

3. The particulars under this Count are that the Respondent on or about 12th June 2019 in the Kampala, made or wrote a letter purporting to have been authored by the Assistant Commissioner Audit of Uganda Revenue Authority addressed to Samona products limited, whereas not.

Alternative Count.

Causing to be made a document which is false contrary to the same S.203 (b) of the EACCMA, 2004.

4. The particulars are that the Respondent, on or about 12th June 2019 in Kampala, caused to be made or written a letter purporting to have been authored by the Assistant Commissioner Audit of Uganda Revenue Authority addressed to Samona products limited whereas not.


Count two:

Making a false document c/s.203 [b] East African Community Customs Management Act 2004.

5. The particulars of the case are that or about 5th July 2019 in the Kampala, the Respondent made or wrote a letter purporting to have been authored by the Commissioner Customs of Uganda Revenue Authority addressed to Samona products limited whereas not.

Alternative Count

Causing to be made a document which is false contrary to the S.203(b) of the EACCMA, 2004.


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6. The particulars are that the Respondent, on or about 5th July 2019 in the Kampala, caused to be made or written a letter purporting to have been authored by the Commissioner Customs of Uganda Revenue Authority addressed to Samona product limited whereas not.
7. To prove their case, the Appellant sought to rely on evidence that on the 12th of June 2019 and 5th of July 2019 respectively, **Pw2 (Nalongo Mukasa Juliet)** received two letters (**exhibits P.1 and 2 respectively**) purporting to come from the URA. The import of the letters was that M/s Samona Ltd had not

filed returns or notifications and that action would be taken against the company in the event of failure to comply with the notice as conveyed in the letters.

8. The 12th of June 2019 letter bore the purported signature of the Assistant Commissioner - Audit, while that of 5th of July 2019 bore that of the Commissioner Customs.
9. Pw2 sent the letters to the Company Accountant (**David Kyeera**), who in turn asked Pw1 (**Esther Nalunkuma**) to establish from URA whether the letters were genuine, and how the company was to respond to them. Pw1 (**Esther Nalunkuma**) was however informed that the letters were false. URA officials subsequently visited the company offices to establish the source of the letters.
10. Pw2 (**Nalongo Mukasa Juliet**) rung the Respondent and informed him about the letters. He asked her to send pictures of them and send them to him, which she did. After he received the pictures, the Respondent told Pw2 that he knew the people who had written the letters, promising to talk to them and advise her about the next steps.
11. The following day he told her that he had seen the responsible URA official, who advised the Company to write to URA to explain that the taxes had been paid. Pw2 gave the Respondent a Company headed paper which he was to take to the URA official to draft an explanation on behalf of the company.
12. The Respondent later took to Pw2 a letter bearing a URA "received stamp". He explained to her that the URA official who had helped him to sort out the matter was requesting for 10m/= for his services, but that he had negotiated with him, and he agreed to reduce the amount to 7m/=.
13. The following day, URA officials went to Pw2's shop and asked her about the person who had given her the false letters. The Respondent was with Pw2 at the time.

14. Pw2 informed the URA officials that the issue relating to the letters had been sorted out, and that URA had even replied to the company. **She was** referring to the letter which the Respondent had given to her, which bore URA's received stamp. When Pw2 opened her drawer to get out that letter, the Respondent got annoyed, and asked her whether she thought that it was a simple matter.
15. Both Pw2 and the Respondent were taken in custody for further investigations.
16. Further evidence was that the Respondent's Phone (**SAMSUNG GALAXY A50; MODEL SM-A505F/DS**) was forensically examined by **Pw4 (Jonathan Kasirye)**. According to the forensic examination report (**exhibit P5**), pictures of the letters in issue, and other letters including an unsigned letter bearing the same information as the one of 5th July 2019 (**exhibit P2**) were found on the Respondent's phone.
17. The learned Trial Magistrate correctly identified the issues for the court's determination as being;
- a. Whether the matter related to customs,*
 - b. Whether the documents were false, and*
 - c. Whether the Respondent authored the false documents.*
18. The Trial court (correctly again) concluded that the matter related to customs, and the documents in issue were false in so far as they bore a wrong address.
19. In acquitting the Respondent however, the learned Trial Magistrate noted that the question of who signed the two letters remained unanswered, since the only evidence linking him to them was the unsigned copy [*of the 5th July 2019, i.e., attachment 7 to exhibit P5*] which was found on his phone.

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20. This appeal relates to the above finding. The Appellant laid two grounds;

- a. **That the learned trial magistrate erred in law and fact in evaluating the evidence thereby arriving at a wrong decision of acquitting the Respondent.**
- b. **That the learned trial magistrate erred in law and fact when he arrived at a conclusion that the Respondent did not author or cause the making of the false documents.**

21. The court recalls its duty as a first appellate court which is to review the evidence, reconsider the materials which were before the trial court, and make up its mind, not disregarding the judgment appealed from, but carefully weighing and considering it, bearing in mind that it did not see the witnesses testify. **(Kifamunte Henry Vs Uganda (Supreme Court Criminal Appeal No. 70 of 1997))**

22. The parties' arguments present one issue for determination by this court; **whether there is sufficient evidence to ground a finding that the Respondent authored the impugned documents or caused them to be made.**

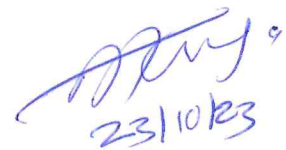
23. The Appellant asserts that there is abundant evidence linking the Respondent to the above allegations. This includes Pw2's testimony that on 10th July 2019, the Respondent who had earlier assisted her in tax related issues called her asking whether she had sorted out those issues. Pw2 informed him about the impugned documents, and later sent them to him on WhatsApp. Later that day the Respondent went to Pw2's shop and saw the letters. He promised that he was to meet the URA officials who he said he knew, to sort out the issue. The following day (11th July 2019), he informed her that he had met them, and that they advised that the company had to write a letter explaining that the taxes had been paid. He also informed her that one of the officials was

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willing to help in drafting the letter on their behalf if they provided the company letter head, which Pw2 gave him. The Respondent returned later that day, with a copy of a letter (*exhibit P.3 which he admits having authored and signed*) indicating that it had been received by URA.

24. The Appellant further asserts that the Respondent's admission that he authored and signed **exhibit P.3** which bears a URA "received" stamp and yet it was never received by URA as **Pw5 (Nabukwasi Sheba)** testified, also provides a strong link between him and the impugned letters.

Considerations.



25. **Section 203(b) of the EACCMA** provides as follows.

"A person who, in any matter relating to the customs makes or causes to be made any declaration, certificate, application, or other document, which is false or incorrect in any particular, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars".

26. While this court agrees with the Appellant that **Pw2 (Nalongo Mukasa Juliet)** and **Pw5's (Nabukwasi Sheba)** testimonies link the Respondent to the impugned letters, and that the letters were false insofar as they bore a wrong address, it does not agree with the submission that this alone suffices to ground a finding of guilt on the charges as laid.
27. It is of note that the crux of the charges is that the Respondent wrote or made the 12th June 2019 letter purporting it to have been **authored** (emphasis added) by the Assistant Commissioner Audit, and the 5th July 2019 letter purporting it to have been **authored** (emphasis added) by the Commissioner Customs of Uganda Revenue Authority whereas not.

28. Instead of proving the alleged false authorship of the letters, the prosecution proved that the letters bore a wrong address (*5th Floor, Crested Towers. PO Box 7279 Kampala, Uganda*) instead of the correct one, (*Head office: Plot M193/M194 Nakawa Industrial area P.O Box 7279 Kampala Uganda*), and that Exhibit P3 did not originate from URA.
29. Proof that the impugned letter bears a wrong address and that another document which the Respondent uttered purporting it to originate from URA did not in fact originate from there cannot properly ground a finding that the letters were not signed by the officials whose signatures are reflected in them. Either the purported authors or someone well versed with their signatures, or a handwriting expert should have given evidence disowning the signatures or excluding the purported authors from the authorship of the letters.
30. It is recalled that neither Pw2 nor Pw5's testimonies on which the Appellant bases his arguments mentions the signature aspect of the letters. There is indeed no evidence relating to this aspect of the charges. Counsel for the Respondent's submission on this issue, rather than being viewed as a challenge to the number of witnesses who were called by the state, (*as the respondent seemed to have taken it since he cited S.133 of the Evidence Act to emphasize that they did not need more witnesses than were called to prove their case*) was a pointer to the fact that no evidence was adduced to prove a vital ingredient of the charges as laid.
31. The evidence proving that the letters bore a wrong address, and Pw1's evidence that **exhibit P3** did not originate from URA was at best only of mere corroborative value but could not on its own ground an adverse finding against the Respondent as far as authorship of the documents is concerned.
32. Based on the foregoing, I find that the learned magistrate's finding, based on the wrong information in the letters, (**Exhibit P.1 and Exhibit P.2**) that they

were false did not contradict his subsequent finding that the charges as laid were not proved.

33. The court finds that there is no evidence to support the charges in so far as the falsehood of the impugned letters' authorship is concerned. This finding renders it unnecessary to address the other challenges raised by counsel for the Respondent against the charges.

Conclusion

34. The judgment and orders of the lower court are upheld. There is no merit in this appeal. It stands dismissed.



Hon. Lady Justice Margaret Tibulya
Judge

22nd October 2023.