

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
ANTI-CORRUPTION COURT AT KOLOLO
CRIMINAL SESSION CASE 4 OF 2019

UGANDAPROSECUTOR

VRS

1.MALONG LAWRENCE LUAL YOR (A1)
2.OKITA LUNYI LOTA MIKE (A2)
3.GAVANA THADEUS ZIKUSOOKA aka JAMES
BYARUHANGA (A3).....ACCUSED

BEFORE GIDUDU, J

JUDGMENT

The three accused persons herein referred to as **A1, A2 and A3** are charged with ten counts summarized as follows:

(i) Obtaining money by false pretence **C/S 304 and 305 PCA**

The three and others still at large, are accused of obtaining **USD 1,900,000** from W.G. Dessie (PW1) between Feb 2017 and Dec 2018 purporting to sell gold to him whereas not.

(ii) Money Laundering **C/S 3(c), 116 and 136(i)(a)** of the **AMLA**. The three and others still at large, are accused of acquiring, possessing and administering **USD 1,900,000** knowing that the money is a proceed of crime.

(iii) Conspiracy to defraud **C/S 309 of the PCA**. The three and others still at large, are accused of conspiring to defraud W.G. Dessie of **USD 1.900.000**.

- (iv) Uttering false documents **C/S 351 and 347 of the PCA**. The three and others still at large are accused of knowingly and fraudulently uttering certificate of origin **50575** of 25th October, 2017 for 50kgs to WG Dessie purporting it was issued by the UNCC&I whereas not.
- (v) Uttering false documents **C/S 351 and 347 of the PCA**. The three and others still at large knowingly and fraudulently uttered **export permit number 02896** of 24th October 2017 to WG Dessie purporting it was issued by the Commissioner Geological Survey and Mines, Entebbe whereas not.
- (vi) Uttering false documents **C/S 351 and 347 of the PCA**. The three and others still at large knowingly and fraudulently uttered **export permit number 004350** dated 14th August 2017 to WG Dessie purporting it was issued by the Commissioner Geological Survey and Mines, Entebbe whereas not.
- (vii) Uttering false documents **C/S 351 and 347 of the PCA**. The three and others still at large knowingly and fraudulently uttered **receipt no. 251** dated 18th October 2017 to WG Dessie purporting it was issued Inter Express Cargo Uganda Ltd whereas not.
- (viii) Uttering false documents **C/S 351 and 347 of the PCA**. The three and others still at large knowingly and fraudulently uttered **receipt no. 252** dated 20th October 2017 to WG Dessie purporting it was issued by **Inter Express Cargo Uganda Ltd** whereas not.
- (ix) Uttering false documents **C/S 351 and 347 of the PCA**. The three and others still at large knowingly and fraudulently uttered analytical lab report dated 23rd October 2017 to WG Dessie purporting it was issued by the Dept. of Geological Survey and Mines, Entebbe whereas not.

- (x) Uttering false documents **C/S 351 and 347 of the PCA.** The three and others still at large knowingly and fraudulently uttered Airway bill number **170814261914** to WG Dessie purporting it was issued by **Global Freight and Cargo** whereas not.

1. PROSECUTION CASE

WG Dessie, PW1, and his friend Abebe Belay Engda, PW2, testified at great length about a gold scam in which they were enticed and conned by the accused persons and others still at large of large sums of money in US Dollars. PW1 and PW2 are Ethiopian Nationals resident and doing business in South Africa.

Witnesses from **Dahabshiil Money Transfer(DMT) in Kampala and Nairobi, Dept of Geological Survey and Mines, Entebbe, UNCC&I and the police CID** also testified. The gist of their evidence is that A1 and A2 received money from PW1 directly and other sums through **DMT** branches in Kampala and Nairobi sent by PW1 purporting it was for the sale of gold; that the export permits, Certificate of origin and the Geological survey report presented to PW1 are false because they were not issued by their respective departments.

Evidence adduced is lengthy and a movie-like story. It starts with friendship in South Africa between A1 and Abebe, PW2. They travel to South Sudan to explore business opportunities for PW2 to invest in at the invitation of A1. After exploring the business environment PW2 declines to put money in Juba. PW2 returns to South Africa

A1 and PW2 remained friends on social media.

In the course of interacting on social media A1 introduced gold business to PW2. In turn Abebe interested W.G Dessie, PW1, in the trade which he (PW1) reluctantly agreed to try.

PW1 and PW2 travelled to Uganda to meet A1 who received them at Entebbe airport and booked them at Speke Resort Munyonyo.

5 A1 introduced the two (PW1&PW2) to others like A2, A3 and others still at large. PW1 paid for one kilogram of gold as a trial but the accused is told to buy ten kilograms, then fifty kilograms and later he is told to take 150 kilograms.

10 PW1 was made to pay endless sums of money to A1, A2, A3, and various people such as a one person who posed as an army General from DRC who owns the gold, Patrick who posed as a URA officer, Hannington who posed as a lawyer for the army General, Oyino who posed as a Kenya Revenue Authority officer, a General's wife in DRC, one Moro from Interpol, etc.

15 The gold scam was transacted in Kampala, Entebbe Airport, Nairobi, Dubai, Zambia and Hong Kong.

20 PW1 and PW2 trusted A1 who kept saying he was a man of God to stay in the transaction. They also believed that A1 was a son of a South Sudanese General who was a gold trader. These two attributes convinced PW1 to continue paying money to A1 and his accomplices trusting that a Man of God and son of an army general trading in gold shall deliver a good deal.

25 Attempts to ask for a refund was always rejected by the accused on grounds that the money had already been spent on logistics and that the deal was ripe it would be imprudent to retreat.

30 Finally, the curtain fell in February 2018 after PW1 failed to get the gold. A1 advised PW1 to report the matter to the Police and have A2, A3 and Hannington arrested. He claimed to have been given only USD 50,000 for his Christmas to keep quiet.

Later, A2 sent videos of A1 to PW1 resting his head on **US** dollars as his pillow. A2 told him A1 had taken all the

money. PW1 reported the matter the police but nothing happened. PW1 was now broke having been fleeced of his money and lost property to money lenders.

In November 2018, Dessie became aware through the press that A2 and A3 had been arrested by **ISO** in another gold scam. He travelled to Uganda and reported to **ISO** who arrested A1.

Later A1 and A3 were released by ISO but PW1 complained. The two were re-arrested and charged in court together with A2 who had remained in detention.

PW1 lost an estimated USD 1,900,000 to the accused, others at large and in air travel and hotel expenses from South Africa where he was based to Uganda, to Kenya, to Dubai, to Hong Kong and back and forth several times chasing gold that never was. He was also given a lot of fake documents purporting to facilitate the transaction.

Here below is a summary of the money transactions from PW1 to the accused and their accomplices according to the testimony of PW1 and PW2 in **USD**.

1.	PW1 paid to A3 in for 1kg of gold plus taxes and insurance. June 2017	30,000
2.	PW1 paid to A3 for 10 kgs of gold after A1 had insisted they take more gold because they had 600 kgs. June 2017	100,000
3.	PW1 paid to General to pay his soldiers	100,000
4.	PW1 paid to Patrick said to be URA officer to assist process export of 150kgs of gold to Dubai. June 2017	70,000
5.	PW1 paid to A1 to renew gold export license. June 2017	10,000
6.	PW1 sent money to A1 to cater for their travel expenses of A1, A2, A3 and Emmanuel to Nairobi to trace gold stuck in Nairobi. July 2017	10,000
7.	PW1 sent to A1 money to rescue gold	150,000

	stuck in Nairobi with help of Oyino posing as KRA officer. July 2017	
8.	PW1 sent another sum to A1 in Nairobi to pay Kenya Govt officials release the gold seized in Nairobi. July 2017	150,000
9.	PW1 paid money to Hannington Tony said to be lawyer for the General to correct error on Airway bill and also pay for his fair to Hong Kong where they would sell gold. July 2017	100,000
10.	PW1 paid more money to Hannington Tony for air ticket to Hong Kong. Sept 2017.	2,000
11.	PW1 paid money to A2 to go to DRC to get 20kgs of gold from General's wife. This was to be sold in order to pay off 150,000 USD balance in Kenya vide Oyino and also to pay 50,000 for customs in Hong Kong so that the 150kgs in Hong Kong can be sold to recover all their expenses. October 2017	30,000
12.	PW1 paid money to A3 to ship 50kgs of gold brought by A2 from DRC. October 2017. Exhibits P3 and P4	50,000
13.	PW1 paid money to A3 to bribe UN officials to allow the export of the 50kgs of gold since it was from DRC. October 2017	60,000
14.	PW sent money to A3 to bribe UN officials in Dubai to re-route 50kgs of gold from Brussels to Hong Kong. November 2017	10,000
15.	PW1 paid money to Hannington Tony to pay for extension of the customs bond for the 150kgs in Hong Kong plus air ticket. Dec 2017	200,000 + 2000
16.	PW1 paid money to Oyino in Nairobi to help trace the gold stuck in Nairobi having been returned from Hong Kong after the UN finding out it is from DRC and not Uganda. Dec 2017	5,000

17	PW1 paid money to A2 to give to the general's wife to release the gold returned from Hong Kong so that they sell it in South Africa. Jan 2018	10,000
18.	PW paid money to Moro said to be of INTERPOL UG to arrest A2, A3 and others for defrauding him of all his money in the gold scam. February 2018	3,000
	TOTAL	1,092,000

2. DEFENCE CASE

5 All the accused denied the charges. **A1**, in his defence denied ever meeting Dessie (PW1) or Abebe (PW2). He denied receiving any money through Dahabshiil Money Transfer (**DMT**) from PW1.

10 It was his testimony that the payment vouchers from Dahabshiil Money Transfer are false. It was his further testimony that he has never received any money from PW1 or PW2.

He also denied ever meeting A2 and A3. He denied uttering any certificates or receipts from any company to PW1.

15 He believes his arrest by **ISO** was because he posted himself on social media when in possession of **USD 100 million**. He exhibited photos of himself basking in dollars (**exhibits D3 to D5**) which he said he took from Serena Hotel Nairobi and Michael Angelo Hotel South Africa. He refused to give **ISO** operatives money that is why he is in court.

20 In cross examination he stated that the source of his wealth is Jesus. He said the money is now in the bank. He admits owning **exhibit P2** which is Trading License from the Ministry of Mining, South Sudan.

25 **A2**, Okita Lunyi Lota Mike, also defended himself against the charges. It was his testimony that he was arrested when

he had gone to offices of Golden Sacks at Muyenga to check on the complaint by a Chinese businessman that his gold export documents were delayed. The Chinese man was introduced to him by his (A2's) wife.

5 While at Muyenga, he was arrested by **ISO** operatives together with 14 others and taken to a safe house in Kyengera. The Chinese man claimed A3 had taken his USD 100,000.

10 While in the detention cells, A1 was brought in. Dessie, PW1, an Ethiopian claimed that A1 had taken his money. A1 was later released with A3. Later Dessie went to ISO complaining about the release of A1. PW1 said he was demanding **USD 1,900,000** from A1.

15 A2 spent three months in detention before being handed to the police where he spent another month before being charged in court.

It was his testimony that the evidence against him are total lies. He denies knowledge of the receipts and certificates contained in exhibits **P1 to P13**.

20 As regards **exhibit P14** where he appears with another person with bundles of US dollars on the table, he admits knowing that person as Tayebwa of Mbarara with whom they were sharing money from proceeds of coffee at Mombasa.

25 **A3** also denied the charges and testified that he owns a company **Golden Sacks Ltd** at Muyenga which deals in gold smelting and testing. On 7th November, 2018 while attending to a Chinese customer, he was arrested by **ISO** operatives. His smelting equipment was taken during
30 arrest. His UGX 40 million and USD 100,000 belonging to the Chinese customer was also taken.

In detention, he was alleged to have taken money belonging to an Ethiopian Dessie. It was the first time he saw A1. In

January 2019, he was set free with A1 after the ISO chief said Dessie (PW1) was a lair.

One month after his release, he was kidnapped on 6th March 2019 from his gate and taken to the police from where he was charged in court together with A1 and A2 for obtaining USD 1,900,000 from Dessie (PW1).

He denied receiving any money from PW1 for any gold transactions because he never issued any receipt for the money. He never received USD 30,000; USD 100,000; USD 70,000; USD 60,000; USD 10,000; USD 100,000.

He denied knowledge of Oyino, Hannington, and Patrick etc. He denied uttering any documents contained in **exhibits P1 to P13**. He denied seeing any gold either in 50kgs or 100 Kgs. He tendered a mineral dealer's license as **D6**.

He believes Dessie (PW1) and Abebe (PW2) are conmen because they could not pay up to **USD 1,900,000** without documentation.

DW1, Musoni Adnan, testified that he did not know A2 and A3. He knew PW1 as a husband of his sister Shinaz Muhammad. He testified that PW1 showed him a photo of **A1** but never told him the reason he was looking for him (**A1**). The rest of his evidence is hearsay about what his sister told him. He testified that his sister who has since separated with PW1 told him that PW1 deals in drugs. The sister did not testify. His evidence of what he heard from her is irrelevant.

Another defence witness, DW2, Benjamin Sunday Bizimana testified that he knew A1 from detention after he was arrested at Muyenga with A2 and A3. He got arrested when A3 called him after **ISO** operatives arrested him at Muyenga. When he went to check out why A3 was being arrested he was also arrested.

He was released after 45 days. He saw PW1 at the police station claiming A1 had taken his USD 1,900,000. His evidence relates to witnessing the arrest of A3 and A2.

5 **3. BURDEN OF PROOF.**

The burden of proof is upon the prosecution to prove all the essential ingredients of each offence beyond reasonable doubt.

10 The accused have no duty to prove their innocence. The case is proved on the strength of the prosecution case and not on the weakness of the defence.

Woolmington V DPP (1935) AC 462 applied.

15 **4. RESOLUTION OF THE CHARGES.**

15 **Count One: Obtaining money by false pretence C/S 304 and 305 PCA**

The prosecution is required to prove the following elements of the offence beyond reasonable doubt.

- 20 (i) That there was a representation by words, writing or conduct of a matter of fact either **past or present**.
- (ii) That the representation was **false**
- (iii) That the person making the representation **knew** it was false or did not **believe** it to be true.
- 25 (iv) That the false pretence was made with **intent to defraud**
- (v) That it is the accused who committed the crime.

30 Ms. Marion Acio, Chief State Counsel submitted that the three accused and others at large fleeced PW1 of a total of

USD1,278,000. They acted in concert with each playing a complimentary role to actualize the fraud. **A1** played the lead role of inviting **PW2** and eventually **PW1** to Uganda. He introduced the gold trade which the victims fell for.

5 **A2** played the role of being a relative of the Generals that owned the gold in DRC and persuaded the victims to pay more money each time they appeared to give up.

10 **A3** played the role of a clearing agent and processor of paper work to export the said gold. She asked court to find that money was obtained from **PW1** by means of false pretence that there was gold to buy whereas not.

15 Mr. Stephen Mungoma, learned counsel for the accused, disagreed. He contended that the promise to sale gold was about the **future** and not the **present or past**. It was his view that the evidence adduced did not show that there was gold to be bought in the present tense. It related to gold to be sourced from **DRC** which is a civil contract and not a criminal offence.

20 Mr. Mungoma also submitted that the money in the indictment is exaggerated. It does not total to USD 1,900,000 as alleged and this could be because **PW1** is a liar.

25 From the prosecution evidence, the interaction between **A1** and **PW2** lasted between 2011 to 2017 before **A1** invited **PW2** to Kampala to do gold business. **PW2** testified that he came to know **A1** through a friend. The two travelled to Juba where **PW2** wanted to find business opportunities in a new Country of South Sudan. It was **PW2**'s evidence that he first met **A1** in South Africa. **A1** invited him to go to the new
30 Republic of South Sudan where there were plenty of business opportunities. **A1** took him to the South Sudan

Embassy and got him a visa. PW2 bought a ticket for A1 and they travelled together to Juba.

5 In Juba, PW2 was advised to build a guest house with A1 as a partner since a foreigner could not own a business without a local partner. After assessing the situation, PW2 declined and returned to South Africa but remained chatting with A1 on social media.

10 In 2017, A1 send videos of gold to PW2. A1 asked PW2 to join the gold business. He asked PW2 to find an investor so that the buy gold from a Congolese General who had 2 tons of the same but had trusted A1 with 600kgs which A1 was to sell first before accessing the other gold from the General. The deal was for A1 to raise 50% equity and the investor to raise 50%. The business was to be done in Uganda where
15 A1 was now operating from.

20 When PW2 asked about the gold trading license requirement, A1 said he had an international license from the UN to buy and sell gold. PW2 trusted A1 who projected himself as a staunch Christian and man of God. Since the Ethiopian community in South Africa trusted PW2's business skills, he convinced PW1 to come on board.

25 In June 2017, PW2 came to Uganda to meet A1. Three days later A1 asked PW2 to tell the investor to travel to Uganda for the deal. PW2 asked PW1 to travel to Uganda. When PW1 Arrived in Uganda, he was introduced to A2, A3 and others at large such as the Congolese General, Emmanuel the translator for A2 who spoke broken English but used French, Hannington Tony the alleged lawyer for the Congolese General, Patrick the alleged URA staff and Oyino
30 the alleged Kenya Revenue Authority staff.

At first PW1 offered to buy one kilo to test the waters of the gold trade but A3 kept changing positions. A3 told PW1 he could not take out only 1 kg of gold. He offered to buy 10kgs and after payment A3 said **URA** had declined to clear only 10 kgs. The minimum allowed was 150 kgs. Later, the accused asked PW1 to take 150 kgs, which he should sell and take off his money with the balance going to the Congolese General.

Between June 2017, and December, 2017 which is a period of 6 months, PW1 paid various sums of money for various reasons as shown in the table above. At the end of the day PW1 did not get any gold. All these payments were being made for two main reasons. The first is that they trusted A1 as a man of God who would not cheat and secondly, they had put so much money in the deal that they feared to pull out believing it was due to mature. Pulling out would lead to loss.

The accused deny everything said by the complaints against them. It is their case that they had never met or interacted with PW1 and PW2.

A1 claimed he was arrested because he took photos of himself basking in money as seen in defence exhibits **D3 to D5**. A2 and A3 claim to have been arrested by **ISO** but they were not aware of any charges. They deny ever meeting A1 who they only saw at the ISO headquarters shouting and denying taking money from an Ethiopian they came to learn as PW1.

From PW2's testimony before he came to Uganda, A1 claimed to have 600kgs of gold from the Congolese General. When PW1 arrived, he offered to buy 1kg after he had been shown pieces of gold. The offer to have PW1 take more gold was because what was available was 600kgs and yet

according to A3, URA could not clear small kilos of gold. It is with respect, not true as Mr. Mungoma submitted that the gold was to be sourced in DRC which would be a future contract. The deal was about gold that was available and seen by the buyer. It was not about gold that A1 was to get from Congo. It was available in Muyenga and also seen at Entebbe Airport.

It is also a fact that PW1 did not get any gold at the end of the day. It is a fact that any deal about gold was false. The falsity related to the **past or present** and not the **future**.

Since the complainant adduced documentary evidence of payment vouchers from Dahabshiil money transfer, false reports, false certificates and false airway bills, it means that he was defrauded. PW1 did not get value for his money and it follows that the false representation was made to him with knowledge that it was false and with the intent to defraud him of the money. It was PW1's evidence that A3 said Uganda Laws did not allow the buyer to carry the gold to the airport. That it was A3 as clearing agent allowed to do so. This was meant to ensure that the buyer does not take possession. The purported sale was made with knowledge that the sale was false.

Was it the accused that cheated PW1? The accused have denied ever meeting or receiving money from PW1. Evidence on record shows that PW1 and PW2 met the accused and others several times and in several places such as Munyonyo, BMK apartments, Muyenga, Golden Tulip Hotel, King Fahad Plaza- all in Kampala, Uganda. They also met in Nairobi at Boma Hotel. They met, interacted and communicated for a period of 6 months. What would be the motivation of two Ethiopian Nationals living in Johannesburg South Africa to come to Uganda to implicate

a South Sudanese National, a DRC National and a Ugandan in a crime they have not committed?

Evidence in **exhibit P2** which is a provisional gold license issued by the Government of South Sudan was accepted by **A1** in cross examination as belonging to him. How did his license end up in PW1's possession if the two had never met and interacted before?

Further, **exhibit P15** which is a payment voucher from **DMT** King Fahad Plaza reveals **A1** as payee for 30,000 USD. **Exhibit P16** shows **A1** as payee for USD 2,000. The sender is PW1. A1's passport no. R00057004 with his clear photograph are attached. This was in June 2017 before **ISO** arrested him. What was this money for if A1 and PW1 had no deal? How did A1's passport end up at **DMT** offices?

Exhibits P50 to P59 reveal A1 receiving various sums of USD from PW1 withdrawn from **DMT** offices in Nairobi Head office using his passport number B00000256 with his clear photograph seen on the payment vouchers as follows: (i) 25,000 USD on 6/7/2017 from PW1; (ii) A1 received 34,000 USD on 20/7/2017 from PW1; (iii) A1 received USD 50,000 from PW1 on 6/7/2017; (iv) A1 received USD 1000 from PW1 on 2/10/2017; (v) A1 received USD 690 from PW1 on 13/9/2017; (vi) A1 received USD 1,500 from PW1 on 4/9/2017; (vii) A1 received USD 1,500 from PW1 on 24/8/2017; (viii) A1 received USD 1,500 from PW1 on 21/8/2017; (ix) A1 received USD 31,370 from PW1 on 31/7/2017; (x) A1 received USD 17,027 from PW1 on 29/7/2017. How did A1's passport end up At Dahabshiil Money transfer offices in Nairobi? Does this not confirm what PW1 testified about? A1 referred to all these payment vouchers as false. He denied receiving any money from PW1 or ever meeting him.

The meeting between PW1 and A1 was not an event. It was frequent both physically and on phone in diverse places over a period of six months. It created a relationship. PW1 and PW2 were in my view gullible. They trusted other people too much. I should, perhaps add that the script from which the tricks were being sourced was well written.

A1 is running away from the truth and his Christian credentials were only used for to commit fraud. I do not believe A1 when he stated that the money, he photographed himself with in **exhibits D3 to D5** was obtained from Jesus. Whilst I believe that with God everything is possible, A1's lifestyle betrays his claim of Faith. His denials are not believable in respect of the charge of obtaining money by false pretence. Payment vouchers referred to above connect A1 to the crime.

Exhibits P3 and P4 are acknowledgement receipts from **Inter Express Cargo** issued to PW1 for payment of a total of 50,000 USD being Shipment charges for 50 kgs of gold. **A3** admitted in cross examination that **Inter Express Cargo** belongs to his partner Herbert Bazanye. How did these receipts land in the hands of the Ethiopian National resident in South Africa? It is no coincidence that his business partner's receipt is used in a business **A3** operates. It was part of the fraud.

Exhibit P33 is a payment voucher from **DMT** King Fahad Plaza. It reads A3 as payee for USD 9000 sent by PW1 on 20th June 2017. A3's **National ID CM77018109TR6G** is attached. What was this money for? It proves that PW1 dealt with A3 as per his testimony. **A3** must be telling lies. His denial is false. He has no credible defence to the charge of obtaining money by false pretence.

Exhibit P14 is a photograph of **A2** sitting on table with dollars. It was taken by PW2 when they paid 200,000 USD to the so-called lawyer representing the Congolese General to extend the customs bond in Hong Kong for 150kgs of gold. **A2** admits it is him in the photograph but contends it was taken whilst he was in Mombasa sharing money with Tayebwa from sales of coffee. Why take a photograph when sharing your own money? I don't believe A2's version of the story.

Exhibit P18 which a payment voucher from **DMT** King Fahad Plaza for 5,000 USD shows A2 receiving the said money from PW1. A2's passport is attached. What was this payment for if A2 has never met PW1? This only confirms what PW1 and PW2 testified about being conned by the accused and others still at large.

When I consider the evidence of PW1 and PW2 together with samples of exhibits showing payments to A1, A2 and A3 plus other documents like acknowledgement receipts against the defence denials that they have never met the complainant, I find the prosecution version more credible and believable. The defence did not offer any reasonable doubt to the evidence adduced by PW1 and PW2 on count one. Witnesses called by the defence such as DW1, Musoni Adnan and DW2, Benjamin Sunday Bizimana were not useful in my view. Their evidence was not relevant to the charges the accused faced. DW1's evidence is that PW1 told him he was looking for A1. This confirms the prosecution case against A1 instead. DW2's evidence is that A3 was arrested with him. In detention, A1 was brought in with PW1 alleging A1 had defrauded him. This again shows that PW1 was a genuine complainant. The two witnesses had no knowledge of events that happened between June and December 2017. They were not relevant.

It is my finding that there is over whelming evidence on record to prove that the three accused and others still at large obtained money amounting to **USD1,092,000** from PW1 by false pretence. The prosecution has proved all the ingredients of the offence of obtaining money by false pretence in count one beyond reasonable doubt.

I note that various sums of money were being stated by the complainant; the prosecution in submissions; and the defence in their final submissions. The charge sheet gives the figure as **USD 1,900,000**. Ms. Acio admitted in her final address that the figure proved by evidence is less than the one stated in the charge sheet. She put the figure at **USD 1,278,000**. Mr. Mungoma submitted that it was even less than one million USD. I have found upon the evidence of PW1 in his testimony in court that the amount proved is **USD1,092,000**.

PW1 testified that he arrived at **USD 1,900,000** as the money he would have got from selling 150 kgs of gold in Hong Kong. I was also asked to consider that the money given to the accused did not include expenses of money spent by PW1 on air tickets, accommodations, meals, ground movement etcetera.

The court inspected PW1's passport during his cross examination by the defence. There was proof that he travelled to various countries and had visas for Uganda, Kenya, UAE and Hong Kong covering the period June to December 2017. This must have put him to high expense regarding the cost of travel, meals and accommodation for him, PW2 and the accused persons. But those expenses cannot be part of count one in a criminal trial. They are recoverable by civil suit.

Count Two: Money Laundering C/S 3(c), 116 and 136(i)(a) of the AMLA. The prosecution is required to prove the following elements of the offence beyond reasonable doubt.

- (i) That the accused acquired, possessed, used or administered property knowing at the time of receipt that the property is the proceeds of crime.
- (ii) Proceeds of crime defined as- any property or economic advantage derived from or obtained directly or indirectly through the commission of a crime and includes property later successfully converted, transformed or intermingled as well as income capital or other economic gains derived from such property at any time after the commission of a crime. **AMLA (2017)**
- (iii) Money laundering defined- the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under **section 3** of the **AMLA (2013)**

Ms. Acio submitted that the accused persons received and possessed money which was proceeds of crime and are guilty as charged in count two. Mr. Mungoma for the accused contended that count two was preferred in bad faith to deny bail to the accused in the Magistrates' court. It was his view that there was no evidence regarding the proceeds of crime.

With due respect, the charges in count two are misconceived. The offence of money laundering is committed when the accused turn illegitimately obtained

property into seemingly legitimate property. Whilst there is proof that the accused received money from PW1 by false pretence in count one, there was no evidence adduced regarding the process of trying to legitimize that money.

5 The offence under **section 3(c) of the AMLA** is committed when a person acquires, possesses, uses or administers property knowing or having reason to believe at the time of receipt that the property is the proceeds of crime. When the
10 accused obtained money from PW1 as I have found above, they committed an offence of obtaining money by false pretence. That offence was complete.

That alone could not amount to another offence of Money
15 laundering unless there was evidence adduced to show that the accused embarked on using or administering the money so as to legitimize it by acquiring property or hiding it or transferring it to other people. There must be action taken on the money to amount to the offence money laundering
20 otherwise the action of obtaining it cannot by itself result into two offences. That is double jeopardy prohibited by section 18 of the PCA which provides that a person shall not be punished twice under the code or under any other law for the same offence.

Without much ado I find that charges in count two were not
25 only misconceived, but there was no evidence to support the allegations. There was no exhibit to show that the money obtained was laundered to disguise its source,

Count Three: Conspiracy to defraud C/S 309 of the PCA.
The prosecution is required to prove the following elements
30 of the offence beyond reasonable doubt.

- (i) An agreement between two or more persons in a conspiracy to defraud any person of property.

Ms Acio submitted that each of the accused played a particular role that complemented the others to commit defraud. It was her view that the accused had an agreement to defraud the complaint of the money by each playing a particular role.

Mr. Mungoma for the accused disagreed contending that there were no acts from which an agreement could be inferred. He accused PW2 for being a broker between A1 and PW1. He disputed evidence that PW1 could raise one million USD. It was his view that PW1 did not show evidence of sale of his property in South Africa to raise the money.

A conspiracy is an agreement between two or more people to behave in a manner that will automatically constitute an offence by at least one of them. It is the agreement that constitutes the crime. The conspirators must have the intention to defraud. That constitutes the mens rea. The agreement need not be a formal one, but there must be evidence of their conduct from which the court can infer a common understanding of the conspirators to commit a crime.

Prosecution evidence shows that A1 held out as a licensed gold trader from South Sudan. He also held out as a well connected person to the political and military leadership in South Sudan. He further held out as an honest Christian with faith in God. PW1 was enticed by these credentials. It is A1 who took PW1 to A3 who he introduced as a gold smelter and clearing agent. The samples of the alleged gold were in A3's premises at Muyenga. A2 acted as brother to the General who was the owner of the gold. When all hope

seems to have been lost on the original consignment in Hong Kong, it is A2 who offered an alternative and purported to get another 50 kgs from DRC. This was from the General's wife. This also turned out to be hot air.

5 Evidence by PW1 and PW2 is so graphic detailing how A1 enticed them into a gold deal as master planner whilst A3 played the role of a clearing agent knowledgeable in gold export procedures. A2 was a kind of agent of his alleged brother the General that owns the gold and later plays a prominent role of providing alternative gold after the first deal appeared to collapse. The so called additional gold only added more losses to PW1 as he was compelled to pay more money.

10 In short A1 was the master planner; A2 was the assurer that gold exists whilst A3 was the paperwork "expert" with connections in **URA** and the **UN**. A3 is a licensed gold smelter trading under the name Golden Sacks Limited. He used his business premises and operations to dupe PW1 and PW2 to believe they were in the right business whereas not. A2 took advantage of his Congolese Nationality to dupe PW1 and PW2 into believing that he was a brother of a Congolese General who owns gold mines in DRC whereas not. The entire team was assembled by A1 as author of the script from which the sinister plan was acted. Each played a complimentary role to sustain the fraud.

20 Then defence did not offer any credible challenge to the prosecution evidence pinning the three and others on the run about this conspiracy which was well woven that it lasted a whole six months before the script dried up causing PW1 to report the matter to the authorities.

30 The three were always present at Munyonyo, BMK apartments, golden Tulip Hotel, Entebbe Airport, Protea

Hotel Entebbe and in Nairobi. They also separately received fund sent by PW1 through Dahabshiil Money Transfer. They each encouraged PW1 and PW2 to pay more money because pulling out was not an option. They gave assurance that the deal was ripe and PW1 was about to get profits from the investment whereas not.

The actions of each of the accused and others still at large confirm the existence of a conspiracy to defraud. The defence submission that there were no acts from which to draw this inference is, with respect, not sustainable.

I find as a fact that there is abundant evidence to prove that the accused conspired to defraud PW1 of colossal sums of money using a well written script. The fraud was intentional and lasted six months before PW1 came to his senses to realize how much he had been fooled to sell his property to chase a bogus deal which left him and PW2 as paupers. Count three has been proved beyond reasonable doubt. I find each of the three accused guilty.

Counts Four to Ten: Uttering false documents C/S 351 and 347 of the PCA. The prosecution is required to prove the following elements of the offence beyond reasonable doubt.

- (i) That the document is a false.
- (ii) That the false document was uttered knowingly and fraudulently.

Ms Acio abandoned count 8. She submitted that for the rest of the counts four to ten, evidence was adduced to show that the documents were false. Mr. Mungoma on the other hand mixed up his submissions contending that there was no evidence that the accused handed the disputed documents to PW1. He argued further, that the prosecution

did not adduce evidence of receipts issued by the accused for money received from PW1.

Perhaps, I should observe that where there is evidence of a conspiracy to defraud, it would unreasonable to expect that the fraudsters would issue acknowledgement receipts. Even the agreement to defraud is not written to avoid leaving stains of evidence. Similarly it would be unreasonable to expect that genuine receipts would be issued where fraud is being committed. Learned counsel for the defence cannot expect the state to produce receipts for money taken fraudulently. That is why we are in court. I will deal with the counts separately as they relate to deferent documents.

Count Four is about Certificate of origin Uganda number 50575 of 25th October, 2017 purported to have been issued by the Uganda National Chamber of commerce and Industry. **This is exhibit P10.** It was admitted by consent during the trial on 30th September, 2019.

It was PW1's evidence that exhibit P10 was given to him by A3 after he had paid a total of USD 50,000 as per receipts issued by A3 seen in exhibits P3 and P4. Exhibit P10 was to enable PW1 take out 50 kgs of gold sourced from DRC by A2 after the original deal for 150 kgs in Hong Kong collapsed. This was on 20th October, 2017.

The defence denies knowledge of these documents. A3 denied issuing any receipts or uttering **exhibit P10.**

Evidence of (PW11) Dr. Churchill Bachwa former Ag Secretary of Uganda National chamber of Commerce and Industry (**UNCC&I**), testified that exhibit P10 is false because it does not start the serial number with digits "00". It was his evidence that certificates issued by the chamber

have digits “00” as starting numbers whereas exhibit P10 starts as number **50575**.

Secondly, the signature on **exhibit P10** does not belong to any staff at the chamber. Thirdly, the chamber uses a circular stamp whilst **exhibit P10** has a rectangular stamp. In cross examination, he stated that although he joined the chamber in 2019, he was able to verify what was issued in 2017 because of records. He was emphatic that **exhibit P10** did not have a duplicate copy on file as is the case with all certificates issued. Besides it was not in their data bank as a document ever issued by the chamber.

PW11’s evidence leaves no doubt that **exhibit P10** is a false document. The question is who uttered it. PW1 and PW2 state that A3 issued it after they had paid him money to process the export of 50 kgs of gold allegedly brought from DRC by A2. A3 denies it. At the time PW1 was given exhibit P10 he was also given exhibits P3 and P4.

These two exhibits are acknowledgement receipts not of Golden Sacks Ltd owned by A3 but of inter express Cargo owned by Henry Bazanye, a partner of A3 in Golden sacks limited. What a coincidence! I have already observed that in cases of fraud, actors hide their identities in regard to documents. It is reasonable to believe the testimony of PW1 and PW2 that **exhibit P10** was given to them by A3 after paying him money shown on exhibits **P3 and P4**. A3 knew that exhibit P10 was false because he did not ship any gold to PW1. A3 was the “expert” on documents manufacture in the scheme. The accused are connen in the mineral trade. The charges in count four are proved beyond reasonable doubt.

Count five is about export **permit 02896** of 24th, October 2017. It is exhibit **P5**. The evidence of PW8, Kato Edwards is

that his signature on exhibit **P5** is forged. He testified that the forger tried very hard to make it resemble his but failed.

The defence denied knowledge of exhibit **P5**. Exhibits P5 to P11 were admitted by consent on 30th September, 2019. They were part of documents investigated by D/Sgt Okwaja, PW10. It is part of documents contained in police exhibit slips tendered as **exhibit P60**.

There is no dispute that exhibit P5 is false. It purports to be an export permit for gold bars weighing 50kgs originating from Buhweju in Uganda. PW1 testified how A3 gave him documents for exporting gold because he was acting as the clearing agent. A3 denies this. I have already analyzed the defence denials in count one and found that there is no reason from PW1 and PW2 to lie against the accused. They did not meet them once but several times in several places over a period of six months. There was a purported trade relationship established between PW1, PW2 and the accused persons. PW1 testified that he had no grudges with them. The defence denials are just an afterthought and false. The bogus documents were given to PW1 to make him believe it was a genuine deal. Having found in count three that the accused had a conspiracy to defraud PW1 of his money, I have no difficulty finding that the bogus documents were uttered knowingly and fraudulently. PW1 did not export the purported 50 kgs of gold.

The charges in count five have been proved beyond reasonable doubt.

Count six is about export permit **004350** dated 14th August 2017. This is **exhibit P11**. Mr. Kato, PW8 stated that the forgery of his signature on **exhibit P11** is worse than the one on **P5**. **Exhibit P11**.

Again the defence denied knowledge of this document. My findings on **exhibit P5** apply with equal force to **exhibit P11** because the same witness (PW8) denied the signature attributed to him. He was emphatic that the forgery of his signature in **exhibit P11** is even worse. I make the same finding that A3, the paper manufacturing “expert” in concert with his fellow accused uttered **exhibit P11** to PW1 knowingly and fraudulently. PW1 did not export the alleged 150 kgs as alleged in exhibit P11. It is the reason the matter is in court. Charges in count six have been proved beyond reasonable doubt. There is no credible defence to the charges.

Count seven about receipt **number 251** of Inter Express Cargo Uganda dated 18th October 2017. It is **exhibit P3**. The evidence of PW1 is that it was issued by A3 for shipment of 50 kgs of gold. According to the testimony of PW1, on 20th October 2017, he paid to A3 a further USD 30,000 to complete the payment of 50,000 USD for the shipment of 50kgs of gold which A2 claimed to have got from the General’s wife in DRC. After paying USD 30,000 A3 gave PW1 a receipt which is **exhibit P4**. The charges in **count 8** relate to exhibit **P4** which is for the same transaction as **exhibit P3**.

Ms Acio for the state submitted that the state had not established the falsity of **exhibit P4** in Count 8. If it was not established that **exhibit P4** was false in **count 8** then it follows that the falsity of **exhibit P3** in **count 7** has not been proved. The truth is that the company called Inter Express Cargo exists. It belongs to Herbert Bazanye a partner of A3 in Golden Sacks Ltd. In fact Herbert Bazanye holds majority share holding in Golden sacks Ltd. He holds 70% while A3 holds 30% as per **exhibit P41**.

Consequently, since Inter Express Cargo Ltd is a registered company as per **exhibits P42 to P45**, it cannot be said that **exhibits P3 and P4** are false. It follows that **counts 7 and 8** were misconceived. The charges in **counts 7 and 8** were not proved and are dismissed.

Count nine is about uttering a false lab report purporting it was from the department of Geological Survey and Mines Entebbe whereas not. It is exhibit **P6**.

PW6, Baguma Zachary and PW7 Onyege Henry deny the authenticity of **exhibit P6**. PW7 who is said to have signed it was in the UK on studies at the time. Clearly, exhibit **P6** was not issued by the department of Geological Survey and Mines Entebbe. PW1 testified that A3 gave him **exhibit P6**. It is PW1 who gave it to the police. PW10 testified that he investigated the genuineness of **exhibit P6** at the department of Geological Survey and Mines and confirmed it was not issued by that office. It is a false document issued to PW1 as part of the scheme to get more money from him. It was meant to blind PW1 and indeed caused him to bleed more money.

The accused denied uttering it. I do not believe the accused. I have already established from evidence that PW1 and PW2 are gullible. They fell for every trick that the accused persons brought up. In this criminal scheme, false documents were uttered to persuade PW1 pay more money. They were uttered knowingly and fraudulently within the meaning of **section 351 of the PCA**. The prosecution proved charges in **count nine** beyond reasonable doubt.

Count ten is about an **Airway Bill 170814261914** from Global Freight and Cargo. See exhibit **P12**. A letter from **URSB** contained in exhibit **P35** confirms that **Global Freight and Cargo** is not registered in Uganda and

therefore cannot purport to issue any Airway bill to transport any goods by air. It is a false document. PW1 testified that it was issued to him by A3. But A3 denies it.

I have already found PW1 and PW2's evidence to be credible on the source of these false documents. I have already found that A3 was the "expert" manufacturer of bogus documents used to actualize the fraud. The document was purporting to transport 150kgs of gold to Hong Kong. The story of Hong Kong is well detailed by PW1 and PW2. They went to Hong Kong three times. They never took possession of any gold. All the accused were acting in unison to ensure that the fraud succeeds. It indeed succeeded.

There was no credible defence to this charge. The prosecution has proved **count ten** beyond reasonable doubt.

5. **CONCLUSION:**

Having considered the entirety of the prosecution case and weighed it against the defence case which was just full of mere denials for every allegation made by PW1 and PW2, it is my finding that the prosecution has proved the charges in **counts 1, 3, 4, 5, 6, 9 and 10** against each of the accused persons beyond reasonable doubt.

The charges in **counts 2, 7 and 8** were not proved beyond reasonable doubt and are dismissed.

The two lady assessors advised me to find each of the accused persons guilty. It was their view that the prosecution had discharged the burden and standard of proof. They advised that the accused conspired to defraud the complainant of his money purporting they had gold to sell to him whereas not. They also manufactured a host of

false documents to deceive the complainant and indeed obtained more money from him. I accept their opinion.

Consequently, I find each of the accused guilty on **counts 1, 3, 4, 5, 6, 9 and 10**. I convict each one of them on each of those counts.



Gidudu Lawrence

JUDGE

16TH August, 2021

All accused present.

Mr. Kawooya. N for the state

Mr. Mungoma. S

Bruce Manzi Court Clerk

Mr. okuku interpreter. English Swahili

Judgment read in open court.



16th August 2021