THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 17 OF 2016.

Between

1. **HUDSON JACKSON ANDRUA**
2. **ANGOL MICHEAL ……APPELLANTS**

VERSUS

UGANDA ……RESPONDENT

CORAM: KATUREEBE, C.J, KISAAKYE; MWANGUSYA; OPIO-AWERI, MWONDHA, JJ S.C

(Appeal against the judgment of the Court of Appeal before Nshimye, Kasule and Ekirikubinza Tibatemwa. JJA)

JUDGMENT OF THE COURT

INTRODUCTION-` -

This is a second appeal against the judgment of the Court of Appeal that was delivered on the 17th day of December 2015 arising from the judgment of the Anti-Corruption Court at Kololo.

The appellants were indicted for Abuse of office contrary to Section 11(1) of the Anti-Corruption Act, 2009.

Back ground to the appeal.

The appellants were employees of the National Forestry Authority. Hudson Jackson Andrua (first appellant) was the Acting Executive Director while Angol Micheal (second appellant) was a Board member.

On the 12th day of September, 2010, Midland Holdings through its Executive Director Jim .W Opolot wrote to the Executive Director of National Forestry Authority, (first appellant) a letter proposing a

land swap of 200 Acres of land in Kirinya belonging to NFA for 100 Hectares of land belonging to Midland Holdings. Midland Holdings explained that its intentions were to decongest Kampala and create employment opportunities by building a satellite city with modern housing, shopping malls and all amenities thereon.

On 9th November 2010, the first appellant in his capacity as Executive Director wrote to the then Minister of Water and Environment (PW5) advising against the land swap. In the letter, he instead proposed a partnership arrangement between Midland Holdings and National Forestry Authority [NFA] suggesting that it would promote the implementation of the Uganda Forest Policy objective of urban Forestry. He further advised that the land could be allocated to Midland Holdings under a management contract with NFA. He however highlighted that since H.E the President's ban on land allocation/licensing in Central Forestry Reserves was still effective, the executive authorization needed to be secured.

On the 18th November 2010, the Minister responsible for Forestry, PW5 wrote to the chairperson National Forest Authority and laid down the grounds upon which Midland Holdings' application would be considered. She emphasized that it was a land swap and not a sale. She further gave a directive that the land being offered by Midland Holdings located in Bujuuko be verified. While the minister (PW5) insisted on a swap, the first appellant instead on the following day, 19th November, 2010 wrote to the MD Midland Holdings and informed them that the land swap was impossible since it contravened Section 8 of the National Forest Act, 2003. He however advised that NFA intended to instead offer Midland 40 hectares under a management contract with NFA along eco-tourism business development approach. He further warned that authorization from the minister and H.E the President was required since land allocation /licensing was halted by a presidential directive of August, 2008 which was still effective.

On 20th December 2010, the first appellant revealed that Midland in any case had no land in Bujuko in a letter to the chairperson of the Board of Directors, NFA. This meant that Midland Holdings'

proposal was based on false pretences and therefore the land swap was nonexistent.

On the 18th January 2011, the first appellant further wrote to the Minister (PW5) and informed her that Midland was found to have no land in Bujuuko and so the swap would not take place. He advised in his letter that the partnership he had mooted earlier could still take place.

On 24th January, 2011, the Minister wrote to the first appellant authorizing him to proceed and finalize the allocation to Midland holdings, Uganda limited. She however stated that "the Board should support your action."

The first appellant had already made a draft agreement because on 23rd May 2011, he called PW1 the (Chairperson Board of Directors National Forestry Authority) to go and look at it. PW1 who was busy at a workshop asked the second appellant to go and look at the document.

On the 24thMay 2011, the second appellant informed PW1 that the license agreement had been signed. PW 1 then wrote a letter to the first appellant asking him to defer what had already been signed. The signing aggrieved all the Board Members.

The appellants were arrested and charged with abuse of office. The prosecution case was that they prepared and approved a grant of a license to Midland Holdings of land in Namanve Central Forest Reserve without the Board approval and or following the procurement laws, regulations, procedures and requirements. Their actions were prejudicial to the interest of their employer.

The prosecution led 5 witnesses to prove the ingredients of the offence of abuse of office against the appellants.

In their defence, the appellants denied all allegations made against them and claimed that their actions were duly authorized.

The High Court found both appellants guilty of Abuse of office. The first appellant was sentenced to 3 years imprisonment while the second appellant was sentenced to 2½ years imprisonment.

The appellants were aggrieved by the High Court findings and accordingly appealed to the Court of Appeal. The Court of Appeal dismissed the appeal on all grounds.

The Appellants being aggrieved by the Court of Appeal decision appealed to this court on the following grounds:-

1. **The Learned Justices of the Court of Appeal of Uganda as the first appellate court failed to properly evaluate the evidence before them as is mandated to reappraise the evidence and draw inferences of fact so as to come to its own independent decision whether the trial court's decision can be sustained or not pursuant to Rule 30 (1)(a) of the Judicature (Court of Appeals) Rules Directions SI. No. 13 -10.**

2. **The Learned Justices of the Court of Appeal of Uganda erred in fact and law when they concluded that the prosecution proved beyond reasonable doubt that the accused persons abused their offices as charged.**

3. **The Learned Justices of the Court of Appeal of Uganda erred in fact and in law when they wrongly found that the Appellants did not seek the approval of the Board.**

4. **The Learned Justices of the Court of Appeal of Uganda erred in fact and in law when they wrongly found that there was loss caused / or could have been caused to the employer of the appellants and when they failed to find that the Government of Uganda and the employer of the appellants would have benefited enormously if the contract signed by the appellants had not been frustrated and sabotaged and implemented as it should have been.**

5. **The Learned Justices of the Court of Appeal of Uganda erred in fact and law when they confirmed the overly severe custodial sentences of 3 years and 2½ years respectively awarded against the appellants given the circumstances of the case.**

They prayed court for orders that the appeal be allowed and the conviction, sentences and orders of the lower courts quashed and the appellants set free.

Representation

The appellants were represented by **Mr. Opwonya Charles Dalton** while the respondent was represented by **Mr. Elizooba Maxim, Senior State Attorney (DPP)**

Arguments for the appellants

Counsel for the appellants argued grounds 1,2, 3 and 4 together and ground 5 separately.

Counsel for the appellants submitted that the prosecution evidence was marred with grave inconsistencies and lies. He pointed out the evidence of PW1, the chairperson of the Board arguing that it had a lot of inconsistencies. Counsel argued that PW1 in his testimony claimed that when he became chairperson, standard procedures regarding land were drafted however, he did not produce the said standard procedure. Further, contrary to the subsequent witnesses testified that there was no standard procedure.

Counsel further argued that the honorable Justices of Appeal erred when they concluded that the Board was not consulted. He contended that the first appraisal of the Board Chairman about Midland Holdings was on record. Further evidence was adduced to the effect that whatever the first appellant did was copied to the Chairperson, indication that there was good communication between the 1st appellant and the Board.

Counsel contended that the whole transaction emanated from the Minister who forwarded the Director of Midland Holdings to the technical personnel of NFA. Counsel contended further that the first appellant displayed great honesty when he advised the Board and the minister that swapping was impossible since midland's side of the deal was nonexistent.

Counsel argued that the first appellant's actions were directives from the minister who in a letter authorised him to allocate land to Midland Holdings as a lease for 49 years. The letter directed the first appellant to act after the Board had supported the action which same letter was copied to the Board. Counsel prayed that court offers a liberal interpretation of the clause "the Board should support your actions" because in counsel's opinion, it was a Ministerial Directive to the Board under the law.

Counsel concluded that the offence alleged against the 1st appellant was not proved beyond reasonable doubt as the ingredients as provided for in S. 11 of the Anti- Corruption Act were not established. He stated that there was no arbitrary act because the 1st appellant at all times acted in the know of all stake holders i.e the Minister, the Board Chairman, NFA Board Members, and the permanent secretary who always gave him a go ahead to act.

On the second appellant, Counsel submitted that the said appellant did not participate in any process throughout the evolution, planning and was only called upon by the Board Chairman on the 23rd May 2011 to go and sign the agreement which he diligently did as he had always been instructed by his superior.

Counsel submitted further that there was no agreement signed since there was no consideration offered by any party. He stated that the holding in the case of **Nsimbe Holdings Ltd V Attorney General & The Inspector General of Government, Constitutional Petition No. 2 of 2006** was inapplicable since

the agreement signed was done with full knowledge of the Board and approval.

Counsel argued that since the contract was not effected, then the appellants did not act arbitrarily and no loss was caused to government. Counsel referred court to **R.W Hodgin law of Contract for East Africa at page 113,** where the writer states as follows;

"A fault in the formation of a contract may have one of three possible effects upon it, the most serious is that the fault renders the contract void. In the situation, neither party can enforce the agreement and neither party gains any rights under it or suffers any obligations from it, contracts can be void due to an operative mistake between the parties because that type of contract has been declared illegal by statute or by common law."

He prayed court to allow the grounds of appeal and quash the conviction against the appellants.

Arguments for the respondent on grounds 1,2,3 and 4.

Counsel for the respondent submitted that the duty of this court as a second appellate court is to evaluate whether the first appellate court carried out its duty to re-hear the case and reconsider materials before the trial judge.

Counsel submitted that all ingredients of the offence of Abuse of office under S. 11 of the Anti-corruption Act were proved beyond reasonable doubt.

Counsel contended that PW1, PW2 and PW3 were all Board Members who denied having authorized and or approved the appellants to execute the license agreement on behalf of the Board. Counsel further argued that had NFA been aware of the fact that the agreement had already been signed, it would not have resolved to have the signing of the agreement deferred.

Counsel argued that appellants were Board Members who attended the meeting of 08.06.2011 but did not inform the rest of

the Board members that the license agreement had already been signed when the matter arose. Counsel urged court to interpret the above silence as a sign that the two knew that they had acted in total disregard of the law and that procedure and their actions were erroneous and unlawful.

Counsel contended that the appellants departed from the lawful procedure for execution of documents as provided by S. 53(2) of the National Forestry and Tree Planting Act, 2003 and the variance in the procedure used to authenticate the license agreement was arbitrary as it was not consistent with known procedure and the law.

Counsel invited court not to venture into the truthfulness of the witnesses that the appellants claim gave inconsistent testimonies while relying on the authorities of **Kifamunte Henry (supra) and Akbar Godi Vs Uganda (Crim. Appeal No. 3 of 2013);** where it was held that a second appellate Court should not interfere with two concurrent facts from their trial Court and the Court of Appeal unless if finds that there was no evidence to support the findings.

Lastly, Counsel submitted that Article 119(5) of the Constitution of Uganda as amended) makes it mandatory for any contract which Government is a party or holds an interest , to be concluded only after advice has been sought and obtained from the Attorney General. Counsel argued that the evidence on record does not display that any advice was sought from the Attorney General.

Counsel accordingly prayed court to dismiss these grounds of appeal.

Court's findings

The above grounds were argued together by both counsel and they were to the effect that the learned justices of Appeal erred in law and fact when they failed to properly consider the evidence, wrongly made a finding that the charge of abuse of office had

been proved beyond reasonable doubt against both appellants, wrongly concluded that the appellants did not seek approval of the Board and that of the Attorney General in signing the License Agreement of 20.05.2011

The offence in issue is Abuse of office contrary to Section 11(1) of the Anti-corruption Act.

The above Section 11(1) reads as follows:-

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 of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

From the wording of the above section, the ingredients of the offence of Abuse of office are:-

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

ANALYSIS:-

1. <u>Accused must have been an employee of a public body or entity in which Government has shares.</u>

The Court of Appeal observed as follows when ascertaining whether the appellants were employees of a public body;

" in our appreciation of the evidence adduced, it was not in contention that at the material time, the 1st appellant was an employee as Executive Director and the second appellant was an employee as Board member of the National Forestry Authority

(NFA). Each of the 1st and 2nd appellants was therefore, in law, a public officer……..”

The evidence of PW1, PW2, PW3, DW1, DW2 and DW3 all point to the fact that both appellants were employees of the National Forest Authority. The first Appellant was employed as the Acting Executive Director of the National forestry Authority while the second Appellant was employed as a Board Member in the same entity. Further, their employment contracts are on record and they indicate that during the time the license agreement was negotiated and signed, both of them were employees of the National Forestry Authority. We therefore agree with the Court of Appeal that this ingredient was proved beyond reasonable doubt.

The accused carried out an arbitrary act.

Section 11(1) requires that for one to be convicted of the offence of Abuse of office, he must have done or directed to be done an arbitrary act. The lower courts labored to define what arbitrary means. It was defined in the case of **Uganda Versus Kazinda ACD CR CS 138 of 2012** as “An action, decision or rule not seemingly to be based on reason, system or plan and at times unfair or break the law.”

The **Oxford Learner’s Dictionary** defines arbitrary to mean “based on random choice or personal whim rather than any reason or system or unstrained and autocratic use of authority.”

The respondent’s claim against the appellant was that the appellants without authority and using their specific positions in employment negotiated and signed an agreement with Midland Holdings limited on behalf of the National forest Authority without approval.

The Court of Appeal held as follows;

“ in our considered view, both the law has been stated and the facts of the case particularly the direction of the minister ,

enjoined the 1st and 2nd appellants to first seek the approval of the NFA Board before executing the 20.05.2011 License Agreement.

As to first seeking the advice of the Attorney, this was constitutional requirement therefore the absence of any manual of procedure on the part of the NFA Board cannot absolve the 1st and 2nd appellants of criminal liability for what they did……"

7 The appellant's actions required approval and in the instant case two kinds of approval which are the Board approval and Attorney General's approval were required before concluding the contract. We shall deal with these approvals one after another;

BOARD APPROVAL

This matter emanated from the minister who referred the
14 executive director of Midland Holdings to the Executive Director NFA (first appellant).

A series of letters were written between the responsible Minister (PW5), the chairperson board of directors, NFA (PW1), and the first appellant concerning the contract between NFA and Midland Holdings. On 24th January, 2011, the Minister wrote a letter
21 (PEX11) to the first appellant authorizing him to proceed with the arrangements of entering into agreement with midland holdings. She however concluded the letter with a directive that the first appellant would conclude the arrangement only after getting approval from the Board. For purposes of clarity, this was the clause in the minister's letter. **"the board should support your action."**

28 This directive placed a duty on the first appellant to seek the Board's approval before engaging, negotiating and signing the agreement.

PW1, PW2 and PW3 were all board members however in their testimonies, they denied having approved of the first appellant's actions.

The first appellant in his testimony claimed to have been authorised by the Board. we are inclined to dismiss that claim because there was no Board minute or any other cogent evidence to that effect. The 1st appellant submitted that all stake-holders were in the know of what was taking place because he communicated to every one of his actions.

It is true that the first appellant communicated with the Minister and the chairperson Board of Directors, however, the case against him was that he without approval, negotiated and signed a license agreement on behalf of NFA. Further communicating to the Minister and the chairperson of the Board did not connote a Board approval. **Section 55 (1)** of the National Forestry and tree planting Act is to the effect that the Board of Directors consist of the Chairperson, the Executive Director and five other members. Therefore by the Minister directing that the Board should support the actions, she meant all of the members of the Board and not just the chairperson.

Further, the first appellant has no power to act independent of the Board when taking decisions pertaining the Authority. The office of the Executive Director of the National Forestry Authority and its functions are provided for in **Section 66 (1), (2) and 3 of the National Forestry and Tree Planting Act No. 8 of 2008.** The section provides that;

> **(1) The executive director is the chief executive officer of the Authority and is responsible for the day to day operations and administration of the Authority.**
>
> **(2) <u>Subject</u> <u>to</u> this Act and to <u>the general supervision and control of the Board,</u> the Executive director is responsible for –**

(a) the implementation of the policies and programmes of the Authority and reporting on them to the Board;

(b) the proper management of the funds and property of the Authority;

(c) the organisation and control of the staff of the Authority;

(d) the development of an operating plan to guide the Authority in achieving its objectives;

(e) the development of management plans for utilization of forestry resources in the central forest reserves.

(f) Co-operation with other lead agencies and organisations in the forestry sector.

(g) The development of an economic, efficient and cost effective internal management structure and;

(h) Performing any other duty that may be assigned to him or her by the Board.

(1) The <u>Executive director is, in performance of his or her functions, answerable to the Board.(emphasis added).</u>

The provisions above clearly stipulate that the Executive Director of NFA does not have authority to act independently but rather he is answerable to the Board in all his dealings regarding the Authority matters. In the same vein we dismiss the submission by

the Appellant that the directive was actually meant for the Board since they were copied. It has been clearly established that the requirement of an approval from the Board is a legal requirement and breach of it is arbitrary.

It was counsel for the appellants' submission that the second appellant did not participate in any procedure throughout the evolution , planning and that he was only called upon by the Board Chairman on the 23rd may 2011 to go and sign the agreement which he diligently did as he had always been instructed by his superior. This argument requires us to examine in detail the second appellant's role in the conclusion and signing of the license agreement.

PW1 in his statement, stated that the first appellant through his secretary called him on phone requesting him to go to the NFA offices to look at some documents to which he replied that he was busy. PW1 instead asked the second appellant to go to the first appellant on his behalf and look at the documents. PW1 maintained the same evidence in his testimony in court.

The second appellant, however, stated in his testimony that he was called by the chairperson who told him that the Midland Holdings issues had been finalized but since he was busy, the former should go on his behalf and look through the documents and sign on the Board's behalf. This being a criminal case, the burden of proof is on the prosecution therefore we shall examine the evidence adduced by the prosecution regarding the second appellant.

The Second Appellant being a Board Member was presumed to know the powers of the Board and the chairperson of the Board regarding matters regarding the Authority. He was sent on behalf of the chairperson to peruse a document which instead of perusing, he exceeded his limits by signing the same without consulting the "Board." Being a board member, he had

knowledge that there was no Board meeting authorizing the Executive Director to even draft the agreement. The only authority that the first appellant had was from the Minister, however, she directed him to first seek approval from the Board.

It was therefore arbitrary for the second appellant to sign on behalf of the Board yet he was fully aware that he had no such powers and that the actions of the first appellant were not approved by the Board. Even if it was a fact that he was sent to look at the midland holdings documents, he knew that he had no powers to purport to sign on behalf of the Board because the Board consisted of a team of individuals who had to sanction such an act.

We accordingly agree with the Court of Appeal that the appellants acted arbitrarily when they signed the license on behalf of NFA without approval from the Board.

Attorney General's approval

The Attorney General's involvement in government contracts is provided for under **Article 119(4) of the constitution of Uganda,** which provides as follows:-

> ***(a)*** **to give legal advice and legal services to the Government on any subject;**
>
> ***(b)*** **to draw and peruse agreements, contracts, treaties, conventions and documents by whatever name called, to which the Government is a party or in respect of which the Government has an interest;**
>
> **(*c*) to represent the Government in courts or any other legal proceedings to which the Government is a party; and**
>
> ***(d)*** **to perform such other functions as may be assigned to him or her by the President or by law.**

Further **Article 119(5) of the Constitution** provides that;

"**Subject to the provisions of this Constitution, no agreement, contract, treaty, convention or document by whatever name called, to which the Government is a party or in respect of which the Government has an interest, shall be concluded without legal advice from the Attorney General, except in such cases and subject to such conditions as Parliament may by law prescribe." (emphasis added)**

The Interpretation Act, Section 29 provides that;

Any power conferred or duty imposed on the Attorney General by or under any Act may be exercised or performed by the Solicitor General—

(1) in any case where the Attorney General is unable to act owing to illness or absence; and

(2) in any case or class of cases where the Attorney General has authorised the Solicitor General to do so.

Therefore the Solicitor General the right-hand officer in the Attorney General's chambers and can act on behalf of the Attorney General.

The Attorney general's involvement is further regulated by **The Constitutional (Exemption of Particular Contracts from Attorney Generals' Legal Advice) Instrument.** These regulations provide for exemptions of certain contracts from the need of the Attorney General's Advice. **Rule 2(1)** of the regulations reads that;

" An agreement or contract involving an amount of fifty million shillings or less is exempted from the application of Article 119 (5) of the Constitution"

The record indicates that the money involved in the contract in the instant case was around eight hundred million shillings which was way above the exempted amount. Therefore an approval from the Attorney general or solicitor general was mandatory.

In the instant case, the evidence of PW1, PW4 and PW5 shows that no advice was obtained from the Attorney General before the license agreement was signed between Midland Holdings LTD and NFA. The Solicitor General in his letter (exhibit P17) also confirmed that the license agreement was null and void, because NFA did not obtain the Attorney General's approval.

The attorney general's advice regarding contracts when a government agency is involved is a constitutional requirement. It cannot be contradicted by any action or Act of Parliament. Our view in line of Article 2(2) of the Constitution is that any action inconsistent with the constitution is null and void to the extent of its inconsistency.

The above position was buttressed by the **Constitutional Petition No 2 of 2006, Nsimbe Holdings Ltd vs Attorney General of Government** when it pronounced that it is unconstitutional of anyone or any authority to proceed to conclude any contract, agreement, treaty, convention or document to which Government is a party or in respect of which the Government has an interest without first seeking the legal advice from the Attorney General.

We accordingly agree with the Court of Appeal that both appellants were guilty of signing the license agreement without approval of the Board and the advice of the Attorney General.

The act was done in abuse of Authority.

The actions by the appellants were done in misuse of the positions they held in the NFA. They were the custodians of regulations and procedure in the Authority but they used their Authority to break the law. Their refusal to seek the necessary

approval clearly amounted to abuse of the authority they possessed.

<u>The act was prejudicial to the employers.</u>

The appellant submitted that since the contract was not complete due to the fact that no consideration was offered, there was no financial loss to the Authority. That this meant that the
7 appellants' actions were not prejudicial to the authority.

Prejudicial per the Oxford Learner's Dictionary **means something harmful or detrimental.** It is immaterial that the contract was stopped before the consideration was paid. This is because the first and second appellant displayed lack of ethics when they went behind the back of every one, to sign the contract at hand. The first appellant in his testimony and the
14 letters on record found out that Midland Holdings was a sham company which wanted to swap nonexistent land with the Authority. He verily reported the discovery but relentlessly pushed for another kind of arrangement between the Authority and the company. In his position as Executive Director, he ought to have been an eye opener before dealing with the company.

Further he should have followed all the procedures and legal
21 requirements before concluding the agreement. Their actions connote a selfish action intended to cause detriment to the Authority. The appellant's actions led the authority into signing a fake agreement that was capable of exposing it to legal actions by the party who had been led to believe that an everlasting agreement had been signed. From the above discussion, the appellants being in positions of Power in the NFA misused their
28 authority when they arbitrarily entered into a contract, which was

prejudicial to the Authority. In the premises we find that the passage quoted from **R.W Hodgin Law of Contract in East Africa at page 113** was out of context.

It is our considered view that the Court of Appeal properly re-evaluated the evidence on record. The Court of Appeal analyzed the letter of the Minister dated 24.01.2011(Exhibit P11) where the Minister directed the 1st appellant that the "board should support your actions." The learned justices rightly came to the conclusion that this in effect meant that the board had to sit and pass a resolution to the effect that the license agreement can be executed for and on behalf of the board. Furthermore, from the minutes of the board meeting held on 08.06.2011(Exhibit P.16), it was clear that the license agreement was not executed at their behest. The fact that the appellants acted contrary to the Minister's directive and the authorization of the board makes them fall foul of the provisions of section 60(2) and section 54(3) of the Act which was clearly prejudicial to the interest of the authority.

The appellants in acting contrary to the Constitutional provisions of seeking guidance from the Attorney general before committing the Authority to a contract was clearly prejudicial to the interests of the Authority because as per the authorities cited earlier, it is mandatory to seek this Government advice before committing the Government or a Public body in which the Government holds an interest.

We do not agree with the appellants' arguments that the appellants were not guilty of any arbitrary act warranting the

conviction for abuse of office. We do not also agree that the prosecution evidence was marred with inconsistencies. Counsel mentioned only the evidence of PW1 regarding the board having manual guidelines contrary to what other witnesses testified. It is trite law that when the inconsistencies and contradictions are grave, unless resolved, the evidence must be rejected.

However if they are minor and do not go to the root of the case, then they are ignorable; See: **Tindigwihura Mbahe Vs Uganda SCCA No.37 of 1987.** The inconsistency is minor in the sense that it was immaterial whether the standard manual procedure of the Board was existent or nonexistent since procedures to be followed in granting licenses were provided for by the law. The trial court and the Court of Appeal carefully analyzed the evidence of PW1, PW2, PW3, PW4 and PW5 and came to the conclusion that the appellant signed licensing agreement involving NFA and Midland Holdings without approval from the Board and the Attorney General. These were two concurring findings of facts. We have not been persuaded that the above two concurring conclusions of the two Courts were wrong. This Court cannot interfere with the two concurring findings of facts unless it is persuaded that this Courts were wrong, See **Kifamunte Henry (supra) and Akbar Godi Vs Uganda (Crim. Appeal No. 3 of 2013) (supra).**

It is our considered view that the ingredients were proved beyond reasonable doubt.

We conclude that the learned justices of the Court of Appeal properly carried out their duty as a 1st appellate court and arrived at the correct conclusion that the prosecution had proved all the ingredients of the offence of Abuse of Office contrary to section 11 of the anti-corruption Act against the appellants beyond reasonable doubt. Thus grounds 1, 2, 3 and 4 are accordingly answered in negative.

Ground 5

The Learned said Coram of the Court of Appeal of Uganda erred in fact and in law when they confirmed the overly severe custodial sentences of 3 years and 2 and half years respectively awarded against the appellants given the circumstances of the case.

Appellant's arguments

Counsel submitted that the sentence of 3 years and 2 ½ years handed to the appellants respectively were too harsh. Counsel argued that although abuse of office would lead to 7 years but still the 3 years were harsh in circumstances where no loss to government was caused. Counsel stated that y they made a simple mistake, a warning would have been sufficient since no loss occurred.

Counsel prayed court to allow the appeal; the conviction, sentence and orders of the court of appeal be quashed and the appellants set free.

In the alternative, counsel prayed that if the conviction is upheld, then a caution to them would suffice as per No. 10 (g) of the Sentencing guidelines Directions.

Respondent's arguments.

Counsel submitted that the lower courts addressed themselves to the provisions of The Constitution sentencing guidelines for Courts of Judicature (Practice) Directions 2013, before considering the appropriate sentence to hand down to the accused. Counsel argued further that the offence in question carries a maximum of 7years as per the third schedule of the guidelines; the starting point is 3 and half years. He stated that there is no extra ordinary issue raised by the appellants that the lower courts left out. He prayed court to uphold the sentence by the lower courts.

Court's findings

A reading of this ground seems to suggest that the appellant is challenging the propriety of sentence imposed by the trial judge and confirmed by the Court of Appeal.

The Court of Appeal observed as follows on the issue of sentencing;

"*we on our part find that the trial judge properly dealt with the sentencing of each appellant. He considered both the mitigating factors and aggravating factors in respect of each appellant before arriving at the sentence that he imposed upon each appellant and he gave reasons for his decision. The trial judge in our considered view , apart from what we have pointed out as relate to advance age properly complied with the Constitution(sentencing guidelines for Courts of Judicature) Practice Directions, 2013, particularly Directions 41,42,43 and 44.*

Sentencing is as a result of the exercise of discretion of the trial judge. We as the appellate court of first instance, can only interfere with the discretion exercised by the trial judge , while sentencing , acted on wrong principle or overlooked a material fact or imposed an illegal sentence imposed is manifestly harsh and /or excessive in the circumstances of the case; See: **Kiwalabye Bernard Vs Uganda CR. Apppeal No. 143 of 2001** *(SC).*

We are not satisfied that the learned trial judge exercised his discretion , while sentencing the appellants, in such a way that was contrary to any of the principles stated above so as to call upon us to interfere with the way he exercised his discretion……."

It is an established principle that an appellate court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in

principle. (*see:* **Kiwalabye Benard V Uganda ; Supreme Court Criminal Appeal No. 143 of 2001).**

The appellants were entrusted with public offices to protect the environment on behalf of the citizens of this country. The power accruing to their positions was given to them by the lawmakers to ensure that they are equipped to protect the forestry reserves in the country. However, they did not hesitate to use the authority they held to illegally enter into an agreement. They willfully disregarded the laws, procedures and protocol when they conveyed rights upon themselves by signing licensing agreement without first obtaining the approval of the Board of Directors as required by law and the approval of the Solicitor General as required by the Constitution.

The lower courts considered that 7 years was the maximum sentence for the offence of abuse of office, but 3 and a half years was the starting range according to the sentencing guidelines . They took into account the fact that no financial loss to government was incurred and other mitigating factors before arriving to the sentencing. The offence carries a maximum of 7 years imprisonment therefore 3 years and 2½ years respectively was reasonable. In light of the sentencing jurisdiction of this court, we find that all principles were followed and that there is no reason for this court to interfere with the sentence.

The appeal is hereby dismissed in totality and the decisions of the High Court and Court of Appeal upheld.

Dated at Kampala this……21st …….day of…June….2018

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Hon. Justice Katureebe, C.J,

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Hon. Justice Kisaakye, JSC

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Hon. Justice Mwangusya, JSC

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Hon. Justice Opio Aweri,JSC

14 **.....**
Hon. Justice Mwondha, JSC