

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
SESSION CASE NO. HCT-00-AC-CN-0002/2014**

1. OCIRA GEOFFREY**APPELLANTS**
2. LOUM DENIS }
3. WATMON GEORGE }

VERSUS

UGANDA **RESPONDENT**

JUDGMENT
BEFORE HON.JUSTICE JOHN EUDES KEITIRIMA

8TH AUGUST 2014

The Appellants Ocira Geoffrey, Loum Dennis, and Watmon George who will hereinafter be referred to as the 1st appellant, 2nd appellant and 3rd appellant respectively being dissatisfied with the Judgment of the Chief Magistrate vide Criminal Case No. ACD-160/2011 delivered on 28th March 2014 appeal to this court against the said Judgment and sentence. The appellants were convicted of the offence of Causing Financial Loss Contrary to Section 20 of the Anti-Corruption Act 2009 which were counts one, two and three.

A2 was convicted on the count of False Accounting by a Public Officer Contrary to Section 22 of the Anti-Corruption Act, 2009.

The grounds of the appeal are that;

- (1) The trial Chief Magistrate erred in law and in fact when she considered and relied on the prosecution's evidence in isolation of defence/accused's case and hence wrongly convicted the appellants on the above offence.
- (2) The trial Chief Magistrate erred in law and fact when she conducted the trial of the Appellants of offences founded on a defective charge sheet.

- (3) The learned trial Chief Magistrate erred in law and fact when she did not exhaustively consider and evaluate the evidence on record and eventually wrongly convicted the Appellants.
- (4) The learned trial Chief Magistrate erred in law and fact when she imposed a harsh and excessive sentence and orders.

The appellants pray that this court allows the appeal, find the appellants innocent and acquit them, quash the sentence and orders issued by the trial magistrate.

The 1st and 2nd appellants are represented by M/S Odongo and Co. Advocates who will hereinafter be referred to as Counsel for the appellants and David Bisamunyu represented the respondent and he will hereinafter be referred to as Counsel for the respondent. The third appellant represented himself.

All parties filed in written submissions the details of which are on record.

BACKGROUND

The appellants were charged in the trial court with Causing Financial Loss Contrary to Section 20(1) of the Anti- Corruption Act 2009 on counts 1, 2 and 3 and Appellant 2 Loum Denis was charged on count 4 with False Accounting by a public officer Contrary to Section 22 of the Anti-Corruption Act 2009. In the trial court it was only appellant 1 who was represented. The other 2 appellants represented themselves.

The prosecution called 12 witnesses to prove their case. The appellants were found guilty and convicted of the said offences.

Before I deal with resolving the grounds of appeal, I would wish to state the duty of this court as a first appellate court as was held in the case of **Kifamunte Henry Vs Uganda Supreme Court Criminal Appeal No.10 of 1997 page 5** where it was held that the appellant is entitled to have the appellate's court own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to rehear the case and to consider the materials before the trial magistrate. The Appellate court must then make up its own mind not disregarding the Judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impressions made by the trial court which saw the witness but there may be other circumstances quite apart from manners and demeanor which may show

whether a statement is credible or not which may warrant the appellate court in differing from the trial court even on a question of fact turning on credibility of a witness which the Appellate court has not seen.

The 1st appellate court should also always be mindful that the onus to prove a case against the accused lies on the prosecution and the standard of proof must be beyond reasonable doubt.

In resolving the grounds I will not follow the order they are presented in the Memorandum of Appeal. I will start with Ground 2.

RESOLUTION

GROUND 2: The learned trial Chief Magistrate erred in law and fact when she conducted the trial of the Appellants of offences founded on a defective charge sheet.

It was submitted for the 1st and 2nd appellant that Section 87 of the Magistrate's Court Act provides for joinder of persons under the following circumstances;

- (a) Persons accused of the same offence committed in the course of the same transaction,
- (b) Persons accused of an offence and persons of abetment or of an attempt to commit that offence;
- (c) Persons accused of more offences than one of the same kind;
- (d) Persons accused of different offences committed in the course of the same transaction. That the section permits a joint trial of several persons in specified cases because of some basic connection between the various offences committed by them.

It was further submitted for appellant 1 and 2 that they were charged on offences that happened on different dates, at different places and with different activities. The first Appellant was charged with money meant for activities in Anaka hospital in the financial years 2008/2009-2009/2010 but the 2nd appellant was a Vector Control Officer charged with activities concerning financial year 2009/2010 and this could not be treated as being the same offence or transaction, and it was therefore wrong for the appellants to be joined together as this caused a Miscarriage of Justice as they could not properly defend themselves. Counsel for the 1st and 2nd appellant quoted the case of **Yakobo Uma and another Vs R [1963] EA 542** where two appellants were charged and tried jointly. The particulars of each alleged offence showed that the incident said to involve the first appellant had

occurred on a different date, a different place and with a different weapon from the one said to involve the second appellant. The complainant was the same in each count. It was held by Sir Udo Udoma Chief Justice as he then was that the charge as laid was bad in law for misjoinder.

It was submitted that this appeal should therefore be allowed for misjoinder.

It was submitted for the Respondent that there was no misjoinder of offences or persons. That the appellants were charged with offences which happened in a given financial year(s) of 2009/2010 in Amuru District and are captured in both the internal audit quarter review reports and the Auditor General's report for Amuru District Local government for financial statements ended 30th June 2010. That each accused was charged in a separate count and therefore there was no misjoinder of persons. That in any event if there was a misjoinder the appellants should have brought it to the attention of court at the earliest possible time which they did not. That the case of **Yakobo Uma and Another Vs R [1963] 542** cited by the appellants was distinguishable from the instant case because in the former, the accused persons had pleaded guilty and were convicted on their own plea of guilty.

Section 87 of the Magistrates Court's Act provides that the following persons may be joined in one charge and may be tried together-

- (a) Persons accused of the same offence committed in the course of the same transaction;
- (b) Persons accused of an offence and persons accused of abetment or of an attempt to commit that offence;
- (c) Persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code Act or of any other written law) committed by them jointly within a period of twelve months;
- (d) Persons accused of different offences committed in the course of the same transactions;
- (e)
- (f)

To appreciate the submissions raised on this ground, one has to look at the charge sheet the appellants were charged from.

The charge sheet had four counts.

Count 1 is Causing Financial Loss Contrary to Section 20(1) of the Anti-Corruption Act of 2009.

The particulars of the offence were that appellant 1 Ocira Geoffrey in the financial years 2008/2009-2009/2010 at Amuru District Local Government being employed by Amuru district as a Senior Accounts Assistant by virtue of his office failed to account for shs 13,513,000/=(thirteen million five hundred and thirteen thousand shillings) being funds advanced to him for official duty, while knowing or having reason to believe that such an act would cause financial loss to Amuru District Local Government.

Count 2 is Causing Financial Loss Contrary to Section 20(1) of the Anti-Corruption Act 2009.

The particulars of the offence were that appellant 2 Loum Denis in the financial year 2009/2010 at Amuru District Local Government being a person employed by Amuru district as a Vector Control officer by virtue of his office failed to account for shs 17,465,000/= (Seventeen million , four hundred and sixty five thousand shillings) being funds advanced to him for official duty, while knowing or having reason to believe that such an act would cause financial loss to Amuru local government.

Count 3 is Causing Financial Loss Contrary to Section (1) of the Anti –Corruption Act of 2009.

The particulars of the offence are that appellant 3 in the financial year 2009/2010 at Amuru district being employed as a nursing officer by virtue of his office, failed to account for shs 19,560,000/= (Nineteen million, five hundred sixty thousand shillings) being funds advanced to him for official duty, while knowing or having reason to believe that such an act would cause financial loss to Amuru District Local Government.

Count 4 is False accounting by a public officer Contrary to Section 22 of the Anti-Corruption Act 2009.

The particulars of the offence are that Appellant 2, on the 13th of February 2011 at Amuru District Local Government office in Amuru District being employed as a Vector Control officer and being charged with receipt and management of 17,465,000/=(Seventeen million four hundred and sixty five thousand shillings) which were funds for Social Mobilization for Neglected Tropical Disease Control (NTD's) Programme and implementation of Mass Drug Administration(MDA's)

knowingly furnished a false statement (accountability) for the same to the Chief Administrative Officer(CAO) of Amuru.

Surely, there is a clear misjoinder of the appellants in one charge. The appellants were charged on offences that happened on different dates, at different times and with different activities!

The 1st appellant was a Senior Accounts Assistant charged for causing financial loss for activities in the financial years 2008/2009-2009/2010. The 2nd appellant was charged for causing financial loss in his capacity as a Vector Control Officer in 2009/2010.

The 3rd appellant was charged for causing financial loss in his capacity as a nursing officer in financial year 2009/2010.

Count four was false accounting by appellant 2 on 13th February 2010 in his capacity as vector control officer.

There is nothing to show that the appellants committed the same offence in the course of the same transaction nor that they abetted or attempted to commit that offence, nor that the offences were committed by them jointly within a period of 12 months nor were they different offences committed in the course of the same transaction. The particulars of the offences are very clear on this. They were not in the same transaction and not committed jointly by the appellants. The charge as laid was bad in law for misjoinder as it did not fall within the ambit of Section 87(a) (b) (c) (d) (e) (f) of the Magistrates' Court Act. The offences alleged in counts 1,2 and 3 are several, they are separate and distinct and occurred on different occasions. They were not committed in the same course of transaction and nor were they committed jointly.

The case of **Yakobo Uma and Another V R [1963] EA 542** as cited by counsel for Appellant 1 and 2 is on all fours with this case.

This ground of appeal is therefore allowed and it would dispose of the whole appeal. This misjoinder derogated the right to a fair hearing as the appellants were not properly charged. Considering that some appellants were not even represented it must have prejudiced them in their defence. Article 44(c) of the Constitution provides that

“ there shall be no derogation from the right to a fair hearing”.

The entire trial was therefore flawed for violation of this right. Since the charge laid was bad in law it affected the appellant's right to a fair hearing.

I will not delve in resolving the other grounds raised as that would be an exercise in futility. I will therefore allow the appeal and quash the convictions, sentences and orders made by the trial Chief Magistrate.

However considering that the appeal is allowed based on a technicality and not the substance with regard to the offences the appellants were charged with, I will order a retrial where the appellants will be charged separately as the original trial was defective.

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Hon. Justice John Eudes Keitirima
Judge
8/08/2014.