

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**ANTI COURRUPTION DIVISION**  
**CR. CS 121 OF 2010**

**UGANDA**

=====

**PROSECUTOR**

***VERSUS***

**CHEPTUKE KAYE DAVID**

=====

**ACCUSED**

**BEFORE: HON. JUSTICE P.K.MUGAMBA**

**JUDGEMENT**

Cheptuke Kaye David was at all times material to this case the Magistrate Grade 1 Kisoro. He has since been inducted before this court with several offences. The first count is corruptly soliciting for gratification, contrary to Sections 2(a) and 26(1) of the Anti Corruption Act. Therein it is alleged that between 29<sup>th</sup> January 2010 and 16<sup>th</sup> February, 2010 accused solicited for a gratification of Shs. 300,000= from one Nyondo John Bosco as an inducement of promise to release on bail the three cousins of the said Nyondo who were in custody. That solicitation is said to have happened at the court of the Grade 1 Magistrate, Kisoro.

The charge in Count 2 is of corruptly receiving a gratification, contrary to Section 2(a) and 26(1) of the Anti Corruption Act. The particulars are that on 12<sup>th</sup> February, 2010 at Kisoro Magistrate's Court accused received Shs. 100,000= from Uweyezu Angela as an inducement to release on bail Musekura Denis, Richard Nterenganya and Busingye Scovia.

In Count 3 the charge is corruptly receiving a gratification, contrary to Section 2(a) and 26(1) of the Anti Corruption Act. It is alleged in that count that accused on 16<sup>th</sup> February, 2011 at Kisoro Magistrate's Court received a gratification of Shs. 100,000= from Nyondo John Bosco as final payment for having released on bail Nyondo John Bosco's cousins charged in the case accused presided over.

Ten witnesses were called by the prosecution in support of its case. Deo Tereraho was PW1, Musekura Denis was PW2, Emeri George William was PW3, P.C. Twinomugabe was PW4, Catherine Kusemererwa D/ASP was PW5, Necklet Erute was PW6, John Bosco Nyondo was PW7, Nyiransaba Stella was PW8, Uwayezu Angela was PW9 while Hererimana William testified as PW10. For the defence accused gave evidence on oath and called Benon Harera as his witness.

I should lay out the prosecution case. As mentioned earlier, accused was Grade 1 Magistrate at Kisoro. On or about 28<sup>th</sup> January 2010 Scovia Busingye Musekula Denis and Ntirenganya Richard, all siblings, were held in custody, charged with malicious damage to property. They were due to appear before accused's court at Kisoro. PW7, cousin to the prisoners, eventually stood surety for Busingye Scovia who was on 29<sup>th</sup> January, 2010 released Denis and Ntirenganya Richard were not so lucky because a total of Shs.200,000= was required to secure their release. There was a telephone conversation between PW7 and accused on 9<sup>th</sup> February 2010, following which accused advised PW7 to leave the money PW7 wanted to hand to him with PW1, the Court Clerk. PW7 did not comply. On 16<sup>th</sup> February 2011, Pw7 went to the chambers of the accused and left Shs. 100,000= with the accused. Accused was immediately apprehended and the present charges are in consequence.

In his defence, accused denies all the charges.

The burden of proof is on the prosecution to prove the guilt of the accused beyond reasonable doubt. There is no burden on the accused to prove his innocence. **See Sekitoleko Vs Uganda [1967] EA 531.**

Count 1 relates to currently soliciting for gratification. Prosecution evidence out to show that accused was a public official, that he directly or indirectly solicited for money in exchange for an act in the performance of his public function. The particulars in Count 1 show accused solicited for Shs. 300,000= from Nyondo John Bosco in order for him to release on bail Musekura Denis, Busingye Scovia and Ntirenganya Richard, all cousins to Nyondo John Bosco. Accused was the Magistrate who presided over the case for which they were being held, to wit KAB/01/CR/C0/0028/2010. In connection with this charge the prosecution relied on the evidence of PW7, Nyondo John Bosco. It was his evidence accused never discussed the issue of bail with the court prosecutor. Prosecution did not give details of the prosecutor alluded to nor was he called to testify.

Relationship between the accused and the said prosecutor was never established, nor accused's role in the matter. That prosecutor remains a phantom as pertains this case, I must hold. Needless to say no evidence was adduced to implicate accused in the offence alleged in this count. Given the finding I have reached and expressed earlier on, I agree with their opinion. I find accused not guilty on Count 1 and acquit him.

Accused in Count 2, is alleged to have received Shs. 100,000= from PW9 as an inducement to release on bail PW9's relatives who were being held in custody. It is alleged accused received the money on 12<sup>th</sup> February, 2010 in the chambers of the Grade 1 Magistrate, Kisoro and that the case involving the prisoners was before his court.

Evidence was given by PW8 that she handed over Shs. 100,000= to PW9 in order that PW9 would stand as surety for the prisoners. This testimony is supported by PW9 said she entered the chambers of the Grade 1 Magistrate, Kisoro in the company of PW10 on 12<sup>th</sup> February, 2010. It is her evidence she sought the company of PW10, the Kisoro District Speaker, because she had only Shs. 100,000=. It was her evidence PW10 was an acquaintance of accused and she wanted PW10 to persuade accused to accept Shs. 100,000= promising to pay the rest of the money in future. This evidence is supported by PW10 who went to support PW9 who went on to support PW9's evidence that accused accepted the arrangement and received Shs. 100,000= from PW9 and PW10 testified that accused demanded that the remaining Shs. 100,000= should be produced when the case was next mentioned on 26<sup>th</sup> February 2010. PW9 and PW10 both mentioned that accused had asked for and examined PW9's identity papers in the chambers also.

Therefore, PW10 had gone away while PW9 went to open court where the prisoners were later produced. In his defence accused agreed with PW9 and PW10 that they had both been to his office early on 12<sup>th</sup> February 2010 regarding the release of the prisoners. He added however that also in his chambers was one Herera (DW2) who had gone to his chambers earlier on to inquire over another matter. DW2 was in the chambers when PW9 and PW10 entered the chambers. He was still in the chambers when they left eventually. DW2 agreed with accused that no money was handed over to accused by PW9 as alleged or at all. PW9 said she was given no receipt for the money she paid to accused because when she asked for one she was told she would have to pay Shs. 500,000= in order to be issued with a receipt. If she was to pay Shs. 100,000= to secure the release of the prisoners, she was told by accused, she would not be issued with a receipt. In his evidence PW10 said he was not bothered about the money paid which he considered a deposit. It was accused's defence supported by DW2 that PW9 and PW10 had an amorous relationship. Accused further testified that he had had dealings with PW10 in the past but that their working relationship was not that smooth at the material time.

It was evidence that the allegation that he had received money from PW9 was hatched by PW9 and PW10 in order to frame him.

I have carefully looked at the evidence of the prosecution as well as the defence. In this connection I have considered the testimonies of PW9 and PW10, accused as well as DW2. I have found it hard to believe that a seemingly harmonious conference would have taken place as narrated between accused and PW9 together with PW10 if the working relationship was as bad as the defence would make it out to be. DW2 does not say that in the negotiations anything other than harmony reigned. I see no reason to believe the testimonies of PW9 and PW10 were

influenced by any ill will, hence suspect. The two struck me as credible and respectable witnesses and I have no reason to alter the assessment.

Having established there was a meeting in the chambers earlier on evidence was led that PW9 went to open court where she intended to stand surety for the prisoners. One of the prisoners PW9 was to stand surety for testified as PW2. It was his evidence earlier in the morning he and his brother were not taken to court because they were told the Magistrate concerned was not in court. PW2 said however that other prisoners were taken to court. That was on the 12<sup>th</sup> February, 2010, the day in issue. PW2 stated that later in the day when they were about to have lunch, an officer told them they were to be taken to court. They were taken to court and found accused working on some cases. PW2 said that in court they were asked if they had sureties whereupon PW9 said she was ready to stand surety for them. According to PW2, accused told PW9 to meet him in chambers in their absence. According to PW2 the prisoners were in the meantime kept in the nearby house until late in the evening when they signed the papers.

It was also the evidence of PW2 that he was told by PW10 that already Shs.100,000= had been paid and that next time they came to court on the 26<sup>th</sup> February, 2010 they should go there with another Shs.100,000=. In his testimony PW2 said in court accused had not mentioned any money to be paid. He said also that after court, accused and PW9 had gone to accused's chambers while the prisoner sat outside.

I have considered all the evidence above as given on behalf of the prosecution. I have considered also the defence testimony of the accused as well as DW2. I note that no exhibit is available. Any exhibit such as the money in issue or a note in acknowledgement of receipt would certainly have been a fillip to the prosecution case. Nevertheless where there is satisfactory description of the substance in issue, court will accept evidence relating to that substance notwithstanding the non availability of that substance. That is the wisdom in **Uganda Vs Katusabe [1088 – 1990]** HCB 59. Both PW9 and Pw10 testified that accused received Shs.100,000= from PW9. It was also the evidence of PW2 that soon after his release on bail he learnt from PW10 that Shs.100,000= had been paid to secure bail for him and his brother and that the outstanding Shs.100,000= would have to be paid on 26<sup>th</sup> February 2010. I find sufficient corroboration in the prosecution evidence concerning accused's receipt of money. In light of such evidence I find the defence denial not convincing. I am satisfied the prosecution has proved beyond reasonable doubt that accused received Shs.100,000= from PW9 in order to release PW2 and his brother on bail. The assessors in their joint opinion advised me to find accused guilty as charged. For the reasons I have given earlier on, I agree with that verdict. I find accused guilty of the charge in Count 2 and convict him accordingly.

In Count 3 accused is again charged with corruptly receiving a gratification, this time from PW7. The particulars are that on 16<sup>th</sup> February, 2010, accused while at Kisoro Magistrate's Court received a gratification of Shs.100,000= from Nyondo John Bosco as final payment for having

released on bail Musekura Denis, Busingye Scovia and Richard Ntirenganya who were Nyondo John Bocso's cousins.

The prisoners were being on a charge of malicious damage to property in criminal case No. **KAB/01/CR/CO/0028/2010** and accused presided over that case. To secure a conviction the prosecution ought to prove that at the material time, accused was a Magistrate at Kisoro who presided over the case involving the prisoner concerned and that at the time alleged he received the gratification in issue as final payment for having released on bail the prisoners in issue. From the evidence it is not contention that accused held the office of Grade 1 Magistrate Kisoro at the time. It is not contested he presided over a case involving the particulars involved. It is not disputed that the material time he did receive Shs.100,000=. At issue is the reason why he received that money. It is prosecution evidence accused had earlier denied bail to PW7's two cousins, namely Musekura Denis and Richard Ntirenganya. PW7 had taken a complaint to the Inspectorate of Government alleging accused was demanding for a bribe before he could release the two prisoners. That was before 12<sup>th</sup> February 2010. The Inspectorate of Government arranged with PW7 to lay a trap for accused before 12<sup>th</sup> February 2020. It failed because accused was away from Kisoro. On that occasion accused advised PW7 to hand any money PW7 wished to give him to PW1, the Court Clerk. PW7 did not comply.

On 16<sup>th</sup> February 2010, PW7 took trap money which was well marked to accused's chambers. He had with him Shs. 200,000= but accused said all he required was Shs.100,000=, so Shs.100,000= was left with accused and was the money found on him when he was arrested in his chambers soon after. In his defence, accused denied he had asked for any money from PW7 in order to grant bail to his cousins. Indeed PW7 admitted accused never asked him for any money for the release of the prisoners on bail. There was agreement in the testimonies of accused and PW7 that they were well acquainted and that together they had carried out some transactions such as a deal involving a sale and purchase of a Motor Vehicle as well as several loan transactions, so that it was not contested that earlier on accused had extended a short term loan of Shs.100,000= to PW7 which was due for payment. Could this have been the reason why accused readily accepted Shs.100,000= instead of Shs.200,000= PW7 was prepared to hand over? Or was it, as the prosecution would have it, because Shs.100,000= was still owing from the money necessary to secure bail for the prisoners charged in accused'd Court? It is not clear what the accused received the money for. The prosecution must prove beyond reasonable doubt that money was received by accused in relation to Court Matters in order to have accused convicted, I find in the evidence of state witness PW7 nothing to lead to such conclusion.

In their joint opinion, the two assessors advised me to find accused guilty on Count 3.

Respectfully, I do not agree with their advice for the considerations I have already expressed. I find accused not guilty on Count 3 and acquit him of the charge.

In consequence accused is acquitted on Count 1 and on Count 3. I find him guilty and convict him of Count 2.

P.K. MUGAMBA

JUDGE

12/11/2010