

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
ANTI CORRUPTION DIVISION
CR.CA 09 OF 2011

EMMANUEL MATOVU **APPELLANT**

VERSUS

UGANDA **RESPONDENT**

BEFORE: HON. JUSTICE P. K. MUGAMBA

J U D G M E N T

The appellant, Emmanuel Matovu, was charged in the trial court with Abuse of Office, contrary to section 87(1) of the Penal Code Act in Count I. In Count II he was charged with Causing Financial Loss, contrary to section 269(1) of the same Act. On 31st March 2011 he was convicted on both counts and was sentenced to 12 months' imprisonment on Count I and to 36 months' imprisonment on the other count. The sentences were to run concurrently. He now appeals against conviction and sentence. The three grounds of appeal advanced read as follows:

1. The Learned Trial Magistrate erred in law and fact when she found that the appellant did not hold the activity for which he received Ug. Shs. 2,700,000= (Two Million Seven Hundred Thousand Shillings) and thus was guilty of abuse of office.
2. The Learned Trial Magistrate erred in law and fact when she convicted the appellant of causing financial loss relying on the finding that the appellant did not carry out the activity and neither did he file proper accounts.
3. The Learned Trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record and as a result came to an erroneous conclusion.

The first ground of appeal revolves around a passage in the judgment of the trial court at page 59 of the record. Paragraph 2 on that page reads:

“Having presented no accountability even after the audit query raised in the quarterly report of 10.04.2006 exhibit 10 and there being no proper explanation as to why the accused filed no accountability yet he received money on 24.11.2004 and purportedly carried out the activity between 01.06.2005 – 30.06.2005, this court finds that the accused did not carry out the activity for which he received the 2,700,000= (two million seven hundred thousand shillings) and this was prejudicial to the interest of his employer Mukono District Local Government. Ingredient two was thus proved.”

Earlier in her judgment the trial magistrate had set out the ingredients of the offence of Abuse of Offices.

- i. That the accused is a public official / employee of a public body.
- ii. That the accused did an arbitrary act prejudicial to the interests of his employer.

The first ingredient was not in contention given that accused was a public official, being a District Prisons Commander, Mukono. As for the second ingredient court found failure to account for the money requisitioned for by accused comprised the ingredient and meant the activity had not been carried out. There is no gainsaying the accused owed an explanation to the District Local Government for the money received to carry out an activity. Besides the report that the activity had been carried out an explanation of how the money requisitioned for had been expended was required. Plainly put it is not sufficient to merely show that some activity was carried out as the accused did. As the learned magistrate noted, accused did not in the eyes of court carry out the activity for which he received the Shs. 2,700,000= in the absence of

explanation of expenditure. The law requires such explanation. To fail to make an account was an arbitrary act. This court has held that an essential ingredient of the offence of abuse of office is that the acts complained of should be prejudicial to the rights of another, a right being an interest recognized and protected by law respect for which is a duty and disregard for which is a wrong. See **Ignatius Barungi Vs Uganda [1988 – 1990] H.C.B 68**.

It was an arbitrary act on the part of the appellant herein not to account for the money when it was time to do so. To his greater misfortune even after an audit query was raised he did not give the necessary account. Needless to say the act was to the prejudice of the Mukono District Local Government. In the circumstances I see no reason why I should disturb the finding of the learned trial magistrate.

The second ground of appeal has its genesis in the last paragraph on page 59 of the record. This too is part of the judgment of the trial magistrate. It reads:

“The accused received 2,700,000= (two million seven hundred thousand shillings), did not carry out the activity and neither did he refund the money so he knew it was a financial loss to his employer and I find as such”.

In his submission, counsel for the appellant stated that conviction of the appellant on causing financial loss resulted from his conviction on the charge of abuse of office. It was contended that had the appellant not been found guilty on Count I he would not have been convicted on Count II. Earlier in her judgment the learned trial magistrate had set out the ingredients of the offence of causing financial loss as:

- i. That the accused is an employee of the government.

- ii. That the accused did an act knowing or having knowledge that the act will cause financial loss to the government.

Once again the fact that accused is an employee of the government is not disputed.

At issue is whether the conviction on Count II is a direct result of conviction on Count I. Respectfully there is no basis for such conclusion. Certainly the learned magistrate arrived at the conclusion she did in Count I and the reasons for that conclusion are manifest in her judgment. Regarding her verdict on Count II she noted that financial loss resulted from failure to carry out the activity as well as failure to refund the money. Lest it be forgotten the appellant never made an account for the money he was advanced, the Shs. 2,700,000= Cardinal in all this is value for money. Doubtless the magistrate made her decision on Count II despite her verdict in Count I. This ground of appeal also should fail.

As for the third ground of appeal the learned trial magistrate properly evaluated the evidence on record and reached a proper conclusion. The appellant has not shown where the magistrate erred. In the premises I find this ground moot and it too must fail.

This appeal is accordingly dismissed.

P. K. MUGAMBA

JUDGE

07/10/2011

