

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CRIMINAL APPEAL NO. 341 & 354 OF 2019**  
**KYENKYA JOSHUA ::::::::::::::::::::::::::::::::::: APPELLANT**  
**VERSUS**  
**UGANDA::: RESPONDENT**

*(Arising from the decision of the High Court in Criminal Appeal No. 0029 of 2018)*

**CORAM: HON. JUSTICE ELIZABETH MUSOKE, JA**  
**HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA**  
**HON. JUSTICE STEPHEN MUSOTA, JA**

**JUDGMENT OF COURT**

The appellant was charged before the Chief Magistrates Court of Causing Financial Loss contrary to Section 20, Abuse of Office contrary to Sections 11(1) and (2) of the Anti-Corruption Act, 2009 and an alternative count of Conspiracy to commit a felony contrary to Section 390 of the Penal Code Act. The appellant was first tried before a Magistrate Grade 1 and acquitted on all counts. The respondent appealed to the High Court and the Appellant was convicted of causing financial loss and Abuse of Office and sentenced to a fine of 8,000,000/= or in default to serve 7 years imprisonment and a fine of 1,000,000/= or in default to serve 1 year imprisonment



respectively. He was also ordered to pay compensation of 81,870,030/= to Nakasongola Local Government and banned from holding public office for a period of 10 years from the date of judgment.

The appellant was dissatisfied with the decision of the High Court on appeal and filed a second appeal before this court on grounds that;

1. The learned appellate Judge erred in law when she failed to re-evaluate the evidence on record as a whole thus reaching a wrong conclusion that it was the appellant who entered details of non-existent employees on the IPPS of Nakasongola District Local Government.
2. The learned appellate Judge erred in law when she failed to apply the law governing adducing of electronic evidence in Court.
3. The learned appellate Judge erred in law when she failed to read the record properly and concluded that PW1 (Kasozi Suleman) was given a computer printout which showed that some of the ghost names had been entered into the IFMS by the 1<sup>st</sup> respondent (appellant) which was not the case.
4. The learned appellate Judge erred in law when she held that both IFMS and IPPS are not stand alone systems thereby reaching a wrong conclusion on the two systems.

### **Background**

The background of the case, as deduced from the facts before the Chief Magistrate's Court, is that the appellant, together with one





Hosea Galimaka were working at Nakasongola District as Human Resource Officer and Accountant respectively. The daily EFT processing report received from the Bank of Uganda for Nakasongola District Local Government highlighted a number of payments generated by the district that were not honored for payment, due to insufficient account balance on the district salary account at Bank of Uganda. The particulars of the payments showed that they were payments to new beneficiary accounts that did not exist in the previous month's payroll. As a result, the appellant and his colleague were charged accordingly.

### **Representation**

When this appeal came up for hearing, Mr. Kavuma Issa and Mr. Omilo Charles appeared for the appellant while Ms. Sylvia Nabirye, Senior Inspectorate Officer appeared for the respondent.

### **Appellant's submissions**

Counsel argued all the grounds of appeal concurrently for reasons that the main issue for determination by this court is whether it is the appellant who entered the details of non-existent employees onto the IPPS of Nakasongola District Local Government. Counsel argued that the state called 8 witnesses and relied on prosecution exhibits 1, 2, 3, 4, 5, 6, 7, 8 and 9. That the High Court considered only the evidence of PW1, Kasozi Suleman, PW2, Flora Nansubuga Lutega, PW3 Namatovu Miriam and PW6 Otim Dickens to convict the appellant of causing financial loss and ignored other exhibits on record which exonerated the appellant.

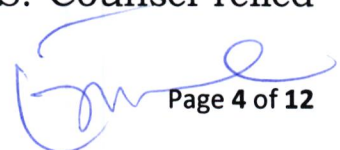


Counsel argued that the evidence of PW4 Samson Nawandwe was not considered in re-evaluation and yet it was important to determine who entered the details of non-existent employees onto the IPPS of Nakasongola District Local Government. That the system generated report printed from IFMS showed that the fake employees were created by Hosea Galimaka and not the appellant. This evidence was also that of PW7 Sarah Magoola, the investigating officer, whose findings exonerated the appellant. PW7 discovered that some of the names of the employees had been created from the Ministry of Public Service and on interviewing them they accepted having participated in the creation of the names on the IPPS system.

### **Respondent's submissions**

Counsel submitted that the learned appellate Judge fully re-appraised the evidence on record as a whole before reaching her decision. The learned trial Judge relied on the evidence of PW1 to the effect that the fraudulent names were entered by the appellant, as the Human Resource Officer, but he was using a computer belonging to the District Accountant. Counsel argued that PW2 testified that the appellant gave her two hand written lists bearing names, IPPS numbers, gross pay and months, with instructions for her to type. The appellant submitted the list to URA for PAYE purposes and the appellant did not deny having authored exhibit P.6.

Counsel argued that it is immaterial that the learned appellate Judge only considered the evidence of PW1, PW2, PW3 and PW7 to conclude that the appellant entered the names into the IPPS. Counsel relied





on Section 8 (3) of the Electronic Transactions Act 2011, that where the best evidence rule is applicable in respect of an electronic record, the rule is fulfilled upon proof of the authenticity of the electronic records system in or by which the data was recorded or stored. Counsel submitted that the learned appellate Judge properly found that IPPS and IFMS are connected in such a way that in order for an employee to access IFMS, his/her details have to first be captured onto the IPPS.

### **Consideration of the appeal**

As a preliminary matter, we note that this is a second appeal. The role of this court as a second appellate court is laid down under **Rule 32(2)** of the **Judicature (Court of Appeal Rules) Directions** which provides that;

*“on any second appeal from a decision of the High Court acting in exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court, but shall not have discretion to hear additional evidence.”*

This Court is therefore obliged to appraise the inferences of fact drawn by the trial court.

We also considered the provisions of **Section 45 of the Criminal Procedure Act**, which is the applicable law concerning appeals from the High Court in the exercise of its appellate jurisdiction. It provides;



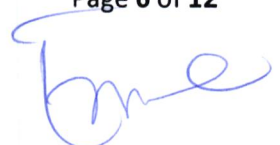
45. *Second appeals.*

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

The effect of this provision is to bar appeals on matters of fact or matters of mixed fact and law.

The duty of a second appellate court is intertwined with the duty of a first appellate court although the two are different. The Supreme Court has distinguished clearly the duties cast on each court in the case of **Kifamunte Henry v. Uganda Criminal Appeal No. 10 of 1997** thus;

*"We agree that on a first appeal, from a conviction by a Judge the appellant is entitled to have the appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However, there may be other circumstances quite*





apart from the manner and demeanour, which may show whether a statement is credible or not which may warrant a court in differing from the Judge even on a question of fact turning on credibility of witness which the appellate Court has not seen. See **Pandya v. R [1957] EA 336, Okeno v. Republic [1972] EA 32 and Charles Bitwire v. Uganda Supreme Court Criminal Appeal No. 23 of 1985** at page 5.

Furthermore, even where a trial Court has erred, the appellate Court will interfere where the error has occasioned a miscarriage of justice: See S. 33(i) of the Criminal Procedure Act. It does not seem to us that except in the clearest of cases, we are required to re-evaluate the evidence like is a first appellate Court save in Constitutional cases. On second appeal it is sufficient to decide whether the first appellate Court on approaching its task, applied or failed to apply such principles:" See **P.R. Pandya v. R (supra), Kairu v. Uganda 1978 HCB 123.**

Therefore, the duty of a second appellate court is to examine whether the principles which a first appellate court should have applied were properly applied and if it did not, for it to proceed and apply the said principles.

Counsel argued the four grounds of appeal concurrently. According to the appellant, the major issue for determination by this court is whether it was the appellant that entered the details of the non-existent employees onto the IPPS of Nakasongola District Local Government.



The learned appellate Judge relied on the evidence of PW1, PW2, PW3 and PW6 to convict the appellant. We agree with the appellant's counsel's contention that the learned appellate judge re-evaluated the evidence on record selectively and ignored the evidence of the Inspectorate Officer, PW7 and that of PW4, the Computer Analyst at the Ministry of Local Government. The evidence of the computer analyst was crucial in determining who entered the details of the non-existent employees onto the IPPS of Nakasongola District Local Government.

According to the evidence of PW4, the new entries had been created by a user ID Hosea Galimaka and the salary invoice used to generate these invoices was created by credentials of Miriam Namatovu. PW4 also stated that there were 37 entries 32 of which were created by the user ID of Hosea Galimaka while the other 5 were coming through the system from the ministry of Public Service down to the Local Government through a process called pay change report.

PW7, the Investigating Officer from the IGGs office stated that on receiving the complaint for investigation, she approached the Ministry of Local Government specifically the component coordinator of IFMS and provided her with the list which included the ghost employees in the system. It showed that they were created by Hosea Galimaka, who was charged together with the appellant. PW7 made a system check with the Human Resource Nakasongola Mr. Drici, which revealed the stations at which the names were created and these were Kaliro, Kamuli and Bugiri districts. Her team visited those

  
Page 8 of 12



districts and was referred to the Ministry of Public Service where the system showed that the remaining names had been created by officials of the Ministry of Public Service.

PW7's testimony on page 73 of the record of appeal is that the investigation at the Ministry of Public Service gave them the names of the individuals who created the ghosts on IPPS and they interviewed Samali Ibanda, Akello Winnie, Jesse Mwalye and Medina Namansa. They were asked to provide the pay change slips on which they created the employees and they stated that they could not trace most of them. That the reason why their names appeared on the system as creators was because they were asked to manage the migration of the employees from the old system legacy to IPPS in the new system.

Whereas the evidence of PW3 was that she was new and had been trained by Hosea Galimaka and the appellant, she stated that she would log in and the appellant would work on her user name while she watched to learn. She however did not state that the names were entered onto the system by the appellant.

The handwritten instruction relied on was got from PW2 allegedly written by the appellant. When PW3 was interviewed by PW7, she stated that for March 2015, the payroll she received from the appellant did not have any of the suspected ghosts. After forwarding it to Public Service which later returned on confirmation, she was surprised to see ghost names on it.



An appellate court, in our view, must establish whether the trial court considered the totality of evidence to determine whether essential elements of a crime have been proved beyond reasonable doubt.

The test applicable was well stated persuasively in the famous South African case of **DPP VS Oscar Leonard Carl Pistorious Appeal No. 96 of 2015.**

*“The proper test is that an accused is bound to be convicted if the evidence establishes his [her] guilt beyond reasonable doubt, and the logical corollary is that he [she] must be acquitted if it is reasonably possible that he [she] might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be false; some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored.”*

It is our considered view that the prosecution evidence did not prove that it was the appellant that entered the ghost employee names onto the system of Nakasongola Local Government. The decision in **Justine Nankya v. Uganda SCCR Appeal No. 24 of 1995 (Unreported)** citing with approval **Okoth Okale v. R. (1955) E.A. 555** emphasizes among others, that an accused has no obligation to prove his innocence. Even where he or she opts to keep quiet throughout the trial or offers a very incredible defence, he



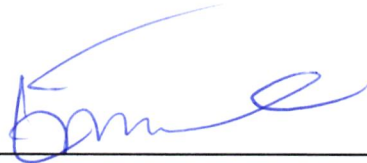
or she can only be convicted upon the strength of the prosecution case against him or her.

We find that the offences were also not proved by the prosecution.

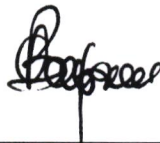
This appeal therefore succeeds. We accordingly set aside the judgment and orders of the trial court and make the following orders;

1. This Appeal is allowed.
2. The appellant is hereby set free unless he is held on other lawful charges.
3. The appellant be refunded any monies paid as fine and compensation pursuant to the orders of the High Court.

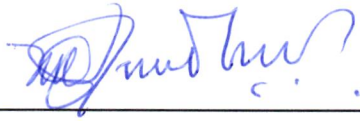
Dated this 25<sup>th</sup> day of Nov 2022



**Hon. Justice Elizabeth Musoke, JA**



**Hon. Justice Catherine Bamugemereire, JA**



---

**Hon. Justice Stephen Musota, JA**