

Uganda ..... Respondent  
Versus  
Kazinda Geoffrey & 3 others..... Accused

**Before: Hon. Lady Justice Margaret Tibulya**

Bank of Uganda (BOU).

In financial year 2011/2012 various Development Partners made financial contributions to the PRDP. The Irish Government contributed 4,000,000 Euros. The Danish Government contributed DKK 5,000,000. The Swedish Government contributed Swedish Kroner 16,000,000. The Ministry of Finance was the one supposed to disburse the funds to the beneficiaries.

It is alleged that on three separate occasions, without authority **Mr. Okello Wibert (A2)** who according to **Pw10 (Lawrence Ssemakula)** was a Principal Systems Analyst based at Uganda Computer Services and was the only one responsible for effecting Electronic funds Transfers (EFTs), illegally transferred **Ugx14,876,108,017/=, 3,500,000,000/= and shs 1,795,368,488/=** from the Holding Account (No. 003300098000060) to the Crisis Management and Recovery Program Account No. 000030088000030 of Office of the Prime Minister.

The state seeks to rely on a computer forensic examination report (**exhibit P 19**) which shows that the impugned transactions were carried out on a computer which was ordinarily used by **A2 (Okello Wilbert)**, and on his (**A2's**) charge and caution statement (**exhibit P1**) in which he admits that he transferred 14, 876,108,017b/=, among other evidence. It is asserted that disbursement of PRDP funds was not supposed to be done by EFT but by Security Papers on the authority and approval of the Accountant General.

The state, through **Mr. Lawrence Ssemakula (Pw10)**'s evidence asserts that the Crisis Management and Recovery Program Account No. 000030088000030 of Office of the Prime Minister had been dormant and was not meant to be used for PRDP funds. Further that disbursement of PRDP funds was not the mandate of Uganda Computer Services and was therefore outside **Mr. Okello Wilbert's** duties. The functions of the Uganda Computer Services Department in which **A2** worked were the processing of the payroll for Government employees and the processing of EFT payments for pensions and direct transfers of grants.

**Pw17 (Mpoza)** and **Pw27 (Bwoch)** stated that on or about the 19<sup>th</sup> day of December, 2011 after **A2 (Okello Wilbert)** had already executed the transfers, **A3 (Mr Mugisha David)** by email informed **A4 (Atwine Bright)** that Ireland had disbursed **4 million Euros** as part of two tranches intended for Crisis Management



in Karamoja. He reminded her to credit the money to a relevant account.

The state seeks to rely on the evidence that **A3 (Mr Mugisha David)** was a Senior Economist at Ministry of Finance, Planning and Economic Development in the Macro Economic Policy Department, and his duties included compiling data on financial contributions by Development Partners to the National Budget, and therefore knew about the availability of PRDP funds from Development Partners. It is the state's case that the instructions by **A3 (Mr Mugisha David)** to **A4 (Atwine Bright)** were issued without the knowledge and authority of A3's supervisors and were outside his scope of duties.

**A4 (Atwine Bright)** who was a Senior Accountant, upon receipt of the above email on 28<sup>th</sup> December, 2011 forwarded it to the **late Amon Takwenda** for action. The state seeks to rely on A4's charge and caution statement (**exhibit P37**). The late **Mr. Amon Takwenda** obtained a false bank Statement confirming the availability of the PRDP funds, and prepared a Security paper for the approval of the Accountant General and the Commissioner Treasury services (**the late Mpoza Isaac - Pw 17**) to facilitate the transfer of **Ug shs. 14,800,000,000** from the Holding account (*the PRDP account no. 003300098000060*) to an operations account (*the Crisis Management and Recovery Program account no. 000030088000030*) of Office of Prime Minister.

**Pw17 (Mpoza)** and **Pw27(Bwoch)** testified that **A4 (Bright Atwine)** prepared a reconciliation statement and later submitted the Security paper for the approval of the Accountant General and the Commissioner Treasury services **Mpoza Isaac (Pw17)**. The Security paper was supported by the false Bank Statement and a false Reconciliation Statement. It is the state case that the preparation of the Security paper by **A4 (Atwine Bright)** and the **late Amon Takwenda** was fraudulent, and that the Security paper was supported by a forged Bank of Uganda bank statement (**exhibit P24**). It is contended that in any case, since the money had already been transferred by EFT on 1<sup>st</sup> December, 2011 by **A2 (Okello Wilbert)**, this process was only meant to cover up the fraudulent transfer of the funds.

According to **Mr. Nsamba (Pw29)**, soon after the money reached the Crisis Management and Recovery Program Account No. 000030088000030 of Office of



the Prime Minister it was spent on various fraudulent payments using forged Security Papers by **Kazinda Geoffrey (A1)** who was the Principal Accountant in the Office of the Prime Minister. To this end, a lot of that money was wired to Bank accounts of food suppliers (**Mwani Amos, Hajji Asuman Ssebulondo, Davis Daniel Mulindwa (Pw's 24, 25, 26 respectively)**), whose uncontested evidence was that on **A1 (Kazinda Geoffrey)**'s instructions they withdrew it and returned it to him (**A1**).

It is the state's case that each of the security papers which were used to withdraw the money bore a forged signature of the Permanent Secretary Office of the Office of the Prime Minister (**Pw21- Mr. Pius Bigirimana**) and genuine signature of **A1 (Kazinda Geoffrey)**.

The state sought to rely on documentary evidence including;

- **A4's (Bright Atwine)** email of 28<sup>th</sup> December 2011 to **Amon Takwenda (part of exhibit P.24)**,
- **Security paper no. 183039** dated 28<sup>th</sup> December, 2011 for the purported transfer of **UG. Shs 14,800,000,000/=** as well as the false reconciliation statement (**also part of exhibit P.24**),
- **A3 (David Mugisha)**'s Email of 19<sup>th</sup> December, 2011 to **A4 (Atwine Bright)**, (**also part of exhibit P.24**),
- Letter from the Accountant General (**Pw27 Mr. Gustavo Bwoch**) to Director Banking, Bank of Uganda concerning forged Bank Statement (**exhibit P 30**),
- The letter from the Director Banking dated 29<sup>th</sup> October, 2012 to Auditor General, and other documents from Bank of Uganda relating to Electronic Funds Transfer Infrastructure and file transfer (**exhibit P 31**),
- Bank Statements of the Crisis Management Account (OPM) and of Account **No. 003300098000060** at Bank of Uganda (**exhibit P 26**),
- Security papers and other documents involving the transfer, credit, debit, and movement, of the questioned monies (shs14,876,108,017/=, shillings 3,500,000,000/= and shillings 1,795,368,488/= (**exhibit P 29 (1-33)**),
- Email from (**Pw10, Lawrence Ssemakula**) to **A2 (Okello Wilbert)**, and **A2's** reply to him (**exhibit P 17**),



- Hand writing expert report (**exhibit P 33**),
- Auditor General's report (**exhibit P 34**),
- Forensic Examination Report and attachments, about the imaging of the computers used by **A2 (Okello Wilbert)** and statements of interpretations of the logs ((**exhibit P 19**),
- Documentation in relation to employment of all the accused persons ((**exhibits P 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11**),
- Charge and Caution statements of the accused persons ((**exhibits P1 and 36, 37**).

Each accused person denied the allegations. The relevant aspects of each accused's evidence shall be referred to as and when necessary.

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

The prosecution bears the burden to prove each of the ingredients of each offence beyond reasonable doubt. It is not the responsibility of the accused persons to prove their innocence (**Ssekitoleko Vs Uganda [1967] EA 531**). Where any doubt exists in the prosecution case it should be resolved in favor of the accused persons (see **Kiraga Vs Uganda (1976) HCB 305**).

**A2 (Wilbert Okello).**

### **Abuse of Office (counts 1, 2 and 3).**

In the charges of abuse of office C/S 11 of the ACA (*counts 1, 2 and 3*), it must be proved that **A2 (Wilbert Okello)**;

1. **was employed in a public body,**
2. **did or directed to be done an arbitrary act which was prejudicial to the interests of his employer,**
3. **abused the authority of his office.**

### **Whether A2 (Mr. Wilbert Okello) was employed in a public body.**

The fact that **A2 (Mr. Wilbert Okello)** was a Principal Systems Analyst/Programmer with the Ministry of Finance and was therefore employed in a public body was not contested. In any case, the fact of his employment was proved by the evidence of **Pw5 (Dennis Kagwa)** who exhibited his employment record




(exhibits P. 2). On the basis of the above evidence, I find that the first ingredient with regard to each of **counts 1, 2 and 3** has been proved beyond reasonable doubt.

**Whether A2 did or directed to be done an arbitrary act which was prejudicial to the interests of his employer.**

The arbitrary acts which **Mr Okello** is alleged to have done are the transfers of **14, 876,108.017/=** (count 1), **3, 500,000,000/=** (count 2) and **1,795,368,488/=** (count 3) from account number **003300098000060** in Bank of Uganda to the Crisis Management and Recovery Program Account number **000030088000030** of the OPM, contrary to established procedure.

**Whether the funds in issue were transferred at all.**

 The fact that the funds were transferred was not contested. **Pw20 (Richard Chemonges)** the Director Banking in Bank of Uganda testified that the funds were indeed transferred from the account of Support to Peace Recovery and Development in Northern Uganda, number **003300098000060** in Bank of Uganda (**exhibit P25**) to Crisis Management and Recovery Program Account of OPM number **000030088000030** as per Bank of Uganda statement of accounts (**Exhibit P26**). He testified that on 1/12/2011, the Bank received and effected electronic instructions for **14,876,108,017/=** which was credited on Crisis Management and Recovery Program Account. His further evidence was that on 30/01/2012, the Bank received and effected Electronic instructions crediting Crisis Management and Recovery Program Account with **3.5b/=**. He states that on 30/01/2012, the Bank received and effected another Electronic Instruction, crediting the same account with **1,795,368,488/=**. The above transactions are reflected in **Exhibit P. 26**. This evidence leaves no doubt that the funds complained about in counts 1, 2 and 3 were indeed transferred.

**Whether A2 (Mr Wilbert Okello) effected the funds transfers as alleged in counts 1, 2 and 3.**

Part of the state case is premised on an admission by **A2 (Mr Wilbert Okello)** that he indeed made the transfer of **Shs 14,876,108,017/=**. In this regard, **Pw4 (D/AIP Orone David Martin)** testified that he took a charge and caution statement (**exhibit P.1**) from **A2 (Wilbert Okello)** in which the accused admitted that he had



transferred Shs 14,876,108,017/= from the PRDP account to Crisis Management Account.

A trial within a trial was not conducted since the charge and caution statement was neither repudiated nor retracted by the accused at the time it was received in evidence. Strangely though, long after the statement had been admitted in evidence **Mr Okello** sought to retract it, maintaining that he only signed it because the recording officer (**Pw4 (D/AIP Orono David Martin)**) promised to help him with the case. He also claimed that the contents of the statement were neither read nor explained to him, and that he signed the statement without reading through it. These issues would ordinarily call for the conducting of a trial within a trial in line with established principles in **Tuwamoi Vs Uganda (1967) EA 84**, only that they were raised after the statement had been admitted in evidence without any objection. The defence chose not to cross examine **Pw4 (D/AIP Orono David Martin)** on his evidence that the accused voluntarily made the admission after the charges were read and the words of caution administered to him. Pw4 was clear that the statement was read back to the accused before he signed it.

The court considers that the issues raised by the defence, coming long after **Pw4 (D/AIP Orono David Martin)** had given evidence are an afterthought. Pw4 was denied an opportunity to respond to them. **I find that the admission is admissible in evidence.**


Even if the accused's belated retraction of the admission is taken to have negatively affected its evidential value, the court determines that other than the admission, there is abundant evidence proving that the accused (**A2**) effected the funds transfers in issue.

The first aspect of evidence in this regard, is that of **Pw27 (Gustavio Bwoch, then Accountant General)**, that he established that it was **A2 (Mr. Wilbert Okello)** who made a transfer, and that when he sought an explanation from him (**A2**), he admitted that he indeed effected the transfers but on the advice of **Mr. Mugisha** and **Mr. Mwasia (exhibit P.32)**. The court accepted the above evidence since the defence neither denied nor challenged it.



Other relevant evidence is that of **Pw 10 (Lawrence Ssemakula)** that when he realized that there could be a problem with funds transfers he sought an explanation from **A2 (Wilbert Okello)** who was the one handling transmission of payment files to B.O.U and was in-charge of that section (**Exhibit P. 16**). **Mr. Wilbert Okello (A2)** replied that there were problems in the transmission of files that month, and that he would provide an explanation after retrieving the logs (**the last page of exhibit P17 refers**). On 6/2/2012 **Mr Okello** wrote back explaining that he had retrieved the logs but that "**it seems to be confused**" and maybe that is how those errors occurred.

In his defence, A2 maintains that he is not sure (and does not know) whether he wrote the explanation to **Pw10 (Lawrence Ssemakula)** as per **exhibit P 17**, but that the email shows that he wrote it.

The accused's evidence that he is not sure (and does not know) whether he wrote the explanation does not overcome **Pw10's** testimony that he (**Mr Okello**) actually wrote an explanation to him (**Pw10**) over the queried transfers. The accused's evidence does not also overcome that of **Pw10** that he (**Mr Okello**) was the one handling transmission of payment files to B.O.U and that he was in-charge of that section. The court therefore accepts **Pw10's** testimony in this regard, and with it the fact that **Mr Okello** was responsible for the queried transfers, the reason he offered such an explanation to **Pw10** when requested.

Basing on the fact that his name does not appear in the list of staff members of UCS department in the 2011/12 Ministerial Policy statement (**Exhibit D.4**), the accused denied that he was working in the Computer services department at the material time. He maintained that he could not therefore have effected the alleged transfers.

In my view, the fact that the accused's name does not appear in the list of staff members who were working in UCS at the time does not overcome the overwhelming evidence including that of the people who deployed him there (**Pw10 (Ssemakula)**, **Pw 17 (Mpoza)** and **Pw27 (Bwoch)**, and those he was working with (e g **Pw2 Arthur Mugweri**), **Pw3 (Tony Yawe)**, **Pw6 (Charles Mwasa)** and **Pw9(Samson Byereta)** that he was in fact working in the UCS



department. The investigating officer (**Pw30 George Komurubuga**), was more over clear that **A2's code (code 89 belonging to UCS)** was used to transfer the funds, and that the EFT summary Internal transfers showed that he made the transfers. **Pw10** specifically testified that **A2** was attached to FMS Department but continued handling residual work of UCS. His transfer letter indicated that he had been transferred to FMS but would continue handling specific work in UCS. I believed their evidence since there is no reason they could falsely implicate the accused. I find that the accused was working at UCS at the material time.

**Pw10's** evidence that **A2 (Wilbert Okello)** was the only one handling transmission of payment files to B.O.U was corroborated by that of **Pw2 (Arthur Mugweri Ronald)**, **Pw3 (Yawe Tonny)**, **Pw6 (Charles Mwasia)** and **Pw9 (Leon Samson Byereta)** who interpreted Bank of Uganda server logs (*exhibit P12*, trails/lines of information left on a computer whenever an action is performed on that computer, (as per *exhibit P.13*).

The logs were arising out of a report that had been issued by the Auditor General in this matter. In this regard **Pw9 (Leon Samson Byereta)** inter-alia found that, with reference to *exhibit P.13*, for file **9989122001. INT.pgp** in row No.4 of *exhibit P13* only one transaction, the one for 3.5b/= was successfully downloaded for processing. For file **9986123101. INT.pgp.Pg3** a transaction for 1.795,368,488/= was successfully downloaded for processing.

**Pw9 (Leon Byereta)** also found that the IP address of the computer that was used to make the transfers is **192.168.8.3**. The significance of this IP address is that the person who used to use that computer on a daily basis was **Mr. Wilbert Okello (A2)**.

The accused's evidence was that applications require somebody who wants to use the system to have a User name or account and a password / or PIN, basically for security purposes, so that someone who is not authorized to use the system does not get access to it without those credentials. He stated that for him to log on the system he would use **User 1** credentials, and that the security people who designed the system made the same User name as the password, and so the user name was **User 1** and the password was **User 1** for EFT transfer. He maintains that since his



credentials were known to all other groups, and if any other person had access to the server room nothing would stop them from transferring money.

In this regard he asserts that every agent involved in the transfer of money knew the above naming convention and many people including **Richard Anyi, Monica Mugisha, Sande Erasmus, Stella Olinga, Daka Henry, Lubowa Daniel, Peter Wagabaza** knew the **User 1** credentials. **Mukunya Jairus, Muyingo Gerald** of the Uganda Computers Services department and **Javan and Mutaka** of Bank of Uganda had access to those credentials.

He also asserts that access to the server room was not restricted. In the Ministry of Finance every IT person who had something to do with the equipment in the room, eg Uganda Computer Services (UCS), the Data centre team, the maintenance engineers, URA and ISN people would all access the server room.

The court notes that the accused's assertion that the security people who designed the system made the same User name (**User 1**) as the password was not put to **Pw3 (Yawe Tonny)**, a member of the network team who testified that for one to be able to use the computer at UCS, they had the software installed and a username and a password. A Username is an account to allow one carry out their tasks. It is the respective user who can use this account. A user name is created for the user by a systems administrator, and then the user creates the password.

**Yawe's** further evidence was that the password is usually created at the level of a server, and that it is usually one person who should have it. He stated that in order to effect payments, one needed a second account to be able to do transactions, and that **A2 (Wilbert Okello)** had a second account. Also that **Dan Lubowa, Sande, Dennis Kisina, Judith Kobusingye** and **Duncan Kagulu** were not operational people and therefore only had the administration account of the computer. They only had the username and administrator password to the computer but not to the core FTP application.

**Pw3 (Yawe Tonny)**'s evidence was supported by that of **Pw9 (Leon Byereta)** who stated that having access/credentials to the physical server does not mean that one has automatic rights to send a file. One must have credentials at the application



level (**i.e the core FTP application**) that allows them to connect to B.O.U. These credentials were personal to holder (ie, it is the user who enters his/her password to create that particular user). They are specific to the people in-charge and they were given by a member in the IT security group.

Pw9's further evidence was that **Arthur Mugweeri, Lakuma, Morphat Masaba** and **Pw9** himself only had credentials to the network system of the computer in issue, which could only allow them to offer support, such as installing Anti-virus and peripheral equipment like printers on the physical machine. They could not access the core FTP application that allows the user to send a file from Ministry of Finance to B.O.U. He specifically stated that unlike **A2 (Wilbert Okello)** who had credentials at the application level they did not have the credentials for user 1, 2 and 5 which could log in at the application level to transfer the files to the B.O.U server. Pw9 clarified that in the ordinary course of business (in operations) User 1 credentials were owned by **Mr. Wilbert Okello** while User 2 credentials are owned by the IFMS department. User 2 and 5 were based at IFMS. User 1 was based on UCS.


In the courts view, **Pw3** and **9's** testimonies constitute logical responses to the accused's assertion that many people had the credentials which were relevant to funds transfer. When cross examined by the defence on this issue, **Pw3** and **9** remained steadfast. They offered logical explanations about the workings of the system as opposed to the defence's illogical suggestion that there was no security protocol in place in the Ministry of finance. The court therefore prefers the state's account to that of the defence.

The court recalls **Pw2 (Arthur Mugweri Ronald)**'s testimony that **Mr Okello (A2)** who had the sole responsibility of sending E.F.T's would use the infrastructure which was in place (*a computer which had the software used for encrypting and decrypting which is connected to the server in Bank of Uganda*), and that he (**Mr. Wilbert Okello**) had the ability to log on to that computer and onto the server in Bank of Uganda. That evidence is consonant with that of Pw3 and 9 on that specific issue and therefore lends credence to the admission (**exhibit P1**) which **A2 (Mr Okello)** made before **Pw4 (D/AIP Orone)**.



Court is cognizant of the fact that aspects of the charge and caution statement were denied as being factually incorrect. This includes a statement that the accused was directed by **Mwasa (Pw6)** to transfer the money. Pw6 denied that he ever instructed the accused to effect the transfers. The fact that aspects of a confession statement are incorrect does not render the whole of it inadmissible. While I believed **Pw6's** evidence that he did not instruct the accused to effect the transfers, I am firm in the conviction that the aspect of the confession that the accused effected the transfer of **14b/=** is factually correct.

**Pw11 (Milton Sabiiti)** who imaged and examined a computer with hard disc **5FG4PY2S** (the computer the accused used to use) established that files **9989110112.INT**, **9989123001.INT** and **9986123101.INT** were on the computer hard disc, and that user account "**wokello**", the only one that had a successful login in the core FTP application did the transfer of the three INT files.

The defence sought to rely on **Dw11 (Owora Henry Owino)**'s evidence to impeach the credit of **Pw11's** testimony. The court however determines that **Dw11's** evidence is not worthy of credit. He was instructed by the defence to review and critique **Pw11's** evidence after Pw11 had long testified. 

I found it strange that counsel for the accused who had every opportunity to impeach the credit of **Pw11** through cross examination chose to employ another person to purport to review his (Pw11's) evidence in his absence, thereby denying him an opportunity to explain or clarify the issues that were raised by **Dw11**. The review was tantamount to condemning **Pw11** unheard.

It was also unethical that the defence on whose behalf **Dw11** testified paid him to do the work over which he testified. This raised credibility issues about his evidence. For the above reasons the court rejected **Dw11's** evidence as being unreliable.

All evidence considered, the court finds that **A2 (Mr. Wilbert Okello)** effected the funds transfers as alleged in each of counts **1, 2 and 3**.



**Whether A2's action of transferring the funds amounted to arbitrary acts within the meaning of section 11 of the Anti-Corruption Act.**

**Uganda Vs Atugonza ACD CR CS 37 of 2010** and **Uganda Vs Kazinda ACD CR CS 138/2010** are authority for the position that an “arbitrary act” is an “Action, decision or rule not seeming to be based on reason, system or plan and at times seems unfair or breaks the law.” The arbitrary act or omission must be done wilfully (i.e. “deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not”). This includes doing things based on individual discretion rather than going by fixed rules, procedure or law.

There is overwhelming evidence that the transfers were illegal. **Pw10 (Lawrence Ssemakula)** testified that it was not the Accused's role to transmit files on IFMS. He also stated that for Donor and project accounts security papers are used, and not electronic transfers as was the case here. According to Pw10, it was unusual for donor funds and project accounts to be funded through the UCS sub-system. The above evidence proves that the accused's actions were not based on procedure or system and that they were done wilfully since the accused obviously knew that what he was doing was wrong, the reason he lied to Pw10 that there was confusion and that errors could have occurred.

**I find that A2's action of transferring the funds in each of counts 1, 2 and 3 amounted to arbitrary acts within the meaning of section 11 of the Anti-Corruption Act.**

**Whether the acts were prejudicial to the interests of A2's employer**

**Pw8 (Keith Muhakanizi)** testified that the funds were used for a purpose for which government of Uganda had not agreed with the donors. The donors who included Ireland, Denmark, Norway, Sweden, D.F.I.D (U.K) and the Global Fund suspended their financial support to the Government and demanded for refunds which was done. The refund totaled approximately \$26.4m.

**Pw 21 (Bigirimana)** and **Pw29 (Nsamba)** testified that the funds which were irregularly transferred were misused, and that there were no accountabilities for it. The above sufficiently proves that the accused's actions **in each of counts 1, 2 and 3** were prejudicial to the interests of his employer and i so find.



**Whether A2 (Wilbert Okello) abused the authority of his office.**

The term “**abuse of office**” refers to a departure from what is legally acceptable or reasonable. It is about acting in a way that breaches one’s duties and obligations. It is the wrong or unfair use of power to the prejudice of another (see **Ignatius Barungi Vs Uganda (1988-1990) HCB68**).

**A2 (Mr Okello)** made the funds transfers by virtue of his office as a Systems analyst. His actions were deliberate, the reason he disguised the payment as salary payments and transmitted them electronically instead of using Security Papers as would ordinarily have been, according to **Pw10 (Ssemakula)** and **Pw27 (Bwoch)**. The accused hijacked the signature and authorization roles of **Pw27 and Pw17 (Mpoza)** or **Pw10 (Ssemakula)** and therefore wrongly used his office.

In agreement with the lady Assessor, I find that the prosecution has proved that **Mr. Wilbert Okello** abused his office as alleged in each of counts 1, 2 and 3. **Mr. Wilbert Okello** is accordingly convicted of Abuse of office c/s 11 of the ACA on each of counts 1, 2, and 3.

**Count 70 (alleged abuse of office by A3 and A4).**

The questions for courts determination are;

1. **Whether each of A3 (David Mugisha) and A4 (Bright Atwiine) were employed in a public body,**
2. **Whether each of them did or directed to be done an arbitrary act,**
3. **Whether the acts were prejudicial to the interests of A3 and A4’s employer,**
4. **Whether each of them abused the authority of their respective offices.**

**Whether each of A3 and A4 was employed in a public body.**

The fact that each of **A3 (David Mugisha)** and **A4** were employed in a public body was not contested. There is abundant evidence from **Pw7 (Charles Ziraba)**, **Pw 17 (Isaac Mpoza)** and **Pw27 (Gustavio Orach Lujwero Bwoch)** to prove this issue. The first ingredient is therefore answered in the affirmative for each of **A3 and A4**.



Whether each of **A3 (David Mugisha)** and **A4 (Bright Atwiine)** did or directed to be done an arbitrary act.

The particulars of the offence are that each of **A3 (Mugisha)** and **A4 (Atwiine)** caused the processing of documents intended to effect the transfer of PRDP funds amounting to **14, 876,108,017/=**, from account number **003300098000060** at the Bank of Uganda, in a manner contrary to the established disbursement procedures for such funds.

The basis of the charges against **A3 (David Mugisha)** is an email (part of exhibit **P 24**) he is alleged to have sent to **A4 (Bright Atwiine)** and copied to **Mr. Isaac Mpoza (Pw17)** then Commissioner Treasury services department, making reference to PRDP (*a poverty action plan support for Northern Uganda to help them improve in a number of areas after the long insurgency*). In the email, the accused is alleged to have communicated to **A4 (Bright Atwiine)** that;

*"... I was not able to communicate to you on the ring fenced tranches of PRDP. As you are aware by now, Ireland disbursed Euro 4m as part of the two tranches intended for Crisis management in Karamoja Area. This is to remind you to credit a relevant account that covers crisis management as part of the PRDP program. Please keep me informed when such ring fenced disbursements are made in order to classify them properly".*

**A3 (David Mugisha)** mounted three alternative defences;

1. Pointing to the fact that the email does not bear his address, he denied that he wrote and sent it to **A4 (Bright Atwiine)**.

He sought to rely on **Dw11 (Owora)**'s evidence that an email must bear the address of the sender. Suffice it to say that the reasons for the court's decision to reject **Dw11 (Mr Owora)**'s evidence (at **page 12**) of this judgment are relevant to this issue as well. This is so because **Pw1 (Maris Wanyera)**'s explanation that in the Ministry of finance, printed Email addresses will not come out as the full account, and that the system inter-changes at times and the details of the e-mail address do not appear, was not contested by the defence. Her testimony that **A3's** Email address (which is on the second part of the exhibited **P.24**) was **david.mugisha@finance.go.ug** was not also challenged.



There is no reason **Pw1 (Maris Wanyera)** could have told lies against A3. I find it strange and escapist for the defence to advance an alternative account without challenging that of the prosecution in the first place. The court therefore rejects the defences account and accepts that of **Pw1 (Maris Wanyera)** as the logical account.

2. A3 raised the possibility that another person used his email address to send the email to A4.

In this regard, he explained that he was assigned an official email ( **david.mugisha@finance.go.ug.**) and a password which would periodically expire (usually about 2 months), but he did not have exclusive access to this email account, and that any of the ten people in the IT department could access his account, log in and transact.

The court however considers that the accused did not advance this defence during the police investigation to allow the investigators test its probity. He did not advance it during the cross examination of relevant witnesses such as **Pw1** as well. There is no plausible reason for the accused to have kept such information to himself had it been a genuine account. Since he did so, the court is entitled to reject his account as it does, as an afterthought.

3. He alternatively asserts that he had no role in the transfer of the funds since according to the special investigation report (**Exhibit P.34 (page 21)**) and all other evidence, the **14,876,108,017/=** in issue was transferred on 1/12/2011 yet the email was written on 28/12/2011.

A4 (**Bright Atwine**) testified that when she received the email from A3's e-mail account, she sent it to the **late Amon Takwenda** who prepared the security paper in issue for the signatures of **Pw17 (Mpoza)** and **Pw27 (Bwoch)**. The letter bearing their signatures was also prepared on the basis of the email.

It is common cause that **Pw17 (Mpoza)** and **Pw27 (Bwoch)** signed the documents relevant to this charge after the funds had been removed from the account, and that the documents were never presented to the Bank.

That the process was also inconsequential since the EFT had already transferred the money on 1st December 2011 by A2 is not in dispute. In addition, **Pw17**



(Mpoza) and Pw27 (Bwoch) were clear that the documents they signed did not transfer the money in issue.

That being so, the court agrees with the defence submission that the fact that the documents which were processed on the alleged prompting of A3 and A4 were not presented to the bank can only mean that those documents were not intended to effect the transfer of the money in issue. The court determines that the state evidence doesn't support the charges as laid, and in agreement with the lady Assessor acquits each of **A3 (David Mugisha)** and **A4 (Bright Atwiine)** of the offence of abuse of office.

#### **A1 (Geoffrey Kazinda).**

In his submissions, A1 raised several points of law most of which I will not respond to here. I will only respond to the one that he suffered a miscarriage of justice when the court heard witnesses in the absence of his legal representative.

This complaint is very intriguing, it coming from A1 whose conduct throughout the trial supports the view that he was not interested having legal representation. In the first place, his lawyers of choice would absent themselves even on dates which would have been agreed on by all parties. Some of them even withdrew from proceedings upon realizing that there were witnesses in court, thereby forcing the court to adjourn hearings to enable A1 get legal representation. This he would do, only that most of the lawyers he would secure would behave in a similar manner. When the court intervened and tried to secure counsel on state brief, the accused is on record rejecting the idea. He apparently only allowed them after realizing that outright rejection would be counterproductive. Even then, there is evidence that he interfered with their work, since all counsel on state brief always disappeared and would not respond to hearing notices after interacting with the accused.

The list of lawyers who once represented A1 includes and is not limited to **Mr. Kyobe William, Mr. Emoru Emmanuel, Mr. Andrew Kasirye, Mr. Paul Rutishya, Mr. Anguria, Mr. Hassan Kato, Mr. Earnest Kalibbala, Mr. Kafuko Ntuuyo, Mr. Fox Odoi and Dr Akampumuza.**



Those appointed on state brief and who mysteriously disappeared after their first court attendance included **Mr. Jordan Asodio, Mr. Anthony Wameli and Mr. Adris Musimaami**. Such a turnover of legal representation is unprecedented.

The court got the impression that the conduct of the defence counsels was pursuant to A1's clear instructions, since even towards the end when the court insisted on appointing counsel on state brief for him, he always insisted on first meeting them before the hearings, and after their interface with him they would not come back to court, and would ignore hearing notices.

When it became clear that the accused would not allow counsel to represent him, out of frustration and in order to have the matter finally disposed of, the court made a decision to hear the very last witness (**Dw11, Mr Owora**) who in any case had been called by A2 and whose evidence had nothing to do with A1, in the absence of any lawyer for A1.

It is now clear that A1 was investing for such a time as this when he would cry wolf for a situation he deliberately created. A1 and his legal team's conduct is the main reason the case took eight whole years to come to a conclusion as the court record demonstrates.

The real issue in my view should be whether the Constitutional right to legal representation (*Art. 28 (3) (e) of the Constitution*) includes a right to hijack the court process as the A1 did. In conclusion, **Mr Kazinda** was afforded all necessary facilities for his defence but he abused his rights with a view to frustrating the trial. It is clear that he waived his *Art. 28 (3) (e)* rights and should not be heard to complain as he is doing.

### FORGERY

One of the key witnesses against A1 is **Mr. Pius Bigirimana (Pw21)**, the reception of whose evidence A1 had objected to. The court over ruled that objection, which was that **Pw21** had published a book in breach of the subjudice rule. The court was alive to the fact that whatever was in the book was not evidence and could not form a basis for any judicial decision. Also that the probity of **Pw21's** evidence was to be tested through cross examination. These were the reasons the objection was over ruled.

Forgery is the making of a false document with intent to defraud or to deceive (**S.342 PCA**).



To prove that **A1 (Mr Geoffrey Kazinda)** committed forgery as alleged in *counts 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66 and 68*), the state had to prove that;

1. Each of the impugned security papers is false/forged,
2. It was made with intent to deceive or defraud, and that
3. It was made by the accused.

**Whether each of the thirty-three security papers is a false document.**

A false document is one which purports to be what in fact it is not (S.345 of the PCA). In **Gerald Nsubuga &1 vs Uganda Crim. Appeal 64/2008**, in which a false signature was written in a land Transfer form, it was held that the Transfer form was a false document as it told a lie about itself.

In each of counts 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66 and 68 the state contends that the security papers comprised in **exhibit P.29 (1) to (33)** purport to be what in fact they are not in that each of them bears a forged signature of **Pw21 (Mr Pius Bigirimana)**.

**Pw21 (Mr Pius Bigirimana)**'s evidence that he did not make the signatures attributed to him in each of the impugned security papers is corroborated by that of **Pw28 (Mr. Samuel Ezati)** a forensic document examiner who upon comparison of the impugned signatures with request signatures of **Pw21 (Mr Pius Bigirimana)** found fundamental differences and concluded that **Pw21 (Mr Pius Bigirimana)** did not sign the questioned signatures (see **page 8 of exhibit P.33- Laboratory report**). Further corroboration is supplied by **Pw29 (Andrew Timothy Nsamba)** an Auditor who inter-alia found that a total of 13billion/= from O.P.M Accounts was paid out bearing signatures *which appeared different* from the one of the Permanent Secretary (**Mr Pius Bigirimana**). The above evidence leaves no doubt that each of the thirty-three security papers is a false document within the meaning of S.345 of the PCA, and I so find.



**Whether each of the thirty- three security papers were made with intent to deceive or defraud.**

Under **section 346 of the Penal Code Act**, intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person, ascertained or unascertained, capable of being defrauded by it.

In this case, the government of Uganda which was capable of being defrauded by the false security papers was in existence at the time each of them was made. The presumption of intent to defraud therefore validly operates in this case.

And, as shall be seen shortly, financial loss was caused which points to the fact that the only intention for engaging in forging the mandate signature of a Principal Signatory in a payment instruction that involved Government funds was to defraud the Government of the funds. It is clear therefore that the forgery was done with intent to defraud.

The court consequently determines that whoever wrote the false signatures in each of the thirty-three security papers (**exhibit P.29 (1) to (33)**) purporting them to belong to **Pw21 (Mr Pius Bigirimana)** intended to deceive or defraud. **The second ingredient is resolved in the affirmative.**

**Whether each of the thirty-three security papers was made by the accused.**

The accused denied the allegation and asserted that the security papers were duly signed by **Pw21 (Mr Pius Bigirimana)**. He argues that a register book in which the accountant {**Lydia Nalwanga**} manually recorded security paper details and in which the Permanent Secretary initialed was not presented to court to show that the security papers in issue do not appear in that book, and that **Lydia Nalwanga** was not called to testify. Also that the filing index of December 2011 to 2012 was not brought to Court to show that the documents relating to these transactions are missing.

The court doesn't find the accused's assertion worthy of credit since he did not put these facts to relevant witnesses such as **Pw21** to give them an opportunity to comment on them. The assertion that **Pw21** signed the security papers is not supported by evidence and must fail.



The evidence which the state seeks to rely on to prove its case against the Accused is circumstantial. This was that;

- In **Pw21 (Mr Pius Bigirimana)**'s testimony, only the Accused as Principal Accountant used to keep the security papers, and they were only used as and when there was a transaction to be made.
- As Principal Signatory, **Pw21** was supposed to sign on a Security Paper after the Principal Accountant **A1** had originated it and signed his part.
- **Pw 21** who was familiar with **A1**'s signature since he had worked with him for three and a half years and had received several documents bearing his signature let alone seeing him sign documents, positively identified the accused's signature in all the impugned Security Papers (**Exhibits P.29 (1-33)**). **Pw21** disowned the signature attributed to him in each of the impugned security papers.
- **Pw21** had never seen or approved any requisitions relating to the impugned Security Papers, and the BOU had never called him as Principal Signatory to confirm the validity of the payments in the questioned Security Papers as was required by procedure.
- the money which was later withdrawn by **A1 (Mr. Geoffrey Kazinda)** under the impugned security papers had been fraudulently transferred from the PRDP Account to the Crisis management account (*as has been found*), dormant accounts to which only the accused and **Pw21 (Mr Pius Bigirimana)** had been signatories.
- **Pw22 (Milton Opio Orech of Bank of Uganda)** called only **A1 (Geoffrey Kazinda)** and not **Pw21 (Mr Pius Bigirimana)** who was the principal signatory, to confirm the payments in respect to each **Exhibits P.29 (1)-(33)**.
- **Pw 29 (Andrew Timothy Nsamba, the auditor)** found invoices which had been fraudulently approved by **A1 (Mr. Geoffrey Kazinda)** yet the responsibility of approving only rested with the Accounting officer (**Pw21 (Mr Pius Bigirimana)**). **Pw29** interrogated the system and found that this responsibility was assigned to **A1 (Mr. Geoffrey Kazinda)** by a System Administrator in the Ministry of Finance.
- **Pw 29** also found that 3.2 billion/= was withdrawn in cash from the Crisis Management Account by the then cashier **Isaiah Onyu (who was A1's**



supervisee) with a frequency of 96Million/= or 100Million/= almost daily. In nine instances 787Million/= was withdrawn on Fridays, yet it was not likely that activities could be undertaken over weekends.

- **Pw23 (John Martin Owori)** who was the Commissioner/Head for Disaster Preparedness, the responsible Department for the majority of the activities reflected in **exhibit P29**, for which the monies in issue were purportedly utilised denied that he ever authorized and /or made requests for resources and submitted them to the Accounting Officer/the Permanent Secretary as should have been the case. His further evidence was that during the period 2011/2012 the two accounts were not being used to support activities in his department. The Crisis Management and Recovery Account had closed in 2010. The account was meant to handle only funding from UNDP and UNDP was no longer putting funds on that account. Also that his department did not utilize funds from the Building sustainable peace and development in Karamoja account, and that this account was under Northern Uganda department.
- For all the above monies no single accountability document was presented to the auditors.

The court is cognizant of the legal principle that in order to base a conviction on circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt (**Simon Musoke Vs R [1958] EA 715**).

To this end the court took note of the fact that the key aspects of the above evidence were neither denied nor controverted. Noteworthy is the fact that the whole process, beginning with the transfer of the money from the PRDP Account of the Ministry of finance, the receipt of it in Bank of Uganda, its transfer to the Crisis management account of OPM to its final utilization in OPM, was tainted with fraud, and the only common factor throughout that chain was **A1 (Mr. Geoffrey Kazinda)**.

The fact that **A1 (Geoffrey Kazinda)** was the only person who was contacted when the money was transferred from the PRDP Account to the Crisis Management Account (*a fact he doesn't deny*) means that he was the only one who



knew about the existence of those funds in the dormant Account as it was then. This, coupled with the facts that;

- all the money reflected in each of the thirty-three impugned security papers was withdrawn by **A1 (Geoffrey Kazinda)**.
- only his signature of the two in each of the thirty- three security papers was genuine,
- there is credible evidence that **Pw21 (Mr Pius Bigirimana)** who could have been the other signatory to the documents never signed them, and the accused's insistence that he did is against the weight of evidence,

rules out the possibility that another person perpetuated the forgeries, thereby lending credence to the state assertion that **A1 (Geoffrey Kazinda)**, who evidently had a felonious intent throughout the scam, wrote the impugned signatures in each of the thirty-three security papers in order to access the funds.

Considering the above, i am firm in my conviction that each of the thirty-three security papers was made by **A1 (Geoffrey Kazinda)**. In agreement with the lady Assessor I find that **A1 (Geoffrey Kazinda)** forged **Pw21 (Mr Pius Bigirimana)**'s signature in each of the thirty- three security papers, and therefore made false documents as charged in each of counts 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 6, 66 and 68.

#### **Causing Financial Loss.**

The state sought to prove that in the performance of his duties, **A1 (Geoffrey Kazinda)** did an act (causing the payment of various amounts of money from the *Crisis Management and Recovery Account* (counts 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49 and 51), and from the *Building of Sustainable Peace and Development in Karamoja Account* (counts 53, 55, 57, 59, 61, 63, 65, 67 and 69), using the forged Security papers, knowing or having reason to believe that the act would cause financial loss to the Government.

In this regard the state had to prove that;

1. **A1 (Geoffrey Kazinda)** is an employee of the Government,
2. The government suffered financial loss,



3. The financial loss resulted from an act or omission by the accused,
4. The accused knew or had reason to believe that the act or omission would cause financial loss to the Government.

**Whether A1 (Geoffrey Kazinda) is an employee of the Government.**

**A1 (Mr. Geoffrey Kazinda)** doesn't deny that he was an employee of the Government. There is moreover abundant evidence including his employment records (**PEx4, P5 and P6**) and the evidence of **Pw's 10 and 27 (Ssemakula and Bwoch)**, supporting the assertion that **A1** was an employee of government. The first issue is therefore answered in the affirmative.

**Whether the government suffered financial loss.**

The accused maintains that the government did not suffer financial loss since the money in issue was used to finance activities such as funding Policy Management Committee meetings, refunding money which had earlier been borrowed by the department of Northern Uganda from the department of Karamoja, payment for facilitation of a regional workshop in Teso, payments to **Mr. Johnson Owaro** and **Mr. Vincent Wabwoya**, money expended in relation to the Permanent Secretary's monitoring visit to Northern Uganda and such other expenses.

He adduced the evidence of **Dw9 (Richard Okimondo)** who testified as a former employee of PRDP, and stated that many projects such as building schools, teachers houses and nurses houses were executed.

The accused maintains that there is no evidence to show that the committees which were to benefit from the services did not benefit, or that the activities were covered but were paid for from another vote.

The court however rejects the above evidence on the ground that the accused who was a Principal Accountant and not a project implementation officer would not be in a position to know what activities were/not executed. **Pw23 (Owor John Martin)**'s evidence is that implementation of activities was the role of responsible technical departments.



The defence account is moreover contradicted by the testimony of their witness (**Dw6 (Odonga Otto)**) that the **PRDP** project did not achieve the desired result as there was flagrant abuse of the funds and that some of the projects that were supposed to be undertaken were not undertaken.

The accused further contends that there was no financial loss since some of the payments in issue were authorized by the accounting officer (**Pw21 -Mr. Pius Bigirimana**).

There is however no evidence to support the suggestion that any of the impugned payments was authorized. On the contrary, **Pw21's** evidence as supported by that of the hand writing expert (**Pw28 Ezati**) was that (**Pw21 -Mr. Pius Bigirimana**) did not authorize any of the impugned payments.

The accused advances a proposition that there were payments which were authorized by people who **Pw21** designated to authorize on his behalf. This proposition lacks merit since all the impugned payments bear only the signature of **A1** and the purported signature of **Pw21**.

The accused also asserts that **Pw21** had delegated the approval of payments below **2 million shillings** to the office of the Under Secretary finance and administration. This assertion is irrelevant since none of the payments in issue bears an amount below **2 million shillings**.

On the whole, the court determines that the defence evidence in this regard doesn't overcome that of **Pw23 (Owori John Martin)**, the Head of the responsible Department who was the one to have requisitioned for the funds and authorized expenditure for execution of activities under the **PRDP** Program and the Crisis Management and Recovery Programs.

**Pw23** pointed to the fact that the bulk of the money reflected in the impugned security papers came from Crisis Management and Recovery Account and some from "Building sustainable peace and Development in Karamoja" account. His testimony that during 2011/2012 the two accounts were not being used to support activities in his department rules out any possibility that the activities reflected in the impugned documents were ever executed as claimed.



Further ruling out any possibility that the accused could have spent the money in issue on implementation of government programs, **Pw23** stated that except when he was not in the country and delegated his responsibilities to his Deputy, no other person could initiate a requisition. He specifically stated that a Principal accountant or Permanent Secretary or other person could not initiate a requisition on behalf of a Head of Department. Also, that though de-mining activities fell under his department, he did not requisition for the **95,112,000/=** that is reflected in **Exhibit P.29 (30)** and the **47,780,000/=** that is reflected in **Exhibit P.29 (18)** which relates to assessment of the current resettlement situation which also fell under his department.

Testifying about the documents comprised in **exhibit P29** generally, **Pw23** pointed out that they lack key attachments such as memos requesting for the monies, minutes of contracts committee approving procurements, LPO's for the companies that are reflected, Goods Received Notes issued by the stores, letters from the procurement unit confirming delivery of the quantities of food reflected and cover letters from him (**Pw23**) as the Head of Department to Permanent Secretary recommending payments.

The court accepted **Pw23's** evidence that as the head of department he was the one responsible for executing most of the activities reflected in the impugned documents since it was not contested.

The accused advanced another narrative, that in the OPM they couldn't draw more than Shs100 million, meaning that even if an approval of 200 million was obtained, the shs 200m/= had to be split so that several security papers of less amounts but totaling to Shs 200m/= were signed.

In the courts view, the above narrative does not explain away the evidence that all the impugned security papers bear a false signature of **Pw21** (*the accounting officer*), and that the monies reflected in those security papers were not accounted for.



In the courts view, **Pw23's** evidence demonstrates in a graphical manner that the monies reflected in the impugned security papers were not put to their stated use, which lends credence to the assertion that the government suffered financial loss.

In addition to **Pw23's** evidence, the state sought to rely on that of **Pw's 8 (Keith Muhakanizi), 21 (Mr Pius Bigirimana), 24 (Mwani Amos), 25 (Hajji Asuman Sebuyondo), 26 (Daniel Davis Mulindwa Mutasingwa) and 29 (Andrew Nsamba Timothy).**

The relevant aspects of **Pw8 (Keith Muhakanizi)'s** evidence are that based on the Auditor General's report and on the fact that the funds did not follow the right process, he as the Secretary to Treasury (then) made a decision that there was a loss. His evidence as supported by that of **Pw21 (Mr Pius Bigirimana)** was that the Development partners suspended funding to the government and demanded for refund of their money which was done as follows;

Ireland was refunded 5.6m US\$, Denmark – 0.8m US\$, Norway – US\$4.2m  
Sweden – US\$ 3.8m, D.F.I.D (U.K) – US\$ 2.1m, Denmark – US\$ 0.8m, Global Fund – US\$0.5m, Norway (PRDP) US\$5m, DFID – US\$1m and US\$ 2.7m.

The total refunded was approximately **\$26.4m**, which in the courts opinion was a loss to the government.

The uncontroverted evidence of **Pw24 (Mwani Amos), Pw25 (Hajji Asuman Sebuyondo) and Pw26 (Daniel Davis Mulindwa Mutasingwa)** who are business men/food suppliers to the OPM was that on several times between 2010 to 2012, after they would have received payment for what they had supplied to the OPM, they found monies which were equivalent to what they will have been paid in each of their bank accounts. **A1 (Mr Geoffrey Kazinda)** would call them to his office and inform them that he had erroneously deposited money into their company accounts, and ask them to draw it and take it to him which they would do. This happened to **Pw25** on about eleven occasions, and to **Pw26 (Daniel Davis Mulindwa Mutasingwa)**, about 7-8 times.

The above evidence corroborates the audit finding (at **page 33 paragraph 6.3.11 of exhibit P34, and Appendix 17**) that food suppliers within OPM were over paid



by over 8.6billion/=. The court accepts the above evidence as being credible, and in its view the over 8.6billion/= also constituted financial loss to the government.

Other relevant evidence in this regard is that of **Pw 29 (Andrew Nsamba Timothy)** the special auditor) who in relation to the money which was received from the **Crisis Management and Recovery Account (counts 5 to 51)** found that the OPM didn't have any approved work plans to spend it. The accused maintains that the criteria which the auditor used to determine the payments which were approved and those which were not approved is not clear.

Pw29 was however clear that this was determined after he interfaced with the accounting officer (**Pw21**) who indicated to him the payments he had approved and those he had not approved. Pw21's evidence relating to payments he never approved is corroborated by that of the hand writing expert (**Pw28**) who opined that **Pw21** did not write the signatures attributed to him in the queried payment documents. I therefore don't find the accused's concern credible.

The accused questions the fact that while in **Exhibit P34 at page 22** the Auditor General indicated that at the time of audit, all the money on the Crisis management account (**exhibit P.26**) had been paid out, the bank statement bears a balance of **Shs852 million**.

The court however does not see any contradiction in the evidence that at the time of the audit (**June 2012**) all the money on the Crisis management account had been paid out, and the evidence that the balance in the same account was **Shs852 million** as at **30<sup>th</sup> March 2012**.

It was Pw29's evidence that the accounting officer (**Pw21**) denied knowledge of expenditure totaling to 4.6Billion/= (see **page 22 (6.3.3)** of the investigation report (**Exhibit P34**), and that a further review revealed a correlation with the impugned security papers (**exhibit P29 (1 -33)**) in which **Pw21**'s signature was forged.

Pw29 also found (**page 23 of exhibit P34**) that **3.2Billion/=** was withdrawn in cash by the then cashier **Isaiah Oonyu** (who, according to **Pw21 reported to the AI, the Principal Accountant as his immediate Supervisor**), with a frequency of 96Million/= or 100Million/= almost daily. In nine instances, 787Million/= was withdrawn on Fridays which left him wondering whether activities were to be



undertaken over weekends. It is in evidence that for all the above monies, no single accountability document was presented to the auditor.

The accused maintains that he wasn't given chance to handover to the new person, implying that accountability documents were never accessed by the auditors because he was not given an opportunity to hand them over. The court however rejects this assertion.

**Mr. Pius Bigirimana-Pw21's** evidence that the accused absconded from work was not controverted and I believed it, it having been corroborated by that of the investigating officer (**Pw30-George Komurubuga**) that he went to Luzira prisons with a view of interviewing the accused but he did not corporate. It is clear that the accused did not want to participate in the investigations, and so the assertion that he was not allowed to hand over office is diversionary.

**Pw29 (Nsamba)** further testified that on 12 December 2011, **980,000,000/=** was transferred from the **Crisis Management and Recovery Account** to the **Building Sustainable Peace and Development in Karamoja Account** (which relates to **counts 53 to 69**) which had been dormant for two years. Out of the **980,000,000/=** which had been transferred, **Shs 681,738,832/=** was withdrawn in cash by the cashier **Isaiah Oonyu** over a period of one month. He found that neither a cash book nor accountability documents were availed for audit and so the whole amount remains unaccounted for.

In conclusion the accused's assertion that there was no loss to government, and that even if it was there, it is not related to these payments is rejected on the basis of the evidence as highlighted. **I find that the government suffered financial loss.**

**Whether the financial loss resulted from an act by the accused.**

The court has found (for counts 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66 and 68) that the accused forged the security papers (exhibits P29 (10-33) which were used in the payment of the monies reflected in each of them. It has also been found that the money remains unaccounted for.



Based on that, the court finds that the accused caused the payment and loss of the money in each of counts 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65 67 and 69.

I accordingly find that the financial loss in each of counts 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67 and 69 resulted from the accused's causing of payment of the monies in issue as charged in the above counts.

**Whether the accused knew or had reason to believe that the act or omission would cause financial loss to the Government.**

The forgery was intended to facilitate illicit access to the money which was achieved. The accused obviously knew that the forgery would cause financial loss, and I so find.

In conclusion, the court finds that in the performance of his duties, A1 (Geoffrey Kazinda) caused the payment of various amounts of money from the Crisis Management and Recovery Account (as alleged in counts 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49 and 51), and from the Building of Sustainable Peace and Development in Karamoja Account (as alleged in counts 53, 55, 57, 59, 61, 63, 65 67 and 69), using forged Security papers, knowing or having reason to believe that the act would cause financial loss to the Government.

In agreement with the lady assessor, A1 (Mr. Geoffrey Kazinda) is convicted of the offence of causing financial loss as charged in each of counts 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67 and 69.

**CRIMINAL CONSPIRACY**

In a charge of Criminal Conspiracy C/S 52 (c) of the ACA (counts 71, 72, and 73), the state must prove that;

1. there was a conspiracy between the accused persons, and



2. the purpose of the conspiracy must have been for purposes of commission of an offence under Section 11(1) of the ACA (the illegal transfer of the funds complained of).

#### Count 71

It is alleged that **A1 (Mr Geoffrey Kazinda)**, **A2 (Mr. Wilbert Okello)**, **A3 (Mr. David Mugisha)** and **A4 (M/s Bright Atwiine)**, while serving in their respective capacities engaged in a conspiracy to commit an offence under Section 11(1) of the ACA (*the causing of the transfer of 14,876,108,017/= which were PRDP funds, from Account No 003300098000060 at Bank of Uganda, in a manner contrary to the established procedures for such funds*).

It is recalled that **A3 (Mr. David Mugisha)** and **A4 (M/s Bright Atwiine)** were acquitted of the offence of abuse of office on the ground that the documents in respect to which they were charged were written after the funds had been transferred. The documents were therefore not intended to cause the transfer of the funds. The charge of conspiracy cannot stand since it is premised on the same facts. In agreement with the lady Assessor, each of **A3 (Mr. David Mugisha)** and **A4 (M/s Bright Atwiine)** is acquitted of the offence of Conspiracy.

#### Whether there was a conspiracy between A1 and A2.

Each of **A1 (Mr. Geoffrey Kazinda)**, **A2 (Mr. Wilbert Okello)** denied the charges in each of counts 71, 72 and 73 and maintained that they got to know each other from court.

**A1 (Mr Geoffrey Kazinda)** testified that he didn't get any document to confirm that the 14,876,108,017/= had come in, and that his position did not put him in a position to know that the funds had come. He stated that he was alerted by the Permanent Secretary (**Pw21**) on 2/12/2011 that the money had come into the Crisis Management Account.

He also maintained that he only came to know about the 3,500,000,000/= and the 1,795, 368, 488/= when he was in court, and asserted that the fact that he didn't spend an amount which is above what he was aware of, (*he stated that he only spent 13,300,000,000/=*) supports his evidence.



The court did not believe that A1 and A2 did not conspire to cause the transfer of the above monies as alleged. **A1 (Mr. Geoffrey Kazinda)**'s assertion that he was only alerted by the Permanent Secretary (**Pw21**) on 2/12/2011 that the **14,876,108,017/=** had come into the Crisis Management account cannot be true since he did not put his account of events to **Pw21** to allow him deny/confirm or explain it. It is therefore rejected as an afterthought.

The assertion that he (**A1**) only spent **13,300,000,000/=** even it was true does not overcome the evidence that he conspired to cause the irregular transfer of the **3,500,000, 000/=** and **1,795, 368, 488/=**, since these are unrelated occurrences.

The court did not believe that A1 only became aware of the transfer of the **3,500,000, 000/=** and the **1,795, 368, 488/=** from court given **Pw21**'s evidence that he (**A1**) lied to him that the money had been allocated to the OPM in response to **Pw21**'s request for it. The Accused did not deny this evidence. His denial that he knew about the transfer of that money is rejected as a pack of lies.

Even if he (**A1**) learnt of the money's transfer from **Pw21** and from the court as he maintains, that would not rule out the fact that he conspired with A2 to transfer it, since the two events are unrelated (i.e., the fact that one party is unaware that what was conspired about came through does not rule out the fact that there was a conspiracy in the first place).

The court doesn't find it to have been a mere coincidence that **A2 (Mr. Wilbert Okello)** irregularly transferred the money and **A1 (Mr. Geoffrey Kazinda)** irregularly caused it's withdraw as has been found. The facts and circumstances of the case point to a meeting of the minds and unity of purpose between **A1 (Mr. Geoffrey Kazinda)** and **A2 (Mr. Wilbert Okello)** to cause the transfer of **14,876,108,017/=** from Account No 003300098000060 at Bank of Uganda, in a manner contrary to the established procedures for such funds.

For this reason, I don't agree with the Lady Assessor's opinion that there was no evidence to prove the charge of criminal conspiracy against **A1 (Mr. Geoffrey Kazinda)** and **A2 (Mr. Wilbert Okello)**.

**I find that there was a conspiracy between A1 (Mr. Geoffrey Kazinda) and A2 (Mr. Wilbert Okello).**



Whether the purpose of the conspiracy was for purposes of commission of an offence under Section 11(1) of the ACA (the illegal transfer of the funds complained of).


Since there is evidence that the funds were illegally transferred by A2 (Mr. Wilbert Okello), there is no doubt that the purpose of the conspiracy was for that very purpose. Based on this the court finds that A1 (Mr Geoffrey Kazinda), A2 (Mr. Wilbert Okello) while serving in their respective capacities engaged in a conspiracy to commit each of the alleged offences in counts 71, 72, and 73. Each of them is therefore convicted on each of counts 71, 72, and 73 as charged.

In conclusion, orders of conviction are entered against A1 (Mr. Geoffrey Kazinda) for forgery as charged in each of counts 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66 and 68, for causing financial loss as charged in each of counts 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65 and 67 and for conspiracy as charged in each of counts 71, 72, and 73.

Orders of conviction are entered against A2 (Mr. Wilbert Okello) for abuse of office as charged in each of counts 1, 2 and 3, and for conspiracy as charged in each of counts 71, 72, and 73.

Orders of acquittal are entered against each of A3 (Mr. David Mugisha) and A4 (M/s Bright Atwiine) for abuse of office as charged in count 70 and for conspiracy as charged in count 71.

It is so ordered.

  
Hon Margaret Tibulya,  
Judge.

20<sup>th</sup> September 2021.







**Sentence for A1 (Geoffrey Kazinda)**

I have taken all that said in aggravation and mitigation of sentence into consideration.

The state submission that the offences are grave and involved a lot of money and that the accused's actions affected communities in distress then is very crucial in determining the sentences to be meted out to the accused.

In aggravation of sentences and in line with the guidance in the sentencing guidelines I have taken into account the fact that the crimes were committed in a sophisticated manner, and that they were obviously premeditated.

Also important is the fact that the accused is a second offender, having been convicted of illicit enrichment, an offence falling in the same category as the offences with which he has been convicted. On the other hand in mitigating sentence I have taken into account the fact that the accused has been on remand for over 6 years.

The 6 years shall be deducted from the would be sentence.

In his submission, the accused maintains that a custodial sentence will not serve any reformatory purpose since the prosecution has not argued that the accused has not reformed.

Other arguments the accused raises seem to be premised on the wrong basis, that all sentences he has served (in other offences) are



relevant to the sentence in this case. Those other offences are distinct from this one, and if the court were to consider them in the way that the accused suggests, it would be promoting a miscarriage of justice against the complainant who has lost a lot of money in this singular case.

As I have said this case involved colossal sums of money (over 19billion) all lost through the accused's actions. There is evidence that he personally benefitted from the crimes **(see evidence of Pw's 24 to 26, and Pw29 (Nsamba))**.

The fact that he has a past conviction for illicit enrichment can only mean that he had made it a habit to abuse the trust his employer had put in him as a custodian of public resources.

All factors considered, I sentence the accused as follows: -

Forgery (S.342 & 348 PCA)

The offence of Forgery (S.348 PCA) attracts a maximum life imprisonment term. He will serve 25years imprisonment on each of the even number counts 4 to 68 inclusive.

Causing financial loss

He will serve 10 years' imprisonment on each of the odd number counts 5 to 69 inclusive.



### Criminal conspiracy

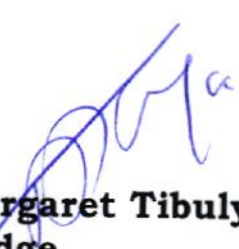
He will serve 5 years' imprisonment on each of counts 71, 72 & 73'.  
The imprisonment sentences are to be served concurrently, meaning that the accused will serve a total of 25 years' imprisonment.

The remand period has already been deducted from the would be sentences.

### Orders

1. Under S.35 of ACA he will pay compensation of **19,171,476,505/= (Nineteen billion, one hundred seventy-one million, four hundred seventy-six thousand, five hundred and five shillings)** to the government as compensation.
2. Under S.46 ACA he is hereby barred from holding a public office from 10 years from today.

Accused's right to appeal explained.



**Margaret Tibulya**  
**Judge**  
**24/09/2021**



**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO**  
**NO.HCT-00-AC-SC -47-2013**  
**UGANDA:..... PROSECUTOR**

**VERSUS**

**KAZINDA GEOFFREY &3 OTHERS:..... ACCUSED**

**BEFORE: HON.LADY JUSTICE MARGARET TIBULYA**

**8<sup>th</sup> October 2021**

**SENTENCE**

I have considered all that has been said by both parties. There can be no doubt that the offences with which the accused was been charged and has been convicted are serious being that they led to the loss of colossal sums of money to the government. The accused abused the trust the government put in him being that he had access to government financial systems, which privilege he abused with devastating result.

I have however taken into account the fact that the accused is of advanced age. His conduct throughout the trial is also noteworthy in that he was fully co-operative and attended all hearings, despite the fact that the trial last 8 whole years.

A2 did not in any way contribute to that delay. The delay must have visited untold mental anguish on him as it did to all those who were involved. This alone persuades me to issue to him a sentence which puts that factor into consideration.



Section 11 of the Anti-Corruption Act under which he was charged provides for a maximum of 7-year imprisonment term or a fine of up to 3,360,000/=

Section 390 of the Penal Code Act under which he is to be sentenced for conspiracy provides for a maximum of 7-year imprisonment term.

Considering all that has been said I sentence the accused as follows:

1. On each of Counts 1, 2, and 3 he will pay a fine of 3,000,000/= or serve 3 years' imprisonment in default.
2. On each of Counts 71, 72, and 73 he will pay a fine of 3,000,000/= or serve 3 years' imprisonment in default.

For clarity sake, in the event that he chooses to pay the fines, the sentence is to run consecutively, but the imprisonment term will be concurrent.

I will not order the accused to pay compensation since the evidence on record does not support the assertion that he benefited from his crimes.

Under Section 46 of the Anti-Corruption Act, the accused is barred from holding a public office for a period of 10 years from today.

Right to Appeal explained.

.....  
  
**Margaret Tibulya**

**Lady Judge**

**8/10/2021**