

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN
AT ANTI CORRUPTION DIVISION
CRIMINAL APPEAL NO.3/2012

UGANDA:..... PROSECUTION
VERSUS
ACUMA GODFREY :.....ACCUSED

BEFORE: HON.D.K.WANGUTUSI

JUDGMENT

The appellant was convicted on three counts namely Embezzlement, Abuse of office and False Accounting. He was sentenced to six months imprisonment on the first count, four months on the second count and three months on the third count, the prison terms were to run concurrently. He was also ordered to refund Uganda shillings 6,670,000.

The brief facts were that the appellant, a bursar of Lango College in Lira, received capitation grant for the school in 2004.

This sum of money was supposed to supplement local revenue obtained by the school. Accountability thereof was to go to the Ministry Of Education.

The Appellant being the purchasing officer withdrew the money and spent it .The Lira Town Council councilors not being satisfied with the manner it was spent, lodged a Complaint with the Inspector General of Government. In the investigation that followed the Inspector General of Government detected flows in the accountability and charged the appellant with Embezzlement of UGX 6,670,000/=, Abuse of office and false accounting. He was convicted in the lower Court. The appellant being dissatisfied with the decision of the trial Court logged this Appeal. The Appellant based his Appeal on four grounds namely that;

1. The trial magistrate erred in Law and fact when she failed to properly evaluate the evidence on record and thus came to a wrong decision thus occasioning a miscarriage of justice.

2. The trial magistrate erred in Law when she held that the case against the accused had been proved to the required standard, thus convicting the appellant on insufficient evidence.

3. The trial Judge erred in Law when she misconstrued misdirected and misplaced the Law on false accounting on the facts of the case.

4. The trial Magistrate erred in Law and in fact when she ordered the appellant to refund the sum of UGX 6.670.000/=

The appellant then sought the quashing and setting aside of the decision and sentence.

Counsel for the appellant decided to deal with the three grounds jointly possibly because succeeding in the first would equally affect the remaining two. On these three grounds Counsel for the Appellant submitted that the record of the store keeper that was being relied upon so much was unreliable because it did not reflect all the procurements at the school. He further submitted that PW5 as a witness did not give satisfactory evidence that it was the appellant who added the figure 1, to the figures 499,200 as to result into 1,499,200. He said it required the prosecution to produce the carbon copy. As for PW6 his evidence was not helpful because he received books from the head master. Counsel for the appellant wondered why PW7 who examined the documents was not availed the original of the invoice of 499,000/=

As for the TV's, Counsel in the appellant relied on the evidence of PW7 who had taken over from the old headmaster, that there were three TV's in the school.

In reply Counsel for the Respondent state submitted that in his evidence the appellant did not say he gave books to the headmaster. He did not deny the Accountability he submitted. Counsel for state further submitted that PW6 who was alleged to have received books worth 2,000,000 written by Abbot, Macmillan and Nelkon denied receiving them. There was no evidence that the school received the items.

I shall say right from the start that the Learned Magistrate was right when she found that capitation grant Uganda shillings 6.670.000/= was given to Lango College where the appellant was the bursar. She also rightly found that the appellant did withdraw the said sum of money. Here she rightly relied on the accountability for the money.

The appellant did not deny receiving the money. He admits receiving and spending it on the things that appeared in his accountability. In the prosecution of this case, the prosecution gave special emphasis to three items to prove their case. These were the absence of the TV that the

appellant said he bought, the books worth 2,000,000 that he allegedly bought from Lira Bookshop and Halcho Enterprises limited invoice with its disputed insertion of figure 1 before 499,200 turning it into 1.499.200/=

I shall first deal with the 2,000,000 spent on the books. Relying on the evidence of PW9 that the voucher of 2,000,000 was unsupported by the books at the school, and that of PW4 the storekeeper that his records Exh P5 did not reflect these books, the Learned Magistrate found that the appellant never bought the books in the following paragraph,

“The prosecution as per the evidence stated earlier clearly proved that the 6,670,000/= was not used for the intended purpose of running the school as the things purportedly purchased by the accused never reached school as per the school records”

From the evidence on record the appellant was in addition to being the bursar, also the procurement officer. The headmaster was the accounting officer. The system in place was that before the release of any money, a cash requisition form would be originated by the action officer in this case the procurement officer, It would be verified by the Deputy in-charge Administration/Contracts and the headmaster would approve stating the amount to be released. In the case of the 2,000,000 there is an invoice on record headed Lira Bookshop listing a number of books stating the cost of 2,7000,000. On the strength of this the appellant requisitioned for money as follows;

“May you authorize payment for text books supplied by lira Bookshop” Ex P12. The language of the request pre-supposes that the books had already been supplied. So when the Deputy in charge administration “verified” he was doing it based on an activity he had confirmed. If the request was to pay for future supply one could say that the appellant got the money but he did not bring the books. Here however the books were saw to have been supplied. As accounting Officer the headmaster must have seen the books. The silence of the headmaster from 30th November 2004 until his departure from the school on the 8th January 2007 can only mean that the books never went missing or that he as headmaster received the books.

PW6 in his evidence said” The things I received like the books, it is the Headmaster who gave me”

In my view the foregoing means that there were items that the headmaster received directly without first going through the storekeeper who it seems was sidelined. With this evidence coupled with the silence of the headmaster a lot of doubt is raised as to whether the accused did not buy the books. Moreover the owner of Lira Bookshop was not even summoned to say whether the invoice was not theirs or was a fabrication, or that the receipt dated 2/12/04 for two million did not emanate from them. Or that they did not sell the books.

Failure to call the proprietor of the Lira Bookshop left an unfilled gap in the prosecution case that can only be resolved in favor of the appellant. Turning to the entertainment TV the prosecution contended that the TV size 24 inches was never bought and that even the stabilizer was never bought. Evidence in respect of this issue was got from PW9 who told the trial Court that when he got the accountability Exh P12, he went to Bermuda Shopping Spot where the appellant had said he had bought the T.V and later to Glass International where the stabilizer had allegedly been bought. He told the trial Court that the Proprietor of Bermuda Shopping Spot denied ever supplying the T.V. He then preferred to replace the evidence that would have been brought by the shop with the statement of Ali Aziz on the grounds that the latter had since passed on. Relying on that evidence Court convicted. Just like the books I dealt with earlier, the appellant had gone through the process of requisitioning funds for the purchase of the TV and the stabilizer. It was verified and approved. A receipt from Bermuda was put in as accountability .Even if Ali Aziz was dead, the prosecution should have called the person running the shop to comment and say something about documents that on the face of it originated from their shop. Furthermore the T.V was for the school entertainment, it's not being there would have been known by the headmaster who was the accounting officer and who had approved release of funds for its purchase. His silence for all those years about it is not explainable without calling him to give evidence. Failure to call him left this Court wondering whether the TV was bought or not.

The other very important reason for requiring the headmaster to testify was because there were purchases or donations to the school that went straight to his office without passing through the storekeepers hands.

Turning to the newspaper payment, it was the prosecution evidence that the appellant had inserted a figure 1 before 499,200/= to turn the amount on the invoice to 1.499.200. The handwriting expert PW7 had told the trial Court that he had found an alteration in the figures of annexure 11 Exh12.He said,

“The figure 1 seen in the amount 1.4999.200 was written with a different pen”. That subjecting the writing to VAC 5000

“It was found that figure 1 remained yet all the other figures disappeared”. This meant 1 was added or written with a pen which was not the same as the one used to write 499,200/=. He said since the alteration was at the beginning it could be concluded that it was added.

The Court believed PW7 and rightly so that the same had been written by two different pens. Relying on this evidence the learned trial Magistrate wrote,

“Besides the receipt from Halcho exhibit P6 had an additional figure which was confirmed by the handwriting expert as being written in different ink and the author of the document P5 distanced himself from that figure “1”

The prosecution evidence therefore left no doubt that false returns are made as accountability for 6,670,000/= capitation grant. Hence ingredient two was proved”.

In his testimony PW5 the proprietor of Halcho Enterprises told Court that he ran his business with his wife but his wife could not have written or altered the invoice Exh P6. His wife was not called. Furthermore how the figure 499,200 was reached is unexplained so as to give strength that figure 1 was not inserted from Halcho Enterprises. I say this because the invoice which emanated from the newspaper vender was in respect of newspapers for the period May- October 2004.That period covers 184 days. In 2004 New Vision was sold at 700/= and Monitor was 800/= if one bought everyday 4 copies of each, the amount would run over a million shillings. That as it may the process of acquisition of the money was approved by the Accounting officer who might also have been the recipient of the News papers. The headmaster approved 1 million for newspapers on 29.11.2004. He could not have authorized that when he had been supplied newspapers of only 499.200,he never complained until he left the school. He was not called to testify. His testimony would have lent support to .PW5’s denial that he had issued a 1.499.200

invoice. Moreover even the invoice book from which Halcho issued the invoice was not produced for comparison. This left doubt as to whether the invoice had been altered after it left the shop or not.

After reviewing the evidence upon which the convictions were based by subjecting it to a fresh and exhaustive scrutiny as expected of an appellate Court, I find the appellant's criticism of the trial Court that it did not scrutinize the evidence in the case and by implication, if it had done so it would have rejected the prosecution's evidence and accepted the appellant's instead justified

For the above reasons this Court is of the view that the charges against the appellant were not proved with the degree of certainty required and that he was on the evidence entitled to the benefit of doubt and to be acquitted.

This appeal is therefore allowed. The convictions are quashed and sentences set aside. Any fines paid by the appellant be refunded.

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HON.D.K.WANGUTUSI
JUSTICE OF THE HIGH COURT
26/04/2012
