

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
AT MBALE**

**HCT- CR-CN-0013/2011**

**OKOBOI GUSBERT.....APPELLANT  
VERSUS  
UGANDA.....RESPONDENT**

**BEFORE: THE HONOURABLE JUSTICE STEPHEN MUSOTA**

**JUDGMENT**

This is an appeal from the judgment of the Principal Magistrate Grade One Pallisa dated 28<sup>th</sup> February, 2011 whereby he convicted the appellant **Okoboi Gusbert** of obtaining money by false pretences c/s 304 and 305 of the penal Code Act and sentenced him to six month imprisonment and compensation of shs 1,800,000/=. The appellant is represented by M/S **Walukhu Wettaka & Co. Advocates** while the respondent by Ms **Chekwech Justine** a State Attorney.

The grounds of Appeal are that:

- 1 The learned trial magistrate erred in law and fact when he failed to judiciously evaluate the evidence on record thereby reaching a wrong decision.
- 2 The learned trial magistrate erred in law and fact when he convicted the appellant on weak evidence
- 3 The learned trial magistrate erred in law and fact when he rejected the appellants defence thus coming to a wrong decision.

4 The learned trial magistrate erred in law and fact when he harshly sentenced the appellant to six months imprisonment plus a fine of 1,800,000/=

The appellant prayed that this appeal be allowed and conviction and sentence be set aside. In the alternative that the sentence of six months be substituted with a lesser sentence.

The facts constituting the background to this appeal are that the appellant was charged, tried, and convicted of obtaining money by false pretences from one **Oloit Charles** pretending that he was going to buy cotton whereas not. According to the evidence for the complainant (PW1) the latter dealt in produce i.e cotton, cassava, maize, sorghum etc. That the accused was one of his employees for about five years. on 15.12.2008, PW1 gave the appellant 1.8 million to go and buy 3000 kgs of cotton at 600 per kg . The appellant never delivered the cotton nor refund the money despite several demands. The PW1 gave the money in the presence of **Twaha Okurut, and Okiria Abraham**. Both these people who testified as PW2 and PW3, told court that they witnessed the transaction when the appellant received the money for buying cotton. The appellant, however, denied receiving any cash from PW1 to buy cotton, Attributing the claim to a grudge with PW1. He was supported by DW2, DW3 and DW4.

In his judgment, the learned trial magistrate found that prosecution had proved the offence against the convict/ appellant hence this appeal.

At the hearing of the appeal; court allowed respective counsel to file written submissions.

I have considered the appeal generally. I have perused the lower courts record and the brief evidence adduced at the trial. As a first appellate court, this court is enjoined to re evaluate the evidence adduced during the trial and reach its own conclusion whether the findings by the trial court can be supported. While doing this, the appellate court must bear in mind that it did not observe the witnesses give evidence.

With the above statement of the law, I will go ahead and decide this appeal as argued by both learned counsel.

### **Grounds 1 &2**

I agree with the submission by learned counsel for the appellant that the evidence by the prosecution at the trial was contradictory .Whereas PW1 ,the complainant, told court that he gave money to the appellant to buy him cotton and confirmed it in cross examination, PW2 testified that the money was not given directly to the appellant. According to PW2 **Okurut Twaha**, 2 million shillings was given to **Okiria** to pass it to him to buy cotton . That the complainant also gave 1. 8 million to **Okiria** to pass over to the appellant to buy cotton as well. Further that **Okiria** was given his 1 million.

The evidence of PW2 is corroborated by that of **Okiria Ibrahim** (PW3) who confirmed that it was him who was given the money to pass it over to both **Okurut** and the appellant to buy cotton. That it was PW3 who

gave 1.8 million to the appellant to buy cotton. However the appellant denied receiving any money from the complainant. In his defence he told court that the claim by the complainant is actuated by a grudge because the appellant denied him an exhibit when Katapeun's cassava was uprooted. That because the complainant was involved in the case, he wanted to destroy the evidence.

From the above evidence, it is apparent that there was no strong evidence to found a conviction of the appellant for the offences charged. None of the ingredients of the offence charged were proved beyond reasonable doubt. There remained doubt whether the complainant gave money to the appellant and he asserts. He does not acknowledge that he sent the appellant the 1.8 m /=. There is no proof that this money reached the intended recipient. Under Section 305 of the penal Code Act, any person who by false pretence and with intent to defraud obtains from any other person anything capable of being stolen commits a felony. False pretence is defined under Section 304 P.C.A as any representation made by words, writing or conduct of a matter of fact either past or present which representation is false infact and which the person making it knows it to be false or does not believe it to be true. As rightly submitted by learned counsel for the appellant, all the evidence by the prosecution witnesses can not prove that the appellant requested for the money from the complainant or made a representation to the complainant to induce him to part with the money complained of knowing that, the representations were false.

Even if the complainant had handed over the money to the appellant, the circumstances would not have amounted to false pretences since it would have been the complainant who would have voluntarily handed over the money to the appellant.

An accused does not obtain money by false pretence if a complainant hands over the money to him of his own free will asking the accused to buy for him cotton. Consequently grounds 1 & 2 will succeed.

**Ground 3:**

In view of my finds on grounds 1 and 2 , I agree with learned counsel for the appellant that the learned trial Magistrate ought not to have rejected the defence evidence.

It created doubt as to whether the appellant received the alleged money and if he received it, it was by false pretences. The appellant put up a defence of alibi that on the day he allegedly received the money, i.e 1.12.2008 he was at the home of **Akore Lawrence** to attend a meeting concerning some one to go and buy a bull to be consumed for Christmas. This defence of alibi was not disproved by the prosecution evidence. This should have worked in favour of the appellant who had no duty to prove his alibi.

Ground 3 will also succeed.

**Ground 4:**

The appellant abandoned the appeal regarding sentence of six months. He however contends that the order for compensation of 1.8 million was not justified.

In his sentence, the trial Magistrate ordered that:

*“ Accused is jailed for six months and he is ordered to refund (the) complainant(s) 1.8 million after jail sentence.”*

My reading of this sentence suggest that the order regarding the 1.8 m= is neither a fine nor a compensation. It is referred to as a “refund”.

In my view this order does not fall under Section 199 of the magistrates Courts Act. It can not be upheld. The order for refund is hereby set aside Ground 4 of the appeal also succeeds.

For the reasons given above I will allow this appeal, quash the conviction and set aside the orders of the trial Court.

**Stephen Musota**

**Judge.**

**06/12/2013**