THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-O5-CR-CN-0067-2003

(From KAB-00-CR-CO-0061-2003)

KYERERE BESIGYE FRANK……... APPELLANT

vs

UGANDA ……RESPONDENT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMA

JUDGMENT

This is an appeal against the decision of the Chief Magistrate sitting at Kabale delivered on 15th December 2003. Four counts were preferred against the appellant the trial court. The first was abuse office, contrary to section 83 (1) of the Penal code Act. The second was corruption, contrary to section l (a) and 5(1) of the Prevention of Corruption Act. 1970. The third was of making a document without authority. contrary to section 334 (a) of the Penal Code Act while Count Four also elated to making a document without authority save that while Count Three concerned Exhibit PE1, Count Four concerned Exhibit PE 3. The trial court had convicted the appellant on all the counts and sentenced him to $1^{1}/_{2}$ years imprisonment on each count. The sentences were to run concurrently. Furthermore court under S. 209 (1) of the Magistrate's Courts Act and Article 126 (2) (c) of the Constitution ordered the appellant to pay compensation of Shs. 1,200,000/ to the complainant.

The appellant appeals against the conviction, sentence and orders of the trial court cud sets out the following grounds in his memorandum of appeal.

1. The learned trial Chief Magistrate failed to properly evaluate the evidence on the court record and thereby came to a wrong conclusion.

2. The learned trial Chief Magistrate erred in law and in fact in not finding that the charges against the accused had not been proved to the prescribed standard of proof.

3. The learned Chief Magistrate erred in not finding that the prosecution had failed to prove beyond all reasonable doubt that the appellant had authored the contents of Exhibit PE 1 (letter dated 20/08/98 addressed to Mr. Katabazi); Exhibit PE Ill (letter dated 18/11/98) addressed to the Managing Director. Ggave Construction) and Exhibit PX (letter dated 18/11/98 addressed to the Parish Chief Kitojo/ Chairman LC II, Kitojo).

4. The sentence pronounced by the learned Chief Magistrate was excessive and oppressive and based on wrong principles.

5. The order to pay compensation was wrongful and oppressive in the circumstances and has occasioned injustice upon the appellant.

Grounds 1, 2 and 3 of the appeal relate to evidence concerning whether the appellant herein was correctly convicted as the author of Exhibit PE 1, Exhibit P1/ III and Exhibit PX. It was in this regard that additional evidence was called under Section 41 of the Criminal Procedure Code Act. The appellant called as his witness Mr. John Baptist Mujuzi while the respondent called Det/SSP Samuel Ezati to testify on its behalf.

Exhibits PE 1. Ph III and PX comprised of typewritten letters bearing each the signature of the appellant. The authenticity of appellant's signature on the documents in issue was not contested. Also not contested was appellants handwriting for the words for Sanyu Sadaayo S/C' appearing on each of the three exhibits. It is however the contention of the appellant that he had put his signature in blank pieces of paper after an arduous meeting late one afternoon and that he had left the several pieces with someone. It was his case that the words which are typewritten on the exhibits were added after his signature and were therefore not authored by him. On the other hand the respondent insists the appellant was the author of the documents in issue and that his signature on them was appended after they were typewritten.

Additional evidence on appeal was called to resolve the two divergent hypotheses.

This being a court of first appeal it behoves it to look into, the evidence given in the trial court and evaluate it afresh. The appellant as DW1 said in his testimony that he had signed blank sheets of paper and that he had done so on behalf of Sanyu Sadaayo, the Sub-county Chief. At

the time the appellant was Chairperson L.C.3 in the same Rwamucucu sub-county and had been requested by the Sub-county Chief o preside over a meeting for tax assessment for the sub-county. At the end of the meeting he had put his signature on sixteen blank sheets of paper hoping they would e typed upon after his signature and serve as notices of the tax assessment programme agreed upon at the meeting. DW4, Mutabazi Stanley, testified that after he meeting the appellant had signed about 10 pieces of paper extracted from exercise books and that the stamp which was placed on those papers on the occasion as that of the Chairperson, Rwamucucu. Upon further examination the same witness was to say the papers he saw were 'halved Ream paper and were of the size of exercise book paper'. Tumwesigye Ignatius was DW5. He stated that the appellant put his signature on 'full sheet foolscaps' (sic). Could the witnesses he referring to the same sheets? According to the appellant the exhibits were similar to the papers he had signed in blank after the meeting. On that occasion the stamp pressed on the papers was that of the Sub-county Chief Rwamucucu. The evidence of DW4 is to the effect that he had seen the appellant append his signature on blank sheets of paper together with the stamp of the Chairperson L.C. 3. It is unclear from his testimony whether the sheets he saw on the occasion were from an exercise book not. The two pieces of evidence above are far from re-assuring that DW4 and the appellant refer to the same sheets of paper. DW5 testified that what he saw being signed on the occasion he relates to were full sheet foolscaps' (sic). Yet what was exhibited were extracts from an exercise hook or exercise books. My finding is that neither DW4 nor DW5 saw the appellant sign the documents in issues. Their testimonies do not resolve the controversy.

John Baptist Mujuzi was Additional Witness 1. He is a handwriting expert in his own right having worked for the government of Uganda for many years before retiring into private consultancy. He testified for the appellant after he had had opportunity to examine the questioned documents in their original form. Resides his testimony in court his report of investigation was proffered as an exhibit. The testimony of the witness and his report are at one. It was his evidence that where an ink line overlaps a typescript it is-possible to determine which one of the two was on the paper first. The ink of a typewriter ribbon, he added, is greasy and forms a black thin paste on paper so that if it sits on top of a ball pen ink line the thin paste can be scraped off leaving the pen ink line in place. He observed that in Exhibits PE I and X the typed name 'Frank B. Kyerere overlapped with parts of the blue pen strokes of the appellant's signature. It was his

evidence he had made a microscopic examination of the overlapping aforesaid and carefully scraped of a thin top layer. What got off was the black ribbon ink. The microscopic operation was carried out a two places and the results were similar. Black particles of the typewriter ribbon ink came off while the blue ball pen ink stroke remained in place. His conclusion was that the blue ball pen writing was under and the typed characters were on top: proving that the signature was in place earlier than the typing in Exhibit PE 1 and exhibit PX. The report further suggests that as the signatures were in place before the typing in the two exhibits under review the observable crowding of the typewriting in Exhibit PE III was done so that the typed text would fill up the available space above the signature. However in cross-examination the witness admitted that it is normal for one to sign a document before typing is done. He further opined that crowding of the wording is not evidence that the signature was a paper before the typewritten contents on the exhibits.

To counter the evidence of Mr. J.B. Mujuzi the respondent had Mr. Samuel Ezati as its witness. He has a Police rank of Detective Senior Superintendent and at the time of his testimony he was attached to the Scientific Aids Laboratory located at Uganda Police Headquarters where he examines questioned documents. Earlier on the same witness had testified in the trial court. It was his evidence before this court that he had examined the documents in issue in their original form for about 30 minutes with the aid of a:simple microscope which has the capacity of magnifying 2 to x 10. He stated right away that Exhibit P III did not contain intersection between the signature of the appellant and the typewritten script and that as such the ‘exhibit served no purpose by way of determining what preceded the other on paper between the signature and the typewriting. It was his evidence Exhibits PE I and PX contained the necessary intersection at several points and could be relied on to prove the elusive precedence. He stated that the signau.ire is printed in blue ball point pen ink in both Exhibit PE I and Exhibit PX. According to him the blue bail pen ink is resting on the typewritten matter and the reason for this observation is because scientifically black and white are not colours. The two colours’ do not reflect any colour hut instead they absorb any other colour. Consequently when they lie on top of another colour they subdue the colour below. He gave another scenario where a high contrast colour is imposed on black or white the opposite of the earlier scenario. In the event of the colour being blue, the blue pigment in the ink will be reflected and easy to observe if it is above the

underlying black ink. He noted that since black and white do not reflect any colours, any colour above them will be noticed even by ordinary, eye inspection and that any writing in blue above a white or black surface could demonstrate this. It was his conclusion that Exhibit PE 1 and exhibit PX show clearly that the signature lies on top of the typewriting. To elaborate this point he cited the various points of intersection in the exhibits. He noted however that the method alluded to by Mr. Mujuzi of scraping and lifting what is typewritten from the paper is physically difficult and scientifically unsatisfactory. He said this is so because where the ball pen ink meets with typewriting ink a chemical solution is formed and that this solution cannot be separated by physical means such as scraping. The witness further stated that relying on the chemical mixture of the ball pen ink and the typewriter ink only it is not possible to tell what ink was on paper before the other and that the solution resultant from the mixture can be separated only by chemical means and not by physical means as the appellant sought to show.

Clearly the expertise of J. B. Mujuzi is at a tangent with that of Samuel Ezati counsel for the appellant in support of his submissions supplied this court with some extracts from a publication called Scientific Examination of Questioned Documents by Ordway Hilton. It was published by Callaghan & Company. I find the following passage at pages 102 and 103 of assistance.

Sequence of writing. Intersecting writing strokes have definite patterns, depending upon their sequence, the lapse of time between the two writings, the destiny of the two strokes, and the kind of inks, writing instruments, and the paper used. With the binocular microscope aided by skillfully controlled light and photography, these differences can be revealed and demonstrated to a lay observer.

What appears to be the obvious solution may not always be the correct answer. For example, the deepest coloured line often appears on top even though it was written first….’

The variables to he considered are legion and this court is not satisfied they have been taken into account.

The appellant ventures to prove that his signature and words written with the blue ball pen ink were on paper before the typewritten text. I should note here that hat usual is for someone to append his signature to a document which already contains the contents he intends to sign for.

Indeed at pages 3 and 4 of his submissions counsel for the appellant underscores this point stating:

‘The 1st principle is what is known as the “probability’ test. This principle involves understanding what does happen in real life situations and then testing the credibility of any given evidence against that standard (i.e.) of real life situation See Sarkar’s Law of Evidence l41 Ed. 1997 Reprint Vol. 1 at l02-F03. For instance when the Chief Magistrate was faced with the two letters which purported to be demanding a bribe, she should have asked herself, thus. “in a real life situation can a reasonable person demand for a bribe in writing?’

going by the wisdom suggested above of a real life situation it could he riposted hat putting a signature to a blank sheet of paper is a contingency way outside the probability test of a real life situation. In any case there is a prescription that normal people intend the natural consequences of their acts and as such the appellant must have signed the typed documents knowing what he was signing for. Sec DPP vs Smith [1961] AC 290. Given the circumstances of this case I am not satisfied the appellant has shown cause for court to make the presumption that he did not sign the impugned documents after they were ready subsequent to being typewritten. Had he done so in light of sections 103 and 105 of the Evidence Act a different conclusion might have been arrived at. The trial court made a proper evaluation of the evidence which I find no cause to fault. Furthermore I have found no added value in the additional evidence tendered. The appellant was in the circumstances correctly convicted on all the charges.

Next I should address the sentence imposed. The first count carried a maximum sentence of 7 years imprisonment. The second count carried a maximum sentence of 10 years’ imprisonment. Each of the last two counts carries a maximum sentence of 7 years’ imprisonment. The learned Chief Magistrate imposed a custodial sentence of $1^{1}/_{2}$ years imprisonment on each of the four counts and sentences were to run concurrently. She gave an elaborate explanation for the decision which explanation I find satisfactory. There is nothing to persuade me the sentence was either excessive or oppressive in the circumstances. This ground also should fail

Ground number five of appeal concerns compensation. The learned Chief Magistrate ordered the appellant to pay compensation to the complainant pursuant to Section 209 (1) of the Magistrates’

Courts Act. Respectfully I see no cogent reason why the order came to he made. Should it he deemed necessary to seek recompense the complainant would be better advised to take civil proceedings to that end. As it is the order made by the Chief Magistrate is out of place. It is hereby set aside.

Besides the last ground relating to compensation, this appeal is dismissed and the decision of the learned Chief Magistrate is accordingly confirmed.

P. K. Mugamba

Judge

11th November 2005