

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
ANTI CORRUPTION DIVISION
HCT-00-AC-SC 0007/2015

UGANDA :::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

OBEL RONALD::::::::::::::::::::::::::::ACCUSED

JUDGMENT
BEFORE HON JUSTICE PAUL K. MUGAMBA.

A total 51 counts are contained in this indictment against the accused, Obel Ronald. In Count 1 he is charged with Abuse of Office, contrary to section 11(1) of the Anti Corruption Act. In counts 2 to 26, inclusive, he is charged with Forgery, contrary to sections 342 and 347 of the Penal Code Act. He is charged also with Uttering a False Document, contrary to section 351 of the Penal Code Act in counts 27 to 51 inclusive. The prosecution called 10 witnesses to prove its case. PW1 was Anthony Namara, Commissioner Immigration Control. PW2 was Benon Mujuni, Principal Immigration Officer. PW3 was Ssali Kyumya Harrison, Senior Immigration Officer. PW4 was Julia Ikiso, Human Resource Manager, Identification Registration Authority. PW5 was John Matte Baluku, Senior Immigration Officer. PW6 was Sasagah Godfrey Wanzira, Director Citizenship and Immigration Control. PW7 was Margaret Nanziri, Human Resource Officer. PW8 was Namirembe Rosemary, Immigration Officer. PW9 was Sylvia Chelangat, Questioned Documents Analyst. Balaba Christian D/IP, the investigating officer, testified as PW10.

Accused was at the time material to this case an employee of the Government of Uganda. He was Assistant Commissioner, Legal and Inspection at the Directorate of Citizenship and Immigration Control. It is the prosecution case that in the course of his employment accused served as a member of the Work Permit Committee which had the mandate to recommend Work Permit and Entry Permit applications for approval by the National Citizenship and Immigration Board. It is however contended by the prosecution that on 18th August 2011 accused was suspended from

membership of the Work Permit Committee after he was told so at the meeting held then and which meeting he attended. It is urged by the prosecution that despite the said suspension accused unilaterally and illegally went ahead to make recommendations of several work permits and entry permits. It is further the prosecution case that accused forged the signature of the Director of the National Citizenship and Immigration Board as approving the divers applications. It is vehemently contended by the prosecution that in all the instances cited accused abused his office, giving rise to the indictment.

The onus is on the prosecution to prove the charges against the accused person beyond reasonable doubt. It is not the responsibility of the accused to prove his innocence. See **Sekitoleko V Uganda** [1967] EA 531.

Abuse of office is the initial charge. To prove the offence the prosecution ought to prove the following ingredients:

- (i) that accused was an employee of a public body,
- (ii) that accused performed the arbitrary act,
- (iii) that the act was in abuse of his authority, and
- (iv) that the arbitrary act was prejudicial to the interest of his employer.

It is the prosecution case that accused was employed by the Government of Uganda as Assistant Commissioner, Legal and Inspection at the Directorate of Citizenship and Immigration Control. The defence did not contest this as a fact. I find this ingredient proved beyond reasonable doubt.

The next ingredient the prosecution must prove is that accused performed the arbitrary act alleged. This court dealt with what constitutes an arbitrary act when considering the case of **Uganda v Francis Atugonza**, CR.CS 37 of 2010,(cited in ULII as [2011] UGHC 72) and observed,

‘ The prosecution must prove whether accused did or directed to be done an arbitrary act. According to the Oxford Advanced Learners’ Dictionary, 7th edition ‘arbitrary’ is an action, decision or rule not seeming to be based on a reason, system or plan and sometimes seeming unfair. The other meaning in the definition relates to using power without restriction and without considering other people. It is a reliance on individual discretion rather than going by fixed rules, procedures or law.’

The state adduced evidence to show that between 2011 and 2012 accused wrote minutes recommending the grant of Work Permits/Entry Permits on 25 application files well knowing that he was not authorized to do so. It was urged further that accused did so with the knowledge that it was against established procedures for issuance of Work Permits or Entry Permits. The prosecution alleged also that accused was not authorized to do so given that he had been suspended from transacting work of the Work Permit Committee as member effective 18th August 2011. As such, it was argued, he could not legitimately make such recommendations any more. It was in this respect evidence was given of the minutes of the meeting of 18th August 2011 where it was noted that accused was being suspended from the committee which scrutinized and made recommendations on work permits and entry permits. It was the evidence of PW2 that he recorded the minutes in issue but on being examined he stated that he did not know if there was a subsequent meeting to confirm the minutes of 18th August 2011. A glance at the minutes shows accused attended the meeting. Accused, on the other hand, disputes ever attending that meeting. It was his evidence he was out of the country at the time and as such he could not have been in attendance. No attendance register was availed to attest to accused's presence at the meeting. Indeed there was no evidence of communication of the suspension decision being made to the accused. No indication was given of how long the said suspension was meant to last. Indeed it was the testimony of the defence that in December 2011 the Commissioner Inspection and Legal Services proceeded on leave and that accused acted in her stead. This evidence was not controverted by the prosecution let alone the argument that in that acting capacity accused carried out the role of his immediate superior which did not exclude sitting on the Work Permit Committee. It was the evidence of PW2 that after September 2011 Heads of Department had a role to scrutinize and make recommendations on work permit applications. In light of the above considerations evidence is wanting from the prosecution to show that the actions or decisions accused took on the occasions being questioned were arbitrary, not based on reason, system or plan. Cogent evidence should have been given to the effect that when accused acted as he did he had no authority to do so and that he had knowledge of any alleged want of authority. This ingredient has not been proved beyond reasonable doubt.

The prosecution must prove also that accused abused his authority by making the recommendations. In the last ingredient it was not proved that accused had actual notice of his suspension. Given that he was not aware of the suspension which was argued by the prosecution to be hindrance to his authority to make recommendations, accused could not have acted

arbitrarily when he continued to make the recommendations. This ingredient also has not been proved by the prosecution.

Finally the prosecution must prove that the arbitrary act was prejudicial to the interests of accused's employer. This revolves on whether accused was eligible to make recommendations on Work Permit applications at the time in issue. It is not denied by the defence that accused made the impugned recommendations. What was denied by the defence however was that he forged the signature of PW6 and wrote the accompanying approval. Evidence was given that commencing September 2011 approval was given and endorsed by the Director, who PW6 was. If accused was mandated to give recommendations following a set procedure and he proceeded to do so there is no way he could be said to have prejudiced the interests of his employer. As a matter of fact no evidence was adduced of any aborted application by reason of accused's recommendation. I hold this ingredient too has not been proved beyond reasonable doubt.

The lady assessors in their joint opinion advised me to find the accused person not guilty on count 1. For the reasons I have given in the course of this judgment I agree with their advice. I find accused not guilty on count 1 and acquit him.

Accused is also charged with forgery in counts 2 to 26, inclusive. To prove this charge the prosecution must prove that:

- (i) the document is forged or false,
- (ii) the document was made with intent to deceive or defraud, and that
- (iii) accused did the forgery

Regarding the first ingredient it is alleged by the prosecution that the documents involved were forged or false. The documents purport to be work permit processing sheets. It is the evidence of the accused that indeed he wrote the recommendations in issue and placed his initials 'R.O' next to the recommendations. He was emphatic he wrote the recommendations and added his initials well knowing he was doing it within his mandate as a Work Permit Committee member. It was his evidence he did not forge the signature of PW6, let alone write the approval. It was the evidence of PW6 and PW9 that the signatures purporting to be those of PW6 were actually not those of PW6. It was their evidence also that PW6 did not write the related approvals. Given that evidence I find the first ingredient is proved by the prosecution.

As to whether the documents were made with intent to deceive or defraud, whoever wrote the approvals in issue and appended signatures purporting to have been done by PW6 intended to deceive and defraud. The purport of the document thereafter was to tell a lie about itself. Consequently I find the second ingredient has also been proved beyond reasonable doubt.

It behoves the prosecution to adduce evidence to prove that accused did the forgery. The learned State Attorney in his submissions stated that it can be inferred for circumstantial evidence that it was accused who forged the signature of PW6 and wrote the approvals on the documents in issue. This however is not apparent in the testimonies of PW2, PW6 and PW9 or anyone else. All PW6 and PW9 could state was that they did not know who had forged the approvals and the signature of PW6. In order to rely on circumstantial evidence for a conviction one ought to bear in mind the statement of the law in **Simon Musoke V R** [1958] EA 715 that where there is evidence which is circumstantial, in order to justify an inference of guilt the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. In the instant case no evidence has been adduced ruling out another person as the perpetrator of the impugned forgeries. Consequently I do not find the prosecution has proved beyond reasonable doubt that accused did the forgery in issue.

The lady assessors advised me to find the accused not guilty on all counts alleging forgery against the accused in the indictment. For the reasons I have given in this judgment I agree with their opinion. I find accused not guilty on counts 2 to 26 inclusive. He is accordingly acquitted on those counts charging forgery.

Accused is indicted for uttering a false document. The offence is charged in counts 27 to 51 inclusive. This offence is said to have been committed when one knowingly tenders or shows a forged document to another with intent to deceive or defraud. There must be knowledge on the part of the accused that the document is forged. The accused must also have the intention to deceive or defraud. In the cases at hand accused was charged with knowingly and fraudulently uttering processing sheets bearing minutes recommending the granting of work permits and entry permits bearing the signature of Mr Sasagah Godfrey Wanzira. It is evident and it is not contested that accused did write and initial the recommendations in issue. Thereafter those recommendations would be approved by the Director Citizenship and Immigration Control, PW6. Approval followed recommendation and as such the approval minutes were appended alongside the questioned signature after accused was through with the recommendation minutes. Accused

could not have uttered, on available evidence, the impugned processing sheets bearing the signature of PW6. There is no evidence the feigned signature of PW6 was appended before accused made his recommendations and put initials on them. As such there is no way accused could have uttered the documents in issue as alleged. No evidence was adduced to this effect. This offence has not been proved by the prosecution beyond reasonable doubt in any of the counts where it is charged.

The lady assessors in their joint opinion advised me to find accused not guilty in any of the counts where accused is charged with uttering a false document. For the reasons I have given in this judgment I agree with their advice. I find accused not guilty on counts 27 to 51, inclusive, and acquit him.

Ultimately accused is acquitted on all charges levelled against him in the indictment. I so find.

.....

PAUL K. MUGAMBA

JUDGE

10TH NOVEMBER 2015