

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT KOLOLO
HCT-00-AC-CN-0009 OF 2013

UGANDA ::: APPELLANT

VERSUS

BAGARUKAYO CHARLES ::: RESPONDENT

BEFORE:HON.JUSTICE.D.K.WANGUTUSI

J U D G M E N T

This Appeal arises from the judgment and orders of the Learned Magistrate Grade 1 at the Anti-Corruption Division acquitting Bagarukayo Charles herein to be referred to as Respondent.

The background of the matter as seen in the evidence is that the respondent was an employee of the Ministry of Public Service, he worked in the ICT section as a Computer Operator specifically under the Teachers pay roll Monitoring Unit. He was said to be saddled with the duties of supervision of staff in the data entry, updating the teacher's pay roll, production of pay roll reports and soft copies of the said pay roll. He also did reconciliation of the foregoing with the Ministry of Finance and production of pay roll were also said to be his responsibility. According to evidence the processed pay roll would then be sent to Ministry of Finance for processing and payment of salaries. The respondent was the in charge of the computer room responsible for salaries, it was the Prosecution's sole that in the course of time the respondent rang, arranged and met PW1, Mr. Banda, Joshua

who was the Senior Accounts Assistant and Head of the Koboko District Finance. He introduced himself to him in the presence of another Charles of Ministry of Education. He told him he had processed teacher's salary in excess and that PW1 should go, withdraw, pay the teacher's and send back the balance in cash to the respondent PW2 Onzu Musa the Chief Administrative Officer was also said to have been contacted by the respondent. The respondent is said to have given him an account number on which the excess money would be deposited, it was a Stanbic Account in the names of Charles Bagarukayo. PW2 then directed PW1 to process and remit the excess money onto that account. PW4 Zainabu Hemisi who was also an accounts assistant received similar instructions, they made several deposits on the account that they had been given.

At the time this was taking place, PW3 Charles Enuke the Regional Inspector due to public demand investigated allegations of embezzlement of salaries for teachers in Koboko District. He said to have come across withdrawals by PW2 and PW3, he also stumbled on PW2 and PW4, he also stumbled on deposits of some of the money on respondents account in Stanbic IPS building. PW3 got the bank statement of the said Stanbic account indicating deposits and the person who made the deposits. The accused now responded admitting that it was his bank statement which was tendered in as exhibit P10 before the Trial Court. The accused or respondent now had no objection to the deposits slips showing Zainabu PW4 and Onzu PW2 as the depositors. PW3 convinced that the respondent obtained the money illegally, charged him with four counts of corruption contrary to sections 2e of the Anti-Corruption Act 2009. The respondent went through a full trial, he was found not guilty by the Trial Magistrate and was acquitted.

The Prosecution being dissatisfied with the decision filed this appeal; the appeal is grounded on the following;

That the Learned Trial Magistrate erred in law and fact when he ruled that there was no evidence to show that the accused person received gratification as an inducement or undue advantage to bring about a certain result concerning Koboko District.

The second ground was that the Learned Trial Magistrate erred in law and fact when he failed to properly apply the ingredients of the offence of Corruption under section 2e and 2h of the Anti-Corruption Act 2009.

The third ground was that the Learned Trial Magistrate erred in law and fact when he considered and relied on the defense evidence in isolation of Prosecution's case and hence he wrongly acquitted the respondent of the above offences

Fourthly the Learned Trial Magistrate erred in law and in fact when he did not exhaustively consider and evaluate the evidence on record and eventually wrongly acquitted the respondent. The appellant sought this Court to allow the appeal, find the respondent guilty, convict him and sentence him.

At the time of hearing Learned Counsel for the appellant argued grounds one and four together. He submitted that the Learned Trial Magistrate was wrong to hold that there was no connection between the respondent and Koboko District and that there was no way that he could connect the accused to the offence.

Dealing with this matter the Learned Trial Magistrate wrote as follows;

He said there was no link between the accused and Koboko District which would eventually link the accused to offences allegedly committed. The link was too remote that there is no reasonable tribunal or Court that could rely on it to convict. The Learned Trial Magistrate was instead of the view that it is the witnesses PW1, PW2, and PW4 who were in the wrong and he wrote as follows, the patent issue in

this case is that all State witnesses told Court that the excess funds or money should have been remitted back to the Treasury. The Koboko Officials i.e. PW1, PW2, and PW4 did not remit the excess funds back to Treasury as they ought to have done. He then absolved the respondent and panged as follows,

It is my considered view that such conduct was improper and the officials of Koboko District should have been held accountable personally and not the accused person. Counsel for the appellant submitted that the link between PW1, PW2 and PW4 is seen from the dealings between them with PW1 meeting the respondent in Kampala and the several telephone calls that he made to PW1 and PW2 whom he gave even his bank account. In reply the respondent submitted that he did not intimidate the Koboko officials he wanted how a person in U1 scale could be intimidated by a public servant in U5. He denied ever giving those pay rolls or any other evidence. He said the pay rolls were from Ministry of Finance not Public Service where he was employed so he could not have had them then later on give them over. He said that the money the CFO and Chief Administrative Officer withdrew was much more than that deposited on his account so it could not be the same money. He said they were formerly charged with him and so they were giving evidence against him so as to save themselves. He said the money that was deposited on his account was from Banda for onward transmission to Banda's friend.

Right through the trial it is clear that PW1, PW2 and PW3 had something to do with withdrawal and depositing money onto the respondents account. Indeed when the matter broke out, all the three were on the 6th of August 2010 charged together as people who had committed the offence with the respondent. On the 26th of April 2011 the IGG dropped charges against PW2 and PW4 and yet when that of PW1 had already been dropped in the proceedings. The question to be dealt with

was how reliable was the evidence of these three witnesses. This type of situation was considered in *Leo Mabuzi versus Uganda* 1974 HCB 81, that it was settled rule of practice that collaboration was looked for in respect of evidence of accomplices, this did not mean accomplices were not competent witnesses or that a conviction could not be based on their evidence merely because it was not collaborated but to base a conviction on uncorroborated accomplice evidence, such evidence had to be very cogent as to satisfy Court beyond reasonable doubt. I should add that the collaboration required was that independent testimony collaborative of the accomplice evidence implicating the accused or tending to connect him to the crime. This collaboration may be got from other Prosecution witnesses. It may also be obtained from defence witnesses or the accused himself who may advertently supply what is lacking in the Prosecution case since the evidence of the accused is on the same plane or basis as any other evidence. You will find that in *Abdu Mukasa versus Uganda* 1977 HCB 2008.

Turning to the present case the evidence of the three Prosecution witnesses who had earlier been charged with the respondent received corroboration from PW3 and PW5. For PW3 that evidence received corroboration from the fact that indeed money was withdrawn from the Koboko District account and deposited on that of the Respondent. That money was deposited on the Respondents account also received corroboration from the respondent himself who before the Trial Court said money was deposited on his account once.

The piece of evidence that money was deposited on the Respondent's account by PW1, PW2 and PW3 further received corroboration from documents tendered in court namely exhibit P8 and exhibit P11 which are bank slips indicating deposits, Exh P8 made by PW2 while exhibit P11 showed deposits made by PW4 . Exhibit P10 the bank statement showed the deposits and withdraws on the respondents

account clearly correspond with exhibit P8 and exhibit P11 in respect of dates and amount deposited on the 3rd July 2007, 12th June 2007, PW4's deposit of 5th April 2007 in the sum of 10,200,000/= and that of 9th of February 2007 in the sum of 10,700,000/= were all corroborative of the fact of money being deposited in the respondents account. Lastly there was exhibit P12 which showed that the account in question belonged to the Respondent. PW3 and PW5 also corroborated PW1 and PW2 in the fact that the Respondent was an employee of the Public Service. Letters of Appointment and deployment Exh P9 also corroborated that piece of evidence.

That therefore notwithstanding while PW1, PW2 and PW4 can be said to be accomplices there evidence was not only cogent but it received enormous corroboration on which any Court after warning itself on the danger of basing its decision on un corroborated accomplice evidence would have relied on.

The next issue is that, was there a link between the Koboko officials and the respondent? PW1 in his testimony which remained undisturbed by cross examination told the Trial Court how the respondent telephoned him, met him and told him that excess money would be sent to Koboko which PW1 should send back. He also told the Trial Court that the respondent traced him again and proved to him the excess by giving him a pay roll covering the Koboko District teachers' salaries which included excess money. He proceeded to Koboko where he found another pay roll and on comparison it showed what the respondent was saying was actually correct. The cross examination that followed left the Prosecution evidence that PW1 and the respondent made and undisturbed.

The Respondent's involvement in the pay rolls was also testified to by PW5 who was his boss at the Ministry of Public Service. This evidence was not however

properly evaluated by the Trial Magistrate. If he had done so he would have seen the part the respondent played in the making and verification of the teacher's pay roll. PW5 explained the activities of the Respondent; he said the duties of the respondent were to supervise staff in data entry, updating the teacher's pay roll, producing pay roll reports and soft copies of pay rolls. He also undertook reconciliation with the Ministry of Finance, implemented changes in teacher's pay roll system and ensured that the computer system was working to produce those pay rolls.

The foregoing from PW5 which remained unchallenged was proof that without the Respondent's office doing its part, the Koboko teachers would not receive any pay. In concluding as I have above I am cautioned by the following evidence of PW5 when he says;

“Afterwards we would prepare a letter to Minister of Finance indicating to them that we have processed pay roll changes for a given month and submit the updated pay roll for processing and payment of salaries”.

Above all the foregoing is strengthened by the fact that the Respondent would supervise and at the same time verify the pay roll transaction as is seen in Exh P14 dated 10th March 2010. From the evidence that was before the Trial Court it was not simply talk that the Respondent could influence things but he was in the position to and indeed influenced the amount of money going to Koboko District for teachers. It was therefore easy for him to have pay rolls in his possession not only because he was computer literate but also because it was he who would send the soft copy of the updated processed pay roll changes to the Ministry of Finance to process payment of the salaries. Had the Trial Court evaluated and analyzed evidence produced before it, it would not have come up with the finding that the

link between Koboko District and the respondent was remote. Evidence showed clearly that his activities in the generation of the pay roll directly affected Koboko District Teachers and the local Government of Koboko.

Furthermore PW2 gave the account details of the Respondents account to PW1 so as to deposit the excess money onto it. How could he have got his personal account except that it was given to him by the respondent himself? There is no evidence on record to show that the respondent was shocked when he found the money on his account. The witnesses testified and at no point were they cross examined on how they obtained the account details indicating that the respondent knew how it had reached PW2. The respondent said money which had been deposited on his account was for onward transmission to a business associate of PW1 called Peter Onzima while it is trite law that the accused is not expected to prove his innocence and that he cannot be convicted on the weakness of his defense. Once an accused is put on his defense it means a prima facie case has been made out.

A prima facie case is made out against the accused where the Prosecution has adduced credible evidence proving each and every ingredient of the offence which if un rebutted or un explained would warrant a conviction, ***Capt. Mike Mukula versus Uganda HCCA No.1 of 2013, Patrick Lwanga Zizinga versus Uganda Criminal Appeal No.224 of 2004, and in Lubiro Alias Musa versus the Republic 1960 EA page 184.*** Putting the respondent on his defense in this case meant that the evidence before the Learned Trial Magistrate was such that it could only be over thrown by evidence in rebuttal. It was so because it possessed a danger of the accused being convicted if he remained silent. In such a circumstance Peter Onzima was a necessary witness to counteract the purpose of the money that had been deposited. In any case PW3 told Court that one of the persons the Respondent

led him to denied ever doing business with PW1 or receiving money from the respondent.

Furthermore PW1, PW2, and PW4 all testified against the Respondent but at no time did Counsel for Respondent bring up the issue of Peter Onzima. The defense of giving money to Peter Onzima came so late in time that it must have been an afterthought just to escape responsibility, *Festo Androa Asenua & Anor versus Uganda Cr App No 1 of 1998*.

All in all the money trail ends with the Respondent, it was deposited on his account, it was withdrawn by him and there is no visible trail after him. It stopped with him; the money must have been put there for his personal use. Lastly there was the issue of intimidation namely that the Respondent influenced PW1, PW2 and PW4 to deposit money on his account. Exh D1 tendered in court by the respondent showed that PW2 Onzu Musa told the investigator that he was threatened that is why he received the Respondents account number and ordered the excess money to be deposited on it. In his evidence PW2 said that he was followed all the time, threats were issued and the fact that the pay roll was produced by the Respondent did not help matters. When PW4 testified he said it was understood that the Respondent being the one making the pay roll would handle the accountability at the headquarters. From their evidence, the fear that the Respondent could easily influence the Koboko teachers' salaries negatively was within them.

Furthermore the fact that Koboko had workers who were not on the pay roll, a fattened pay roll that enabled Koboko District to pay them with some of the money was enough inducement for the Koboko officials to put their freedom on the line.

There was that undue advantage in the belief that the respondent could exert improper influence relating to the Koboko District salary transactions.

From the foregoing the only conclusion is that evidence is abundant that the respondent was a public official having been an employee of Government in Government service, there is evidence which is abundant that he received money in form of gratification which was done for purposes of maintaining the salary pay roll as it enabled the District to pay off debts and those not on the pay roll. It is also proved that the exercise was re- enforced with threats and uncertainty on the part of the District Officials. These done in the context of how the respondent accessed the money positively satisfied the ingredients of the charges of corruption.

Having subjected the evidence upon which the Respondent was acquitted to a fresh and exhaustive scrutiny as is expected of an Appellate Court, it is my finding that the Appellants' criticism of the Trial Court that it did not scrutinize the evidence and by implication that if it had done so it would have rejected the respondents defense and accepted the Appellant's evidence justified.

For the above reasons Court is of the view the Prosecution had proved the offence of Corruption contrary to section 2(e) of the Anti-Corruption Act 2009 on all the four counts to the required standard of beyond reasonable doubt. This Appeal is therefore allowed, the findings of acquittal are quashed and set aside and substituted with convictions.

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HON.JUSTICE.D.K.WANGUTUSI

JUDGE OF THE HIGH COURT

12th /06/2013