

33 **5. The brief background of the case.**

34 The Appellant was charged with the offence of *obtaining money by False pretense*
35 *contrary to section 305 of Penal Code Act* where it was alleged that in the year
36 2019 at Bukoto in Kampala District, the Appellant with intent to defraud, obtained
37 money worth Uganda shillings 10.000.000/= (ten million) from Tumanye Irad by
38 falsely pretending that he was going to take him abroad (United Kingdom) whereas
39 not.

40 He was convicted and sentenced as follows:

41 "I therefore sentence him to a fine of Uganda shillings 4,800,000/= (Four
42 million eight hundred thousand but of which Uganda shillings. 300.000/=
43 (three hundred thousand) is payable to URA and Uganda shillings
44 4,500,000/= (Four million five hundred thousand is compensation or 23
45 months of imprisonment. I further order compensation of Uganda shillings
46 4,500, 000/= Four million five hundred thousand to the complainant."

47
48 The appellant was dissatisfied with the ambiguity and alleged illegality of this
49 sentence hence this appeal.

50
51 **6. The duty of the first Appellate Court.**

52 It is trite law that the duty of the first Appellate court is to look at the proceedings
53 and evidence on record and reappraise it afresh subjecting it to exhaustive scrutiny.
54 It is at liberty to draw its own inferences of fact and arrive at its own independent
55 conclusions as to whether it should maintain the decision of the lower court or
56 there is need to vary it and or overturn it all together.

57 The Appellate court combs the record right from the time of plea taking, taking and
58 recording of evidence, evaluation of evidence, application of the law to the
59 evidence and or facts, judgment, the verdict, sentencing process and the final
60 sentence given.

61 This role of the first Appellate court was well stated in the cases of **Pandya V R**
62 **[1957] E.A 33** which has been followed in a plethora of cases. It basically
63 reevaluates the evidence bearing in mind that it did not witness the demeanor of
64 the witnesses.

65 **Section 34 of the Criminal Procedure Code Act**, provides for the powers of the
66 appellate court where there has been a conviction like in the instant case in the
67 following words:

68 *(1)“The appellate court on any appeal against a conviction shall allow the*
69 *appeal if it thinks that the judgment should be set aside on the ground that*
70 *it is unreasonable or cannot be supported having regard to the evidence or*
71 *that it should be set aside on the ground of a wrong decision on any*
72 *question of law if the decision has in fact caused a miscarriage of justice, or*
73 *on any other ground if the court is satisfied that there has been a*
74 *miscarriage of justice, and in any other case shall dismiss the appeal; except*
75 *that the court shall, notwithstanding that it is of the opinion that the point*
76 *raised in the appeal might be decided in favor of the appellant, dismiss the*
77 *appeal if it considers that no substantial miscarriage of justice has actually*
78 *occurred.*

79 *(2)Subject to subsection (1), the appellate court on any appeal may—*
80 *(a)reverse the finding and sentence, and acquit or discharge the appellant,*
81 *or order him or her to be tried or retried by a court of competent*
82 *jurisdiction; (b)alter the finding and find the appellant guilty of another*
83 *offence, maintaining the sentence, or with or without altering the finding,*
84 *reduce or increase the sentence by imposing any sentence provided by law*
85 *for the offence; or(c)with or without any reduction or increase and with or*
86 *without altering the finding, alter the nature of the sentence.”*

87
88 7. The appellant filed written submissions while the learned state senior state
89 Attorney made oral submissions which have been put into consideration while
90 writing this judgment.

91 Whereas the appellant’s case was that the sentence was ambiguous and should be
92 set aside and declared illegal, the learned state attorney conceded that it was
93 ambiguous but this court is possessed with power to set aside the ambiguous
94 sentence and substitute it with a proper sentence since there was justification for
95 the sentence.

97 Following the above law and the Pandya case, I perused the proceedings of the
98 lower court to ascertain the propriety of the decision that was arrived at by the
99 lower court.

100 The trial Magistrate properly laid down the legal principles pertaining to
101 adjudication of criminal cases to wit, the burden of proof that lies on the
102 prosecution and rightly quoted the case of **Woolmington versus the DPP (1935)**
103 **AC 462**, and the standard of proof that is beyond reasonable doubt, quoting the
104 **Miller versus Minister of Pensions (1947) ALL ER 372**.

105 He also stated the ingredients of the offence of obtaining money by false pretences
106 contrary to section 305 of the PCA which the prosecution had to prove as follows:

- 107 1) That the accused made a false representation by words, writing, or
108 conduct to the complainant.
- 109 2) That the accused knew that the misrepresentation was false or did not
110 believe it to be true.
- 111 3) That the complainant parted with money on the basis of the false
112 representation.
- 113 4) That the false representation was intended to defraud the complainant.

114

115 The trial Magistrate had the duty to take the evidence and evaluate it properly to
116 see if it discloses the criminal intent or mind which is commonly referred to as the
117 mens rea of the accused person and whether he actually received 10,000,000/= (
118 Ten million Uganda shillings) from the complainant.

119

120 The prosecution called 3 witnesses to prove its case.

121 Basically, the prosecution case was that the appellant was connected to the
122 complainant, one Tumanye Irad by his sister, Nyesigomwe Phiona on the
123 understanding that the appellant was to get him a security job in the UK. That on
124 3rd December 2019, the appellant and complainant started having conversations
125 on the same and Irad accordingly made the first deposit of Uganda shillings
126 1.000.000/= (one million) to the appellant, another Uganda shillings 2.025.000/= (two million twenty-five thousand) was paid and later another Uganda shillings 1.552.000/= (one million five hundred fifty-two thousand). That further on 6th March 2020 when the complainant returned to Uganda he sent him Uganda

130 shillings. 2.990.000/= (two million nine hundred ninety thousand) via mobile
131 money and they later met physically and he handed him Uganda shillings.
132 1,840,000/= (one million eight hundred forty thousand). That in total, the
133 complainant paid him Uganda shillings. 8.800.000/= (eight million eight hundred
134 thousand), and Uganda shillings. 1.200.000/= (one million two hundred thousand)
135 to the police to arrest the appellant making it a total sum of Uganda shillings.
136 10.000.000/= (ten million).

137 In addition, they called 2 witnesses. PW2 Nyesigomye Fionah, his sister and PW3
138 Bira Evelyn, the arresting officer to corroborate the complainant's case and closed
139 their case.

140 For the Defence, the appellant led his testimony on oath wherein he admitted to
141 knowing the complainant and his sister and having dealings with them and in fact
142 taking money from PW2 to render her some assistance with taxes at URA.

143 Having heard all the evidence, the trial magistrate found that the prosecution had
144 proved its case beyond reasonable doubt and accordingly convicted and sentenced
145 him as highlighted above.

146
147 From simple arithmetic, the figures mentioned by the witnesses add up to
148 7,855,000/=.

149 Then there was a figure of 1,200,000/= allegedly paid to the police to have the
150 accused/ appellant arrested which would add up to 9,055,000/=.

151 The trial magistrate did not consider the fact that the alleged money that was
152 obtained was 10,000,000/= yet evidence before him was of 9,055,000/=

153 The trial Magistrate did not consider the fact that 1,200,000/= was actually a bribe
154 allegedly paid to the police officer because no police officer testified that they
155 received officially the facilitation of arresting the accused person who was actually
156 a serving army officer according to his evidence and therefore easy to be arrested
157 by his own bosses and handed over.

158
159 The Appellant did not deny knowing the complainants but went ahead and stated
160 that he was helping them to follow up their tax issues with URA.

161 The trial Magistrate went ahead and convicted him, but what stunned this court is
162 his orders.

163 In fact in his judgment he shifted the burden of proof to the accused now Appellant
164 for failing to produce any documents from URA but surprisingly made an order that
165 Uganda Shillings 300,000/= should be paid to URA out of the fine of Uganda shillings
166 4.800.000/=

167 No single witness from URA testified about Uganda sh. 300.000/= and how it
168 accrued. It is not mentioned anywhere in the proceedings which has made this
169 court wonder whether some information that formed his decision concerning the
170 award was extraneous and not stated in court.

171 It is incomprehensible that a senior Magistrate grade one would make such an
172 order without the backing of the evidence on record.

173 If I may look at the sentence again:

174
175 ***"I therefore sentence him to a fine of Uganda shillings 4,800,000/= (Four***
176 ***million eight hundred thousand but of which Uganda shillings. 300.000/=***
177 ***(three hundred thousand) is payable to URA and Uganda shillings***
178 ***4,500,000/= (Four million five hundred thousand is compensation or 23***
179 ***months of imprisonment. I further order compensation of Uganda shillings***
180 ***4,500,000/= Four million five hundred thousand to the complainant."***

181
182 The question to be asked is, how many complainants are in this case"?

183 How does URA come in?

184 Who is to be compensated in the first amount of Uganda Shs. 4,500,000/= or he
185 suffers imprisonment of 23 months?

186 Why is he making a second compensation order of 4,500,000/=?

187 All the above vague orders shows that the trial magistrate arrived at an erroneous
188 judgment in the first instance that was not backed by evidence.

189 Court is doubting the source of his information and as such doubting the entire
190 proceedings.

191
192 With the above said, was the sentence illegal and ambiguous?

193 Any sentence that does not arise from a proper conviction is illegal.

194 There was no evidence that the appellant received 10,000,000/= from the
195 complainant for the facilitation of getting him a job in the U.K.

196 There was no single document from the U.K that was adduced in court to
197 prove that he uttered it to the complainant to convince him to part with the
198 money.

199 In cases of obtaining money by false pretenses, the accused must do some
200 false overt act that convinces the complainant to believe him or her to part
201 with his or her money. It is not just a word of mouth as that is difficult to
202 prove given the high standard of proof beyond reasonable doubt.

203 I looked for the evidence that would have convinced the complainant to part
204 with Uganda shillings 10,000,000(Ten millions) in vain.

205 The prosecution had to prove receipt of Uganda Shillings 10,000,000/= which
206 was also not done. The alleged facilitation of shillings 1,200,000/= paid to
207 the police was not proved at all because no recipient of that money ever
208 acknowledged it. The order of payment of Uganda shillings 300,000/= (
209 three hundred thousand to URA without any legal justification in terms of
210 evidence on record supports the evidence of the accused that one of the
211 witnesses had some relationship with him concerning URA which issue was
212 not given much attention. The trial magistrate instead shifted the burden to
213 the accused to produce documentation while at the same time making
214 orders for payment of money to URA making his final decision very
215 ambiguous.

216 **In the result, I found the conviction erroneous and therefore allow this**
217 **appeal with the following orders:**

- 218 **1) Quash the conviction as all ingredients of the offence were not**
219 **proved.**
- 220 **2) Set aside the ambiguous sentence and orders therein.**
- 221 **3) The appellant should be released unless held over other lawful**
222 **charges.**

223 **The state is free to appeal against this decision within 14 days if not satisfied.**

224 **Dated at Kampala this 4th day of September 2023.**

225 
226
227 **Judge Margaret Mutonyi.**

228 **Appellate Judge.**