

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
ANTI CORRUPTION DIVISION
CR.CA 006 OF 2010

SENTONGO HUSSEIN:..... APPELLANT

VERSUS

UGANDA:..... RESPONDENT

BEFORE: HON. JUSTICE P.K. MUGAMBA

JUDGMENT

Appellant, Sentongo Hussein appeals against the judgment of Grade 1 Makindye Magistrate's court where on 1st April 2010 he was convicted of embezzlement contrary to Section 268(b) and (f) of the Penal Code Act and sentenced to three years' imprisonment. Appellant is also to refund Shs. 5,660,000= and pay costs of Shs. 500,000 to the complainant. The appeal is against conviction, sentence and the orders imposed,

From the jumble that the grounds of appeal appear to be two emerge and would read as follows:

- 1) That the learned Grade 1 Magistrate failed to evaluate the evidence as a whole thus reaching a wrong decision and orders.
- 2) That the learned trial magistrate erred in law and fact to hold (sic) that the appellant committed the offence of embezzlement when the ingredients were not proved.

Both counsel for the appellant and the learned state attorney elected to argue the grounds together. The prosecution has the onus to prove the offence charged beyond reasonable doubt. Where the charge was embezzlement, the prosecution ought to prove the ingredients of the offence which were plainly that the accused was an employee of the complainant company and that he stole a certain amount of money which he received on behalf of his employer. It was nowhere disputed that accused was indeed at one point an employee of Stop and See Uganda

Limited, It was never contested accused did receive money particularly from tenants on behalf of his employer. Evidence was led that accused issued receipts for money he received on behalf of his employer.

The charge of embezzlement of which accused was convicted is hinged on evidence of discrepancies between particulars written on receipts issued by accused and copies of receipts. While serial numbers appeared similar, what was apparent on the former was different from what appeared on the latter. For sure names of payee differed and amounts written on the latter were more than amounts written on the former, It is this observation that led to a complaint being made and investigations being set in trend. It is noteworthy that forensic animation of handwriting was done in the course of investigations and the accused was found to be the author of the receipts issued and the carbon copies in issue. In all fairness no audit was carried out to show how much money could have been stolen. Yet in the judgment of the trial magistrate Shs 5,660,000 was money belonging to the company the accused was adjudged to have stolen. With due respect that finding has no basis in fact and in law. Dubious book keeping is not synonymous with embezzlement and this is the reason for there being several kindred offences relating to accounting.

In the circumstances this appeal succeeds. The conviction is quashed and the sentence is set aside. Also set aside are the orders of the lower court consequent to conviction.

P.K.MUGAMBA

JUDGE

17/08/2010