THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA

ANTI-CORRUPTION COURT KOLOLO

HCT-00-AC-CN-0027/2015

1. ASP MALAMBALA GASTA

2.IP KANYINGULE MALIK:::::::::::::::::::::::: APPELLANTS

VERSUS

UGANDA:: RESPONDENT

BEFORE HON: JUSTICE LAWRENCE GIDUDU

JUDGMENT

The two appellants are police officers. They were charged with corruption related offences, the gist of which is that they demanded and received a bribe from another police officer in appreciation for having included his name on the list of promotions. They were both convicted by the Principal Grade One Magistrate

Appellant No. 1 was convicted of the offence of receiving a gratification contrary to section 2(a) of the Anti-corruption Act and sentenced to a fine of 2 million shillings or two years imprisonment. He paid the fine.

Appellant No. 2 was convicted of two counts of soliciting and receiving a gratification contrary to section 2(a) of the Penal code Act and sentenced to a fine of 1million or 1 year's imprisonment for soliciting and to a fine of 2 million shillings or 2 years imprisonment for receiving. He also paid the fine.

In their joint appeal, they argued one ground framed as below:

1. That the learned Trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record thereby reaching a wrong conclusion.

Mr. Serwanda Learned counsel for both appellants criticized the Trial Magistrate for finding the appellant No. 2 guilty yet the defence case is that, the money he received from PW1 was repayment for the loan he had advanced to him. He argued that since PW1 and the second appellant were friends, they had dealings where they were lending money to each other and so the money received

was just part of the loan repayments.

It was his view that because the second appellant had pestered the complainant (PW1) to refund his money, PW1 became hostile and chose to frame him in a corruption case.

As regards the 1st appellant, learned counsel criticized the Trial Magistrate for convicting him on the count of receiving a gratification yet the evidence on record reveals that PW1 had been promoted already. Therefore there was no need for the 1st appellant to receive a bribe.

In reply Ms. Tabaro Caroline supported the conviction of both appellants contending that the offence in section 2(a) is not limited to events that happen in the future. It was her contention that an offence under 2(a) of the Anti- corruption Act could still be committed if money is exchanged for an act or omission done in the past.

She dismissed the loan repayment theory as false contending that the 2nd appellant was a go-between who used to solicit and receive bribes from police officers in exchange for favors by bosses at Headquarters.

Further, Ms Tabaro argued that if indeed the complainant was paying A2 for a loan of 330,000/=, why then did the 2nd appellant accept only 300,000/= and even then, if it was his money, why did he retain 100.000/= and took 200.000/= to the 1st appellant?

It was also her submission that if indeed it was a case of loan repayment, why did the 2nd appellant require the complainant to record his name, rank and district on a chit which the 2nd appellant took to the 1st appellant in the same envelope where 200.000/= was found? She asked.

She asked me to dismiss the appeal and uphold the sentence.
My duty as the 1st appellate court is to subject the evidence as a whole to a fresh and exhaustive examination and make my own findings and draw conclusions on them. Of course I am mindful that I did not have the advantage of hearing or seeing the witnesses.

In this appeal it is not in dispute that PW1 Siraj Tibita was known to the 2nd appellant. They both joined the police in the same year 1994 and were friends. It is not in dispute that on 15th of November 2010, PW1 handed 300.000/= to the 2nd appellant. It is not in dispute that moments after the two travelled to Police Headquarters Kampala and after a short while officers from the

Professional Standards Unit (PSU) of the police arrested the 1st appellant who upon being searched was founded with 200.000/=.

While the prosecution contends that that money had been demanded by the 2nd appellant and was corruptly received by him as a gratification for including PW1 ’s name on the list of promotions, on the other hand the defence contends that PW1 was only paying the 2nd appellant money that he owed him and that in turn, the 2nd appellant was paying money to the 1st appellant for money he owed him.

The issue for my decision, therefore, is whether the money received by the 2nd appellant and part of which was found with the 1st appellant was corruptly received or not?

The evidence of PW1, is that the 2nd appellant kept calling him asking him to raise 500,000/= to be paid to the bosses at Headquarters particularly one Sharita for including his name on the list of those promoted from the rank of Sergeant to Assistant Inspector of Police.

When he could no longer bear the repeated demands, he reported the matter to the professional standard Unit of Police.

It was the testimony of SP Habyara Fortunate (PW3) that he received a complaint from PW1 wherein PW1 complained that the 2nd appellant was demanding money from him as gratification for having included his name on the list of promoted officers.

He organized for 400.000/= to lay a trap, he marked the serial numbers and made photocopies of the money which was in the denominations of 20.000 notes. He detailed other police officers like D/C Mutebi Edward who testified as PW2 and SP Wanyoto to effect the trap.

The team moved to the 2nd appellants residence at Jinja Road Police Barracks, where PW1 handed 300.000/= to the 2nd appellant. The 2nd appellant put some of the money in the envelope and asked PW1 to record his name rank and district on a piece of paper which he put in the same envelope and proceeded to Police Headquarters with him. Shortly, officers from PSU that included PW2 and PW3 arrested the two appellants. And upon being searched the serialized money amounting to 200.000/= plus the small chit were found on the 1st appellant.

When the 2nd appellant house was searched, another 100.000/= which matched the serial numbers

of the money organized by PW3 was found in the 2nd appellants bed

PW1 who had retained 100.000/= of the money he obtained from PW3 surrendered the same making a total of 400.000/=

In their defence, the 1st appellant alluded to a grudge he had with witnesses such as PW4 relating to work as the reason he is framed on these charges. He also stated that in June 2010 he lent 200.000/= to the 2nd appellant which the 2nd appellant had promised to refund in one week but failed. The 1st appellant pestered the 2nd appellant to pay him his money and on 15th November 2010, the 2nd appellant gave him the money in an envelope but shortly after the police arrested him

His explanation that the money was for paying of a loan fell on deaf ears. He was arrested and later charged.

He admits that there was a chit in that envelope with the names and rank of PW1. For his part the 2nd appellant explained that he had a good relationship with PW1 and that one time lent him money amounting to 150.000/=.

It was his evidence that he lent this money to PW1 by depositing it in PW1 s bank account since they were working in different Districts. He deposited another 70.000/= on another occasion and on another occasion deposited 80.000/= still on PW1 s account and finally he deposited 30.000/=.

It was his case that he lent PW1 a total of 330.000/=.
From September 2008 he asked PW1 to refund his money in vain, in June 2010 he approached the 1st appellant for a loan of 200.000/= since PW1 was not refunding his money.

It is no wonder that when on 15th November 2010, PW1 decided to pay the 2nd appellant 300.000/=, the 2nd appellant promptly went to pay off the loan he had acquired from the 1st appellant.

He was surprised that they were both arrested on allegations that the money he had received from PW1 was a bribe.

Mr. Sserwada asked me to find that the theory about the complainant, the 1st and 2nd appellants lending money to each other is the correct one.

Ms. Tabaro for the state asked me to dismiss that money lending theory, submitting that it is false since PW1 and the 2nd appellant were former friends, there was no reason for PW1 to turn against

him. She argued that PW1 was not even crossexamined to reveal any bad faith he had developed against the 2nd appellant. It was her view that the money lending theory is an afterthought.

I have read both the prosecution and defence evidence on record. I have not come across any challenge to the evidence of PW1 or that of PW4 during crossexamination that would reveal that grudges had developed between PW1 and the 2nd appellant and between PW4 and the 1st appellant which could lead to a conclusion that the charges against the two appellant were manufactured in order to put them into trouble.

During the testimony of PW1, he was cross-examined about the 150.000/= he received from the 2nd appellant and he explained that the 2nd appellant was simply refunding his money. He was not asked any further questions.

In other words it is the 2nd appellant who was borrowing money from PW1 and not the other way round. When the 2nd appellant introduces 330.000/=, during his defence it looks like an afterthought.

Similarly, when ACP Halongo Timothy testified, he was cross- examined. However he was not examined upon the dispute between him and Commissioner of Police Arinaitwe which sucked in the 1st appellant leading to a grudge as the 1st appellant testified in his defence.

The issue of that grudge therefore, also looks to be an afterthought.

Since there is no doubt that the 2nd appellant received money which money had been marked by the PSU, and was delivered through PW1, and the same was identified as the trap money in court, in absence of any challenge to the evidence adduced by the prosecution, the logical conclusion is that the money was for services which the 2nd appellant and his bosses had rendered to PW1.Besides, the existence of the note with name, rank and district of PW1 in the same envelope where money was found on the 1st appellant stained the transaction. It was no ordinary loan repayment.

Mr. Sserwada raised an issue that the gratification had to be for an act or omission to be done in future and that since PW1 had already been promoted; any receipt of such money is not an offence under section 2(a) of the Anti-Corruption Act.

With respect, I am unable to share that view. The provisions of section 2(a) of the Anti-Corruption Act, do not distinguish future, present or past acts or omissions. On the contrary, the provisions are interpreted to fault any public officer who receives money or other gifts favors or promises in

exchange for any act or omission in the performance of his or her public functions- past present or future.

There is nowhere in section 2(a) of the Anti- Corruption Act where the act or omission is intended to **induce** the person to perform a future act only.

For as long as a public officer performs an act or omission contrary to established procedures, in exchange of which he or she demands or solicits for and receives a gratification, that person commits a crime for acting **corruptly** as defined in section 1 of the Anti-Corruption Act.

Similarly if a public officer solicits or receives a gratification in order to influence him or her to do an act or omission in the present or future, contrary to established procedures that person equally commits a crime of acting corruptly as defined in section 1 of the Anti-corruption Act.
In her judgment, the Trial Magistrate concluded that the prosecution evidence had more weight than the defence version which was premised on the theory of money lending. She reasoned that since the 2nd appellant and PW1 were great friends, no evidence had been adduced to challenge the version that the 2nd appellant acted corruptly by soliciting and receiving money from the complainant.

The Trial Magistrate also held that even if the appellants were not members of the police council mandated to promote police officers, it was their habit to take advantage to act as middlemen to solicit and receive funds from junior officers who would end up being irregularly promoted. Indeed the undisputed evidence of PW4 is that several officers were demoted because they were found to have been irregularly promoted.

It was also the evidence from the PSU officers that when A2's house was searched, he was found with lists of names of several officers and their ranks plus their work stations. Of course the 2nd appellant explained that he kept those lists because he used to receive many inquiries from officers in the field.

However I would dismiss that defence for the reason that he did not explain further why those names were found in his house and not at his workplace. If the inquiries were official, then there would be no need for the 2nd appellant to carry those records to his bedroom except for the reason that he had turned his bedroom into a "money spinning office".

In conclusion, it is my finding on the evidence on record that the prosecution proved the charges against the two appellant beyond reasonable doubt and the Trial Magistrate had sufficient evidence and justification to find the two guilty and properly convicted them.

The Trial Magistrate was in my view justified in dismissing the money lending theory because it was an afterthought. The unchallenged evidence of the prosecution regarding the conduct of the 2nd appellant clearly showed he was acting corruptly. If he had been paid back his money, there would have been no need to receive the same from his bedroom and there would have been no need to require the complainant to record his name, rank and district on a paper which the 2nd appellant put in the same envelope and which the 1st appellant confirms to have received with the money.

It is my conclusion that the events that happened on the 15 th of November 2010 were criminal acts committed by the two appellants. They had benefited from irregular promotions in the Police Force and had to be caught one day. They are lucky to have got off lightly with the small fines.

The appeal is dismissed.

LAWRENCE GIDUDU

JUDGE

11th April, 2016.