THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ANTI-CORRUPTION DIVISION KOLOLO

HCT-00-AC-CN-0036-2015

ASIIMWE JOSELINE::APPELLANT

VERSUS

UGANDA::RESPONDENT

BEFORE: JUDGE LAWRENCE GIDUDU

JUDGMENT

The appellant, a former cashier with Mandela National Stadium was charged and convicted of offences of embezzlement contrary to section 19 paragraph (c) of the Anti-Corruption Act, and Abuse of Office contrary to section 11 of the Anti-corruption Act and sentenced to 2 years' imprisonment on count 1 and 1 year's imprisonment on Count 2.

She was also ordered to pay 150 million to Mandela National Stadium.

The facts leading to this appeal are straight forward. In 2010, the NRM Party planned to hold National Conferences at Nambole and detailed Mr.Hassan Wasswa Galiwango PW1- the Director Finance and Administration to contact the appellant for the purpose.

They negotiated a rate of 30 million per day to use the Stadium facilities. PW1 arranged for the money in cash and on 28th August 2010, the appellant signed for 150 million on voucher No.

5428 whose particulars were "**being payment for the venue for the special organ, conferences and the National conferences".** The payee was **Namboole National Stadium**.

The appellant took this money under escort provided by the NRM Party and put it in her safe at Namboole. This payment was not reflected anywhere in the Stadium account books or bank accounts. The conference was held and concluded.

The IGG got wind of the fact that the money had not been banked on the stadium accounts and had been spent without authorization from the stadium management.

An investigation was launched, the appellant and 2 other stadium employees were arrested and charged.

In her defence the appellant acknowledged receipt of the money, but insisted it was for the NRM Committee to spend on the party activities. It was her defence that the money was not for the stadium. She contended that for the stadium to receive money it should have invoiced the client and signed an agreement to use the stadium facilities. These were not done.

It was her view that she was a condute for keeping the money to be used by the NRM party officials at the stadium.

It was her evidence that she was a member of the NRM Committee which was organizing the conference.

Through Mr. Robert Mackay and Denis Nyombi (Learned counsel) the appellant premised her appeal on the following grounds;

1. That the Learned Trial Magistrate considered the prosecution case in isolation of the defence case to convict her.

2. That the Learned Trial Magistrate convicted the appellant without proof of the essential ingredients of the offences charged.
3. That the sentence of 2 years and order of refund were excessive in the circumstances of the case.

Grounds 1 and 2 were argued concurrently.

Mr. Mackay for the appellant contended that the payment voucher exhibited as **D1** was not proof that the money was paid to Namboole National Stadium.

He also argued that there was no contract between the stadium and the NRM Party for the use of the stadium. It was his view that the money received by the appellant remained the property of NRM which had the freedom to use the money on its activities.

He was of the view that this was a private deal between the NRM Party and the appellant.

He concluded that if the Trial Magistrate had considered the defence case, she would have found that this was private deal between NRM officials and the appellant and that there was no complainant since the conference was successfully held.

On ground 3, Mr. Nyombi for the appellant, asked me to intervene in regard to the sentence because her employer had not complained; she did not handle this money as an individual but was part of a committee of NRM Party; she did not steal the money for her benefit; and it is the NRM party officials that entrusted the money to her. He concluded that a fine would have been sufficient for the crime.

Mr. Kinobe for the state, argued the contrary contending that the voucher signed by the appellant clearly indicates Mandela National Stadium as the payee.

The appellant received this money as an employee of the stadium. She took custody of the money and occasionally consulted the stadium Management like Mr. Ogwang (MD) and Mr. Okot (Finance Manager) on how to spend this money.

He submitted that once the appellant signed for the money in the names of her employer, property passed to the stadium.

He contended that the appellant had, with the knowledge of her bosses, negotiated an oral contract for the use of stadium facilities. And it was incumbent upon her to bank the money on the stadium accounts.

He stated that the complainant in the case was the Office of the IGG. As regards the sentence, Mr. Kinobe submitted that the 2 years compared to the 14 years provided in the law was not excessive. He also contended that the 1 year's imprisonment for Abuse of office was not excessive considering that the maximum sentence under the law is 7 years.

In a brief reply, Mr. Mackay criticized the prosecution for not adducing evidence from the Stadium Management in regard to the failure to bank the money instead of relying on the testimony of PW2 who was the investigating officer.

My duty as a 1st appellate court is to review the evidence and reach my own conclusions paying due regard to the judgment appealed from and also taking into account the fact that I neither saw nor heard the witnesses testify.

As regards to Grounds 1 and 2, I understand the prosecution evidence to be that the appellant having signed the payment voucher on 28th August 2010, acknowledging receipt of 150 million as money paid to Mandela National Stadium failed to deposit the same on the

stadium accounts and also failed to reflect the payment in the stadium cash book thereby depriving the stadium of revenue it should have earned for hosting the NRM Conference.

On the other hand I understand the appellant's case to be that the transaction was a private deal between her and the NRM Party committee to which she was a member. She treated this as a private arrangement because there was no contract signed between the stadium and NRM Party, there was no proforma invoice issued to the NRM Party for the 150 million and all party activities at the stadium went on smoothly without a complaint including none from the stadium management.

Without much ado I find that the testimony of the appellant to the effect that this was a private deal to use Mandela National Stadium facilities by the NRM party through her as a member of the NRM Committee, as amounting to an admission that she abused the facilities of the country to promote her party activities .

This is because Mandela National Stadium is a National facility and the use of those facilities needs to be paid for as part of revenue generation by the stadium. The appellants admission as amplified by her lawyers submissions that the facilities at Mandela National Stadium were to be used to implement the private deal of the appellant and her party colleagues is a clear statement that the appellant abused the authority of her office to use the facilities of her employer without payment. Denying her employer revenue it should have earned for an activity that was held is prejudicial and amounted to abuse of office.

A **voucher** is an accounting document used for the control of the processing of charges and disbursements. It is a document that serves as evidence to a transaction or authority to make such a transaction. In this case it was used as evidence that PW1 had authorized payment to

Mandela National Stadium and that the appellant as an employee of the stadium had received money on its behalf.

The natural events that should have followed according to the appellant's employment letter contained in exhibit **P3** was to issue a receipt and bank the money. Any expenditure would have to be requisitioned for, authorised by the relevant signatories and payment vouchers prepared by the appellant before effecting payments.

I do not in the least and with respect accept Mr. Mackay s submission that even if the money was signed for by the appellant on the NRM payment voucher, the funds remained for the NRM party. That would render payment vouchers meaningless and is contrary to accounting procedures.

Even in ordinary speak, the Cambridge English Dictionary 1995 defines a **voucher** as a piece of paper that is a record of money **paid** or one that can be used to **pay** for particular goods or services.

It is with respect illogical for the NRM party to be said to have paid money by voucher to Mandela National Stadium which was received by its cashier (the appellant) and yet the money remained the property of the NRM party.

If NRM party wanted to control its funds and yet use the facilities at the stadium free of charge, there would be no need to prepare a payment voucher.

They would have just carried their money in boxes and gone to Namboole from where it would spend as it pleases.

However the evidence of PW1 betrays the appellants defence and the fact that the appellant was an Accounts person (cashier) she must have known the full implications of signing a **payment voucher** where the payee is her **employer**. If the appellant wanted to treat this as a private deal she should have declined to sign the payment voucher in the names of her employer. She could have received the money as an NRM committee member.

In a nutshell, upon perusing the prosecution and defence evidence on the record, I have come to the conclusion that the appellant embezzled the money the moment she received it and never posted the same in her employers cash book and also failed to bank the same on her employers bank account contrary to the terms of her appointment contained in the appointment letter of 28th December 1999 (**exhibit P3**).

Whether the appellant benefited from the money or not is irrelevant. Theft is committed the moment a person converts with fraudulent intent even if that person intends afterwards to return the property (see section 254(2) (e) and (4)(a) of the Penal Code Act).

Failure to issue a proforma invoice and a formal contract were deliberate actions intended to avoid the procurement process for private gain. It is my view that, that was an irregularity that did not affect the legality of the transaction. The moment the appellant signed the vourcher and received money on behalf of her employer, she was bound to deliver and declare such funds.

It would be scandalous to accept the appellant's submission that the NRM Party which is the party in power can cut private or shoddy deals with people such as the appellant to abuse National resources.

The conviction of the appellant for embezzlement and Abuse of office by the Trial Magistrate was in my view proper. Grounds 1 and 2 fail.

Turning to Ground No. 3, I was asked to intervene on the basis that the sentence was excessive and that a fine would have been sufficient because the employer did not complain; she did not handle the money alone; it is the NRM party committee that handled the money and that the appellant was not a beneficiary.

On the other hand the state argued that the prison terms imposed were far below The ceilings set in the relevant sections of the law.

I understand the appellants grievance to be that the share of her blame worthiness is much less than the punishment she has taken.

I understood Mr. Mackay in his brief reply to imply that this was a group conspiracy and it would be unfair to punish the appellant alone.

Under the sentencing guidelines, particularly guideline No. 44 (c) provides that the subordinate or lesser role of the offender in a group or conspiracy involved in the commission of the offence is a mitigating factor in a sentence for corruption or related offence.

The record of proceedings and exhibits tendered reveal that up to 46 million was spent on stadium facilities such as water, electricity, minor repair and payment of staff salaries

This means that out of 150 million, 104 million was the money the appellant did not account for.

At this point it would be unfair to ask her to pay her employer 150 million yet she yet she spent 46 million on her employer's facilities and staff.

I will therefore intervene in fairness by setting aside the order of refund of 150 million and substitute the same with an order of payment of 104 million to Mandela National Stadium.

As regards the prison terms of 2 years and 1 year respectively the law is that an appellate court would intervene where the sentence is manifestly high or too low as to amount to an injustice.

An appellate court would also intervene where a wrong principle was followed or where the sentence is illegal.

The question I ask is 2 years for embezzlement and 1 year for abuse of office excessive in the circumstances of this case?

A point was canvassed by the appellant that she was not alone. In other words she is carrying the cross for the rest of the gang.

It was her evidence that the committee of NRM Party managed these funds. Of course I do not agree that the committee of NRM Party having paid money to the stadium should have had access to the same.

If the appellant had been charged with other persons, and proven to have shared the money, I would be prepared to intervene. But once the appellant signed for the money on behalf of her employer and instead of delivering the same to her employer chose to avail it to strangers to spend as they wished, she cannot have mercy from this court to reduce the sentences imposed. There is no justification.

I take note that if the IGG who is empowered under the Act, (IGG Act) to investigate cases of corruption in Government Agencies had not stumbled on this matter this case would not have seen the light of day. It would, therefore, be ridiculous for this court to impose light sentences which at the end of the day would encourage rather than stop corruption.

I do not find the sentence imposed to be excessive or illegal and would therefore not interfere with the discretionary sentencing powers of the trial court. The result is that the appeal is substantially dismissed on all grounds except for the Order of refund which is substituted with an order to compensate the Stadium of 104 million.

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LAWRENCE GIDUDU

JUDGE

6TH January 2016

Appellant present

Denis Nyombi for Appellant

Kinobe Rogers for IGG

Herbert Mwesigwa – clerk

Sheila Rwendeire – Transcriber

Judgment read in open court. R/A, 14 days explained.