

REPUBLIC OF UGANDA
ANTI CORRUPTION DIVISION
HOLDEN AT KOLOLO
CRIMINAL APPEAL NO. 26 OF 2011
AMPUMUZA NAD:..... APPELLANT
V
UGANDA :..... RESPONDENT

Before Hon. Lady Justice Catherine Bamugemereire

Judgment

The Appellant, Ampumwize NAD, was charged with the offence of Causing Financial loss in Count 1 c/s 269 of the Penal Code Act Cap. 120. In the Alternative he was charged with Embezzlement c/s 268 of the Penal Code Act as the law then was. As a result the Appellant was tried and found guilty of the offence Embezzlement and was sentenced to three years' imprisonment which was the minimum sentence prescribed by the law in force at the time. In addition, the Appellant was ordered to either refund UGX 12,339,000/= to Kabale District Local Government or to pay the participants who were not paid. In the alternative he was ordered to return the money to the PDM Secretariat, a programme which falls under the Ministry of Local Government in Kampala. The refund orders were made under S.270 of the MCA.

Further, in Count No. 3, the Appellant was charged with Abuse of office c/s 87 of the Penal code Act and in Count No. 4, he was charged with False Accounting by a Public office c/s 326 of the Penal Code Act. Consequently the appellant was convicted of the offence of Abuse of Office in Count No.3 and sentenced to two years imprisonment. Regarding the offence of False Accounting by Public Officer in count No.4, the Appellant was sentenced to 1 years' imprisonment. It was also ordered that all the terms of imprisonment run concurrently.

Prosecution produced twenty five (25) witnesses and the accused gave a sworn defence.

The brief facts of this case were that in 2002 Ministry of Local Government introduced Participatory Development Management (PDM) project in Kabale District. Bubare Sub County was selected to pilot the project. The Appellant was at all material times employed by Kabale District Local Government as Senior Economist. By virtue of his position as the Senior Economist the Appellant, who headed the planning unit, naturally, became the supervisor of the PDM Project.

The PDM Secretariat, Ministry of Local Government remitted funds to the PDM project in Bubare through the then CAO (Chief Administrative Officer) Kabale, PW1 Mr. Samuel Katehangwa. The funds were remitted by Bank drafts upon which Kabale District Local Government duly acknowledged receipt of the money by issuing Treasury General Receipts which were marked P.Exh. 1 (a) - (d). It is alleged that the Appellant, being the project manager for the PDM project embezzled project funds amounting to UGX 12,339,000/= and furnished false accountability to explain away the theft. The Appellant denied the charges and insisted that his accountability was accurate and proper.

The Appellant raised nine grounds of appeal. I have resolved them as follows: Grounds No. 1 and 2 were argued separately while Ground No. 3, 4, 5, 6, 8 and 9 were argued as one and Ground No. 7 was argued alone.

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

In ground no.1 it is alleged that the Learned Trial Magistrate erred in law and in fact when she considered money and facts outside the state

period in the charge sheet. Here below is what the learned trial magistrate said,

“However, I agree with the defence submission filed on 29/8/2011 at page 2 thereof that P.Exh 1c) the release of UGX 11,072,200/= dated 29/03/2004, and P.Exh.1d) the release of UGX 6,833,400/= dated 30/6/2002, are outside the period indicated in the charge sheet on all counts, which ranges from 28/04/2003 to 26/03/2004. Under S.88 (L) of the MCA Cap.16 in connection with sections 268 and 269 it is provided that “it shall be sufficient to specify the gross amount of the property in respect of which the offense is alleged to have been committed and the dates between which the offense is alleged to have been committed.”

In compliance with this provision, therefore prosecution is expected to confine its evidence to the specified amount and the range of dates indicated. Therefore in determining the amount of funds accused is supposed to have falsely accounted for, I will not consider the releases outside the charge sheet, because as submitted by the defence counsel, prosecution has never bothered to amend the charge sheet to match with the evidence.”

From the above excerpt the learned trial Magistrate considered both sides and took into consideration the defence submissions regarding the times stated and clearly left out the contested period. For this reason I see no merit in this ground. It must fail.

Regarding the second ground of appeal the learned trial magistrate is faulted for concluding that the District Chief Administrative Officer was required to submit accountability but not to account for the funds. I will once again reproduce what she said, thus;

“So even PW4, who sent the funds expected the District Planner, the accused to account and not the CAO.”Having established that it was the accused’s responsibility to account for the funds for which he was the requisitioner and implementer. I have to find out whether he knowingly furnished false accountabilities.”

Although the CAO was the overall accounting officer, the accused did indeed receive the money from the CAO and it was the appellant who expended the money. The learned trial magistrate had the opportunity to see the witnesses firsthand and was able to conclude that the CAO was not directly responsible for the money in question. The learned trial Magistrate, quite rightly in my view, chose to believe prosecution witnesses No. 2 and No. 4. Once again this ground of appeal must fail.

Grounds number 3, 4, 5, 6, 8 and 9 in my view can be merged into one and stated as follows: whether the learned trial magistrate properly evaluated the evidence on record. I have given very careful consideration to the submissions of learned counsel regarding the four grounds and have scrutinised the evidence on record. Without going into much detail here, I note that the discretion lay with the magistrate whether to believe the prosecution or the defence. Since the Learned Trial Magistrate had the opportunity to assess the demeanour of the witnesses and to hear them out first hand. The learned trial magistrate believed the prosecution and quite rightly so in my view. An issue which emerged was whether PW11 was an agent. The question of an agent is a question of fact. PW11’s conduct was clearly that of an agent; someone who acts on behalf of another. This was the finding of the learned trial magistrate, as a person who had an opportunity to see these witnesses first hand. The principle of agency is very simple. I find that a person who acts on behalf of another can be rightly referred to as an agent. I find that the learned trial magistrate considered this evidence as a whole. The grounds must fail.

In Ground no.7 of the appeal the issue was whether learned trial magistrate erred in law and in fact when she calculated the alleged embezzled funds and arrived at 12,339,000 allegedly without facts on court record? I will once again carefully examine and trail the reasoning behind this decision by first looking at the proceedings. This is what the learned trial magistrate had to say about the accountability;

“This means considering P.Exh.1 (a) and (b) the releases of UGX 43, 255,280/= and UGX 30,772,400/=. The accountability for UGX 43,255,280/= is contained in P.Exh.4 while the accountability per UGX 30, 722,400/= is contained in P.Exh.5. The relevant pages in P.Exh.4 are 95-116 and pages 54 and 58 of the proceedings where the testimony of PW5, the I/O explains the figures. According to the testimony of PW5 and P.Exh.4, pages 95-116 highlighted in red, 212 village community facilitators attended a training workshop and each one was supposed to be paid UGX 3000/= daily for two weeks. So for one week it was 212x21.000 totalling to UGX 4,452,000/= and for two weeks it totals to UGX 8,904,000/=. However PW5 testified that when the 212 participants were interviewed, they said that they never received the alleged money.”

The learned Trial Magistrate depended on the evidence of the I.O, PW5 regarding the actual amounts paid to the 212 participants. The I.O apparently interviewed the participants, collected their specimen handwritings for expert analysis and testified regarding his findings. I would have appreciated, as a result of such examination, that detailed report of such findings was made out including the content of the interviews. Nonetheless, PW5, the I.O was available for cross-examination and apparently his evidence appeared unchallenged. Further still the learned trial magistrate relied on the findings of the handwriting analyst to reach her decision as seen below:

“However according to P.Exh.10 the handwriting expert’s report PW20, Mr. Ezati Samuel, the handwriting expert found that some participants signed for the 21,000/=when he compared their signatures on

P.Exh.4 with their sample signatures, EXH 1-9, 11,14,15,23. Then for the authors of specimen signatures EXH 27 and 47, PW20 found that their specimen signatures were incomparable with the alleged signatures on P.Exh.4 and he did not make a finding on them. The total is UGX 357,000/= on them. On P.Exh.5 in which there is accountability for UGX 30,772,400/= at pages 25-34 for participants C1-C190 and pages 35-44 for participants D1-D190, each of the participants at pages 25-34 was supposed to be paid UGX 6000/= this totals to UGX 1,140,000/=

On pages 35-44 each participant was supposed to be paid UGX 10,000/=. This totals to UGX 1,900,000/=. On page 6, there is a list of trainers, namely: Rwebasira, Ntungwa, Tumwebaze D, Tumwesigye L, Byaruhanga L and Binegoro D. Each of them was supposed to be paid a total of UGX 60,000/= which is for 6 villages for 2 days at a rate of UGX 5000/= per village per day. For 6 of them it totals to UGX 360,000/=

On the same page 6 the sub county chief and the Chairperson LC3 were also each supposed to be paid UGX 36,000/= totalling to UGX 72,000/= According to the testimony of PW5 at pages 58-59 of the proceedings, the alleged payees denied the alleged payments and that therefore the total loss was UGX 3,808,000/=

According to the handwriting expert's report specimen signature Exh 27 of one Sanyu was written in capital letters and therefore it was not comparable with the questioned signatures on C126 for 6000/= and D126 for UGX 10,000/=. In the circumstances UGX 16,000/= will be deducted. PW9, Binegoro Dinah denied the alleged

signature against her name for UGX 60,000/= at p.6 of P.Exh.5. One Tumwesigye who testified as PW12 and RwebasiraGershom who testified as PW14 were not examined about p.6 of P.Exh.5. The handwriting expert's findings tallies with some of the statements which were tendered in court as P.Exh.15 as some of the witnesses could not be easily found without delay. For example the statement of Turyagenda David which is no.35 tallies with the handwritings findings for author of Exh.17 that he did not sign for shs.21,000 on P.exh.4 and UGX 6000/= and UGX 10,000/= on P.Exh.5.

P.Exh.15 was tendered in Court with the consent of the defence as per page 135 of the proceedings. The total which was lost through forgeries on P.Exh 4 and 5 would be 8,904,000 +3,800,000 totalling to UGX 12,712,000/=. The total which is to be deducted as a result of the handwriting expert's findings is UGX 373,000/=leaving a total of UGX 12,339,000/=

The above findings by the learned trial Magistrate are self explanatory. I need not say more except to note that the learned trial magistrate meticulously went through a tooth-comb examination of the evidence relying on prosecution exhibits 'P4', 'P5', 'P15' and 'P27'. She also considered the evidence of PW9, PW12, and PW14. I find that the decision of the learned trial magistrate was based on sound judgment. I have scrutinised both prosecution and defence evidence as a whole and would not fault the learned trial magistrate's findings. I find that even if the learned trial magistrate had devoted half of her findings on giving attention to the defence case, she probably would have arrived at the same conclusion of guilt.

I find no reason to upset the findings of the lower court.

This appeal is therefore dismissed.

Signed:

Hon. Lady Justice Catherine Bamugemereire

14/Dec/2011