

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
ANTI CORRUPTION DIVISION
CR. CA 010 OF 2010

GASHENYI JOHN WYCLIFF ===== APPELLANT

VERSUS

UGANDA ===== RESPONDENT

BEFORE: HON: JUSTICE P.K. MUGAMBA

JUDGEMENT

Gashenyi John Wycliff was Town Clerk, Kiboga Town Council. He has since been convicted of Abuse of Office, contrary to Section 87(1) and (2) of the Penal Code Act by the Anti Corruption Court, Grade 1 Magistrate's Court, and sentenced to a fine of Shs. 2,000,000= or to imprisonment of 2years in default of payment of the fine. This appeal seeks to have the Judgment and Sentence set aside.

Four grounds of appeal were advanced. They read as follows:

- 1) The Learned Trial Magistrate erred in fact and law when he failed to properly evaluate evidence on record and came to a wrong conclusion.
- 2) The Learned Trial Magistrate erred in fact and law when he relied on the prosecution evidence in total disregard of the defence evidence and wrongly convicted the appellant for abuse of office.
- 3) The Learned Trial Magistrate erred in fact and law when he ruled that the appellant's acts were arbitrary and prejudicial to the interest of Kiboga Town Council.
- 4) The Learned Trial Magistrate erred in fact and law when he sentenced the appellant to a fine of Shs. 2,000,000= which was high and excessive and contrary to law.

At the outset I must acknowledge that it is the duty of the first appellate court to reconsider and evaluate the evidence on record and come to its own conclusion bearing in mind, however, the fact that it never saw the witnesses as they testified. That is the wisdom in *Nsibambi Vs Lovinsa Nankya* (1980) HCG 81 and elsewhere. As later amends, the charge sheet had its particulars reading:

“Gashenyi John Wycliff on or about 21/12/2005 being a person employed by Kiboga District Local Government as Town Clerk Kiboga Town Council, did in abuse of authority of his office an arbitrary act prejudicial to Kiboga Town Council in that he sold and transferred Kiboga Town Council land comprised in Plot 534, Block 655 in favour of Haji Ssekitoleko Sulayimani without author from Kiboga Town Council and thereby unlawfully passed on council land to Haji Sekitoleko Sulayimani”.

In his Judgment the properly laid out the elements of the offence of abuse of office which the prosecution had to prove, as being:

- a) The accused was an employee of a Public body.
- b) The accused did or directed to be done an arbitrary act at the time in question.
- c) The act is an abuse of the authority of the office of the accused.
- d) The arbitrary act is prejudicial to the interest of the accused’s employer or any other person.

It is not in doubt the appellant was an employee of Kiboga Town Council. It is not disputed either that the appellant did transfer the property in land at Katanjovu, belonging to Kiboga Town Council, his employer, to a Third Party. At the core of this appeal is resolution or whether or not the appellant herein sold and transferred the property in issue without authority of his employer. Appellant’s testimony at page 64 of the proceedings is apt. He stated:

“The report says that small part of the land had Sekitoleko’s fence and recommended that it should be left with him and Sekitoleko be advised to apply for that small piece of land. Haji Sekitoleko applied for that small piece of land and I signed for him. I did not go back to the council I went ahead and signed the transfer to the said Sekitoleko. I based on the Town Council resolution of 11/04/1996 minutes 15-2-96”

Sadly, by not going back to the Council for authorization the appellant fell on his own sword. He could act lawfully only on the authority of the Council. Section 3(5) of the Local Government Act provides that the Local Government in a town is the Town Council and this is buttressed by Section 9(1) of the Act ordaining a council as the highest political authority within the area of

Jurisdiction of a local Government and that it has legislative and executive powers to be exercised in accordance with the Constitution and the Act.

To cap it up Section 65(2) (c) of the Act states that the Town Clerk is the head of the administration of the relevant urban council and is responsible for implementation of lawful decisions taken by the council. It is urged by the appellant that he disposed of the property in issue following a resolution of 11/04/1996. He quoted minute 15-2-95. For one that minute is not a resolution. Even if it were, disposal of the property is not therein contained, let alone disposal to Sekitoleko.

In fact there is no evidence of any authorization of the council for the appellant to act like he did contained anywhere on the record. I cannot say much more regarding the veracity of documentary evidence since it was not subject to forensic scrutiny as should have been the case. Suffice to say I would have reached the same conclusion I do that the appellant acted without authorization by Kiboga Town Council, which was unlawful. I see no reason why I should disturb the finding of the Trial Court.

On whether or not there was a sole, denial by the appellant files in the face of the consent (Land Form 6) which the appellant does not deny signing. It is manifest therein the transfer was for a consideration of Shs. 300,000=

Having dealt with the first three grounds of appeal, I should address the final one.

Appellant was for consideration expressed by the trial court sentenced to a fine of Shs. 2,000,000= or a custodial sentence of 2 years in default of payment of that fine. In my view that sentence is by no means stiff. The trial court did not consider compensation under Section 197(1) of the Magistrate's Court Act. In my view Kiboga Town Council is entitled to some compensation for the loss of that piece of land at Katanjovu. I consider Shs. 5,000,000= fair and reasonable given the fact the land in issue is situated in an urban area and was registered.

Accordingly, this appeal fails with an order for appellant to pay compensation to Kiboga Town Council besides the sentence imposed by the Trial Court.

P. K. MUGAMBA

JUDGE

13/10/2010

