

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ANTI-CORRUPTION DIVISION

CRIMINAL APPEAL NO 20 OF 2022

(ARISING FROM COURT ACD SESSION CASE NO.004 OF 2020)

EYUL SAM JOHNNY:..... APPELLANT

VERSUS

UGANDA :.....RESPONDENT

Judgment

Before Hon Lady Justice Margaret Tibulya

This is a judgment on appeal against the judgement and orders of the Chief Magistrate sitting at Kololo. The appellant was convicted of causing financial loss C/s 20 (1) of the ACA. It was alleged that between January, 2017 and March 2018 at Apac District Local Government, being employed by the Government of Uganda as a Principal internal Auditor, Apac District Local Government, he received and drew **UGX 23,014,400/=** as monthly salary through his personal Account **N0.01981011008446** held in DFCU Bank Lira Branch. Further that during the same period he was employed at National Council of Sports and drawing salary therefrom knowing or having reason to believe that his act would cause financial loss of **UGX 23,014,400/=** to his employer.

The Prosecution case was that between January 2017 and February 2018 the accused was drawing two salaries. One salary was from Apac District Local Government while the other was from the National Council for Sports as the Bank statement to

his bank account (**exhibit P15**) illustrates. During the period in issue, he drew a total of **23,014,400/=** from Apac District Local Government yet he had absconded from work with the district and was instead working with National Council of Sports (**Pw1-Joven Jokene at pages 17 and 19 of the lower court record, Pw2 – Milto Abok at Page 25, Pw3 –Kayigwa Tito at page 38, and Pw5 Abyeto Stella at page 45**).

Apac District Local Government was deprived of the appellant's services and incurred financial loss as a result of the accused's actions (**Abyeto Stella at page 47 and D/Sgt Tayebwa at page 57**)

At **pages 63, 66, 67, 68** of the lower court record, the appellant admitted that he was working with the National Council of Sports during the period he received salary from Apac District Local Government.

The learned trial magistrate found that the prosecution had proved all ingredients of the offence and convicted the appellant with causing financial loss of **13, 754,840/=**.

This Court (**a first appellate court**) has a duty of re-evaluating the entire evidence on record, subjecting it to fresh scrutiny before arriving at its own conclusion bearing in mind that it did not have the opportunity to see the witnesses testify, see **Kibuuka Vs Uganda, (2006) 2 E.A 140**, and **Kifamunte Henry Vs Uganda, Criminal Appeal NO.10 OF 1997(Unreported)**.

The burden of proof in criminal matters is on the prosecution-**Woolmington Vs DPP [1935] AC**. The prosecution has to prove all ingredients of the offence beyond reasonable doubt-**Miller Vs Minister of Pensions (1947) 2 ALL ER 372**.

The grounds upon which the appeal is based are that;

1. the learned Trial Magistrate erred in law and fact when she convicted the Appellant of the offence of causing financial loss yet he was not an employee at Apac District Local Government and was out of office when money was deposited on his account.
2. the learned Trial Magistrate erred in law and fact when she convicted the Appellant of the offence of causing financial loss yet the accused was not in control or aware of the acts of Apac District Local Government.
3. the learned Trial Magistrate erred in law and fact when she convicted the Appellant of the offence of causing financial loss even when the money received by the Appellants were debts meant to be paid by Apac District Local Government.

The appellant's complaints will be resolved in the order they are presented.

Ground 1

That the learned Trial Magistrate erred in law and fact when she convicted the Appellant of the offence of causing financial loss yet he was not an employee at Apac District Local Government and was out of office when money was deposited on his account.

The parties' arguments present one issue; **whether or not at the time of the commission of the offence of causing financial loss, the appellant was an employee of Apac District Local Government.**

The appellant seeks to rely on his own testimony at page 62 of the record of proceedings, where he maintains that he only worked with Apac District Local Government from 1999 to 2009, before the impugned funds deposits were made. He also seeks to rely on **Pw 1 (Jokene Joven)** and **Pw2 (Milton Abok)**'s evidence

(pages 13 and 24 of the Record of proceeding respectively) that in 2009 he was interdicted, and that when he was subsequently allowed to contest in elective politics he was deleted from the pay roll (page 63 of the record of proceedings). It is further argued that when the Appellant requested for resignation his employment was automatically terminated.

The appellant is however on record (*second last paragraph of page 67*) admitting that on **17th June 2010** he wrote to the Chief administrative officer requesting to resign (**exhibit P17**). It is not possible that he had left the job **in 2009**, but at the same time sought to resign from it in **2010**.

Secondly he admits that he petitioned court for his reinstatement (*he had been deleted from the pay roll when he left for elective politics*), and the petition was granted. The Judgment and Decree (**exhibit P19 a & b**) is dated **27th February 2014**. He does not deny that on **11th April 2017** he wrote to the CAO (**exhibit D3**) laying down conditions for his resumption of duty. Pw5 (**Stella Abyeto**) was positive that the appellant was reinstated on the pay roll in fulfillment of the court order (**page 45**). Based on the foregoing evidence, the appellant's assertion that he rejected to be reinstated is factually incorrect. As recent as the **10th December 2017** when he wrote to the CAO requesting for early retirement which was denied, the appellant was still in Apac District Local Government' employment. One cannot seek to retire from a job they don't hold.

The matrix of evidence and chronology of events run counter to the appellant's assertion that he ceased to work for Apac District Local Government in 2009.

I find that the appellant was in the employment of Apac District Local Government when the funds in issue were transferred to his account.

This finding negates the submission that it was improper for the Trial Magistrate to hold that the Appellant was an employee of Apac Local Government yet at the time money was deposited on his Account he was already out of office.

The assertion that during the period in issue the appellant was only receiving arrears and what the Court had awarded him is contradicted by his own testimony at **page 67** where he admits that by the **10th December 2017** when he wrote to the CAO requesting for early retirement he was in the service of **Apac District Local Government** and that they were sending money to his account.

The submission that salary payment was not in the appellants control but that of the Chief Administrator Officer ignores the evidence that by his actions, such as providing his Bank Account details at the relevant District officials for processing of his salary (page 30, paragraph 30) and his letters to the CAO, he misrepresented that he was in the employment of the District. **I find that the appellant was in the employment of Apac District Local Government when the funds in issue were transferred to his account.** And, based on that finding, the complaint that the learned Trial Magistrate erred in law and fact when she convicted the Appellant of the offence of causing financial loss yet he was not an employee at Apac District Local Government and was out of office when money was being deposited on his account fails.

Ground 2

That the learned Trial Magistrate erred in law and fact when she convicted the Appellant of the offence of causing financial loss yet the accused was not in control or aware of the acts of Apac District Local Government.

The assertion that the accused was not in control or aware of the acts of Apac District Local Government is an outright lie. The appellant testified that he started working with National Council of Sports on the 1st August 2014. This was long before his reinstatement into his position at the District, and yet he didn't disclose his employment status with the National Council of Sports to the District Local Government. And, by supplying his account details to the relevant District officials he knew that he would be paid salary. Based on these facts, the complaint that the learned Trial Magistrate erred in law and fact when she convicted the Appellant of the offence of causing financial loss yet he was not in control or aware of the acts of Apac District Local Government has no merit and must fail.

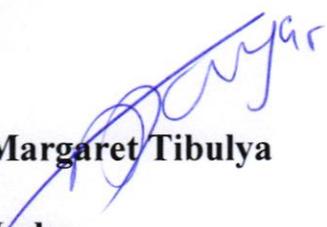
Ground 3

That the learned Trial Magistrate erred in law and fact when she convicted the Appellant of causing financial loss even when the money he received were debts which Apac District Local Government was paying.

The assertion that the money received by the Appellant were debts which the District Local Government paid to him is incorrect. The entries in the Appellant's bank statement at DFCU bank confirm that **13,754,840/=** earned by the Appellant between **1/3/2017 and 19/11/2018** comprised of salaries after he was reinstated in service as a result of the court case. The Appellant indeed states (*at page 63 paragraph 6 line*

8 of the record of proceeding) that he received **13,754,840/=** in his account as salary from January 2017 to December 2017. His denial that the payments were for salaries is an afterthought which is rejected. The complaint that the learned Trial Magistrate erred in law and fact when she convicted the Appellant of causing financial loss even when the money received by the Appellants were debts is without merit.

I find no merit in the appeal and it stands dismissed. The Judgment and orders of the lower court are up held.



Margaret Tibulya

Judge

29th March 2023.