

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO**

**CRIMINAL APPEAL NO. 26 OF 2014**

**(Arising from Criminal Case No. 00239 of 2011)**

**BRIAN SSEMPIIRA::::::::::::::::::::::::: APPELLANT**

**Versus**

**UGANDA ::::::::::::::::::::::::::::::::::RESPONDENT**

**BEFORE: HON.LADY JUSTICE MARGARET TIBULYA**

**J U D G M E N T**

**BACK GROUND**

The appellant was convicted of Embezzlement C/s 19(1) (111) of the ACA, and was inter- alia sentenced to five years imprisonment. The evidence against him was that he stole ATM cards and PIN Mailers from a cupboard in which they had been kept by his colleague, and he withdrew the money in issue. The basis for the lower court decision was the charge and caution statement the appellant made while in police custody and his evidence in court in which he admitted stealing the cards and drawing the money. In addition to that evidence there was that of Pw2 (**Puneet Swarnakar**), Pw.3 (**Rakesh Gupta**), and Pw5 (**D/Aip Abwango**) that the CCTV footage showed the appellant withdrawing the money from an ATM, and further that four cards and pins were recovered from his home by the investigators.

The complaint in grounds 1 and 2 is that the trial magistrate did not evaluate the evidence in that it does not show the appellants job description. The respondent argued that the appellant's job record was testified to by Pw1, and the job contract was exhibited as well. Most important though is the fact that the appellant in his defense described himself as an employee of the bank.

I note that the law only requires the prosecution to prove that the accused is an employee of the bank and this they did through the evidence of PW1 and the accused's evidence that he was a team leader in the Bank. The complaint that the job description of the appellant was not proved has no relevance to the issue at hand. Moreover as the respondent submitted the job description was actually testified to in the evidence of Pw1. This ground has no merit and it fails.

The next complaint is that the CCTV footage does not show the time of withdrawal of the money. It was also argued that the audit report shows that the money was withdrawn on 12<sup>th</sup> December 2011 by which time the appellant was in custody. Also that the auditor having been a bank employee renders his report unreliable since bias cannot be ruled out. The response was that the fact that the money was withdrawn was sufficiently proved by the evidence of Pw5 (**the investigating officer**) who watched the CCTV footage and saw the accused draw the money. Pw5's further evidence was that ATM cards, their PINS and 7,120,000/= were recovered from the accused's house.

I again fail to see how the absence of a record of the time of the withdrawals would help the appellant given that in his evidence in court he admitted having withdrawn the money. He is on record as having testified thus,

**"I was team leader and got access to the four ATM cards from the cupboard in the office, only to find that these cards were credited and I withdrew money from the ATM of Nakasero branch-crane bank...The pin numbers of the ATM cards were attached together...In my house, four ATM cards were recovered together with their PIN numbers...there was some money 7,120,000/= recovered from my house. Some of the money recovered from my house was part of the money I withdrew from ATM machine using ATM cards which were tendered in court..."**

This admission went to galvanize the charge and caution statement and the evidence of witnesses who testified that they watched the CCTV footage and saw the accused draw the money. There was therefore sufficient evidence to ground a conviction. The complaint has no merit.

Similarly without merit is the complaint that the court relied on a confession that was not properly admitted. I perused the lower court record and found that the proper procedure was followed before admitting the confession, since a trial-within-a-trial was conducted to test its admissibility.

The complaint that the appellant was not represented when he admitted the offence in court yet he does not understand the legal procedures is also without merit given that at one stage he had legal representation and when his advocate abandoned him there is no evidence that he asked the court to give him a chance to get another lawyer and the request was not granted.

On the whole I did not find merit in any of the grounds raised by the appellant given the evidence of his admission of the charges before the court. This helped to support the charge and caution statement which was recorded by Pw4, and CCTV footage reflecting him drawing the money. He was rightly convicted.

On ground 3, it was submitted that the sentence of five years is harsh since the appellant was a first offender. The respondent argued that the maximum sentence for Embezzlement is 14 years imprisonment and that five years imprisonment is not excessive. Also that there were aggravating factors such as the fact that the accused jumped bail and lied to court that he had died leading to wastage of resources in tracing him. Moreover the sentencing range under the sentencing guidelines runs from 2 years. Five years is therefore within the sentencing range.

The respondents arguments are valid, only that a person's personal circumstances should always be considered when sentencing. It is true he acted recklessly, but perusing the record I got the feeling that he quite easily broke down, which to me was a sign of remorse. His evidence in defense was basically his owning up and admitting the offence. This should have been given the deserved weight. In addition he is a relatively young man, said to be still in school. The sentence

should have been one that could give him a chance to pursue his education so as to ensure meaningful reform and become a useful member of society which I believe he can become if given chance. The five year term will not in my view serve this all important goal. As things stand he has served about one year and three months to date.

In order to mitigate the harm to his future I order as follows;

- 1. The five year imprisonment sentence is set aside.**
- 2. Instead but in addition to the term already served he should pay a fine of 1,000,000/= or serve 2 more years imprisonment.**
- 3. The other orders of the lower court to remain undisturbed.**

**Right of appeal explained.**

**Margaret Tibulya.**

**Judge.**

**21<sup>st</sup> March 2016.**