

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ANTI CORRUPTION DIVISION

HCT-00-CN-0005/2015

NASSEMBULE GEORGE ::::::::::::::::::::::::::::::: APPELLANT

VERSUS

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

JUDGMENT

This is an appeal against the decision of the Grade 1 Magistrate’s court delivered on 27th February 2015 wherein the appellant was convicted in count 1 on personating a public officer, contrary to section 17 (b) of the Anti-Corruption Act and in count 2 and count 3 on corruptly soliciting for gratification and corruptly receiving gratification respectively, contrary to section 2(a) and 26 of the Act already related to. Consequently the appellant was sentenced to 12months’ imprisonment on count 1 and count 3. On count 2 he was sentenced to 18months imprisonment. The sentences were to run consecutively. This appeal is against conviction and sentence.

Two grounds of appeal are set out. They read as follows:

1. The trial magistrate erred in law and fact when she convicted the appellant and accepted the wrong charge of personating a public officer contrary to section 17(b) of the Anti-Corruption Act 2009.
2. The trial magistrate erred in law and fact when she sentenced the appellant harshly and excessively in count 1 to 12months, count 2 to 18months and in count 3 to 12 months with the sentence to run consecutively.

This is the court of first appeal in this case. As such it behoves it to go over the record of the trial court in order that it may reach its independent decision unaffected by the finding of the trial court. Admittedly though this court does not have the advantage of seeing the witnesses testify.

Regarding ground 1 of appeal it is nowhere disputed that the appellant was at the material time a public officer. The allegation was that appellant passed off as George Opio, a state prosecutor whereas he was not the one. The crime of personation or impersonation occurs when one represents oneself as another person for the purpose of deceiving someone. In this connection it was established that appellant and George Opio are two different people and that appellant never ever was a state prosecutor. The prosecution adduced the evidence of PW1, Sserunkuma Nicolas, to the effect that appellant led him to believe he was George Opio, the state prosecutor. Further evidence to this effect was obtained when appellant communicated with PW1 on phone and was heard by PW2 and PW4. The conversation was recorded and was tendered in evidence with the person at the other end claiming to be the Opio in contention. This evidence was tendered in court and was not contested by the defence. I am satisfied that the trial Magistrate reached a proper conclusion. The evidence available showed clearly that appellant impersonated George Opio the state prosecutor. This ground of appeal fails.

As for the second ground of appeal, the maximum term of imprisonment provided under the Anti-Corruption Act for an offence in section 2(a) thereof is ten years' imprisonment. That would affect the appellant respecting convictions under count 2 and count 3. Nevertheless in count 2 the appellant was given a sentence of imprisonment of 18months and in count 3 he was given a sentence of imprisonment of 12months. As for count 1 the sentence of imprisonment was 12months, never mind that the maximum sentence of imprisonment available is three years' imprisonment. It is therefore a misnomer to refer to the sentences as harsh. The other concern of the appellant is that the sentences were to run consecutively. There is no need to repeat that the sentences imposed were not harsh but I should add that under section 175 of the Magistrates Courts Act the trial Magistrate exercised her discretion properly in my view. This ground also fails.

Consequently this appeal fails. The decision of the trial court is upheld in its entirety.

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Paul K Mugamba

Judge

18th June 2015