

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ANTI CORRUPTION DIVISION

HCT-00-CN-0016/2015

ANDREW GAWAYA ::::::::::::::: APPELLANT

VERSUS

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

JUDGMENT

This is an appeal against the decision of the Grade 1 Magistrates' court dated 26th March 2015 whereby the appellant was convicted of corruptly receiving a gratification contrary to section 2(a) of the Anti-Corruption Act and sentenced to a fine of Shs. 4,000,000/= or in default to imprisonment of 4 years. This appeal is against the conviction and sentence.

The appeal hinges on two grounds which read:

1. The learned trial Principal Magistrate erred in law and fact when she failed to properly evaluate the evidence on record and arriving at a wrong conclusion thus occasioning a miscarriage of justice.
2. The learned trial Principal Magistrate grossly erred in law and fact when she sentenced the Appellant to a manifestly excessive sentence.

This is the first court of appeal in this matter. As such it is incumbent upon it to go carefully through the record in order that it might freshly consider the evidence and reach a decision resulting from its own sifting of the evidence. Needless to say the court will be lacking the opportunity which the trial court had of observing the witnesses as they testified. See **Okeno v Republic**[1972]EA 32.

Facts in the State case are not complicated. The appellant here was Resident State Attorney of Ibanda. In the course of his assignment at Ibanda he met the complainant. The complainant's father had issues which were brought to the office of the appellant first regarding employees but later more issues were referred to the appellant including prosecution of complainant's father, which was handled by the appellant. It is the State contention that the complainant sought for appellant's assistance to avoid conviction of his (complainant's) father and that appellant agreed to assist provided he was paid some money. The State cited two of the occasions where money was duly sent by the complainant to the appellant. The appellant does not deny receiving money from the complainant.

Ingredients of the offence were properly laid out by the trial court as proof that the appellant herein was a public official, proof that the appellant received directly or indirectly a gratification of Shs. 600,000/= and proof that the gratification was in exchange for an act or omission in the performance of his public functions. It was not disputed that the appellant, being a Resident State Attorney, was a public official. That should see off the first ingredient as proved. It is not disputed either that on two occasions: on 14th June 2013 and 24th December 2013 the appellant received Shs.500,000/= and Shs.100,000/= respectively from the complainant. I should note that while evidence shows the date of first recorded transaction as 14th June 2013 the indictment shows the date as a day earlier, 13th June 2013. I do not agree with the appellant's spirited

submission that in the circumstances of this case the difference is of any moment. What difference exists is in my view subsumed by the admission that the event did indeed come to pass.

What should be considered next is the import of the two remits from the complainant to the appellant. I agree with learned counsel for the appellant that the evidence here is circumstantial. According to the complainant, who testified as PW5, he was requested by the appellant to make payments on the understanding it would assist the complainant's father triumph over the case that had been brought in court against him, and the appellant was in charge of it and prosecuted it. The appellant on the other hand agreed he handled the case in issue. He added that he had asked for the money from the complainant as a loan. I find the following passage spanning pages 46 and 47 revealing. It is from cross-examination of the appellant and reads:

'.....on 14/06/2013 the Police file of Bikanya's employees was called for by the office of the DPP Kampala following the complaint by the accused person who was on warrant of arrest. By 14/06/2013 the DPP's office in Kampala was already involved in the file of Bikanya's employees. I am the one who forwarded the file to DPP's office. I perused the file before sending it to the DPP's office in Kampala..... Bikanya was involved in the case of his employees (sic) prosecuted Paul Mugisha's father. It is my evidence that I requested the money from Paul Mugisha as his friend. A friend can help out when he/she is in trouble. It is not necessary that a friend would expect you to bail them out when they are in trouble. I had not yet refunded the loan of UGX.500,000/= obtained from Paul Mugisha by 24/12/2014 and I have not yet refunded it up to today.....'

Similar to many cases borne of sleaze it would be expecting too much to look for a memorandum of understanding by whatever name called. It has got to be the word of the complainant against

that of the appellant here. In a case depending exclusively upon circumstantial evidence court before deciding on a conviction, must find that inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis that that of guilt. See **Simon Musoke v R** [1958] EA 715. It is strange, indeed unethical, for a State Prosecutor in the clothing of a Resident State Attorney charged with prosecuting a case to be receiving money, whatever the guise, from a person related to one he is prosecuting. Appellant was receiving gratification from the son of an accused person in a case he prosecuted. Clearly that is a scandal and the irresistible conclusion is that the trial court properly believed the version of the complainant. The yarn of the appellant, for indeed he spun a yarn holds no water. I find the finding of the trial court irresistible and see no reason to disturb the conclusion arrived at.

The second ground of appeal is on the sentence. The law is well settled that whenever a trial court has exercised its discretion on sentence an appellate court will not interfere with it unless that discretion has not been exercised judiciously or it has been exercised on wrong principles. In the case at hand the trial court gave its reasons. It is argued however by the appellant that the sentence handed down by the trial court was excessive. A glance at section 26 of the Anti-Corruption Act reveals the maximum term of imprisonment for conviction on the offence as ten years and that the fine should not be in excess of 240 currency points or both such fine and imprisonment. In the event appellant was sentenced to a fine of Shs.4,000,000/=. For clarity I should add that the 240 currency points would amount to a total Shs. 4,800,000/=. To argue, as the appellant does, that the sentence was excessive is a misnomer.

In the result this appeal fails. It lacks merit. The conviction and sentence of the trial court are upheld.

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Paul K Mugamba

Judge

18th June 2015