

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ANTI CORRUPTION DIVISION

HCT-00-CN-0019/2014

BYAMUKAMA JACKSON ::::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::::::: RESPONDENT

JUDGMENT

Byamukama Jackson appeals against the decision of the Grade 1 Magistrates' court dated 14th August 2014 wherein the appellant was convicted on the offence of Abuse of Office, contrary to section 11 (1) of the Anti-Corruption Act and sentenced to a fine of Shs. 1,500,000/=. The appeal is against conviction and sentence.

Three grounds of appeal are set out.

They read as hereunder:

1. The learned Trial Magistrate erred both in fact and in law in holding that the Appellant did not follow the procedure of procuring fuel from a non qualified supplier.
2. That learned Trial Magistrate erred in law in holding that all the ingredients of the offence of abuse were proved by the prosecution.
3. That learned Trial Magistrate erred both in fact and in law in her failure to properly evaluate the evidence on record thus convicting and sentencing the Appellant wrongly.

Counsel for the appellant elected to argue the three grounds together, a process counsel for the respondent followed.

It is the duty of the first appellate court to go through the record afresh in order for it to arrive at an independent conclusion. The only disadvantage of course being that it is not in a position to observe the way the witnesses testify.

The appellant was charged under section 11 (1) of the Anti-Corruption Act. That provision reads:

'11 Abuse of office.

(1) A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.'

The amended charge read in its particulars as follows:

'Byamukama Jackson during or about the month June 2009 at Kihiihi Town Council in the District of Kanungu while employed by Kanungu Local Government as Town Clerk of Kihiihi Town Council acted arbitrarily by awarding a contract for supply of fuel to a company not

prequalified to supply fuel in the names of NOB and JM Co. Ltd worth 20,000,000/= contrary to the Local Governments (Public Procurement and Disposal of Public Assets) Regulations of 2006, which action was in abuse of the authority of his office and prejudicial to the interests of his employer.'

The ingredients of the offence are not in controversy. They are:

- (a) That accused was employed in a public body or a company in which the Government has shares,
- (b) That accused did or directed to be done an arbitrary act,
- (c) That the act was done in abuse of the authority of his or her office,
- (d) That the arbitrary act was prejudicial to the interests of his employer or her employer or any other person.

The appellant was Town Clerk of Kihiihi Town Council. It is stated in the charge sheet but denied by the appellant that he was employed by Kanungu Local Government. It was argued on behalf of the appellant that he was employed by Kihiihi Town Council since it is a distinct public body, distinct from Kanungu District Local Government. Exhibit P1 was proffered without demur. It is a letter of appointment on promotion of the appellant to be Town Clerk (Principal Township Officer) of Kihiihi Town Council. The appointment was from Kanungu District Local Government and signed on its letter head and on its behalf by the Chief Administrative Officer (CAO) of Kanungu District Local Government. For good measure it bore a reminder to the appointee that when occasion demanded he would be required to serve in any part of Kanungu District. Lest it be lost on us section 65 (1) of the Local Governments Act states that an urban council other than a division council shall have a town clerk who shall be appointed by the district service commission upon request by the relevant urban council. In the instant case

Kihiihi Town Council was the urban council. It is idle therefore to argue that Appellant was not an employee of Kanungu District Local Government. The first ingredient was properly addressed by the trial court.

The second ingredient regards whether appellant did or directed to be done an arbitrary act. It is not contested that appellant entered a contract for the supply of fuel. It is not in controversy that his employer, on whose behalf the contract was entered, had prequalified suppliers and that NOB & JM was not prequalified. It was argued on behalf of the appellant that there was an urgency and as such he had to act fast to engage a company other than that prequalified. Evidence was led to show that Gaz, which had been prequalified by the contracts committee did not have the necessary fuel at the time. There was also evidence given to show that the contracts committee was not in existence at the time material to this case. It was not in doubt that the Chief Administrative Officer was the Accounting Officer for the District Local Government and that he or she had overall supervisory powers over the Appellant. He could have been relied upon to determine what to do next. The appellant did not submit the issue for consideration by the CAO in the absence of the contracts committee. Evidence was led to show the haphazard means employed by the appellant on the occasion such as issuing the cheque impugned without due signature of the payment voucher as well as payment of the gargantuan Shs. 20,000,000/= in one sum without due consideration of the likely availability of fuel at the depot of the prequalified supplier as the case turned out to be. In **Kassim Mpanga v Uganda** SCCA No. 30 of 1994 also reported in [1995] KARL 55 the Supreme Court found that accused was aware of the set conditions but that notwithstanding he had gone ahead to act in breach of the specific conditions. He was held to have had the knowledge that what he was doing was wrong and the act was held to be arbitrary. I am satisfied what the appellant did in this instance was arbitrary.

The next ingredient, that of abuse of authority, the testimony of the appellant at page 43 of the record should suffice. He stated in part:

‘..... I did not inform the Chief Administrative Officer about the change of the prequalified supplier of fuel to NOB & JM’

The correct thing for the appellant to have done would have been to consult the Chief Administrative Officer regarding what to do next, given that the prequalified supplier had no fuel. When the appellant went ahead to contract with NOB & JM he did so in abuse of his office. Doubtless it was no coincidence that NOB & JM project was carried out without the treasurer having to sign in the vote book. The least appellant could have done would have been to ensure he complied with the accounting system. In the event those were the least of the considerations. Accused went ahead and had his way, contravention of the regulations in place notwithstanding. He had no authority to contract with NOB & JM like he did.

All in all I find no reason to fault the decision of the Trial Court. It is upheld and the appeal is dismissed.

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Paul K Mugamba

Judge

18th June 2015