THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

THE ANTI-CORRUPTION DIVISION, KOLOLO

CRIMINAL APPEAL NUNBER 040 OF 2015

(Arising from Criminal Case No. ACD-CSC NO. 020 OF 2014)

MUSEULE SIRAJI ::APPELLANT

VS

UGANDA (IGG) :::RESPONDENT

BEFORE Hon. Lady Justice Margaret Tibulya

Judgment

This is a judgment on an appeal from the judgment and orders of the Chief Magistrate sitting at the Anti-Corruption Court. The appeal is premised on three grounds as herebelow.

1. The Learned Trial Magistrate erred in law and in fact when she failed to evaluate the evidence on record as a whole there by arriving at a wrong conclusion of convicting the appellant.
2. The Learned Trial Magistrate erred in law and fact when she regarded grave/major inconsistencies and contradictions in the prosecution's case as minor and disregarded them there by arriving at a wrong conclusion.
3. The Learned Chief Magistrate erred in law and fact when she convicted the appellant of the offence of soliciting and receiving a bribe which was

illegal tender there by occasioning a miscarriage of justice to the Appellant.

The brief facts of the case were that the appellant (**the Human Resource Officer in charge of Salaries**) demanded for 800,000/= from **Pw4 (Kabugho Sylvia)** a newly recruited primary school teacher, so that he could enter her name on the pay roll. She had taken three months without getting her salary because her name was not on the pay roll. She gave the appellant some money but he insisted on being paid the full amount. She reported the matter to the authorities who organized a trap. The appellant was arrested after he received fake 200,000/= notes from Pw4.

PW1 (D/Sgt Ongom Samuel Victor) and **PW2 (D/Cpl Byobusingye Herbert Christian)** saw him receive the fake money which they had put in a brown envelope. They recovered the notes from him in the presence of PW3 (**Ssebbowa Dickson**) and PW5 (**Wamala Musangalata**). The appellant was convicted for abuse of office and soliciting for and receiving gratification hence this appeal.

This being the first appellate Court in this matter, it has a duty of re-evaluating the evidence and come to its own conclusion bearing in mind that it did not have the opportunity to see the witnesses testify, see **Kibuuka Vs Uganda, (2006) 2 E.A 140.**

Grounds 1 and 3 that;

- The Learned Trial Magistrate erred in law and in fact when she failed to evaluate the evidence on record as a whole there by arriving at a wrong conclusion of convicting the appellant.
- The Learned Chief Magistrate erred in law and fact when she convicted the appellant of the offence of soliciting and receiving a bribe which was illegal tender there by occasioning a miscarriage of justice to the Appellant,

were argued jointly.

To expound on the two grounds, a number of arguments were raised by counsel for the appellant. I will deal with them in the order they were laid.

- It was argued that the trial magistrate failed to properly evaluate the evidence since there is no reason why PW4 (**Kabugho Sylvia**) who said that she sent Ugx 50,000/= and a further 150,000/= to one Osilam claims to have met the appellant. Further that it is not logical that she kept sending money to Osilam even after meeting the appellant.

The response was that Osilam is the one who introduced PW4 to the appellant and the money he received was meant for the appellant and was in exchange for entering PW4 on the payroll. PW4 offered Shs 50,000/= to the appellant but he rejected it saying it was little, and he demanded for Shs 900,000/=.

I found this complaint misconceived given the clear account of Pw4 that when she first interacted with Osilam he told her that he was to link her to the responsible officer, the appellant, which he did.

I find that the learned magistrate rightly believed that evidence and cannot be faulted for her decision.

- It was further argued for the appellant that to P4's knowledge the appellant was not the appointing authority and so she could not have continued giving him money. Also that there is no evidence linking the appellant to the solicitation since there is no evidence that the money paid to Osilam was given to the appellant. Also that PW4 confirms that the appellant never directly asked for money from her.

In response it was pointed out that PW4 did not pay the money to get a job but for accessing the payroll.

I again considered the evidence on the record and find it clearly indicated that Pw4's complaint related to issues of accessing the pay roll, and not getting her a job. I therefore again agree with the respondents submission in this regard.

- The next argument was that since most of the prosecution witnesses were involved in laying the trap, their evidence needed corroboration especially since the RDC and the chairman LC5 to whom the complainant first reported the matter and who are said to have heard the appellant demand for the money did not testify and that there was therefore no basis for the finding that the appellant solicited for the money.

In response the following evidence was pointed out as supporting the lower court finding that the appellant indeed solicited for the money;

- Pw4's evidence that when she failed to raise the money she reported the matter to the RDC who told her to send Shs 100,000/= to the accused. She sent the money but the appellant still refused to enter her on the payroll demanding for the full amount.
- The telephone calls between **PW4 (Kabugho)** and the appellant, especially the one which was made in the presence of PW1 and PW2 provided a link between **PW4 (Kabugho)** and the appellant as evidenced by Exhibit P.8 **(call data)**.
- PW1 and PW2 saw the Appellant meet and receive the brown envelope from PW4. The second call confirms the previous telephone conversations between the two.
- Exhibit P.7 shows that on the 7th August 2013 the appellant received Shs 101,000/= from PW4. This confirms her evidence that she rang him and that the RDC told her to send the money.
- Exhibit P.8 proves the act of solicitation since it shows that between May 2013 and August 2013 the appellant and PW4 communicated fourteen (14) times by phone.
- The evidence of the witnesses to the search and the fact that money, bearing the marks testified to by Pw1, was recovered all corroborate the statements of PW1, PW2 and PW4 on the markings and the contents of the envelope.

First of all there is no legal requirement that evidence of witnesses who participate in arranging traps requires corroboration. The only requirement is that all evidence including such evidence should be subjected to credibility tests. Once it passes the test as seems to have been the case here, it can legally be used to ground a decision of the court without corroboration.

Secondly, I again find the appellants complaint to be unsustainable for the reasons given by the respondent. The evidence that the appellant actually communicated with the complainant on the days she said he solicited for money corroborated her complaint that he indeed solicited for the money. The fact that the RDC and the LC 5 chairman didn't testify does not water down that evidence. I find no merit in this argument.

- Next was the argument that Pw4 (**Kabugho**) knew that the appellant was not the one responsible for including people's names in the payroll.

I did not find basis for this argument since there is no evidence to support it. Moreover, the issue is not whether or not the appellant could in fact include the complainants name on the pay roll, but rather whether he solicited for and indeed received the gratification.

- Next was the argument that the appellant's action of putting the brown envelope in the paper tray and not opening it shows that he did not know its contents and therefore did not agree to receive gratification from **PW4 (Kabugo).** The response was that he was in fact aware of what he was received the reason he did not bother to open the envelope.

These arguments illustrate the problem of trying to interpret another person's actions on the basis of visual observations since all interpretations may appear reasonable. It therefore dangerous to rely on such interpretations. In this case there is no need to go into conjectures since there is evidence of earlier contact between the parties over an ascertained issue, which was receipt of the money. The evidence is that the appellant demanded for money and was called and he came to receive it. It is not possible that he did not know what he had received.

Similarly the argument that since **Pw4 (Kabugo)** is now getting salary having accessed the payroll after submitting her papers shows that she had not submitted the correct documents, the reason she was unable her access the payroll for the three months is only a conjecture and runs counter to the available evidence.

The argument that since the appellant is not the appointing authority he cannot be said to have breached his public function is misleading since the complaint was not that he demanded for money in order to appoint the complaint to any post.

- The first leg to the last argument on grounds 1 and 3 is that gratification under Section 2 of the Anti-Corruption Act must be of monetory value. In this case fake money was used. The accused cannot therefore be liable for an act that does not amount to an offence at the time of its commission. **Mensrea** was not established.

The response was that PW1 explained why fake money was used in the trap.

I note that the term gratification is defined in very broad terms under S.2 of the ACA. I don't think however that the definition of that word is relevant for purposes of resolving this issue. The key issue should be whether one who unknowingly receives fake money under circumstances where he demanded for money can be said to have received gratification.

I agree with the learned Magistrate that what was important was the convict's **state of mind.** It is a fact that the appellant didn't know that what he had received were fake notes. It is also a fact that he solicited for money and that when he received the envelope he believed that he was receiving what he had solicited for. That is what the law seeks to penalize. Counsel for the appellant's argument that **Mensrea** was not established therefore runs counter to the evidence and is rejected.

- The second leg to the last argument was that in ***Uganda Vs Ekungu Simon Peter Criminal Appeal No.019/2011*** it was observed that Entrapment tends to turn villains into victims, and that trapping a public officer is akin to enticing him to commit an offence which he had no intention of committing and that it becomes worse when the trap money is not legal tender.

The response was that in **Ekungu Simon Peter** (supra) it was held that where a person was ready, willing and able to commit the crime as charged whenever an opportunity presented itself was offered this opportunity by government officers such person cannot claim he was entrapped in this case. In this case, it was said the arresting officers did not create the idea of committing the crime, they did not persuade or talk to the accused into committing the crime. He was ready and willing to commit it before interaction with the police. He demanded for the money and willingly received it both by mobile phone and brown envelope from PW4. The police and PW4 did not create the idea of committing the crime in his mind.

My view is that the responds arguments are valid. All evidence is that the accused was a willing and informed receiver of a bribe. Counsel for the appellant's argument is therefore baseless.

On the whole, I find that the lower courts conclusion that the appellant's action of soliciting for money in exchange for entering the complainants name on the pay roll was an arbitrary act which was prejudicial to his employer was backed

by evidence. The finding that the appellants delay in doing so was in abuse of his office was also backed by evidence.

There was evidence that the appellant while holding office did an arbitrary act of soliciting and receiving Shs 300,000/= from PW4 in exchange of performance of his public duty. The appellant was rightly convicted. **The 1st and 3rd grounds of appeal therefore fail.**

The second ground was that there were major contradictions in the prosecution case which the lower court overlooked. Had they been considered they would have led to the acquittal of the appellant. Counsel cited **Hajji Musa Sebirumbi Vs Uganda Criminal Appeal 10/1989** in which it was held that material inconsistencies should be resolved in favor of the accused person.

The contradictions in issue were that;

- **PW1 (Sergent Ongom)** said that the complainant alleged that the personnel officer had asked for Shs 800,000/= in order to enter her on the payroll, and that she paid Shs 400,000/= to Osilam James for onward transmission to the Personnel officer but that the search certificate on the other hand shows that the money used to trap the appellant was Shs 180,000/= . That later on page 18 of the proceedings PW1 says that the total amount used was Shs 200,000/= explaining that one note of Shs 20,000/= was omitted due to harassment from that office.
- **PW4 (Kabugho)** on page 47 (**last paragraph**) says she took the four notes of Shs 50,000/= denomination to the appellant in an envelope. The exhibited money were five 20,000/= notes and two 50,000/= notes. It was argued that if PW4 was a truthful witness and indeed handed over the fake notes to the appellant, she could not have told court that it was only 50,000/= notes. At worst she would have said that it was 20,000/= notes which were the majority notes. Further that during cross examination at page 39 of record of proceedings Pw1 states that Kabugo said that the appellant was demanding for a balance of 200,000/=. All these contradictions were major and should have been resolved in the accused's favor.

In response it was argued that;

- The fact that PW1 said that PW4 told him that the appellant had asked for Shs 800,000/= yet PW4 says that the appellant asked for Shs 900,000/= is

a minor contradiction. Moreover the appellant had already paid Shs 100,000/= leaving a balance of Shs 800,000/=. The information to Pw1 might have been correct.

- That PW4 claims that she gave Osilam Shs 400,000/= yet she gave him and the appellant less money. The record shows that PW4 sent Osilam Shs100, 000/= (page 45) after about a week she sent him Shs 150,000/=, that is the total of Shs 250,000/=. The difference could be due to time lapse.
- The contradictions in the evidence of PW1 and PW2 as to the amount of the trap money were explained away by Pw1 who said that he forgot to include one 20,000/= shilling note in the search certificate due to harassment at the time of the arrest of the appellant. The trial magistrate believed him and found that the contradiction did not affect the case as there was other evidence showing that that money was recovered from the appellant (i.e. the exhibit slip and the brown envelope).
- That PW4 said that she was given four 50,000/= notes yet the exhibit slip indicated five 20,000/= notes totaling to 100,000/= and two 50,000/= notes totaling to 100,000/=. This was forgetfulness due to lapse of time.
- The sum of Uganda Shillings 180,000/= as indicated in the search certificate is well reasoned and explained by PW1.

In conclusion it was submitted that the contradictions cited by counsel are minor and were explained away satisfactorily.

I carefully considered the issues raised by counsel. I note that the fact that the appellant received that brown envelope with the fake money was not denied by the defense. Beyond that, I have already found that the phone call data provides a communication link between the parties, and corroboration to the evidence of solicitation.

In these circumstances the alleged contradictions relating to how much was demanded for and received, and how many notes, of what denomination were in the brown envelope can only be but minor especially given that they were explained away, e.g. by Pw1 who said that he forgot to include one 20,000/= note in the search certificate. There is no basis for suspecting that he was telling deliberate lies. His explanation was rightly believed by the trial Magistrate. The other so called contradictions were also rightly taken to have been minor under

the circumstances of the case. The learned magistrate cannot be faulted for her decision. **Ground two fails as well and with it the whole appeal.**

In conclusion, I find that there was sufficient evidence to support the decision to convict the appellant and that the appeal has no merit.

It is dismissed and the Judgment and orders of the lower court are up-held.

Margaret Tibulya

Judge

20th September 2016.

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