

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA.

(ANTI CORRUPTION DIVISION)

CRIMINAL CASE NO. 738 OF 2009

UGANDA	PROSECUTOR
	VERSUS	
MUWONGE EMMANUEL	ACCUSED

BEFORE HON. JUSTICE J.B.A KATUTSI

RULING

The accused at the bar is indicted on two counts of Corruption by a Public Officer an offence under section 2(a) and 6(1) of the Prevention of Corruption Act 1970.

In Count 1 it is alleged that he on the 11th day of June, 2009 at Gulu Court premises in the Gulu District, being a person employed in the Public Service as State Attorney corruptly solicited 150,000/= from Peter Kola as an inducement to drop a criminal case which was sanctioned against Ojok Godfrey.

In Count 2 the particulars allege that being a person employed in the Public Service as State Attorney, at the same place, same time received 150,000/= from Peter Kola as an inducement to drop a criminal case which was sanctioned against Ojok Godfrey. The relevant part of section 2 (a) legislates as follows:

“Any person who shall, by himself or herself or by or in conjunction with any other person –

(a) Corruptly solicit or receive, or agree to receive for himself or herself, or for any other person, or

(b)

Any gratification as an inducement to,”

Section 6(1) of the said Act provides for the penalty to be imposed.

As can be seen from section 2(a) soliciting and receiving are in alternative. Once there is a receiving, then soliciting is subsumed in the act of receiving. It was wrong therefore to create two counts out of one section creating offences in the alternative. Count 2 should have perhaps been in the alternative in case prosecution was not sure of proving soliciting.

Be that as it may, it would appear to me that there was an acute itch to prosecute the accused, such that proper investigations were jettisoned to the winds. It is alleged that the accused received the money, later squeezed it in his hands and threw it out of the window. There was no attempt to lift finger prints on this money. That evidence of finger prints would have put the matter to rest. Instead prosecution decided to adduce evidence that was contradictory in material particular and in some cases ridiculous. At one stage it was claimed that one of the Police Officers climbed up a mango tree to see what was going on in the office of the accused!

What is a prima facie case? This has been a subject of much talk and writing that I consider it idle to add to the acres of paper and streams of ink that have been devoted to this subject. Suffice it to say that the evidence on record falls far short and does not measure to the degree of proof that makes up a prima facie case. That being the view I take of this case, it is with a lot of misgiving that I find the accused not guilty and acquit him.

J.B.A. KATUTSI

JUDGE

03/09/2009

03/09/2009:

Kandebe with Bahutu for accused

State not represented.

Accused before court

Ruling delivered.

J.B.A. KATUTSI

JUDGE

03/09/2009