

5

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA  
(CRIMINAL DIVISION)**

**CRIMINAL APPEAL NO. 33 OF 2023**

**ARISING FROM THE CHIEF MAGISTRATES’ COURT OF BUGANDA ROAD**

10

**CRIMINAL CASE NO. 582 OF 2020**

**NANTEZA AGATI ..... APPELLANT**

**Vs.**

**UGANDA ..... RESPONDENT**

15

**JUDGEMENT**

**BEFORE HON. JUSTICE GADENYA PAUL WOLIMBWA**

**1.0. Introduction**

20 Nanteza Agati, from now on called the Appellant, was charged with obtaining money by false pretence contrary to section 305 of the Penal Code Act. She was also charged with the offence of intermeddling with the property of the deceased contrary to section 11 of the Administrator General Act. HW Owumugisha, a Magistrate Grade I at the Chief Magistrates Court, Buganda Road, convicted the Appellant. She was sentenced to Eighteen (18) months imprisonment for  
25 obtaining money by false pretences and Two (2) months imprisonment for intermeddling with the estate of the deceased. Both sentences were to run concurrently. The Appellant, being aggrieved with the conviction, sentence, and compensatory order, filed this appeal because:

- 30 1. *The Learned Trial Magistrate erred in Law and Fact when she failed to evaluate the evidence as a whole, thereby coming to an erroneous decision;*
2. *The Learned Trial Magistrate erred in Law and Fact when she convicted the Appellant without satisfying herself with all the ingredients of the offense of Obtaining Money by False Pretenses;*

- 35 3. *The Learned Trial Magistrate erred in Law and Fact when she relied on the uncorroborated evidence of the Co-accused, occasioning a miscarriage of justice;*
4. *The Learned Trial Magistrate erred in Law and Fact when she failed to resolve the grave contradictions and inconsistencies, thus occasioning a miscarriage of justice.*
- 40 5. *The Learned Trial Magistrate erred in Law and Fact when she harshly sentenced the accused to 2 months and 18 months imprisonment thus occasioning a miscarriage of justice, and;*
6. *The Learned Trial Magistrate erred in Law and Fact when she ordered the Appellant compensates UGX. Without sufficient evidence, 130,000,000/= (One Hundred and Thirty Million Shillings) to the complainant within.*

I found the grounds of appeal repetitive and therefore reduced them to the following:

- 45 1. Did the trial magistrate correctly evaluate the evidence and come to the right conclusion in convicting the Appellant?
2. Is the sentence imposed on the Appellant harsh, excessive, and unjust?
3. Whether the trial magistrate rightly ordered the Appellant to pay compensation?

## 50 **2.0. Adjudicative Facts**

The prosecution alleged that the Appellant, during August 2017, at KCB bank in Kampala district, with intent to defraud, obtained UGX. 142M from Mbabazi Rebecca by falsely pretending she was selling her four acres of land. The prosecution also alleged that the Appellant and others still at large, without being authorised by the Administrator General, took possession  
55 of the estate of the late Mayanja Andrea Nakiyingi's land comprised on Block 429 Plot 44 situated at Kawuku Bugiri on Entebbe Road, Wakiso.

Rebecca Mbabazi, hereinafter called the complainant, bought four acres of land from the Appellant for UGX200M. According to the evidence, the complainant initially did not deal with  
60 the Appellant when buying the land. She dealt with Muganza Juma, an estate agent who had signed a memorandum of understanding with the Appellant to recover, survey, sub-divide and get titles for land comprised on Block 429 Plot 44 at Kawuku Bugiri on Entebbe Road, out of which the complainant bought the four acres. This huge chunk of land belonged to the estate of

the late Andereya Nakiyenje Mayanja, who passed away, leaving one son called Henry Kyobe.  
65 Upon passing on of the late Andereya Mayanja, the Administrator General obtained letters of  
administration for the estate because Kyobe, the only child of the late Andereya Nakiyenje  
Mayanja, was an imbecile and, therefore, incapable of administering the estate. The Appellant,  
who described herself as the heiress to Kyobe's mother in 2015, obtained a Management Order  
to manage Kyobe's affairs, including looking after him. Having received the Management Order,  
70 the Appellant searched and established that the parents of Kyobe had left land in Bugiri  
registered in the name of the Administrator General.

On 8<sup>th</sup> August 2015, the Appellant signed a Memorandum of Understanding (Exhibit DEXH  
No.1) with Muganza Juma to help her recover land comprised in Busiro Block 429 Plot 50 and  
75 others at Bugiri- Ssabadu, Mengo. Clause 5 of the MOU provided that the second party,  
Muganza, 'shall be entitled to a commission of 2 acres off every 10 of the recovery to the above  
estate.' Muganza agreed to invest his resources to actualise the objectives of the Memorandum of  
Understanding. Following the execution of the MOU in 2017, the complainant was introduced  
to Muganza by Sebuliba when she came looking to buy land in Bugiri. Muganza, who had  
80 instructions from the Appellant, agreed to sell four acres to the complainant at UGX50M per  
acre. An agreement was signed for the purchase of land. The complainant paid UGX 18M as the  
initial payment. Later on, Muganza introduced the complainant to the Appellant. The Appellant  
and the complainant entered into three agreements of sale of land ratifying Muganza's actions. In  
these agreements, the Appellant described herself as the proprietor of the land. However, in the  
85 second agreement, she indicated that the land was still registered in the name of the  
Administrator General but maintained that the land was hers.

After the complainant had paid UGX67M, she halted payment of the balance because the  
certificate of title for the land was not forthcoming. The Appellant then took her to the office of  
90 the Administrator General, where they met Mr Bogere, who allegedly confirmed that although  
the land was registered in the Administrator General's name, the Appellant had the authority to  
deal with it. Convinced that the Appellant had the authority to deal with the land, the  
complainant made additional payment for the land- making a total of UGX.143M, although the  
Appellant disputed UGX 10M, which she says was not covered by the agreement.

95 As the transactions were going on, several things happened. First, the Appellant got letters of  
administration as Kyobe's next friend concerning Andereya Nakiyenje Mayanja's estate. Kyobe  
passed away. The Appellant was then prosecuted for his murder and, I believe, acquitted. Letters  
of Administration granted to the Appellant were revoked, and the Administrator General was  
100 reinstated as the estate administrator. With these complications, the Appellant could not process  
the land and a certificate of title for the complainant. The complainant reported this matter to the  
Police, resulting in charges against the Appellant, Sayuni Godius, Muganza Juma, and Ssebuliba  
Ceaser.

The prosecution called only the complainant to prove the charges against the accused persons.  
105 The Appellant's co-accused were acquitted at the stage of no case to answer. In her defence, the  
Appellant denied obtaining money by false pretence because, as Kyobe's caretaker, she had the  
authority to sell the land. She also asserted that the Administrator General – through Mr Bogere,  
acquiescence to her action or at least tacitly / knew that she was involved in the land on behalf of  
Kyobe. The Appellant called her previous co-accused as her witnesses. They all confirmed the  
110 land transaction between the Appellant and the complainant. The Appellant, also called  
Balikuddembe, the customary heir of the late Kyobe, was a witness. He confirmed that he knew  
about the dealings between the Appellant and Complainant regarding the land. Balikuddembe  
signed a Memorandum of Understanding with the complainant, where he undertook to give her  
the four acres of land she had bought, provided he is granted letters of administration to the  
115 estate of the late Kyobe.

### **3.0. Summary of the judgment in the lower court against the Appellant**

After the case, the Trial Magistrate convicted the Appellant of the two offences. The relevant  
parts of her judgment read as follows:

120

*The beginning point is PEXH. No.2 is an agreement between A1(Nanteza Agati) and the  
complainant Mbabazi Rebecca (as vendor and purchaser, respectively) dated 07<sup>th</sup> August 2017  
for the sale of 04 acres of land at a consideration of UGX. 200,000,000. This was the agreement  
that the complainant acted upon to begin making payments of the monies complained of in the  
125 charge.*

... It is clear from the evidence that at the time of making this agreement in 2017, Nanteza was not a registered proprietor of the land in the description, as the estate was under the administration of the Administrator General. By describing herself as the registered proprietor in this agreement, well knowing that she was not, A1 made a misstatement in law amounting to a  
130 presence for which the complainant entered into the transaction. That misstatement was made by her (A1), yet she was aware that it was an existing fact that she was not the registered proprietor and owner of the land she was selling to the complainant. She knew it was false.

The Trial Magistrate added that the complainant acted on the pretence of making a payment of  
135 UGX 130M for the land.

Regarding the offence of intermeddling with the estate of the deceased, the Trial Magistrate held that:

... the offence is of strict liability. Under section 11 of the Administrator General Act, anybody  
140 who purports to deal with the property of the deceased without letters of administration commits the offence. From the evidence on record, it is clear that when A1 executed the PEX1 and PEXH2, she had no letters of administration to deal with the estate of the deceased Mayanja Andrea Nakiyingi. That authority was only held by the Administrator General. The testimony of A1 herself was clear to the extent that the letters of administration of the estate at the time were  
145 held by the Administrator General.

...Be that as it may, A1, also DW1, informed the court that she possessed a management order in respect of Kyobe Henry, son to the deceased Andereya, which order does not confer upon A1 the authority to dispose of the estate of the deceased. I, therefore, find that by A1 presenting herself  
150 as the registered proprietor of the land in issue and entering into purchase agreements with the complainant PW1, she intermeddled with the estate of Nakiyingi Andereya, as she had no authority to do so. I accordingly convict A1(Nanteza Agati) for the offence of intermeddling with the estate of the deceased contrary to section 11 of the Administrator General's Act.

155

#### 4.0. Representation

The Appellant was represented by M/s Kayanja & Co Advocates, while the Respondent was represented by Ms Apolot Joy Christine, a Senior State Attorney in the Office of the Director of Public Prosecutions.

#### 5.0. Submission of the Parties

Both parties filed written submissions.

##### 5.0.1. Submissions of the Appellants

The Appellant listed six grounds of appeal in her memorandum of appeal. I have perused the grounds of appeal, and it is my considered view that the appeal can satisfactorily be handled under three major grounds of appeal, namely,

1. Did the trial magistrate correctly evaluate the evidence and come to the right conclusion in convicting the Appellant?
2. Is the sentence imposed on the Appellant harsh, excessive, and unjust?
3. Whether the trial magistrate rightly ordered the Appellant to pay compensation?

But for purposes of laying out the Appellant's submissions, I will follow the format used by her counsel.

##### Grounds 1,2, & 4

Counsel for the Appellant submitted that the trial court erred in law when it convicted the appellant of obtaining money by false pretences without satisfying itself of the ingredients of the offence. He submitted that whereas the Trial Magistrate correctly listed the ingredients of the offence of obtaining money by false pretences, she erred in law by holding that the prosecution had established that the Appellant made a false statement or misstatement. He submitted that before an accused person is convicted of obtaining money by false pretences, the prosecution must establish that the accused person made a false statement. He referred me to the case of **R vs Sullivan (1945) 30 Cr, App 132**- where the Court of Appeal held that "*there must be some misstatement which in law amounts to pretences, that is, a misstatement as to the existing fact made by the accused person, that it was false to his knowledge that it acted upon the mind of the person who parted with the money and that the proceeding on the part of the accused person was fraudulent.*" He also referred me to the case of **Nakigude Madina vs. Uganda Criminal Appeal**

**No. 001 of 2017**- where the High Court held that, “*a representation is fraudulent only if made with the contemporaneous intent to defraud.*”

190

Turning to the case under consideration, he submitted that Exhibit PEX2, which the Trial Magistrate relied on to convict the Appellant, was not made contemporaneously with the payments. He said the statement was made much later after PW1 had made payments to Muganza Juma. It is worth noting here that exhibit PEX2 was the sales agreement between the Appellant as a vendor and the complainant as the purchaser of four acres of land, which is the dispute's subject. He submitted further that although the Trial Magistrate held that the appellant described herself as the owner of the suit land, the finding of the court fell short of intent to defraud since the complainant knew that the land was in the name of the Administrator General as indicated in PEX2. There was no intent to defraud.

200

Additionally, counsel submitted that the complainant could not have been misled about the ownership of the land in question because her attorneys must have advised her that the land she was buying was registered in the name of the Administrator General.

Counsel also faulted the Trial Magistrate for overly relying on the evidence of the complainant and DW3 to convict the Appellant, and yet, according to the evidence, the appellant testified that the complainant withdrew money for processing titles and that the complainant invested money for processing the titles. The Appellant also testified that she took the complainant to Bogere, who advised her not to give money to anyone. The trial magistrate was, therefore, wrong to reject the Appellant's evidence without justification instead of relying on the complainant's evidence, which was full of contradictions.

Concerning the offence of intermeddling with a deceased person's estate, counsel submitted that the evidence fell short of establishing intermeddling. He submitted that from the evidence of PW1, DW1 and DW3 on pages 3,4 and 6 of the judgment, the court held that the parties went to the office of the Administrator General, where Mr Bogere, an officer in the department, confirmed to the complainant that she was dealing with the right person. That the Administrator General was the custodian of the land. Mr. Bogere was the agent of the Administrator General,

and he rightly authorised the Appellant to deal with the estate of the late Nakiyenje, for which  
220 the Administrator General was the custodian and registered proprietor of the land. With this  
evidence, the trial magistrate should not have convicted the Appellant of intermeddling with the  
estate of the deceased when she had the full authority of the Administrator General. In wrapping  
this ground, counsel submitted that the Appellant knew the registered proprietor was the  
Administrator General when making Exhibit PEXH2. She, therefore, never made a misstatement  
225 that she was the proprietor of the land.

Regarding the Contradictions, counsel submitted that the complainant's evidence was riddled  
with material contradictions incapable of supporting a conviction of the Appellant. The major  
inconsistencies were as follows: Firstly, the complainant testified that the land belonged to  
230 Muganza's father and that she gave him money to process the titles for the land. Secondly, the  
complainant lied that the land was for the Appellant, yet she knew that the land was registered in  
the name of the Administrator General. Thirdly, the complainant said that she was encouraged to  
pay additional instalments for the land after she and the Appellant had met Mr Bogere, who gave  
her the comfort that she was dealing with the right person concerning the land. Fourthly, the  
235 complainant contradicted herself when she testified that she paid Muganza for the land, yet she  
also claimed that she paid the Appellant. Counsel submitted that with all these major  
contradictions, the Trial Court should not have convicted the Appellant of the two offences.

### **Ground 3**

240 The trial magistrate erred in law when she convicted the appellant based on accomplice evidence  
without warning herself and seeking corroboration.

In particular, counsel submitted that the trial magistrate relied on the evidence of Muganza Juma  
and Sayuni Gordius, who were jointly charged with the appellant, to convict the Appellant  
245 without warning herself of the dangers of relying on uncorroborated accomplice evidence. He  
submitted that the evidence relied on was that the appellant had instructed Muganza to manage  
the estate and that they should get someone to invest in it, especially in processing land titles.  
They stated they had witnessed the drafting of the comprehensive agreement in which the



Appellant acknowledged UGX 100M. The trial magistrate should have warned herself of the  
250 dangers of relying on accomplice evidence before using it to convict the Appellant.

### **Grounds 5 & 6**

The learned trial magistrate erred in law in sentencing the appellant to custodial sentences  
without considering that the appellant was a first offender. The Appellant should have been  
255 given a fine under section 175 of the MCA as a first offender. Secondly, counsel submitted that  
although the Trial Magistrate has discretion to award compensation, she did not provide sound  
reasons for awarding compensation to the complainant. He referred me to the case of Senkungu  
Lutaya vs Uganda, where the court held that section 197(1) of the MCA requires the court to act  
judiciously before making an order of compensation.

260

Counsel explained that the complainant testified that she paid UGX. 98M to Muganza, and  
Muganza testified that he gave money to the Appellant. He said that this was not possible  
because there was no way Muganza could have given all the money to the Appellant when he  
testified that the land belonged to his father and that he was collecting money to process titles. In  
265 conclusion, the learned trial magistrate erred when she ordered the appellant to compensate  
UGX. 130M when the appellant only received UGX. 32M.

### **5.0.2. Submissions of the Respondent**

Counsel for the Respondent argued the grounds of appeal under three broad categories: firstly,  
270 **whether the Trial Magistrate properly evaluated the evidence; secondly, whether the trial  
magistrate erred in law and fact when she failed to resolve the grave contradictions and  
inconsistencies, thus occasioning a miscarriage of justice; and thirdly, whether the sentence  
imposed by the trial magistrate was harsh and excessive.**

275 The Respondent submitted that the prosecution proved all the ingredients of the offence of  
pretences against the Appellant. She submitted that the ingredients of the offence of obtaining  
money by false pretences are the presence of false pretences, the intention to defraud, the  
obtaining from someone anything capable of being stolen, and the participation of the accused  
person. She submitted that the prosecution led sufficient evidence to prove that the Appellant

280 committed the offences of obtaining money by false pretences and intermeddling in the deceased's estate.

She stated that the complainant testified that when she wanted to buy land, she contacted Sebuliba, who introduced her to Muganza Juma, who claimed he had land for sale. He was  
285 selling an acre for UGX.50M. The complainant was later taken to the Administrator General after the Appellant asked for UGX. 35M. Around this time, the Appellant told her that she was caretaking the land on behalf of Henry Kyobe, a son of the late Andereya N Mayanja. The complainant, having been convinced by an official of the Administrator General that she was dealing with the rightful owners of the land, made payments for land and executed agreements of  
290 sale marked as exhibits PE1-4. She submitted that the Appellant never disputed the agreements and received the money. In her testimony, the Appellant stated that the land was registered in the name of the Administrator General and that the Appellant was caretaking the land on behalf of Kyobe. DW2 testified that he was the agent of the Appellant and that upon receiving payment for the land, he would send money to the Appellant. He was also sent to collect money from the  
295 complainant. That the Appellant received UGX. 130M for the land, he testified that despite paying for the land, the complainant never received the land.

DW3 testified that the initial payment of UGX.18M for the land was paid to DW1, and he witnessed it. He was also present when UGX. 80M was paid to the DW1. DW2 also received  
300 UGX. 30M in his presence, which he handed over to the Appellant. He was also present when the agreement for UGX.100M was made for the land between the Appellant and complainant. She submitted that the Appellant sold land she never owned, yet she signed the agreements tendered in as the purported owner of Plot 44 Block 429. The Administrator General owned this land. She submitted that the Appellant used the agreements to lure the complainant to pay UGX  
305 130M, yet she never received the land she had purchased. The evidence presented before the court was adequate to satisfy all the ingredients of obtaining money by false pretences, and therefore, the Trial Magistrate was correct to convict the Appellant. Consequently, grounds 1 to 3 do not have merit.

310 **Ground 4- The trial magistrate erred in law and fact when she failed to resolve the grave contradictions and inconsistencies, thus occasioning a miscarriage of justice.**

She submitted that there were no contradictions in the prosecution's evidence. The evidence of the complainant was clear and coherent. The complainant did not raise the inconsistencies raised  
315 by the Appellant. The complainant's case is that she purchased land from the Appellant through Muganza Juma, whom the appellant used to send to collect the money. The Appellant signed the agreements. The complainant who gave direct evidence never contradicted herself. Her evidence was credible and reliable. She further submitted that if there were any inconsistencies in the prosecution case, then they must be minor. She referred the court to the case of **Uganda vs. Adrien James Peter HCCS 10 of 2010**, which says, "*minor inconsistencies will not result in the evidence of a witness being rejected.*" She concluded this submission on the note that Ground  
320 4 should fail.

Regarding Grounds 5 & 6, she submitted that an appellate court can only interfere with the  
325 sentence if it is either illegal or founded upon a wrong principle due to the court's failure to consider a material fact or if it is harsh and manifestly excessive in the case circumstances. See **Kiwalabye Bernard vs. Uganda SCCA 143 of 2001**. She also cited the case of **Aharikundira v. Uganda [2018] UGSC 49**, where the Supreme Court held that "*there is a high threshold to be met for an appellate court to interfere with the sentence handed down by a trial judge on the  
330 grounds of it being manifestly excessive. Sentencing is not a mechanical process but a matter of judicial discretion; therefore, perfect uniformity is hardly possible. The key word is 'manifestly excessive'. An appellate court will only intervene where the sentence imposed exceeds the permissible range or sentence variation.*"

335 She further submitted that the magistrate considered aggravating and mitigating factors in sentencing the Appellant; the offence is rampant in the area and neighbouring districts, and the Magistrate never imposed the maximum penalty.

Regarding compensation, she submitted that the Trial magistrate correctly applied the principles  
340 of awarding compensation in section 197(1) of the Magistrates Courts Act. Besides, the

Appellant never disputed UGX. 130M lost by the complainant. The prosecution tendered in agreements marked PEX1-4, which the Appellant executed with the complainant. The appellant did not dispute them. So, the order of compensation was not harsh. It was appropriate. In conclusion, counsel for the Respondent asked this court to dismiss the appeal.

345

## **6.0.Resolution of the Appeal**

### **6.0.1. The Duty of the First Appellate Court**

This Court is aware that it is the first appellate court and must, therefore, evaluate all the evidence on the court record, bearing in mind that it did not see the demeanour of the witnesses.

350

In Kifamunte Henry v Uganda (Criminal Appeal No. 10 of 1997) [1998] UGSC 20 (15 May 1998), the Supreme Court guided that:

*The first appellate court has a 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 judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour, the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However, there may be other circumstances quite apart from manner and demeanor, which may show whether a statement is credible or not which may warrant a court in differing from the Judge even on a question of fact turning on the credibility of witnesses which the appellate Court has not seen. See Pandya vs. R. (1957) E.A. 336 and Okeno vs. Republic (1972) E.A. 32 Charles B. Bitwire ys Uganda - Supreme Court Criminal Appeal No. 23 of 1985 at page 5.*

360

365

*Furthermore, even where a trial Court has erred, the appellate Court will interfere where the error has occasioned a miscarriage of justice: See S. 331(I) of the Criminal Procedure Act.' It does not seem to us that except in the clearest of cases, we are required to reevaluate the evidence like is a first appellate Court save in Constitutional cases. On the second appeal, it is sufficient to decide whether the first appellate Court, on approaching its task, applied, or failed*

370

to apply such principles: See *P.R. Pandya vs. R. (1957) E.A. (supra) Kairu vs. Uganda (1978) F.I.C.B. 123.*

In line with the Supreme Court's decision above, the evidence from the Trial Court shall be re-evaluated, bearing in mind that the Appellate Court never had the chance to observe the  
375 demeanour of the witnesses.

### **6.0.2. The Law on Evaluation of Evidence**

In **Chour Mohammed v Uganda (Criminal Appeal No. 0123 of 2015) [2015] UGHCCRD 1 (15 May 2015)**, Justice Kwesiga observed that:

380 *In my view, evaluation of evidence is examination of the evidence of both the prosecution and defense which includes documental, oral testimony and where available circumstantial evidence in the case as a whole that helps to prove or establish a fact to the satisfaction of the court that the fact has been proved beyond reasonable doubt in case of a criminal trial or on a balance of probabilities in case of civil proceedings.*

385 *This process calls for examination of evidence of prosecution and defense on the same point together and where there is a conflict in the evidence produced to prove the same point, the trial court should explain why one has been preferred against the other or what impact the evidence in rebuttal has had on the first evidence and what conclusion necessarily arises from that mixture. The decision derived from such mixture or evaluation must logically flow from the  
390 evaluation and not farfetched lest it becomes erroneous conclusion.*

#### **He also added that:**

*The Accused persons can only be convicted on the strength of the prosecution evidence and not on the weakness of the defense evidence or lack of it because the burden of proof is always upon the state or the prosecution.*

395 I respectfully agree with Justice Kwesiga's decision on the evaluation of evidence and will apply his observations to this case.

400

### **6.0.3. The Revised/Merged Appeal Grounds**

**Ground 1: Did the trial magistrate correctly evaluate the evidence and come to the right conclusion in convicting the Defendant?**

405

The crux of the matter before the court is whether the Appellant was rightly convicted of the offences of obtaining money by false pretence and intermeddling with the property of the deceased.

I will start with the offense of inter meddling with the property of the deceased before dealing  
410 with the Offense of Obtaining Money by false pretenses.

#### **1. The Offense of Intermeddling**

Section 11 of the Administrator General Act provides as follows:

415 *When a person dies, whether within or without Uganda, leaving property within Uganda, any person who, without being duly authorized by law or without the authority of the Administrator General or an agent, takes possession of, causes to be moved or otherwise intermeddles with any such property, except insofar as may be urgently necessary for the preservation of the property, or unlawfully refuses or neglects to deliver any such property to the Administrator General or*  
420 *his or her agent when called upon so to do, commits an offence; and any person taking any action in regard to any such property for the preservation of the property shall forthwith report particulars of the property and of the steps taken to the agent, and if that person fails so to report he or she commits an offence.*

*(2) Any person who commits an offence under this section is liable on conviction to*  
425 *imprisonment for a period not exceeding three months or to a fine not exceeding two hundred shillings or to both, but without prejudice to any civil liabilities he or she may have incurred.*

The ingredients of the offence of intermeddling in the deceased's estate can be committed in two instances. Firstly, where the accused directly interferes with the estate and, secondly, where the accused unlawfully refuses or neglects to deliver the property to the Administrator General or his agent when ordered. For this judgment, I will address the first limb of the offence of intermeddling in the deceased's estate. The ingredients of the offence are:

- a) Presence of an estate of a deceased person with property.
- b) Interference with the estate by either taking possession, moving, or dealing with an estate in a manner inconsistent with the estate's rights, except for purposely of urgently preserving the property for the benefit of the estate. In **Namirimu v. Mulondo and Others [2014] UGHCFD 48**, Bamugemeire (J), as she then was held that, *“intermeddling includes assuming authority to administer the estate of another when a person does not have authority.”*
- c) The person interfering with the estate must not have lawful authority or authorisation from the Administrator General to deal with the estate.
- d) The accused person must be responsible.

Counsel for the Appellant submitted that the Appellant never intermeddled with the estates of the late Andereya Mayanja because she had the authorisation of Mr Bogere, an officer in the Office of the Administrator General, to deal with the estate. On the other hand, the Respondent supported the decision of the Trial Court, which found that the Appellant had intermeddled with the estate of the late Andereya Mayanja by selling a portion to the complainant. I have perused the record and noted that the prosecution did not call any witness from the estate of the late Andereya Mayanja to testify to the estate's existence or interference with it. The Administrator General, who was reported to be the administrator of the estate, was also not called to testify. The complainant's testimony was not helpful to the prosecution in this regard. She was only and rightly interested in recovering money from the Appellant for the failed consideration in the botched land transaction. Yet, it is a principle of criminal law that an accused should only be convicted on the strength of the prosecution case.

An accused person never bears the burden of assisting the prosecution in making a case against them. In this case, the prosecution presented only the evidence of the complainant who purchased land from the estate of the late Andereya K Mayanja but never called evidence from

either the Administrator General or a beneficiary of the estate complaining about the activities of  
460 the Appellant in the estate. In the absence of a complainant from the estate against the Appellant,  
the Trial Magistrate should not have convicted the Appellant of the offence of intermeddling in  
the estate of the deceased. The Appellant is, therefore, acquitted of the offense of intermeddling  
contrary to section 11 of the Administrator General's Act.

## 465       **2. The Offense of Obtaining Money by False Pretenses**

Section 305 of the Penal Code Act provides that:

*Any person who by any false pretence, and with intent to defraud, obtains from any  
other person anything capable of being stolen, or induces any other person to deliver to  
470 any person anything capable of being stolen, commits a felony and is liable to imprisonment for  
five years.*

Section 304 of the Penal Code Act defines a false representation as:

475 *Any representation made by words, writing or conduct of a matter of fact, either past or present,  
which representation is false in fact and which the person making it knows to be false or does not  
believe to be true is a false pretence.*

In **Kavuma Davis vs. Uganda Criminal Appeal No. 38 of 2021 (High Court – Kampala)**, the  
High Court held that:

480 *For court to convict of an accused of the offence of obtaining money by false presence the  
following elements must be proved beyond reasonable doubt:-*

- 1. Obtaining or taking away something capable of being stolen*
- 2. Taking must be by false pretence*
- 3. There must be intent to defraud*
- 485 *4. That the accused person participated in the commission of the offense.*



In Nakigude Madina v Uganda (Criminal Appeal No. 64 of 2007) [2008] UGHC 8 (2 September 2008), the High Court discussed what the prosecution must do in a charge of obtaining money by false pretense. Justice Lugayizi observed that “*for an accused to be convicted of the offence of obtaining money by false pretence, the prosecution must prove beyond*  
490 *reasonable doubt that the accused made a statement, well knowing that it was not true.*”

In Uganda v. Okecho (Crim. Rev. No. 203 of 1976), Allen (CJ) held that “*for the offence of false pretence ( to succeed ), the accused must initiate the transaction.*”

In summary, the ingredients of the offence of obtaining money by false pretence are:

- a) There was a false representation of a material fact, past or present.
- 495 b) The person who made the representation knew that it was false.
- c) The representation was made to defraud the other person.
- d) The victim relied on the presentation.
- e) The victim passed ownership of their property to the statement maker.
- f) The accused person is responsible.

500 Before discussing the ingredients of the Offense of Obtaining Money by False Pretenses, as outlined above, I will first deal with the Appellant’s contention that the Learned Trial Magistrate erred when she relied on the uncorroborated evidence of some co-accused persons to convict the Appellant.

505 The complainant testified that she bought four acres of land at UGX—200 M from the Appellant. The land was part of the estate of the late Andereya N Mayanja. The complainant testified that on the 23<sup>rd</sup> of August 2017, she met Muganza, who offered to sell the land to her. She entered into a sales agreement with Muganza for the land at UGX. 200M. She paid UGX.18M as the first instalment for the land. An agreement was entered into, which was received in evidence as  
510 exhibit P1. It is worth noting that Muganza was acting on behalf of the Appellant vide a memorandum of understanding in which the Appellant had assigned Muganza the responsibility of managing the land in question. This is the very reason Muganza took and introduced the complainant to the Appellant after the sale. Besides, in exhibit P1, the Appellant was indicated as

the owner of the land. Muganza, having introduced the complainant to the Appellant as the  
515 'owner of the land/ vendor', paved the way for the Appellant to enter into a formal agreement to  
sell land, herein marked as Exhibit PE2.

Exhibit P2 is a formal agreement between the Appellant as the vendor and the complainant as the  
purchaser of the land. The opening preamble provided that the vendor is the registered proprietor  
of Plot No.44, Block 429. However, in brackets, it indicated that '*though still in the names of the*  
520 *Administrator General*'. Clause 2 of this agreement stated that the vendor had received  
UGX.100M as payment for the land. In clause 3, the vendor undertook to transfer the land into  
the complainant's name after payment of the purchase price. The Appellant signed the agreement  
as vendor and the complainant as purchaser. It was witnessed by Bukenya Livingstone, Muganza  
Juma, and Sayuni Godius, among others.

525

Although Counsel for the Appellant argued that the Appellant never described herself in this  
agreement as the proprietor of the land, a literal interpretation and reading of exhibit PE2 shows  
that the Appellant described herself as the owner of the land and, in this regard, acknowledged  
receipt of UGX.100M being part payment for the land. At no time did the Appellant show to the  
530 complainant that she was carrying out the transaction as an agent or on behalf of the  
Administrator General, who was the registered proprietor of the land. She was the alfa and  
omega of the land and could, therefore, do anything with it. No wonder, in cross-examination,  
the Appellant admitted to having sold the land. She said that as a holder of Management letters  
for the late Kyobe, she had the authority to deal with the land, including selling it.

535

Balikudembe (DW3), the customary heir to the late Kyobe, in a Memorandum of Understanding  
signed with the Complainant, equally confirmed that the Appellant had sold the land to the  
Complainant. Therefore, counsel for the Appellant is wrong when he asserts that the Appellant  
never claimed that she owned the land. All the defence witnesses corroborated the complainant's  
540 testimony.

Counsel for the Appellant criticised the Trial Magistrate for relying on accomplice evidence to  
convict the Appellant without warning herself of the requirement not to use accomplice evidence  
without corroboration. The criticism of counsel stemmed from the fact that some of the co-

545 accused of the Appellant, who was found not to have a case to answer, testified as defence witnesses and gave evidence that confirmed that the Appellant sold land to the complainant.

An accomplice is defined as “a person who knowingly, voluntarily, or intentionally gives assistance to another in (or, in some cases, fails to prevent another from) the commission of the  
550 crime.” An accomplice is criminally liable to the same extent as the principal. See: law.cornell.edu

The Uganda Criminal Justice Bench Book defines an accomplice as ‘ a person who is in any way involved in the commission of a crime, whether as a principal or secondary offender or as an accessory.’ See: page 182.

555

Section 132 of the Evidence Act provides that “An accomplice shall be a competent witness against an accused person; a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.”

560 An accomplice is a competent witness and a conviction is not fatal simply because such evidence has not been corroborated. In short, accomplice evidence is good evidence, but good judicial practice strongly suggests that such evidence must be corroborated before a court convicts upon such evidence. In **Rwalinda vs, Uganda, Criminal Appeal No.113 of 2012 [2014] UGCA 73**, the Court of Appeal observed that:

565

*The position of the law as regards evidence of an accomplice and the requirement for its corroboration has been discussed in numerous decisions of the Supreme Court and of this Court, and it is well settled.*

570 *All the authorities appear to stem from the case of **R vs. Baskerville [1916] 2 KB 658** , which is the fullest, clearest and most authoritative position of the law in this regard. It is unquestionably the locus classicus of the law of an accomplice’s evidence.*

*The brief facts of that case were that, Baskerville was charged of an offence of  
575 committing “gross indecency” with two boys and convicted. The two boys testified against him.*

The only corroboration of their statement was to be found in a letter sent by the accused to one of the boys enclosing a note of ten shillings. The words of the letter were capable of innocent construction. The court of appeal held that the letter was sufficient corroboration and the conviction was upheld.

580

In their Judgment the learned justice of appeal stated as follows.

585

***“The evidence of an accomplice must be confirmed not only to the circumstances of the crime but also to the identity of the prisoner.....(It) does not mean that there must be confirmation of all circumstances of the crime, as we have already stated, that is not necessary. It is sufficient if there is confirmation as to material circumstances of the crime and the identity of the accused in relation to the crime.”***

Further on in that Judgment, the learned justices of appeal went on to state that;-

590

***“The corroboration need not be direct evidence that the accused committed the crime, it is sufficient if it is merely circumstantial evidence of his connection to the crime.***

595

I agree with the statement of the law that accomplice evidence requires corroboration. However, in this case, the defence witnesses, whom the Appellant called to support her defence, are not accomplices. Although the witnesses, Muganza, Sebuliba and Sayuni Godius, were initially charged with the Appellant, they were acquitted at the stage of no case to answer and, therefore, ceased to be co-accused. The Appellant then, of her own volition, called them as her witnesses. The witnesses testified for the appellant's benefit and had nothing to hide to save themselves from conviction since they were not facing any charges. Therefore, the Appellant cannot call her witnesses as accomplices. Perhaps she wanted to call them hostile witnesses. But even if the witnesses were accomplices, Exhibits PE 1 to 4 corroborated their testimony, and therefore, it would have been safe to rely on their evidence. The Appellant's argument that her witnesses were accomplices lacks merit.

600

#### **605 Did the Appellant make a False Representation of a Material Fact?**

Section 304 of the Penal Code Act defines a false representation as:

*Any representation made by words, writing or conduct of a matter of fact, either past or present, which representation is false in fact and which the person making it knows to be false or does not believe to be true is a false pretence.*

The Appellant submitted that she never made the representation that she was the proprietor of the land contemporaneously. This cannot be true. The Appellant engaged Muganza Juma as her agent to secure and recover the land belonging to the estate of the late Andereya Nakiriya Mayanja, which she was now claiming on behalf of Kyobe (now) deceased. The MOU exhibited as DEXH1, which the Appellant signed with Muganza, authorised Mugangaza, an estate agent, to actualise the development of an estate on this land, which included finding resources to develop the land by getting buyers for the land. Under the MOU, Muganza secured the complainant as a buyer of the land for the benefit of the Appellant. I note that the complainant said Muganza initially claimed that the land belonged to his father, who had given him authority to sell part of it to process titles for the entire land. However, Muganza came clean of this lie when, in obedience to the MOU, introduced the complainant to the Appellant as proprietor of the land, and the two signed a proper sale agreement (EXP2). Therefore, whatever work Muganza did in getting the complainant to buy the land, he did it as an agent of the Appellant, which she cannot deny. Furthermore, after Muganza had introduced the complainant to the Appellant, the latter ratified his actions and took charge of the transaction – meaning that this was her transaction right from the beginning. The Appellant, therefore, made a representation that she was the proprietor of the land, whereas she was not. Consequently, there is no merit in the appellant’s argument that the statement was not made contemporaneously.

**Did the Appellant know the Statement was false and make it with the intent to defraud the Complainant?**

The case for the Appellant is that the complainant knew that the land she was buying belonged to or was registered in the name of the Administrator General. In addition, the complainant was represented by counsel, who should have advised her about the valid owner of the land. The Respondent argued otherwise that the Appellant held out as the owner of the land and was never the agent of the Administrator General. I have perused the evidence on the record. In her words,

the Appellant admitted to having sold the land as a holder of Management Letters for the late Kyobe. She held out to the whole world that she owned the land. With this in mind, she contracted Muganza to assist her in recovering the land and, in consideration thereof, offered to give him two acres for every ten acres of land recovered. Only an owner could do this. Was this land the property of the Appellant? No! The land belonged to the estate of the late Mayanja. At the time of sale to the complainant, it was registered in the name of the Administrator General, who had letters of administration for the estate. The land, though for the estate's beneficiaries of the late Mayanja, who included Kyobe, had not yet been transferred to the names of Kyobe, whose names the Appellant had obtained a management Order.

A statement is said to be made with intent to defraud if made without due regard to its truthfulness. The Appellant made a representation that she owned the land in question when she knew that she was neither the owner nor the beneficiary in the estate of the late Andereya N Mayanja. She made this statement to defraud the unsuspecting public that she was the registered proprietor because she could not lawfully sell land that she did not own or had the authority to deal with. It was immaterial that she was somewhat expecting to administer this land if it was transferred into her name as the administrator for Kyobe. It was also immaterial that she had dealings with one Bogere in the Administrator General's Office. None of these engagements or liaisons gave her authority or a proprietary interest in the land. Consequently, the trial Magistrate was correct when she found that the Appellant made a false statement with the intention of defrauding the complainant.

#### **660 Did the Complainant Act on the Appellant's Statement?**

The complainant believed that the Appellant owned the land and had the authority to sell it. She entered a sales agreement and paid the Appellant and her agent UGX 142M for the land. The complainant would not have paid or parted with her money if she hadn't been convinced by the Appellant's assertion that she owned the land.

#### **Did the Complainant Part with her Property?**

Yes, the complainant parted with UGX 142M, which the Appellant took and has never provided  
670 consideration by giving her the land she paid for.

In conclusion, the Appellant was rightly convicted of obtaining money by False Pretenses  
contrary to section 305 of the Penal Code Act.

### **Summary of Findings for Ground 1**

- 675
1. In the absence of a complainant from the estate against the Appellant, the Trial Magistrate should not have convicted the Appellant of the offence of intermeddling in the estate of the deceased. The Appellant is, therefore, acquitted of the offence of intermeddling contrary to section 11 of the Administrator General’s Act.
  - 680 2. “Co-accused persons” who were acquitted at the stage of no case to answer cease to be co-accused and are no longer considered accomplices when the defence calls them witnesses.
  3. The prosecution proved all the elements of the Offense of Obtaining Money by False Pretense to the required standard.

### **685 Ground 2: Is the sentence imposed on the Appellant harsh, excessive, and unjust?**

The Appellant submitted that she was given a harsh and excessive sentence when she was sentenced to a custodial sentence as a first offender. She should have an option to pay a fine. The appellant criticised the trial magistrate for ordering her to compensate UGX. 132M, yet she  
690 only received UGX. 32M. The Respondent supported the sentence of the Trial Magistrate. In imposing a custodial sentence, the Trial Magistrate took cognisance of both the aggravating and mitigating factors and noted that the offence of obtaining money by false pretence was rampant in the region and, therefore, required a deterrent sentence. She also referred to the Sentencing Guidelines in arriving at an appropriate sentence. Sentencing is at the discretion of the  
695 sentencing officer, and it can only be interfered with on appeal in exceptional circumstances.

In **Aharikundira v. Uganda [2018] UGSC 49**, the Supreme Court held, “*There is a high threshold to be met for an appellate court to intervene with the sentence handed down by a trial judge on grounds of it being manifestly excessive. Sentencing is not a mechanical process but a*

700 *matter of judicial discretion; therefore, perfect uniformity is hardly possible. The key word*  
*is “manifestly excessive”. An appellate court will only intervene where the sentence imposed*  
*exceeds the permissible range or sentence variation.”*

I have reviewed the trial magistrate's decision. She sentenced the Appellant to eighteen months  
705 imprisonment for an offence that attracts a maximum sentence of five years imprisonment. She  
considered both the aggravating and mitigating factors in arriving at the sentence. She followed  
the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions 2013. Part  
VII of the Guidelines provides a starting point of two and a half years for convicts of obtaining  
money by false pretences. The Appellant received eighteen months' imprisonment, less than the  
710 starting sentence of thirty months. The sentence imposed by the Trial Magistrate was neither too  
low nor excessive. Perhaps she would have given the Appellant a more lenient sentence had it  
not been that she meticulously planned the offence and obtained large sums of money from the  
complainant and the prevalence of fraud in land transactions in the area. In the absence of any  
reasons that show that the trial magistrate acted on a wrong principle or that she departed from  
715 sentencing principles or imposed a sentence that is manifestly excessive or unjust, there is no  
justifiable reason for me to interfere with her discretion and sentence.

**Ground 3: Did the trial magistrate rightly order the Appellant to pay compensation?**

The Appellant was aggrieved by the compensation order because she did not receive all the  
720 money in the land transaction. The Respondent supported the trial magistrate's decision ordering  
the Appellant to compensate the complainant. Section 197 of the MCA provides as follows:

*(1)When any accused person is convicted by a magistrate's court of any offence and it appears*  
*from the evidence that some other person, whether or not he or she is the prosecutor or a witness*  
725 *in the case, has suffered material loss or personal injury in consequence of the offence*  
*committed and that substantial compensation is, in the opinion of the court, recoverable by that*  
*person by civil suit, the court may, in its discretion and in addition to any other lawful*  
*punishment, order the convicted person to pay to that other person such compensation as*  
*the court deems fair and reasonable.(2)When any person is convicted of any offence under*  
730 *Chapters XXV to XXX, both inclusive, of the Penal Code Act, the power conferred by subsection*



*(1) shall be deemed to include a power to award compensation to any bona fide purchaser of any property in relation to which the offence was committed for the loss of that property if the property is restored to the possession of the person entitled to it.(3)Any order for compensation under this section shall be subject to appeal, and no payment of compensation shall be made*  
735 *before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the determination of the appeal.(4)At the time of awarding any compensation in any subsequent civil suit relating to the same matter, the court hearing the civil suit shall take into account any sum paid or recovered as compensation under this section.*

740 Compensation in a criminal trial may be awarded if there is sufficient evidence to prove that the complainant suffered material loss and that it is a case where the complainant could recover damages in a civil trial. The Trial Magistrate ordered the Appellant to compensate the complainant because she sold her land that did not belong to her and yet received UGX.132M. The Appellant received UGX 132M directly or through Muganza, who was acting as her agent.  
745 She signed the land sale agreement, acknowledging receipt of the money. Additionally, Balikuddembe, the customary heir of Kyobe, admitted that the Appellant had sold the land to the complainant and promised to give the latter four acres if he got letters of administration to late Kyobe's estate. Therefore, there was abundant evidence on the record that the Appellant received money from the complainant and failed to give her four acres of land. Under **section**  
750 **197 of the Magistrate Courts Act**, the complainant is entitled to compensation. Accordingly, I find no reason to disturb the compensation order made by the trial Magistrate.

## **7.0. Decision**

755 The Appeal is allowed in part and dismissed in part with the following orders:

- 1) The Appellant is acquitted of the offence of intermeddling with the estate of the deceased contrary to section 11 of the Administrator Generals Act, and the sentence imposed therein is quashed.
- 2) The conviction and sentence of the Appellant for the offence of obtaining money by False Pretences contrary to section 305 of the Penal Code Act is confirmed.  
760
- 3) The order of compensation is confirmed.

It is so ordered.



765

Gadenya Paul Wolimbwa

**JUDGE**

15<sup>th</sup> February 2024

I request the Deputy Registrar to deliver the judgment on 19<sup>th</sup> February 2024.

770



Gadenya Paul Wolimbwa

**JUDGE**

775 15<sup>th</sup> February 2024

Judgment read in open court in the presence of the parties, Mr. Mbekayiza Robert, holding brief for Mr. Mugabe Herbert for the Appellant and Mr. Edward Court Clerk.

780

Festo Nsenga

**Deputy Registrar**

19<sup>th</sup> February 2024

785