

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT KAMPALA  
ANTI CORRUPTION DIVISION  
HCT-00-AC-SC-0025-2012**

UGANDA ..... APPELLANT

**VERSUS**

NANDAULA LILIAN ..... RESPONDENT

**BEFORE JUSTICE PAUL.K MUGAMBA**

**JUDGMENT**

The state appeals the decision of the Grade one Magistrate delivered on 10<sup>th</sup> October, 2012 whereby the Respondent was acquitted on charges of corruptly soliciting for gratification and corruptly receiving gratification under section 2(a) and 26 of the Anti Corruption Act. Three grounds of appeal were advanced and read as follows:

1. The learned trial Magistrate erred in Law and fact by failing to properly evaluate the prosecution evidence as a whole thereby arriving at the wrong decision to acquit the Respondent.
2. The learned trial Magistrate erred in law and fact by failing to consider the corroborative evidence on the charge of solicitation as advanced by prosecution thereby arriving at a wrong decision.
3. The learned trial magistrate erred in law and fact by failing to properly evaluate the prosecution evidence against the Respondent in respect of receipt of gratification.

When arguing the appeal, the learned counsel for the appellant elected to argue all the grounds together. The response was in kind.

This is the first appeal in this matter and as such Court is enjoined to carefully shift through the evidence on record in order that it may arrive at an independent conclusion, derived of course from a fresh and exhaustive scrutiny albeit lacking the advantage of seeing the witnesses testify. See ***Dinkerrai Ramkrishan Pandya v R [1957] EA 336***. Further it is instructive to bear in mind ***Sekitoleko Vs. Uganda [1967]E.A531*** where it was ordained that the onus to prove the case

against an accused beyond reasonable doubt lies on the Prosecution and that any doubt that lingers ought to be resolved in favour of the accused.

Briefly the case for the Prosecution was that one Bogere had a complaint and wanted the District Police Commander of the area charged for assault. To accomplish his wish he went to places where he believed he would get help, including Kampala, and met whoever he thought could influence the actualization of his wish. Until he met the Respondent who at that time was a new State Attorney at Jinja station. The wishes of accused were not immediately met. He however got from the respondent her telephone number for future communication. It is evident communication did take place but it always originated from Bogere's phone. None was initiated by the respondent. On leaving the office of the respondent Bogere had gone to the office of the Inspectorate of Government in Jinja where arrangements to prepare and effect a trap were made.

In his evidence PW2 (Bogere) said the respondent initially asked him to pay her Shs.1,000,000/= if she was to charge the District Police Commander. He testified however that the amount asked for was later reduced to Shs. 500,000/=. According to PW2 that is when he asked for the respondent's telephone number and proceeded to report to the Inspectorate of Government office in Jinja. To confirm his report to the officials in the Inspectorate of Government office he rang the respondent and spoke to her in a way that enabled them to hear her on the other side of the line. When he said that he was the person involved in the file in issue and mentioned the file number the respondent told him not to mention the particulars of the file again because of the likelihood of her being trapped. Given the evidence on record besides the testimony of PW2 that the respondent asked him to take money to her there is no other evidence in support of the claim. Of particular interest is the evidence of PW2 in cross examination at page 33 of the record concerning a call he made to her at 9.30am on 6<sup>th</sup> June 2011. He stated that she said she was in Court. In his words he added that she said 'A!!! I am in Court.' Asked to explain what he understood the response to mean he replied that he did not know. It is apparent it was a response in disgust rather than a response from an eager and expectant interlocutor. The evidence by the prosecution in the allegation of solicitation lacks proof.

The other charge related to receipt. It is not in dispute the Inspectorate of Government set up a string operation to catch the respondent. The money involved, Shs. 350,000/=:, was marked and photocopies of the respective currency notes were made before the money was handed over to

PW2 to convey to the respondent who sat alone in her office. No sooner had PW2 signaled to his companions that he had done what he had been assigned to do than the companions made their entry into the respondent's office. The testimony of PW3 in cross-examination at page 47 of the record summarizes what transpired. The record shows PW3 stating in part, 'The money which was recovered was not in the accused's bag, it was not even in her drawer not even in her pocket.'

At page 44 of the record PW3 said in her examination in chief regarding a photograph taken at the same, 'This is a photo which has me half way and the accused person. This is when the accused person was putting money on the table. She had the money in her right hand.'

The scenario cannot be complete without relating also to the testimony of the respondent at page 84 of the record where she stated as follows;

- The people told me I had received money from Bogere who was in my office.
- I asked them which money they were talking about.
- It was at this point that Bogere told them that the money was in the file.
- That was the same file that was before me which he had touched when I was on phone
- I opened the file to see the money he was talking about
- There was money in the file. I did not know how much it was.
- I got the money from the file and said "Bogere kwata sente zo" what I can recall there was a 50,000/= note. The money was not counted in my presence, it was even not displayed anywhere."

At page 77 of the record both in cross examination and in re-examination PW5 stated that respondent said that PW2 was attempting to give her money. The evidence of PW5 at page 62 of the record mentions one Shs.50, 000/= note in the hands of the respondent. It is not clear if it was part of the money involved in the trap. Then there is mention of the total Shs.350, 000/= being put on the table of the respondent. It is not clear from the narrative where that money came from.

It is clear however that PW2 took money to the office of the respondent. PW2 says he handed the money to the respondent, a claim the respondent denies saying instead that PW2 placed the money inside a file on her desk when her attention was occupied elsewhere on a telephone call she was making. It is the evidence of the respondent against that of PW2 we have to contend

with regarding what happened. What is in issue is whether the respondent did receive money from PW2. So the evidence to go by can be circumstantial only. In **Kazibwe Kassim vs Uganda [2001 – 2005] HCB 11** the Supreme Court held that where the prosecution case wholly depends on circumstantial evidence, in order for court to act on such evidence the exculpatory facts against the (appellant) must be incompatible with the evidence of the (appellant) and capable of explanation upon any other reasonable hypothesis than that of guilt. Court added then that the circumstantial evidence in that case did not contain any facts which, taken alone, amounted to proof of guilt. In the instant case I do not find the presence of money in the environs of the respondent can alone serve as proof of receipt.

I would refer also to the case of **Watete alias Wakhoka & 3 others Vs Uganda [1998-2000] HCB 7** where the Supreme Court held that whenever court is evaluating evidence and assessing its credibility all factors likely to colour, taint or in any way affect a witness' truthfulness or accuracy must be carefully considered. The witness' motive for testifying when evident is one of the factors. That and other factors when applicable assist Court to determine what weight and therefore reliance, if any, to place on the witness' testimony. Court added that there is no legal requirement to treat a witness who has a purpose of his own to serve in a special way though that purpose must be taken into consideration when assessing the witness' credibility.

There is no clear motive why the respondent should have received the money. It is not proved. However from the evidence there is motive on the part of the person who alleged to have handed over the money, PW2. His wish to have the District Police Commander charged had not been met. He needed to have the State Attorney see that he too could take steps to achieve what he wanted accomplished. This comes out clearly when one follows the various steps he had earlier taken such as his travels to offices of the Resident State Attorney as well as to Kampala. I find the evidence of the respondent regarding what transpired in her office more credible than that of PW2 who strikes me as a man of the world. Lesser men would not take liberties with the office of the State Attorney and make assertions he is said to have made. Clearly he had received money from the Inspectorate of Government and he had the motive to show he could deliver results. In contrast I may be forgiven for the impression that in the saga the respondent comes out as naive and trusting.

All in all I see no reason why I should disturb the finding of the trial Court. The prosecution did not prove its case beyond reasonable doubt.

I dismiss the appeal.

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**Paul K. Mugamba**

**Judge.**

**14<sup>th</sup> MAY 2013.**