

**THE REPUBLIC OF UGANDA**  
**IN THE ANTI-CORRUPTION DIVISION OF THE HIGH COURT, AT KOLOLO**  
**CRIMINAL APPEAL NO.15 OF 2019**

(Arising out of Anti-Corruption Division Criminal Case No 0069 of 2018)

**UGANDA**

**APPELLANT**

**VERSUS**

**BOB MUDDUSE**

**RESPONDENT**

**BEFORE THE HON. JANE OKUO KAJUGA**

**JUDGEMENT**

This is an appeal from the decision of Sarah Namusobya, Magistrate Grade 1 sitting at the Anti-Corruption Division delivered on 30<sup>th</sup> August 2019 in which the Appellant was acquitted of the offenses of **Embezzlement** C/S 19 and **Abuse of Office** C/S 11 of the **Anti-Corruption Act** respectively.

The appeal is against the acquittal.

The case for the prosecution as summarized from the record of the lower court is that the Respondent was employed as a Senior Town Agent with Lugazi Municipal Council in the period of June 2016 to February 2019. His duties included mobilizing the population for payment of revenue. It was alleged that he received money totaling to **Ushs 37,052,962** meant for fees and taxes from Sugar Corporation of Uganda (SCOUL) and he did not take the money to his employer. The conclusion therefore was that he took the money for himself. This formed the basis of the embezzlement charge. It was also alleged that he acted in abuse of the authority of his office when he arbitrarily received the Ushs 37,052,962 to the prejudice of his employer. He was accused of collecting the money in cash, contrary to established procedure where payments were to be made by cheque or direct bank transfer. It was further alleged that he did not have the authorization of his employer to receive cash.

The prosecution called eight witnesses and tendered several documentary exhibits in support of its case. At the conclusion, the trial Magistrate found that there were grave inconsistencies and contradictions in the prosecution case pointing to deliberate untruthfulness and raising doubts in her mind. She therefore held that prosecution had

failed to prove its case to the requisite standard and acquitted the Respondent on both counts.

Being dissatisfied with this decision, the Appellant filed this appeal which is based on the following grounds:

1. That the trial Magistrate erred in law and fact when she came to a finding that the accused did not steal Ushs 37,052,962
2. That the trial magistrate erred in law and in fact when she failed to properly evaluate the prosecution's evidence as a whole, thereby leading to the acquittal of the Respondent

I am duty bound to address the manner in which the grounds of this appeal are formulated.

**Section 28(4) of the Criminal Procedure Code Act** provides that;

*“Where the Appellant is represented by an advocate or the appeal is preferred by the Director of Public Prosecutions, the grounds of appeal shall include particulars of the matters of law or of fact in regard to which the court appealed from is alleged to have erred”.*

This requirement is intended to make clear what part of the lower court's judgment the appellant wishes to appeal against and for what reasons. The second ground of appeal is framed in a very general way, making it hard to point out what particular matters of law or fact are being appealed against. The assertion that the magistrate failed to evaluate the prosecution evidence as a whole is ambiguous and offends **Section 28(4)** of the **CPC**. It suggests that the appellant is unsure of the specific facts and matters of law over which he is dissatisfied. When the appellant then chooses to handle both grounds together, as in this case, the arguments become even more muddled.

I will nevertheless, in the interests of justice endeavor to identify the issues raised in their submissions as resolve the appeal.

#### **Representation:**

The appellant was represented by **Thomas Okot** from the Inspectorate of Government while **Kayizi Ronald of Kasana, Mpungu and Co Advocates** appeared for the Respondent.

Both filed written submissions and Counsel for the Respondent took the opportunity to highlight his arguments before Court. The appellant did not file a rejoinder to the Respondent's submissions.

### **Consideration of the appeal**

This court is mindful of its duty as a first appellate court to carefully and exhaustively reevaluate the evidence as a whole and come to its own decision on the facts, being mindful of the judgement appealed from and the fact that it did not have the opportunity to see the witnesses testify. **Kifamunte Henry Vs. Uganda SCCA No, 10 of 1997 and Bogere Moses and Anor vs. Uganda, Supreme Court Criminal Appeal No. 1 of 1997)**

As far as matters of demeanor and truthful of witnesses is concerned, the appellate court shall be guided by the observations made on the record of proceedings during trial (**Coghlan Versus Cumberland (1898) Ch. 704** quoted in **Pandya Versus R (1957) EA 336**).

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As I resolve this appeal, I will be guided by the accepted standard of proof beyond a reasonable doubt as established in the case of **Miller Versus Minister of Pensions (1947) 2 ALL ER 372 at 373** and in **DPP versus Oscar Leonard Pistorius**, Appeal No 96 of 2015 where the standard was expounded as follows:

*"...an accused is bound to be convicted if the evidence establishes his or her guilt beyond reasonable doubt and the logical corollary is that he or she must be acquitted if it is reasonably possible that he or she might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the evidence which the court has before it. What must be borne in mind however is that the conclusion which was reached (whether it be to convict or to acquit) must account for all the evidence..."*

The prosecution therefore has the duty to prove all the ingredients of the offense and the accused can only be convicted on the strength of the prosecution case (See **Ssekitoleko Versus Uganda (1967) EA 531**). This evidence must be credible and not tainted with lies and must lead to no other conclusion than that the accused person committed the offense with which he is charged. Where there are doubts raised in the prosecution evidence, these must be resolved in favor of the accused.

I have considered the record of proceedings and the judgement of the lower court, examined the exhibits tendered in this case and the submissions made before this court.

I will evaluate both grounds 1 and 2 together

### Resolution of the appeal

From the submissions of counsel for the appellant, the following issues are identified as the key arguments raised in opposing the trial Court's acquittal of the Respondent on both Counts:

1. Whether there was sufficient evidence of theft by the Respondent.
2. Whether the decision that the evidence of PW 1 and 2 contradicted that of PW3 and the reliance on the contradictions to acquit the Respondent was proper
3. Whether the trial court was right to rely on the evidence of DW2 to arrive at the conclusion that the Respondent did not steal the money.
4. Whether the respondent's action of receiving the money was an arbitrary act

### **Was there sufficient evidence of theft?**

*Answer:* The ingredients of the offense of embezzlement as summarized by the trial magistrate in her judgement were not in contention. The fact of the Respondent's employment as a Town Agent was not contested, neither was the element of receipt of the monies in issue by the respondent. It was not in issue that the money belonged to the respondent's employer. What is in contention is whether the respondent stole the money.

The appellant contends that the Respondent cannot escape from accounting for the money that he received from SCOUL as the paper trail ended squarely with him and he should be held accountable. There was no evidence that the money received was handed over to the employer through the treasurer or banked on the employer's account.

Counsel for the Respondent opposes this submission and contends that there was evidence that the Respondent handed over all the money received to **PW 1 (Grace Matovu** who was the Head of Finance) and **PW 2 (Okurut Vincent** who was the Town Clerk). Both were senior employees in the Municipal Council and were supervisors of the Respondent. He referred to them as deceitful witnesses who should have been prosecuted instead of the Respondent.

In resolving this issue, the trial magistrate analyzed the evidence of **PW1, PW2** and **PW3**. She believed PW 3 when he stated that two transactions of Ushs 8 million and Ushs 5 million was paid in cash to the respondent with the express authorization of PW 1 and PW 2 respectively. She also believed his evidence that they followed up the

payments by physically moving to SCOUL and making a case for the payment of the money in cash to the Respondent. They claimed that there was need for urgent payment. **PW 3 is Patrick Mike Dhikusooka**, a manager in charge of administration in SCOUL.

What is clear to this Court is that the Prosecution presented gravely contradictory evidence in support of its case. Respondent's claim that he was taking the monies received in cash to PW 1 and PW 2 bears credence from PW3's evidence which shows that they were involved in pursuing and making a case for the payment of some of the money in cash to the Respondent. They claimed they needed the money to run the municipal's activities. There was never a complaint made by PW 1 and PW 2 thereafter that these monies were not subsequently received. The obvious conclusion that can be reached by Court is that the payment of Ushs 8 million and then Ushs 5,000,000 was indeed received by the employer, as alleged by the Respondent.

*Three*  
PW 3 testified clearly and he was very firm even under cross examination. His evidence was credible. He contradicted that of PW 1 and PW 2 in material particulars. He stated that when they received the demand notes for payment of **Ushs 68,165,820**, the Respondent went to him demanding payment in cash, which he rejected. He returned the next day with PW1 who emphasized the urgent need for cash. He was then forced to authorize payment of Ushs 8 million. He also stated that the letter of 11<sup>th</sup> July 2016 was followed up by PW2 who also stated that they needed urgent cash payment to settle obligations. He authorized and the money was paid.

This evidence above is fundamentally contradicting PW 1 who stated that she never authorized payments to the respondent in cash, and that she was not aware about the payment of the money to the Respondent. She claims money should have been paid by cheque and direct bank transfers. The evidence of PW 2 is essentially the same as that of PW1. This court can safely conclude that their evidence is shown to be false by PW 3.

If Court is satisfied that the Respondent told the truth in respect of the two transactions, then it cannot simply dismiss his claim that all the money he received was handed over to PW 2 and PW 1 in similar manner. It should be noted that even for the Ushs 8 million and 8 million, there was no acknowledgement of receipt. A serious doubt is created in the mind of the court as to whether he took the money for himself or indeed handed it over to them.

The best evidence to show that the money was not received by the employer, should have been that of the Finance Officer and the town Clerk. In light of the contradictions,

their claims that they never received any money are not believable. More than a reasonable doubt is cast.

Their evidence is contradicted in so many ways by the rest of the prosecution witnesses.

PW 4, the auditor in SCOUL (**Ssekomago John Geoffrey**) states that the Respondent had been introduced to receive cash payments on behalf of the municipal council. He further states that they have never paid any money and the same is demanded by the Council.

PW 6, **Ninsiima Afia** states that payments in cash were normal for the municipal council. These are contrary to the claims of PW1 and PW2 that all payments were to be made in cheque.

Counsel for the Respondent argues that PW1 and PW2 at all material times knew of the cash payments and lied on oath about not being aware and not authorizing the payment. They also lied on oath about having received some of the money. Their evidence cannot therefore be relied upon by this court including in respect of the balance of Ushs 24,052,962 referred to by the appellant in his submissions. This Court agrees with him.

I have carefully considered the evidence of the witnesses and find inconsistencies and contradictions of the kind that go to the root of the case and point to a deliberate untruthfulness on the part of the witnesses as to affect the weight to be attached to the prosecution evidence (**Alfred Tajar versus Uganda EACA Cr Appeal No. 167/69**).

Counsel for the appellant submits that since the paper trail ended with the respondent, he should be held accountable for the money and be convicted. He relies on the decision in **Inziku Paul and 2 others Versus Uganda (Criminal Case No 3/2011 of the Anti-Corruption Division of the High Court)** where he says the Judge upheld conviction of a person with whom the trail on receipt of money had ended.

I have analyzed the judgement of the trial court at page 7. It reads:

*"Whereas as rightly stated by prosecution that the paper trail ended with the accused person, the grave contradictions and inconsistencies in the prosecution evidence create doubt in my mind as to the involvement of the accused person in the theft of the money as it has been observed that the accused was not acting on his own volition when he went to demand for cash payments from SCOUL.*

I have studied the Inziku Paul Case and find that it can be distinguished from this present appeal. In that case the Judge noted as follows:

*“The third appellant received the money from the bank. Though the third appellant alleges that he handed over the money to the second appellant, that version is refuted by the second appellant. No independent evidence exists to support the claim by the third appellant that he handed over the money to the second appellant....”*

It is on the above basis that the third appellant's conviction was upheld. Court observed that there was no accountability on his part for the money he received.

In the present case there is evidence from which the court can safely conclude that money in cash was handed over to PW1 and PW2. This view is further strengthened by the evidence of the former Mayor of Lugazi Municipal Council who testified as **DW1**. He testified on oath that he witnessed the respondent giving money to the Town Clerk. PW1 was present at the time. That the two told him that the money was from SCOUL for doing some activities. They said they had requested cash from SCOUL since they did not have any money.

This evidence lends credence to the defense case and has the effect of casting further doubt on the prosecution case.

I have carefully considered the reasons given by the trial Magistrate in acquitting the Respondent on the charge of Embezzlement. I see no reason to defer from her findings and will leave the judgement undisturbed in that regard.

Regarding the second count of abuse of office, the Trial Magistrate found that the prosecution did not establish through evidence, the right procedures for remittance of fees and taxes due to the municipal council. No guidelines, rules or regulations were tendered in court to support the claims of the PW1, PW2 and PW5 that no cash payments were allowed. I agree that failure to submit such evidence makes it impossible for the court to establish that the Respondents actions were contrary to established procedures.

This matter is further complicated by the prosecution evidence which shows that PW1 and PW2 were involved in directing payments in cash.

It would further have been useful for the Prosecution to have supplied evidence of payments by cheque made by SCOUL in the preceding period and during the time the offenses occurred to support their claims that money was always paid by cheque or bank

transfer. As it is there are prosecution witnesses saying payments had to be in cash and others saying it had to be by cheque. The respondent cannot be held to have abused the procedures and acted arbitrarily to established procedure, when this procedure is unclear, or where some senior officers like PW1 and PW2 were authorizing payments in cash as testified upon by PW3.

**Conclusion:**

The decision of the trial magistrate to acquit the respondent on both charges preferred against him cannot be faulted.

In light of the foregoing, the appeal fails on both grounds.

I accordingly dismiss it.



Jane Okuo Kajuga

Judge of the High Court

7.8.2020