

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT KAMPALA  
CRIM. APPEAL NO.06/2011**

**UGANDA:..... PROSECUTOR  
VERSUS  
OKONGO DENIS & ANOTHER:..... ACCUSED**

Before Hon. Lady Justice Catherine Bamugemereire

**J U D G M E N T**

(A criminal appeal arising out of the Judgment of Principal Magistrate Grade One Baguma Emmanuel dated 17th March 2011 vide criminal case HCT-00-ACD-CR SC 27 of 2010)

This appeal arises out of the Judgment of Principal Magistrate Grade 1 Emmanuel Baguma sitting at the Anti Corruption Division Kololo, Uganda. The two Respondents were found not guilty of three counts of the offence of abuse of Office c/s 11 of the Anti Corruption Act 2009 and not guilty of one count of Causing Financial Loss c/s 20 of the Anti Corruption Act. The State exercised its right to appeal against an acquittal under article 139 (2) of the Constitution of the Republic of Uganda 1995.

The case in the lower court originated from a part-exchange-part sale of Gulu Municipal Council property and the main issue was whether the officers acted ultra vires, in abuse of office thereby causing financial loss to the Council. The facts giving rise to this case were that at the material time A1 was Acting Town Clerk Gulu Municipality while A2 was Deputy Mayor of the same Council, respectively. It was alleged that Gulu Municipal Council authorised the purchase of land at a place known as Wiceri for purposes of swapping the said land with the Central Forest Reserve in Gulu town. The purchase of land was sanctioned by a full council meeting on 30<sup>th</sup> May 2007. At the said council meeting it had been resolved vide min. CL/7A (vi)/2007 that Twenty Five Million Uganda Shillings (UGX 25,000,000) be borrowed from the House Sales Account for purchase of land at Wiceri with a view to swapping this land with the Central Forest Reserve in Gulu town. However, contrary to the council resolution, land was bought at Latoro for Twenty Five Million Uganda Shillings (UGX 25,000,000) and an additional 8 plots was also acquired. It was the prosecution case that Gulu Municipal Council never authorised the purchase of land at Latoro nor did it

authorise the inclusion of 8 plots in the said sale price. It was also prosecution case that the sellers at Latoro did not receive the payment of Twenty Five million Uganda Shillings (UGX 25,000,000) as stated. Instead, they were only given Twenty Million Uganda Shillings (UGX 20,000,000) of which A2-Kilara Benson allegedly received Six million Uganda Shillings (UGX 6, 000,000 ) leaving the sellers with only Fourteen Million Uganda Shillings (UGX 14, 000,000).

It must be stated that the role of the appellate court is not restricted to only subjecting the evidence and record of the lower court to a fresh and exhaustive scrutiny as rightly observed in Pandya v R 1957 EA 336 and Uganda v Prof Gustavus Senyonga and Anor Cr Appeal No.4 of 1997 (Court of appeal) but the appellate court may also examine the appeal process. This is implied in the provisions of s.28 of the Criminal Procedure Code Cap 116 as amended.

It is on record that Judgment in this case was delivered on 17<sup>th</sup> March 2011. Ten days later, the State represented by the IGG lawfully filed a notice of appeal on 28<sup>th</sup> March 2011 and nothing else. Up until 19<sup>th</sup> August 2011 the State neither filed a Memorandum of Appeal nor did it initiate the fixing of a hearing date of the case. After a futile and long wait, the Registrar issued hearing notices ordering the parties to appear in court on the 10<sup>th</sup> of August. In response, on 5<sup>th</sup> August 2011 the Head Prosecutions in the office of the IGG wrote as follows:

*‘We represent the appellant in the above case. We were served with a hearing notice for the 10<sup>th</sup> August 2011 in respect of the above appeal. The officer having personal conduct of the appeal shall be undergoing training in trial Advocacy organised by NITA USA from 8<sup>th</sup> to 13<sup>th</sup> August 2011 and therefore unable to attend court on the 10<sup>th</sup> August 2011. We therefore pray that court allows written submissions attached in lieu of the oral submissions. Our submissions in reply shall be filed after receipt of the respondents’ submissions. We so pray.’*

Following the above letter written submissions purporting to argue an appeal were unilaterally filed by the said officer On 5<sup>th</sup> August 2011. Apparently a memorandum of appeal had been filed with the registry around the 3<sup>rd</sup> of August. The memorandum of appeal had only one ground of appeal and stated as follows:

‘TAKE NOTICE that the IGG on behalf of the State being dissatisfied with the judgment of His Worship Baguma, Grade One Magistrate Anti Corruption Division, delivered on the 17<sup>th</sup> March 2011 whereby he acquitted the Respondents of the offences of abuse of office c/s 11 of the Anti Corruption Act 2009 and Causing Financial Loss c/s 20 of the Anti Corruption Act hereby appeals to this honourable court against the said Judgment and acquittal on **the one ground that:**

*The learned trial Magistrate erred in law and fact by failing to properly evaluate the prosecution evidence against the respondents. Wherefor the appellant prays that the appeal be allowed the acquittals be set aside and substituted with convictions and appropriate sentences.’*

The memorandum of appeal was drafted by the Inspectorate of government, Directorate of legal affairs whose address is Jubilee Insurance Centre, Parliamentary Avenue, Kampala Uganda.

Whilst this court has exhaustively examined the evidence of the lower court and subjected it to fresh scrutiny, I need to make a few comments about the manner in which this appeal was initiated and managed.

First, it is unacceptable for officers of court to seek adjournment of cases by letter. Adjournment by letter is inappropriate and will not be entertained by this court. This court is under a duty to hear cases judiciously, efficiently and expeditiously. In all matters before court there must be personal attendance by officers of court. Where for good reason, an officer having personal conduct of the case fails to attend; another officer must appear on his behalf and be ready to proceed with the matter before court.

Secondly it is totally unacceptable for Officers from the Inspectorate of Government to instruct courts on how cases or appeals filed before courts shall be heard. Conduct of a trial is the singular duty of the presiding Judge or magistrate. When court is in session, authority over the proceedings flows through the judge or magistrate. State Attorneys, Advocates and Officers of the Inspectorate of Government, inter alia, are officers of court whose primary role is to assist in the presentation of evidence to make sure the judge has all the appropriate information to determine the case. Consequently, it is the Judge who decides on the manner in which a matter before court will be conducted. In general, oral submissions are the preferred mode of presenting arguments to the presiding judge or magistrate because they are

conducted in open court in a transparent atmosphere an attribute which may be less evident with written submissions. Oral submissions therefore reinforce the notion of Justice being seen to be done. Indeed there may circumstances when court requests counsel to submit written submissions in order to save courts time. In that event it is the court that initiates the process. It is absolutely inappropriate for Counsel to unilaterally and by letter decide on their own motion to argue an appeal by filing written submissions. For the avoidance of doubt let me state that it is entirely out of order for an officer of court to order court by letter, how a trial should proceed. Such behaviour may in certain circumstances attract sanctions on grounds of contempt of court.

Thirdly the memorandum of appeal in this matter appears to have been filed as an after-thought. It does not state even in general terms the grounds of appeal. See the case of Arnold Pudo s/o Aranda v R (1960) EA at 381 (Court of appeal).

The memorandum of appeal file in this case does not meet the standards of a memorandum of appeal expected under s. 28 of the Criminal Procedure Code Cap 116 referred to as the CPC. The procedure for filing an appeal is laid down as follows:

#### S. 28 Notice of Appeal

(1)Every appeal shall be commenced by a notice in writing which shall be signed by the appellant or an advocate on his behalf and shall be lodged with the Registrar within fourteen days of the date of judgment or order from which such appeal is preferred.

(4)Where the appellant is represented by an advocate or the appeal is preferred by the Directorate of Public Prosecutions, the grounds of appeal shall include particulars of the matters of law and fact in regard to which the court appealed from is alleged to have erred.

(5)Where an appellant who is not represented has not availed himself or herself of the provisions of sub-section (3) of this section, nothing contained therein shall be read as preventing the appellate court from permitting him from raising any proper ground of appeal orally at the hearing of the appeal.

It is mandatory that every appeal is commenced by a notice of appeal which must be lodged with the registrar within fourteen days of the date of judgment. This requirement was complied with in the instant appeal as a notice of appeal was filed within time. However, the IGG appears to have completely lost interest in prosecuting this appeal until a hearing notice was issued by the Registrar.

This court could have summarily dismissed this appeal under s. 32 (1) of the CPC. Court however proceeded under the proviso of s. 32(2) b which states that

‘Notwithstanding subsection (1):

No appeal shall summarily be dismissed where the notice or grounds of appeal has been signed by an advocate unless such advocate has had an opportunity of being heard in support of the same.’

The IGG in this case was granted an opportunity of being heard in support of this appeal but failed to acquit himself. The memorandum of appeal filed in this case which was in a brief and stereotyped form and raised no specific point of law or fact. The form of memorandum of appeal filed by the IGG does not meet the requirements established by law and indeed falls below the standard laid down in s. 28(4) of the CPC. The court frowns upon use of blanket and stereotype memoranda which are laid out in terms so general as to be valueless. Indeed as pointed out in Mutemba s/o Rutehenda v R (5) 1953 20 EACA 276

‘Such a system must be intelligently applied to the facts of the case as revealed by the evidence and should not degenerate into drafting a stereotype form of memorandum.’

More thought needs to be applied to the drafting of memoranda in order to avoid unintelligent, blanket and stereotype forms filed in a hurry by learned officers. Wide discretion is only allowed for litigants who do not avail themselves of the services of counsel. Such litigants may be allowed to raise their grounds of appeal orally before the court. Unfortunately the magnanimity shown to an unrepresented litigant is not available to officers of the inspectorate of government. The officers of the IGG are constitutionally at par with those in the Directorate of Public Prosecutions though the latter is the only one mentioned in s.326 (3) of the CPC.

In view of the above, this court finds that the memorandum of appeal was not properly filed since the grounds of appeal must particularise the matters of law and fact in regard to which the court appealed from is alleged to have erred. But even if it were the case, the memorandum of appeal was lacking in form and content and did not raise any specific point of fact or law. I accordingly dismiss this appeal.

Judgment delivered this 31<sup>st</sup> day of August 2011.

.....  
31<sup>st</sup>/08/2011  
**HON.LADY CATHERINE  
BAMUGEMEREIRE  
JUSTICE OF THE HIGH COURT**