

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT AT THE ANTI CORRUPTION DIVISION**

**SESSION CASE NO. HCT-AC/CO NO.004/2016**

**UGANDA ::::::::::::::::::::::::::::::PROSECUTION (IGG)**

**VERSUS**

**GEOFFREY KAZINDA:::::::::::::::::::::::::::: ACCUSED**

**JUDGMENT**

**BEFORE**

**HON. LADY JUSTICE MARGARET TIBULYA**

The accused stands charged with three counts of **illicit enrichment**. The gravamen of the state case is that the accused's lifestyle and value of land and vehicles attributed to him is disproportionate to his income and past known sources of income or assets.

### **Back ground**

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**Mr. Geoffrey Kazinda** (a leader under the Leadership Code Act 2002) made declarations and submitted Declaration forms for the years 2005, 2007, 2009 and 2011 to the IGG. In the process of verifying his income and assets, **Pw15 (Victor Amos Acidri)** retrieved the accused's appointment letters from the Accountant General's office, which indicated that;

1. **Mr. Kazinda** was appointed a Senior Accountant on 29<sup>th</sup>/12/99 and his salary was U3 scale, ranging from **4,403,976/= to 4,645,932/= p.a.** (exhibit **P.18(a)**).
2. He was appointed Principle Accountant on 30<sup>th</sup> January 2006 and his salary was U2 scale, ranging from **11,372,863/= to 13,545,122/= p.a.** The starting salary was indicated as **11,372,863/= p.a** (exhibit **P18 (b)**).
3. **a).** a pay change report entered on 11/5/2007 indicated taxable arrears of **2,884,479/=**.  
**b).** a pay change report dated 13/3/2007 indicated that the accused as Principal Accountant had a basic salary of **961,492/=** per month and taxable arrears of **5,768,952/=(exhibit P.19(a))**.  
**c).** there was a pay change report in accused's name with a personal number of 030503, which number appears on all three pay change forms, (exhibit **P.19 (b)**).

Copies of the Declaration forms submitted by the accused for March 2005, March 2007, March 2009 and March 2011 (**Exhibits P.20 (a), (b), (c), (d)**) indicate that;

- ✦ For 2005 as a Senior Accountant the accused declared a salary of **6.5m/= p.a**, allowances of **2m/= p.a** and no other sources of income.
- ✦ For 2007 as a Principle accountant he declared a salary of **9m/=p.a** with no other sources of income.
- ✦ For 2009 as Principle Accountant he declared a salary of **11m/=p.a** and allowances of **6m/= p.a**.
- ✦ For 2011, as **Principal Accountant** he declared a salary of **11,372,863m/= p.a** and allowances of **4,320,000/= p.a**, and indicated that he had no other sources of income.

Upon analyzing the Declaration forms and appointment letters, and after confirming the payment of salary with Bank of Africa Equatorial branch, **Pw15 (Victor Acidri)** established that the accused earned a total income (*salary and allowances*) of **83,754,655/= (eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)** for the period **2009 to June 2012**.

In **count 1**, it is alleged that between 2010 and June 2012, being the Principal Accountant in the Office of the Prime Minister, he maintained a standard of living above that which was commensurate with his income or past known sources of income or assets whose sum for the duration 2009 to 2012 was established by the Inspectorate of Government to be **83,754,655/=(eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)**, when he rented and occupied Suite No 105 Constellation Suites, Sheraton Hotel Kampala for a period of ten (10) months at a total cost of **Ugx210,364,011/= (Two hundred and ten million, three hundred and sixty four thousand, and eleven shillings)**.




### **Burden and standard of proof.**

The state bears the burden of proving the allegations beyond reasonable doubt. The accused is not under any obligation to prove his innocence, and where any doubt exists it should be resolved in his favor (**Kiraga Vs Uganda (1976) HCB 305**).

**Section 31** of the Anti -corruption Act, 2009 establishes a presumption of liability upon proof of excessive wealth by the prosecution.

### **The issues for courts determination are;**

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1. Whether between 2010 and June 2012 the accused rented and occupied Suite No 105 Constellation Suites for ten (10) months at a total cost of **Ugx210,364,011/= (Two hundred and ten million, three hundred and sixty four thousand, and eleven shillings)**,
  2. Whether the accused maintained a standard of living above that which was commensurate with his income or past known sources of income or assets whose sum for the duration 2009 to 2012 was **83,754,655/=(eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)**.

**Whether between 2010 and June 2012 the accused rented and occupied Suite No 105 Constellation Suites Ten (10) months at a total cost of Ugx 210,364,011/= (Two hundred and ten million, three hundred and sixty four thousand, and eleven shillings).**

This issue has two sub-issues;

**a).whether he in fact occupied the suites,**



b).whether he rented the Suites Ten (10) months at a total cost of Ugx 210,364,011/= (Two hundred and ten million, three hundred and sixty four thousand, and eleven shillings).

**Whether he occupied the suites.**

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6/11/2020

The accused denies that he ever occupied the Suites in issue. The state assertion that he occupied **Suite 105 Constellation Suites** is premised on the evidence of a **house keeper, Stella Aloba (Pw6)** that she knew **Mr. Geoffrey Kazinda** in 2011/2012 as a client of Sheraton hotel. She was positive that he checked in apartment **120** for more than one month but later went into apartment **105**. After some time apartment **105** remained vacant but under his name. Later a small boy and a maid (the accused's relative) moved in. At all material times in 2011 and 2012 (*ie, when the accused was using the apartment as his office, when it was vacant and when a small boy and maid occupied it*), the apartment was under the accused's names. The boy could not speak and the girl wasn't talking much. **Pw6** used only to see **Kazinda** driving in on Mondays to Saturday lunch break to see them and go.

**Pw5 (Richard Odwong)** and **Pw10 (Paul Oswald Lwanga)** testified that **Mr. Kazinda** occupied Suite No 105 Constellation Suites for about **six (6)** months.

According to **Pw5 (Richard Odwong)**, **Mr. Kazinda** was introduced to him by the then Laundry Manager (**Mr. Charles Obentu**), and in December 2011 **Mr. Kazinda** rented apartment **105** at the **Constellation Suites** where he stayed for about six months.

**Pw10 (Paul Oswald Lwanga)**, then Assistant Manager with the Front Office department of Sheraton Hotel also testified that **Mr. Geoffrey Kazinda** who was their client for about 3-4 years between 2010/2012 occupied apartment **No 105 Constellation Suites** for 6 months between January 2012 to June 2012. He also

hired premises as an office within 2010/2012 and was using their laundry and restaurant services.

I note **Pw5 (Richard Odwong)** and **Pw10 (Paul Oswald Lwanga)**'s testimony that the accused occupied the Suites for **about Six months** which is a less period than the alleged **ten months** in the indictment. The Sheraton management in their letter forwarding a financial statement which comprises of restaurant bills, laundry bills and bills for apartment hire attributed to the accused (**Exhibit P10**), also mentioned that the accused occupied the suites for six months. It is clear that the evidence on record points to **six months** and not **ten months** occupancy period, but that fact does not prejudice the accused in any way. The court will hence forth proceed on the basis of the evidence that the accused occupied the suites for **6 months**.

From their evidence, it is clear that **Pw5 (Richard Odwong)**, **Stella Aloba (Pw6)**, and **Pw10 (Paul Oswald Lwanga)**, closely interacted with the accused over a long period of time. This completely eliminates any possibility of mistaken identity. Each of their evidence was specific in time and location. There is no reason they could give false evidence against him in such a coordinated manner. I believed each of their evidence, and **find that the** accused indeed occupied **Suite No 105 Constellation Suites Sheraton Kampala** during the material period.

**Whether he rented the Suites for ten months (10) months at a total cost of Ugx 210,364,011/= (Two hundred and ten million, three hundred and sixty four thousand, and eleven shillings).**

The prosecution sought to rely on the evidence of **Pw5 (Richard Odwong)** that **Mr. Kazinda** was introduced to him by the then Laundry Manager (**Mr. Charles Obentu**), who told him that he (**Mr. Kazinda**) was giving them good business



volume and that he (**Mr. Kazinda**) wanted to open a credit facility. Further that the accused requested and was allowed to utilize credit facilities under the names of **Pw4 (Charles Kamunvi)** on the basis that as a civil servant his expenses at the Hotel could cause him problems. **Pw4 (Charles Kamunvi)** testified that he has never rented, occupied or incurred the expenses attributed to him in the invoices bearing his names.

**Pw10 (Paul Oswald Lwanga)** a Credit Manager at Sheraton Hotel also testified that **Mr Kazinda** had a credit facility in the names of **Kamunvi Charles**, and that all the bills incurred by him were entered in the computer which had a financial management system. From that system, Sheraton was in position to generate a summary statement which reflects all the bills incurred by the accused. **Exhibit P10** which comprises of restaurant bills, laundry bills and bills for apartment hire for the period between **2009** and **2012** is the outstanding bill for **Kazinda**.

By the time he (**Pw10**) took over office, **Mr Kazinda** owed the hotel **210,364,011/=** (**Two hundred and ten million, three hundred sixty four thousand and eleven Uganda Shillings**) in the names of **Kamunvi Charles**. Out of that, about **149,000,000m/=** was paid leaving a balance of **61,000,000m/=**.

**Pw11 (Sylvia Chellangat)**'s expert opinion was that the accused wrote and signed Sheraton Tax Invoices (**exhibits P.11 (1) to P. 11(36)**) which reflect the cost of goods and services he consumed at the Hotel during the period in issue.

The state also seeks to rely on the evidence that in an attempt to make a partial payment of **30,000,000/=**, the accused issued the following three cheques (**exhibits P.9**) to the Hotel;

- Bank of Africa Cheque no.**243953** for 10m/=, dated 15/7/2012, issued by **Mr. Geoffrey Kazinda** to Sheraton Kampala hotel.



- Bank of Africa Cheque **no 243954** for 10m/=-, dated 15/7/2012 issued by **Mr. Geoffrey Kazinda** to Sheraton Kampala.
- Bank of Africa Cheque **no 243955** for 10m/=-, dated 15/7/2012, issued by **Mr Geoffrey Kazinda** to Sheraton hotel, all marked as **Exhibit P.9.**

The cheques however bounced for lack of sufficient funds in his account. The accused does not deny having issued the three cheques but maintains that he issued them in the process of booking for a congratulatory party which the mother of his child was organizing after his successful operation. The court did not believe the accused's explanation given that he only advanced it during his testimony. He did not put it to **Pw5 (Richard Odwong)** and **Pw10 (Paul Oswald Lwanga)** to give them a chance to agree, deny, explain or challenge it. They were positive that the cheques were issued in partial payment of the debt the accused owed to Sheraton Hotel, and they were examined on their accounts. Their evidence remained unshaken. The accused's account of events is therefore rejected as an afterthought.

**Pw5 (Richard Odwong)**'s evidence that the accused did not want bills to be issued in his names so as to avoid detection and that he took credit in **Kamunvi's** names is lent credence by **Kamunvi (Pw4)**'s testimony that the accused used to use his brothers (**Patrick Mirembe** and **Wamala**) as his agents, and that at one time the **Lwokya** family (*the accused's late father's family*) had a party at Sheraton and at their request, he paid between **50m/=-** and **60m/=-** which was given to him by **Wamala**. The court recalls that the accused did not deny or challenge **Pw4's** assertions which point to the fact that the accused's mode of conduct of business with Sheraton was always undercover. It also establishes a link between **Pw4** and the accused with regard to the accused's expenditure at Sheraton during the period.

**Pw4 (Kamunvi)** denied that he consumed the goods and services and made payments reflected in the invoices and receipts below;

- I. invoice dated 10/11/2011 for 25,500/=, for Laundry services.
- II. invoice dated 10/5/2011 for 7000/= for Park square.
- III. invoice dated 11/01/2011 for Victoria, for 326,300/=.
- IV. invoice dated 26/10/2011 for 300,000/=.
- V. invoice dated 21/10/2011, for 459,700/=.
- VI. invoice dated 20/10/11, for 109,000/=, for Park Square.
- VII. invoice dated 19/10/2011, for 130,000/= for Park Square.
- VIII. invoice dated 18/10/2011, for 104,500/=, for park square.
- IX. (a) Receipt No. **9495** dated 27/04/2012 for City Ledger of 18.5m/=.
- (b) Receipt No. **14976** dated 6/4/2012, for 8m/= for CL.
- (c) Receipt No. **14528** dated 25/2/2012 for 5m/= paying for CL.
- (d) Receipt No. **14273** dated 19/2/2012, for 10m/= .
- (e) Receipt **13536**, of 2/2/2012, for 20m/= for CL.
- (f) Receipt No. **14607**, of 17/3/2012 for 10m/= for CL.
- (g) Receipt No. **13099** of 9/2/2012 for 10 m/=.
- (h) Receipt No. **12786**, for 21/12/2012 for 10m/= hotel bills.
- (i) Receipt No. **13249** for 20/12/2012 for 10m/=.
- (J) Receipt No. **12539** for 10m/= for 19/2/2011.
- (k) Receipt No. **13225** for 28/12/2011 for US\$ 3000 and UGX 7,650,000/= for APT.
- (L) Receipt No. **1302** for 19/10/11 for 10m/=.
- (m) Receipt No. **2425** on 19/7/2011 for 10m/= for CL.
- (N) Receipt No. **15005** for 10m/= for 20/4/2012, all marked exhibit P.11



I note that the money paid by the accused as indicated in the receipts alone totals to UGX **149, 150,000/=**.

The accused questioned the total amount of money in issue. According to him, the allegation is that between 2010 and June 2012 he rented office space at **1000 USD** per month, and that the total in those 30 months would be **30,000USD\$**. He further maintains that it is alleged that he rented the **Suite at 3000 USD** per month for 10 months, which would yield another 30,000USD\$. Also, that it is alleged that he incurred bills of 212m/=. According to him, the first **60,000\$** is equivalent to **200,000,000m/=**. If that is added to the signed bills of **210,000,000m/=**, the total would be **410,000,000m/=**. Since receipts totaling to **149,150,000/=** were exhibited, the outstanding balance (which would be his debt) would be **250,000,000m/=**. He maintains that the prosecution combined all the bills and called them **210,000,000m/=**, and that they deducted **149,000,000m/=** to come to **61,000,000m/=**. Given Pw4's evidence that he paid **60m/=** through his bank, the balance would be close to zero.

The court's understanding is that the **60,000,000m/=** which **Kamunvi** said that he paid through his bank was a mere example of money he paid on the accused's behalf when parties were thrown at the Hotel by his family. It must not be linked to the accused's alleged debt with Sheraton.

The accused's assertion that the prosecution case is that he rented a suite or office space at **1000 USD** per month and occupied it for 30 months is a creature of his imagination. It is not borne out in evidence.

The evidence about the total amount owed by the accused and the total outstanding was adduced through Pw5 (**Richard Odwong**), Pw10 (**Paul Oswald Lwanga**), and Pw15 (**Victor Acidri**), and was that for every service which the hotel offers,



bills are posted in the system. When posting they consider the invoice number, the period within which the bill is posted and the description of the bill.

The total amount incurred by the accused (**210,364,011/=**) was extracted from a system generated statement (**Exhibit P10**) as supported by **Exhibit P.11 (1) (2), (3), Exhibit P12 and P.13**. Also, that out of the total bill of **UGX 210,364,011/=** (for rent, laundry services and apartment hire), the accused paid **UGX 149,150,000/=** leaving a balance of **61,214,011/=**

It was in evidence that the outstanding **61,214,011/=** constitutes of **Restaurant bills, laundry bills** and debts relating to **apartment hire**, and that the summary statement for **restaurant, laundry and apartment bills**, indicates that the **Kamunvi Charles** account bears an outstanding balance of **61,214,011/=**.

The court notes that the accused did not put his computations to the witnesses who testified about the total amount he owed and how it was arrived at. On the basis of the clear and convincing evidence proving the total amount the accused spent, and how much he still owes the Hotel, the court rejects his version as being imaginary and not supported by evidence.

The accused makes reference to documentary evidence he presented to the Commercial Court, but that evidence was not adduced in this court and therefore bears no evidential value to this case.

The accused advances a narrative about how he came to sign the Sheraton Hotel bills in issue, maintaining that he consumed internet services at the Sheraton Café, and paid money under a revenue triangle involving **Kamunvi, Partick Mirembe** and the **Sheraton** Hotel. Again, that account of events was never put to the witnesses including **Kamunvi** himself, to avail them an opportunity to confirm or deny it.

**Pw5 (Richard Odong)** testified that **Mr. Kazinda** rented office space in the first quarter of 2009. Before that, the hotel had sought to run Taxi hire services for which they had earmarked the office which Kazinda later rented. They had put up a sign reading "**Wheels on Hire**". His evidence is that when **Mr. Kazinda** took over that office, he asked them not to remove that sign.

**Dw1 (Muliisa Solomon)**'s evidence that the promoters/ first subscribers of M/s **Wheels on hire (U) Ltd** are **Charles Kamunvi (5 shares), Moses Kisitu (5 shares), Patrick Mirembe (10 shares), and Joshua Lagu (5 shares)**, and that the Directors are **Charles Kamuvi, Moses Kisitu, Patrick Mirembe and John Lagu**, seems to contradict **Pw5 (Richard Odong)**'s. The court notes yet again that **Dw1**'s evidence was not put to **Pw5** for him to explain, confirm or reject it, which renders the defence evidence unreliable.

When giving his evidence the accused advanced yet another narrative about possible **Teaming** and **Lading** at Sheraton Hotel. This possibility was also not put to the relevant witnesses, and is therefore rejected as an afterthought.

In conclusion, on the basis of **Pw5 (Richard Odwong)** and **Pw10 (Paul Oswald Lwanga)**'s the evidence that the accused consumed bills totaling to **Ugx 210,364,011/= (Two hundred and ten million, three hundred and sixty four thousand, and eleven shillings)** some of which he signed as opined by the Forensic Document Analyst's expert (**Pw11 (Sylvia Chellangat)**), and since he even issued cheques (**exhibit P.9**) in partial settlement of the outstanding amount, there can be no doubt that he indeed incurred the alleged expenses. The court finds that between 2010 and June 2012 the accused rented and occupied **Suite No 105 Constellation Suites** for six (6) months at a total cost of **Ugx 210,364,011/= (Two**



**hundred and ten million, three hundred and sixty four thousand, and eleven shillings).**

**Whether the accused maintained a standard of living above that which was commensurate with his income or past known sources of income or assets whose sum for the duration 2009 to 2012 was 83,754,655/=(eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings).**

According to the **Cambridge international Dictionary of English** standard of living is the amount of wealth and comfort people have in a particular society. It is that level of wealth, comfort, material goods, and necessities available to a certain socioeconomic class, geographic area or person.

*6/11/2020*

The accused challenged the prosecution's mindset, allegedly informed by the erroneous belief that he did not have a wealthy back ground, and maintains that on the contrary;

- the sale of his father's timber yard at Nabugabo fetched a handsome sum of money,
- his father's family was compensated for land on which Entebbe Airport was constructed,
- When he graduated from University in 1993, he worked as Credit Controller Uganda Airlines. This involved a lot of travel to Harbors where Uganda Airlines kept its stocks such as cargo. He was also in charge of AIITA- International Air transport Association, for the inter billing between various Airlines who handle one passenger.
- In 1995 he was a credit controller at **Celtel Ltd.**
- He worked at the Auditor General's office



- he was later attached to the second phase of the **Economic and Finance Management project** (EFM P2).
- He later headed the Directorate of Water Development in Luzira under the Ministry of Natural Resources and energy.
- From there he was in-charge of Movement Secretariat to manage finances of converting the Movement system into a political party.
- From there he became Principal Accountant at Office of Prime Minister in 2007,

and he therefore has a wealthy back ground.

  
6/11/2020

The gravamen of the prosecution's case is that the accused filed Declarations with the IGG for the years 2009 to 2011 which show that he earned a total income (*salary and allowances*) of **83,754,655/=**(**eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings**), for the period **2009 to June 2012**.

In the process of verifying his income and assets it was discovered that in that period, he had spent **210,361,011m/=** at Sheraton in ten months.

The accused doesn't contest the information he submitted in his Declaration forms (**exhibits P 20 a, b, c, d**), neither does he deny that he earned a total income (*salary and allowances*) of **83,754,655/=**(**eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings**), for the period **2009 to June 2012**. He however talks about other income outside his declarations.

Declarations are a legal requirement for leaders under the **Leadership Code Act 2002** and are not a mere formality. Indeed in part 111 of the forms the accused made a declaration that the information he had given is true, complete and correct

to the best of his knowledge. The accused can't be heard to say that other than what was declared there was property he left out and which the court should consider in evaluating the evidence before it. It is only logical that any income and assets outside the Declarations, and the reasons for their omission must be explained by the accused.

In this case other than his testimony that he had those other sources of income, he does not offer any explanation for having left them out of his declarations. Moreover, he only mentions the sources of income when giving his defence. If they indeed existed, he should have mentioned them to the investigators for them to confirm their existence and investigate their sources. That he only brought up the issue in his defence must be read to mean that it is an afterthought, which must be rejected.

There is sufficient evidence that the accused rented and occupied Suite 105 Constellation Suites for six months at a total cost of **Ugx210,364,011/= (Two hundred and ten million, three hundred and sixty four thousand, and eleven shillings)**, and that he paid the sum of **149,150,000/= (One hundred and forty nine million, one hundred fifty thousand shillings)** under the names of **Kamunvi Charles**, leaving a balance of **61,214,011/= (Sixty one million and two hundred fourteen thousand, eleven shillings)**.

The accused's income or past known sources of income or assets for the period **2009 to June 2012** was proved to be **83,754,655/=(eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)**. The narrative about the existence of other income or sources of income and assets is rejected for being unfounded.



**Was there “reasonable ground” to suspect that the accused maintained a standard of living above that which was commensurate with his current or past known sources of income or assets?**

The word “Reasonable” is defined in Nolo’s Plain-English Law Dictionary as *“just, rational, appropriate, ordinary or usual”* in the circumstances.

**Lord Greene M.R in Associated Provincial Picture Houses Ltd Vs Wednesbury Corporation 1 KB 223, EWCA Civ 1** suggests that “reasonableness” connotes that one has taken account of all the necessary things that they should have taken account of, one does not take into account that which they should not have taken into account and that the decision is not irrational.

**The State Vs Leidholm, Supreme Court of North Dakota, 334 N.W.2d 811 (1983)** distinguishes between the subjective and objective standard of reasonableness.

An objective standard of reasonableness requires the finder of fact to view the circumstances from the standpoint of a hypothetical reasonable person and absent the unique particular physical and psychological characteristics of the defendant.

A subjective standard of reasonableness asks whether the circumstances would produce an honest and reasonable belief in a person having the particular mental and physical characteristics of the defendant, such as their personal knowledge and personal history, when the same circumstances might not produce the same in a general reasonable person.

**In Uganda Vs. Akankwasa Damian HCT-00-Ac-SC-69 of 2010** it was held that in order to attain a conviction of illicit enrichment, prosecution must demonstrate that the accused’s enrichment cannot be justified from known sources of income.



Expounding the above principle, **Keitirima (J)** in **Uganda v B.D. Wandera HCT-00-AC-SC-0012** opined that once the prosecution proves the accused's known current and past sources of income, and gives a proper valuation of his assets and shows that the property or assets are disproportionate to his known current and past income then an inference is drawn that he illicitly enriched himself if no plausible defence is given by the accused.

The above position is supported by **Muzila et al, (2012)** in "*On the take: criminalizing illicit enrichment to fight corruption*" who post that once these elements have been proved, the presumption is made by the Court, unless evidence is presented to the contrary by the accused. Further, that the Courts interpreted "**known**" to mean lawfully obtained income that is revealed by a thorough investigation and cannot refer to sources of income especially within the knowledge of the accused person.

In the Malawian case of **The State v. Mzumar, Criminal Case no. 47 of 2010**, the accused was charged with three counts of possession of unexplained property, contrary to Section 32(2) (C) of the Malawian Corrupt Practices Act of 1995, specifically for having possessed assets disproportionate to his known sources of income. The court found that the prosecution had demonstrated beyond reasonable doubt that the accused had in his possession pecuniary resources that were disproportionate to his present or past official emoluments or other known sources of income and that the accused had failed to give a reasonable explanation to explain the acquisition of these properties.

The word "**significant**" is used in International Instruments instead of the word "**reasonable**", but I think the objective test has to be applied in all situations.

**Article 20** of the **United Nations Convention against Corruption** defines illicit enrichment as a “**significant** increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

**Article 1** of the African Union Convention on preventing and combating Corruption defines illicit enrichment to mean the **significant** increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income.

Basing on the above authorities, and if the court proceeded from the premise that the sum of the accused's income or past **known** sources of income or assets for the duration 2009 to 2012 was **83,754,655/= (eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)**, but that he rented and occupied Suite No 105 Constellation Suites, Sheraton Hotel Kampala for a period of **six (6) months** at a total cost of **Ugx 210,364,011/=** out of which he paid **149,150, 000/=**, a finding that the suspicion that the accused maintained a standard of living above that which is commensurate with his current or past known sources of income or assets was rational/ reasonable would be inevitable.

The accused's assertion that the income upon which the prosecution relied to infer an exaggerated standard of living was far below the threshold for the offence runs counter to the objective test of reasonableness in so far as he obviously seems not to appreciate the clear disproportionality inherent in the fact that his total income and assets for three years was **83,754,655/= (eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)**, yet he paid **149, 150,000/=** for services worthy **UGX 210,000,000/=** which he consumed in six months.

The accused argued that even if the consumption of **UGX 210,364,011** were established as genuine, the offence is committed when past known sources of income are aggregated. Further that the employment history he outline to the court



spans an 18 year period from 1994 to 2012, and that if he earned 83m/= in 3 years, he must have earned a lot more for the 18 years.

The accused's argument that the offence is committed when past known sources of income are aggregated is correct, and in this case, his past **known** sources of income are those lawfully obtained, revealed by a thorough investigation (**on the basis of his Declaration forms**), and cannot refer to sources of income especially within his knowledge (see **Muzila et al, (2012) (ibid).** .

In conclusion, the evidence that;

1. the accused, whose income or past known sources of income or assets for the period **2009 to June 2012** was **UGX 83,754,655/=**, rented and occupied a Hotel Suite (inclusive of laundry and restaurant bills) for **six months** at a total cost of **Ugx210,364,011/= (Two hundred and ten million, three hundred and sixty four thousand, and eleven shillings) 149,150,000/=** of which he paid,
2. he feared to be seen to have spent that amount of money at Sheraton on the basis that it could cause him problems and requested that his bills be issued (**and were in fact issued**) in Pw4 (**Kamunvis's**) names,

and the fact that he did not give a reasonable explanation as to how or where he got the **149,150,000m/=**, leaves no doubt that there was reasonable cause to believe that he maintained a standard of living above that which was commensurate with his income or past known sources of income or assets for the duration of the period in issue. **I find him guilty** of Illicit Enrichment contrary to **S.31 (1) (a)** of the Anti-Corruption Act and accordingly convict him.

In **count 2** it was alleged that between 2010 and June 2012, being the Principal Accountant in the Office of the Prime Minister, the accused was in control and possession of land comprised in;

- Volume 2014 Folio 19, Plot No. 1904 Bukoto Kyadondo Mengo,
- Volume 1956, Folio 11, Plot No. 264, Bukoto Sabaddu Kyadondo West Mengo, and
- Volume 213 Folio 21, Plot No. 2132 Bukoto Mengo,

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whose value was established to be **3,657,747,500/= (Three billion, six hundred and fifty seven million, seven hundred and forty seven thousand five hundred shillings)**, which was disproportionate to his income and his past known sources of income or assets whose sum for the duration 2009 to 2012 was established by the Inspectorate of Government to be **83,754,655/= (eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)**.

In **Uganda versus Bernard Davis Wandera Criminal Appeal no. 7811 of 2014** it was held that the ingredients for the offence of illicit enrichment under S.31 (1) (b) and S.31(2) are;

- i. That the accused is in control or possession of pecuniary resources or property, and
- ii. That the pecuniary resources or property is disproportionate to his or her current or past known sources of income and assets.

The issues for determination therefore are;

1. Whether the accused was in **control and possession** of land at the material time,
2. Whether the value of the land established to be **3,657,747,500/= (Three billion, six hundred and fifty seven million, seven hundred and forty**



seven thousand five hundred shillings) was disproportionate to the accused's income and his past known sources of income or assets for the duration 2009 to 2012.

**Whether the accused was in control and possession of land at the material time.**

**Pw1 (Br. George Willis Kamanda)**, the Executive Secretary of the Uganda Brothers of Christian Instruction, **Pw2 (Brother Gerald Byaruhanga Edward Kahwa)** an Assistant Supervisor General and a member of the leadership Team of the Brothers of Christian Instruction since 2006, and **Pw3 (Br. Gerald Majela Mwebe)** a Major Superior between 2009 to 2015, all testified that though land in

- Vol. 2014 Folio 19 Plot 1904 Bukoto,
- Vol. 1956 Folio 11 Plot 264 Bukoto, Sabaddu, and
- Vol. 213, Folio 21 Plot 2132 Bukoto, Mengo,



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is registered in their society's names, it doesn't belong to the Brothers of Christian Instruction. Had the society received those properties between 2009 and early January 2012 it would be reflected it in the **exhibit P. 3 (annual general meeting report of the chairman of the Board of registered Trustees dated 18/1/2012)**. Any properties received by the society after 2012 would be reflected in the subsequent Annual General meeting minutes of 2013, 2014, 2015 or 2016 (i.e. in the subsequent Chairman's report for the relevant AGM), and all the Chairman's annual general meeting contain an updated list of all society properties. The property has never been discussed at an AGM of the Association, and it is not in the inventory or list of thire properties.

**Land in Vol. 2014 Folio 19 Plot 1904 Bukoto.**

**Pw2 (Brother Gerald Byaruhanga Edward Kahwa)** testified that the transferor of the land in **Volume 2014 Folio 19 Plot 1904 Bukoto** was **Dr. Busingye Bazare Robert** who **Pw2** has never met. **Mr Kazinda** informed him that he had donated the property to the society, which information he passed onto **Pw3 (Br. Gerald Mwebe)**. **Pw2 (Br. Gerald Byaruhanga)** and **Pw3 (Br. Gerald Mwebe)** were signatories on the transfer documents though the Annual General meeting didn't instruct them to sign the documents on behalf of the society. The transfer forms (*which they received from the accused*) reflect a transaction amount of 120,000,000m/= purportedly paid to **Dr. Busingye Bazare Robert** by **Gerald Byaruhanga** and **Gerald Mwebe**, but they did not pay the 120m/= to **Dr. Busingye**. To **Pw2's** knowledge their society has never paid the 120m/- to **Dr. Busingye**.

The accused denied that he bought the land in issue, and pointed out that **Dr Busingye** in his statement did not say that he sold the land to him.

The court recalls that **Pw2 (Brother Gerald Byaruhanga)**'s evidence that the accused made him and Brother Mwebe sign transfer documents for the land, and that he told him that he had donated the land to the society was never challenged by the accused. The court notes that **Pw2** is the accused's family friend, who was even entrusted with the accused's Fathers Will, and would have no reason for falsely testifying that;

- the accused acquired the property at **120m/=**,
- the accused gave him **70m/=** and directed him to have the property transferred in the names of Registered Trustees of Brothers of Christian Instruction,



- **He (Br. Byaruhanga)** took the documents to a lawyer (**John Mike Musisi**) to process the transfer, which was done on 29/3/2010,
- he approached **Brother Mwebe (Pw3)** for a copy of the Constitution and the seal of the Trustees to help in the transfer process,
- He gave **Brother Mwebe Gerald** the transfer forms for his signature since they were anticipating the property as a gift from **Kazinda**, but the gift never materialized,
- he handed over the documents to **Mr. Kazinda**,
- by 20/3/2014 he had never seen the documents back to the trustees,
- the property is not in the records of the Trustees as their property.

*[Handwritten signature]*  
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The accused's argument that **Dr Busingye** who was not called as a witness, never said that he (accused) paid him for the land is without merit. In the first place, the accused did not challenge Pw2's evidence in its entirety. For him to raise these issues at the time of his defence is not helpful to him. Once Pw2's evidence was not challenged it was not necessary for the prosecution to adduce further evidence to prove the uncontested issues. The court believes Pw2's evidence and finds that the accused bought and owns **Land in Vol. 2014 Folio 19 Plot 1904 Bukoto** at **120,000,000m/=**.

#### **Land in Vol. 213 Folio 21 Plot 2132 Bukoto Mengo.**

Pw2 testified that this land was never discussed in the Annual General Meeting of the society and it is not documented in the report of the Chairman of the Board of Registered Trustees (**exhibit P. 3**) and in all their records. It was registered in the society names with effect from 16/1/2012. The previous owner (28/11/2007) was the accused's mother (**Teopista Nanfuka**).

According to **Pw2** he got the transfer forms from the accused when the part which was supposed to be signed by the transferor had not been signed. Pw2 signed the form in his capacity as the executive secretary of the Association, as the purchaser on the accused's instructions. This was on the understanding that the accused had donated the land to them, but he didn't purchase the land. He returned the forms to the accused.

He later got the forms from the accused and on his instructions took them to counsel **John Mike Musisi**. Although the property is registered in the association names, it does not belong to them and they don't have the title in their possession. The members of the association were not aware that **Teopista Nanfuka** was donating land to the Association.

**The accused** explained to the court that the land at **Plot 2132 Bukoto** belonged to his late father, on whose instructions it was transferred to his mother (**Teopista Nanfuka**). In his **Will**, his father instructed his mother to enter into an understanding with the Brothers of Christian Instruction under which there was to be an investment, and half of the proceeds from that investment would go to the upkeep of old and aged Brothers, half to grandchildren and to the accused's father. The proceeds to the Brothers were a gift for the long relationship his father had with them.

The court recalls **Pw2(Gerald Byaruhanga)**'s testimony that in October 2009 the Brothers held a meeting and passed a resolution to open an account relating to Life Insurance for upkeep of infirm and old Brothers, a joint effort with **Teopista Nanfuka**. This evidence corroborates the accused's evidence about the existence of the joint venture.



The fact however that the Land in issue was at one time registered in **Nanfuka Teaopista's** names, and that at some stage she had a joint effort with the Brothers is not corroborative of the accused's assertion that it ever belonged to his father.

The court finds it strange for example, that even when **Pw2** testified that the accused's father entrusted him with his **Will** and the accused testified that **Pw2** actually read it to the family, he (the accused) did not specifically examine him about the fact that his father bequeathed **Plot 2132 Bukoto** to his mother with instructions to enter an investment agreement with the Brothers of Christian Instruction. Not a single question was put to **Pw2** about that critical issue. That he did not find it important to examine him on such a crucial aspect of his defence creates doubt about its veracity.

The court also notes that had the land been bequeathed to **Teopista Nanfuka** by her husband and had there been nothing to hide, there would be reason for transferring it to the society through **Pw2 (Bro Byaruhanga Gerald)** who signed the documents as its buyer whereas he was not. **Pw2** testified that he got the transfer documents from the accused when the part to be filled by the transferor had not been signed, and he signed as the purchaser on the accused's instructions, on the understanding that the accused had donated the land to them. Donating and a purchasing are two distinct transactions. There were obvious attempts at concealing of the correct ownership of this land in a manner only consistent with the accused's mode of ownership of property.

**Dw3 (Kaddu)** is an unreliable witness and his evidence that the land belonged to the **accused's father** was rejected since it contradicts his statement to the police (**Exhibit P23**) in which he had stated that the property in fact belonged to **Mr. Kazinda**.

**Pw7 (Ajiri)** testified that he knows the accused as an old boy, and that he paid him money for drawing the Architectural plans for a construction project on the land. The accused denied that he went to school/university with **Pw7** and lived with him in a University Hall of residence. He maintained that he only saw him in court.

It is strange that even when the accused maintains that he does not know and has never met **Ajiri**, he did not put to him a single question challenging his evidence that they studied and lived together at the University. He did not cross examine him on his testimony regarding when and how they met.

**Pw7 (Ajiri)**'s evidence was specific in time and location, and he gave intricate details of when he met the accused and how he received instructions for the Architectural drawings and supervision of works on **plot 2132**. **Mr. Ajiri's** evidence is moreover corroborated by **exhibit P 6 (the approved plans)** the existence of which clothes his evidence with credibility.

**Dw4 (Bazibumbira Vincent)**'s evidence that **he** was contracted by **Engineer Katende** to supervise and pay workers' money which had been provided by the Brothers of Christian Instruction, and that he never had any dealings with **Kazinda** concerning that building is against the weight of evidence that Mr. Kazinda is the one who contracted builders for the buildings on the land. **Ajiri's** evidence must be believed since it fully corroborates **Pw2's** evidence that the land belongs to **Mr. Kazinda**.

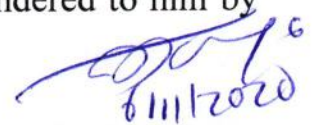
On the basis of **Pw2** and **Pw7's** evidence the court **finds** that the land at **Plot 2132 Bukoto** belonged to **Mr. Kazinda** who tried to conceal its right ownership by using his mother. His testimony that it belonged to his father who bequeathed it to his mother is rejected as a pack of lies.



### **Land in Vol. 1956 Folio 11 Plot 264 Bukoto**

According to the land title, from 16/1/2012 the Registered Trustees of Brothers of Christian Instruction is its registered proprietor. As at 3/10/2008 the registered proprietors were **Mugisha Richard** and **Niwagaba Brian**. **Pw2 (Gerald Byaruhanga)** testified that he signed the sale agreement of 3/12/2009 as the purchaser. According to the agreement, the land cost **350, 000,000m/=** which Pw2 paid in installments. The first installment was for **130m/=** on 3/12/2009 and the second one of **100m/=** was payable by February 15<sup>th</sup> 2010. The third and last installment for **120m/=** was payable by May 30<sup>th</sup> 2010.

He got **130m/=** from the accused (**Geoffrey Kazinda**) and paid the first installment. He doesn't recall whether he paid the second installment in person but he paid the final installment of **120m/=**. The title was then surrendered to him by one of the two people and he took it to the accused.



Pw2's further evidence was that the issue of acquisition of that property was never introduced for discussion at any Annual General meeting of the society. That land is also not mentioned in either **exhibit P. 3 or P. 4, (the chairman's report)**.

**Pw2** gave the forms relating to **Vol. 2014 Folio 19 Plot 1904 Bukoto and Vol. 1956 Folio 11 Plot 264 Bukoto**, to lawyer (**Mr. John Mike Musisi**) who **Mr. Geoffrey Kazinda** referred him to, and requested him to have the property registered in names of the Registered Trustees of Brothers of Christian Instruction. The lawyer's fees were to be paid by the accused. **Pw2** picked the land Title from **John Mike Musisi** on the accused instructions, and he gave it to the accused who didn't give him any other instructions. He got the sum total of **UGX 70m/=** Stamp Duty for all the titles from **Mr. Geoffrey Kazinda**.

The accused maintains that the land belongs to the Brothers of Christian Instruction. He points to the fact that the Chairman's reports, Constitution and minutes of AGM on which the prosecution based their case are incomplete since **Exhibit P.3** (a report of the chairman of the Board of Trustees to the AGM) does not bear the signature of **Brother Mubiru Tibyasa Joseph**.

He also points to the fact that some records were not up dated, giving room to the possibility that the inclusion of properties on the list of those owned by the society was only erroneously omitted.

There is no reason for **Pw1 (Br Kamanda), Pw2 (Br Byaruhanga) and Pw3 (Br Mwebe)** disowning property if it really belonged to their association. Moreover, the accused did not put his assertions to them to give them a chance to confirm, explain or deny them. **Pw2** through whom the accused conducted a number of transactions is a close family friend. He has no reason for giving false evidence against him. The court believed him, and finds that the accused purchased **Land in Vol. 1956 Folio 11 Plot 264 Bukoto at 350,000,000/=**, and that it belongs to him.

The evidence is that all the properties in issue are registered in the names of the Brothers of Christian Instruction. *Turinawe and 4 others Vs Engineer Turinawe and another Supreme Court Civil Appeal no 10 of 2018*, lays down the principle that a certificate of title is not conclusive proof of ownership of land until the circumstances of acquisition have been investigated. **Pw2** explained that he acquired the land on behalf of and upon the direction and facilitation of **Mr. Geoffrey Kazinda**. In line with *Turinawe (Ibid)* ownership of the properties in issue has been proved to be with the accused.



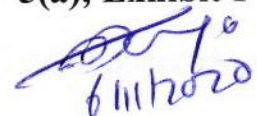
**The concept of “control and possession”.**

The word “**possession**” is defined under the **Black’s law dictionary 9th edition at page 1281** as;

*“the fact of having or holding property in one’s power; the exercise of dominion over property, or the right under which one may exercise control over something to the exclusion of all others...”*

The ordinary English meaning (Oxford Advanced Learner’s Dictionary, 7<sup>th</sup> edition), of the word “**control**” is; “**the power to make decisions...**”

It is clear from the testimonies of **Pw2 (Br. Byaruhanga)**, **Pw 3 (Br Mwebe)** and **Pw 7 (Ajiri)** that at all times **Mr Kazinda** had power to make decisions/exercised control over land comprised in certificates of Title **Exhibit P 5(a), Exhibit P 5(b) and Exhibit P 15.**



He for example gave instructions relating to transfers and funded those processes, he retained the certificates of Title in his possession, he personally paid workers and contractors for services related to the properties as early as 2005. **Pw 7 (Ajiri)** shows that the accused was in control and possession of the property and that there was only a small shell structure on **plot 2132**. **Pw8 (Mwanje Nassir)** corroborates his testimony and states that the architectural plans were modified/varied in 2009.

**The court finds that the accused was in control and possession of land in issue at the material time.**

**Whether the cost/value of the land, established to be 3,657,747,500/= (Three billion, six hundred and fifty seven million, seven hundred and forty seven thousand five hundred shillings) was disproportionate to the accused's income and his past known sources of income or assets for the duration 2009 to 2012.**

The state sought to rely on the expert evidence of **Pw8 (Mwanje Nassir)** and **Pw9 (Ashaba Aheebwa)** as far as the cost/value of the property is concerned.

**Section 43 of the Evidence Act** underscores the relevance of expert evidence when a court is required to form an opinion on a point of art (inter-alia). It is now settled that expert evidence is not necessarily conclusive on an issue under scrutiny. The evidential value of expert evidence must be subjected to scrutiny before reliance upon it by courts.

While **Cross & Tapper on Evidence**, Butterworths, 1995, 8<sup>th</sup> Edition, p.557 post that "Generally speaking, the testimony of an expert is likely to carry more weight and more readily relate to an ultimate issue than that of an ordinary witness", Sarkar's **Law of Evidence**, 17<sup>th</sup> Edition, 2010, P.1258 has this to say; "The infirmity of expert evidence consists in this, that it is mostly matters of opinion and is based on facts detailed by others, or assumed facts and opinions against opinion; and experts are selected by parties by ascertaining previously that they will give an opinion favourable to the party calling them. Expert evidence is, however, of value in cases where courts have to deal with matters beyond the range of common knowledge and they could not get along without it, e.g., matters of scientific knowledge or when the facts have come within the personal observation of experts."

The author concludes that:



**“The evidence of an expert is not conclusive. It is for the courts to assess the weight of the evidence and come to its own conclusion. An expert is fallible like all other witnesses and the real value of his evidence lies in the logical inferences which he draws from what he has himself observed, not from what he merely surmises or has been told by others. Therefore in cross-examining him it is advisable to get at the grounds on which he bases his opinion. There is great difficulty in dealing with the evidence of expert witnesses. Such evidence must always be received with caution; they are too often partisans – that is they are reluctant to speak quite the whole truth, if the whole truth will tell against the party who had paid them to give evidence. ... Their duty is merely to assist the court by calling its attention to, and explaining, matters the true significance of which would not be clear to persons who have received no scientific training, or have had no special experience in such matters.”**

The court is cognisant of the need for caution in evaluating **Pw8 (Mwanje Nassir)** and **Pw9 (Ashaba Ahebwa)**’s evidence, in line with the above authorities, and is alive to the fact that the evidential value of their evidence lies in the logical inferences that they drew from what they personally observed.



I note that each of the two witnesses gave an elaborate account of what he did and the basis for his opinions. Their evidence was subjected to thorough cross examination. The witnesses did not prevaricate or waver, and provided logical inferences upon which they based their conclusions. In my judgment therefore, given that the conclusions in **Exhibit P7 (the valuation report)** were grounded on scientific and logical deductions, and that the expert witnesses gave an elaborate account of how they arrived at their opinions, I allow their findings that the market

value of the land as at July 20<sup>th</sup> 2015 was **4.8 b/=**, and **3. 187b/=** as at December 31<sup>st</sup> 2012.

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The court recalls that for the period of **2009** to **June 2012**, the accused's income or past known sources of income or assets was **83,754,655/=(eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)**. It has been established that he was in control and possession of land/ developments valued at **3,657,747,500/=** (Three billion, six hundred and fifty seven million, seven hundred and forty seven thousand five hundred shillings) during that same period.

There is a clear mismatch between his known earnings/income/assets on the one hand, and his physical land assets. This supports the conclusion that the value of the land/developments in issue, established to be **3,657,747,500/= (Three billion, six hundred and fifty seven million, seven hundred and forty seven thousand five hundred shillings)** was disproportionate to the accused's income and his past known sources of income or assets (**83,754,655/=(eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)**) for the duration 2009 to 2012. **I find the accused guilty of Illicit enrichment contrary to section 31 (1) (b) of the Anti-Corruption Act and convict him accordingly.**



In **count 3** it was alleged that between 2010 and June 2012, being the Principal Accountant in the Office of the Prime Minister, the accused was in control and possession of motor vehicles;

- **AK 1BMW,**
- **AK2 Mercedes Benz,**
- **UAN 200X Dodge,**
- **UAM 200B,**



which cost **769,473,835/=** (*seven hundred sixty nine million, four hundred and seventy three thousand, and eight hundred thirty five shillings*), which was disproportionate to his income and his past known sources of income or assets whose sum for the duration 2009 to 2012 was established by the Inspectorate of Government to be **83,754,655/=** (**eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings**).

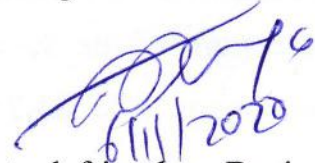
The issues for determination are;

3. Whether the accused was in **control and possession** of the above Vehicles at the material time,
4. Whether the value of the vehicles established to be **769,473,835/=** (*seven hundred sixty nine million, four hundred and seventy three thousand, and eight hundred thirty five shillings*) was disproportionate to the accused's income and his past known sources of income or assets for the duration 2009 to 2012.

**Whether the accused was in control and possession of vehicles at the material time.**

#### **AK1 318 BMW**

The state seeks to rely on the evidence of **Pw4 (Kamunvi Charles)** that **Mr Kazinda Geoffrey's** brothers (**Mirembe** and **Wamala**) were his friends. Motor vehicle **AK 1 318BMW** had been his (Pw4's) car and was registered in his names but **Mirembe** told him that the accused wanted it because his son had admired it. He informed **Mirembe** that he wanted 18m/= for it. **Mirembe** gave him the money but **Kazinda** was the one buying the car.



As a condition for purchase of the vehicle, **Faisal** (a mutual friend to **Pw4** and **Mirembe**) requested that the vehicle, then registered as **UAL 159T** had to be registered as **AK 1**, to reflect the initials of the accused's sons names "**Allan Kazinda**", and it was so registered (see registration documents exhibit P 22(c)). **Mirembe** and **Pw4** didn't sign any sale agreement. Pw4 did not issue any acknowledgement of receipt of the money. Upon receiving payment he signed transfer forms and gave them to **Mirembe**. He didn't fill the name of the person to whom he was transferring the car. To Pw4's knowledge the owner of vehicle **AKI** is **the accused**.

#### **AK 2 Mercedes Benz (details in P 22 (d))**

The procurement documents show that **Mercedes Benz AK2**, was imported by Spear Motors on the orders of **Br. Byaruhanga Gerald (Pw2)** at **544,594,287/=**. **Pw2** however denied that ever procuring it. According to Pw4, **Faisal** asked him to pay the Taxes, which he did on condition that the vehicle was registered in his names. **Pw4** gave **120,000,000/=** in Taxes to **Gilbert Wavamunno** of Spear



Motors but the receipt must have been given to **Faisal**. After he paid, the motor vehicle was taken by **Faisal** who later paid him some money and requested that the vehicle be registered as **AK2 (the initials of the accused's son's names)**. **Pw4** dealt with **Mirembe or Faisal**, both of whom informed him that they were agents of **Mr. Geoffrey Kazinda**. Out of the **120,000,000m/=** he paid, **Pw4** recovered about **85,000,000m/=**.

#### **UAM 200x Dodge (details in P. 22(b))**

**Pw4 (Kamuvi Charles)** ordered for it from Spear Motors after **Faisal** told him that they wanted a car of those specifications. **Faisal** paid for the car but **Pw4** was given some commission. The cost of the vehicle was **92,489,460/=**, including **Pw4's** commission of **5,000,000m/=**. The vehicle was registered in **Pw4's** names on **Faisal's** instructions since he (**Pw4**) had commission on it. **Faisal** later told him that they wanted to use the car to get money from money lenders. **Pw4** verbally informed the money lender that he had no claim over the car, and he signed transfer forms but he did not fill in the names of the person to whom he was transferring it. He gave the forms to **Faisal**.

#### **UAM 200B Mercedes Benz ML (details in P.22(a))**

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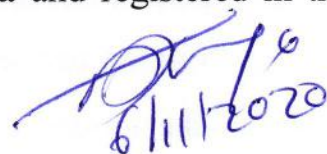
**Faisal** asked **Pw4 (Kamunvi)** to procure it on the accused's behalf and gave him **US\$ 20,000** for the purpose. **Pw4** is its registered owner, but it is at **M/s Top Finance** in Kololo over money lending issues. He signed transfer forms passing over the motor vehicle to the people who had given him the money, and he gave the transfer forms to **Faisal**.

In addition to **Kamunvi (Pw4's)** evidence, the state sought to rely on **Pw15 (Victor Amos Acidri's)** evidence that when he went to conduct verifications at the accused's residence he found all the four vehicles there, and that the same vehicles

had appeared on local televisions at that residence. According to his findings, **AK 1** was previously owned by **Kamunvi Charles** but **Mr. Kazinda** bought it from him at 25m/=, and the registration was changed from **UAL 159T**.

**UAN 200X (Dodge)** was purchased from Spear motors by **Kamunvi Charles** for **92,489,460/=** (*inclusive of taxes as per the tax invoice from Spear Motors*) which was given to him by the accused. **Mr Kamunvi** registered it in his names at the time of purchase, and later gave the accused documents to transfer it into his names but the transfer was never effected.

**UAM 200B M/B (ML 350)** was imported at **107,000,000m/=** (*including a 5m/= commission*) by **Kamunvi** on the instructions of **Kazinda** and registered in the names of **Kamunvi**. The money was paid by the accused.

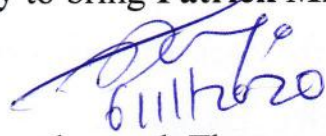


The prosecution asserts that all four motor vehicles which cost a total of about **769m/=** belong to Mr. Kazinda, but that he procured and registered them in the names of **Kamunvi Charles and Byaruhanga Gerald** to disguise their ownership. The documents relating to all vehicles are **Exhibit P.22 (a), (b), (c), (d)**.

The accused maintains that since all the vehicles are in the names of **Charles Kamunvi**, he is their owner. He pointed to **Pw4 (Kamunvi)**'s evidence that it was **Patrick Mirembe** who paid him for the **AK 1** with an explanation that **Kazinda** wanted it for his son **Allan Kazinda**. Further, that **Kamunvi's** evidence was that after he bought the **AK2** Faisal told him that the accused had bought it for his son **Allan Kazinda** and as a condition of purchase for both of those motor vehicles, they had to have the **AK1** and **AK2** initials which stand for **Allan Kazinda**, and that the vehicles were driven away by **Faisal**.



He denied that he told **Faisal** that he wanted vehicles **UAM 200B** and **UAM 200X** as **Kamunvi** testified. He does not know anyone in the names of **Faisal** and could never instruct a person he does not know or has never met. The prosecution was at liberty to bring the **Faisal** who **Kamunvi** referred to but they did not. He has never instructed **Patrick Mirembe** to procure a motor vehicle for him or his family. His son **Allan Kazinda** has never stepped into or driven the vehicles that are attributed to him and to his names. Prosecution was at liberty to bring **Patrick Mirembe** but they did not.



The accused has never seen any of those vehicles on the road. There was no visual evidence, no photographs or even exhibit slips were brought to the court to support **Victor Acidri's** evidence that the vehicles were seen on television in his compound.

**M/s Spear Motors** who imported some of the vehicles were not brought to testify to the accused's or **Faisal's** involvement on his behalf. Documents such as Log books, sale agreements and transfer forms were not exhibited to show the accused's involvement in the purchase or transfer of the vehicles.

**Allan Kazinda** was not summoned to testify about the allegations, since the initials "AK" could also stand for "Ali Kato". No documents between **Faisal** and **Kamunvi** and between **Kamunvi** and **Mirembe** were exhibited.

The accused pointed out that **Kamunvi** testified that **Faisal** borrowed money against the vehicles from a company called **Top Finance**, but he (**Pw4**) did not show court any document to that effect. **Pw4** did not show court the accused's capability to influence non-documented decisions or how his life was authoritative over his (**Kamunvi's**) conduct.

**The court recalls** that the accused and his counsel took a deliberate decision not to cross examine or challenge any aspect of **Pw4's** evidence. Not a single question was put to Pw4. The presumption which the fact that the vehicles are registered in **Kamuvi's** names creates was arased by Pw4's evidence that they in fact belong to the accused. The key aspects of Pw4's uncontested evidence include;

- that the accused used his brothers (**Patrick Mirembe** and **Wamala**) and **Faisal** as his agents,
- that all four vehicles belong to the accused. (This evidence is important in that it rebuts the presumption that **Pw4** in whose names the vehicles are registered is their owner).
- That it was **Patrick Mirembe** who paid him for the **AK 1** with an explanation that the accused wanted it for his son **Allan Kazinda**.
- That **Faisal** told him that the accused had bought the **AK2** (which was imported by Spear Motors on the orders of **Br. Byaruhanga Gerald (Pw2)** for his son **Allan Kazinda**.
- That both vehicles had to have the **AK1** and **AK2** initials which represent "**Allan Kazinda**", as a condition for their purchase.
- That the vehicles were driven away by **Faisal**.
- That the accused told **Faisal** that he wanted vehicles **UAM 200B** and **UAM 200X**.
- That the accused instructed **Patrick Mirembe** to procure a motor vehicle for him

There can be no reason for Pw4 to have disowned the four vehicles and deny himself of all those financial benefits, only to incriminate the accused. In this regard, the evidence that he is a close friend of the accused through whom he



conducted financial transactions at Sheraton hotel is relevant. The court believed **Pw4 (Kamunvi)**'s uncontroverted testimony.

The accused's assertion that he does not know anyone in the names of **Faisal** and could therefore not have instructed **Faisal** as Pw4 testifies is a mark of dishonesty, since he in fact mentioned **Faisal** as one of his witnesses.

The accused pointed to the fact that the prosecution did not adduce the evidence of the **Faisal**, **Patrick Mirembe** and **Allan Kazinda** all who **Kamunvi** referred to, and **M/s Spear Motors** who imported some of the vehicles in issue. Further that no visual evidence, no photographs or even exhibit slips were brought to the court to support **Victor Acidri**'s evidence that the vehicles were seen on television in his (accused's) compound. Also that Log books, sale agreements and transfer forms were not exhibited in court to evidence his involvement in the purchase and transfer of the vehicles, and that no documents between **Faisal** and **Kamunvi** and between **Kamunvi** and **Mirembe**, and those evidencing the loan transaction between **Faisal** and **M/s Top Finance** were exhibited. He also asserted that there is no evidence of his capability to influence non documented decisions or how his life was authoritative over **Kamunvi**'s conduct.

The accused did not contest **Kamunvi**'s evidence and facts relating to the issues he is raising. Neither did he contest (in cross examination) **Pw15**'s evidence that he found all four vehicles at his residence. The prosecution is not under any obligation to adduce evidence where the facts in issue are not contested.

It should be clarified that **Pw4 (Kamunvi)**'s evidence that **UAM 200B Mercedes Benz ML** is now at **M/s Top Finance** in Kololo over money lending issues does not contradict **Pw15**'s evidence that he saw it at the accused's residence when he was conducting verification, which was in 2012.

The court notes the fact that the same names; **Charles Kamunvi, Patrick Mirembe, Wamala, Faisal and Br Byaruhanga** are surfacing in relation to properties and activities attributed to the accused. The accused in fact testified that **Mirembe and Wamala** (who he declared as his dependant) are his brothers. He testified that **Charles Kamunvi, Patrick Mirembe, Wamala** were doing business in which he was also involved. He named **Faisal** as his witness in this case. This is not a mere coincidence given the evidence that he was using agents to conceal illicit transactions and businesses to cover his tracks, and it is consistent with his mode of conducting business and owning property.

On the basis of **Kamunvi (Pw4)**'s uncontroverted evidence as laid out above, and **Acidri (Pw15)**'s evidence that he found all the vehicles at the accused's residence, the court is satisfied that the accused was in control and possession (**as defined herein**) of vehicles in issue at the material time, as alleged in count 3.

**Whether the value of the vehicles established to be 769,473,835/= (seven hundred sixty nine million, four hundred and seventy three thousand, and eight hundred thirty five shillings) was disproportionate to the accused's income and his past known sources of income or assets for the duration 2009 to 2012.**

**It is in evidence that;**

- **AK 1** cost **25m/=** but it was re-sold to the accused at **18m/=**,
- **AK2 Mercedes Benz** was imported at **544,594,287/= (exhibit P)**, plus Taxes of **120,000,000/=**.
- **UAM 200x Dodge** cost **92,489,460/=** including a **5,000,000m/=** commission.
- **UAM 200B Mercedes Benz ML** cost **US\$ 20,000 (107,000,000m/= (including a 5m/= commission))**



According to the above evidence, the total value of the vehicles is about **762,083,747/=** (*seven hundred sixty two million, eighty three thousand, seven hundred and forty seven shillings*).

Considering that the accused's income or past known sources of income or assets for the period **2009 to June 2012** was **83,754,655/=(eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings)**, the sum of **762,083,747/=** (*seven hundred sixty two million, eighty three thousand, seven hundred and forty seven shillings*) which is the total value of the vehicles he was in control and possession of is disproportionate to his income and his past known sources of income or assets whose sum for the duration 2009 to 2012 which was established to be **83,754,655/=** (**eighty three million, seven hundred and fifty four thousand, six hundred and fifty five shillings**).

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About the accused's argument that if his long employment history spanning 18 years were taken into account, it would be found that he could realistically maintain the lifestyle in issue, if the Court were to assume that every three years for the 18 years of his career he received **UGX 83,754,655/=** (the amount attributed to him during the period 2009 to 2012) and if all this money was not spent on anything, his total earnings in 18 years would be **UGX 502,527,930/=**. The difference between **UGX 502,527,930** on the one hand, and the total amount (in cash and cost of properties) attributed to him in all three counts on the other hand, would still render his lifestyle grossly disproportionate to his income.

**I therefore find him guilty of illicit enrichment contrary to section 31 (1) (b) of the Anti-Corruption Act and convict him accordingly.**

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The lady assessor opined that there is sufficient evidence to ground convictions on each count and I am in full agreement with her.

I find the accused guilty of **illicit enrichment** contrary to **section 31 (1) (a) in count 1**, and contrary to **section 31 (1) (b) of the Anti- Corruption Act in counts 2 and 3**, and I convict him on each of the three counts.



**Signed**

**Judge**

**28/October/2020.**