THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO

Crim. Appeal 0025 of 2015

(Arising from criminal case No. 117 of 2012)

OTIM OPUS MOSES JUVENTINE:::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA:: RESPONDENT

BEFORE: HON.LADY JUSTICE MARGARET TIBULYA

J U D G M E N T

This is a Judgment on appeal from the Judgment and orders of the Chief Magistrate Anti-corruption court sitting at Kololo. The appellant was convicted of abuse of office contrary to Section 11(1) of the Anti-Corruption Act and sentenced to a fine of 3,000,000/= or to three years imprisonment in the alternative. He was in addition ordered to refund 7,247,775/= to the Ministry of Education and Sports. The appeal is against conviction and sentence and is premised on two grounds, the rest of the grounds having been dropped.

The two which were argued are;

1. The learned Magistrate erred in Law and fact when she ignored to consider the mitigating factors and harshly sentenced the appellant.
2. The sentence of 3 years imprisonment or the alternative sentence of a fine of 3,000,000/=, and an order of refund of Ugx 7,247,775/= was too harsh in the circumstances.

THE ARGUMENTS

It was argued that the appellant pleaded guilty and regretted his mistakes and did not waste courts time. He was a civil servant for the past 30 years, and he has lost his entitlements such as salary and retirement benefits which he was to receive in a few years. He has no known source of income and has not been able to pay the fine of 3,000,000/= despite having been given 30 days within which to pay it. He is of the advanced age of 55 years and the prison conditions have caused a threat to his life.

He prayed that the court should reduce the sentence and consider as sufficient the 13 months so far spent in prison and allow him go back to his family for whom he was the sole bread winner.

On the second ground it was argued that his mitigation should have been considered by the court. He is 55 years old and has lost livelihood (**his pension and benefits**). He cannot afford to refund the 7,247,775/= as was ordered. His mistakes did not outweigh his services to the school he headed, and he did not personally gain from the mistakes.

He prayed that the appeal be allowed, the sentence reduced and the order of refund of the 7,247,775/= be quashed.

The respondent submitted that the trial court considered the mitigating factors before passing the sentence. The court on page 27 of the judgment for example said that, "***the convict will be treated as a first offender …… this court will however exercise leniency in sentencing the convict for the reasons that the mitigating factors in this case outweigh the aggravating ones as per the Sentencing guidelines. The convict has saved courts time and is remorseful. He regrets his acts as said in his own words"***

It was further argued for the respondent that the maximum sentence for abuse of office is 7 years imprisonment, but he was sentenced to a fine and even allowed 30 days within which to pay it. The advanced age of 55years was considered before the sentence was passed by the trial court.

Also that the assertion that he saved courts time is not true since he was charged in September 2012, but entered his plea of guilty in April 2014 two years after trial. He could have pleaded

guilty earlier and not wasted courts time.

Arguing the second ground it was contended that it was within the magistrates powers (**S. 197 of the Magistrates Courts Act**) to order compensation of the 7,247,775/= to the ministry of Education and Sports. The order to refund was neither excessive nor harsh since it is provided for under the Law.

The law relating to appeals against sentence, **S. 34(2) (b) of the Criminal Procedure Code** gives power to the court to reduce or increase the sentence by imposing any sentence provided by the law for the offence.
In **Muhwezi Obedi Vs Uganda, Criminal Appeal No. 147 of 2009**, the Supreme Court, citing **Livingstone Kakooza Vs. Uganda (S.C Criminal Appeal No. 17 of 1993** [unreported]), reiterated the principle that an appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case.

The lower court record shows that the trial court considered the following factors;

- the appellant was a first offender,
- the mitigating factors in the case outweighed the aggravating ones,
- he saved the courts time and was remorseful and therefore deserved lenience.

Whether the court acted on a wrong principle or overlooked some material factor.

Other than the plea that the appellant was a civil servant for the past 30 years and has lost his entitlements such as salary and retirement benefits, and that he has no known source of income yet he is of the advanced age of 55 years, the appellant has not raised anything new.
The grounds the appellant has raised comprise of the usual inconveniences that come with the package of punishment and are the "**normal wear and tear**" of punishment. Loss of entitlements such as salary and retirement benefits and the effect of the prison conditions on in-mates life is universal to all those who are convicted and who serve imprisonment terms, young and old. It is not peculiar to the appellant, and cannot be used to support the argument that the sentence in this

case was harsh.
The appellant's inability to pay the fine and to refund the money as ordered is not an indicator harshness of sentence. Sentences are a punishment and should ordinarily cause some inconvenience and discomfort to the subject.

There is therefore no evidence that the lower court acted on a wrong principle or overlooked some material factor.

Whether the sentence was manifestly excessive in view of the circumstances.

The maximum sentence for abuse of office is 7 years imprisonment. The appellant was sentenced to a fine of 3,000,000/= or imprisonment of 3 years. He was even allowed 30 days within which to pay the fine. The decision to issue an order of a fine instead of a term of imprisonment is an express act of lenience. A fine of three million shillings cannot be said to have been excessive in a case of abuse of office which should have called for a stiff imprisonment term.

As for the order of compensation, the magistrate acted within her powers (**S. 197 of the Magistrates Courts Act**) to order the compensation of 7,247,775/= to the Ministry of Education and Sports.The order was neither illegal nor excessive/harsh since it only covered the exact amount that the Government lost.

All in all I find that the magistrate considered all that she was ought to have considered. The sentence was neither excessive nor harsh. In the result, both grounds of appeal fail and the appeal is dismissed. The judgment and orders of the lower court are upheld.

Margaret Tibulya
Judge.
30th August 2015.