

REPUBLIC OF UGANDA
HIGH COURT OF UGANDA
HOLDEN AT KOLOLO
CRIMINAL APPEAL No. 22 of 2011

MAGANDA ::::::::::::::::::::::::::::::::::;:APPELLANT
JAMES

V

UGANDA ::::::::::::::::::::::::::::::::::RESPONDENT

**BEFORE: HON.LADY JUSTICE CATHERINE
BAMUGEMEREIRE**

J U D G M E N T

(Arising out of the Judgment by Magistrate Grade One Anti
Corruption Division) (Dated 9/09/2011: Criminal Case no. 178 of 2011)

This appeal arises out of the decision of Magistrate Grade 1 Sarah Langa in which she convicted the appellant of two counts; one of Fraudulent False Accounting c/s 23 (a) and (b) of the Anti Corruption Act 2009 and the other of Abuse of Office c/s 11(i) of the Anti Corruption Act. She however acquitted the appellant of Embezzlement c/s 20 of the ACA.

The Appellant was at the material time a Senior Supplies Officer of Iganga Hospital in Iganga District. Iganga District was part of an integrated home-based management Project of Malaria and Pneumonia at

community level. The Medical Stores which the appellant was in charge of were stocked with anti-malaria and antibiotic medicines targeted specifically at children aged five years and below. On unspecified dates the Medicines Unit in Kampala received complaints about the presence of expired drugs in Iganga which allegedly originated from the Appellant's stores. At the same time there were also numerous complaints about unexplained dwindling of medical supplies to the community. The Appellant was subsequently arrested, charged, tried and convicted hence this appeal.

It is my duty as the first appellate court to subject entire lower court record to a fresh and exhaustive scrutiny. In examining the evidence this court will draw inferences and come to its own conclusions therefrom. I am however careful to note that I did not have the privilege to hear and see the witnesses first hand. As such I am conscious of that fact. Reference is made to **Pandya V.R. 1957 E.A. 336** and to **Kifamunte H v Uganda Crim. Appeal No. 10/97.**

The appeal is against both conviction and sentence and is based on five grounds. In arguing this Appeal Mr. Kavuma Issa for the Appellant abandoned ground no.2 but argued ground 1 and 4, ground 1 and 3 and then

ground no.5 on its own. He contended that the convictions on the Counts of Fraudulent False Accounting c/s 23 of the ACA and Abuse of Office c/s 11(1) of the ACA were based on insufficient evidence. Mr. Kavuma contended that Maganda, the Appellant was not responsible for issuing drugs to the community. He further argued that it was Pw2 Tusubira Hilda and Pw7 Namusabi Ruth who were directly involved with the communities and not his client. Further still, Mr. Kavuma argued that his client was not guilty issuing expired drugs to the community for medical purposes and that he did not do an arbitrary act of knowingly issuing expired drugs. In addition Mr. Kavuma contended that the prosecution did not prove beyond reasonable doubt that the actions of the accused were prejudicial to the rights of his employer and in abuse of his office.

In reply learned State Counsel argued that the learned trial Magistrate properly evaluated the evidence and took into consideration both sides of the case. She further submitted that the appellant was under obligation to store the drugs and to ensure they were of good quality. In addition State Counsel countered the Appellant's submission that the Appellant would not have known that the drugs given to the community were expired.

I have carefully perused the evidence on record and considered the arguments of both counsel. The prosecution relied in part on the evidence of a handwriting analyst PW8, Apollo Ntarirwa Mutashwera. The Analyst's report was marked Exh P11. He found the handwriting in question to have significant similarities with the samples which were gathered from a one Maganda. Mr Ntarirwa's evidence was that whoever wrote the specimens was the same writer of the signatures on the questioned vouchers Exh P19. The testimony of PW9, DIP Byaruhanga Frank is self-evident. He stated that he was detailed by the Director of the Medicines Unit to investigate this case. He proceeded to Iganga Medical stores where the appellant showed him 61 boxes of Coartem two of which were open (Exh. P14 and 15). The officer examined the dates on the 'use-by-dates' and they appeared altered. The dates had been changed from 2008 to 2011. In addition to the direct and expert evidence, the prosecution also relied on circumstantial. The principles governing circumstantial evidence was well articulated in Akol Patrick v Uganda 2006 HCB 7 where it was held thus;

'Where evidence is circumstantial it must be such that it produces moral certainty beyond reasonable doubt that it is the accused who

committed the crime. The facts proved by the prosecution must be such that there are no other co-existing circumstances which would destroy the inference of guilt that is to say; in order to support a conviction, circumstantial evidence must point irresistibly to the appellant as the one who committed the offence for which he or she is charged.'

In this regard I find overwhelming proof linking the appellant with the commission of this offence. The Appellant was the first point of contact in the District and held single point responsibility for receiving drugs from the Medical Stores in Kampala. Drugs were received and checked by him before onward transmission. In order to deliver medicine to children under the age of five in the communities, PW2 and PW7 would make original requisitions to the appellant. The red flag was raised when one of the requisitions was altered and a huge amount of expired drugs (re evidence of PW6) was found. All evidence appeared to lead to the conclusion that the appellant was singularly responsible for receiving and distributing drugs. Clearly, although the appellant denied opening boxes there was overwhelming proof that the appellant regularly opened up the boxes and removed doses

prior to distributing materials to the Community workers. Similarly the appellant typically supplied materials in response to original vouchers but he did not originate the vouchers. This indeed confirms that PW2 and PW7 could not have been involved in this fraudulent scheme as only duplicate vouchers, to which only the appellant had access, were found forged. Further it is instructive that the appellant's handwriting was identified by the expert as strikingly similar to the handwriting in the document. The handwriting expert's analysis indeed supports the inference that it was the appellant who altered the dates on the vouchers.

Regarding grounds four and five, I agree with State Counsel that the learned Trial Magistrate did take into consideration the defence of the accused and did properly evaluate the evidence as a whole. I find no reason to upset her findings. It is therefore my finding that the two counts on which the convictions were entered against the accused were proved beyond reasonable doubt as required by law. See Okethi Okale v Uganda 1965 EA 42. See also Kooky Sharma and anor V Uganda Criminal Appeal No. 10 of 1997.

I therefore find no reason to disturb the findings of the Learned Trial Magistrate. For reasons given above

both Convictions and Sentences are upheld and the Appeal is dismissed forthwith.

Hon. Lady Justice Catherine Bamugemereire

Judge of the high court

6/12/2012