

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA  
HOLDEN AT KAMPALA**

**ANTI CORRUPTION DIVISION HCT-00-CN-12/2013**

**OUMA ADEA :::APPELLANT**

**VERSUS**

**UGANDA ::: RESPONDENT**

**JUDGMENT**

The Grade 1 Magistrates’ court convicted the appellant on the charge of corruptly receiving gratification contrary to sections 2(a) and 26 of the Anti Corruption Act.

In consequence he was sentenced to pay a fine of shs 2,000,000/= or, in default, to a custodial sentence of one year. He paid the fine apparently but appeals against both conviction and sentence. The memorandum of appeal comprises four grounds presented thus:

1. The learned trial magistrate grossly erred in law and fact in her failure to consider and adjudicate upon the defence’s objection that the charge sheet in counts I and II was defective for failure to allege an essential ingredient thus erroneously convicting and sentencing the appellant as she did.
2. The learned trial magistrate grossly erred in law and fact in her failure to vigorously and exhaustively subject the entire evidence on count II thus erroneously convicting the appellant on that count.
3. The learned trial magistrate erred in law and fact in holding that the evidence of PW1 and the entire evidence proved that the money belonged to IGG whereas not.
4. The learned trial magistrate erred in law and fact in relying on:
  - a) Accomplice evidence of PW3 to convict the Appellant.
  - b) The uncorroborated evidence of PW1, PW2, PW5 and PW6 which evidence required corroboration since all the said witnesses stated to have purportedly set up the trap leading to the arrest of the appellant together.

This court, being the first appellate court, is under a duty to make a thorough scrutiny of the evidence and record of the trial court so that it may reach its own independent conclusion bearing in mind however that this court did not have the advantage the trial court had of seeing the witnesses testify. See **Pandya V R** [1957] EA 336.

The first ground of appeal relates to the charge. The charge in issue should be Count II. It reads:

#### COUNT II STATEMENT OF OFFENCE

CORRUPTLY RECEIVING GRATIFICATION, contrary to section 2(a) and 26 of the Anti Corruption Act, 2009.

#### PARTICULARS OF OFFENCE

OUMA ADEA on 25<sup>th</sup> November 2011 at Golf Course Hotel Yusuf Lule Road in Kampala, received a gratification of US\$ 2000 (Two thousand United States Dollars) from Paul Sherwen, the Managing Director of a company called Busitema Mining Company, as an inducement to allow the company survey land at Tiira Trading Centre at Busitema Sub County in Busia District for purposes of mining gold.

Emphasis above is added.

Counsel for the appellant stated that when the trial court convicted appellant in Count II it did so on a defective charge. Needless to say a proper charge must contain a statement of the specific offence or offences with which the accused person is charged together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged. Section 85 of the Magistrates' Courts Act is emphatic on this. However, a charge which does not disclose any offence in the particulars is manifestly wrong and cannot be cured. Indeed the authority in the Tanzania Court of Appeal case at Arusha in **Isidori Patrice V Republic**, Criminal Appeal No.224 of 2007 drives the point home. There it is stated thus:

*'It is mandatory statutory requirement that every charge in a subordinate court shall contain not only a statement of the specific offence with which the accused is charged but such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.....'*

*It is now trite law that the particulars of the charge shall disclose the essential elements or ingredients of the offence. This requirement hinges on the basic rules of criminal law and evidence to the effect that the prosecution has to prove that the accused committed the actus reus of the offence charged with the necessary mens rea.*

*Accordingly, the particulars, in order to give the accused a fair trial in enabling him to prepare his defence, must allege the essential facts of the offence and any intent specifically required by law. We take it as settled law also that where the definition of the offence charged specifies factual circumstances without which the offence cannot be committed, they must be included in the particulars of the offence.....'*

It is argued by counsel for the appellant that the conviction was improper given that appellant is not a public officer. The fact must be borne in mind that appellant at the time in issue was Chairperson L.C.V, Busia District. Article 257 of the Constitution would have the Chairperson L.C.V as a public officer. Under section 1 of the Anti Corruption Act also the appellant qualifies as a public officer. Consequently it is idle to argue that appellant was wrongly charged for the offence. Paul Sherwen, PW6, testified that he was Managing Director of Busitema Mining Company and that the company was involved in issues of valuation and compensation pertaining to inhabitants of several villages where mining activity was to take place. It was the evidence of PW6 that in that regard meetings had been held and that the appellant had been involved. In connection with this PW6 testified that appellant asked for US \$ 3000 from him (PW6) in order to enable appellant to travel to the United States of America. It was further evidence of PW6 that appellant assured him that once the sum was paid it would enable the evaluation and compensation process be pushed through. According to PW6 money was not paid immediately so appellant kept asking for it. Afterwards PW6 made this development known to the Inspectorate of Government, who made arrangements to set a trap to catch the appellant in the process of receiving the money. Between PW6 and the Inspectorate of Government it was agreed the sum of money be scaled down to US\$ 2000 and it is that sum PW6 testified he handed to the appellant in an envelope. The evidence is supported by that of PW3 whose testimony was that appellant handed to him an envelope appellant had received from PW6. In his evidence PW2 also said that PW6 handed the envelope to appellant who later handed it to someone else to keep. In this respect the evidence of the envelope issuing from PW6 to the appellant and from the appellant to PW3 is further corroborated by that of PW2 who was not a participant in the envelope handling exercise. For the record the defence contested evidence of the prosecution that appellant ever asked for money from PW6 or that PW6 ever handed the envelope containing the money in issue to appellant. Given the evidence above what stands to be resolved is whether a fair minded and informed observer, having considered the facts, would conclude that it was possible the appellant corruptly accepted a gratification. In the circumstances of this case, bearing in mind the defence evidence in the trial court alongside that of the prosecution of course, I find it was not farfetched for the trial court to find that appellant received the envelope from PW6. It was deemed a response to appellant's demand for money from PW6 in order to influence the valuation and compensation exercise PW6's company sought to be expedited. There is no doubt the gratification was corruptly received. Respectfully the argument by the appellant that the charge is defective is untenable.

It was argued on behalf of the appellant that the trial magistrate did not scrutinize the evidence before her taking into account the inconsistencies and contradictions in the evidence of the prosecution. Justification for the argument revolves around the point in time when PW3 joined the appellant and PW6 on the occasion of the envelope leaving the possession of PW6. On his part PW6 stated that the money came from the Inspectorate of Government but PW1 testified that that US \$ 2000 was sourced from PW6. The Supreme Court of Uganda in **Haji Musa Sebirumbi V Uganda**, Criminal Appeal No.10 of 1989 stated as follows:

*‘The principles upon which a trial Judge should approach contradictions and discrepancies in the evidence of a witness or witnesses are now well settled in this country. They are stated..... in the well-known case of **Alfred Tajar V Uganda**, EACA Cr.App.No.167/1969 (unreported) and followed in many subsequent cases.....The substance of these decisions is that in assessing the evidence of a witness his consistency or inconsistency; unless satisfactorily explained will usually, but not necessarily, result in the evidence of a witness being rejected; minor inconsistencies will not usually have the same effect unless the trial Judge thinks that they point to deliberate untruthfulness, moreover ,it is open to a trial Judge to find that a witness has been substantively truthful, even though he lied in some particular respect. The principles apply to contradictions and discrepancies in the evidence of a single or more witnesses supporting the same case.....’*

Indeed in **Uganda V F. Ssembatya & Another** [1974] HCB 278 it was held that minor discrepancies do not usually have the same effect of the evidence being rejected unless they point to a deliberate lie or untruthfulness.

Turning to the case at hand I find no ground to fault the finding of the trial court. No deliberate lies or untruthfulness are evident. The record shows money issuing from PW6 to the appellant and then to PW3 at the scene of the trap. In essence appellant received the gratification from PW6 and it is of no import what the source of the money was.

Appellant argued that the money may not have been legal tender. This is another moot argument in my view given that evidence was tendered of the money received which when compared to the record of the notes earlier made prior to the trap matched favorably.

The argument regarding accomplice evidence as advanced by the appellant is far from being availing. Section 132 of the Evidence Act provides that an accomplice is a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Be that as it may, the evidence of PW3 was corroborated by that of PW6 and PW2. The evidence of PW3 was given in an environment where there was no intimation of him being held responsible let alone charged for the offence in issue. The ebbs and flows of accomplice evidence could not be applied to his testimony. Here again no basis exists to fault the finding of the trial court as respects the testimony of PW3.

This appeal is dismissed. The conviction is upheld and, consequently, the sentence.

.....  
**Paul K Mugamba**  
**Judge**  
**8<sup>th</sup> April 2014**