

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEALS NO. 094 OF 2018 AND 058 OF 2019

(Appeal from the decision of the High Court of Uganda at Kampala (Anti-Corruption Division) before Tibulya, J. delivered on 15th June, 2018 (conviction) and 30th August, 2018 (sentencing) in Criminal Session Case No. 017 of 2014)

- 1. NATANGA PATRICK MATEMBU**
- 2. FREDRICK RWABUHORO KWIHIRA**
- 3. NAMOLYA ALEX**
- 4. SAKARI GODFREY WOPUWA:::::::::::::::::::::::::::::::::::::APPELLANTS**

VERSUS

UGANDA:::RESPONDENT

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

JUDGMENT OF THE COURT

The appellants were convicted of various offences, as follows: the 1st appellant on four counts – one of Abuse of Office contrary to **Section 11 (1)** of the **Anti-Corruption Act, 2009** (count 1); one of **Forgery contrary to Sections 342 and 347** of the **Penal Code Act, Cap. 120** (count 4), Cap. 120; and two of **Uttering a False Document** contrary to **Sections 351 and 347 of the Penal Code Act, Cap. 120** (counts 6 and 8); the 2nd appellant on one count of **Abuse of Office** contrary to **Section 11 (1) of the Anti-Corruption Act, 2009** (count 2); the 3rd appellant on one count of **Preparation to Commit an Offence**



contrary to Section 52 (b) of the Anti-Corruption Act, 2009 (count 3); and the 4th appellant on one count of **Attempting to Commit an Offence** contrary to **Sections 387 and 22 of the Penal Code Act, Cap. 129** (count 9).

On 30th August, 2018, the High Court imposed the following sentences: the 1st appellant to concurrent sentences of 1 year's imprisonment on count 1 and 6 months' imprisonment on each of counts 4, 6 and 8; the 2nd appellant was sentenced to 1 year's imprisonment on count 2; the 3rd appellant was sentenced to pay a fine of Ug. Shs. 2,000,000 or in default to serve a sentence of 2 years imprisonment on count 3; and the 4th appellant was sentenced to 1 year's imprisonment on count 9. The High Court also made an order disqualifying each appellant from holding public office for a period of 10 years from the date of sentencing.

The appellants were dissatisfied with the decision of the High Court and separately appealed to this Court. The 2nd appellant's appeal was registered as No. 94 of 2018 while that for the 1st respondent as No. 58 of 2019. The 3rd and 4th respondents were given audience during the joint hearing of the 1st and 2nd appellant's appeals.

The 1st appellant's grounds of appeal are that:

- 1. The learned trial Judge erred in law and fact when she accepted and believed the prosecution case in isolation and without consideration of the defence case thereby arriving at a wrong conclusion.**



2. The learned trial Judge erred in law and fact when she attributed to the prosecution witnesses matters that were not canvassed in evidence (sic).
3. The learned trial Judge erred in law and fact when she made a finding that the appellant violated the PPDA Regulations without considering and applying the NAADS Guidelines and without reviewing the evidence as a whole.
4. The learned trial Judge erred in law and fact to convict the appellant with the offence of abuse of office, forgery and uttering of false documents in absence of evidence to prove all the essential ingredients of the offences.
5. The learned trial Judge erred in law and fact to hold that failure to follow the PPDA Regulations was sufficient to make an inference that there was no transparency, and that the quality, quantity and value for money principles were violated by the appellant.
6. The learned trial Judge erred in law and fact when she ignored and failed to properly evaluate the evidence of PW (sic) Dr. Francis Byekwaso showing that the said procurement was in line with the 2007 NAADS Guidelines.
7. The learned trial Judge erred in law and fact when she failed to resolve the contradictions and inconsistencies in the prosecution's evidence as required by law in favour of the appellant which was injustice (sic) and detrimental to the appellant.



8. 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 2nd appellant relied on the following grounds:

- 1. That the learned trial Judge erred in law and fact in holding that the appellant was guilty of abuse of office.**
- 2. That the learned trial Judge erred in law and fact when she improperly evaluated the evidence on record thereby reaching the wrong conclusions.**
- 3. That the learned trial Judge erred in law and fact by sentencing the appellant as she did which was harsh and unfair in the circumstances of the case.”**

The 3rd appellant appealed on the following grounds:

- 1. That the learned trial Judge erred in law and fact when she found the appellant guilty of the offence of preparation to commit the offence of abuse of office and/or furtherance of commission of the offence of abuse of office.**
- 2. That the learned trial Judge erred in law and fact when she failed to evaluate the evidence on record which error led to a miscarriage of justice.”**

The 4th appellant appealed on the following grounds:

- 1. That the learned trial Judge erred in law and fact when she failed to properly evaluate the evidence on record with**



respect to the offence of attempt to commit an offence and thereby erroneously convicted the appellant.

2. That the learned trial Judge erred in law and fact when she held that the appellant did not supply the seedlings yet supply was done.

3. That the learned trial Judge erred in law and fact when she gave an illegal, harsh and excessive sentence to the appellant given the circumstances of the case.

Representation

At the hearing of this appeal, Mr. Godfrey Mafabi, learned counsel, appeared for the 2nd and 3rd appellants. The 1st and 4th appellants appeared for themselves. Mr. Baine Stanley Moses, learned Chief State Attorney and assisted by Ms. Bireke Safina, learned Senior State Attorney and Mr. Kawooya Nicholas, learned State Attorney, all from the office of the Director Public Prosecutions, appeared for the respondent.

1st appellant's submissions

The 1st appellant argued the grounds as follows: grounds 1, 3, 5 and 6; and then ground 4 independently. Grounds 2, 7, 8 and 9 were abandoned.

Grounds 1, 3, 5 and 6

The 1st appellant submitted that the learned trial Judge erred when she found that the procurement of the coffee seedlings was done contrary to the **Public Procurement and Disposal of Public Assets**



(PPDA) Regulations. The 1st appellant contended that the PPDA Regulations were inapplicable to the procurement and instead, as brought out by the evidence of PW1 Dr. Francis Byekwaso, it was the **NAADS Guidelines, 2007** and the directions issued by the NAADS Secretariat that applied. He further submitted that conducting the procurement under the NAADS procedure was permitted under the provisions of **Article 159 (3) (a)** of the **1995** Constitution, the NAADS Act and **Guideline 18 (3)** of the NAADS Procurement Guidelines, 2007. The 1st appellant further submitted that procurement under the NAADS procedure is conducted by the Sub-County and this was what happened in the present case where the procurement of the seedlings was conducted by Butiru Sub-County as per the evidence of PW3 Patrick Bwayo.

Furthermore, the 1st appellant contended that the prosecution did not adduce evidence to prove that he participated in the procurement of the seedlings and indeed he had not done so, as he was not a member of the Butiru Sub-County procurement committee which had a Sub County NAADS Coordinator. The 1st appellant contended that he was the District NAADS Coordinator, and did not participate in the procurement by the Sub County.

The 1st appellant also submitted that under the NAADS procedure, procurement for goods valued at Ug. Shs. 250,000,000/= may be handled by the Sub-County, and thus the learned trial Judge erred when she found otherwise.



The 1st appellant also submitted that he participated in the procurement by coordinating with the 4th appellant, the supplier, to ensure that quality seedlings were supplied. He had also engaged farmers and community leaders to ensure that the seedlings were received. The 1st appellant maintained that he never sourced for the seedlings as the learned trial Judge erroneously found.

The 1st appellant concluded by submitting that the procurement of the coffee seedlings was carried out in accordance with the NAADS Guidelines, the relevant applicable law, and was lawful.

Ground 4

The 1st appellant submitted that the learned trial Judge erred when she convicted him of the offences of abuse of office, forgery and uttering of false documents yet several vital ingredients of those offences were not proved. With regard to the offence of abuse of office, the 1st appellant submitted that the prosecution was obligated to prove that: 1) the appellant at the time of the commission of the offences was employed by a Government body; 2) that the appellant did or directed to be done an arbitrary act prejudicial to the interests of his employer; and 3) that the act was done in abuse of office. The 1st appellant submitted that a person may only be found to have done a prejudicial act in abuse of office if the doing of the act fell within the duties assigned to him/her by virtue of his position. Thus, it was necessary in the present case for the learned trial Judge to ascertain the duties assigned to the 1st appellant as the District NAADS



Coordinator and whether or not they included responsibility for the procurement in issue. The 1st appellant maintained that he was neither responsible nor had he conducted the procurement in issue and thus he could not technically be found to have abused his office for a task for which he was not responsible. The 1st appellant submitted that the third ingredient of the offence of abuse of office was not proved.

The 1st appellant further submitted that the second ingredient of commission of a prejudicial act was also not proven. He reiterated his earlier submissions that the evidence indicated that the procurement in issue was carried out in accordance with the applicable NAADS Guidelines.

It was further submitted by the 1st appellant that several ingredients of the offences of forgery and uttering false documents were not proved. He relied on the case of **Kazinda vs. Uganda, Criminal Appeal No. 83 of 2013 (unreported)** where this Court held that the ingredients of the offence of forgery are as follows: 1) making of a false document and 2) the intention to defraud or deceive. The 1st appellant noted that the false documents he allegedly made or uttered were distribution lists submitted to the NAADS Secretariat. He further noted that PW12 testified that the distribution lists bore a forged signature attributed to him, and further alluded to evidence that the distribution lists indicated that the coffee seedlings were distributed in 2011 yet the procurement in issue was done in 2012. The 1st appellant submitted that there was no evidence proving that he



forged or that he uttered the said distribution lists. The evidence of PW12 and PW15 was indeed that they are the ones who had signed the said lists.

2nd appellant's submissions

Counsel for the 2nd appellant submitted that the three grounds relied on by the 2nd appellant concern two issues, namely: 1) whether the trial Judge failed and/or improperly evaluated the evidence on record; and 2) whether the trial Judge erred in law and fact in convicting the 2nd appellant for the offence of abuse of office when there was no evidence proving the 2nd and 3rd ingredients of the offence beyond reasonable doubt. On issue 1, counsel contended that the evidence indicated that the relevant procedures had been followed during the procurement in issue. He referred to the evidence of PW1 Byekwaso, PW3 Bwayo, PW16 Mugisha and PEX 2 B which proved that the procurement of the seedlings was envisaged to be undertaken at Sub-County level. He also referred to the evidence of the 1st appellant as DW1, the 2nd appellant as DW2 which was to the effect that the NAADS Secretariat instructed Manafwa District to conduct the procurement at the Sub County level. Counsel also referred to the evidence of DW8 which was that the procurement had followed the applicable procedure contained in the 2007 NAADS Guidelines. Counsel contended that the learned trial Judge failed to properly evaluate the highlighted evidence which proved that the procurement of the seedlings was lawfully carried out. He urged this Court to resolve issue 1 in the affirmative.



With regard to issue 2, counsel submitted that the learned trial Judge correctly stated the ingredients of the offence of abuse of office which are as follows: 1) that the accused person is an employee of a public body; 2) that the accused person did an arbitrary act; 3) that the accused person acted in abuse of office; and 4) that the arbitrary act was prejudicial to the interest of his/her employer. Counsel submitted that the second ingredient was not proven. He pointed out that the evidence instead indicated that the applicable procurement procedure was followed. Further, that if the procedure was not followed, the 2nd appellant was not liable as he had acted in accordance with PEX2 and had requested the 1st appellant who was overseeing the procurement to ensure that the relevant procurement procedure was followed. Thus, to counsel, the 2nd appellant had no knowledge that the relevant procedure was not followed and hence did not have mens rea.

Furthermore, counsel cited the case of **Bagonza vs. Uganda, Court of Appeal Criminal Appeal No. 102 of 2010 (unreported)** as authority for the proposition that involvement of persons other than the accused person in a decision negates arbitrariness. In the present case, other people like the District NAADS Coordinator, the Chief and the Procurement Committee of Butiru Sub County, and the NAADS Secretariat were all involved. In addition, the NAADS Secretariat did not query the documents related to the procurement in issue. In view of the above submissions, counsel contended that the 2nd appellant did not do the arbitrary act mentioned in the indictment of requesting



for payment knowing that the procurement laws had not been followed.

Counsel also submitted that the 2nd appellant did not act in abuse of office because he was merely following the advice contained in PEX2 when he approved the procurement. The third ingredient of the offence of abuse of office was also not proven.

With regard to the fourth ingredient of whether the act of the 2nd appellant had been prejudicial to his employer, counsel submitted that it was not because the relevant procurement laws had been followed and the seedlings had actually been supplied.

The 2nd appellant made no submissions on sentence, and we take it that he abandoned ground 3 of the appeal.

3rd appellant's submissions

Counsel for the 3rd appellant began by submitting that the particulars of the offence in relation to the 3rd appellant as set out in the relevant indictment offended Section **25 (c)** of the **Trial on Indictments Act, Cap. 23**, in that they failed to sufficiently describe the criminal act that the 3rd appellant committed. Counsel pointed out that the particulars merely alleged that the 3rd appellant had assisted the 1st appellant to contravene procurement procedures, laws and requirements, but did not set out how exactly he had committed the offence. In counsel's view, the charge was defective and should have been struck out.



It was further submitted that there was insufficient evidence to support the allegation that the 3rd appellant helped the 1st appellant to commit the offence of abuse of office so as to support the learned trial Judge's decision to convict him of the offence of **Preparation to Commit an Offence** contrary to **Section 52 (b)** of the **Anti-Corruption Act, 2009**. He further contended that the nursery operators who testified did not implicate the 3rd appellant as having contracted them to supply coffee seedlings. Counsel further contended that in any case, the evidence indicated that the 1st appellant was not responsible and could not have acted in abuse of office over the relevant procurement. He further contended that the evidence indicated that the 1st appellant was not responsible for the procurement of the coffee seedlings.

Further still, counsel contended that the charge against the 3rd appellant could not be sustained as it concerned violation of PPDA procurement requirements yet it was the NAADS regulations which applied in the present case.

4th appellant's submissions

The 4th appellant argued grounds 1 and 2 jointly; and then ground 3 independently.

Grounds 1 and 2

The 4th appellant submitted that the prosecution evidence was insufficient to prove the charges against him and thus the learned trial Judge erred when she convicted him. He contended that rather



than establish any wrong doing, the prosecution evidence proved that the coffee seedlings were supplied. He referred to the evidence of PW4, the NAADS Zonal Coordinator who testified that upon conducting a verification exercise, he learned that 400,000 coffee seedlings were supplied, and to the evidence of PW5 a nursery bed operator who testified that he was contacted by the 1st appellant over supply of the coffee seedlings. The 4th appellant testified that he had contacted nursery bed operators who then supplied coffee seedlings to farmers in the District, and after the supply had been made, he made delivery notes to demand payment from the District. He referred to the evidence of DW4, DW5 and DW7 in support of his submissions. In the 4th appellant's view, the fact that coffee seedlings were supplied absolved him of any wrong doing.

Ground 3

The 4th appellant submitted that the sentence imposed on him was illegal as the learned trial Judge, while imposing the sentence, failed to take into account the period he spent on remand. For that reason, the 4th appellant urged this Court to set aside the sentence imposed on him.

Respondent's submissions

The respondent's submissions in reply to the respective appeals have been considered independently.

Reply to the 1st appellant's submissions



Counsel for the respondent, in reply to the 1st appellant's appeal, argued grounds 1, 3, 5 and 6 jointly. Counsel made no submissions on grounds 2, 4 and 8.

Grounds 1, 3, 5 and 6

Counsel submitted that the learned trial Judge considered the prosecution and the defence evidence in its entirety, contrary to the 1st appellant's submissions. He contended that when viewed in totality, the prosecution evidence established that the 1st appellant was responsible for the procurement of the coffee seedlings which was conducted in contravention of the law. Counsel submitted that the 1st appellant's attempt to rely on the evidence of PW1 to exonerate him cannot be sustained as PW1, was employed at the NAADS Secretariat in Kampala, and was not conversant with the events surrounding the procurement which took place at the District and Sub County level.

Counsel also disagreed with the appellant's submission that the procurement in issue was conducted in accordance with the applicable NAADS guidelines and also that the PPDA procedure did not apply. He contended that the 1st appellant did not rely on the NAADS Guidelines in the trial Court and neither were they tendered in evidence, and thus the trial Judge cannot be faulted for not considering them.

Furthermore, counsel pointed out that the NAADS Secretariat guided that the procurement was for coffee seedlings for Manafwa District, and therefore the 1st appellant's contention that the procurement was



conducted by Butiru Sub County was false. Counsel insisted that the PPDA procurement procedure was applicable to the procurement in issue and thus the appellant was guilty of abuse of office for failing to follow that procedure.

It was further submitted that the learned trial Judge rightly found that the 1st appellant played a leading role in the procurement in issue despite his denials. Counsel contended that the evidence proved that the 1st appellant prepared and secured the false documents which were submitted to the NAADS Secretariat to justify the procurement. It was the 1st appellant who contacted suppliers and farmers and not Mamayi Co. Ltd which had been allegedly contracted to supply the seedlings. The 1st appellant had also signed the delivery note for the seedlings on behalf of Manafwa District. Counsel submitted that the prosecution evidence showed that the appellant was involved in the procurement as buyer and supplier, and this was wholly irregular and in abuse of office.

Counsel also submitted that, contrary to the 1st appellant's assertions, the relevant procurement needed clearance from the Attorney General in accordance with **Article 119 (6) of the 1995 Constitution**, having been conducted on behalf of a Government body.

With regard to the conviction for forgery, counsel agreed with the 1st appellant's statement of the ingredients of the offence, but refuted the contention that the ingredients were not proven against him. He contended that the conviction was based on the prosecution's case



that the appellant forged a distribution list purporting that 38,000 coffee seedlings had been distributed to farmers in Manafwa, and the prosecution case was proved by the evidence of PW12 Mwasame and PW15 Mityelo David. PW12 and PW15 testified that the appellant asked them to compile a list of farmers in Buwabwala District, and had used that list for offering false accountability. PW12 also testified that whereas he was indicated on the list as having received coffee seedlings, he had not received any, neither had he seen any other farmer receiving coffee seedlings. Counsel further contended that the evidence indicated that the lists were recovered from the 1st appellant and that the latter also admitted that he prepared them which constituted sufficient evidence against him. It was therefore unnecessary to call a handwriting expert to verify the appellant's signature on the documents. Counsel concluded by submitting that the prosecution evidence justified the learned trial Judge's decision to convict the appellant of forgery.

Counsel also refuted the appellant's submission that the evidence in support of the charges of Uttering a False Document was insufficient, and that there was no evidence to prove that it was the appellant who uttered the alleged false documents. He contended that the ingredients of the offence were as follows: 1) that a document was uttered; 2) that the document was false; 3) that the document was uttered by the accused person; and 4) that the accused acted knowingly and fraudulently when he uttered the false document. On the first ingredient, counsel submitted that PW1 and PW2 testified that the false documents were presented to the NAADS Secretariat



for processing payment, hence they were uttered. On the second ingredient, counsel reiterated his earlier submissions that several witnesses testified that the documents were false. As for the third ingredient, counsel submitted that the evidence indicated that it was the 1st appellant who compiled the lists for submission to the NAADS Secretariat. On the fourth ingredient, counsel submitted that as the seedlings were not supplied, it could be inferred that the appellant submitted those lists with fraudulent designs. In conclusion, counsel submitted that the prosecution evidence was sufficient to support the convictions against the 1st appellant.

Reply to the 2nd appellant's submissions

Counsel argued grounds 1 and 2 together, then ground 3 independently.

Grounds 1 and 2

Counsel submitted that all ingredients of the offence of abuse of office were proven contrary to the 2nd appellant's contention. He referred to the case of **Andrua and Anor vs. Uganda, Supreme Court Criminal Appeal No. 17 of 2016 (unreported)** which lays out the following ingredients of the offence of abuse of office: 1) the accused was an employee of a public body or entity in which the Government has shares; 2) the accused carried out an arbitrary act; 3) the arbitrary act was done in abuse of authority of the office of the accused; and 4) that the arbitrary act was prejudicial to the interests of his employer. Counsel submitted that the first ingredient was admitted.



With regard to the second ingredient, counsel noted that the 2nd appellant's contention was that the prosecution evidence did not prove that he had knowledge that the relevant law was not followed when conducting the procurement of the coffee seedlings, but submitted that that contention was false. He contended that the 2nd appellant's knowledge could be inferred from his attempt to cover up the irregularities in the relevant procurement by making nursery bed operators to sign a memorandum of understanding with Mamayi Co. Ltd, to make it seem that the seedlings had been supplied whereas not. Counsel further contended that the 2nd appellant was assisted by the 1st and 3rd appellant to compile a false distribution list (PEX12) to represent that seedlings were supplied to farmers in Buwabwala and Bukiabi Sub-County, and the 2nd appellant had proceeded and submitted the falsified lists to NAADS and obtain payment. Furthermore, counsel submitted that the 2nd appellant was responsible for the irregular procurement because he was the technical head of the district to whom NAADS had delegated to conduct the procurement in issue. For that reason, the 2nd appellant was bound to ensure that the procurement was carried out in accordance with relevant PPDA and other legal requirements. It was the 2nd appellant who ought to have sought for clearance from the Attorney General but did not do so, and in counsel's view, all the circumstances indicated that the 2nd appellant acted arbitrarily when he made the request for the NAADS Secretariat to pay Ug. Shs. 250,000,000/= to Mamayi Co. Ltd.



Counsel further submitted that the 2nd appellant acted arbitrarily when he allowed the procurement of the coffee seedlings to be conducted by the Sub County when it was delegated to the District.

It was submitted that the above highlighted acts were done in abuse of office, which proved the third ingredient.

It was also submitted that the 2nd appellant's acts of approving the irregular payment was prejudicial in that Government was denied the opportunity to contract a genuine contractor and deliver coffee seedlings to facilitate development of its citizens, the farmers in Manafwa District. In the premises, he submitted that the 2nd appellant could not, as he submitted, escape liability for the prejudicial act because other officials at the NAADS Office may have facilitated the irregular procurement and should have been charged. Counsel also urged this Court to reject the 2nd appellant's submission that he was not aware of the procurement in issue as it was conducted at Sub County level, as in her view, the appellant was the supervisor for the whole district and cannot plead ignorance of the regulatory framework in which he operated.

Counsel concluded by submitting that the learned trial Judge rightly found that the evidence proved the case against the 2nd appellant beyond reasonable doubt.

Reply to the 3rd appellant's submissions

Counsel argued grounds 1 and 2 of the 3rd appellant's appeal jointly.



On the 3rd appellant's contention that the charge sheet was defective and did not set out the material particulars of the offence he committed, counsel submitted that this was untrue, and that a perusal of the amended indictment at pages 8 and 9 of the record of appeal shows that the material particulars were clearly reflected therein.

As for the 3rd appellant's submission that he should not have been convicted because the 1st appellant was not responsible for the relevant procurement, counsel replied that the assistance the 3rd appellant rendered to the 1st appellant was illegal because the latter acted contrary to the law when he carried out the procurement. Counsel contended that the evidence of PW6 explained that the 3rd appellant together with the 1st appellant assumed responsibility and participated in the procurement of the coffee seedlings. Further, the evidence of PW15 showed that the 3rd appellant participated in delivery of coffee seedlings done after queries had been raised about the procurement process, which to counsel, was evidence that the 3rd appellant was guilty of wrong doing. Counsel submitted that the highlighted acts of the 3rd appellant were done in preparation to or in furtherance of the commission of the offence of the abuse of office by the 1st appellant, and thus the learned trial Judge's decision to convict the 3rd appellant was justified.

Reply to the 4th appellant's submissions

Counsel submitted that the 4th appellant's contention that the prosecution evidence was insufficient to justify his conviction for the



offence of **Preparation to Commit an Offence** was false and misconceived. He contended that the 4th appellant misunderstood that a conviction for the offence could only be sustained upon proof that he received money from NAADS, yet all that was required was proof that he attempted to commit an offence. Counsel contended the prosecution evidence proved that the 4th appellant attempted to obtain Ug. Shs. 250,000,000/= from the NAADS Secretariat by submitting a delivery note dated 5th April, 2012 to misrepresent that he supplied 400,000 coffee seedlings to Manafwa District. Counsel submitted that the delivery note was likely false because while it should have been made after the coffee seedlings had been delivered, the evidence indicated that some nursery bed operators were contacted to supply seedlings after the date indicated on the delivery note. The highlighted issues had caused PW2 to doubt the authenticity of the documents, including the delivery note, that were presented to NAADS for payment. Counsel contended that all the above highlighted issues were considered by the learned trial Judge and she made the correct findings.

It was further submitted that the learned trial Judge rightly considered the prosecution evidence which indicated that it was the 1st appellant and not the 4th appellant, who contacted the suppliers of the coffee seedlings which further incriminated the 4th appellant.

On the 4th appellant's submission that the coffee seedlings were supplied and so he could not have been guilty of any wrongdoing, counsel replied that evidence of PW5 and PW6 indicated that the 4th



appellant did not supply any coffee seedlings and that it was the nursery bed operators contacted by the 1st appellant who had done so. In addition, counsel submitted that as per the evidence of PW16, fewer seedlings totaling 320,000 than the 400,000 seedlings which the 4th appellant claimed to have been supplied, were actually supplied.

Counsel contended that the learned trial Judge properly considered the evidence which showed that the 4th appellant sought to get money for supply of coffee seedlings which he was not entitled to, and that this was evidence of a fraudulent intent. Counsel prayed that this Court upholds the 4th appellant's conviction.

Ground 3

Counsel conceded to this ground and agreed that the sentence imposed on the appellant was illegal as the learned trial Judge did not take into account the period the 4th appellant spent on remand, as required under **Article 23 (8)** of the **1995 Constitution**, and should therefore be set aside. Counsel prayed that this Court invokes its powers under **Section 11** of the **Judicature Act, Cap. 13** and passes an appropriate sentence.

2nd appellant's submissions in rejoinder

Counsel for the 2nd appellant stressed that the procurement of the coffee seedlings was governed by the NAADS guidelines and was envisaged to be undertaken at Sub-County level, and that therefore,



the respondent's submission that the procurement was governed by PPDA procedures was misconceived.

On the respondent's submission that the 2nd appellant acted arbitrarily by knowingly requesting and/or initiating payments for the coffee seedlings from NAADS well knowing that the relevant procurements had not been complied with, counsel rejoined that the 2nd appellant acted in accordance with the NAADS guidance set out in Exhibit PEX2. Moreover, upon the 2nd appellant submitting the request for payment, officials at the NAADS Secretariat had evaluated and approved payment. Counsel submitted that there was no evidence of mens rea against the 2nd appellant and at most he could only be said to have misconstrued the contents of PEX2 but there was no evidence of a guilty mind.

Counsel also contended that the **Andrua case (supra)** relied on by the respondent was distinguishable, in several respects, and could not be applied to the present case. First, the 2nd appellant was not the final decision maker as the appellant in the case was. Secondly, the 2nd appellant was merely following guidelines given to him unlike the appellant in that case. Thirdly, the 2nd appellant did not sign a contract unlike the appellant Andrua who was found to have signed a contract without approval from the Solicitor General. Fourthly, the 2nd appellant adhered to advice given by NAADS while the appellant in the Andrua case disregarded it. Fifthly, the 2nd appellant merely initiated and forwarded a document for payment, unlike in the Andrua case.



Furthermore, counsel submitted that the **Constitutional (Exemption of particular contracts from Attorney General's Legal Advice) Instrument** was inapplicable.

It was also submitted that the NAADS Guidelines permitted a Sub County to procure goods in excess of Ug. Shs. 500,000/=, and up to Ug. Shs. 250,000,000/= as had been done in the present case. In view of the above circumstances, counsel urged this Court to find that the learned trial Judge erred when she found that the 2nd appellant did any arbitrary act.

Counsel submitted that the 2nd appellant should not have been found to have abused her office because she complied with the directives in Exhibit PEX2.

On whether the 2nd appellant's acts were prejudicial to his employer, counsel maintained no prejudice was suffered because the coffee seedlings were supplied.

With regard to the respondent's submissions on the 3rd appellant's appeal, counsel submitted that the 3rd appellant should not have been found guilty for acts regarding contract management and execution which he had no powers to involve himself.

Resolution of the Appeal

This is a first appeal and this court takes cognisance of the established principles regarding the role of a first appellate court. The cases of **Kifamunte Henry v Uganda Supreme Court Criminal Appeal No. 10 of 1997** and **Pandya v. R [1957] EA 336**, and **Bogere**



Moses and Another v. Uganda, Supreme Court Criminal Appeal No. 1 of 1997 in essence have established that a first appellate court must review/rehear the evidence and consider all the materials which were before the trial Court, and come to its own conclusion regarding the facts, taking into account that it has neither seen nor heard the witnesses; and in this regard, it should be guided by the observations of the trial court regarding demeanour of witnesses.

Rule 30 of the Judicature (Court of Appeal Rules) Directions SI 13-10 is also relevant. It provides that;

“30. Power to reappraise evidence and to take additional evidence

(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—

(a) Re-appraise the evidence and draw inferences of fact; and

(b) In its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner.”

We have borne the above principles in mind in resolving this appeal. We shall re-evaluate the evidence on record for each of the appellants from the 1st and 2nd, 3rd and 4th appellants.

1ST AND 2ND APPELLANT’S APPEALS

We shall consider the 1st and 2nd appellant’s appeals jointly. One issue arises from the 1st and 2nd appellant’s grounds of appeal namely:



Whether the learned trial Judge erred in convicting the 1st and 2nd appellants as she did.”

As we noted earlier, the 1st appellant was convicted on the following four counts; one of **Abuse of Office** contrary to **Section 11 (1)** of the **Anti-Corruption Act, 2009** (count 1); one of **Forgery** contrary to **Sections 342 and 347** of the Penal Code Act, **Cap. 120** (count 4); and two of **Uttering a False Document** contrary to **Sections 351 and 347 of the Penal Code Act, Cap. 120** (counts 6 and 8).

The second appellant was convicted on one count of **Abuse of Office** contrary to **Section 11 (1) of the Anti-Corruption Act** (Count 2).

We shall begin by jointly considering the cases for the 1st and 2nd appellant on their respective convictions for Abuse of Office.

The offence of abuse of office is provided for under Section 11 (1) and (2) of the Anti-Corruption Act and provides that;

“11. Abuse of office.

(1) A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

(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.”

The ingredients for the offence of abuse of office are;

- (a) The appellant at the time of the commission of the alleged offence, was employed by a public body or company in which the government has shares.
- (b) The appellant does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person.
- (c) The act was done in abuse of authority.

On the 1st ingredient, it is not a disputed fact that the 1st appellant was employed as NAADS District Coordinator for Manafwa District and the 2nd appellant was employed as the Chief Accounting Officer for Manafwa District.

With regard to the 2nd ingredient, the appellants' case is that the procurement was legally done in accordance with the NAADS Guidelines 2007 and the NAADS Act (2001) on community based procurement.

The 1st appellant's role, according to the prosecution evidence, was to contact nursery bed operators and linked them to the 4th appellant, who had been awarded the contract of supplying the seedlings. In the procurement cycle, contracting ends with an award of contract. Thereafter, is contract management which require that the contractor



works with the user department being the production department in this case wherein the 1st appellant had to ensure that the items supplied are in compliance with the specifications for efficient execution of the contract.

The testimony of PW1 was that the 1st appellant's role was to coordinate and ensure timely and efficient execution of the contract. From his evidence, there was no offence for a NAADS operator to link the farmers to suppliers. PW1 stated that he did not effect payment in the first place because the documents submitted lacked a verification report. Later, a verification report was attached dated 4/5/2012. He testified in cross examination that the Ministry of Finance went for verification in Manafwa District and PW1 saw the report made by Internal Audit Ministry of Finance and the Permanent Secretary signed the report. All the other documents including the LPO had been attached and the only reason the payment was not effected at that time was the variance in the dates. PW1 then instructed their staff based in Manafwa to do a verification on behalf of NAADS Secretariat and one Ofwono, the zonal NAADS Coordinator Buginyanya went and carried out the verification and filed a verification report which PW1 studied and forwarded to the financial controller.

PW4, the zonal NAADS Coordinator who carried out the verification testified that when he went to Manafwa for the verification, he, together with the 1st appellant and Nambuya Modesta, sampled 15 sub-counties and met the secretary farmers' forum chairpersons who



stated that they had received coffee seedlings. He stated that they chose the sub counties and farmers randomly using the distribution list.

PW6, a nursery bed operator testified that the 1st appellant inspected his nursery bed in 2012 and assigned him to supply coffee seedlings to Bukabi and Buwomi sub-counties and he supplied 28,965 seedlings. He had a meeting with the CAO, RDC and other District officials and they made a memorandum of understanding so that they could process the payment.

PW12, a chairman farmer forum Buwabwala, testified that his father received 23200 coffee seedlings and that the farmers who received coffee seedlings were selected parish by parish and the coffee seedlings were received in 2012. PW12 took part in the distribution and stated that they had distribution lists against which those who received the coffee seedlings would sign.

The 1st appellants' testimony was that this was a delegated procurement which was handled by the sub-county. The delegation letter was written for the Chief Administrative Officer and the 1st appellant was asked to expeditiously handle the procurement. This was not the first of its kind and every year, money was sent to sub-counties to do procurement. We note that the prosecution witnesses agreed to the fact that the supply of the coffee seedlings was actually done but argued that the right procurement procedures were not followed. The NAADS Procurement was derived from **Article 159(3) (a)** of the Constitution, the **PPDA Act 2003**, the **NAADS Act 2001**



and the NAADS Procurement Guidelines 2007 which provide for community based procurement. Part III of the NAADS Guidelines provides for guidelines for community based procurement which focuses on farmer participation in the acquisition of goods and services at the sub-county Local Government Level. The prosecution case was that the procurement ought to have been carried out through the PPDA Regulations and not at the sub county level.

The 1st appellant testified that this procurement was done using the 2007 and 2008 NAADS Guidelines and this was after the President of Uganda ordered a review of NAADS to ensure that the procurement was hastened and the quality of input improved on by the communities themselves doing the procurement.

The 2nd appellant wrote the letter to the ED of NAADS for additional support of 250 million shillings for purchase of 500,000 coffee seedlings and the letter had instructions amongst which the sub-counties were to do the procurement under the NAADS Act and the NAADS Guidelines. The 2nd appellant instructed the District NAADS Coordinator, the 1st appellant, to take charge of the procurement. After the procurement process was effected, the 2nd appellant was to receive the documents stated in instruction (e) of Exhibit P.2 and make a submission to the NAADS Secretariat for further verification and pay the service provider.

According to paragraph (b) of Exhibit P2, sub counties were supposed to handle the procurement and whereas Manafwa has 30 sub-counties, it was not the duty of the 2nd appellant to choose the sub-



county to do the procurement. The monitoring report on delegated procurement for coffee in Manafwa District by Daniel Muwanga, a NAADS Board Member Eastern Region August 2013 on page 626 of the Record of Appeal indicated that;

“...the information did not tally with what the district leaders knew. It was then agreed that the district officials go back and meet all the sub county leaders and ascertain what is on ground and later harmonize with what the investigating team had presented. It came out to be very different whereby while the investigating team said only 200,000 coffee seedlings had been supplied out of 1,000,000 coffee seedlings in the three procurements, the district officials found out that more than 1,000,000 coffee seedlings had been supplied...”

This report was made after investigations were carried out by Daniel Muwanga, on instructions to try and harmonize the reason for the failed payment to Mamayi & Co. for the seedlings supplied. Further, the report found that in total, 1.028.588c coffee seedlings were supplied instead of the planned 1,000,000 coffee seedlings which meant that there was excess coffee supplied and coffee worth 250.000.000/= was not paid for. The report further recommended that the supplier/contractor of 400,000 coffee seedlings Ms Mamayi & Co. be paid the money in the contract for the supplies made.

The NAADS Guidelines which provide for the delegated sub-county procurement do not bar a sub-county from carrying out a particular procurement on behalf of other sub counties. The key factor is



whether the procedure was followed and it is our finding that it was. The testimony of PW3 was that in such a process, an advert is run calling for bidders capable of supplying technologies. At the opening, the bidder that can supply at the lowest price is identified and a notification is given to the secretary on who has won the contract. PW3 attended the meeting and the contract was awarded to Mamayi & Co. to supply the 400,000 coffee seedlings.

It is therefore our finding that the prosecution failed to prove the ingredient of doing an arbitrary act in abuse of authority against the 1st and 2nd appellants. We accordingly set aside the convictions and sentence against the 1st and 2nd appellants for the offence of Abuse of Office.

We find that the coffee seedlings were indeed supplied under the community base procurement and the proper documents submitted to process payment. The testimonies of PW1, PW3, PW4 and PW16 confirmed that the procurement took place and was done by Butiru sub-county procurement committee. DW4, DW5 DW6 and DW7 also confirmed that they were subcontracted by Mamayi and Co. Ltd to supply seedlings, which they did.

We accordingly quash the convictions of Forgery contrary to Sections 342 and 347 of the Penal Code Act, Cap. 120 (count 4); and Uttering a False Document contrary to Sections 351 and 347 of the Penal Code Act, Cap. 120 (counts 6 and 8).



3RD APPELLANT'S APPEAL

The 3rd appellant was convicted on one count of the offence of **Preparation to Commit an Offence** contrary to **Section 52 (b)** of the **Anti-Corruption Act, Cap. 2009**. It has been submitted that the particulars of the said offence as set out in the relevant indictment did not comply with the provisions of **Section 25 (c)** of the **Trial on Indictments Act, Cap. 23 (TIA)**, which rendered the charges against the 3rd appellant defective. Before dealing with Section 25 (c), we wish to note that **Section 22** of the **TIA** is also relevant on this subject of manner of drafting particulars in an indictment, it provides:

“22. Contents of indictment.

Every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.”

We now set out **Section 25 (c)**, which contains rules on the framing of particulars of an offence in an indictment. It provides:

“25. Rules for the framing of indictments.

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) ...



(b) ...

(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 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;

(d) ...”

In our view, it is mandatory, that particulars of an offence set out in an indictment must give reasonable information as to the nature of the offence charged. In the present case, the particulars were drafted as follows:

“Namolya Alex (3rd appellant) during the month of April, 2012 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 Natanga Patrick (A1) to contravene the procurement procedures, laws and requirements during the procurement of 400,000 coffee seedlings by Manafwa District Local Government.”

It is apparent that whereas the particulars allege that the 3rd appellant assisted the 1st appellant to contravene the procurement procedures, laws and requirements, it is not stated what form the assistance offered by the 3rd appellant. The failure to state the manner in which the 3rd appellant assisted the 1st appellant means



that the particulars failed to give reasonable information on the nature of the offence and that the indictment was defective in relation to the 3rd appellant. It therefore follows that the conviction of the 3rd appellant basing on that defective indictment was a nullity and we hereby set it aside.

The 3rd appellant's appeal is allowed and we quash his conviction for the offence of **Preparation to Commit an Offence** contrary to **Section 52 (b)** of the **Anti-Corruption Act, 2009**.

4TH APPELLANT'S APPEAL

The 4th appellant was convicted on one count of the offence of Attempt to Commit an Offence contrary to **Sections 387 and 22** of the **Penal Code Act, Cap. 120**. We shall proceed to set out the law providing for the said offence. **Section 387** of the PCA provides:

"387. Attempts to commit offences.

Any person who attempts to commit a felony or a misdemeanour commits an offence, which unless otherwise stated, is a misdemeanour.

Section 22 of the PCA sets out the punishment for the offence of Attempts and provides:

"22. General punishment for misdemeanours.

When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a period not exceeding two years."



The essential ingredient of the offence of Attempt to commit an offence is that the accused attempted to commit a specified felony or a misdemeanor. The particulars of the relevant offence were that:

“Sakari Godfrey Wopuwa during the month of April, 2012 in Manafwa District attempted to obtain Shs. 250,000,000/= from the NAADS Secretariat by falsely pretending that Mamayi & Company Ltd had supplied 400,000 coffee seedlings to Manafwa District Government whereas not.”

We have already found, while resolving the 1st and 2nd appellant’s appeals, that the supply of the 400,000 seedlings was actually done, having followed the delegated procurement under the NAADS Guidelines. Consequently, the conviction and sentence against the 4th appellant is accordingly set aside.

All in all, as Hon. Justice Catherine Bamugemereire and Hon. Justice Stephen Musota agree, the 1st, 2nd, 3rd and 4th appellant’s appeals are allowed. Hon. Justice Elizabeth Musoke will not be signing this judgment for reasons that she does not agree with our decision in its entirety. We accordingly make the following orders;

1. The 1st appellant’s conviction and sentence for the offences of Abuse of Office contrary to Section 11 (1) of the Anti-Corruption Act, 2009 (count 1); Forgery contrary to Sections 342 and 347 of the Penal Code Act, Cap. 120 (count 4); Uttering a False Document contrary to Sections 351 and 347 of the Penal Code Act, Cap. 120 are hereby set aside.



2. The 2nd appellant's conviction and sentence for the offence of Abuse of Office contrary to Section 11 (1) of the Anti-Corruption Act, 2009 is hereby set aside.
3. The 3rd appellant's conviction for the offence of Preparation to Commit an Offence contrary to Section 52 (b) of the Anti-Corruption Act, Cap. 2009 is hereby set aside.
4. The 4th appellant's conviction of the offence of Attempt to Commit an Offence contrary to Sections 387 and 22 of the Penal Code Act, Cap. 120 is hereby set aside. The 4th appellant should be paid the contract price of 250,000,000/= for the supply of 400.000 coffee seedlings to Manafwa District.
5. We order that the 1st, 2nd, 3rd and 4th appellants be set free unless held on other lawful charges.

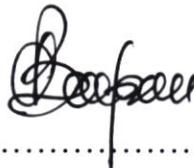
We so order

Dated this 17th day of March 2023

Signed

.....
Hon. Elizabeth Musoke

Justice of Appeal



.....
Hon. Catherine Bamugemereire

Justice of Appeal





.....

Hon. Stephen Musota

Justice of Appeal

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEALS NOS. 094 OF 2018 AND 058 OF 2019**

- 1. NATANGA PATRICK MATEMBU**
- 2. FREDRICK RWABUHO RO KWIHIRA**
- 3. NAMOLYA ALEX**
- 4. SAKARI GODFREY WOPUWA:.....:APPELLANTS**

VERSUS

UGANDA:.....:RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala (Anti-Corruption Division) before Tibulya, J. delivered on 15th June, 2018 (conviction) and 30th August, 2018 (sentencing) in Criminal Session Case No. 017 of 2014)

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

JUDGMENT OF ELIZABETH MUSOKE, JA

I have had the advantage of reading, in draft, the majority judgment authored by my learned colleagues Bamugemereire and Musota, JJA. I concur with the statement of the facts and submissions as set out in the majority judgment, and I shall not repeat that material in this judgment. I also concur with the reasoning and disposition of the 3rd and 4th appellant's appeals.

However, I am unable to agree with the decision of the majority to allow the 1st and 2nd appellant's appeals, and in this judgment, I set out to briefly explain my reasons. I agree with the majority that the key issue underlying the 1st and 2nd appellants' respective appeals is whether there was sufficient evidence to support the learned trial Judge's decision to convict the 1st and 2nd appellants as charged.

It will be noted that the 1st and 2nd appellants were, each convicted of one count of the offence of Abuse of Office contrary to **Section 11 (a)** of the **Anti-Corruption Act, 2009**. The charges against the appellants Abuse of

Office arose from allegations that the 1st and 2nd appellants had participated in fraudulent and/or irregular procurement of 400,000 coffee seedlings purportedly conducted by Manafwa District Local Government. The appellants denied any wrong doing and contended that the procurement was lawfully and honestly carried out. Accordingly, the beginning point in resolving this issue, is to consider whether the procurement in issue was irregular and/or fraudulent. Upon reviewing the evidence, I found that there is sufficient prosecution evidence on record that proves that the alleged procurement was fraudulent. For instance, the evidence of PW16 Mugisha Eldad, a police officer who carried out investigations into the challenged procurement explained, in his evidence, why he felt that the relevant procurement was irregular. PW16 testified that he obtained a copy of a letter by the 2nd appellant dated 13th April, 2012 in which the latter requested NAADS to pay for coffee seedlings. PW16 pointed out that whereas the 2nd appellant, in the letter, requested for payment for coffee seedlings which he contended had already been supplied at the time of writing the letter, no seedlings had actually been supplied.

Furthermore, PW16 testified that the police retrieved distribution lists for the coffee seedlings and studied them. He made the following findings:

"I used the [distribution lists] to appreciate that the supply was done after they [2nd appellant] had demanded for payments. The payments came after the supply – it was clear because the earliest date here is 1/5/2012 and yet the letter from the CAO forwarding attachments to Executive Director NAADS was dated 13/4/2015"

PW16 further alluded to the delivery note for the coffee seedlings (Exhibit P.5) which showed that all the seedlings had been supplied by 4th April, 2012. He testified that the dates indicated on the delivery note were likely false because as per accountability presented by the 1st appellant some seedlings were supplied in June, 2012.

PW16 further testified that the distribution lists (Exhibit P.8) purportedly showing that some farmers had received coffee seedlings were also likely false because he had interviewed some farmers on the list and they denied

receiving seedlings. He singled out Namuchula Iddi, Mityero David and Mwasame Geoffrey as some of the farmers in that category.

Mityero David testified as PW15. He stated that in November, 2011, the 1st appellant approached him while he was a NAADS Coordinator in Buwabwala Sub-County and informed him of plans by the District to supply coffee seedlings to farmers in that Sub-County. PW15 stated that the 1st appellant said that the seedlings were ready to be supplied in November 2011, but the farmers refused to receive them because they preferred the supply to be made around January to February, 2012. PW15 testified that by April 2012, only one farmer had received about 1000 seedlings. He also testified that he prepared a list showing that the farmer had received the seedlings, signed it and left it with the Chairman Farmers' Forum. PW15 stated that at the time of preparing the list, it contained only three names. However, in the course of police investigations, he discovered that other names had been added to the list. PW15 also corroborated the testimony of PW16 to the effect that some seedlings were supplied in June, 2012 yet the 2nd appellant claimed that all seedlings had been supplied by 13th April, 2012. PW15's evidence was supported by the evidence of PW12 Mwasame Kooko who worked closely with him in Buwabwala Sub County.

I also reviewed the evidence of PW13 Namuchula Idd, another farmer who was said to have supplied some of the seedlings in issue. PW13 stated that he supplied seedlings in 2011, and not 2012, when the seedlings in this case are said to have been supplied.

Further, I considered the evidence of PW11 Kuremu Steven. He said that his name was indicated on a distribution list retrieved from the 1st appellant as having received 1,500 seedlings in 2012. He denied having received the seedlings and said that his name was wrongly indicated on the list.

In view of the above evidence, it is my opinion that at the time the 2nd appellant wrote to request NAADS to pay for coffee seedlings that had allegedly been supplied earlier, no such supply had been made, which was irregular. Nonetheless, it will be noted that that the money requested by the 2nd appellant was paid in accordance with payment documents that he presented to NAADS which included a Local Purchase Order (Exhibit P4) and

a Delivery Note (Exhibit P5). The fact that these documents were prepared when the seedlings had not been supplied is, in my view, evidence of fraudulent procurement.

There was another reason supporting the conclusion that the procurement in issue was fraudulent. It will be noted that the procurement was purportedly conducted through one Sub-County, Butiru Sub-County whereas it should have been conducted by the District or by each Sub-County individually. I observe that the procurement was conducted following a request to NAADS by the 2nd appellant, then Chief Administrative Officer for Manafwa District, to provide funds for purchasing coffee seedlings. According to a letter (**Exhibit P2**) by then Acting Executive Director of NAADS Dr. Francis Byekwaso (PW1) to the 2nd appellant, the procurement was delegated to the district, although it was required to be conducted at Sub-County level. The appellants relied on the instructions in the highlighted letter to argue that one Sub County, Butiru, could conduct the relevant procurement on behalf of the entire District. I am unable to accept this argument, as the majority have done. In my view, the logical interpretation of the instructions contained in Exhibit P2 is that each Sub-County could only be responsible for its area and could not conduct procurement of coffee seedlings on behalf of all other Sub Counties in the District. The relevant distribution lists (**Exhibit P8**) purported to show that farmers from other Sub-Counties like Bukiabi, Buwabwala, Busukuya, Bupoto, among others also received some coffee seedlings in a procurement conducted by Butiru Sub-County. In my view, this indicated that the impugned procurement was conducted in an irregular and fraudulent manner.

For the reasons given above, I would conclude, as did the learned trial Judge, that the impugned procurement was conducted in a fraudulent and irregular manner. With that in mind, I would proceed to determine whether the elements of the offence of abuse of office were proved against the 1st and 2nd appellants. I observe that the offence of abuse of office is provided for under **Section 11 (1)** of the **Anti-Corruption Act, 2009** which provides:

"11. Abuse of office.

(1) A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty-eight currency points or both."

The ingredients of the offence of Abuse of Office, according to the above provision, insofar as relevant to the present case are as follows:

- "1. That the accused person was employed in a public body.**
- 2. That the accused person did or directed to be done an arbitrary act.**
- 3. That the arbitrary act was prejudicial to the accused person's employer.**
- 4. That the act was done in abuse of authority of the accused person's office."**

There was no dispute about the first ingredient. With regard to the second ingredient, I can conclude from the earlier analysis that the 2nd appellant did an arbitrary act by requesting for payment in respect to procurement of coffee seedlings that had been fraudulently and irregularly conducted. The 2nd appellant has submitted that he was not guilty because he passed the responsibility for handling the relevant procurement to the 1st appellant, and that therefore, he had no knowledge if at all the relevant procedure was not followed. I cannot accept this contention. As the learned trial Judge found, the 2nd appellant was Manafwa District's Accounting Officer, and he was expected to know or interest himself in knowing the details of all procurements conducted in the District. He cannot claim ignorance of the irregular and/or fraudulent procurement in this case.

I am also unable to agree with the 2nd appellant that he can be exonerated because of the involvement of other people in the relevant procurement, such as the District NAADS Coordinator, the Butiru Sub- County Chief, members of the Procurement Committee of Butiru Sub-County, and some members of the NAADS Secretariat. I am of the view that criminal liability is

personal and can be imposed on several persons if the evidence permits. In my view, the case of **Bagonza vs. Uganda, Court of Appeal Criminal Appeal No. 102 of 2010 (unreported)** does not establish any rule to the effect that involvement of persons other than the accused person in a decision negates arbitrariness, as claimed by counsel for the 2nd appellant. In my view, the assessment of criminal liability is done on a case by case basis. In the present case, there was sufficient evidence to prove that the appellant acted arbitrarily when he misrepresented that the procurement of the coffee seedlings had been properly done.

On whether the 2nd appellant's arbitrary act was prejudicial to his employer, I find that it was. I consider that conducting public procurement in a fraudulent and irregular manner automatically prejudices the Government's interest in ensuring transparency and accountability for public funds. I would agree with counsel for the respondent that the 2nd appellant's act of vouching for procurement that had been irregularly and fraudulently conducted, by submitting fraudulent payment documents was prejudicial in that the said act frustrated Government's efforts to ensure effective delivery of coffee seedlings to the farmers in Manafwa District, and affected their prospects of development.

Lastly, on whether the 2nd appellant did an arbitrary act in abuse of the authority of his office. According to the **Merriam Webster-Dictionary (2022)**, "abuse" means an "improper or excessive use". Therefore, abuse of office covers a scenario where an office holder improperly uses his office. I earlier found that the 2nd appellant requested for payment for procurement that was irregularly conducted. This in my view amounted to abuse of office. I would therefore conclude upon reviewing the evidence that the ingredients of the offence of Abuse of Office were proved against the 2nd appellant and his conviction was justified.

I now turn to consider whether the ingredients of the offence of Abuse of Office were proved against the 1st appellant. It was alleged that in April, 2012, the 1st appellant had done an arbitrary act of "contravening the procurement law, regulations and procedures during the procurement of 400,000 seedlings by Manafwa District". I earlier found that the procurement

of the 400,000 coffee seedlings was irregular for various reasons. What needs to be considered now is whether the 1st appellant played any role in the procurement.

According to the evidence on record, the 1st appellant was the Manafwa District NAADS Coordinator at the relevant time. It will be noted that the funds for procuring the coffee seedlings were provided by NAADS, and the 1st appellant played a key role in the alleged supply of the coffee seedlings. The 1st appellant signed the delivery note alleging that Mamai Co. Ltd had supplied the coffee seedlings. In addition, the 1st appellant was very active in making accountability to misrepresent that the seedlings had been supplied as at the date of requesting for payment yet the supply was done thereafter. The 1st appellant has argued that he did not participate in the relevant procurement because it was conducted by Butiru Sub-County which had a Sub-County NAADS Coordinator. The 1st appellant also argued that the only role he played was to coordinate with the 4th appellant as the supplier to ensure that the coffee seedlings were distributed to the farmers. I would reject these arguments. Several witnesses testified that the 1st appellant played a significant role in the relevant procurement. PW4 Ofwono Willy, who in April, 2012, went to Manafwa to verify the supply of coffee seedlings, testified that the 1st appellant was one of the district officials he met with, and who assured him that the coffee seedlings had been supplied. I am satisfied that the evidence proved that the appellant participated in the irregular procurement and this constituted an arbitrary act, which clearly was in abuse of office. The learned trial Judge was right in convicting him for abuse of office.

I now move on to consider the other offences of which the 1st appellant was convicted, namely one count of Forgery contrary to **Sections 342 and 347** of the **Penal Code Act, Cap. 120** and two counts of **Uttering a False Document** contrary to **Sections 351 and 347** of the **Penal Code Act, Cap. 120**.

With respect to the conviction for Forgery, it was alleged in count 4 that the 1st appellant had, during the month of April, 2012 at Manafwa District Local Government Headquarters in Manafwa District with intent to defraud or

deceive, forged a distribution list of 38,000 seedlings purporting that the said seedlings were received by farmers in Buwabwala Sub County in Manafwa District whereas not. The offence of Forgery is provided for under **Sections 342 and 347** of the **Penal Code Act, Cap. 120. Section 342** provides:

"342. Forgery.

Forgery is the making of a false document with intent to defraud or to deceive."

Section 347 states:

"347. General punishment for forgery.

Any person who forges any document commits an offence which, unless otherwise stated, is a felony and is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years."

The elements of the offence as provided for under the above sections are therefore as follows:

- "1. The accused person made a false document.**
- 2. That he/she made it with the intent to defraud or to deceive."**

The 1st appellant submitted that there was insufficient evidence to support the convictions for Forgery. He referred to the evidence of PW12 and PW15 who testified that they had signed the said distribution lists and submitted that it was they and not him who had prepared the distribution lists. I have reviewed the evidence.

PW15 Mityeero David testified that he was the Buwabwala Sub-County NAADS Coordinator at the relevant time. He testified that in 2011, he was approached by the 1st appellant who asked him to prepare a list of farmers in Buwabwala to be given coffee seedlings. PW15 testified that he prepared a list of 37 farmers, including himself, who were to receive 1000 coffee seedlings each for a total of 37,000 coffee seedlings in Buwabwala. The tabulated list, dated 11th November, 2011, included columns with particulars such as (1) Number, (2) Name of Beneficiary (3) sex (4) Parish (5) Village (6) No. of Coffee Seedlings expected and (7) Signature. PW15 testified that

he and the Chairman Buwabwala Sub-County Farmers Forum filled their particulars on the list. No other farmer had signed on the list. He also testified that by June, 2012, the coffee seedlings had not been received. PW15 testified that he left the list with the Chairman Farmers Forum in June 2012 and went for studies.

PW15 further testified that sometime, thereafter, he was approached by police officers who showed him the list with filled particulars for all the farmers. He told the police officers that the list was forged because the particulars were just filled yet the farmers had not received any seedlings. PW15 also testified that about 23,300 seedlings were supplied to farmers in Buwabwala in June, 2012.

In cross-examination, PW15 testified that he handed over the list he prepared to one Kooko Godfrey, the Buwabwala Chairman Farmers Forum. He also said that he was not present when it was filled, and he did not know who filled it. We however noted that PW16 Detective Inspector Mugisha Eldad, testified that he obtained the distribution list from the 1st appellant. The 2nd appellant, while testifying in his defence denied having forged the lists. He referred to the evidence of PW15 and stated that the witness had confirmed that he and one Kooko had prepared the lists.

The learned trial Judge found as follows:

"PW16 (AIP Mugisha) testified that these lists were certified and given to him by A1 (Natanga), a fact he concedes to. In his defence, A1 only denies the allegation of forgery. PW12 and 15's evidence sufficiently proves that signatures of beneficiaries including that attributed to PW12 were forged. The accused who last had these documents and certified them must be circumstantially taken to be the one who forged the documents."

I find that the learned trial Judge's findings were supported by the evidence. While it is true that PW12 and PW15 prepared empty distribution lists, it is more likely that the 1st appellant filled the distribution lists with false information to give the impression that certain Farmers in Buwabwala had been supplied with coffee seedlings, whereas not. I would uphold the 1st appellant's conviction for Forgery.

The 1st appellant's conviction for Uttering a False Document in count 6 related to allegations that he had uttered the distribution list we have already found to have been forged in our analysis on the Forgery count. There is evidence that the 1st appellant acted knowingly and fraudulently when he uttered the distribution list. It therefore follows that the conviction in count 6 has to be sustained.

The conviction for Uttering a False Document in count 8 related to allegations that the 1st appellant had knowingly and fraudulently uttered a false document to the NAADS Secretariat, to wit, a distribution list of 15,100 coffee seedlings purporting that they were received by farmers in Lwakhakha Sub-County in Manafwa District, whereas not. The offence of Uttering a False Document is provided for under **Sections 351 and 347** of the **Penal Code Act, Cap. 120**.

Section 351 provides:

"351. Uttering false documents.

Any person who knowingly and fraudulently utters a false document commits an offence of the same kind and is liable to the same punishment as if he or she had forged the thing in question."

Section 347 only sets out the punishment for the offence, and we have already set it out earlier. From the above provisions, the ingredients of the offence of Uttering a False Document are as follows:

- "1. The accused uttered a false document.**
- 2. He/she acted knowingly and fraudulently when he uttered the false document."**

The evidence in support of count 8 was given by PW12 Kuremu Steven. He testified that although his name was indicated on the distribution list (**Exhibit P8 XXVIII**) as having received 1,500 coffee seedlings from Manafwa District in 2012, he did not receive those seedlings as alleged. He also testified that, as a political leader, he was aware that no seedlings were supplied in the area under the NAADS programme as the distribution list falsely indicated.

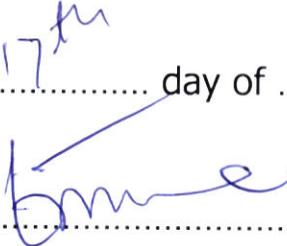
It will be noted that Exhibit P8XXVIII was included in the accountability provided by the 1st appellant to the 2nd appellant, which the latter transmitted to NAADS for obtaining payment. Accordingly, it can be concluded that the 1st appellant uttered the said list which was a false document. The 1st appellant testified that he did not utter the relevant list, but that was false considering the evidence of PW16, which was that the 1st appellant had prepared the list. In addition, PW13 Namuchula Idd, who was the nursery operator indicated as having supplied the seedlings on the distribution list denied having supplied any coffee seedlings in 2012. Therefore, like the learned trial Judge, we conclude that the 1st appellant was guilty of the offence of Uttering a False Document in count 8. I would therefore find that there was sufficient evidence and the 1st appellant was rightly convicted on count 8 as charged.

In conclusion, I would find that the 1st and 2nd appellants' respective convictions on all the respective counts were justified, and uphold them.

However, as the majority have a different view, the decision of the Court shall be as set out in the judgment of the majority.

It is so ordered.

Dated at Kampala this 17th day of moem 2023.


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Elizabeth Musoke

Justice of Appeal