

Damian Akankwasa v Uganda (Const.Petition No.4 Of 2011) [2011] UGCC 8
(21 April 2011)

Subject: whether the applicant/ petitioner can be charged under the Anti-Corruption Act for offences allegedly committed before the enactment of the Anti-Corruption Act?

The applicant/ petitioner the Executive Director of National Forest Authority, was charged with an offence of Causing Financial loss contrary to the provisions of section 20 of the Anti-Corruption Act. For offences committed between 13/08/07 and 29/02/08 before the enactment of the Anti-Corruption Act. He unlawfully allocated 100,000 cubic metres of round wood at Katugo Central Forest Reserve to Nile Plywood (U) Ltd for harvest at a rate of Shs 62,500/= per cubic meter instead of the set price of Shs 82,500/= per cubic meter knowing or with reason to believe that such action would cause financial loss of Ug. Shillings two billion [2,000,000,000/=] to National Forest Authority. The petitioner contended that charging the applicant/ petitioner under section 20(1) of the Anti-Corruption Act No.6/09 for offences allegedly committed between August 2007 and February 2009 before the enactment of the Anti-Corruption Act and before the creation of the offence contravene Articles 28(7) and (12) of the Constitution.

DECISION

The requirement of Article 28(7) as we understand it is that for a person to be charged with a criminal offence under any legislation the facts or omissions allegedly committed must have constituted a criminal offence which is defined under the law and there has to be a sentence prescribed for it. The test to be applied is whether the acts or omissions allegedly committed by an accused person constituted a criminal offence at the time they were committed. The acts which the applicant is alleged to have committed and which it is alleged caused financial loss to National Forest Authority occurred between 13th August 2007 and 29th February 2008. During this period there was a criminal offence of causing financial loss defined under section 269 of the Penal Code Act which has been repealed by the Anti-Corruption Act. There was also a punishment prescribed for it.

Section 20 of the Anti- Corruption Act in court's view is a re-enactment of section 269 of the Penal Code Act. The only difference between the two sections is the sentence in the latter Act was enhanced though it is not material. The facts constituting the offence meet the criteria of Article 28(7). Causing financial loss was a criminal offence between 13th August 2007 and 29th February 2008. The applicant/petitioner was properly charged