

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.29 OF 2014 (Arising from Makindye Chief Magistrate's  
Court Criminal Case No. 173 of 2012)**

**1. ALAWI SEKANDI**

**2. SARAH SSOZI** ..... **APPELLANTS**

**VERSUS**

**UGANDA** ..... **RESPONDENT**

**JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA**

**1. Introduction**

**1.1** The appellants are jointly or/and severally represented by Mr. Muhwezi Eric of The Muhwezi Law Chambers Advocates and Ms. Ndugwa Zaituni of Magala Mutyaba & Co. Advocates.

**1.2** The respondent is represented by Ms. Agaba Maureen, State Attorney working with the Directorate of Public Prosecution.

**1.3 Facts of the appeal.**

The 1<sup>st</sup> and 2<sup>nd</sup> appellants are Son and mother respectively who were jointly charged with the offence of obtaining money by false pretence Contrary to Section 305 of the Penal Code Act.

The two appellants were found guilty of the charged offence and convicted, sentenced to 5 years imprisonment and an order was given that the property in issue be sold by the complainant to recover his money.

The prosecution adduced evidence from seven (7) witnesses at the trial in the lower Court.

Dissatisfied with the conviction, sentence and order of the trial Court, the appellants filed this appeal by filing the memorandum of appeal.

#### **1.4 The memorandum of appeal**

The grounds of appeal are; that:-

- 1. The learned trial Chief Magistrate erred in law and fact when she convicted and sentenced the appellants basing on inconsistent and contradicting testimonies of the prosecution witnesses.**
- 2. The learned trial Chief Magistrate erred in law and fact when she failed to evaluate the evidence on record thereby arriving at a wrong decision.**
- 3. The learned trial Chief Magistrate erred in law when she imposed a harsh and excessive sentence to the appellants.**

#### **2. Resolution of the grounds of appeal**

**2.1** When this appeal came up for hearing, Counsel for the appellants, Mr. Muhwezi Eric argued grounds 1 and 2 together, and MS. Ndugwa Zaituni argued ground 3 of appeal and made the final rejoinder and reply to the submissions by the Counsel for the respondent. In reply, counsel for the respondent followed the same sequence in arguing this appeal.

#### **2.2 Grounds 1 and 2 of appeal**

**2.2.1** Counsel for the appellant, Mr. Muhwezi Eric, submitted that the trial

Chief Magistrate in her judgment based her findings on Exhibits, Exh. P1, Exh. P2, and Exh. P3, which are at pages 75, 76 and 77 of the record of appeal respectively. He referred Court at page 81, line 9 from top where the trial Chief Magistrate held that:-

**“From the above evidence, I am convinced that the complainant paid money to a tune of 15 million shillings to the accused persons as presented in Exh.P1, Exh. P2 and Exh. P3.”**

And on the same page 81, same paragraph line 3 from the bottom the trial Chief Magistrate held that:-

**“I am convicted that the complainant paid all together 15 million shillings to the two accused persons as presented in the agreements tendered in Court as Exhibits.”**

Counsel for the appellants further referred Court to page 82, 1<sup>st</sup> paragraph lines 1 and 2, page 83 beginning from line 3 from top of the record of appeal to justify his submissions when attacking the said Exhibits. He submitted that according to said Exhibits, there is no proof that the appellants ever received money from PW1, Muyonjo Francis. That the said Exhibits must be a forgery. That there is no proof from the forensic handwriting expert that the names of the appellants on the said Exhibits were written by the said appellants. He analysed every shortcoming on the said Exhibits, and submitted that the said Exhibits have no evidential value to justify the conviction, sentence and order against the appellants. He prayed that Grounds 1 and 2 of appeal be allowed.

**2.2.2** In reply, Counsel for the respondent, Ms. Agaba Maureen, the State Attorney, on grounds 1 and 2 submitted that throughout the trial at all material times the appellants were legally represented. That they did not object to the admission in evidence of Exhibits P1, P2 and PW3 as forming part of the evidence on record. That by necessary implication the appellants conceded to the truthfulness of those Exhibits. In her submissions, she supported the findings of the trial Chief Magistrate. She prayed that grounds 1 and 2 be disallowed.

**2.2.3 Court**

I am alive at the legal position that the duty of the 1<sup>st</sup> appellate Court is to re-evaluate the evidence on record and come to its own conclusions. In that regard, I perused the entire evidence on record, read the judgment of the trial Chief Magistrate to see whether the trial Chief Magistrate evaluated the evidence on record, and came to the correct conclusion.

The 1<sup>st</sup> ground of appeal suggests that the trial Chief Magistrate relied on inconsistent and contradicting testimonies of the prosecution witnesses. Then the 2<sup>nd</sup> ground of appeal suggests that the trial Chief Magistrate failed to evaluate the evidence on record thereby came to the wrong decision. From this point, Counsel for the appellants ably attacked the Exhibits, Exh. P1, Exh. P2 and Exh. P3. Though the said Exhibits have some shortcoming, from the evidence on record, the authors of those documents were called to Court as prosecution witnesses and testified on them. In the examination in Chief PW1, Muyonjo Francis; PW2, Kazibwe Keven and PW3, Serunkuma Stephen, according to the record of appeal,

gave detailed evidence against the appellants. In that respective detailed evidence, each of the said witness explained how the said Exhibits were drafted. At page 34, 2<sup>nd</sup> paragraph, last two lines from its top, PW2, Kazibwe Keven, in cross examination on the very documents stated:-

**“We were doing this according to the money received. We were supposed to go to the lawyers to make a proper agreement. We were not professionals.”**

PW2 in his testimony stated that he knew the appellants (accused) before – see page 30, last paragraph line 3. This piece of evidence was not controverted by the appellants in defence. I therefore make a finding that all what was done in respect of this case, PW2 who had known the appellants before had trust in them and took them for granted. Further, at page 35 of the record of appeal, PW3 stated that he did not write on the said agreement. Even though that seems to be the case, what is not in dispute is that PW3 witnessed the payment of shs 10,000,000/= (Shilling ten million only) by the complainant, PW1, to the appellants see page 35 last paragraph, line 3 from the bottom where he stated:

**“Muyonjo had the money in his hands counting.**

**After counting he gave it to Hajati. It was 10,000,000/=”**

In cross- examination, this piece of evidence was never challenged nor/and contradicted. It remained a fact that money was paid by the complainant to the appellants and that witness saw this.

On who was the seller and the buyer of the suit land, at page 34, last paragraph from line 10, it is clear that the 2<sup>nd</sup> appellant is the mother of the 1<sup>st</sup> appellant. The

1<sup>st</sup> appellant was present when the money was being given to his mother for the purchase of his land, which according to the evidence of PW1, PW2 and PW3 was given to him by his parents (the 2<sup>nd</sup> appellant and his father).

Counsel for the appellants discredited the evidence of PW3 in respect of the payment of Shs. 10,000,000/=(shillings ten million only) and submitted that, that was the first payment. I have re-evaluated the evidence on record, and my considered view is that PW3 could only testify on what was within his knowledge. And rightly so, he only witnessed the agreement executed during his presence. Thus PW3 could not have addressed himself on Exh. P1, PW2, and PW3, which he had no knowledge about.

PW1, PW2 and PW3 gave direct and independent evidence. Their respective evidence was never contradicted at all in cross-examination, by the appellants nor was it challenged in defence.

At page 79 of the record of appeal the trial Chief Magistrate properly stated the ingredients of the offence charged. She framed the issues from the said ingredients of the offence charged and at pages 80, 81, 82 and 83 of the record of appeal, in her judgment, properly applied the prosecution evidence on record when resolving whether the appellants (accused) committed the charged offence. As I have stated hereinabove in this judgment that I re-evaluated the prosecution evidence on record, certainly I am satisfied that the trial Chief Magistrate properly evaluated the evidence on the record of appeal and came to the right decision.

Therefore, I do not see any reasons on which to fault the trial Chief Magistrate on grounds 1 and 2 of appeal. In the result, I find that the submissions of Counsel for the appellants on the said grounds of appeal fell short to discredit the prosecution overwhelming evidence against the appellants. Thus grounds 1 and 2 fail.

**3.3 I now turn to grounds of appeal.**

**3.1** Counsel for the appellants Ms. Ndugwa Zaituni submitted that the sentence of five (5) years imprisonment against the appellants who were first offenders are harsh and excessive. She further submitted that the order of sale granted to the complainant to sale the land for the recovery of his money was misplaced on ground that the suit land belonged to one Abdu Ssozi who was not party to the proceedings before the lower Court. That therefore the trial Chief Magistrate order was erroneous.

**3.2** In reply to the above submissions, Counsel for the respondent Ms Agaba Maureen, the State Attorney did not agree with the submissions by Counsel for the appellants. She too, evaluated and analysed the evidence on record and in her submissions she supported the sentence and the order passed by the trial Chief Magistrate. She prayed that ground 3 of appeal be disallowed.

**3.3 Court:**

I perused the Court record, and I am satisfied that in passing the sentences against the appellants, the trial Chief Magistrate considered the mitigating factors. They are that:-

- “1) The offence was rampant in the area.**
- 2) The 2<sup>nd</sup> appellant was a convict in criminal case No.1377 of 2012 where she had been sentenced to 5 years imprisonment;**
- 3) She considered that the appellants’ family had made a business to defraud the unsuspecting public.**
- 4) That the appellants had not shown any remorse by not paying back the money.”**

To that extent the sentences of five (5) years imprisonment would be okay. However, owing to the fact that the money had and received by the appellants was shillings 15,000,000/= (shillings fifteen million only), and where an order to have it recovered by the complainant by the sale of the suit land was grant by the trial Chief Magistrate, in my view, then a sentence of 5 (five) years imprisonment was harsh and excessive. The sentences would have been justifiable if the trial Chief Magistrate had given an alternative sentence of a fine, in the circumstances of this case.

As to the order granted by Court, pursuant to Section 197 of the Magistrates Court Act, Cap 16 Laws of Uganda (MCA) the trial Chief Magistrate has powers to grant the same. I do not see anything wrong with that order. However, under



Section 198 of the Magistrates Court Act (MCA) (Supra) the amount of money to be recovered has to be specified in the order, which in this case was not done.

In the result this ground 3 of appeal succeeds in part.

#### 4. **Conclusion**

Finally for the reasons and analysis of the entire appeal given hereinabove in this judgment, this appeal has no merit. It is accordingly dismissed and judgment is entered in the following terms:-

- a) The appeal is dismissed.
- b) Since ground 3 succeeded in part the sentences of 5 (five) years imprisonment without an alternative sentence of a fine are varied as follows:-
  - (i) Each convict (appellant) is sentenced to 5 (five) years imprisonment or in the alternative to payment of a fine of Shs.10,000,000/= (Shillings ten million only)
- c) The said fines shall be paid within a period of 14 (fourteen days) from today.
- d) When the said fines totaling Shs. 20,000,000/= are paid in Court, the same shall be paid to the complainant as costs and compensation for the loss and injury he suffered pursuant to Section 198 of the Magistrates Court Act (MCA) (Supra).

Dated at Kampala this 14<sup>th</sup> day of May, 2014.

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**Joseph Murangira**

**Judge.**

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**VERSUS**

UGANDA .....RESPONDENT

**COURT REPRESENTATION**

Ms. Ndugwa Zaituni for the appellants.

Ms. Agaba Maureen, State Attorney, for the respondent.

Ms. Margaret Kakungulu, the Clerk is in Court.

Court:

Judgment is delivered to the parties in open Court. Right of Appeal is explained.

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**Joseph Murangira**

**Judge**

**14/5/2014**