

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

**CORAM: HON. MR. JUSTICE C.M. KATO, JA;
HON. MR. JUSTICE J.P. BERKO, JA;
HON. MR. JUSTICE A. TWINOMUJUNI, JA.**

CRIMINAL APPLICATION NO. 12 OF 1999.

**1. PROF. GASTAVUS SSENKONGA)
2. CHRISTINE NAMUDDU KIGUNDU).....APPLICANTS**

VERSUS

UGANDARESPONDENT

RULING OF THE COURT:

Prof. Gastavus Ssenyonga and Christine Namuddu Kigundu (the applicants) were convicted and sentenced to terms of imprisonment by the Buganda Road Chief Magistrate's Court on two counts of Causing Financial Loss and two counts of Abuse of office. The charges were laid under Sections 258(1) and 83(1) of the Penal Code Act. Their appeal against the said convictions and sentences to the High Court was successful and were acquitted and discharged. The Director of Public Prosecutions successfully appealed to this court against the decision of the High Court. This court reversed the decision of the High Court and affirmed the convictions and sentences passed by the Chief Magistrate's Court. The appellants are dissatisfied with the said decision of this court and intend to appeal to the Supreme Court.

The intending appeal will be a third appeal which emanated from a judgment of a Chief Magistrate's Court in exercise of its original jurisdiction. Section 6(5) of the Judicature Statute, 1996, (Statute No.13 of 1996) requires such an appeal to be lodged to the Supreme Court with a certificate of this court that the matter raises question or questions of law of great public or

general importance. The instant application seeks leave to appeal to the Supreme Court on such certified points of law of great public or general importance.

A draft points of the alleged law of great public or general importance put before us are:

“(a) The standard of strict liability put upon the high level officer of the Civil Servant - Permanent Secretary and Under Secretary - arise great and serious matters of Public and general importance.

(b) Appointments of accounting officers who are not financial experts into positions of financial accountability and strict liability on them cause matters of great public concern and general importance”.

The argument of applicants’ counsel is that the first applicant was, until his conviction and sentence, the Permanent Secretary in the Ministry of Agriculture, Animal Industry and Fisheries. The second applicant was Under Secretary in the same Ministry. The first applicant was the Accounting Officer with the second applicant as his assistant. They were both convicted for causing financial loss and abuse of office. According to counsel there is evidence on record that they might not have gained financially, yet they are suffering for the acts of their junior officers who were experts in finance. In his view the point of law of public importance is whether or not the country should continue to appoint persons as accounting officers who do not have relevant qualifications in financial matters.

Mr. Wamasebu, on behalf of the Director of Public Prosecutions, has submitted that the draft points are not points of law of great public or general importance, but rather they are issues of policy which are not matters for the courts. The fact that the applicants accepted the appointments meant that they knew what they were expected to do. Therefore they cannot complain that they were not qualified for the job and as such should not be held responsible for the offences they were charged with.

We think there is merit in the argument of Mr. Wamasebu. The first applicant was, until his appointment, a professor of Veterinary Science at the Makerere University. He was appointed Permanent Secretary on the 21/12/91. The second applicant is a graduate and was appointed

Under Secretary on 11/1/89. At the time of their appointments the Constitution that was in force was the 1967 with modifications. Article 67 of that Constitution provides:

“67(1) subject to the provisions of clause (2) of article 34 of this Constitution, a department of the Government shall be under the supervision of a Permanent Secretary whose office shall be a public office.

(2) The functions of a Permanent Secretary under this article shall include,

(a) the organisation and operation of the department;

(b) tendering advice to the Minister in respect of the business of the department;

(c) implementation of the policy of the Government of Uganda; and

(d) responsibility for the proper expenditure of public moneys:-

Under the 1967 Constitution Permanent Secretaries were required to ensure proper accountability of public moneys. It is clear that apart from the terms of their employments which were articulated in the proceedings, the applicants had no illusions about the demands of their employments. Therefore at the time the applicants accepted their respective appointments they knew what the Constitution required of them. If they felt they were not qualified to discharge that duty they ought not to have accepted the appointments. Their acceptance of the employment implied that they were competent to discharge the duties expected of them. The charges in respect of which they were tried and convicted arose from their failure to properly account for public moneys entrusted to them: the very purpose for which they were employed.

Their arguments that they were let down by their junior staff has already been considered by the Supreme Court in *Kasim Mpanga v Uganda Criminal Appeal No. 30 of 1994*. The appellants were the managers of the Ministry and not those under them.

Besides, whether or not it is proper to appoint nonqualified persons in financial matters as accounting officers, is not a point of law for consideration by the court. It is a policy matter which should be directed to the Executive.

We therefore do not consider that the draft issues are points of law of considerable public or general importance and of some novelty to warrant certification to the Supreme Court.

The application is consequently refused.

Dated at Kampala this 25th day of November 1999.

C.M. Kato

Justice of Appeal

J.P. Berko

Justice of Appeal

A. Twinomujuni

Justice of Appeal