

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**ANTI CORRUPTION DIVISION CR.CA 004 OF 2012**

<b>1<sup>ST</sup></b>	<b>OPOLOT JOHNSON ::::::::::::::::::::::::::::</b>	}	<b>APPELLANTS</b>
<b>2<sup>ND</sup></b>	<b>OJONO CHARLES</b>		
<b>VERSUS</b>			
<b>UGANDA</b>	<b>::::::::::::::::::::::::::::::::::</b>		<b>RESPONDENT</b>

**BEFORE: HON. JUSTICE P. K. MUGAMBA**

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

**24<sup>TH</sup> APRIL 2012**

Opolot Johnson and Ojono Charles, first and second appellant respectively, appeal the decision of the Grade 1 Magistrate’s court delivered on 27<sup>th</sup> January 2012. The appeal is against conviction and the three grounds of appeal read as hereunder:

1. The learned trial magistrate erred in law and fact when she failed to evaluate evidence as a whole thereby arriving at a wrong decision to convict the appellants.
2. The learned trial magistrate erred in law and fact in basing her decision on conjecture thereby arriving at a wrong decision.
3. The learned trial magistrate erred in law and fact when she convicted the appellants after shifting the burden of proof to him, thereby occasioning a miscarriage of justice.

At the outset I must note that the grounds of appeal presented are general where they should have specified issues of concern giving raise to the appeal. The proper procedure is for grounds to specify what matters in the decision of the trial court the appellant does not agree with.

Be that as it may, this court in its appellate position has a duty to treat the evidence on record to fresh scrutiny in order that it arrives at an independent decision despite the fact that this court lacks the advantage of the court of first instance where court could observe the mien of a given witness. See *Lovinsa Nankya V Nsibambi [1980] HCB 81*. Trial court's evaluation of evidence is what made this appeal necessary, I presume.

In her judgment the trial magistrate ultimately convicted both appellants of embezzlement, contrary to section 19(a)(i) and (iii) of the Anti Corruption Act. This must have been an error given that the first appellant was never charged with that offence. Secondly the sentence on the charge does not include the first appellant. Finally the warrant of commitment to serve a sentence of imprisonment does not mention the charge of embezzlement as one of the offences on which the first appellant had been found guilty. As far as it applies to the first appellant mention of the charge of embezzlement as applying to him must have been an error. I should not dwell on it. Nevertheless the position is different concerning the second appellant who was charged with and convicted of embezzlement involving the shs 50,496,388/= in issue. In her judgment the trial magistrate did state the ingredients of the offence, particularly the element of theft. It is not contested that Aseku Rose PW3 was not only the District cashier but also a bank agent who on all the three occasions in issue took cash cheques to the bank and received cash. Doubtless the cash received included the shs 50,496,388/=. What is in issue is what the good cashier did with that money. Her evidence was that every occasion she received cash from the bank she handed it over to the second appellant without the second appellant's acknowledgment of receipt of the

money. That was on three distinct occasions, she testified. The first occasion was in January. The second occasion was in April. The third occasion was in May. The second appellant denied receipt of that money. Needless to say the burden of proof to prove that the second appellant received the money in issue lies on the prosecution. See ***Uganda V Kahitira [1988-1990] HCB 30***. There is no way in the instant case that burden could shift to the accused person, who the second appellant was. The prosecution failed to adduce evidence that the second appellant received the money and in the premises the learned trial magistrate erred when she found for a fact that the second appellant stole the money. Since receipt and progressively theft were never proved I find the conviction of the second appellant for embezzlement was in error. I acquit him of that charge which is in count 1.

I have looked at the trial court's treatment of some other evidence. I agree with the reasons given by the trial court regarding the loose minute, whose addressee remains an enigma that it was an afterthought given that uncertainty and failure by the defence to cross examine PW3 on it. In addition the trial court's conclusion that there was no imperative for withdrawing money from the District account is correct and should not be disturbed. No evidence was led of payment of arrears and even the Education Officer PW2 was not aware of such arrears as should have been the case if that were true. In any case there was no evidence of wrong account details of the teachers which would have made it necessary to adopt means other than direct bank transfers, as was the norm. Matters do not improve for the two appellants when it is shown that while cheques were made in the names of PW3 the voucher showed the cheque was made in the names of Stanbic Bank. As regards the charge of Causing Financial Loss and Abuse of Office in count I and count II respectively the trial court properly applied the law to the facts on record and came to a proper finding.

This appeal partially succeeds. The decision of the trial court is upheld save for the conviction of the second appellant on count III which is quashed and the sentence therefore is set aside.

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**JUDGE**

**24<sup>TH</sup> April 2012**