

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CRIMINAL APPEAL NO 327 OF 2016**

*(Arising from the Judgment of the High court Anti-Corruption HCT-00-AC-SC-*

5 *0005-2005 dated 13<sup>th</sup> October, 2016 before Hon. Mr. Justice Lawrence Gidudu)*

**KIGOYE FRANCIS.....APPELLANT**

**VS**

**UGANDA.....RESPONDENT**

10 **CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA**

**HON.MR. JUSTICE STEPHEN MUSOTA, JA**

**HON. LADY JUSTICE PERCY TUHAISE, JA**

**JUDGMENT OF THE COURT**

**Background**

15 This is a first Appeal against both the conviction and sentence. The Appellant was indicted on one count of embezzlement c/s19 (b) (I) (ii) (iii) and 37 counts of fraudulent false accounting c/s 23(b) of the Anti-corruption Act No. 6 of 2009. The High Court of Uganda at Kampala (Anti- Corruption Court) convicted the Appellant on all counts. The court sentenced the Appellant to imprisonment of 5 years on  
20 count one and 3 years in respect of each count of the 37 counts with the sentences to run concurrently.



## **Introduction**

The brief facts of this Appeal are that in the period of January 2009 to November 2013, the Appellant who was a Principal Accountant at the New Vision Publishing and Printing Company in the course of his employment stole the sum of Shs.336, 597,398/- being the property of his employer. The Appellant further during the period of 14<sup>th</sup> January 2009 to 17<sup>th</sup> April 2012 knowingly and fraudulently made false entries on carbon copy receipts purporting that different sums of monies at different dates had been paid to his employer by different distributors/agents whereas not the said sum in reality having had been paid by the company's advertisers. Furthermore that the Appellant would then approach a distributor/agent with a false statement of account indicating that such account had been credited and thereby demand for cash in lieu instead.

Having been dissatisfied with both conviction and sentence of the High court, the Appellant filed this Appeal.

In his Memorandum of Appeal dated 12<sup>th</sup> December 2016, the Appellant raised the following grounds;

1. That the learned trial Judge erred in Law and fact when he found that prosecution had proved all the ingredients for the offence of embezzlement beyond reasonable doubt, whereas not.
2. That the learned trial Judge erred in law and fact in failing to subject the evidence on record to a thorough evaluation thereby coming to a wrong conclusion that the offence of fraudulent false accounting had been proved beyond reasonable doubt.



3. That the learned trial Judge erred in law and fact when he engaged in speculation and conjecture.

4. That the learned trial Judge erred in law and fact when he imposed a manifestly harsh and excessive sentence on the Appellant.

5 Having read the grounds, we find that ground 3 on speculation and conjecture is common to grounds 1 and 2. We shall therefore take into account ground 3 when addressing grounds 1 and 2. Thereafter we shall address ground 4 alone.

#### LEGAL REPRESENTATION

10 Mr. Henry Kunya appeared for the Appellant while Mr. Tom Walugembe, Senior State Attorney represented the State.

#### DUTY OF THE COURT

15 This is a first Appeal and this court is charged with the legal duty of reappraising the evidence and drawing inferences of fact as provided for under **Rule 30(1) (a)** of the **Judicature (Court of Appeal Rules Directions SI13-10)**. The rule states that;

*"..... (1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may-*

*(a) Reappraise the evidence and draw inferences of fact: and*

20 *(b) In its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner...."*

This court also has the duty to caution itself that it has not seen the witnesses who testified firsthand. On the basis of its evaluation, this court must decide whether to support the decision of the High court or not as illustrated in *Pandya v R [1957] E.A 336 and Kifamunte Henry v Uganda, Supreme Court Criminal Appeal No 10 of 1997.*

#### **GROUND ONE:**

That the learned trial Judge erred in Law and fact when he found that Prosecution had proved all the ingredients for the offence of embezzlement beyond reasonable doubt, whereas not.

#### **Case for the Appellant:**

##### **On Embezzlement**

Counsel for the Appellant submitted that apart from finding that the Appellant was an employee of New Vision Printing and Publishing Company, the trial Judge failed to make a finding on the remaining ingredients of Embezzlement. In this regard he relied on the case of *Annaliza Mondon and Anor v. Uganda CA Cr. App No. 151 of 2009* (unreported).

Counsel for the Appellant raised three lines of argument under this ground.

First, it is the case for the Appellant that the evidence relied upon by the trial Judge was not supported by any documentary evidence.

Counsel submitted that Jengo Edward (PW5), a newspaper agent in Eastern Uganda whose evidence was relied upon by the trial Judge to convict the

Appellant never adduced any documentary evidence in support of the allegation that his account had been credited with a total of Shs 95,000,000/-. He in particular did not produce any receipt in court allegedly issued to him by the Appellant. Counsel further submitted that the Shs 95,490,119/= which Jengo  
5 Edward (PW5) was told to pay is not reflected anywhere in the statements (Annexure 2). He also argued that there was no evidence to corroborate that of PW3 **Francis Ejeu** Manager Audit that other advertisers like Gitta refunded Shs. 10,424,448/= and equally settlements by some advertisers of refunds were not supported by any documentary proof.

10 Secondly, it was the case for the Appellant that the Appellant's sudden disappearance from work and the presence of the Appellant's signature on carbon receipts did not in itself prove the Appellant's alleged embezzlement of the sum of Shs 336,597,398/=.

15 Thirdly, Counsel argued that the concerned advertisers, distributors and agents should have testified in support of the prosecution's case that the creation of false carbon copies resulted in fictitious money in the company's accounts.

### **CASE FOR THE RESPONDENT**

Counsel for the Respondent opposed the grounds of Appeal arguing that the ingredients of embezzlement (including employment which was not denied) had  
20 been proved beyond reasonable doubt and that the trial Judge therefore arrived at the right conclusion after evaluating all the evidence on record. He raised two reasons to demonstrate it. He argued that in order to prove the offence of embezzlement, the prosecution had to prove all the ingredients of the offence namely;



1. That the accused was an employee of the company,
2. The accused stole the money and
3. The money belonged to the company to which the accused had access by virtue of his employment.

5 First, learned counsel argued that the trial Judge re-evaluated all the evidence on the record.

He argued that the trial Judge relied on evidence of Jengo Edward, a newspaper agent in Eastern Uganda (PW5), Zabair Musoke, Chief Financial Officer New Vision (PW1), Francis Ejegu, Manager Internal Audit (PW3) and SP Sebuwufu Erisa the document Examiner, police Forensic lab Naguru (PW7) and the Appellant (DW1).  
10 Zabair Musoke (PW1) testified that on the 13<sup>th</sup> December 2013 he received a complaint from the Credit Manager of suspicious transactions done by the Appellant; he had also received an email from the Appellant resigning from his Job. When the Appellant was asked to return to office to answer to the fraud  
15 allegations against him and also handover, he went silent and never returned to office. Ordinarily the Appellant was supposed to give one months' notice, sit an exit interview with the Human Resource Department, hand over company property and then sign off but he did not do this.

Counsel further submitted that when Francis Ejegu (PW3 the Manager Internal  
20 Audit), when tasked to investigate the fraud in the credit control department, he examined all the carbon copy receipts for all the 11 staff in the department who included the Appellant, reviewed all the bank slips of cheques and cash, generated customer balance statements and interviewed the affected advertisers. He found that Shs. 628,604,821/= was not remitted by distributors to

the company for newspapers supplied. This was as a result of cheques from advertisers being receipted by the Appellant and Mubale Peter in the names of the Distributors instead of the advertisers who had paid the company. Francis Ejegu (PW3) gave evidence that the Appellant receipted Shs 336,597,398/= in names of five newspaper distributors namely Ronald Jengo, Edward Kiberu, Rogers Semwogerere Francis and Bilungi Thaluwa. He further testified that manual receipts were issued to clients and when the Appellant and Mubale would return from the field, they would summarize their day's collections and handover cheques and cash to the chief cashier for banking. The carbon receipts details would then be in-putted into the system and credited to customer's accounts by IT staff in finance as testified by Nicholas Mujuni the senior systems accountant. Francis Ejegu (Pw3) further testified that the carbon copies were falsified by the Appellant. The names of the drawers of the cheques were different from the actual companies that had paid the New Vision. The bank deposit slips showed different drawers of the cheques reflected in the receipt books. The prosecution tendered into evidence the carbon copies, deposit slips, some of the waste cheques and a few original receipts. Francis Ejegu (PW3) elaborated on the fraud in respect of each receipt that formed the basis for counts 2-38. Mr. Ejegu (PW3) testified that the carbon receipts were written and signed by the Appellant whose signature he was conversant with. This evidence was corroborated by Sebuwufu Erisa (PW7) a handwriting expert who examined the handwriting and the signature on the 37 carbon receipts and he attributed authorship of the writings to the Appellant.



Jengo Edward (PW 5) testified that the Appellant approached him in September 2012 to allow him deposit cheques on his New Vision account and that indeed Shs 95,490,119/= was deposited on this account which he remitted to the Appellant.

5 Secondly, Counsel submitted that the audit report also proved the second and third ingredients of the offence. Counsel submitted that even without the evidence of the original receipts, the advertisers affected and all the distributors, there was overwhelming evidence to prove the second and the third ingredient of embezzlement. The Audit report clearly spelt out that the advertisers whose monies had been manipulated using 37 carbon copy receipts. The 37 falsified  
10 carbon copy receipts when compared with the bank deposit slips, the waste cheques in some instances, show that the advertisers and not the distributors were the payees. The act of falsifying the carbon receipts formed the intent to defraud the company of money, and once the accounts of the distributors were wrongly credited, then the theft was committed. The Appellant accessed this  
15 money through the distributors, as shown in the evidence of Ejegu (PW3) who interviewed the distributors such as Gitta Ronald (who refunded some money before going into hiding) and Jengo Edward (PW 5) who admitted that the money had been remitted to the Appellant.

Counsel then distinguished the case of **Annaliza Mondon and Another V Uganda**  
20 **CA Cr App No.151 of 2009** which the Appellant had relied upon and argued that the Appellate court in the said case faulted the Judge for only relying on the evidence of a witness in absence of other evidence (like original records of bookings and payments received by the hotel).



Counsel submitted that in the present case, there was other overwhelming evidence both circumstantial and direct that the trial Judge relied on to find that the ingredients of the offence of embezzlement had been proved (i.e. The carbon receipt, bank deposit slips, the waste cheques and the customer statements to  
5 conclude that the distributors in the 37 carbon receipts had been credited with monies paid by the advertisers). Jengo Edward (PW5)'s evidence further corroborated the findings of the investigative audit. In addition to all this, the conduct of the Appellant disappearing from his work without following proper procedure all pointed to guilt on the part of the Appellant.

10 Counsel prayed that the trial Judge's findings that the offence of Embezzlement was proved beyond reasonable doubt be upheld and this ground dismissed and conviction be upheld.

Further in his rejoinder, counsel argued that any of the employer's in Credit Control Department could have been involved in the said malpractices and  
15 necessarily the Appellant. Given the above circumstances, Counsel prayed that this ground be allowed.

### **COURT'S FINDINGS AND DECISION**

We have considered the submissions of both learned counsel for the Appellant and Respondent. We have also addressed our mind to the authorities presented.  
20 As an ingredient to the offence of embezzlement, the issue of the Appellant's employment is not in contention. The remaining ingredients of embezzlement which are theft of money belonging to his employer which the Appellant had access to by virtue of his office are what are in contention.



The onus is on the prosecution to prove charges brought against the accused beyond reasonable doubt (See **Sekitoleko V Uganda [1967] EA 531**). It is not the duty of the Appellant to prove his innocence. Any doubt arising in the prosecution case is to be resolved in favor of the accused person.

5 The ingredients of the offence of embezzlement C/S 19 of the Anti-Corruption Act as held in the case of **Teddy SSEZI Cheye v Uganda COA Criminal Appeal no 105 of 2009** are;-

**-proof of employment by the government or government body or private entity**

**- Theft of the money**

10 **-property must belong to the employer**

**-Accused had access by virtue of his office.**

A perusal of the record reveals that the trial Judge was alive to the ingredients of Embezzlement when he stated (page 100 of the Record of Appeal) that

15 *"... when I weigh these factors such as the accused's sudden disappearance from his work station, the accused's handwriting on the carbon receipts which were used to create false credits to distributors, the evidence of Pw5 that he acted as a conduit for the accused to receive money against the accused's defense that there was lack of evidence from advertisers and that the fraud was a result of the internal weak control systems, I find that the theft of*  
20 *336,597,398/- has been squarely placed at the doorstep of the accused..."*

*The theft in this case was done in an intelligent manner, the accused created false money by carbon slitting the receipt books of New Vision to read like distributors had paid money whereas not. The accused went to the distributors and collected*

*real or genuine money that the distributors owed to New Vision. This was a clever way of stealing what was due to the employer without first waiting for the money or come to the employer. That is what amounts to embezzlement without first waiting for the money to come to the employer. This is what amounts to*  
5 *embezzlement. It is different from ordinary theft by strangers..."*

Counsel for the Appellant submitted that by the Judge relying on the Appellant's sudden disappearance from work and the Appellant's signature on carbon receipts does not prove the allegation of embezzlement of the sum of Shs 336,597,398/-. This we disagree with as clearly the prosecution unveiled the  
10 entire process of the scheme by the Appellant to embezzle the money due to his employer.

The trial Judge not only draw evidence from the Appellant's sudden disappearance from work and signature on carbon receipts but also drew evidence from Zabair Musoke (PW 1), Francis Ejegu (PW3), Jengo Edward (PW5),  
15 Sebuwufu Erisa the document examiner (PW7) and the Appellant DW1.

A re-evaluation of the evidence clearly shows the following. Zabair Musoke (PW 1) who testified in court that on the 13<sup>th</sup> day of December 2013 when he received a complaint from the credit manager of suspicious transactions done by the Appellant, at nearly the same time he received an email from the Appellant  
20 resigning from his Job. Ordinarily the Appellant was supposed to give one months' notice of the intention to resign and/or sit an exit interview with the human resource manager, handover company property and sign off but he did none of the above. We agree with the trial Judge that this was no coincidence and the conduct of the Appellant was very wanting.



The Judge also found that Francis Ejeu (PW3), Manager Internal Audit, while investigating the fraud in the credit control department, examined all the carbon copy receipts and found that Shs 628,604,821/= had been diverted from the advertisers accounts and wrongly credited on the distributors accounts. The main culprits were the Appellant and a one Peter Mubale. The accused was found to have collected 44 cheques from advertisers such as Moringa, Straight talk, Lowe, Scanad and OMD Uganda totaling to Shs. 336,597,398/=. This money was instead credited through carbon slitting method by the accused to newspaper distributor's accounts for Mr. Jengo, Mr. Gitta, Mr. Semwogerere Ms. Birungi and Mr. Kiberu. Investigations reveal that these distributors whose accounts were fraudulently credited paid the money in cash to the accused. Francis Ejeu (Pw3) further testified that the carbon copies were falsified by the Appellant. Francis Ejeu elaborated on the fraud in respect of each receipt that formed the basis for counts 2-38. Francis Ejeu (Pw3) further testified that the carbon receipts were written by the Appellant whose signature he was conversant with. This evidence was corroborated by Sebuwufu Erisa (PW7 the Handwriting expert) who examined the handwriting and the signatures on the 37 carbon receipts and attributed authorship to the Appellant.

Further when we looked at exhibit D5 of the defence which comprise of the Appellant's transcripts and academic accomplishments (page 37 of the Record of Appeal), it reveals that the Appellant is a member of the Institute of Certified Public Accountants of Uganda, holds an affiliate status with ACCA and holds a certificate in Microsoft-Navision. This therefore makes him an expert in his field of study and therefore should have understood the implications of what he was

doing. However, the Appellant instead took advantage of the loopholes in the Employers system and decided to use this expertise to steal from his employer.

We have also looked at the case of **Annaliza Mondon and Another V Uganda** (Supra) and with due respect we do not see how the said case applies to this case  
5 as there was other overwhelming evidence both circumstantial and direct that the trial Judge relied on to find that the ingredients of the offence of embezzlement had been proved beyond reasonable doubt against the Appellant.

We find therefore that the prosecution proved the ingredients of embezzlement beyond reasonable doubt and agree with the trial Judge's findings regarding the  
10 offence of embezzlement.

This ground accordingly fails.

#### **GROUND 2:**

That the learned trial Judge erred in law and fact in failing to subject the evidence on record to a thorough evaluation thereby coming to a wrong  
15 conclusion that the offence of fraudulent false accounting had been proved beyond reasonable doubt.

#### **CASE FOR THE APPELLANT**

Counsel for the Appellant submitted that the trial Judge erred when he found that the 37 counts relating to fraudulent false accounting had been proven whereas  
20 not. He raised two lines of argument under this ground.

First, he argued that none of the said Distributors (save for Jengo PW5) or advertisers testified in court to support the said allegations. Counsel further argued that so many other company staff were involved and it would be very



difficult to establish the Appellant's culpability without the direct evidence of his involvement.

Secondly, Counsel argued that the alleged loss of original receipts at the hands of the police officer created an impression that only some of the original receipts got lost yet none of the secured ones were ever tendered in evidence. This was  
5 further corroborated by Mr. Francis Ejegu PW3 who confirmed that the police did help them recover some original receipts and yet none of the original ones were ever tendered in court as exhibits. Counsel further argued that Mr Sebuwufu Erisa the handwriting expert never had access to the Appellant's original handwriting  
10 specimen and used photocopies. He also argued that the laboratory report was wanting and the absence of original copies rendered the prosecution evidence fundamentally weak, wanting and lacking in all material respects as there was nothing to compare the available photocopies with.

#### **CASE FOR THE RESPONDENT**

15 Counsel for the Respondent submitted that in order to prove the offence of fraudulent accounting, the prosecution had to show that the Appellant was a servant of the New Vision, and that he knowingly made fraudulent entries with intent to defraud. The Appellant did not contest the first ingredient. As to fraudulent entries, the prosecution relied on Exhibit P9 (the carbon receipts)  
20 whose entries were in favor of distributors such as Giita Ronald Kiberu ,Birungi and Semwogerere Francis, who however never paid money attributed to them to support the 37 offences of fraudulent false accounting committed by the Appellant. Counsel further submitted that when the said receipts were compared with the bank deposit slips, the waste cheques and the customer's

bank statements, the entries instead corresponded with deposits of other cheques drawn by advertisers such as Moringa, Straight Talk Foundation and Scannad Uganda Limited. Counsel further submitted that the Appellant falsified the said carbon receipts well knowing that the same would be used by the IT-staff in Finance to credit customers account with non-existent money which was clear evidence of the intent by the Appellant to defraud the company of money. With regard to the assertion that the prosecution fell short of the required standard to prove the offences in the absence of Advertiser's evidence and original receipts, Counsel for the respondent submitted that there was overwhelming circumstantial evidence to pin the Appellant. The evidence of the handwriting expert Mr. Sebuwufu implicated the Appellant as the author of the 37 carbon copies. Counsel submitted that Mr. Sebuwufu in his evidence testified that there was a close relationship between samples (S1-S6) of the Appellant and the handwriting on Exhibit D 58 and D 66. Even though Mr. Sebuwufu observed that there was no signature on D 58 he confirmed that the handwriting on D8 was that of the Appellant.

#### **COURT'S FINDINGS AND DECISION**

Section 23 of the Anti-corruption Act provides for fraudulent false accounting and provides as follows

20 *"... A person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the following acts with intent to defraud—*

- (a) *destroys, alters, mutilates or falsifies any book, document, valuable security or account which belongs to or is in the possession of his or her*

*employer, or has been received by him or her on account of his or her employer, or entry in that book, document or account, or is privy to any such act;*

5 (b) *makes, or is privy to making, any false entry in any book, document or account; or*

(c) *omits or is privy to omitting, any material particular from any such book, document or account,*

10 *Commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both..."*

From reading this section, our understanding is that the prosecution must prove

1. **That one was an employee and**
2. **That knowingly made fraudulent entries with intent to defraud.**

15 The Appellant did not contest the first ingredient. He however contested the other ingredients which are knowingly making fraudulent entries with intent to defraud your employer. The trial Judge found that the names of the payees in these carbon copies referred to persons such as Giita Ronald, Kiberu Rogers, Burundi and Ssemwogerere Francis and they are distributors who never paid the money attributed to them. Interestingly the amounts for each entry corresponded  
20 to deposit cheques issued by advertisers such as Moringa, Straight talk Foundation and Scanad Uganda Limited. The *modus operandi* of the Appellant seemed to have been that cheques equivalent amounts from the advertisers would be recorded as payment by a distributor in the exact figures that the advertiser paid. This was clearly a false entry. We have looked at exhibits P9





which comprises the carbon receipts whose entries are in favor of distributors such as Giita, Ronald Kiberu, Rogers Birungi Thuluwa and Semwogerere Francis who in reality never paid the money attributed to them. Furthermore that when the said receipts were compared with the bank deposit slips, the waste cheques and the customer's bank statements as testified by Francis Ejegu (PW3), the entries corresponded with deposits of the cheques drawn by other advertisers such as Moringa, Straight Talk Foundation and Scannad Uganda Limited. We have also looked at the evidence of the handwriting expert Sebuwufu Erisa (page 59 of the Record of Proceedings) as earlier on discussed in ground 1 which implicates the Appellant as the author of the 37 carbon copies. According to his evidence, he did not find any challenges in examining the carbon copies and using the photocopies. We have also looked at Francis Ejegu's evidence (which corroborates Sebuwufu Erisa's [PW7] evidence at page 27 of the Record of Appeal) when he testified that

15 ***"...If I saw the deposit slips, receipts etc. I would recognize them. The Handwriting of Kigoye is on those receipts and I know it very well. I have worked with Kigoye and Mubale for years. Kigoye found me at New Vision. The handwriting expert also confirms it. I have ever got Kigoye's specimen signature to verify some work in the course of my duties. I am conversant with Kigoye's Signature..."***

20

We have also looked at the act of the Appellant falsifying the carbon receipts well knowing that the same would be used by the IT-staff in Finance to credit customers account. This was clear intent on the part of the Appellant to defraud the company of money.



In the case of **Ibrahim Matuhi v Republic (1978) LRT N10** it was held by **Sammata J** that;

5           *“That the most a handwriting expert can properly say is that he does not believe a particular person or, positively that the two handwritings are so similar as to be indistinguishable”.*

(See also **Hassan Salum vs. R [1964] EA 126** and **Kit Smile Mugisha v Uganda [1976] HCB**)

In this case, the evidence of the handwriting expert was corroborated by the evidence of a work colleague of the Appellant thus proving that the Appellant  
10 wrote and signed the receipts.



We now turn to the assertion that the prosecution fell short of the required standard to prove the offences in the absence of Advertiser’s evidence and original receipts, we are in agreement with the trial Judge when he found that it was not necessary for the prosecution to present original receipts issued to the  
15 advertisers because copies of waste cheques and bank cheques deposit slips which were attached to the carbon copy receipts were very clear as to who the payee was and the amount paid. There was therefore no need to call the advertisers or the police officer Namuno who is alleged to have lost some original receipts that had been given to her by the advertisers and witnesses like Mr.  
20 Jengo (PW5). We find that there is sufficient information on record to draw the relevant conclusion that the entries in the carbon copy receipts did not match the names of the advertisers who had actually paid the money. There is no doubt that the Appellant falsified entries in counts 2-38. We therefore agree with the trial Judge on his findings.



This ground therefore also fails.

**GROUND 3: That the learned trial Judge erred in law and fact when he imposed a manifestly harsh and excessive sentence on the Appellant.**

5 The Appellant was sentenced to serve 5 years imprisonment on Count 1 of embezzlement which carries a maximum sentence of 14 years and 3 years on each Counts of fraudulent false accounting which carries a maximum of 3 years imprisonment.

Counsel for the Appellant submitted that the said sentences were harsh and excessive.

10 Counsel for the Respondent on the other hand submitted that the trial Judge imposed a very lenient sentence especially when the Appellant was not ordered to make good the loss that the company suffered as shown the audit report.

#### Court's findings and decision



15 We have considered the principles upon which this court can interfere with the sentence of the trial Judge. These principles were set out by the Supreme Court in *Kyalimpa Edward v Uganda, Criminal Appeal No.10 of 1995*. The Supreme Court referred to the case of *R v De Havilland (1983) 5 Cr App. (s) 109* and held as follows;-

20 *"...An appropriate sentence is a matter for the discretion of the sentencing Judge. Each case presents its own facts upon which a Judge exercises his discretion. It is the practice that as an Appellate court, this court will not normally interfere with the discretion of the sentencing Judge unless the sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice: Ogalo s/o Owoura*



*vs. R (1954) 21 EACA 270 and R vs. Mohamedali Jamal (1948) 15 EACA 126..."*

We find that there is no reason to interfere with the Judge's sentences as we do not agree that they are manifestly excessive, considering the fact that the Appellant was not ordered to make good the loss the company suffered as per  
5 the audit report.

Furthermore, the Appellate court has no powers to order compensation which had not been ordered by the trial court as held in the case of **SENKUNGU LUTAYA v UGANDA CRIMINAL APPEAL NO. 67 OF 2012** and Section 34(2) of the **Criminal Procedure Code** which provides that;-

10 *"This section gives power to the Appellate court to alter the finding of the trial court and reduce or increase the sentence. It does not give the Appellate court power to order compensation which had not been ordered by the trial court."*

We find no reason to disturb the trial Judge's sentence in this regard as well.

We therefore uphold the sentence of 5 years on count 1 and 3 years on each  
15 count of fraudulent false accounting.

This ground also fails.

### **Final Result**

In the final result, this Appeal is dismissed. We uphold the conviction of the Appellant for the offences of Embezzlement and Fraudulent false accounting. We  
20 further uphold the trial court's sentences of imprisonment of 5 years on count one for embezzlement and 3 years in respect of each count of the 37 counts on false accounting with the sentences to run concurrently.

We so order.

Dated at Kampala, this 8th day of Aug, 2019

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HON. Mr. JUSTICE GEOFFREY KIRYABWIRE JA

HON. MR. JUSTICE STEPHEN MUSOTA JA

10

HON. JUSTICE PERCY TUHAISE JA

8/8/19

Appellant present

Mr. Kamukama holding brief of counsel

Alatu

for the appellant

Back: clear

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judgment delivered in the presence of the above.

8/8/19