

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO**

**HCT-00-AC-CN-0029/2013**

**GIZIBUI SAM AND ANOTHER.....ACCUSED  
VERSUS  
UGANDA..... RESPONDENT**

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

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

The Inspectorate of Government appeals the decision of a Magistrate Grade 1 Court acquitting the respondents of charges of Causing Financial Loss, Abuse of Office, Embezzlement and False Accounting.

The Appeal was premised on three grounds;

1. The Trial Magistrate erred in law and fact when he held that only audit reports could implicate the respondents in causing Financial loss and false accounting, thus failing to properly evaluate the evidence and arriving at a wrong decision.
2. The Magistrate erred in law and fact when he found that the Inspectorate of Government required the consent of the DPP to prosecute charges of Abuse of Office, and that he failed to properly evaluate the evidence and arrived at a wrong decision.
3. That the Magistrate erred in law and fact when he failed to properly evaluate the prosecution evidence.

This being the first appellate court in the matter, it is incumbent on it to consider and evaluate the evidence afresh and arrive at its own conclusion, bearing in mind the fact that it never saw the witnesses testify.

See Nsibambi Y Lovinsa Nankya (1980)HCB 81. The charges arose from the accused's requisitioning for and receiving various amounts of money for implementing named activities, which activities were either not implemented or false accountabilities were rendered for the implementation of some of the activities. The appellants case was based on payment vouchers, requisitions and receipts which were exhibited.

Counts 1,3,5,7,9 and 11 relating to causing financial loss. Counts 2,4,6,8,10 and 12 relate to Abuse of Office, while Count 13 is about False Accounting.

For all Counts relating to Causing Financial Loss it had to be proved;

1. That the accused persons were employees of Sironko District Local Government.
2. That they did or omitted to do an act knowing or having reason to believe that it would cause financial loss and that loss did occur.

For the Abuse of Office it had to be proved that they were employees of a public body and that they did or directed to be done an arbitrary act prejudicial to the interest of their employer, in abuse of the authority of their office.

For False Accounting it had to be proved that :-

1. The accused were charged with the receipt custody or management of public revenue or property.

2. They knowingly furnished false statements on return of the 600,000/= received by them.

The fact that A1 was the Sub county chief of Buwalasi sub-county Sironko District and that A2 was the sub-Accountant in the said sub county was not contested.

The question relating to their employment status is therefore answered in the affirmative for all counts.

For the rest of the issues I will start with evaluating the evidence concerning A2 (Mataka) because I believe there was no sufficient evidence against him.

All witnesses testified that he was a sub-Accountant, and as such he prepared the queried documents. The documents do not bear evidence that A2 requisitioned for, and/or received or that he was party to the requisitioning and receipt of the monies in issue, beyond preparing the relevant documents, which was his lawful duty. A1's defence was exactly that he did what he was legally expected to do. There being no evidence to the contrary I do not agree with the appellant that there was any evidence to support the charges of Causing Financial Loss and Abuse of Office against A2. I accordingly acquit him on all those charges.

### **FALSE ACCOUNTING- COUNT 13**

A2 is alleged to have made an admission to the investigators that he filled in blank receipts on the instructions of A1 (Gizibui). There is however no evidence relating to the circumstances under which the admission was made.

There is no indication that the provisions of S.23 of the Evidence Act were complied with. The admission cannot therefore be used against A2(Mataka).

PW15 (Margaret Wetaka) testified that A2 (Mataka) took to her certain documents and asked her to sign them in order “to put things right”. The documents that PW15 (Wetaka) admitted to have signed are payment voucher D026 and its attachment which relates to 400,000/= which was meant for a sensitization workshop for Home Based Services for HIV patients. Count 13 under which the allegation of false accounting was laid relates to 600,000/= which was meant to fund a sensitization workshop for members of the Land Committee. Clearly, Wetaka (PW15’s) evidence does not support the allegation in Count 13.

There is therefore no evidence to support the charge of false accounting as well against A2. He is acquitted on Count 13.

### **ACCUSED 1 (Gizibui Sam)**

#### **Counts 1 and 2**

These allegations relate to shs 1,226,400/= reflected in exhibited payment voucher No D024 and an attached requisition signed by A2 (Gizibui).

The requisition was for funds to facilitate village level meetings but PW8(Namisi Robert) and PW10 (Nabude Lillian) testified that participatory meetings start from the parish level. PW8 AND 10 BOTH Parish chiefs never attended any such meetings, or receive any payment as participants.

A1 maintained that the meeting took place, but the focal people were LC Chairmen. He said that the wrong voucher was brought to court. The correct

ones were verified by Internal Audit, and the activity was confirmed to have taken place according to A1.

The exhibited voucher however bears stamps of the internal auditor, the sub-county chief and sub-accountant. Moreover , they are consistent in that they bear similar information among themselves. In addition, PW9(Wolimbwa Robert) the Internal Auditor identified them as originating from Buwalasi sub-county. The defence did not cross-examine him along the line advanced by the accused.

A1's account is therefore against the weight of evidence.

The combined effect of the evidence (both oral and documentaty) is that 1,226,400/= was requisitioned for by and given to the accused. The money was for organizing participatory meetings at the village level, but no such meetings took place, and no support expenditure documents were attached to the voucher by A1 who received the money. This state of affairs aptly answers the questions of causing financial loss and abuse of office in the affirmative. Counts 1 and 2 were proved against A1 (Gizibui).

### **Counts 3 and 4**

The only evidence in this regard is an alleged admission by the accused that the activity was not implemented and that he took the money.

The admission was however made under circumstances that negate reception of the evidence. There is no evidence that the accused was cautioned prior to making the statement. There is no evidence that the activity did not take place, or that the people listed as having attended do not exist.

I therefore acquit A1 on Counts 3 and 4.

### **Counts 5 and 6**

These counts relate to payment voucher No D029 for 600,000/= meant for a sensitization workshop for the members of the Land Committee.

PW1(Masogui Samwiri), PW5(Kaboole Swaleh), PW2(Esther Masaba), PW4(Wasukira Stephen), all members of the Land Committee said that they were not driven to the venue in a hired car as the receipt of one Moses Sebina, a purported special hire driver alleges. They did not get any money, or sign for any money.

Their other evidence was that Rev. Gidudu, Sowedi Swaliki and Mrs. Gizamba Jane are not members of the Land Committee yet these names appear on the attendance list.

The witnesses also maintain that they only got photocopies of the Land Act and Regulations, thereby negating the defence assertion that 7 copies of each of these books were bought as per attached receipt.

A1's defence was the same as the one he advanced for Counts 1 and 2, and my response is the same as the one I gave in resolving the issues in counts 1 and 2.

There is evidence that the accountability documents the accused tendered bore false entries which were meant to show that the 600,000/= had been used for the purpose for which it was released whereas not. The accused caused financial loss and abused his office as alleged in Counts 5 and 6.

### **Counts 7 and 8**

Nabude Lillian (PW10), Wanyimbe Henry (PW6), Namisi Robert(PW8) all testified that they never attended the Youth Workshop that is reflected in payment voucher D043.

PW6 and 10's names appear in the attendance list and signatures attributed to them were appended against 10,000/= for each of them.

The name Namisi "Sam" appears , but PW8(Namisi Robert) said he is the only Namisi who is a Parish Chief, which position is reflected against the name. he said he did not sign for or receive the 10,000/= reflected in the accountability documents.

PW13(J.B Mujuzi) opined that none of the three witnesses appended the signatures attributed to them in the accountability documents.

A1 said that the activity was implemented, but that the right documents were not brought to court. First of all, the documents are clear and they all reflect the same information as the Youth Workshop. Secondly, PW9(Walimbwa) identified them as the accountability documents for the Youth Workshop. It is therefore not true that they are the wrong documents or that the Youth Workshop was implemented.

On the strength of the evidence that the accused requisitioned for and got the 500,000/=, and that the activity for which the money was released did not take place, yet he submitted documents showing that it took place, there is sufficient basis for an adverse finding on each of Counts 7 and 8 – A1 is convicted on each of those counts.

### **Counts 9 and 10**

All documents including the payment voucher D026 and requisition show that Wetaka Margaret was the payee. There is therefore no basis for charging A1 or convicting him on these counts. He is acquitted on each of them.

### **Counts 11 and 12**

These relate to 227,200/= reflected in voucher No.D021, which indicates that, that money was used to pay for fuel. The requisition which is the only accountability document available was signed by A1 (Gizubui). There is no receipt attached to the requisition:- which was PW14 (Martin Lukwago, the investigators) finding.

In his defence, A1 maintained that the 227,200/= was used to pay for fuel but there is no evidence to support that. I did not therefore believe his account of events. That he got the 227,200/= to buy fuel and did not buy it supports the charges of causing financial loss and Abuse of Office. I therefore convict him on Counts 11 and 13.

### **Count 13**

The offence of false accounting is committed when;

1. Someone who is charged with the receipt, custody or management of public revenue and property knowingly furnishes false statements or return of the revenue and property received by him.

## **THE EVIDENCE**

The 600,000/= in issue is the subject of payment voucher No D029 which is the exhibit in Counts 5 and 6.



With regard to Counts 5 and 6, I found that the accountability documents bear false names of purported fund receipts, including three who were not members of the Land Committee. One of those documents (a cash sale receipt) bore items that were never purchased – Land Acts and Regulation books). There is sufficient evidence that e requisitioned for and received the 600,000/= but he did not use it for the stated purpose.

A1 (Gizigui) surely knew that the accountability was false. He was therefore rightly charged with false accounting. I convict him as charged in Count 13.

The main complaint against the judgment of the lower court was that the Magistrate did not evaluate the evidence on record. Having perused the record, I totally agree with the appellant that there was not even an attempt at doing this.

The statement appearing in the lower court judgment to the effect that only an Audit Report could prove that financial loss was caused by the accused is wrong. There was/is sufficient evidence to support those charges against A1 (Gizibui).

The finding that charges of Abuse of Office may only be brought against an accused upon the consent of the Director of Public Prosecutions is also wrong, given that the Inspectorate of Government is independent of the DPP, and has a separate constitutional mandate.

For all counts for which A1 has been convicted i.e. Counts 1,2,5,6,7,8,11,12 and 13, the Appeal succeeds. For all Counts A1 and 2 have been acquitted the appeal fails.

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**HON.LADY JUSTICE**

**MARGARET TIBULYA**  
**JUDGE OF THE HIGH COURT**

**23/4/15**

**12/05/15**

Accused both here

T. Okot for appellant

Mafabi Godfrey for respondent

**MITIGATION**

**PROSECUTION:**No evidence of past criminal record against A1 but the convict wasted courts time for quite a period of time when this trial began.

The amount of lost money in a small area is aggravating factor. The money would have gone a long way in changing lives in this rural society.

What happened is clear evidence that service delivery was denied by the criminal acts of the convict.

There is need to send a strong message to accounting officers especially in rural settings that corruption is costly to be involved in.

We pray for a custodial sentence. Should Court find that a fine is appropriate, we pray for an amount that would send a message to prospective criminals out there.

## **COUNSEL FOR RESPONDENT**

The convict has no criminal record, he is the only bread winner of the family. He also caters for the elderly. The amounts involved in the matter – 200.000/=, 1.2m/= being the highest are not so substantial as other cases which are in billions or hundreds of millions. We pray that the court sentences accused to community service or a fine which will also send a strong message to the community that even sub-county chiefs can also do community service.

It will save on hardship to his family to which he is a bread winner.

A fine could also be considered – an amount commensurate to the wisdom of the court. We so pray.

## SENTENCE

The accused was convicted of the most serious economic crimes. The fact that the lost funds were meant for development programs as a sub-county, is an aggravating factor. I do not find the fact that the funds involved in other cases mitigating since each case is to be considered on its own merit.

The fact that the accused's action harmed the development efforts at a very vulnerable level can't be mitigated by the small amounts involved especially since he did not show any remorse – he has been willing to fight to the end.

I note that the changes were brought under the Penal Code, but the Anti-Corruption Act is the current legislation in the Anti-Corruption area. I will therefore proceed under the relevant anti-corruption laws and sentence the accused as follows;

1. He will pay a fine of 100,000/= on each of the Counts he has been convicted on (Counts 1,2,5,6,7,8,11,12 and 13). In default of the fine. He will serve 1 year imprisonment on each of those counts. Imprisonment term to run concurrently.

In keeping with the law, (S.46 of the Anti-Corruption Act) He is disqualified from holding a Public office for a period of ten years from his conviction.

It is also ordered that he pays 2,553,400/=, the total amount of loss caused to Sironko District Local Government back to the District Local Government.

Rights of Appeal explained.

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**HON.LADY JUSTICE  
MARGARET TIBULYA  
JUDGE OF THE HIGH COURT**

**19/5/15.**