

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT KOLOLO  
NO.HCT-00-AC-SC -0084-2013**

**UGANDA::: RESPONDENT**

**VERSUS**

**NDYANABO ABDALLAH**

**AKA**

**DUKAMUKONO:::ACCUSED**

**BEFORE: HON.LADY JUSTICE MARGRET TIBULYA**

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

The accused stands charged with corruption c/s 2(b) of the Anti-Corruption Act. It is alleged that he unlawfully and corruptly offered 50,000/= to I.P Ogwal Michael, a public officer, as a gratification in exchange for not preferring charges of Causing Grievous Harm and attempted Rape against him, when he was a suspect in Rukungiri CRB's 800/13 and 801/13.

At the beginning of the trial the parts agreed;

- 1. That the District CID officer I.P Ogwal Micheal is a public officer.*
- 2. That the accused was at Rukungiri police station in the office of the District CID Officer Mr.Ogwal Micheal on 22<sup>nd</sup>/04/2013.*
- 3. That the accused was the suspect in the two cases referred to as Rukungiri CRB's 800/13 and 801/13.*

The State adduced the evidence of three witnesses, while the accused gave unsworn evidence and called the evidence of two witnesses.

The State case was that on 22<sup>nd</sup>/04/2013, PW1 (I.P Ogwal Micheal) who is the Rukungiri District CID officer was in his office. At about 11:00am, the accused Abdallah Ndyanabo Alias Dukamukono entered PW's office, sat on a chair and greeted PW1. PW1 had known the accused as a suspect in a case of doing Grievous Harm and in a case of Rape.

The accused then pleaded with PW1 to refrain from taking him to court in those cases and then pulled a khaki envelope from his pocket and placed it in PW1's "pending tray" that was on his desk. The accused told PW1 that he had taken him that "chai"(Tea),so that he should not charge him. PW1 immediately called Sgt Kasimire (PW2) whose office is next to PW1's.

When PW2 came, the accused tried to pick the envelope and run away, but he failed. PW1 explained to PW2 that the accused had taken to him "chai" and he (PW1) asked PW2 to open the envelope. According to PW2 the envelope was in the "out tray".

At about this time PW3 (DAIP Tibihika) came in PW1's office. PW3 had also been called by PW1. PW3 found PW1 seated in his chair, the accused seated in another chair and PW2 standing in front of PW1's table.

As soon as PW3 entered the office, PW1 told him that the accused had come in with a khaki envelope containing some money.

On the instructions of PW1, PW2 picked the envelope and opened it. The envelope contained 50,000/=. This money was exhibited by PW2. The exhibit slip was allowed in court as exhibit PII, the khaki envelope as P3, one 20,000/= note serial number AF 7529191, P4, another 20,000/= note serial number AD 2343245 P5, a 5,000/= note serial number 655 1230, P6 and a 5,000/= note serial number 5289314, P7.

When PW2 asked the accused what the money was for, the accused said it was for thanking PW1. On the instructions of PW1, PW2 arrested and charged the accused.

PW1's further evidence was that the charge of doing Grievous Harm is due to be heard on 20/8/2013 at Rukungiri Chief Magistrates Court. The charge sheet was allowed I court as exhibit PI.

In his defence the accused denied the allegations. He said that he fought with one of his tenants over allegations of seduction of the tenant's wife. The tenant (DW2 Mugabe) reported the matter to police. The police summoned the accused and the matter was resolved outside the police. The accused went to update the police of the developments. He went to the office of the OC CID (PW1). PW1 showed him an envelope and called in PW2 and 3. PW1 instructed his officers to detain the accused. He was given many documents and told to sign them.

The next morning he was taken to court and charged with causing Grievous Harm. Since he had settled that matter, he was surprised at the charges.

His further evidence was that he has intentions of standing for Mayorship of Rukungiri Municipality, and that the incumbent Mayo, one Makuru is not happy with that. Makuru's supporters threatened to bring up charges against him so that he fails to contest for Mayorship. He also found out that PW1 (the O.C CID) is Makuru's friend.

The complainant (DW1) made another additional statement in the Grievous Harm case. On 20<sup>th</sup> the accused was supposed to be taken to court.

PW1 (Mugabe Martin) testified that he was the complainant in the case of causing Grievous Harm against the accused, but that he had reconciled with the accused. He made an additional statement. He stated that the matter was settled on 17<sup>th</sup>/April but that he does not recall when he went to the police to make another statement.

DW3 (Gard Mubangizi) helped reconcile the accused with Mr. Mugabe (DW1). A few days after he reconciled then he found out from DW1 that he had not withdrawn the complaint from the police.

He told him to go and withdraw the complaint. This was two days after he had reconciled them but he does not remember when DW2 withdrew the case.

The legal burden of proving the guilt of the accused rests on the prosecution throughout. See the case of Ojepan Ignatious Vs Ug, Cr. Appeal No. 25/1995, Woolmington Vs DPP (1935) AC 465, and Abdul Ngobi Vs Ug, Cr. Appeal No.10/91.

The onus does not shift to the accused, except in a few specific statutory exceptions, and corruption is not one of them.

The standard of proof is that beyond reasonable doubt. See DOTO S/O MTAKI V.R (1959) EA 860; and MARTIN KAKUBA V UGANDA (1976) HCB 310.

The expression “reasonable doubt” means that the evidence adduced by the Prosecution must carry a reasonable degree of probability of the accused’s guilt leaving only a remote possibility in his favor. See UGANDA V OKELLO (1992-93) HCB 68.

In the event of any doubt at the conclusion of the trial, it must be resolved in favor of the accused who must be acquitted. See UGANDA Vs AWACANGO & ANOR H.C criminal case No.16/2006. (unreported).

The State had to prove the following ingredients;

1. *The accused offered or granted the gratification that is complained of.*
2. *That the gratification was given to a public officer.*
3. *That it was given in exchange for any act/omission in the performance of public functions.*

The fact that I.P Ogwal Micheal the District C.I.D officer is a public officer is not disputed.

Whether the accused offered/granted the gratification;

The State evidence on this core issue was that of PW1 (I.P Ogwal Micheal), that the accused first pleaded with him not to charge him and then he pulled out the envelope which he placed in the “pending tray”, explaining that he had taken him “chai” (tea), so that he (PW1) does not charge him.

Counsel for the accused argued that there is a possibility that there could have been two envelopes given PW1 and 2’s contradictory evidence with regard to where the envelope was. PW1 stated that it was placed in the “pending tray” while PW2 said that he found it in the “out-tray”.

In Oketcho Alfred Vs Uganda, SC. Crim Appeal No. 24/2001, it was held that major contradictions or inconsistencies which go to the root of the case should be resolved in favor of the accused, but where they are minor and were not deliberate lies intended to deceive, they are ignored.

Considering that the fact of the existence of the envelope in PW1’s office at the material time is not disputed by the accused, though he contended that he did not know where it came from. The fact of the existence of one envelope cannot be denied. In his evidence the accused said he only saw PW1 showing it to his boys (that is PW2 and PW3) but he did not know where it came from.

PW1 testified in a steadfast manner over the issue of the envelope.

I find that contradictions as to the name of the tray in which it was as minor, since they do not go to the root of the case.

Counsel invited Court to agree that there was no reason for the accused to corrupt PW1 since the case of Causing Grievous Harm had been settled.

First of all, one of the agreed facts is that the accused was a suspect in the two cases-the one of doing Grievous Harm, and one of Rape.

Beyond that, the fact that the case of Grievous Harm is pending in court has been testified to by PW1 (I.P Ogwal) and PW2 (Sgt Kasimire), with a copy of the charge sheet being exhibited as exhibit P.I. The evidence that the case is due for hearing on 20/8/13 was not challenged.

To that extent, the contention that the charge had been withdrawn by 22<sup>nd</sup>/4/2013 does not hold water and I reject that line of argument.

Turning to the core issue of the accused offering of the gratification, PW1's evidence that the accused offered the gratification was corroborated by that of PW2 (Sgt Kasimire) who testified that he asked the accused about the money and was told that he (accused) had brought it to PW1 to thank him. PW3 also witnessed the opening of the envelope and counting of the money.

Counsel advanced another line of argument about the political ambition of the accused, saying that PW1 is a friend of the accused's opponent.

First of all, the fact that PW1 could have acted maliciously to falsely implicate the accused was not put to him. Secondly the issue of politics in Rukungiri in relation to Mayorship was put to PW1 and he said he knows the Mayor one Makuru but that is not true that he frequently meet him. The fact that they could be friends was not put to him. There is no therefore no connection between these charges and the Mayor Makuru or even the politics of Rukungiri.

I have considered the evidence of PW1-PW3 about how the accused took the money, placed it in the tray on PW's desk and said it was for "chai" for PW1 and desist from charging him and the steadfast manner in which PW1 (I.P Ogwal) testified and find that the accused offered/granted the gratification of 50,000/= to PW1(I.P Ogwal).

Whether it was given in exchange for any act/omission in the performance of public functions.

Counsel for the accused maintained that even if it were found that the accused put the envelope in PW1's tray as I have found, the offer could not have been in exchange for PW1's not preferring charges under CRB 800/13 had already been withdrawn.



The reasons already recorded, I have found that those charges had not been withdrawn and that the case is in court and due for hearing on 20<sup>th</sup> /8/2013.

The evidence of PW1 and PW2 that the accused said that the money was to make PW1 desist from preferring charges was not challenged. I am satisfied to sufficient levels that the accused offered the money in exchange for PW1's not preferring charges which in his public functions as CID office.

The accused raised a general denial to the charges. The evidence and facts however show that he offered the gratification in the circumstances complained of. In agreement with the gentlemen assessors, I find that sufficient evidence was adduced to prove the charge against the accused. I accordingly reject his denial and convict him as charged.

.....  
**HON.LADY.JUSTICE**  
**Margret TIBULYA**  
**JUDGE OF THE HIGH COURT**  
15<sup>th</sup>/08/2013

## SENTENCE

I have considered all that has been said by all parties. True, corruption is a big problem in our country. This Court takes a very serious view of the vice to the extent that any behavior that tends towards corruption is treated firmly.

Counsel for the accused submitted at length about the accused's situation, including that he needs to go back home and look after his family. These are factors that the Court must consider before coming up with a sentence.

The law under which the accused has been charged prescribes maximum sentence. I have considered the circumstances of the accused, including the fact that he has been on remand for 6 weeks. I have also considered the issue that culminated in these charges-that is, he sought to bribe a CID office to defeat the course of justice. The Court takes exception to the conduct of the accused.

Since however he has been on remand and the law allows for an alternative to imprisonment, I sentence the accused to a fine of six hundred Uganda shillings (600,000/= UGX). In default there-of he will serve 12 months imprisonment. The 50,000/= is forfeited to the State.

Right to appeal is explained.

.....

**HON.LADY.JUSTICE  
MARGReT TIBULYA  
JUDGE OF THE HIGH COURT  
15<sup>th</sup>/08/2013**