THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

ANTI CORRUPTION DIVISION

CRIMINAL SESSION 6 OF 2023

UGANDA :: PROSECUTOR

VRS

EZEH GIBSON CHUKUEBUKA ::::::: ACCUSED

BEFORE: GIDUDU, J

RULING

Ezeh Gibson Chukuebuka, the accused, is indicted with money laundering **C/S 3(c), 116 and 136(1)(a) of the Anti-Money Laundering Act, 2013** as amended herein after referred to as (**AMLA**).

It is alleged that in November, 2021 at Entebbe International Airport, the accused intentionally possessed USD 289,980, knowing at the time of receipt that the said funds were the proceeds of crime.

The prosecution produced six witnesses the gist of whose evidence is that on 15th November 2021, whilst Tushabe Mercy, PW1, an Immigration officer, was on duty at Entebbe Airport, she received the accused, a Nigerian National, who wanted a Visa into Uganda.

PW1 established that the accused had an online visa but his air ticket required him to arrive on 14th and not 15th November, 2021. He also carried an invitation that showed he was to attend a conference for a week starting on 13th November, 2021. The ticket

also showed that the accused was to return on 16th November, 2021.

PW1 declined to issue the sticker Visa to the accused because of discrepancies relating to his arrival date, return date and conference duration. She escalated the matter to her supervisor for further management.

She ushered in the accused to her supervisor, Mudondo Maureen, PW2. When PW2 saw the accused, she noticed he had a bulging under belly and asked what he was carrying. The accused said he was carrying money and immediately started pulling it out and placing it on the table.

PW2 was alarmed at the amount of money in dollars. She asked what it was for and the accused said it was for spending. Asked if it was declared at origin, accused said yes but could not produce evidence.

PW2 asked him what he does, he said he was a medic but soon said he was a store man. The accused asked PW2 to lead him to customs to declare the money but PW2 decided to escalate the matter to her supervisor since she felt the accused was carrying a lot of money and was shifty in regard to his job status at home. They searched his bags and found more money. They detained him and referred the matter to the Airport Security committee called WASP.

WASP interrogated the accused and decided to escalate the matter to the Financial Intelligence Authority (**FIA**). It was decided that the money amounting to USD 289,980 be banked on the **FIA** account. Out of this USD 500 was found to be spoilt notes and were instead exhibited (see exhibit P4).

During investigations PW5, IP, Higenyi Paul, interrogated the accused and others like Cypriano, Nakalanzi and Chief Emeka. It was his evidence that Cypriano and Nakalanzi were detailed by

Chief Emeka to go to the Airport and pick a Nigerian passenger who would hand them money to take to him. Chief Emeka owns Lifeway Pharmaceuticals Ltd which invited the accused to Uganda and had claimed the money was from his trade exports to South Sudan.

PW5 investigated Lifeway Pharmaceutical's tax status with **URA** to find out if indeed it had sold drugs to South Sudan to earn money which translated into the money found with the accused. According to returns from **URA**, Lifeway Pharmaceuticals Ltd only exported drugs worth USD 10,000 which does not compare with USD 289,980 which the accused possessed.

PW5 charged Chief Emeka, Nakalanzi and Cypriano and released them on police bond. It was his evidence that Chief Emeka Jumped police bond. The accused was charged in court with intentionally possessing USD 289,980 knowing at the time of receipt the funds were proceeds of crime.

An attempt by D/AIP Kikobye Esther, PW6 to get statements from **URA** staff to explain the returns PW5 had got was futile because **URA** staff did not cooperate. Similarly, her attempt to get the accused's travel history from the Immigration department was futile.

At the conclusion of the prosecution case, Mr. Emoru Emmanuel, learned counsel for the accused opted to make a submission of a no case to answer.

He submitted that evidence adduced fell short of proving an essential ingredient of the offence, that the funds in possession of the accused are proceeds of a crime. Secondly, that evidence adduced has been discredited in cross examination and is manifestly unreliable to sustain a conviction if no explanation is offered by the accused.

He pointed out two essential ingredients which he contended were not established so as to require the accused go on defence.

1. That the accused intentionally acquired, possessed, used or administered property which is the proceeds of crime.
2. That he had knowledge at the time that the property is the proceeds of crime.

In regard to the first ingredient, counsel contended that there was no proof that there was money laundering or that the money was the proceeds of crime or that the accused had knowledge that the funds were proceeds of crime.

It was his view that the predicate offence had not been disclosed to connect the money to a crime. Further, that the accused was arrested by PW2 and PW4 not because he was a suspect of possessing proceeds of crime but because he was in possession of money which they considered to be a lot.

Mr. Emoru criticized PW5, the investigating officer, for failing to investigate the source of the money in order to tag it to crime but instead focused on the income of Lifeway pharmaceuticals Ltd without examining the audited accounts to establish the export value of the company in order to appreciate the trade receivables due to the company

Regarding the second ingredient, learned submitted that factual circumstances surrounding his arrest do not incriminate the accused. He contended that as soon as the accused was asked what he was carrying, he said he was carrying money which he immediately pulled and placed it on the table. Counsel submitted that money was disclosed voluntarily by the accused. It was not because of a search by police. The accused, according to PW2, asked to be taken to customs to declare the money. Instead of taking him to customs, he was detained.

Mr. Emoru faulted PW2 and PW4 for arresting the accused instead of taking him to declare the money because the two labored under a

false belief that carrying money across borders was illegal whereas not.

He cited **section 10(2) of the AMLA and Regulation 10(1)(b) of SI 2015 no. 75** which require a person entering Uganda with foreign currency above **1500** currency points to fill **form D** with the Customs department.

Form D has four parts. The first part requires bio data of the traveller. Part two requires flight details, date of entry and exit. The third part requires physical address of the traveller in Uganda including telephone contacts. Part four requires the value of the foreign currency and the Ugandan equivalent in total sums and signature of declarant.

It was his contention that money can only be seized if there is failure to declare or if there is a false declaration. In this case, PW2 refused to take the accused to Customs to declare and chose to criminalize the money.

It was counsel's submission that the accused had declared the money in Nigeria when he was departing and that he produced this form on **Misc Application 32 of 2022** which he filed challenging his trial in this court. He criticized PW5 who swore an affidavit in reply to **Misc Application 32 of 2022** for failing to take not of that development and to investigate the authenticity of the declaration form or concede that the charges were misconceived.

Counsel believes PW5 lied when he pretended not to know the signature of Godfrey Emojong, his unit boss who had written a report exonerating the accused of money laundering.

He criticized PW1, PW2, PW4, and PW5 for purporting to investigate a case of money laundering for which they not only had no mandate but also lacked knowledge of the law relating to cross border movement of currency.

In regard to the challenge of the Visa based on the invitation letter and the return ticket presented by the accused, counsel submitted that there was no justification in law to deny the accused a Visa because he had a valid online Visa, had a valid return ticket and an invitation letter. It was his view that the ticket could be extended for any period once the accused was in the country because it was valid for one year according to evidence of PW3, Fred Okema Wokrach, a travel consultant. The invitation letter did not state the date when the workshop the accused was to attend would start or close and that PW5 did not investigate this aspect.

On the suspicion that the accused carried money under his belly and in polythene bags, counsel submitted that was a secure way of carrying money. Other money was in the bags he had in his backpack bag. He did not find anything suspicious about the mode of carrying.

He concluded that it was wrong for the Financial Intelligence Authority (**FIA**) to seize and bank money on its account without any supporting law. The money was not found by customs to be contraband and was received without it being first seized by customs and reported on **form 4** under the **regulation 10(4) of SI 2015 no.75**.

He asked court to find that the essential ingredients constituting the offence have not been established and that evidence adduced is insufficient and has been discredited in cross examination that no reasonable tribunal would convict if the accused did not offer an explanation.

He asked court to acquit the accused and order **FIA** to release the money it illegally impounded to allow for the law to be followed by proper declaration and release to the accused as was explained by Brian Kacucu, a customs officer in a statement recorded by PW5's team during investigations and exhibited a "**D1**".

In reply, Mr James Khaukha, learned senior state attorney disagreed and asked court to put the accused on defence.

He submitted that on the evidence adduced, the accused intentionally possessed USD 289980 and had knowledge at time of receipt that the funds were proceeds of crime.

His submission was based on the following circumstances:

(i) The invitation letter (**exhibit P1**) told a lie of a workshop of 7 days

(ii) The return ticket (**exhibit P8**) was for the following day meaning he was just delivering money and going back. The purported workshop was a lie.

(iii) The manner in which the money was packed on his body and bags was suggestive of a courier rather than a legitimate owner. The money in the bags was found after they were searched. This suggests he was hiding it.

(iv) The accused was not clear to PW2 regarding his profession. He said he was a medic and later a store man. This suggested he was just a courier.

(v) The money carried was huge and that such money is not usually carried in hidden places on the body.

(vi) There was no proof of declaration of money in Nigeria.

(vii) Chief Emeka who followed up the case claiming the money jumped police bond after being charged. This suggests the money is from criminal sources.

Mr. Khaukha contended that the cumulative import of all the above factual circumstances lead to a conclusion that the accused intentionally possessed money sourced from criminal activities which is an offence for which he should be put on his defence.

The law does not require proof of conviction of the predicate offence as provided in section **5(b) of the AMLA**.

It was his view that even if the law does not require the accused to declare the purpose of the money, he should be called to account.

In rejoinder, Mr. Emoru submitted that the accused has been in Uganda for close to two years but the state has failed to find criminality on the part of the accused by failing to show that the funds were proceeds of a crime. He insisted that a particular crime has to be established by evidence.

He contended that the invitation letter did not have a start and end date for the workshop and no evidence was adduced to show that the workshop was not held.

He also referred to evidence of PW5 regarding what Nakalanzi and Cypriano told him as hearsay since the two were not called as witnesses. He insisted that the state has to establish a prima facie case that the money is from criminal sources before requiring the accused to explain himself.

He insisted money was not discovered from the accused but he pulled it out voluntarily without force. He challenged the state to produce a search certificate in which money was found and recorded if that is how it was discovered.

He criticized PW5 for being incompetent for failing to investigate the case when he did not apply mutual legal assistance (**MLA**) procedures to obtain legitimate information from Nigeria.

He also insisted that the accused acted honestly to pull out money and asked for customs to declare it. That conduct is not criminal. He faulted the immigration officers for purporting to handle a case of money they are not mandated to do.

Regarding the alleged disappearance of Chief Emeka, he submitted that there was no evidence he had been charged or had jumped police bond.

Finally he asked court not to apply judicial activism in criminal cases by bending the law to put the accused on defence to explain what the state had failed to establish.

A prima facie case is one where a reasonable tribunal properly directing its mind to the law and evidence could convict if no explanation is offered by the defence. See ***Ramanlal T. Bhatt V.R (1957) E.A. 332***

Courts have in a number of cases re-stated when a submission of a no case to answer may be made or sustained.

The test of a prima facie case is objective and a prima facie case is made out if a reasonable tribunal might convict on the evidence so far adduced. Although the court is not required at this stage to decide whether the evidence is worth of credit or whether if believed as weighty enough to prove the case conclusively, a mere scintilla of evidence can never be enough nor any amount of worthless discredited evidence. But it must be emphasized that a prima facie case does not mean a case proved beyond reasonable doubt (See ***Wilbiro V. R (1960) E.A 184, Practice Note (1962) I ALL ER 448; Ramanlal T. Bhatt V.R (1957) E.A. 332);*** **Fred Sabahashi vs. Uganda Supreme Court Criminal Appeal no. 23 of 1993**

A submission of no case to answer can be upheld where:-

- There is no evidence to prove an essential element in the alleged offence or
- The prosecution evidence has been so discredited in cross examination or
- The prosecution evidence is manifestly unreliable that no reasonable tribunal can safely convict thereon. See **Uganda v Stephen Onyabo & 3 ors (1979) HCB 39.**

Applying the above principles to the facts of this case, did the accused intentionally possess USD 289,980 or not?

The accused does not deny possessing the money in question. This comes out clearly in cross examination of witnesses produced by the state.

When he was asked by PW2 what he was carrying on his body, he said it was money and he immediately pulled out money which he placed on the table and when asked if he had declared it upon exit in Nigeria, he said yes but had no documentary proof. According to PW2, the accused asked to be taken to customs to declare the money.

When **FIA** officials were called and seized the money, the accused was taken along to the bank in Entebbe where the same was banked. **Exhibit P3** which is a deposit receipt for USD 289,480 shows that the accused signed it which confirms he was in possession of the money. **Exhibit P3** was admitted by consent. The possession was intentional because the accused did not challenge PW2 when she testified that he wanted to be taken to customs to declare it. Besides he claimed to have declared it upon exit in Nigeria.

Intentional possession is, therefore, not in dispute. It was established. But intentional possession of property is not by itself an offence in law. It must be accompanied with knowledge that at the time of receipt, that property is the proceeds of a crime. That is the offence in **section 3(c) of the AMLA**.

Mr. Khaukha for the state, contends that a series of factual circumstances impute knowledge upon the accused that at the time of receipt the property is the proceeds of crime. On the other hand Mr. Emoru for the accused submits that those circumstances are not sufficient in law to put the accused on defence.

I will examine these factual circumstances bearing in mind that at this stage, I am not required to find if the case has been proved beyond reasonable doubt. All I am required to do is to establish if

evidence adduced is sufficient to convict if no explanation is offered by the defence.

Did the invitation letter (**exhibit P1**) tell a lie of a workshop of 7 days? PW1 denied the accused a Visa on grounds that his invitation letter and air ticket were contradictory. According to her testimony, the accused was supposed to arrive on 14th but had arrived on 15th November 2015. The workshop was supposed to have started on 13th November, yet his ticket showed he was returning on 16th November. This was sufficient to refuse him entry.

The invitation letter which is **exhibit P1,** reads as follows.

"I ***write to invite Mr.EZEH GIBSON CHUKUEBUKA of Enugu, Nigeria; holder of passport no. B50110945 to Lifeway pharmaceutical Industries Ltd, block 198, plot 478, Nangwa, Mukono, Uganda. He is supposed to participate in a 7days workshop in our company. Any necessary assistance to him will be highly appreciated."*** The letter is signed by Mulongo Faziirah, Human Resource Manager.

From the above exhibit it is clear that PW1 lied to say the workshop started on 13th November. The start date for the workshop was not stated in the invite.

The air ticket which is **exhibit P8** shows that the accused departed Lagos on 14th via Addis Ababa where he was to arrive same day in transit. He left Addis Ababa 14th at 22.45 hrs. He arrived at Entebbe on 15th November at 12.45 hrs. This itinerary was provided by an Ethiopian Airlines travel consultant, PW3.

From the above itinerary the accused had to arrive 15th November and if there was any delay, it is so minimal- just a matter of hours, which is a normal feature in airline travel. According to PW3, the air ticket was valid. It was issued in Lagos on 11th November, 2021.

The return was on 16th November at 02.45 hrs. PW1 wondered how the accused could attend a 7 day conference yet he was returning after one day. This is a legitimate query. PW1 testified she interacted with the accused for 3 to 5 minutes before escalating him to her supervisor. She did not have sufficient time to establish how the accused was going to adjust his ticket to fit in the workshop.

PW1 and PW3 admitted that the ticket could be extended. PW1 stated that the change must come before arrival in the country. PW3 stated that the ticket is valid for a year and can be extended anytime. Indeed it was extended 13th December, 2021. PW1's testimony that you need to change travel date before arrival is of course a lie. PW1 acted arbitrarily in denying the accused a Visa.

The reasons for denying the accused a Visa by PW1 were not valid legally. It was either her lack of experience or pressure of work. The letter and air ticket are not, without more, sufficient to arouse the necessary suspicion to deny a traveller a tourist Visa. It is not one of those objective factual circumstances to impute knowledge that the money the accused carried is the proceeds of crime.

The next facts to be examined relate to the manner in which the money was carried, the amount of the money, lack of proof of declaration from Lagos and questions relating to his job. All these are facts relating to his interaction with PW2.

Was USD 289,980 carried suspiciously? What is the objective factual circumstances surrounding its discovery? In her testimony, PW2 stated that the accused had a bulging abdomen. He was wearing a kitengi shirt. When she asked what was bulging, the accused said he was carrying money. He pulled out US dollars from his pants/trousers (not under wear). She asked him to remove more because it looked like there was more money. He removed all the money from his pant. According to PW2, the accused just pulled out the money easily. It came out easily. It was not from his under

wear. PW2 asked if he had declared it in Nigeria. The accused said yes but did not have evidence.

According to PW2, the accused asked for a customs office to declare the money. PW2 instead called her supervisor for guidance. The supervisor advised her to contact security. One Prima of internal security arrived and took over the case. There was more money found in the accused's travel bags. Total amount was USD 289,980. The accused was detained. The accused did not disclose the source of the money or who was to receive the money in Uganda.

In cross examination, PW2 stated that the amount of money was much. She confessed she did not know the process of declaring money at the airport.

Another state witness, Basalirwa Kigenyi Derek, PW4, testified that the accused was detained because he carried large sums of money contrary to International Civil Authority Standards. But in the same breath, he testified that the money beyond a certain threshold should be declared to customs. He conceded that the accused was not taken to customs for the purpose of declaring the money.

For his part, the investigating officer (**IO**) D/IP Paul Higenyi, PW5, testified in cross examination that "**it is not legal to move with money from one country to another**". PW5 was an investigator attached to **FIA**. He held the strong view that currying money across borders is illegal. He did not investigate further because he was sure he had an exhibit that would speak for itself.

From the above summary of evidence of PW2, PW4 and PW5, it is clear to me that the accused was not hiding money. As soon as he was asked what he was carrying, he said it was money. He immediately pulled it out and placed it on the table. He asked for the customs office to declare it but immigration officers who are clearly ignorant of the Laws relating to anti money laundering chose to treat him as a criminal. In fact the **IO**, PW5, believed,

erroneously, that the accused was carrying contraband. He believed, ignorantly, that it is illegal to carry money across borders! The accused was charged because he was carrying money across borders.

The factual circumstances are that the accused voluntarily surrendered the money and asked to legitimize it through customs declaration process but the officers he interfaced with did not know what to do. They made a hullabaloo out of nothing. They assumed a role they were not trained to handle. Money on the accused's body and bags was not traced through a police search. It was secured for carriage and as soon as the accused was asked about his body size, he disclosed he was carrying money. He asked for customs. He was instead arrested. No criminal suspect would ask to be taken to customs.

And even after his arrest, the illicit source of the money was not investigated. The accused said the money was his. The burden of proof is on the prosecution to prove the criminal source. It is not for the accused to prove his innocence. The burden of proof does not shift to the accused except where the law imputes a legal presumption.

All the immigration officers in this case and the **IO** shifted the burden to the accused to prove that the source was legitimate. That is not part of our criminal law. Cases cited by Mr. Khaukha such as **The People and Austin Chisangu Liato, Appeal 291 of 2014**(Supreme Court of Zambia) are not to the point.

Chisangu was found with lots of cash (K. 2,100,100,000=) stashed in his home. He was charged with possession of property suspected of being proceeds of crime. After the prosecution case Chisangu opted to keep quiet in his defence. His known sources of income were examined and found to be insufficient to generate such reserves kept in his house.

The court found that there was reasonable suspicion that the money was obtained from criminal activity because of the large sum in value and the manner in which it was found at his home. The case before me is not about discovery of money. There is no search certificate. It was voluntary disclosure. It was not found in a home or office or hidden in some place. It was money physically in transit. It is not prohibited to carry any amount of money into Uganda. The law only requires it be declared if it is above 1500 currency points. In other words money the equivalent of more than UGX.30,000,000= or above USD 8,000 must be declared. The two scenarios are different. In the Zambian case the money was in an unusual place, yet here it was in transit legally.

Another case put forward to support submissions of the state is the **Privy Council Appeal 59 of 2010 vide The DPP Vrs A.A. Bholah**. The respondent had made three transfers of large sums of money out of Mauritius. The issue was whether the Crown had to prove a specific predicate offence in order to sustain a conviction. The Court concluded that proof of a specific offence is not required. That is the position of **section 5 of the AMLA, 2013**. There is no need to prove a specific offence from which the property is derived. The case before me has a procedure to be followed before a crime can be sustained. That is in case of failure to declare or in case of a false declaration. The money is seized on **form 4** and the accused is prosecuted. The "possession" here is different from money being discovered on a bank account, in a home or some place.

Further, the case of **Uganda Vrs Sserwamba and 6 ors , CS 11 of 2015** is dealing with money found with an accused not in transit but in his possession after an embezzlement had been committed on Equity Bank. There was a nexus between the stolen funds and what was found on the accused. Again here the scenario is different. If the accused had been found with undeclared money in some residence or hotel, the cases cited would have been persuasive

to influence my decision. But as I have explained, with respect, I am unable to find a common thread in the three cases.

The factual circumstances based on the testimony of PW2 removed the accused from the category of criminal suspects under anti-money laundering laws. The factual circumstances are:

(a) Disclosure by the accused that he is carrying money.
(b) Voluntary and immediate pulling out of money from his body.
(c) Requesting for a customs office to declare it.

The above conduct is not that of a criminal. When there are specific laws governing a particular procedure, it is not open to law enforcement to depart from it for sake of creating a crime against a suspect. In the passages below, the procedure is clear and simple.

There is a statement of a customs officer, Brian Kacucu, **exhibit D1** which is instructive but was ignored by the **IO**. It was recorded by the investigation team and was tendered through PW5. He stated thus:

"... as for the procedures/steps involved for travellers to declare their belongings especially cash, normally when a traveller comes, he/ she has to mention or announce especially when has more than 1500 currency points and above at the immigration point. Such a person is escorted to customs by either immigration officer or police attached to the airport. Here in our customs, the cash is declared or registered on form C and D which are forms given to URA for the Anti-Money laundering Act 2013, the Anti-Money laundering Regulations 2015 section 10(2), regulation 10(1)(b) declaration of the particulars of the currency or the negotiable bearer instrument to Uganda Revenue Authority at the port of entry/exit. After filling in the above forms, the person is supposed to be photographed upon presenting a passport (valid) with any other relevant document of identification. The photocopies of both

forms are given to him/ her for purposes of accountability for the cash he has. The person is then left to proceed to his destination meanwhile the above two forms are submitted to Financial Intelligence Authority depending on the time of arrival."

The excerpt is the position of the law in Uganda. PW5's team having recorded and read it would have dropped the charges unless they had obtained evidence to the contrary.

Section 10 of the AMLA as amended 2017 provides thus:

A person-

(1)(a) Entering or leaving the territory of Uganda and carrying Cash or bearer negotiable instruments exceeding one thousand five hundred currency points or the equivalent value in foreign currency

(b).....

shall declare that amount to the Uganda revenue Authority in the manner prescribed by the Minister by regulations.

(2) The Uganda revenue Authority may request additional information concerning the source and purpose of the use of the cash or bearer negotiable instruments referred to in subsection (1)

(3) The customs department of the Uganda revenue Authority shall, without delay, forward to the Authority any form completed under the requirement of this section.

(4) The Uganda Revenue Authority shall, in case of suspicion of money laundering or terrorism financing, or in case of a false declaration or a failure to declare seize the currency or bearer negotiable instruments for a period not exceeding 6 months and shall immediately notify the Authority.

(5) The court may, on application by the Authority, extend the time beyond that prescribed in subsection (4) in respect of the seizure.

Regulation 10 of SI 2015 no. 75 provides for filling of **form D** by a traveller entering Uganda with foreign currency above **1500** currency points in local value.

Form D has four parts. The first part requires bio data of the traveller. Part two requires flight details, date of entry and exit. The third part requires physical address of the traveller in Uganda including telephone contacts. Part four requires the value of the foreign currency and the Ugandan equivalent in total sums and signature of declarant.

In view of the clear provisions of the law cited above, it is obvious that the immigration officers and their advisors in the WASP security committee failed to comply with the law by diverting the accused from interacting with the customs officers who are not only mandated but are also knowledgeable in the laws relating to currency movement and instead charged him as if he had been found with contraband before investigations.

It is no wonder that neither the immigration officers nor the investigating officer treated the possession of currency by the accused as a crime and came to court without investigating if it fell under what is prohibited in section **10(4) of the AMLA**- that is if there was **suspicion of money laundering or terrorism financing, or in case of a false declaration or a failure to declare.** The matter was brought to court by the wrong group prematurely. It is no wonder that Brian Kacucu (**of exhibit D1**) was not called as a prosecution witness. The case would have been a still birth.

Investigations relating to the company's export and income statements from **URA** were not helpful because money had not been

found in company premises in a manner that suggests it was proceeds of a crime.

Finally, the state canvassed the point that the accused failed to prove that he had declared money in Nigeria and that Chief Emeka who went to the police claiming ownership of the money jumped police bond which raised suspicion that the money was proceeds of crime. During cross examination, PW5 admitted that he swore an affidavit opposing the accused's application to have the charges dismissed. That application **number 32 of 2022** was filed and served upon the state. Attached to it is a declaration form for the money in Nigeria. PW5 could not run away from that fact because he swore an affidavit opposing the application. But in this trial he has not tendered any contrary evidence from Lagos to say there was no declaration. Someone must be lying. It is obvious who it is.

Of course PW5's testimony was essentially hearsay. There was no proof that Chief Emeka jumped bail or indeed claimed the money. This case was investigated by PW5 in such a casual and unprofessional manner that his testimony in court is full of stories he picked from people such as Cypriano, Nakalanzi, Mulongo and Chief Emeka. None of these were brought to court either as witnesses or as accused persons. On what basis should the court believe PW5?

The accused should have been allowed to declare the money to the customs department of Uganda Revenue Authority. It should have been the customs department to ask the relevant questions and if need be escalate the matter to **FIA** under **Reg 10(4)(a)&(b) of SI 2015 no. 75**.

In conclusion I am unable on the basis of the scanty, partly false and perhaps selective evidence adduced to put the accused on his defence. To do so would be asking him to fill in the gaps left by the prosecution. It is for the prosecution to adduce evidence from which at the close of the prosecution's case, a trial court can come to a

finding that the evidence establishes a prima facie case and in absence of an explanation by the accused, he could be convicted of the offence charged.

The evidence presented is based on lack of knowledge of anti-money laundering laws by front line managers such as PW1, PW2, PW4 and the **IO**, PW5. Their evidence is not sufficient to establish an essential ingredient, that the money declared to PW2 by the accused was the proceeds of crime. Further, evidence of the **IO** which is really hearsay in substance is manifestly unreliable. I should add that the law as stated in **section 10 of the AMLA and Reg 10 of SI 2015 no.75** was not followed. There was no basis for charging the accused before complying with the law.

I find that there is no prima facie case made out requiring court to put the accused on his defence. I acquit him of the charges.

I order that the money deposited on the FIA account amounting to USD 289,480 be returned to the accused. The same should be declared according to the law and returned to the accused because so far there is no evidence that it was the proceeds of a crime.

The accused's passport be returned to him and any other security deposited in court for his bail be refunded.

.....

Lawrence Gidudu

Judge

4th October, 2023.