

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**CRIMINAL APPEAL No. 0010 OF 2009**  
**(ARISING OUT OF CRIMINAL CASE No. 235 OF 2007**

**UGANDA VERSUS ABAHIKYE MOSES**

**IN THE CHIEF MAGISTRATE'S COURT OF RUKUNGIRI AT RUKUNGIRI)**

ABAHIKYE MOSES:..... APPELLANT

- VERSUS -

UGANDA:..... RESPONDENT

**BEFORE: HON. MR. JUSTICE PAUL K. MUGAMBA**

**JUDGMENT:-**

This appeal is against the decision of the Chief Magistrate, Rukungiri, wherein the appellant was convicted of embezzlement, contrary to section 268 (c) of the Penal Code Act and causing financial loss, contrary to section 269 of the same Act. He was thereafter sentenced to 8 years imprisonment on each of the counts but the sentences were to run concurrently. In addition appellant was ordered under section 270 of the Penal Code Act to pay shs.105,000,000/= as compensation owing to the financial loss he was found to have caused under count II of the charge.

The following grounds appear in the Memorandum of Appeal.

1. The Learned Trial magistrate erred in law and fact when she held that the Appellant embezzled the funds in question.
2. The Learned Trial magistrate erred in law and fact when she held that the Appellant caused financial loss to his employer.
3. The Learned Trial magistrate erred in law and fact when she failed to properly evaluate the evidence and arrived at a wrong conclusion resulting into a serious miscarriage of justice.
4. The Learned Trial magistrate erred in law and fact when she convicted the Appellant to serve 8 years imprisonment and ordered him to pay compensation in the sum of Ug. shs.105,000,000/= (One hundred and Five million shillings only).

5. The Learned Trial magistrate erred in law and fact when she held that all the ingredients of the offences had been proved beyond reasonable doubt.

The principles which guide an appellate court on a matter such as this are well established. They were related to in ***Selle and Another Vs Associated Motor Boat Co. Ltd and Others [1968] EA 123*** where Sir Clement de Lestang Vice President of the Court of Appeal for East Africa noted at page 126 of the report:

***“.. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witness and should make due allowance in this respect. In particular this court is not bound necessarily to follow the judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the imprisonment based on the demeanor of a witness is inconsistent with the evidence in the case generally.”***

The first ground of appeal relates to the count of embezzlement. In her judgment the Learned Chief Magistrate in my view properly related to the elements of the offence when at page 2 thereof she wrote:

***“.. In the instant case the prosecution has the burden to prove the following ingredients:-***

- (a) ***That the accused is employed by government;***
- (b) ***That he stole the employer’s property i.e. money;***
- (c) ***That the property came into his possession by virtue of his employment.”***

I have looked at the evidence as a whole and, with due respect to the Learned Trial Magistrate, I find nothing to suggest the appellant stole money or anything else. In the circumstances I do not find the finding by the Learned Trial Magistrate that there was embezzlement correct. The prosecution never proved this offence beyond reasonable doubt, as it ought. The first ground of appeal succeeds.

The second ground of appeal concerns the charge of causing financial loss. Here again the Learned Trial Magistrate considered the elements of the offence, which comprised the second count and noted, of significance, that the loss amounted to shs.105,308,074/=. Indeed this is the sum which she ordered the appellant to pay as compensation. In her judgment at page 6 the Learned Trial Magistrate correctly noted that the appellant was employed by the Government and that in the performance of his duties he must have done or omitted to do an act knowing or having reason to believe that the act or omission would cause financial loss to the employer. It is then the offence would be complete. I agree with that and go on to agree that the record is replete with evidence of neglect and misappropriation of funds culminating into financial loss to the employer. While one can make note of the ill-fared purchase of the generator, missing funds from the capitation grant, lemon trees proceeds of which remain unclear and several other escapades, no proof exists to justify the sum of shs.105,308,074/= seen as the defining figure for the loss caused by the appellant. This is the figure which led to the order for compensation. More on that later. The Learned Chief Magistrate properly found that the offence of causing financial loss was proved beyond reasonable doubt, nevertheless. I cannot fault her here.

Having found as I have above, I shall treat the other grounds generally since I have in the main pronounced myself on the salient matters. Consequently this appeal succeeds partially in that the appellant is acquitted on count 1 of the charge and that is embezzlement. The order of compensation is set aside given that no basis exists for it. Needless to say this does not shut out possible civil redress. Given the circumstances of the case and the finding that the appellant caused financial loss I find no reason why I should disturb the sentence of 8 year' imprisonment. I so find.

**PAUL K. MUGAMBA**

**JUDGE**

**4<sup>th</sup> December 2009**