

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT THE ANTI- CORRUPTON DIVISION KAMPALA
CRIMINAL CASE NO 07 OF 2017

Uganda.....Prosecutor

Versus

Hon. Herbert Kabafunzaki.....Accused

JUDGMENT

Before Hon Lady Justice Margaret Tibulya.

The Accused stands charged with two counts of corruption contrary to sections 2 (a) and 26 (1) of the Anti- Corruption Act.

The particulars of the offence in count 1 are that while in the performance of his duties as a Minister of state for Labour, Employment and Industrial relations, he directly solicited for himself **Ugx 15,000,000/= (fifteen million)** as a gratification from **Mohammed Mohammed Hamid** in exchange for clearing the name of the said **Mohammed Mohammed Hamid** from allegations of sexual harassment by his former employee.

The particulars of the offence in count 2 are that while in the performance of his duties as a Minister of state for Labour, Employment and Industrial relations, the accused directly accepted for himself **Ug. shs. 5,000,000/= (five million)** as a gratification from **Mohammed Mohammed Hamid** in exchange for clearing the name of the said **Mohammed Mohammed Hamid** from allegations of sexual harassment by his former employee.

At the beginning of the trial, the accused denied the charges, but jumped bail and abandoned the proceedings after the prosecution had led the evidence of 15 witnesses. The Court granted the state's application that the trial proceeds in the accused's absence since it would be against public policy to allow the frustration of court proceedings by the accused person who had chosen to abscond and therefore waived his right to be heard.

Burden and standard of proof.

The burden of proof in criminal cases lies with the prosecution throughout the trial. Except in a few statutory cases, the burden does not shift to the defence. The prosecution is required to prove all the ingredients of the offence beyond reasonable doubt (**Woolmington v DPP (1935) AC 462**).

The offence of corruption.

In **Uganda Vs Mayambala Gasta and Kanyingule Malik AC-CN 27/2015**, it was held that a public officer who solicits and receives a gratification in order to influence him to do an act contrary to established procedures commits the offence of corruption. In this regard, for each of the two counts the prosecution must prove the following ingredients beyond reasonable doubt.

1. That the accused was a public official,
2. That he directly solicited for Ug. shs. 15,000,000/= **fifteen million**),
3. That the accused directly received Ug. shs. 5,000,000/= **(five million)**,
4. That the money was for himself and others, and
5. that it was in exchange for an act in the performance of his public functions.



Whether the accused was a public official.

The state sought to rely on undisputed evidence (**Exhibit P1 (a)**), that the accused was a Minister of state for Labour, Employment and Industrial relations, and that he was therefore a public official within the meaning of the law. The evidence of **Pw1 (Patrick Okello)** who was the commissioner for Labour in the Ministry of Labour, Gender and Industrial relations where the accused was a Minister of State leaves no doubt that the accused was a public official at the material time, and for each of the two counts **I find so**.

Whether the accused directly solicited for Ugx 15,000,000/= (fifteen million).

The back ground to this case is that there had been an allegation of sexual harassment against **Pw.3 (Mohammed Mohammed Hamid)** by one of his hotel workers. On the 6th / April /2017, the accused with others who included **Pw1 (Patrick Okello)** went to Pw3's hotel to investigate that allegation. According to Pw1, at 4:00pm on that day **Pw.3 (Mohammed Mohammed Hamid)** informed him that

one of the persons they had been with at **Pw3's** hotel had gone back to him demanding for a bribe on behalf of the accused so that the allegation of sexual harrasment could be cleared.

According to **Pw 3** on 7th/April/ 2017 the accused invited him to his office over phone number **0779888888**. Pw1 saw **P.w.3 (Mohammed Mohammed Hamid)** and P.w.2 (**Mawulana, the hotel's financial controller**) enter the accused's office on that day.

P.w.3 (Mohammed Mohammed Hamid) and P.w.2 (**Mawulana**) met the accused and he told them that the sexual assault allegations were all over the media and were bound to affect their reputation and businesses. He offered to help clear Pw3's name but at a cost. He then told them that he would send them his agent, one Bruce together with a lawyer, who would help them prepare documents that he (the accused) would use at a press conference to clear Pw3's name.

Pw3 (Mohammed Mohammed Hamid) and Pw2 (**Mawulana**) recorded their conversations with the accused and his agents who included one Bruce and a gentleman who was identified as a lawyer (**Exhibit P.5**).

In the Court's view, the narration of events by **Pw2 and 3** (that Bruce introduced himself to them as the accused's agent and advised them to seek help from the accused, further that the next day the accused by phone invited Pw3 to his office where he offered to help clear his name just as had been mentioned by Bruce leaves no doubt, that the accused solicited for the money in issue from **P.w.3**.

Other evidence is that the accused offered to send Bruce with a lawyer to Pw2 and 3. I don't find it as a mere coincidence that Bruce went to them that same day with someone he introduced as a lawyer. It was not disputed that Bruce was given **Ugx. 2,000,000/=** as advance payment for the lawyers' fees. A receipt in respect to this payment is **Exhibit P.2**.

When **Pw3** asked to speak to the accused in person, Bruce let him do so, and it was over the phone that the accused and **Pw3** agreed to meet in person at Serena Hotel Kampala at 2.00pm. At Serena hotel, the accused got a piece of paper (**Exhibit P.23**) on which he wrote (**Exhibit P.22**) as he spoke about the money he needed to clear PW23's name. He indicated that he needed a total of **Ugx 15,000,000/= (fifteen million)**. Out of that. **Ugx. shs10,000,000/= (ten million)** was his and the **Ugx shs5,000,000/= (five**

million) for the agents and networks that he was going to work with, including journalists from newspaper agencies and television networks; Red Pepper, NTV and NBS. Further evidence was that the accused asked P.W.3 to give him Ugx. 5million there and then. This would be followed by payment of another Ugx.5million before a press conference could be held the following Monday. The last 5million was to be paid on Tuesday after the press conference.

I note that the above evidence was not disputed, and it leaves no doubt that the accused solicited for the Ug. shs. 15,000,000/= (**fifteen million**) from Pw3. In full agreement with the gentlemen assessors. **I find that the accused directly solicited for Ug. shs. 15,000,000(fifteen million shillings) as charged in Count 1.**

Whether the accused directly received Ug. shs. 5,000,000(five million shillings).

It was in evidence that Pw3 decided to report the solicitation by the accused to the police. Since it had been agreed that he was to meet with the accused at Serena Hotel Kampala to pass on the money, the police gave him Ugx. 5,000,000/= (**Exhibit P.4**) for that purpose. At the meeting, PW3 who again recorded his conversation with the accused on **Pw2's** phone (**Exhibit P.5**) passed on the Ugx 5,000,000(**five million**) to the him (Accused).

Pw3's evidence is corroborated in material particulars by that of **Pw11 (Kanene Enoch)** a digital forensic expert who stated that he listened to and retrieved audio files from the Huawei phone (**Exhibit P5**) and transferred the recordings on to CD's (**Exhibit P21**). He said that there were two voices with Arabic accent and the other voices in Ugandan accent.

I note that his evidence was neither disputed nor challenged. It was moreover corroborated by that of **Pw4 (ASP Tusingwiire Joshua)**, **Pw6 (D/C Rugaba)**, **Pw14 (D/C Obayet)** and **Pw15 (D/Cpl Okello John Steven)** who arrested the accused at Kampala Serena hotel on the material day (8th April 2017) and time.

Other relevant evidence was that of **Pw11(Kanene Enoch)** that he received four mobile phones from the police with a request to image and analyze them. The phones had been used by the accused during the commission of the alleged crimes. Exhibit A was a Samsung mobile phone with mobile number **256071502876** which according to the Know Your Customer (KYC) report (**Exhibit P14**) belonged to the accused. **Pw11** found that the phone had been used at the BTS Serena KA1276-Serena IDS, and

concluded that one of the accused's phone numbers was used for making and receiving phone calls while at Serena Kampala Hotel on the 8th/ April 2017, around 3:00pm. The hotel CCTV footage (PEX17) also covers what happened at the hotel on 8th April 2017 at the material time.

The above evidence squarely places the accused to the scene of the crime for purposes of committing the alleged offences, and corroborates that of Pw3 that he handed over the **Ugx. shs. 5,000,000(five million)** to the accused. In agreement with the gentlemen assessors I find that **the accused directly received Ugx. shs. 5,000,000(five million) as alleged in Count 2.**

Whether the money was for himself and others.

Pw3 (Mohammed Mohammed Hamid) was clear that the accused indicated that he needed **Ugx. 15,000,000/=** in total, out of which **Ugx. 10,000,000/=** was his and **Ugx. 5,000,000/=** was for the agents and networks that he was going to work with including journalists from newspaper agencies and television networks; Red Pepper, NTV and NBS. Based on that evidence, **I find that the money was for the accused and others.**

Whether it was in exchange for an act in the performance of his public functions.

Pw3's (Mohammed Mohammed Hamid) evidence that the accused and his agents informed him that the money was the cost for clearing his name of sexual harassment allegations was not disputed. It is common knowledge that one of the accused's roles as Minister in charge of labor was to ensure that there were harmonious labour relations in the country. That he solicited for and received money in order for him to clear Pw3's name can only mean that the money was in exchange for an act in the performance of his public functions, **and I so find.**

In conclusion and in agreement with the gentlemen assessors I find that the prosecution has adduced sufficient evidence to support the charges in each count. **I convict the accused of corruption as charged in each count.**

Hon. Margaret Tibulya
Judge

5th October 2021.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO
HCT-00-ACD-SC-NO.07/2017

UGANDA:..... PROSECUTOR

VERSUS

HON.KABAFUNZAKI HERBERT & 2 OTHERS:.....ACCUSED

BEFORE: HON.LADY JUSTICE MARGARET TIBULYA

8TH OCTOBER 2021

SENTENCE

I have heard and considered all that has been said by the prosecution. The fact that the convict jumped bail can only mean that he has no respect for the criminal justice system, and speaks to his lawless character. He was clearly a mistake in the exalted office of Minister and in public life.

That he could solicit and receive gratification in the manner he did only shows that he was erroneously placed in the offices of Member of Parliament and Minister. The embarrassment he caused to the appointing authority can never be atoned for in any way.

Considering the above I sentence him as follows:

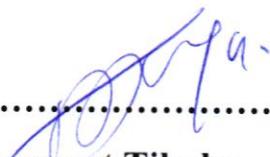
1. On Count 1: He will pay a fine of Shs 5,000,000/= or serve 3 years' imprisonment in default.
2. Count 2: He will pay a fine of Shs 5,000,000/= or serve 3 years' imprisonment in default.

For clarity sake, if he chooses to pay the fine, the sentence will be consecutive, while if he chooses to go to prison the sentence shall be concurrent.

It is ordered (Section 46 of the Anti-Corruption Act) that he is barred from holding a public office for a period of 10 years from today.

It is further ordered that cash bail money be forfeited to the State since the convict jumped bail.

Right to Appeal explained.



.....

Margaret Tibulya

Lady Judge

8/10/2021