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

HCT-04-CR-CN-009-2011
(Arising from Criminal Case No. 254/2009)

MUNYWERO PETER.....APPELLANT
VERSUS
UGANDA.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The appellant brought this appeal arising from the decision of **His Worship Ismail Zinsanze**, Principal Magistrate Grade I Pallisa of 27.01.2011. Appellant was found guilty of uttering a false document c/s 351 of the Penal Code Act. He was sentenced to a fine of shs. 4,000,000/= or to serve 4 years imprisonment in default.

The appeal is against both sentence and conviction. The grounds upon which the appeal is premised are that;

1. Because the decision of the learned trial Magistrate is tainted by fundamental misdirections in law and on the facts.

2. Because the learned trial Magistrate did not evaluate the evidence properly or at all as a result of which he arrived at an erroneous decision.

3. Because the decision of the learned the trial Magistrate is against the weight of evidence.

4. Because the Prosecution did not prove its case beyond reasonable doubt.
5. Because the sentence is excessive.
6. Because the decision of the learned trial Magistrate has occasioned a miscarriage of justice.

However they can all be summed up into two issues. Grounds 1, 2, 3, 4, and 6 are all raising the complaint that the learned Trial Magistrate did not evaluate the evidence properly and reached a decision which was misdirected, erroneous and unlawful.

Ground 5 raises the complaint that the sentence was excessive.

In submissions, appellant argued grounds 1, 2, 3, and 4 together, and grounds 5 and 6 separately.

Respondent chose to argue 1, 2, 3, 4 and 6 together and 4 separately.

The order adopted by the respondent shall be adopted, for purposes of conforming to the issues I have framed to encompass all grounds. The issues are:

1. Whether the learned trial Magistrate did not evaluate the evidence properly and reached a decision which was misdirected, erroneous and unlawful.
2. Whether the sentence was excessive.

I resolve the issues as herebelow:

Issue 1:

As a first appellate court, this court is enjoined to review the evidence in order to determine whether the trial court reached a right decision. (See ***Abdalla Nabulere & Anor. V. Uganda (1979) HCB 77***.

According to the evidence the court listened to the evidence of both the prosecution and the defence. The prosecution case was that appellant in the year 2005 at Pallisa Local Government Headquarters knowingly and fraudulently uttered a forged document to wit a Diploma Certificate to Pallisa District Service Commission purporting the same to have been issued by Uganda College of Commerce Nakawa (MUBS) whereas not. Three witnesses were called to prove this allegation.

PW.1 Odelle Francis (Personnel Officer Pallisa) stated that in 2005 there was restructuring in all local governments in Uganda. Accused presented himself for verification and he presented a Diploma Certificate in Business Administration from Nakawa College to the District Service Commission. Basing on that Certificate he was retained as an Accounts Assistant in the District. In 2007,. The IGG instituted a probe on 5 staff including accused on allegations that their academic documents were false. IGG produced a report recommending that accused be relieved of his employment on account of submitting a forged Diploma Certificate and that police should prosecute him. Following that report, the Chief Administrative Officer recommended accused for dismissal; and the District Service Commission effected the dismissal. A photocopy of the alleged certificate was tendered in as Exhibit P.1 and Dismissal Letter as ID.1.

PW.2 informed court that he is **Mudidi** a former Member of Pallisa District Service Commission. He confirmed that in 2005, accused appeared before the commission for verification of his appointment. They looked at his documents and accused submitted a diploma from Uganda College of Commerce. Witnesses identified the copy of the alleged certificate and confirmed that it was a copy of the original accused had uttered to them.

PW.3 No. 13743 D/C Olupot told court that he was the Investigating Officer in the case. In 2009, he was allocated the matter for investigation. He went to the ACAO of Pallisa to secure the questioned document for investigation. He was given a photocopy of the document; for purposes of having it verified. On 30.3.2009, he received a response from the Registrar (MUBS) disowning the document. Accused was then arrested and charged. He identified the said documents and they were tendered in evidence for the prosecution.

In defence accused stated that on 11.06.2009, he was brought before court to answer the charges which he denied. He informed court that he was a student of Uganda College of Commerce Nakawa between 1987- 1989 where he completed his 2 year Diploma course and awarded a Uganda Diploma in Business Studies. He was employed in 1991 by Pallisa Local Government as an Accounts Assistant, promoted in 2002 to Senior Accounts Assistant Grade I. 2005 he was re-appointed as Senior Accounts Assistant after the restructuring exercise. In 2007 he was interdicted by the Pallisa Local Administration. He sued the Administration and obtained exparte judgment for shs. 95 million. In February 2009, he received a

dismissal letter, then on 11.6.2009, he was charged of the offence of uttering a false document.

On 30.6.2006 the IGG officials from Mbale took away from him his original Diploma documents and he has never received them back. He averred that the letter from MUBS addressed wrong records, instead of addressing records of former Nakawa College of Commerce, though MUBS took over NCC.

Noting the above as the evidence, I have also gone through the lower court judgment and its assessment of the evidence above. I do not agree with the appellant's assertion that the Magistrate mis-assessed this evidence and reached wrong conclusions there from. From the submissions, counsel insists that in resolving the two issues before him, the Magistrate convicted the accused basing on the weakness of the defence case instead of the strength of the prosecution's case. He argued that the prosecution failed to prove the case beyond reasonable doubt. He referred to the cases of ***WAMONGO V. UGANDA (1976) HCB 74,*** and ***BUKENYA & ORS V. UGANDA [1972] EA 549***. He argued that in line with the Bukenya case, the author of the IGG report would have been called, especially as accused said they took away his original documents.

Counsel further attacked the acceptance of a photocopy in evidence as being done in error. He referred to ***KANANURA MELVIN V. CONNE KABANGA SCC No. 31/1992***. He further argued that the Registrar of MUBS ought to have been called to corroborate PW.3 and Investigating Officer's findings.

He also referred to ***Stephen Oporocha v. Uganda [1991] HCB 81***, to argue that the Magistrate did not consider the defence case at all as evidenced by his assertions on page 6 of the judgment, "that the defence had no evidence to say the least..."

In rebuttal arguing, for the respondent the Resident State Attorney stated that the Magistrate evaluated all evidence and reached correct conclusions thereon. He referred to testimony of PW.2- which showed that appellant presented the document, which PW.1 and PW.3 collaborated. He referred to evidence of PW.1, PW.2 and PW.3 to argue that it showed that the accused uttered a false document. He referred to the case of ***Walter & 3 Others v. Republic (1977) LR of TZN*** that to constitute forgery, it must purport to be what infact it is not.

He argued that prosecution chose whom to call as witnesses. Regarding a photocopy he referred to section 64(a) Evidence Act. Regarding the evidential value of the defence case, he referred to section 101 and 105 (1) that he who alleges a fact must prove its existence; especially those within his knowledge.

I agree with the Respondent's evaluation of the evidence on this issue. The Trial Magistrate's conclusions on this evidence are correct as they are borne out with evidence on record. In a case of forgery proof is determined from the falsehood of the content of the uttered document. The prosecution led evidence from PW.1, PW.2, PW.3 and P. Exhibit 1 and other documents to show that the alleged certificate from Nakawa College of Commerce was a forged document.

The fact that the defence averred that this Certificate should have been checked from records of NCC not MUBS, is valid, but from a reading of the IGG Report, various other certificates and academic transcripts from other civil servants like **Mr. Dedya William** were submitted to MUBS, and they were verified. It is therefore not true for accused to say that his record should be checked at NCC (See page 1 and 1 of IGG Report- annex 'B'. All records from NCC, could be verified from MUBS as showed from Annex 'A'.

Secondly as pointed out by the Respondents, facts are proved by evidence. Even if accused has no duty to prove his innocence, once he wants court to believe a fact in his defence, then he must lead evidence to prove it. That is the import of sections 105 of the Evidence Act. He ought to have proved the facts he alleged in his own defence by calling evidence. The Magistrate commented that there was no such evidence at all on record. Accused stated that he obtained the Certificate from Nakawa College of Commerce, but showed court no proof of this. He didn't lead any evidence to show that his original certificate was taken by IGG. He led no evidence to show that his certificate is not forged as alleged. There was therefore no rebuttal of the evidence of forgery which the prosecution led through PW.1, PW.2, PW.3 and Exhibits PE.1 and D.1.

There was no error committed by the Magistrate in accepting the photocopy in evidence. The Evidence Act allows it once the original cannot be retrieved. Evidence from PW.1 showed that accused submitted a photocopy of the original. I take Judicial notice of the fact that original documents of academic papers are normally not placed on personnel records. However copies of them are always

supplied on appointment and placed on the candidate's file. In this case, PW.1 (Personnel Officer) testified that the copy was the true copy. It was further identified by PW.2 who was the Public Service Commission Chairperson for the District and confirmed that the accused presented a copy of the certificate which he identified. These witnesses were cross-examined and their evidence remained consistent.

Accused himself accepted that he uttered the certificate believing it to be his Diploma Certificate. The fact of uttering the document was therefore dully proved.

The prosecution is at liberty to call evidence that it believes will prove its case. In this case it chose not to call the IGG or the Registrar. The evidence they called was enough and the prosecution cannot be faulted for not calling the two witnesses above.

In the final analysis therefore the Magistrate correctly evaluated the evidence and committed no errors at all.

Grounds 1, 2, 3, 4, and 6 which are based on this issue have therefore not been proved and they do fail.

Issue 2:

Whether the sentence was excessive.

The sentence which was meted out according to defence counsel was excessive.

However according to the Penal Code, this offence carries a maximum penalty of 7 years.

Given the gravity of this offence, accused having been convicted after a vigorous trial, the magistrate gave a deterrent sentence. He however was lenient and even gave the option of a fine. This is an offence which was committed with a line of other civil servants. There is not to root of this type of offence a sentence therefore needs to be effective to deter others, while reprimanding the culprit. I do find the sentence given reasonable in the circumstances. I do not see any need to disturb the sentence as it is lawful and reasonable. This ground also fails.

In the result there is no merit in this appeal. It is dismissed. The findings of the learned Trial Magistrate are upheld conviction and sentence accordingly upheld.

Henry I. Kawesa

JUDGE

13.03.2014