

THE REPUBLIC OF UGANDA
IN THE ANTI-CORRUPTION DIVISION OF THE HIGH COURT, AT KOLOLO
CRIMINAL APPEAL NO.016 OF 2019

(Arising out of Anti-Corruption Division Criminal Case No 011 of 2015)

UGANDA :..... APPELLANT

VERSUS

NAMIRO STELLA :..... RESPONDENT

BEFORE JANE OKUO KAJUGA, J

JUDGEMENT

This is an appeal from the decision of Nabende Moses M, Magistrate Grade 1 sitting at the Anti-Corruption Division delivered on 13th September 2019 in which the Respondent was convicted on the charge of Influence Peddling Contrary to Section 8 and 26 (1) and acquitted of Abuse of Office Contrary to Section 11(1) of the Anti-Corruption Act 2009.

The appeal is against the Respondent's acquittal on the charge of Abuse of Office.

The case for the prosecution was that the Respondent while employed as a Senior Land Management Officer of Mubende District did an arbitrary act in contravention of established procedure thereby influencing the Kitenga Sub-county area land committee to process the Certificates of title for **Block 362 Plots 36, 37, 38 and 39** in the names of **Bakojja Richard, Muhangi Justus, Nakibuule Harriet** and **Tindamanyire Tumusiime Teddy** respectively.

Twesigye Nixon The above acts were alleged to have prejudiced the interests of the complainants in the matter, **Twesigye Nixon** and **Siima Arthur Lule**.

The facts of this case as drawn from the evidence before the trial Court are hereby summarized as follows:

Twesigye Nickson acquired a piece of land located in Mujjunwa Parish, Kitenga Subcounty, Mubende District from Senyange Kyambadde Solomon and Nazziwa Betty. The written agreement for sale dated 14th February 2010 was witnessed by the Chairman LC1 of the area and had a sketch showing the neighboring plots as belonging to Kolunako Julius, Mr. Kabuye and Kasensero Dam. He applied for conversion from customary to freehold tenure under the Land Act Cap 227.

The application was referred to the Area Land Committee of Kitenga Sub County which issued a public notice dated 10th December 2010 to the Chairperson Mujjunwa LC1 for a meeting. This meeting was held on 4th January 2011 and was attended by the applicant, Kolunako Julius, Kabuye Sylvia, Local Council 1 executive members and members of the Area Land Committee. The land was inspected and a report of approval made dated 1st January 2011.

In March 2012, the District cartographer Omin George, informed Twesigye Nixon that the land he had applied for was encroaching on Block 362 Plots 36, 37, 38 and 39 registered in the names of Bakojja Richard, Muhangi Justus, Nakibuule Harriet and Tindamanyire Tumusiime Teddy respectively. He provided him with a sketch map which was tendered in evidence before court, showing the overlap between the land Twesigye had applied for and the previously plotted four. Twesigye was convinced his land had been inspected and approved by the Area Land committee as having no other claimants. It had also been cleared as not encroaching on Kasensero dam land by a surveyor called Lubega who the Respondent had tasked to investigate this issue. He notified the second complainant Siima Arthur Lule and the two lodged a complaint with the Inspectorate of Government.

From the evidence, it appears that Siima also owned a kibanja that had been affected by the plotting of Block 362 Plots 36-39. Unfortunately, the facts in respect of his land are scanty.

Investigations were carried out. According to the evidence, the Area Land Committee had been directed by the Respondent to approve the applications in respect of the four Plots, contrary to established procedure. It is on the basis of

the evidence from members of the area land committee, that the Respondent was arrested and charged with abuse of office and influence peddling.

Prosecution called a total of 10 witnesses in support of its case. These included members of the Area Land Committee of Kitenga i.e. **Kyaligamba Albert** (PW 4), **Ahmed Muwanga** (PW5), **Namagembe Zeridah** (PW 6), **Kabasiime Phillip** (PW 7) and **Katiti Joshua** (PW 9). They also called the **District Cartographer** who discovered the overlap on Twesigye's land (PW2) and the **surveyor** .

At the closure of the prosecution case, the Respondent was put on her defense.

She opted to keep quiet and did not call any witnesses.

The Trial Magistrate then acquitted the Respondent of the charge of Abuse of office and convicted her on the count of Influence Peddling, sentencing her to a fine of UGX 3,000,000 (**Uganda Shillings Three Million**).

The appellant being dissatisfied with the acquittal filed this appeal to this Honorable Court on the following ground;

- Justice*
1. The trial Magistrate erred in law and fact when he came to a finding that the arbitrary act in an offence of Abuse of Office, can only be prejudicial to an employer not any other person.

Representation.

At the hearing of the appeal, **Mutabule Wycliffe** from the Inspectorate of Government represented the Appellant while **Semugera Ronald** of Ruhindi and Co. Advocates appeared for the Respondent. Both parties adopted written submissions as filed.

Submissions of the appellant

Counsel for the appellant contended that the trial Magistrate did not appreciate the ingredients set out in Section 11 (1) of the Anticorruption Act for the offense of Abuse of Office and consequently erred in his evaluation of the evidence, arriving at a wrong decision. He points out that this error is apparent at pages 8-

12 of the Judgement, where the ingredients are listed and analyzed by the lower Court. In his view the last ingredient is wrongly cited, as follows:

“In order to secure a conviction on the offense of abuse of office contrary to section 11(1) of the Anti-Corruption Act 2009, the prosecution must prove the following ingredients:

- 1. The accused must have been an employee of a public body or entity in which the Government has shares***
- 2. The accused carried out an arbitrary act***
- 3. The act was done in abuse of the authority of the office of the accused***
- 4. The arbitrary act was prejudicial to the interests of the accused's employer***

Lule
Appellant's counsel submitted it is this error in interpretation that led to the acquittal and that **Section 11(1) of the Anti-Corruption Act, 2009** as amended provides that the offense of abuse of office is committed not only where the arbitrary act is prejudicial to the interests of the accused's employer but also where it prejudices the interests of other persons.

He argues that the prosecution's case was made clear in the particulars of the offense on the charge sheet which showed Twesigye Nixon and Siima Arthur Lule as the persons whose interests were prejudiced.

He submitted that the prosecution had proved the charge of abuse of office against the Respondent beyond reasonable doubt. He therefore prayed that the acquittal of the Respondent on the second count of abuse of office be set aside and that this Honorable court convicts and sentences her accordingly.

Submissions of the Respondent

Counsel for the Respondent opposed the appeal and submitted that the Learned Trial Magistrate's reasoning is supported by case law. That the interpretation of the section has always been restricted to prejudice to the employer, when the offence is allegedly committed by a person in public office/ employed by a public

body or entity in which Government has an interest. He cited no authority for this position.

He prayed however, that in the event that this court is inclined to agree with the appellant's submission then it should find that the prosecution failed to prove to the requisite standard that the complainants in this case suffered prejudice as a result of the actions of the Respondent. No evidence was led by the prosecution to show that the complainants suffered loss.

In a bid to prove his assertion that the complainants had not been prejudiced in any way, he submitted that;

1. Twesigye Nickson and Siima Arthur Lule did not in their testimonies show what interest they had in the land and the legal basis of any claimed interest was never proved.
2. Twesigye did not present evidence that the land he purchased indeed belonged to the sellers' father, Late Vincent Senyange.
3. The investigating Officer did not scrutinize the claim of ownership by Twesigye and instead took it for granted that he owned the land. She didn't confirm its size. She also had no information regarding the land claimed by Siima Arthur Lule. The latter did not present anything to court to represent his alleged interest in the land. He clearly cannot be said to have suffered any prejudice.
4. PW 1, Twesigye initially contended that his land was approximately 50 acres, but that only 18 acres were approved out of the 21 acres that were surveyed. Since he was not sure of how much land he owned, and was not sure of what extent and how the encroachment came about, he cannot contend that he was prejudiced by alleged encroachments.

He concluded that from the foregoing, it would be a miscarriage of justice for the court to conclude that the complainants had been prejudiced. They have since not

lost their land and the land titles of the said beneficiaries, Registered owners of Block 362 Plots 36-39 were surrendered to the Inspectorate of Government.

He prayed to Court to dismiss the appeal and uphold the acquittal of the Respondent.

Consideration of the Appeal

This is a first appeal and as such, this court is enjoined to carefully and exhaustively re-evaluate the evidence as a whole and make its own decisions on the facts (**See cases of Kifamunte Henry Vs. Uganda SCCA No, 10 of 1997 and Bogere Moses and Anor vs. Uganda, Supreme Court Criminal Appeal No. 1 of 1997**)

In **Kifamunte's case**, the Supreme Court of Uganda stated as follows:

Thulle "We agree that on first appeal from a conviction by a Judge the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has the duty to review the evidence of the case and to reconsider the materials before the trial Judge. The appellate court must then make up its own mind not disregarding the judgement appealed from but carefully weighing it and considering it"

Being mindful of the above, and the fact that I did not have the opportunity to see the witnesses testify, I proceed to review the evidence that was adduced before the trial court and make up my own mind on whether the offense of abuse of office as provided under the law was proved by the facts to the requisite standard and whether the judgement of the lower court is proper.

I have considered the record of proceedings and the judgement, examined the exhibits tendered in this case and the submissions made before this court.

The trial magistrate in acquitting the Respondent of the offense of abuse of office first reproduced the particulars of the offense as stated on the charge sheet. I have considered the same and agree with the appellant that they clearly brought out the allegation that the Respondents actions prejudiced the interests of Twesigye

Nixon and Siima Arthur Lule. They did NOT cite the employer as having been prejudiced.

This issue was not in contention and so I will not dwell on it.

I proceed to examine the reasoning of the trial Magistrate in arriving at the acquittal at page 11 of the judgement. This is where the criticism of the appellant stems from. The relevant extract is produced here below:

"I find the State to have misdirected themselves on whom the acts were prejudicial to. The position of the law is that the acts complained of should be prejudicial to the employer. In this case, the state alludes to the fact that the accused's acts prejudiced the interests of Twesigye Nickson and Siima Arthur Lule. These were not the employers of the accused person. I find the State did not pay due regard to the ingredients of the offense, thereby improperly drafted the particulars of the offense for count 2, thus I find the state have recklessly failed to prove the last ingredient. Accordingly, the charge stands to be dismissed and the accused acquitted on the second count.

Thull
The trial court's impression that the arbitrary act MUST prejudice the employer is clear from the foregoing.

The question is whether the law requires that the arbitrary acts of a person charged of this offense should have the effect of prejudicing ONLY the interests of that person's employer for the conduct to constitute an offense? Or rather, is the offense proved if the arbitrary act complained of prejudiced the interests of persons other than the offender's employer?

In order to resolve this, we need to revert to actual provisions of the law and the rules that govern the interpretation of statutes by courts. What is discerned as the intention of the legislature? Can we draw plain meaning from the words of the statute? Is there any confusion or ambiguity in the provisions of the law?

Section 11 (1) of the Anti-Corruption Act is reproduced here below:

"A person who being employed in a public body or a company in which the Government has shares, does or directs to be done an arbitrary act prejudicial to

the interests of his or her employer or any other person, in abuse of the authority of his or her office, commits an offense...."

These words are in the view of this court clear and unambiguous and must be interpreted using the literal rule of statutory interpretation which provides that words in a statute must be given their plain and ordinary meaning.

The Act in question uses the words **"...or any other person"** in defining what abuse of office constitutes. These words cannot be ignored in interpreting the meaning of the provision. They must be considered and understood in their ordinary or plain english meaning in order to get to the root of what the legislature intended.

According to the Mirriam Webster dictionary, 11th edition, "any other" is

1—used to refer to a person or thing that is not particular or specific but is not the one named or referred

The same definition is given in the Oxford advanced learners dictionary 8th edition at page 1040 for the word **"other"** which is the main determinant in the phrase under consideration. It is used to refer to people or things that are additional or different to people or things that have been mentioned or are known about.

Going by the above definitions, the provisions of the law in respect of the offense of abuse of office become very clear when given their ordinary meaning. The thing or person already mentioned in the text is the employer; therefore, any other refers to the additional options or categories provided. In this case the additional category is **"any other person"**.

It is noted that the trial court did not consider the phrase **"any other person"** in its summary of the ingredients of the offense and therefore erred in its understanding of provision and its application to the facts. I agree with the appellant's submissions on this issue for the reasons advanced above.

I find no legal basis for the Respondents argument that where public officers are concerned, the acts must prejudice the employer. This is not the meaning of the provision. I therefore disregard it.

This brings me to the issue of whether the actions of the Respondent were prejudicial to the interests of Twesigye Nixon or Siima Arthur Lule as alleged by the prosecution in the particulars of the offense.

In arguing the appeal, counsel for the respondent rightfully noted that the trial Magistrate had not evaluated evidence pertaining to whether there was prejudice to the interests of the complainants. He surmised, quite correctly that even if the court resolved the appeal in the favor of the appellant on the basis of the arguments made on interpretation of the provision, it would still have to resolve the question of the effect of the Respondent's arbitrary acts on the complainant's interests. Only then would court arrive at a proper decision in this matter.

Indeed, the record shows that the learned Trial Magistrate did not address this issue but rather, upon making the finding that the State had misdirected themselves on whom the acts complained of were prejudicial to, he dismissed the charge as unproved.

Thuller:
This court will therefore go ahead to evaluate the evidence on record in this regard and arrive at a conclusion. The offense is proved if the prosecution adduced evidence showing how the interests of any of the complainants was prejudiced. This is derived from the use of the word "any other person" in the provision.

"Prejudice" is defined in Black's Law Dictionary, 8th Edition as "damage or detriment to one's legal rights or claims"

The Respondent submitted in detail on this matter and his arguments were captured earlier in this judgement. The gist of his submission is that the exact acreage and boundaries of the land claimed by Twesigye Nixon was not proved. It was not shown how Block 362 Plots 36 to 39 encroached on his land or how the alleged overlap affected his ownership. In fact, his ownership of the plot was also in issue. The conclusion therefore is that there was no evidence that his rights

had been infringed upon. He reasoned that since he could not prove whether he had a legal claim or interest over the land comprised in Block 362 Plots 36-39, then he could not claim any prejudice. He argued that there was no evidence of loss suffered by the said Nixon.

The appellant in rejoinder submitted that there is no requirement to prove loss in a case of abuse of office. He argued that the interests of the complainants emanated from the sale agreement he had with the previous owners. The agreement did not indicate the neighbors to his land as including the four people that the Respondent "helped" to secure title. He further explained to court that the surveyor had surveyed 21 acres but with the removal of some acres infringed upon by titling, it came to 18 acres. His interests were therefore prejudiced by the actions of the Respondent.

Thull In order to resolve this issue court must first address its mind to the procedure provided by law for handling applications for freehold tenure and consider why those procedures are in place. What was the intention of the legislature in providing this procedure?

The **Land Act Cap 227 Part 11** provides this procedure. The land committee established under S. 64 is upon receipt of the application expected to determine, verify and mark boundaries of the land applied for. They have powers to adjudicate and decide on any questions that may arise or matters concerning the land and even establish if there are other persons that exercise **any right** in the land or any part of the land. These are not necessarily ownership rights but rights of occupation, use, charges, pledges etc. They are supposed to establish if there are any third party rights and make recommendations.

Section 6 of the Land Act is very instructive. It provides that the committee is to publish a notice in the parish and on the land which is the subject of the application, specifying the location and approximate area of the land and requiring all persons who claim **any interest** in the land or in any adjacent land which may be affected by the application, including in respect of any adjacent land claims as to the boundaries of that land, to attend a meeting of the committee at a specified time and put forward their claims.

It is this court's view that the elaborate procedures established by the law are to safeguard the rights of third parties and other claimants to the land. It is to ensure fairness in the process so that before the application is approved and the certificate of title issued to the applicant, all relevant facts that could affect the grant are taken into consideration.

The provisions of the Land Act create a legal right for claimants and third party interests to be heard. Any actions taken or omissions made during the process certainly can be concluded as prejudicing the rights of such parties. This applies to Twesigye Nixon and Siima Arthur Lule.

I therefore disagree with the Respondents argument that there was no prejudice to the interests of the two. I further find sufficient evidence adduced by the prosecution to show that Twesigye Nixon purchased land in the area and that the surveyed land was established by the cartographer as overlapping with Block 362 Plots 36 to 39. Nixon's application was processed first by the area land committee and due process was followed. The processes of the committee in respect of the four plots mentioned came at later dates.

Twesigye Nixon
I also note that the evidence of **PW 4 (Kyaligamba Albert)** a member of the Area Land committee, **PW 5 (Ahmed Muwanga)** Chairman of the Area Land Committee, **PW 6 (Namagembe Zerida)**, **PW 7 (Kabasiime Phillip)** and **PW 9 (Katiti Joshua)** was that the established procedure was not followed. They bring out the fact that the Respondent directed them to act contrary to it and approve the applications in respect of Block 362 Plots 36-39.

They testified about the how the Respondent directed and pressured them to issue the approval for the four plots by filling forms 4 (application for conversion to freehold), Form 10 (Notice for hearing of application for grant of freehold) and Form 23 (demarcation form for certificate of customary ownership) contrary to procedure. They also signed Land Inspection meeting attendance sheets when the meetings had not been held. They appended their signatures to prefilled documents. The Respondent reassured them that all would be well since she was in charge. PW5 and PW6 testified on how the Respondent persistently pressured them and even quarreled with them to "do her work". They claimed that they caved under the mounting pressure and did what they knew to be wrong.

The actions of the Respondent meant that any person who may have had a claim or any interest, or whose rights may have been affected by the applications for land registration of Bakojja Richard, Muhangi Justus, Nakibuule Harriet and Tindamanyire Tumusiime lost the opportunity to be notified of the applications/interests. They similarly lost the chance to appear and present their claims before the committee or even defend their boundaries. I conclude that Twesigye Nickson and Siima Arthur Albert had a legal right to be notified. They also had an interest in the land. This interest does not need to be one of ownership; it could even be user rights as explained hereinabove. They were therefore prejudiced by the failure to follow procedure which resulted from the Respondent's arbitrary actions.

Paul I am persuaded by the decision of Justice Lawrence Gidudu in the High Court (ACD) criminal appeal case of **Uganda versus Nalubega Sansa Mwajuma** HCT-00-AC-CN-0005-2018. In handling the issue of prejudice to Bweyale Town Council arising from a flawed procurement process, he stated as follows;

"...the process of public procurement ensures that even if the bidder was single handedly sourced, the goods to be supplied are subject to an evaluation including valuation. This ensures that the purchaser gets value for money because independent expert opinion is obtained before the purchase. The entity also benefits from the transparency of the entire process which is good governance."

He held that *"the council was exposed to an unfair process which had been arbitrarily arrived at by the two Respondents. If the process is flawed and riddled with irregularities, then it follows that the intended beneficiary of the goods so procured has suffered a prejudice because it has obtained goods following a process outside the law. It therefore missed out on the benefits that flow from a transparent, competitive and value for money process"*

I have no hesitation in my mind that Twesigye Nixon and Siima Albert missed out on the benefits of the procedure established by law that would have enabled them exercise their right to lodge a complaint and be heard if they so wished. It is the evidence before the court that even the LC Chairperson of the area had no knowledge of how the four certificates of title came to be issued as he did not even know the four beneficiaries. This would not have been the case if the established

procedure had been followed. The overlap of Nickson's surveyed land over the four plots 36-39 as testified upon by the District Cartographer (**PW2**) would probably not have occurred if the rightful procedure had been followed.

Having so found, I resolve that the arguments of the Respondent regarding the unclear acreage of the land claimed by Nixon Twesigye, the question of its ownership and the extent of the encroachment become irrelevant to the issue before court.

Counsel for the Respondent seemed to suggest in his submissions that the Respondents actions were not arbitrary. He does not however present arguments to support this and instead deals with the question of prejudice. I consequently see no need to delve into this. I am satisfied that the trial Court correctly evaluated the evidence in respect of the Respondent's conduct and found that she had indeed acted arbitrarily. This evaluation is found at Pages 4 and 5 of the Judgement. I am satisfied, as was the trial Magistrate, that the Respondent's actions of directing the area land committee to avoid established procedure and approve the four applications was arbitrary.

I accordingly hold that the charge of abuse of office was proved by the prosecution beyond reasonable doubt.

Before I take leave of this appeal, I feel duty bound to address a matter that was not raised by either party to this appeal, but which has a profound effect on the dispensation of justice in this case.

As a first appellate court I am expected to reevaluate the evidence as a whole, subject it to fresh scrutiny and consider the propriety of the judgement of the lower court as a whole. This applies in the consideration of matters which neither party may have addressed in the appeal but which affect the propriety of the lower court's decision. This is in my considered view the full import of the decision in the case of **Kifamunte** cited earlier in this judgement.

Having carefully considered the evidence of witnesses and the exhibits before the court, and read through the judgement of the trial magistrate, and further addressed myself to the provisions of Section 8 of the Anticorruption Act on

influence peddling, I am convinced that the conviction of the Respondent was wrongful.

I take issue with the trial court's interpretation of the law and its application to the facts.

The trial Magistrate highlighted the ingredients of the offense of influence peddling at **page 3** of the **judgement** as follows;

1. That the person did or omitted to do an act
2. The act done or omitted to be done was in contravention of established procedures or principles
3. That the person exercised improper influence
4. That there was benefit accruing to that person or a third party.

I respectfully disagree with the listed ingredients. Section 8 is reproduced here below and reads as follows

"A person who does or omits to do an act in contravention of established principles or procedures as a result of improper influence, for his or her own benefit or for the benefit of a 3rd party commits an offence.

It is my considered view that the provision does not create an offense for the "influencer" or rather the person who exerts or peddles the improper influence. It creates an offense for the person who succumbs to the improper influence and therefore, proceeds to do or omit to do something in contravention of established procedure. As "a result of" in the context of this provision means "because of" or "owing to"

In his judgement at page 5, the magistrate states:

"From the foregoing evidence, the prosecution has demonstrated that the accused did an act by using her position to influence the area land committee to sign on Prosecution Exhibits PE 3 to 6 without following procedures"

Further on at page 7 he states:

“...I am inclined to believe that the area land committee had all reason to believe and follow the accused’s directives even if she could not pay them or fire them. Her position had a direct impact on their decision and indeed I find that they were impaired from making an independent decision as a reason of her influence. From the evidence I find the prosecution to have proven that indeed the accused used her position to influence the area land committee to sign in the files without following the proper procedure. This ingredient has been proved”.

This court agrees with the finding that the Respondent used her position to improperly influence the area land committee to perform improper acts. What I respectfully disagree with is the finding that the Respondent did these acts “as a result of influence”. There is no evidence to suggest that her arbitrary actions were carried out as a result of another person’s influence. This is a requirement of the law for a charge of influence peddling to succeed.

I am fully aware that the title to the section reads “influence peddling” and creates the impression that the conduct being criminalized is that of the person who exerts or exercises improper influence on another. If that were the position, then the conviction of the Respondent would have been proper. A critical reading of the ingredients of the offense as set out thereafter reveals, to the contrary, that it is the person who does an arbitrary act because of or under such influence, who commits an offense. This may be an anomaly but the reading of the text is clear and I am convinced it is not capable of interpretation in any other way. This may be a matter for the legislators to look at, if indeed their intention at the enactment of the law, was to punish an officer who exerts influence.

Had the members of the area land committee been the ones charged, then this offence would apply. The evidence shows they acted or omitted to perform certain acts in contravention of established procedure as a result of the influence of the Respondent.

Having become aware of the error in the judgement, this court cannot look the other way.

The Supreme Court of Uganda in the case of **Fr. Narcensio Begumisa and others versus Eric Tibebaga** (Supreme Court Civil Appeal No 17 of 2002) expounded in detail on the duties of the first appellate court. I quote, *"on a first appeal the parties are entitled to obtain from the appellate court its own decision on matters of fact and law"*

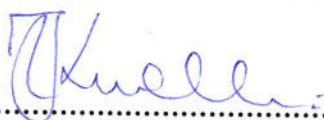
They cited the decision of the Court of Appeal of England in **Coghlan Versus Cumberland** (1898) 1 Ch 704 which observed that *"the court must then make up its own mind, not disregarding the judgement appealed from but carefully weighing and considering it, and not shrinking away from overruling it if on full consideration the court comes to the conclusion that the judgement is wrong"*.

Quale A court cannot sanction that which is illegal, an illegality once drawn to the attention of court it overrides all questions of pleading, and such illegality cannot be allowed to stand.

In the instant case I find that the conviction of the Respondent on the count of Influence Peddling was wrong.

I therefore conclude as follows:

1. There is merit in the appeal against the Respondents acquittal on the charge of abuse of Office. I therefore allow the appeal, set aside the acquittal and convict the Respondent on the charge of abuse of Office
2. I find the conviction on the charge of influence peddling to have been wrongful for reasons provided. I therefore quash it and set it aside. I also set aside the sentence passed by the trial court.


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Jane Okuo Kajuga

Judge of the High Court

8th June 2020

SENTENCE AND REASONS FOR THE SENTENCE

The sentence prescribed by Section 11 (1) of the Anti-Corruption Act 2009 for the offense of Abuse of Office is imprisonment to a term not exceeding seven (7) years or a fine not exceeding 168 currency points or both.

Counsel for the Respondent submitted several factors in mitigation. They are as follows:

1. Respondent is a first offender
2. She is a mother of five children of tender years, the youngest is about to make two years
3. The respondent was cooperative throughout the investigation and trial and she prevailed on the registered proprietors to surrender their titles to the Inspectorate of Government
4. There is no loss suffered by Government, and if at all there is any then it is minimal
5. The Respondent is set to lose her job and not be able to serve Government for ten (10) years
6. She is remorseful

He prayed for a lenient sentence, preferably a non-custodial sentence. He informed Court that the Respondent had previously been convicted for influence peddling and paid a fine of Ushs 3million. He suggested that the court imposes a similar fine so that they do not have to claim it since this appellate court has set aside that sentence.

Counsel for the appellant informed the court that he had only one aggravating factor to raise. That the crimes of the nature the Respondent was convicted for are rampant and that the Court must send a message through sentence that deters others.

He however, agreed with Counsel for the Respondent that a sentence of a fine would be suitable rather than a custodial sentence. In his view, imprisonment of the respondent would not help her to reform, but a fine would. I find no basis for this assumption.

The Respondent asked Court for lenience stating similar reasons as advanced by her Counsel.

I have carefully considered the factors raised in mitigation and aggravation by the parties. I am also mindful of the role of the Court in sentencing and the underlying principles, particularly that the sentence imposed must suit the crime and reflect the seriousness of the offense and level of culpability.

The offense of abuse of office is a serious one intended to address / curb official misconduct and abuse of authority vested in public officers. As submitted by Counsel for the appellant, cases involving fraudulent transactions in land registration are many.

The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice Directions) Legal Notice No 8/2013 provides the sentencing ranges for the offense of abuse of office. The starting point is three and a half years. I consider that the mitigating factors outweigh the aggravating ones, especially since the titles acquired through the abuse of office (for Block 362 Plots 36,37,38 and 39) were surrendered to the IG. However, I have to consider what the appropriate sentence is in light of the circumstances of this case and the risk and effects of the wrongful conduct.

This court considers a fine or non-custodial sentence as not being suitable considering the seriousness of the case. It would be a mere slap on the wrist as the highest amount payable as a fine is Ushs 3.6 million shillings.

The Respondent's duty as a Senior Land Management Officer required her to act lawfully as the effects of abuse would hamper an efficient and transparent land registration system. In this case, it cannot be taken lightly that she influenced / directed/ piled pressure upon members of the area land management committee, directing them to do what she knew to be contrary to the law and the procedures that she was supposed to protect as a senior officer. A fine of Ushs 3.6 million which is the maximum would not suit the crime.

The effect of her actions on the integrity of land registration should be borne in mind. I certainly do not consider it a light matter that Respondent's arbitrary acts

were geared towards placing title in the hands of people whose ownership over the land cited therein is questionable, to the detriment of other members of the community with valid claims.

I also note that it was only after the case was reported to the Inspectorate of Government and investigations commenced that Respondent "caused" the surrender of the four titles. What would have happened if this case had never been reported?

In light of the above reasons:

1. The Respondent is sentenced to imprisonment for 1 year (12 months) with effect from the date of this conviction.

Article 23 (8) of the Constitution does not apply as the Respondent did not spend any time on remand since she was charged.

2. She is disqualified from holding a public office as required by S. 46 of the Anti-Corruption Act for the duration cited therein.

The right of appeal is explained to the Respondent.

J. Okuo

Jane Okuo Kajuga

Judge of the High Court

8th June 2020

Sentence delivered in open court.

Parties: C/A - Mutabire W. Gyabwa (IC)

C/R - Semugera Ronald (Ruhinda & Co Adv)

R - Stella Namiro.

Clerk - Mansi Bruce.

J. Okuo

21/6/2020

