

section 20 of the same Act. The charge under count III was too under the Anti Corruption Act. It was Abuse of Office charged under section 11.

This court, being the court of first appeal, has the onus to examine the evidence on record afresh so that it may arrive at its own conclusion despite the fact that it has not had the advantage of seeing the witnesses testify. See *Lovinsa Nankya V Nsibambi [1980] HCB 81*.

A glance at the grounds of appeal as presented shows they are generalized. Properly framed grounds of appeal should specifically point out errors observed in the course of the trial, including the decision, which the appellant believes occasioned the unsavory outcome being appealed against. What all the three grounds appear to relate to is the trial court's evaluation of evidence which he claims led to his wrong conviction.

The appellant was inter alia convicted of embezzlement, the charge in count I. The prosecution had to lead evidence proving that the appellant was an employee or officer of the Government or a public body, that the appellant stole the money in issue, that the money stolen belonged to his employer, and that appellant had access to the money by virtue of his employment. Needless to say the trial court found all the ingredients above proved by the prosecution. I did not however agree with the finding of the court regarding the element of theft. That element was not proved beyond reasonable doubt. Evidence was led by the prosecution and agreed to by the defence that PW3, Aseku Amoding Rose, on all material occasions went to the bank with an open cheque written in her names and drew the sum of money which happened to be endorsed on the given cheque. While that was not in contention, PW3 testified that whenever she drew the money in issue from the bank she handed it over to the appellant. Curiously that oral testimony regarding the handing over of the cash to the appellant lacked supporting evidence, written, oral or

otherwise. A credibility deficit is further entrenched by the appellant's denial that PW3 ever handed over the cash to him. Certainly the onus is on the prosecution to prove that the appellant stole the money he is alleged to have stolen. There is no proof he had access to it. The prosecution did not prove that the appellant stole, not to mention embezzled, the alleged amount. The conviction for embezzlement against the appellant in count I is accordingly quashed.

Another argument related to the trial court's shifting the burden of proof to the appellant. This would be against our criminal justice system of course in the circumstances of this case. The issue revolves around the import of a loose minute said to have been written by PW3 to show that circumstances were in existence to justify cash withdrawal. I note however that when PW3 testified she was not cross examined on a possible loose minute. Were it considered vital the defence would surely have examined PW3 on it since they alleged to have had knowledge of it at the time. Similarly the investigating officer, PW12, would have been cross examined on it given the defence allegation that it was he who had taken away that loose minute with him in the course of investigations. Then there is the simulated ping pong of the two accused persons referring to each other concerning the addressee of the alleged loose minute. Respectfully the device of the defence to produce the alleged loose minute in their defence when they were past cross examining on it cannot bear any relationship to the purported shift of the burden of proof to the accused. Such argument should fail.

In the result I find that besides this court's finding concerning count I where the conviction is quashed and the sentence set aside, the rest of the judgment is to remain undisturbed.

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JUDGE

24TH April 2012