THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ANTI CORRUPTION DIVISION
CR.SC 72 OF 2011

UGANDA :: PROSECUTOR

VERSUS

IMERE DEO :: ACCUSED

BEFORE: HON. JUSTICE P. K. MUGAMBA

J U D G M E N T

The accused, Imere Deo, is charged with two counts of corruption and one count of abuse of office. In count I he is charged with corruption, contrary to section 2(a) of the Anti Corruption Act in that between October 2010 and April 2011 at Crested Towers, Kampala, in Kampala District he directly solicited for Shs. 100,000,000= for the benefit of himself in exchange for reducing tax liability from Shs. 1,019,878,753= to Shs. 230,000,000= during the audit of Lubmarks Investments Ltd. Count II also charges accused with corruption.

Under section 2(d) of the Anti Corruption Act it is alleged that accused, on 4th April 2011 at Crested Towers, Kampala, in Kampala District, received Shs. 5,000,000= for the benefit of himself in exchange for reducing tax liability of Lubmarks Investment Ltd from Shs. 1,019,878,753= to Shs. 230,000,000=. Under Count III accused is charged with abuse of office, contrary to section 11(1) of the Anti Corruption Act, whereby it is alleged that between October 2010 and April 2011 at Crested Towers Kampala in Kampala District, being a Supervisor with Domestic Tax Department of Uganda Revenue Authority (URA), a body corporate in which

Government has shares, accused did an arbitrary act when he solicited for Shs. 100,000,000=, received Shs. 5,000,000= and reduced tax position from Shs. 1,019,878,753= to Shs. 230,000,000= which is prejudicial to the interests of his employer URA, in abuse of his office. Accused denied all the charges.

In support of its case the prosecution called ten witnesses. PW1 was Joyce Kaweesa Kikulwe, PW2 was Alice Kyomuhangi, PW3 was Charity Kasigazi, PW4 was Jennipher Nyakwera, PW5 was Irene Mbabazi Irumba, PW6 was Belinda Annet Komuntale, PW7 was Moses Sebyala Kiwanuka, PW8 was Takali Jamila, PW9 was Patrick Oburu, while Ogema Tanga testified as PW10. For the defence accused testified as DW1 while his wife featured as DW2.

It is the prosecution case that accused was at the time material to this case, employed by the Uganda Revenue Authority as Supervisor, Domestic Taxes. In that capacity he supervised groups of officers charged with verification of tax liability of tax payers through auditing. One such tax payer was M/S Lubmarks Investments Ltd, whose tax liability was tentatively found to be Shs. 1,019,878,753= by a team comprising accused, PW2 and PW3. When Lubmarks Investments Ltd complained that the tentative tax liability was too high accused told PW7, a director in Lubmarks Investment Ltd, that that sum could be reduced to Shs. 230,000,000= provided the tax payer was in a position to pay him Shs. 100,000,000= for his effort. PW7 found no comfort in the proposal so he reported the matter to accused's employer who set a trap and arrested accused soon after he received Shs. 5,000,000=, part of the desired Shs. 100,000,000=. The charges herein were preferred in the wake of the arrest.

It is the duty of the prosecution to prove the charges preferred against the accused beyond reasonable doubt. See **Ssekitoleko Vs Uganda [1967] EA 531**.

Count I relates to solicitation. The prosecution ought to prove that accused was at the time material to this case a public official that he solicited for goods of monetary value in exchange for an act or omission in the performance of his public office. PW1 testified that accused was a supervisor with Uganda Revenue Authority which is a public body. This evidence was not refuted by the defence. It is an established fact. PW7, a director in Lubmarks Investments Ltd testified that accused asked for a gratification. It was the evidence of PW7 that accused undertook to reduce the tax liability of Lubmarks Investments Ltd from over Shs. 1 billion to Shs. 230,000,000= so long as the company was to pay him Shs. 100,000,000=. Besides that of PW7 there is no other testimony to this effect. PW4 stated that during February 2011 when she was at the Sheraton Hotel, Kampala, she was introduced to PW7, who, hearing that she worked for URA, disclosed to her that a member of staff at URA sought for a bribe from him to reduce an audit finding he had come up with. It was the evidence of PW4 that PW7 did not immediately disclose the staff involved but that PW4 gave PW7 contact details of PW6. Both PW6 and PW7 agree there was communication subsequently between PW7 and PW6 which led to a sting operation. There is also the evidence of PW9 who testified that on 1st April 2011 when he and PW10 visited the office of PW7 he heard a conversation between PW7 and someone on the other end of the line. The phone was loud and PW7 fixed an appointment with the person at the other end of the line. The appointment was set for Monday 4th April 2011. It was then they handed PW7 the money to be used in the trap. It was the evidence of PW9 they were told by PW7 that the person at the other end of the line was Imere Deo. On his part accused denies there was any conversation between him and accused on 1st April 2011. The evidence of PW10 is that on 1st April 2011 he and PW9 went to PW7's office. PW7 had told them he would ring accused and confirm accused still sought for the money. It is the evidence of PW10 also that PW7 put his

phone on the loud note and proceeded to hold a conversation with someone at the other end of the line, who could be heard demanding for Shs. 100,000,000=. Thereafter they were convinced their information concerning solicitation was credible. That is how they went ahead to prepare the trap. I must note here that accused denied having any conversation with PW7 on that day.

On the evidence on record I am not satisfied the prosecution has proved beyond reasonable doubt that the person at the other end of the line mentioning Shs. 100,000,000= was accused. Neither PW9 nor PW10 knew the accused let alone the sound of his voice. No evidence was led to show he spoke to PW7 save the evidence of PW7 himself. Furthermore, the amount of money being asked for by the person on the line was Shs. 100,000,000= and no evidence was led, if indeed prosecution evidence of involvement of accused is to go by, why it was he came to accept Shs. 5,000,000= instead of the Shs. 100,000,000=. I am not satisfied the prosecution has proved beyond reasonable doubt that accused ever solicited for the Shs. 100,000,000= as alleged.

The assessor in her opinion advises that I find accused not guilty on this count. For the reasons I have given earlier I agree with her advice. I find accused not guilty on count I and acquit him accordingly.

In count II accused is charged with receipt of a gratification. Needless to say the prosecution must prove here also that accused was at the time material to the charge a public official. This fact I find proved not only from the evidence of PW1 which is to that effect but also from the fact that the defence does not contest it. The prosecution must prove also that accused received a gratification for the benefit of himself in exchange for reducing tax liability of Lubmarks Investments Ltd from Shs. 1,019,878,753= to Shs. 230,000,000=. PW7, Moses Sebyala Kiwanuka, testified that he received several demands from accused in the past for a gratification

of Shs. 100,000,000= in order for him to be able to reduce the tax liability of Lubmarks Investments Ltd from Shs. 1,019,878,753= to Shs. 230,000,000=. According to PW7 he had consulted with PW4 and later with PW6 regarding that proposal. Indeed both PW4 and PW6 testified that the consultation took place. PW6 moved to have the issue checked out. Both PW9 and PW10 gave evidence showing a sting operation was arranged to have the suspect arrested as he received the money. In the process it was arranged that instead of the Shs. 100,000,000= asked for Shs. 5,000,000= was to be paid initially, with the rest pending payment in the near future. The currency in Shs. 20,000= note denominations was duly arranged, noted and photocopied before it was handed over to PW7 for transmission to his interlocutor. It is the evidence of PW7 in court as well as evidence found in the extra judicial statement of accused that the money was handed over by PW7 to accused. Further evidence to this effect is that of PW5, PW9 and PW10. In his defence accused argued that he did not expect the contents of the khaki envelope to be money. He said he expected the contents to be information on bank guarantees as promised by PW7 earlier. It was his defence PW7 told him before he left the car where he received it to put the envelope in his socks. Accused added that at the time PW7 had a gun. Accused said armed as PW7 was with a gun, he ordered him to take the envelope if he was not to be shot. Subsequently as accused left the car which was parked in the parking yard and headed to his office he got arrested by PW9 and PW10. This evidence is not contested. Also not disputed is evidence that he was found carrying with him Shs. 5,000,000= earlier arranged as a trap. That money was in a khaki envelope in the socks of accused. PW5, PW9, PW10 as well as accused are at one on that. So is the extra judicial statement of accused, exhibit P5.

I have noted that in his defence accused said PW7 forced him at the risk of being shot to put the envelope and its contents in his socks. I do not believe this version of the story because PW7 had

nothing to achieve by having money he had already paid out hidden by someone who would very soon find out what the contents were. Most likely it was accused who did not wish to be caught with ill gotten money. This court takes judicial notice of a stratagem evolved during the heady days of the Amin era perfected during the early 1980s but since abandoned, whereby socks served as depositories of valuables, particularly currency notes, which the carrier sought to hide from prying eyes. The carrier most often knew what the luggage was but prayed hard no one else would come to share his knowledge. In this case a rehearsal of the practice did abort. I have no doubt the evidence shows clearly accused received the money in issue from PW7 as a gratification. PW7 was agent for a tax payer where accused was a public official dealing with matters of taxation in URA concerning the taxpayer. This charge has been proved by the prosecution beyond reasonable doubt.

In her verdict the lady assessor advised me to find that the prosecution has not proved count II beyond reasonable doubt. I respectfully disagree with that opinion given my finding which I have expressed herein. The prosecution has proved count II beyond reasonable doubt and I convict the accused thereon accordingly.

Count III charges accused with Abuse of Office, contrary to section 11(1) of the Anti Corruption Act. It is alleged in the charge that accused between the months of October 2010 and April 2011 at Crested Towers, Kampala, being Supervisor with Domestic Tax Department of Uganda Revenue Authority did an arbitrary act, to wit solicited for Shs. 100,000,000=, received Shs. 5,000,000= and reduced the tax position from Shs. 1,019,878,753= to Shs. 230,000,000= which is prejudicial to the interests of the employer, URA, in abuse of the authority of his office.

Once again it is the evidence of the prosecution that accused worked for URA which is a public body. This evidence is not contested by the defence. The arbitrary act is that accused arbitrarily reduced the tax position of Lubmarks Investments Ltd from Shs. 1,019,878,753= to Shs. 230,000,000=. From the evidence there was never a final audit report. What PW2 and PW3 had done was at reconciliation stage. Before an audit report could be made finally more information was required. In the event there was a tentative tax condition going beyond Shs. 1,000,000,000=. It was the evidence of PW2 that later on accused revised the tentative tax computation which was at over Shs. 1,000,000,000= to about Shs. 230,000,000=. PW2 testified that accused did not come up with evidence for the change in computation. PW3 stated that after she compared invoices with schedules she passed them on to PW2 to make a computation and that PW2 had come up with the figure of over Shs. 1,000,000,000=. She was definite the audit was not complete when she left for leave and a new assignment. Indeed in the evidence tendered by the prosecution there was no final audit report presented. What was presented instead was exhibit P2 entitled “Domestic Taxes Department Audit Report”. It is dated 1st February 2011 but shows it was signed on 31st January 2011. Though his name appears on that document, accused denies he signed it. No proof is available what appears there is his signature. Admittedly his name is written there. Clearly no one can say in the circumstances that accused signed the document, given his denial. What is more, the spaces provided for the signatures of PW2 and PW3 remain blank. Significantly PW5 relates to exhibit P2 which in Item 8, Summary of Revised Assessments and Tax Payable, shows the figure Shs. 230,831,652=. There is no knowing who it was that figure was ordained by.

Given all the discrepancies shown above there is nothing to show the accused person committed the offence alleged against him. This charge has not been proved by the prosecution beyond reasonable doubt.

Needless to say, an essential ingredient of the offence of abuse of office is that the act complained of should be prejudicial to the rights of another. A right is an interest recognized and protected by law respect of which is a duty and disregard of which is a wrong. See **Barungi Vs Uganda [1988 – 1990] HCB 68**.

The lady assessor advised me to find accused not guilty on count III. Given my findings above I agree with her opinion. Accused is not guilty on count III and he is acquitted of the charge of Abuse of Office.

P. K. MUGAMBA
JUDGE
16/09/2011

S E N T E N C E

The convict has been found guilty of the corruption offence of receipt. He was to have received Shs. 100,000,000= and deny the Ugandan tax payer colossal amounts of money. I need not say more about this tendency sadly permeating our society. I accept the convict is a young man who should take care of his family but he should bear the punishment imposed which should carry meaning. He is a first offender, I agree, so I should take that into account just like I must take into account the maximum punishment available under the law.

Having considered everything including his family concerns I sentence the convict to 3 years' imprisonment.

P. K. MUGAMBA
JUDGE
16/09/2011