

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
CASE NO. HCT-00-AC-CN-0012/2014

LOLUK FIDELIS LOGWEE :::::::::::::::::::::::::::::::::::APPELLANT

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::: RESPONDENT

JUDGMENT
BEFORE HON.JUSTICE PAUL K. MUGAMBA

10TH NOVEMBER 2014

Loluk Fidelis Logwee, formerly Town Clerk of Kaabong Town Council, was tried by the Chief Magistrate's court and on 23rd May 2014 was convicted on Abuse of office, contrary to section 11 of the Anti Corruption Act in Count I and Count II and on corruption, contrary to sections 2(g) and 26 of the same Act in Count III and Count IV. Being dissatisfied with that decision, he lodged this appeal. The three grounds of appeal read as follows:

1. That the learned trial magistrate erred in law and fact when she failed to properly evaluate the whole evidence on record to thereby arriving (sic) at a wrong decision.
2. The learned trial magistrate erred in law and fact when she concluded that A1 fraudulently awarded the contracts for additional works of 6km and 2.8 km respectively to Oliabong General Traders.
3. That the learned trial magistrate erred in law and in fact when she held that A1 had no power and/or authority to communicate award decisions of contracts for Kaabong Town Council.

It is sought that the appeal be allowed in order that the judgment of the trial court is quashed and the sentence set aside.

The first appellate court in the matter needs to go through the evidence on record, consider it afresh and arrive at its conclusion, but of course lacking the advantage the trial court had of looking at the witnesses as they testified. See **James Nsibambi V Lovinsa Nankya** [1980] HCB 81. In this connection I have read through the record of proceedings, looked at the exhibits and gone over the judgment of the trial court. I have taken stock also of the arguments proffered on behalf of the appellant and the respondent.

Ground 1 and ground 2 of appeal were argued together. Materially they relate to the treatment by the trial court of the evidence brought before it, stating that the evidence was not properly evaluated. My finding is that the issues raised in grounds 1 and 2 and amplified in submissions on appeal were fully addressed in the judgment of the trial court. There is no basis for disturbing the findings. Taking the argument embedded in ground 2 that the appellant did not fraudulently award the contracts for additional works of 6km and 2.8km respectively to Oliabong General Traders as an instance, it is rewarding to look at the judgment of the trial court where the court vindicates its conclusion. At the top of page 9 of the judgment the following material extract appears:

' It would perhaps be excusable if the award was communicated and eventually a contract signed with Oliabong Traders a firm registered in 2002 as per exhibit P19A which was approved by the contracts committee upon the submission for additional works by the accused (A.1). However the accused totally departed and awarded the contract to a company that never existed when the procurement process started.....'

Evidently the contract was awarded not to Oliabong Traders but to Oliabong General Traders, a different outfit with different individuals. The conclusion of the trial court should not be disturbed and this ground cannot succeed.

Ground 3 relates to whether the appellant had power and/or authority to communicate award decisions of contracts for Kaabong Town Council. It is the stated position of the appellant that he was invested with such power. In her judgment the trial magistrate observed at page 7:

‘ A.1 however went ahead and signed them. Thus not only did A1 assume a mandate that was not his he awarded the contract to a company different from the one he requested the contracts committee to grant additional works’.

It is not disputed the appellant, who was A1 in the trial court, requested the contracts committee to consider the award of additional works for 6kms and 2.8kms respectively to a company known as Oliabong Traders. This and the eventual developments are well chronicled in the case. Nor is it contested that the contracts committee did go ahead to make the concessions requested for. PW3, the Chief Administrative Officer at the time, testified that he declined to process the additional awards because the financial year was coming to a close and because there was need for the Solicitor General to give clearance where contracts are in excess of shs. 50,000,000/=. It was his testimony it was his brief to communicate any awards by the contracts committee to potential service providers. He said further that it was not the role of the appellant to sign and communicate the tender awards as happened. I have looked at the initial award for shs 42,000,000/= to which were to be added the subsequent works. The service provider was Oliabong Traders. The necessary tender award papers were signed primarily by the Chief Administrative Officer and not the Town Clerk. The Town Clerk signed as a mere witness. There was no explanation forthcoming from the appellant regarding what had transpired on that occasion. Under the Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006, the appellant (Town Clerk) is not the envisaged accounting officer responsible for communicating award decisions. It is no wonder the trial

court found that appellant had no power or authority to do what he incorrectly claimed he had power to do on the occasion. Ground 3 too must fail.

This appeal is dismissed .Conviction and sentence by the trial court are upheld.

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PAUL K. MUGAMBA
JUDGE
10TH NOVEMBER 2014.