

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL DIVISION

CRIMINAL APPEAL NO.0055 OF 2012

(Arising from original Criminal Case No.422 of 2009 at Buganda Road Court)

SARAH MALE MPANGA :::APPELLANT

VERSUS

UGANDA :::

RESPONDENT

JUDGEMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

1. Introduction

1.1 The appellant through her Lawyers Tropical Law Advocates (formerly Bwambale, Musede & Co. Advocates) filed this appeal against the respondent. Mr. Bwambale David from the same Law Firm argued the appeal.

1.2 The respondent is represented by the Directorate of the Public Prosecutions (DPP). Ms. Ainebyoona Happiness, State Attorney from DPP argued in opposition to this appeal.

1.3 Facts of this appeal

1.3.1 The appellant was charged together with Wabbi Dan (A2) of the offences of Forgery Contrary to Sections 342 and 347 of the Penal Code Act, on Count1, and conspiracy to commit a felony Contrary to Section 390 of the Penal Code Act, on count 6.

The appellant was charged with others still at large of the offences of uttering a false document Contrary to Section 351 of the Penal Code Act on count2; obtaining Registration by false pretences Contrary to Section 312 of the Penal Code Act, on counts 3,4 and 5. The appellant was tried of the said charged

offences by the prosecution, convicted on counts 1,2,3,5 and 6 and acquitted on count 4. The appellant was sentenced to fine sentences or in default to the payment of the said fine to a term of imprisonment on all the said counts. The fines were paid in Court.

However, the appellant was dissatisfied with the entire judgment, convictions, sentences and orders by Khainza Eleanor, the Chief Magistrate, Buganda Road Court, delivered on 20th November, 2012 and hence this appeal against conviction and sentence.

1.4 Grounds of appeal.

1.4.1 The appellant appeals against the whole judgment, convictions and sentences on the following grounds; that:-

- a) The learned trial Chief Magistrate erred in law and fact when she completely disregarded the evidence of the handwriting expert and chose to rely on the un corroborated evidence of A2 (an accomplice) thereby reaching a wrong conclusion on points of law.**
- b) The learned trial Chief Magistrate erred in law and fact when she based her entire conviction on the evidence of a single witness who was also an accomplice/convict in the same case without such being corroborated by independent evidence.**
- c) The learned trial Chief Magistrate erred in law and fact by failing to properly evaluate the evidence on record thereby reaching a wrong conclusion on points of law and facts.**
- d) The learned trial Chief Magistrate erred in law and fact when she convicted the appellant on speculative statements that lacked basis.**
- e) The learned trial Judge (sic) erred in law and fact when she arrived at her conclusions by conjuncture, imaginations and speculative statements thereby occasioning a miscarriage of justice upon the appellant.**

1.4.2 The appellant prays to this Court to:-

- (a) Allow the appeal.**

- (b) **Quash the convictions.**
- (c) **Set aside the sentences.**
- (d) **Order that the total sum paid in Court as a fine be refunded to the appellant.**

2. Resolution of this appeal by this Court.

2.1 From the onset, it is important to note that A2 (Wabbi Dan) pleaded guilty to count 6 which is conspiracy to commit a felony Contrary to Section 390 of the Penal Code Act and was sentenced to eight (8) months imprisonment: He served the sentence. He pleaded not guilty to Count 1, tried and was found guilty of forgery Contrary to Section 342 of the Penal Code Act, together with the appellant. A2 (Wabbi Dan) the convict never challenged the decision of the trial Chief Magistrate. That is, he (A2) never lodged an appeal in this Court. It is only the appellant who appealed against the conviction and sentence by the trial Court.

Further, it is on record that when this appeal come up for hearing on 6th June, 2014, Mr. Bwambale David Counsel for the appellant abandoned grounds 4 and 5 of appeal. In reply, Counsel for the respondent, Ms. Ainebyoona Happiness never objected to such application to abandon the said grounds of appeal. In the result, grounds 4 and 5 of appeal stand dismissed. In essence, the appellant's Counsel argued grounds 1, 2 and 3 of appeal.

2.2 The duty of the first appellate Court.

It is also important to note that the duty of the 1st appellate Court is to re-evaluate the evidence on Court record and to come to its own conclusion. In this appeal I have to re-evaluate both the evidence of the prosecution and the defence in order to find out whether the trial Court properly evaluated the evidence on record and come to the correct decision against the appellant.

2.3 Counsel for the appellant, Mr. Bwambale David, argued grounds 1,2, and 3 of appeal together. He submitted that the trial Chief Magistrate did not properly evaluate the entire evidence on record and thereby came to the wrong decision. Counsel for the appellant argued that the trial Chief Magistrate based her judgment, conviction and sentence on no credible evidence on Court record. That

the trial Chief Magistrate erred in law and fact to base her said decision on the evidence of an accomplice (A2). He prayed that this appeal be allowed, convictions quashed, sentences and order of the trial Court be set aside. Counsel for the appellant seriously criticized the trial Chief Magistrate, in his submissions.

2.4 In reply, Counsel for the respondent, Ms. Ainebyoona Happiness, did not agree with the submissions by Counsel for the appellant. In her submissions, she argued that the trial Chief Magistrate did not solely rely on the evidence of Wabbi Dan (A2), but that she considered the entire prosecution witnesses' evidence and the defence. She supported the judgment, convictions and sentences of trial Chief Magistrate.

I re-evaluated both the prosecution and the defence evidence and considered the submissions by both Counsel. In resolving this appeal, I shall consider grounds 1,2 and 3 together as they were argued by Counsel both parties.

The gist of the appellant's three grounds of appeal is that the trial Chief Magistrate did not properly evaluate the prosecution evidence on record; and that she relied on the evidence of an accomplice (A2). At pages 2 and 3 (pages 11 and 12 of the record of appeal) of the judgment of the trial Court, last and 1st paragraphs, respectively, the trial Chief Magistrate considered the evidence of all the five (PW1,PW2, PW3, PW4 and PW5), prosecution witnesses. At pages 13 and 14 of the record of appeal (pages 4 and 5 of the judgment of the lower Court) it is clear that the trial Chief Magistrate evaluated and considered both the evidence of the prosecution and the defence. Therefore, the trial Chief Magistrate never relied only on the evidence of a single witness. In her judgment, the trial Chief Magistrate considered among others evidence of the prosecution, and the evidence the handwriting expert (PW5).

Further, it is the complaint of the appellant in this appeal that the trial Chief Magistrate based her decision on the evidence of an accomplice which was not corroborated by other independent witnesses. Indeed, A2 (Wabbi) was an accomplice to the appellant (A1). This is because he pleaded guilty on Count 6

where he was a co-accused with A1. The facts he pleaded guilty to and convicted on the same, clearly showed how he conspired with the appellant to commit the charged offence on Count 1. In that regard, he incriminated himself as well as the appellant. In such circumstances, A2 become a competent witness as against the appellant. This proposition is supported by Section 132 of the Evidence Act, Cap.6 Laws of Uganda, which provides that:-

“Section 132 Accomplice.

An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.”

From the above quoted law, it is my considered view that even if the trial Chief Magistrate had solely relied on the evidence of DW3 (A2) to convict the appellant, the conviction would still be proper. The prosecution witnesses apart from PW5 the expert witness, gave evidence on how A2 made admissions before them that he committed the charged offences together with the appellant (A2). A2 never cross-examined the prosecution witnesses. And in his defence, A2 never negative the prosecution witnesses, evidence. In cross-examination by Counsel for the appellant (A1) the prosecution evidence was never contradicted by the appellant in defence A1 (appellant) at pages 58 last sentence and 59, two lines from top of the record of appeal, the appellant endeavoured to incriminate A2. At page 59 line 8 of the record of appeal, A2 stated that:

“I object. It is not my handwriting. Then at line 11 thereof, the trial Court stated:

“Its not marked as an ID, since the alleged author has rejected it.”

A2 denied all the documents that were adduced in evidence in defence by A1. A2 from pages 68,69, 70, 71, 72 and 73 of the record of appeal, gave evidence against himself and the appellant. In cross-examination by Counsel for the appellant at pages 71 and 72 of the record of appeal, the answers given by A2 to the questions in

Cross-examination incriminated A1 (appellant) with the charged offences. In sum total, from the re-evaluation of the evidence on the record of appeal, the trial Chief Magistrate based her conviction of the appellant on the evidence produced by the prosecution through its five prosecution witnesses. Wherefore, the submissions by Counsel for the appellant on grounds 1 and 2 of appeal do not hold any water at all. In the premises, I find grounds 1 and 2 of appeal in the negative.

On ground 3 of appeal, it was the contention of the appellant's Counsel in his submissions that no single prosecution witness gave evidence that the appellant forged and uttered the transfer form and the application consent form as alleged in the charge sheet. The alleged forged said documents are at page 103 and 104 of the record of appeal, respectively. These two documents were put on record of the trial Court for identification purposes as I.D2 and I.D3. Counsel for the appellant in his submissions heavily relied on them in support of the appellant's appeal.

I have perused the transfer form (I.D2) and noted that the consideration that would have been paid by the appellant's late husband and the date on which the said transfer form was executed are not indicated. Those said omissions make the said transfer form a false document. Then the application for consent to transfer form, I noted that the application for consent transfer to the Commissioner of lands and surveyors was for the transfer of **sublease of Public Land**. Yet the disputed land according to the certificated of Title (PEX P2) at page 80 of the record of appeal is **private mailo**. Again, at the reverse side of the said consent to transfer form, the Chief Government valuer valued the said land at Shs. 3,000,000/= (three million Shillings) on 25th May 2000. And the Commissioner for lands and Surveys never signed the said document. Also and more important, the said document is dated 25/5/2000 whereas, Juliana Nakatudde died in 1992 and A. Mpanga Kigozi died in 1997. The aforesaid facts clearly show that the said documents are a forgery.

Consequent to the above, there is enough prosecution evidence on Court record that supports the decision of the trial Court.

In her evidence in examination-in-Chief, the appellant stated that she found the certificate of Title and other forms in an envelope. But in cross-examination at page 63, bullet 7 from top of the record of appeal, the appellant stated that:-

“I came to know of the land title from Wabbi Dan.”

This means that all the time during the process of the transfer of the suit land into her names, then later to the names of her children, she was with A2. Her evidence is in line with that of A2 in his defence and that of the prosecution witnesses. Again on the same page 63, bullet 17 from top of the record of appeal, the appellant stated:-

“I was not working with A2 when I was chasing for the transfer.”

The piece of evidence shows that the appellant was involved in the whole process as put in the charge sheet. The appellant obtained Letters of Administration in respect of her late husband's estate in 23rd December, 1997. Then she applied to be registered as the administrator of the suit land and transfer the same to her children on 27th June, 2006. It is my finding that by that time, Julian Nakatudde had long died before she could have transferred her land to late Abdullah Mpanga Kigozi, nor signed the transfer form and the application for consent to transfer form. There is enough evidence on record to prove that the appellant was cited together with A2 in executing an unlawful act as well stated in the prosecution witnesses' evidence and that of A2 was never challenged in cross-examination by the Counsel for the 1st accused (appellant).

Finally, I have re-appraised both the prosecution and the defence evidence on record of appeal, as I have done hereinabove in this judgment and I make a finding that the trial Chief Magistrate properly evaluated the evidence on Court record and correctly came to the right decision when she convicted and sentenced the appellant. I have no reasons upon which to fault the trial Chief Magistrate. I therefore, find ground 3 of appeal in the negative.

In the result and for the reasons and analysis given hereinabove in this judgement when resolving grounds 1,2 and 3 of appeal, I find no merit in this appeal. This appeal is accordingly dismissed. The convictions, sentences and order of the trial Chief Magistrate are upheld.

Dated at Kampala this 25th day of June, 2014.

Murangira Joseph

Judge.

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PRESENTATION OF COURT

Mr. Aliwaali Kizito, State Attorney holding brief for Ms. Ainebyoona Happiness, State Attorney.

The appellant is in Court. Her Lawyer is absent.

Ms. Margaret Kakunguru, the Clerk is in Court.

Court: Judgment is delivered to the parties. Right of appeal is explained.

Murangira Joseph

Judge

25/6/2014