

he was stopped by the area L.C11. One Mpambe, (Secretary for defence) and the respondent who was a Local Council 11 member asked him for **UGX 3M** in order for the job to be given back to him. He told them that he could only give them **UGX 1.2M**. The respondent requested him to give her airtime so that she could talk to the others to see if they could accept the **UGX 1.2M**. He sent her airtime of **UGX 8,000** on her phone for that purpose. *(The phone data (exhibit P.10) bears out the fact that the respondent and Pw1 were communicating long before the day of the respondents arrest).*

Pw1 reported the matter to the IGG and while at the Inspectorate he sent more money to the respondent. Pw 6 (**Mr. Ntale**) recorded the conversation in which Pw1 was telling the respondent to talk to her friends. The respondent called him a few minutes before he left the office of the IGG and the conversation in which she said that her colleagues had accepted the offer of **UGX 1.2M** was recorded as well.

A trap was arranged by the IGG officials and on the 27th February 2013 at a restaurant in Kabalagala the respondent was arrested after she received the money.

About the actual receipt of the money, **PW2 (Ag. ASP Namukose)** said that Mr. Swaib **Ssempijja (Pw1)** opened a khaki envelope and gave it to the respondent. He asked her to count the money, which she did, after which she sat on it and continued talking to Pw1. **PW3's (Anatoli Byaruhanga)** account was similar to **Pw2's** in material particulars, that Pw1 pulled out the envelope and handed it over to the respondent who opened it, counted the money which she returned to the envelope before placing it on her thighs.

PW4 Jackson Bbale said that on 27/02/2013 the respondent rung him saying that he was needed over two issues, one of which was related to the "man of the toilet" who they were to meet in Kabalagala. They later met in a restaurant and Pw1 asked them to help him get back his tender which had been cancelled. He gave an envelope to the respondent who was beginning to count money which was in the envelope when she was arrested. His further evidence was that Pw1 owed the Lc about **UGX 3M** which he was supposed to pay in the presence of all the Executive Committee members.

PW6 Ntale Francis, testifying about recordings made by the IGG officials said that the 1st recording was about meeting and paying the money, the 2nd recording was giving directions first of all and assurances that all will be well. He also said that documents show that Pw1 was stopped from working because of failing to remit the money to the LC 2 account but that by the time the tender was terminated the complainant had not yet recovered the money he had spent in repairing the latrine.

The defence case was that **Pw1** rung the respondent one day and told her that he wanted to discuss issues relating to the toilet. She advised him to discuss those issues with the chairperson but he insisted on meeting her. **Pw1** owed the Lc **UGX 3M** and he wanted to pay half of it. He called one Kalule and told him that he had managed to get **UGX 1.2M** which he wanted to pay. Kalule referred him her (**Dw1**). He called her and told her to find him at Centenary bank Kabalagala. She called Bbale Jackson (**Pw4**) to come and get the money.

At the restaurant, Pw1 got the envelope and gave her the **UGX 1.2M** which she put on the table. She was then arrested with the money. She could not issue a receipt because when she received the money she was arrested. She did not have a receipt at the time, but had an exercise book in which they normally record such transactions. The book was removed at the time of arrest but it was returned with her phone.

TUMWINE GERALD (DW2), the General Secretary at LC2 Bukasa Parish said that the Pw1 breached the M.o.U by not paying the agreed money, and not completing the renovation. After losing the contract Pw1 tried to get it back. He visited individual members of the LC II Committee to try and convince them to allow him do the work. When he failed in this he brought accusations of obtaining money by false pretense against Dw2.

The ingredients of the offences were correctly framed as hereunder;

Count 1

1. That the respondent is a public official
2. That she corruptly solicited for gratification of 1,200,000/=

3. That the gratification was in exchange for an act or omission in the performance of her public functions;

Count 2

1. The respondent is a Public official
2. She received gratification of Shs 1,200,000/=
3. Such gratification was in exchange for an act or omission in the performance of her public functions

The grounds of appeal are;

The learned trial magistrate erred in law and fact;

1. When she found that the money received by the respondent was the repayment of a debt by the complainant and not a bribe.
2. When she failed to evaluate the evidence against the respondent properly, thereby coming to a wrong decision to acquit her.

This being the first appellate Court in this matter, it has a duty of re-evaluating the entire evidence on record and come to its own conclusion bearing in mind that it did not have the opportunity to see the witnesses testify, see **KibuukaVs Uganda, (2006) 2 E.A 140.**

DISCUSSION AND RESOLUTION OF THE ISSUES.

The learned trial magistrate erred in law and fact when she found that the money received by the respondent was the repayment of a debt by the complainant and not a bribe.

I find the lower courts argument that the assertion that Pw1 owed the LC some money is proof that the money that the respondent received was for paying the debt misconceived and

diversionary. This is because whether or not the complainant owed money to the L.c is not the issue but whether the respondent solicited for and received a bribe.

The complainant (Pw1) said that the money (**whose receipt by the respondent is not disputed**) was solicited for as a bribe. The learned magistrate did not believe him concluding that he was driven by revenge. The basis for this finding was the evidence of Dw2 that he (Pw1) one time falsely accused him in Makindye court.

I don't however believe the suggestion that the Pw1 was driven by revenge. First of Pw4's evidence is that he came to the scene knowing that he was going to meet Pw1. Other evidence is that all three, Pw1, 4 and Dw1 sat on the same table and conversed before Pw1 passed the money onto DW1. Their interaction as depicted by these pieces of evidence does not support the conclusion that there was any grudge between them. Moreover the background to the actual receipt of the money was that there were telephone exchanges between Pw1 and Dw1 relating to the amount to be given and where to meet. That the conversations are incomplete as was found by the lower court is not important since even in their form they prove that there were cordial interactions between Pw1 and Dw1 before the actual receipt of the money. They provide a link between the protagonists before the giving and receiving of the money, and serve to disprove the assertion that there were grudges between the parties. They are of enormous evidential value and should not have been discounted.

It was not disputed that the respondent had no receipt book. Though she says that she had a book, there is no record of it among the items recovered from her at the time of her arrest. Moreover even if it is assumed that she had one, the evidence shows that she had no intention of acknowledging receipt of the money considering the undisputed evidence that the complainant bid her good bye before she acknowledged receipt of it. It is in evidence that on receipt of the money, she counted and sat on it/put it on her thighs. The assertion that she was not able to record the money because she was arrested immediately after her arrest is factually incorrect. I find fact that she did not, and had no intention of acknowledging receipt of the money supportive of the allegation in count one.

My finding is galvanized by her own evidence that Pw1 used to pay his dues through the bank and that the LC business was normally transacted at the chair-person's residence. The venue at which this money was received, and the manner it was received all serve to support the assertion that it was solicited for as a bribe.

Turning to the lower court judgment, the following findings/comments seem to me to be fanciful theories and conjectures which are completely irrelevant to the issue at hand. Even if they were answered in the affirmative, they don't answer the question whether or not the respondent solicited for a bribe.

- that PW1 owed 3,000,000/= to the area LCII.
- That PW1 had breached the terms of the MoU by inter-alia not paying the amount of money agreed on.
- That it was the accused (**respondent**) who was responsible for collecting money from the toilet.
- that the Local committee had agreed that if PW1 paid all the arrears and also completed the renovation of the toilets then his contract would be reinstated.
- that the prosecution did not challenge the evidence that PW1 owed the Lc11 Money on account of the toilets.

The argument that the non-exhibition of the letter terminating Pw1's contract was fatal because court was not told why PW1's contract was terminated is equally irrelevant because the prosecution did not have to prove that Pw1 owed money to the L.c.

About the comment that only the respondent was arrested yet there is evidence that PW1 had made a complaint against the LCII Vice Chairperson (**Mpambe Lawrence**) who was demanding 3,000,000/= from him (PW1) and that the money was to be shared among the six committee members, I only have to say that there was/is sufficient evidence to prove that the respondent solicited for the money in issue. The possibility that the whole executive was to share the money does not absolve her from the crime, since all the evidence points to the respondent and not to the entire L.c executive.

Similarly, the fact that PW4 who was arrested with the accused was released yet he was among the committee members who was expected to receive the 1,200,000/= does not absolve the respondent from the crime.

That it was Kalule Ismail who referred Pw1 to the accused as a person in charge of the toilets, and that the accused (respondent) was collecting money and coordinating issues relating to

the toilet because she was living near it does not disprove the evidence that she solicited for the money.

I found the following conclusions by the court either not backed by evidence or irrelevant and outright false;

- That PW1 seemed angry and determined to do anything to have the toilets back without paying the debts owed to the committee, and that the recordings (**P.Exh.6**) and transcription tendered in by PW5 as P.EX7 and 8 do not show any kind of corruptly soliciting for gratification,
- that it was necessary to have recorded the conversation from the beginning to know how it all started so as to prove the case against the accused.
- The comment by the magistrate that Pw2 testified that she saw the book is not borne out by the court record.

In conclusion I find that the fact that the respondent is a Public official was not disputed. That she solicited for a gratification of Shs 1,200,000/= was proved by the evidence of Pw1 (the complainant) as supported by the recordings (exhibits P.7 and 8), the call data (exhibit P10), and her conduct of receiving it from a restaurant and not acknowledging receipt of it. That the gratification was in exchange for an act or omission in the performance of her public functions was proved by the evidence that the money was meant for convincing the Lc to return to Pw1 his contract. All ingredients of the offence were sufficiently proved. I therefore uphold the appellants appeal on count one.

Count 2

The learned magistrate rightly found that the main issue relates to the purpose for which the money that was received.

I have already commented on the evidence relating to where and how the money was received, and I found, as I hereby do, that the money was received as a gratification.

Comments by the lower court that the respondent carried files or a book when she went to receive the money are baseless since there is no credible evidence to the effect.

The finding that the circumstances under which the accused was arrested when she received the money were such that she could not have had time to record the money was against the weight of evidence that Pw1 had even bid goodbye to the respondent when she was arrested. The respondent had all the time to write a receipt had it been her intention.

In conclusion I find that the fact that the respondent is a Public official was not disputed. That she received a gratification of Shs 1,200,000/= was proved by the evidence of Pw1 (the complainant) as supported by that of the rest of the witnesses, including the respondent herself, the recordings (exhibits P.7 and 8), the call data (exhibit P10), and her conduct of receiving it from a restaurant and not acknowledging receipt of it. That the gratification was in exchange for an act or omission in the performance of her public functions was proved by the evidence that the money was meant for convincing the Lc to return to Pw1 his contract. All ingredients of this offence were sufficiently proved as well.

I accordingly uphold all the grounds of appeal and convict the respondent on each of the two counts as charged.

Margaret Tibulya

Judge.

9th December 2015.