula enterprises. He testified that he was given the distribution list by the 1st appellant he signed and identified his signature. On investigations
15 carried out by the Inspector General of Government, his supply was put under Shisuwabula enterprises when it was Mai enterprises to pay him. He was taken there by the 1st appellant. However, Mai Mai enterprises never paid him.

PW13 Tsema Rex Christopher, a farmer testified that he received the coffee
20 seedlings in 2011. He received about 10,000 coffee seedlings in July 2011 but there are supposed to get 20,000 coffee seedlings. His Sub - county did not get. He further testified that they received the coffee seedlings twice. The first one was supplied in June 2011 and another one supplied between May and June 2012. This was the Sub - county of Buta. They got seedlings from
25 nursery operators and did not know the arrangement between the contractor and nursery operators.

PW14 Mityero David, Sub - county NAADS coordinator Buwabwala Sub - county testified that in 2011 his Sub - county did not receive coffee seedlings. They received 23,200 coffee seedlings in 2012. They were supplied by nursery
30 operators.

PW15 Wandukwa John, a coffee farmer from Butira parish Senkuru Sub - county testified that they supplied seedlings to Buwebwaala and Senkuru sub

5 counties on instructions of the 1st appellant. The supplies were made in June 2012.

PW16 Naluande David Tutu a farmer and nursery operator supplied coffee seedlings to Bukhoto Sub - county on 23rd August 2012. He testified that he had been approached by Mai Mai and was declared a hostile witness and
10 cross examined by the prosecution.

PW17 Watika Fred, and nursery operator testified that he was given a contract to supply coffee seedlings by the 1st appellant who also negotiated the price with him. He supplied the seedlings in May 2012 to Buta Sub - county and was never paid. He testified that he does not know Shisuwabula
15 enterprises.

PW18 Mooni Peterson, chairman farmers forum Busukuyu Sub - county testified that he never witnessed the distribution of coffee seedlings in 2011. He however witnessed distribution of coffee seedlings in the May 2012 and received 20,000 coffee seedlings from Matambo Joshua, the supplier. He did
20 not know where the supplier got the seedlings from.

PW19 Daudi Walyaula, a coffee farmer and the nursery bed operator supplied Bugobero Sub - county in 2012. He was instructed by one James Wamutana of the Sub - county farmers forum who claimed to have had instructions from the 1st appellant. He also testified that he never received payment and that
25 he had supplied the coffee seedlings in June 2012.

PW20 Situma Robert, a farmer and chairman farmer's forum testified that the Sub - county got coffee seedlings in July 2012. This was Bukhokho Sub - county.

PW21 Wabukhata Kiabi Sam, a coffee farmer of Bukhokho Sub - county
30 testified that he was supplied coffee seedlings in July 2012. He denied the signature purported to be his which was written on the receipt of 500 coffee seedlings in exhibit P 12 (e).

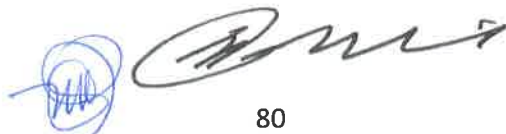


5 PW22 Dr. Joseph Oriokot confirmed having written to Manafwa district about the support in the sum of 418,400,000/= which included money for coffee seedlings worth 300,000,000 Uganda shillings. The procurement had been delegated to Manafwa district. He further testified that the sub counties could do community procurement. That the District NAADS Coordinator
10 supervises what goes on in the field. Provides guidance in the procurement process in the committee but does not sit on the Sub - county procurement committee. He was of the opinion that the district should have procured the 500,000 coffee seedlings. He stated that NAADS has no direct role in the procurement. Procurement was supposed to comply with the PPDA
15 guidelines. He did not know whether the procurement in the particular case had been delegated to the Sub - county.

PW23 Mubosa David Sowedi, a farmer and nursery operator testified that Wamutanya James, chairman farmer's forum of Bugibira told him that the 1st appellant had asked him to supply his Sub - county. He supplied in June and
20 December 2012.

PW24 Sitanyi Womalabe of Mukoto Sub - county and nursery operator testified that he was approached by the DNC to supply and they supplied coffee seedlings in July 2012. He further testified that he negotiated the price with the 1st appellant. He had not been paid by the time of the testimony. He
25 further testified that he supplied through Mai Mai.

PW25 Francis Byekwaso, the former manager monitoring and evaluation at the NAADS also testified. He testified that implementation of the programme starts with the local government undertaking procurement. The purpose of the guidelines was to ensure that money is put to its intended use.
30 Procurement at the Sub - county level was done by the procurement committees. He further testified that the sub counties were allowed to procure technologies. He testified that NAADS received the verification report.



5 PW26 Subuwufu Erisa, a document examiner with the police forensic department at Naguru submitted his findings on several questioned signatures in the documents admitted in evidence.

Similarly, there was the testimony of PW27 D/Sgt Wafula Anthony who testified about investigation of the crime and his findings.

10 Finally, we have considered the testimony of PW28 David Timbiti, a nursery operator. He testified that he received the seedlings in May 2012. He dealt with the 1st appellant and the seedlings were taken by the 1st appellant.

The documentary evidence together with the testimonies of the prosecution witnesses indicate that the NAADS Secretariat earmarked Uganda shillings
15 300,000,000/= for the procurement of 500,000 coffee seedlings on an earlier request of the Chief Administrative Officer Manafwa district to support the farmers in that district. When confirmation was received by letter from the NAADS Secretariat that the funds were available, the Chief Administrative Officer who is the 2nd appellant instructed the 1st appellant to expedite the
20 process of procurement. The 1st appellant wrote a letter to the Sub - county Chief of Butiru Sub - county to carry out the procurement on behalf of the district. The facts analyzed also disclose that the procurement of 500,000 coffee seedlings was supposed to cover 30 sub- counties. The letter from the NAADS Secretariat confirming the availability of funds is dated 2nd
25 September 2011. Immediately thereafter action was taken in which Butiru Sub - county was also instructed by the 1st appellant to carry out the procurement. The 2nd appellant who is the Chief Administrative Officer did not instruct the District contracts committee to undertake the procurement for 500,000 coffee seedlings. Procurement in the sense in which it is used as
30 far as the district is concerned or the sub district of Butiru is concerned is the selection of the supplier or contractor to supply the desired 500,000 coffee seedlings. It is clear from the guidelines of the NAADS Secretariat that there were details of guidelines for implementation of procurement procedures by

5 sub counties. The NAADS Secretariat had its own procurement department but delegated the procurement of the earmarked 500,000 coffee seedlings to Manafwa district local government.

We further need to note that there could have been micro procurement by the various sub- counties if the Chief Administrative Officer only acted as the
10 accounting officer to supply the requisite funds for any procurement that was carried out. Instead, one enterprise was prima facie singled out to supply 500,000 coffee seedlings to the 30 sub- counties. It is not clear whether the company was supposed to supply the nurseries which would in turn supply the beneficiary farmers. The evidence reveals that coffee seedlings were
15 received by farmers but from nursery operators and not Shisuwabula Enterprises. There was absolutely no basis for contracting one enterprise to supply 30 sub- counties. If that course was supposed to be adopted, then the procurement could have been lawfully carry out by the District contracts committee who are appointed by the Chief Administrative Officer.

20 The documentation reviewed clearly shows that they contained a lot of false information which was used to access the funds before the supplies were made. The documents used included a distribution list which indicated the number of coffee seedlings each Sub - county was supposed to receive after the procurement is undertaken. However, the document also had the
25 signatures, which on the face of it indicated that each Sub - county representative signed against a specified number of coffee seedlings so that on the face of it the document shows that the coffee seedlings had been supplied and amounted to 500,000 coffee seedlings. Additionally, the 1st appellant acknowledged receipt of 500,000 coffee seedlings from
30 Shisuwabula enterprises in a delivery note dated 16th September 2011 before any coffee was ever delivered. It is not sufficient for the 1st appellant to submit that the documents were used to access the funds. Documents speak for themselves and the use of falsified documents is an offence on its own. It



5 cannot be an excuse that the use of the falsified documents was to expedite the release of funds for the program. The documents are the reason why funds could be accessed early by Shisuwabula Enterprises.

We have considered the submissions of the 1st appellants counsel that funds were accessed on the basis of certain documents according to the testimony
10 of PW8 Detective Inspector of Police Mugisha. For the Chief Administrative Officer who is the 2nd appellant to process payment, he had a demand note from Shisuwabula enterprises according to a letter he wrote on 19th September 2011 exhibit P 10 (a). The supporting documents included a local purchase order dated 14th September 2011. Secondly, there was a demand
15 for payment of Uganda shillings 300,000,000/= in a letter dated 19 September 2011 by the director of Shisuwabula enterprises exhibit P 10 (d). He deceptively indicated in the letter addressed to the Chief Administrative Officer Manafwa district as follows:

20 Following the award to us of supply of five hundred coffee seedlings to farmers in thirty sub- counties under NAADS program in your district, I have the pleasure to inform you that we have done that to the satisfaction of the beneficiaries and it is therefore our request for you to urgently pay us the money above for continued deliveries.

Attached are copies of: – letter of acceptance

– delivery note

25 – award letter

– Prequalification letter 2011/2012

In exhibit P 10 (e), there is a distribution list for coffee seedlings authored by the 1st appellant containing signatures and on the face of the exhibit, must have been signed by 19th September 2011 when the documents were
30 presented for payment. Also accompanying the documents is the notification of tender award by the 4th appellant dated 13th September 2011. The letter as analysed notified a controversial procurement meeting awarding a tender

5 for the supply of 500,000 coffee seedlings to Shisuwabula enterprises. Finally, there is a delivery note showing that the 1st appellant received the goods.

Armed with the relevant documents, the Chief Administrative Officer requested for payment and payment was released in October 2011 to the account of Shisuwabula enterprises.

10 We have carefully considered the grounds of appeal as submitted by the 1st appellant.

The 1st question was whether the 1st appellant was involved in procurement. We have already considered the letter indicating that the 1st appellant delegated procurement to Butiru Sub - county yet the NAADS
15 authority/secretariat had delegated procurement to Manafwa district. The letter exhibit P 10 from the NAADS Secretariat did not delegate procurement to Butiru sub country but gave a framework for procurement by sub-counties. The letter dated 2nd September 2011 in paragraph (a) – (d) and up to the end of the letter it is stated as follows:

- 20 a) The farmers selected to participate should be members of farmers groups, if not should endeavor to register;
- b) On the basis of the request and in liaison with the farmers, sub counties should undertake procurement of the necessary technologies. The district shall provide the necessary back stopping and advice from the relevant subject matter specialists;
- 25 c) While the procurement is being delegated to the district, it is important to follow the critical procurement steps and guidelines for funds to flow to the suppliers of the technology materials;
- d) The District NAADS Coordinator (DNC) will coordinate the procurement as part established guidelines. The DNC is further advised to ensure that the processes are
30 initiated as soon as possible;
- e) Once the procurement process is completed, the documents shall then be submitted to the NAADS Secretariat for payment to the supplier (s). The documents to be submitted to the secretariat shall include:
- i. The original local purchase orders (LPO's);
 - ii. Verification by subject matter specialist;
 - iii. Original invoices or demand note;

35

- 5
- iv. Delivery notes;
 - v. Acknowledgement of receipt by benefiting farmers;




(f) The NAADS Secretariat will verify the delivery of technologies and any appropriate works before payment can be effected.

10 The purpose of this letter therefore is to officially communicate to you the decision taken to provide the support requested and; to delegated the procurement function to the district.

You are further advised to expedite the procurement process and submit the funds request documentation....

15 The question is whether it was erroneous for the learned trial judge to hold that the delegation was made to Manafwa district. Counties are administrative units within the district and therefore the procurement was supposed to be carried out by Manafwa district even if micro-procurements were carried out by several sub counties under the guidance of the Manafwa district accounting officer.

20 The 1st appellant's counsel further submitted on whether the procurement took place. The evidence adduced shows that farmers were supplied about 303,000 coffee seedlings between October 2011 and July 2012. However, the procurement process used was irregular. The verification report exhibit P2 could only have been made by the person who signed it irrespective of who
25 drafted it. It can only be a defence that it was signed under duress. The verification report was issued by PW 4 Nambuya Modesta. She confessed that she did not verify the seedlings in the field. Secondly, the report was generated with a view to access the funds and was part of the scheme to get funds sooner to Shisuwabula enterprises. In the circumstances it was
30 erroneous to hold that it was the 1st appellant who prepared the verification report. The author of the document is the one who signed it. On the submission of the 1st appellant as to whether PW4 is an honest witness, the observation of the learned trial judge is valid. PW4 confessed to falsehood and the finding that she is an honest witness cannot be impeached.

  85 

5 On whether the 1st appellant prompted PW6 and PW7 to sign a set of minutes, again a document signed by the authors is owned by the authors. In the absence of duress or evidence of duress before the trial court, the document was authored by the persons who signed the minutes and they cannot assign responsibility to the 1st appellant on the face of it.

10 On whether the 1st appellant contracted nursery operators to supply seedlings, there is evidence of witnesses to that effect and the finding of the learned trial judge is supported by those testimonies. The witnesses who stated that they dealt with the 1st appellant included PW 28 David Timbiti, PW24 Sitanyi Womalabe who testified that he negotiated the price with the

15 1st appellant, PW23 Mubosa David Sowedi whose testimony to that effect is hearsay and inadmissible as to the instructions of the 1st appellant. Similarly, PW19 Daudi Walyaula gave inadmissible hearsay testimony about another supplier who supplied seedlings and made claims about the 1st appellant. PW

20 17 Watika Fred testified that he was given instructions by the 1st appellant to supply coffee seedlings. PW12 Soyi Steven testified that the 1st appellant instructed him to supply coffee seedlings to some sub- counties. PW11 Tingu Robert also testified that he was contracted by the 1st appellant to supply seedlings. In the premises there is sufficient evidence for the finding of the learned trial judge that the 1st appellant was involved in contracting nursery

25 operators to supply coffee seedlings to some sub- counties. In any case the submission that the Sub - county handled the procurement is technically inaccurate. Procurement stops with the signing of the contract since it involves the process of bidding evaluation and selection. Regulation 3 of the local government procurement regulations defines procurement as:

30 "procurement" means acquisition by purchase, rental, lease, hire purchase, licence, tenancy, franchise or any other contractual means, of any type of works, services or supplies or any combination;

Further, Regulation 17 makes a contracts committee responsible for several duties as set out in the regulation which is quoted hereunder. These duties



5 relate to the sourcing of suppliers or buyers for procedure and disposal respectively.

17. (1) A contracts committee shall be responsible for—

(a) adjudication of recommendations from the procurement and disposal unit and award of contracts;

10 (b) approving the evaluation committee;

(c) approving bidding and contract documents;

(d) approving procurement and disposal procedures;

(e) ensuring that best practices in relation to procurement and disposal are strictly adhered to by procuring and disposal entities;

15 (f) ensuring compliance with the Act; and

(g) liaising directly with the Authority on matters within its jurisdiction.

(2) A contracts committee shall for the purposes of subregulation (1)—

(a) authorize—

(i) the choice of a procurement and disposal procedure;

20 (ii) solicitation documents before issue;

(iii) technical, financial or combined evaluation reports;

(iv) contract documentation in line with the authorized evaluation reports; and

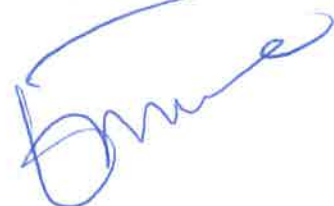
(v) any amendment to an awarded contract;

25 (b) recommend for the delegation of a procurement or disposal function by the accounting officer whenever the necessity arises; and

(c) award contracts in accordance with applicable procurement or disposal procedures as the case may be.

(3) In addition, in the performance of its functions under this regulation a contracts committee shall—

30 (a) approve any amendments to bids before issuing them to bidders;



- 5 (b) nominate contracts committee members to attend and witness pre-bidding meetings and bid openings and closings;
- (c) approve negotiation teams;
- (d) approve evaluation reports for bidders;
- (e) receive and consider micro procurement reports;
- 10 (f) approve amendments of contract documents; and
- (g) ensure compliance with these Regulations.

The procurement process in this circumstances is meant to select a supplier or suppliers of coffee seedlings. The quoted regulations show that the procurement process involves the prequalification, bidding by potential suppliers, evaluation and award of contract among other things. The purchase of seedlings after award of contract as adduced by the prosecution witnesses can only be contract management and does not fall within the mandate of the procurement committee or a contracts committee.

In count 5, the 1st appellant was charged with abuse of office by falsely certifying that 500,000 coffee seedlings were supplied. The falsification of course appears in the distribution list. Secondly, the 1st appellant's counsel submitted that the government was not prejudiced because there was a supply of coffee seedlings anyway. The evidence shows that some sub-counties did not receive the coffee seedlings or did not receive the amount of coffee seedlings which were determined to be supplied to them. It follows that 3rd parties were prejudiced. In the premises the appeal against the counts of abuse of office have no merit and therefore fail.

The 1st appellant was also charged with influence peddling contrary to sections 8 and 26 of the ACA and convicted.

30 We have carefully considered section 8 of the ACA which provides as follows:



5 8. A person who does or omits to do an act in contravention of established principles or procedure as a result of improper influence, for his or her own benefit or for the benefit of a 3rd party commits an offence.

Section 8 penalises the person who contravenes established principles or procedures as a result of improper influence for his or her own benefit. What
10 was the improper influence in the circumstances of the 1st appellant's case? This section is meant to penalise someone who is influenced to contravene established principles and procedures. In the circumstances the 1st appellant was erroneously convicted under the section and his appeal against conviction on this count succeeds and the conviction is set aside.

15 **Forgery**

It was maintained for the prosecution that the appellant made a false document that purported to state that 500,000 coffee seedlings were supplied. The distribution list was signed by the 1st appellant and therefore by endorsing it at the bottom, the 1st appellant is deemed to have authored
20 the document and approved of all its contents. It is irrelevant that some information was left to be filled up. A person who gives a signed blank cheque is responsible for the amount that is filled in it and cashed. In the premises the appellant was rightly convicted for the offence as charged.

In count 2 the 1st appellant was convicted of fraudulent false accounting.

25 In light of our finding that false information was inputted in the system for purposes of obtaining payment, the 1st appellant was rightly convicted for the entries made in the distribution list, delivery note among other documents that he signed. We accordingly uphold the conviction.

We shall subsequently consider the other grounds relating to whether the
30 appellant was lawfully ordered to pay compensation to the victim of the offence. We shall consider this ground together with the appeal of the 2nd, 3rd and 4th appellants.



5 **Appeal of the 2nd appellant.**

The 2nd appellant was the Chief Administrative Officer of Manafwa district at the time of commission of the offences. He was charged with the offence of abuse of office by causing the payment of Uganda shillings 300,000,000/= yet he knew that the procurement procedure and law had not been followed.

10 The learned trial judge held that he caused the payment of Uganda shillings 300,000,000 to Shisuwabula Enterprises. It was submitted for the 2nd appellant that the documents involved in processing payment were verified by other persons and that he relied on the documents and forwarded the documents for payment to be made by NAADS Secretariat.

15 The problem in that submission is that procurement was delegated to the district. The district should have ensured that each Sub - county or county undertook procurement as stipulated in the letter exhibit P 10 (f) dated 2nd September 2011 and paragraphs (a) to (c) that:

- 20 a) The farmers selected to participate should be members of farmers groups, if not should endeavor to register;
- b) On the basis of the request and in liaison with the farmers, sub counties should undertake procurement of the necessary technologies. The district shall provide the necessary back stopping and advice from the relevant subject matter specialists;
- 25 c) While the procurement is being delegated to the district, it is important to follow the critical procurement steps and guidelines for funds to flow to the suppliers of the technology materials;

The letter is clear that procurement was delegated to the district which was to follow critical procurement steps and guidelines for funds to flow to the suppliers of the materials/coffee seedlings. It was expected that the sub
30 counties would make a request in liaison with the farmers for the amount of seedlings to be supplied and would carry out the procurement. It is however clear that the overall procurement in terms of the guidelines would be undertaken by the district. Unfortunately, technical words like the level of the local councils which are corporations was not used. Instead it is clear that



5 sub- counties could procure and it is also clear that several sub counties were envisaged. It was therefore not a programme for the procurement to be further delegated to one Sub - county. It was supposed to be undertaken by several sub counties with smaller budgets generated by the needs of particular farmer's groups in that Sub - county. In the best case scenario, the
10 2nd appellant was supposed to channel funds to several sub counties if procurement is to be undertaken by each of them. In this case one Sub - county purported to procedure for the entire district comprising of 30 sub counties.

15 Instead, one enterprise was selected to undertake the supply of goods to several sub counties. Had the district contracts committee selected the contractor, there would be no problem. The problem is that one Sub - county purported to select a contractor and the 2nd appellant speeded up the request for payment to that enterprise. He did not carry out his role as the accounting officer and therefore the reference to the District NAADS
20 Coordinator who further without apparent express instructions delegated procurement to Butiru Sub - county was an arbitrary act prejudicial to the interests of the employer. By quickly forwarding documents for payment, the 2nd appellant was part of the scheme to pay the selected enterprise which had been contracted irregularly to supply the coffee seedlings. He forwarded
25 documents for payment on the basis that the enterprise had already supplied the 500,000 coffee seedlings to the various farmers in the various sub-counties. Delegating procurement to one Sub - county was an arbitrary act and in the very least was a grossly negligent act amounting to criminal culpability. It violated the oversight role of the accounting officer. The
30 argument that the procurement would use the NAADS guidelines fails because the guidelines should have been used for all sub- counties and not one Sub - county on behalf of all. Further, the role of the District NAADS Coordinator who is the 1st appellant was merely to coordinate and not to conduct procurement. The instructions to the District NAADS Coordinator in

5 terms of speeding up the process was in the very least vague. How was he
going to speed up the process without procurement being undertaken? The
evidence suggests that the only process that was speeded up was the
generation of documents to facilitate speedy payment to Shisuwabula
Enterprises. Whatever the arrangement between Shisuwabula Enterprises
10 and the suppliers, the procurement was already irregular. Finally having one
mega enterprise to supply coffee seedlings to all sub- counties clearly
violated the directives of the NAADS Secretariat who had delegated
procurement to the district. Instead of procurement being undertaken by
various sub- counties where accountability could be easily followed up, one
15 company was paid.

On whether prejudice was suffered by the government, we agree that 3rd
parties in some of the sub counties did not get the coffee seedlings yet the
documents presented by the 2nd appellant indicated that all the sub counties
had been supplied and everything was accounted for. In the circumstances
20 we uphold the conviction of the 2nd appellant for the offence of abuse of
office.

Appeal of the 3rd appellant.

The 3rd appellant Mr. Alex Namolya was charged in count 3 with the offence
of abuse of office and in count 6 with the offence of preparation to commit
25 an offence contrary to section 56 (b) of the ACA and convicted accordingly.
The 3rd appellant's counsel submitted that there was no evidence connecting
the appellants to the offences and the ingredients of the offences were not
proved beyond reasonable doubt. The record shows that in count 6 the 3rd
appellant was charged with preparation to commit an offence as stated
30 above and in the particulars it is averred that during the month of September
2011 in Manafwa district, being the chairman Manafwa district farmers
forum, in preparation to, or in furtherance of commission of the offence of
abuse of office assisted the 1st appellant to contravene the procurement

5 procedures, laws and requirements during the procurement of 500,000 coffee seedlings by Manafwa district local government.

10 Firstly, the 3rd appellants counsel submitted that the particulars of the offence offend section 25 (c) of the Trial on Indictments Act. The statement of the offence was clearly set out in the statement of the offence in compliance with the section 25. With regard to the particulars of the offence, this depends on the wording of section 52 (b) of the ACA. The section provides as follows:

52. Punishment for attempts, preparations, abetments and criminal conspiracies.

A person who—

(a) attempts to commit an offence under this Act;

15 (b) does a thing which is preparatory to, or in furtherance of the commission of an offence under this Act; or

(c) abets or is engaged in a criminal conspiracy to commit an offence under this Act,

commits an offence and is liable on conviction to any penalty prescribed respectively for such an offence by the Penal Code Act.

20 The 3rd appellant's counsel submitted that the evidence relied on by the prosecution was that some nursery operators stated that the 3rd appellant contracted them to supply coffee seedlings on behalf of Shisuwabula Enterprises and the learned trial judge believed them. He submitted that contracting nursery operators without prejudice is contract management or
25 execution and no specific contravened provision of the procurement laws and procedures was cited in the judgment. In any case he submitted that sub- counties were supposed to procure technologies. This is based on World Bank guidelines on procurement. Further that there is no requirement to seek the consent of the solicitor general before executing a contract. He
30 contended that sub- counties were required to use the NAADS guidelines in procurement.



5 He submitted that the 3rd appellant never assisted the 1st appellant to contravene the procurement laws, procedures and requirements during the procurement of 500,000 coffee seedlings by Manafwa district local government and therefore he was wrongly convicted of the offence.

10 A word should be said about the concept of fair procurement and therefore the contravention of the procurement laws, procedures and requirements in the procurement of goods and services. Procurement processes defined by section 3 of the PPDA Act as follows:

15 "Procurement process" means the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award of contract, and contract management.

Though it includes contract management, after the award of the contract, the execution of the contract is governed by the contractual terms with the supplier of the services. Contract management under section 92 of the PPDA Act is provided for by section 76 of the Act which stipulates that:

20 76. (1) For the purposes of this Act, an award decision is not a contract.

(2) An award shall not be confirmed by a procuring and disposing entity until –

(a) the period specified by regulations made under this act has collapsed; and

(b) funding has been committed in the full amount of the required period.

25 (3) An award shall be confirmed by a written contract signed by both the provider and the procuring and disposing entity only after the conditions set out in subsection (2) have been fully satisfied.

(4) The award decision shall be posted in a manner prescribed by regulations during the period specified in paragraph (a) of subsection (2).

30 After a contract has been awarded, terms negotiated and executed by the parties, the implementation of the contract is not part of the procurement cycle unless technical issues are raised so as to avoid it or to negotiate fresh terms. It had to be shown that the 3rd appellant was part of the procurement

5 process in terms of soliciting, awarding or evaluating the potential
contractors. There is no evidence linking the 3rd appellant to the process of
procurement of the contract to supply the seedlings. The 1st appellant
purported to delegate the procurement to Butiru Sub - county. The
particulars of the offence however indicate that the 3rd appellant assisted the
10 1st appellant in the breach of the procurement laws and procedures. We
agree with the appellant's counsel that the particulars of the offence are
vague. Secondly, the particulars of offence were prejudicial to the defence
because it is not clear what the 3rd appellant was defending himself against.

15 It is further not clear how the 3rd appellant assisted the 1st appellant to
contravene the procurement procedure, laws and requirements in the
procurement of 500,000 coffee seedlings by Manafwa district local
government. In the premises, we would set aside the conviction of the 3rd
appellant and set him free unless held on other lawful charges.

Appeal of the 4th appellant.

20 The 4th appellant preferred 12 grounds of appeal which grounds were argued
jointly. The gist of the grounds was that the learned trial judge convicted the
4th appellant of abuse of office in the absence of evidence proving beyond
reasonable doubt the 2nd and 3rd elements of the offence. The act complained
of in the conviction of the 4th appellant is the issuance of the notification of
25 tender award to Shisuwabula Enterprises. It was the prosecution case upheld
by the learned trial judge that the notification of the tender award letter was
an arbitrary act.

30 The 4th appellant's counsel submitted that the 4th appellant's duty was simply
to sign a prepared letter where she duly notified Shisuwabula Enterprises of
the award and there was no evidence of who prepared the notification of the
tender award. Without much ado, that submission of who prepared the letter
has no foundation in law since the person who issued the letter is the one



5 who endorsed as the author thereof. By endorsing as the author of the letter,
the letter was owned by the 4th appellant and therefore it was the 4th
appellant who issued the notification of tender award irrespective of who
typed or prepared it for her signature. Of course the argument is that the 4th
appellant was not responsible for the award of the tender and merely
10 communicated the decision of the procurement committee. Any culpability
of the 4th appellant must in some way relate to guilty knowledge or
participation in the falsification of the minutes alleged by the prosecution to
be the foundation for the fraud. The question is whether the appellant
participated in or knew about the fact that there was no procurement
15 meeting as submitted by the prosecution.

Further, the 4th appellant's counsel submitted that the 4th appellant merely
signed a notification to communicate to the highest bidder a tender award
by the procurement committee. He relied on the testimony of PW 21 the
acting NAADS Executive Director that communication to the highest bidder
20 is made by the Sub - county Chief. Most importantly learned counsel for the
4th appellant submitted that exhibit P 19 which is the notification of tender
award shows that it relies on the minutes dated 12th September 2011. Exhibit
P6 which was admitted in evidence at the minutes of 5th of September 2011
and makes reference to procurement meeting of 12th September, 2011. He
25 further submitted that sub- counties were allowed to procure technologies
in excess of Uganda shillings 500,000/= according to the testimony of various
witnesses.

We have carefully considered the documents which documents speak for
themselves. The notification of tender award clearly refers to a sitting of the
30 procurement committee on 12th September 2011 and its minute
BTR.NAADS/PROC/09/2011. In that notification, Shisuwabula Enterprises was
notified that it had been awarded the tender for the supply of 500,000 coffee
seedlings valued at Uganda shillings 300,000,000/=. They were supposed to

5 accept the offer and submit acceptance letter within 7 days pursuant to which the supplier would be issued a local purchase order.

In evidence is exhibit P6, which are the minutes of 5th September 2011 and the members present are indicated as Patrick Munyanda, Webule Mary, Bwayo Patrick, Nabende B. Chris and Bulolo Aggrey. The 4th appellant is not
10 a member of the procurement committee or in attendance of the NAADS procurement meeting of Butiru Sub - county dated 5th of September 2011. It should be noted that those minutes do not award any tender to Shisuwabula Enterprises but shortlist some companies which included Shisuwabula Enterprises, Erial Interservices Ltd and Mamayi and company Ltd where it was
15 resolved that the committee would sent requests for quotations to those companies and wait for their response. The minutes indicated that the committee resolved that the request for quotations be returned by 10 AM on 12th September and the valuation and award will be handled thereafter. The other minutes admitted in evidence is exhibit P11 which is dated 2nd
20 September 2011 and the members indicated as presented are the same persons who attended the meeting of 5th September 2011. These minutes turned out to be very contentious and suffice it to note that in a minute number BTR/PROC/6/9/2011 the alleged purported award of contract to Shisuwabula Enterprises to supply 500,000 coffee seedlings at a price of
25 Uganda shillings 600 per seedling is reflected. The subsequent minute also directed the Sub - county Chief of Butiru Sub - county to go ahead and inform the District NAADS Coordinator and the district administrative officer Manafwa district local government to sign a contract with Shisuwabula Enterprises for the supply of 500,000 coffee seedlings and the agreed price.
30 On the face of it the minutes signed by Bulolo Aggrey, Patrick Munyanda and Bwayo Patrick.

The 1st problem with the minutes is that it has the same date as the letter from the NAADS Secretariat notifying the Chief Administrative Officer that



5 funds would be available for 500,000 coffee seedlings in the sum of Uganda
shillings 300,000,000/=. Secondly, the minutes are at variance with the other
minutes of 5th September 2011 which prima facie occurred after the award
of contract that which claims to be the preliminary meeting in which
Shisuwabula Enterprises and 2 other enterprises were to be requested for
10 quotations for evaluation before award of contract on 12 September 2011.
Thirdly, there is no evidence of any minutes of any procurement committee
dated 12th September 2011 adduced in evidence. It is material that the
notification of tender award by the 4th appellant is dated 13th September
2011 presumably one day after the procurement meeting quoted therein of
15 12th of September 2011.

PW6 and PW7 who were members of the procurement committee testified
about backdated minutes which were backdated to read 5th September,
2011. However, the 4th appellant clearly specified that the meeting took place
on 12th September, 2011 her letter is dated 13th September, 2011.

20 The 4th appellant's counsel addressed the court on several points of defence.
This included the fact that sub- counties could procure technologies
according to the testimonies of PW1, PW8, PW3, PW4, PW7, PW26 and PW27
as well as DW4 and exhibit P15. The defence presupposes that we would find
that the procurement was carried out lawfully by sub- counties.

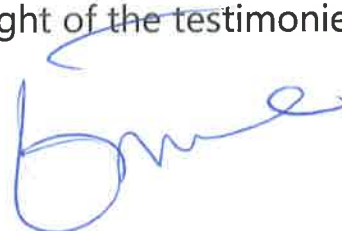
25 Further, the 4th appellant's counsel pointed out that the testimonies of PW6
and PW7 were full of inconsistencies and contradictions. PW 6 testified that
the 1st appellant told them to convene at the shop to meet on the issue of
the minutes. On the other hand, the PW 7 testified that they met at a salon
of PW 6 where he had told him to come. He further testified that he was
30 called on 5th September 2011 and signed 2 sets of minutes with one
procurement item. The 4th appellant's counsel submitted that no such minute
was tendered in evidence. He further pointed out that the chairman of the

5 procurement committee was never called to testify because probably his testimony was prejudicial to the prosecution.

We have carefully considered the testimonies of PW6 Bwayo Patrick, the chairman Butiru farmer's forum who testified that he never attended the procurement meeting for the procurement of 500,000 coffee seedlings in which the contract was awarded to Shisuwabula Enterprises. Secondly, he disowned his signature in the minutes dated 2nd September 2011. He agreed that he signed the attendance sheet for the meeting dated 5th September 2011 but that meeting clearly did not award any contract to Shisuwabula Enterprises.

15 PW7 Mr. Aggrey Bulolo James testified that the 4th appellant called him and he met the chairman and the parties named in the minute. He denied the signature on the minutes exhibited dated 2nd September 2011. The minutes he acknowledged her dated 5th September 2011 which claimed were backdated. He further testified that they never awarded the tender to Shisuwabula Enterprises to supply 500,000 coffee seedlings. He further testified that it is the 1st appellant to give him the minutes to sign.

It is clear that the minutes of the meeting of the 12th September 2011, if it existed at all, were never produced. This is against clear evidence that the notification of award unequivocally quotes a minute from a meeting held on the 12th of September and the possibility of holding such a meeting was advertised to in the minutes of the meeting dated 5th September 2011 and confirmed by PW6 and PW7. The learned trial judge found that the 4th appellant was aware that the procurement committee never sat to award the contract in question. Further she was aware that the procurement process had not been followed. On the basis of that she found that she had done an arbitrary act. In the absence of any evidence that no procurement meeting of 12th September took place, it was erroneous to convict the 4th appellant of the offence of abuse of office especially in light of the testimonies of PW1 6



5 and PW1 7. The minutes referred to that awarded the contract to Shisuwabula Enterprises is said to be contained in the minutes of the committee meeting of 12 September 2011. The prosecution did not prove its case beyond reasonable doubt that such a meeting never took place. We further find that the only act of the 4th appellant was to notify Shisuwabula
10 Enterprises that they had been awarded the contract. We would be suggesting that she should never give a notification of award if an error was made by the procurement committee. In the premises the prosecution never proved the case against the appellant beyond reasonable doubt and we would set aside her conviction for the offence of abuse of office.

15 **Count 10. Forgery**

The 4th appellant was charged in count 10 with forgery where it is alleged that with intent to defraud or deceive the 4th appellant and the 1st appellant forged procurement committee minutes dated 2nd September 2011 awarding a contract for the supply of 500,000 coffee seedlings to
20 Shisuwabula Enterprises purporting that they were minutes of Butiru Sub - county procurement committee whereas not.

The minutes referred to in the notification of award are not the minutes dated 2nd September 2011. In the premises, it cannot be held that it was the minutes of the 2nd September 2011 which awarded the contract if the notification of award of contract is to be considered. In light of the inconclusive evidence of
25 PW7 and PW 6 that they only signed minutes dated 5th September, we find that it was erroneous to convict the 4th appellant of the offence of forgery. In any case they confessed to have signed two documents. If the minutes of 5th of September 2011 were backdated, when did they meet? We further find
30 that the charge of forgery against the 4th appellant had not been proved beyond reasonable doubt but is based on circumstantial evidence that the 4th appellant must have forged minutes dated 12th September 2011 referred to in her admitted notification of award when the no minutes dated 12th

5 September were produced. Secondly, the minutes dated 2nd September 2011 which were produced were not relied on by the 4th Appellant in the notification of award of tender she signed. There is no evidence that the 4th appellant made the document in issue. In the premises, we would set aside the conviction. The appeal of the 4th appellants succeeds and she is hereby
10 set free unless held on other charges.

In summary, the appeal of the 3rd and 4th appellants succeed and their conviction and sentence as well as the order of compensation is set aside.

That leaves the issue of an order against the 1st and 2nd appellants to compensate the state.

15 **The issue of the order of compensation against the 1st and 2nd appellants**

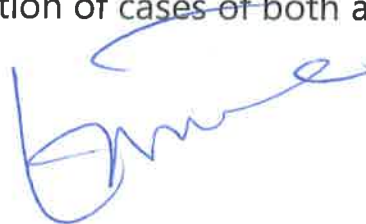
The order made against the 1st appellant is to pay compensation of Uganda shillings 120,000,000/= . The 2nd order made against the 2nd appellant is to pay compensation of Uganda shillings 120,000,000/= . However, the compensation decree was erroneously written as an order to refund Uganda
20 shillings 120,000,000/= by the 1st appellant and a refund of Uganda shillings 120,000,000/= by the 2nd appellant.

The law governing the trial of the 1st and 2nd appellants is the Trial on Indictment Act and the applicable law is the Anti Corruption Act 2009. The orders for compensation states as follows:

25 Under article 126 (2), (c) of the constitution read together with section 126 (1) of the Trial on Indictments Act and section 7 of the ACA I order each of the convicts to compensate the government as follows:

The learned trial judge thereafter issued an order reflecting various quanta of compensation payable by each of the convicts/appellants.

30 Article 126 (2) of the Constitution of the Republic of Uganda sets out principles to be applied by Courts in the adjudication of cases of both a civil



5 and criminal nature. These principles are subject to the laws of Uganda.
Article 126 (2) stipulates that:

(2) In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles –

- 10 (a) Justice shall be done to all irrespective of their social or economic status;
(b) justice shall not be delayed;
(c) adequate compensation shall be awarded to victims of wrongs;
(d) reconciliation between parties shall be promoted; and
(e) substantive justice shall be administered without undue regard to technicalities.

15 The above Article 126 (2) (c) of the Constitution provides for adequate compensation to victims of wrongs. An order of compensation in a criminal proceeding may be issued in addition to the penalty prescribed by the law and such an order is civil in nature. Secondly, as a civil remedy it conforms to the principle of *restitutio in integrum* which means that the victim of the wrong should be restored as nearly as money or materials can do, to a position he or she would have been in had the injury complained of not
20 occurred (See **Dharamshi v Karsan [1974] 1 EA 41** the East African Court of Appeal for the rationale for an order of general damages at common law)

Section 7 of the Anti - Corruption Act 2009 is clear about compensation to an aggrieved party and its wording is mandatory. It provides that:

25 7. Payment of compensation to aggrieved party

(1) Where a person is convicted of an offence under section 6, the court, shall, in addition to the punishment imposed under section 26, order that person to pay by way of compensation to the aggrieved party, such sum as in the opinion of the court is just, having regard to the loss suffered by the aggrieved party.

30 (2) An order made under subsection (1) shall be deemed to be a decree under section 25 of the Civil Procedure Act and shall be executed in the manner provided under section 38 of the Civil Procedure Act.

The first and second appellants were not convicted under section 6 but under section 11. Secondly, an order made under section 7 is deemed to be a

5 decree which may be executed in the same manner as a decree in a civil court under section 38 of the Civil Procedure Act. Section 7 of the Anti - Corruption Act envisages a mandatory order of compensation.

Secondly, section 6 of the ACA is clear about the circumstances in which an order for compensation shall be awarded because it provides:

10 A person who converts, transfers or disposes of public funds for purposes unrelated to that for which the resources were intended, for his or her own benefit or for the benefit of a third party, commits an offence.

15 Unless the person is convicted of conversion, transport or disposal of public funds for purposes unrelated to that for which the resources were intended for use or her own benefit or for the benefit of a 3rd party, the compensation order cannot be made under section 7 ACA.

20 Because section 7 of the ACA is inapplicable, it is to examine the provisions of section 11 of the ACA and which the 1st and 2nd appellants were convicted and sentenced. Particularly the relevant provision is section 11 (2) the ACA which provides that:

(2) Where a person is convicted of an offence under subsection (1) and the act constituting the offence was done for the purposes of gain, the court shall, in addition to any other penalty it may impose, order that anything received as a consequence of the act, be forfeited to the Government.

25 Section 11 (2) of the ACA deals with forfeiture. It also covers anything received as a consequence of the act. In the circumstances at the trial, no evidence was led to prove the loss which the government suffered as a result of the act. Instead the evidence shows that some third-party such as farmers in sub- counties were not supplied with coffee seedlings. The evidence
30 adduced further shows that 309,049 coffee seedlings were supplied (testimony of PW8). The NAADS Secretariat availed facts under a NAADS project for the support of farmers in the enterprise of growing coffee and value addition. The letter from the NAADS Secretariat dated 2 September



5 2011. The funds were fully accounted for indicating acknowledgement of receipt by benefiting farmers. Particularly the benefiting farmers are selected to participate in the program prior to the release of funds. Of further interest is the fact that the basis of the list of farmers is for purposes of liaison with the farmers and sub counties who were supposed to undertake the
10 procurement for their own farmers. The contract to supply was however irregularly given to Shisuwabula Enterprises instead of sub counties undertaking procurement for their own farmers.

In general, all the provisions of the Anti - Corruption Act do not directly provide for compensation to the injured party or party who suffered a loss
15 as a consequence of the commission of the offence of abuse of office. We have considered instead the provisions of **the Trial on Indictment Act** on compensation under section 126 thereof which provides that:

126. Compensation.

(1) When any accused person is convicted by the High Court of any offence and it appears
20 from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable.

25 ...

(4) An appeal shall lie to the Court of Appeal against any order awarding compensation under this section.

The assessment of compensation payable to 3rd parties under section 126 (1) of the Trial on Indictment Act, is based on the evidence of loss suffered by
30 the said 3rd parties. There was no evidence of any loss suffered by the government of Uganda. There is no evidence that the government of Uganda had to replace the money meant for the seedlings to be delivered to the beneficiaries who did not get. Instead, the evidence shows that some

5 seedlings were supplied but no payment was received by the suppliers of the seedlings.

PW4 Modesta Nambuya who was supposed to carry out the verification of the coffee seedlings supplied in all the sub counties testified that she never carried out the verification and was not sure whether the coffee seedlings
10 were supplied. She further testified without giving details that some nursery operators were not paid. There are no details of the nursery operators who were not paid or the amount of money owing.

Further compounding the problem of the quantum of compensation is the fact that the witnesses testified that the coffee seedlings were bought at price
15 of about 250 to 300 shillings per coffee seedlings instead of the 600 shillings for which the funds were supplied.

PW8 testified that 309,049 coffee seedlings were supplied and that 18 sub-counties did not benefit from the programme.

PW10 Tingu Robert testified that he was contacted by the 1st appellant
20 supply seedlings and the supplied Magale Sub - county but was not paid. He testified that he supplied the 8569 seedlings at a total cost of Uganda shillings 1,713,800/=. The price for each seedling was Uganda shillings 200.

PW11 Edward confirmed that he picked the seedlings from Tingu Robert.
PW12 Steven Soyi testified that he supplied the coffee seedlings amounting
25 to 26,900 coffee seedlings and each seedling was going for 250 shillings. He negotiated the price with the 1st appellant. The total value was Uganda shillings 6,725,500/=. He testified that he has not received this money from the 1st appellant.

PW 13 Tsema Rex Christopher testified that he received coffee seedlings in
30 2011. He received about 10,000 coffee seedlings in July 2011 but he was supposed to get 20,000 coffee seedlings. They got Coffee Seedlings from nursery operators but he did not know the arrangement between the



5 contractor and the nursery operators. There was no evidence of whether the nursery operators were paid or not. On cross examination he testified that his Sub - county of Buta got 10,000 coffee seedlings in July 2011 and 17,650 coffee seedlings between May and June 2012.

10 PW14 Mityero David the Sub - county NAADS coordinator Buwabwala witness that about 23,200 coffee seedlings were received by his Sub - county from nursery operators.

15 PW15 Wandukwa John testified that he supplied 9200 seedlings but only 8200 coffee seedlings were taken because 1000 were rejected. He sold it seedling at a total cost of Uganda shillings 7,700,000/=. He had no complaint against the 1st appellant.

20 PW 16 Naluande David Tutu testified that he was one of the nursery operators and he had ever supplied the coffee seedlings to Bukhoto Sub - county. He was declared a hostile witness and cross examined by the prosecution. He testified that it was not the 1st appellant to pay him but Mamayi and Co Limited who were the contractors who contracted them to supply the coffee seedlings.

25 PW17 Watika Fred, a nursery operator testified that he supplied 5850 seedlings at a total value of Uganda shillings 1,480,000/= and each seedling was Uganda shillings 250 only. He had never been paid by the time of the test.

PW18 Mooni Peterson testified that 20,000 coffee seedlings were received from Matambo Joshua in Busukuya Sub - county.

30 PW19 Daudi Walyaula supplied Bugobero Sub - county. He supplied 9162 seedlings at Uganda shillings 300. He testified that it was about Uganda shillings 2,700,000/= or more and that he had never been paid.



5 PW20 Situma Robert testified that he supplied 4 parishes with coffee seedlings.

PW21 Wabukhata Kiabi Sam testified that he was supplied coffee seedlings in July 2012. He received 120 coffee seedlings and not 500 coffee seedlings.

10 PW23 Mubosa Sowed, a nursery operator testified that he supplied seedlings in June and December 2012. He supplied 13,000 seedlings at Uganda shillings 300. He supplied Bugobero Sub - county. He was never paid and is owed Uganda shillings 3,900,000/=.

15 PW24 Sitanyi Womalabe testified that he supplied 3450 coffee seedlings at a price of Uganda shillings 300 each and the total cost was 1,035,000/=. He was not paid by the time of the testimony.

PW28 David Timbiti testified that he sold the seedlings to Manafwa district NAADS program once but he was never paid. He supplied the 13,900 coffee seedlings at a cost of Uganda shillings 300 each and he is owed Uganda shillings 4,170,000/=.

20 The only evidence of the persons who had not been paid is the above evidence. The order of the learned trial judge for the 1st and 2nd appellants to pay the government Uganda shillings 120,000,000/= each amounting to a total of Uganda shillings 240,000,000/= was an arbitrary order because the evidence shows that it is not the government which lost the money but the
25 nursery operators who were not paid. We therefore allow the appeal and set aside the order of compensation and substitute that order with our own order finding that only above named beneficiaries of the funds were not paid their dues after they had supplied farmers with coffee seedlings.

30 The remedy of any other third-party who never got the supplies or who was not paid for the supply of coffee seedlings lies in civil remedies in which he or she may, if there is a cause of action, sue for breach of contract. This is because there is no evidence disclosed on record specifying what loss any

 107



5 other 3rd parties may have suffered if at all. In the premises, we would award the following persons the following amounts against their names:

1. Tingu Robert - Uganda shillings 1,713,800/=
2. Steven Soyi – Uganda shillings 6,725,500/=
3. Wandukwa John - Uganda shillings 7,700,000/=
- 10 4. Watika Fred – Uganda shillings 1,480,000/=
5. Daudi Walyaula - Uganda shillings 2,700,000/=
6. Wabukhata Kiabi Sam the equivalent of 380 Coffee Seedlings at 300 shillings each – Uganda shillings 114,000/=
7. Mubosi Sowedi – Uganda shillings 3,900,000/=
- 15 8. Sitanyi Womalabe – Uganda shillings 1,035,000/=
9. David Timbiti – Uganda shillings 4,170,000/=

We further order that the sums awarded to the above mentioned persons are payable by the 1st and 2nd appellants jointly and severally and they carry interest at 14% per annum from November 2012 up to the date of judgment
20 of the trial Court. The aggregate amount due at the date of judgment of the trial court for each person shall carry further interest at the rate of 8% per annum from the date of judgment of the trial court till payment in full.

Dated at Kampala the 24 day of Aug 2020

Elizabeth Musoke} 

Justice of Appeal

Stephen Musota} 

Justice of Appeal

Christopher Madrama} 

Justice of Appeal