

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL SUIT N. 486/2012

5 **UGANDA ECUMENICAL CHURCH LOAN FUND LTD -- PLAINTIFF**

VS

ANNET NAKYEJWE ----- DEFENDANT

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

10 **Background:** Under a contract of service dated 01.03.10, the Plaintiff Company employed the Defendant to work as an Accountant. The duties of the Defendant were set out in the contract and in the Accounting Policies and Procedures Manual.

 Within just one year of the said contract, that is on 01.03.11, the Defendant resigned from the job with effect from 01. 04. 11; and handed over to the Executive Director of the Plaintiff; on
15 the 31.03.11.

 On 08.04.11, Jonathan Kaiso the Accounts Assistant of the Plaintiff Company reported to the Central Police Station, Kampala, that the Defendant had resigned from service without giving any reason; and when he checked the financial records, he realized that Shs. 49,214,300/- received by the Defendant had neither been captured in the system nor banked. That he
20 suspected the money had been embezzled by the Defendant.

 Investigations commenced and other members of staff of the Plaintiff Company and the Investigating Officer also made statements on different dates. The Defendant was eventually charged in the ANTI-Corruption Division with the offence of embezzlement. The outcome of the criminal charges is not known to this Court.

25 The Plaintiff Company also instituted a special cash Audit for the period of 01.01.2009 – 31.03.11. The audit was conducted by SDS & Co. Certified Public Accountants. The Company was tasked to review all cash and cheque receipts; the cash book in relation to the petty cash and cash receipts; bank statements and the respective cash books; cash expenses and relate them to the banking; and to review all reconciliations for accuracy and correctness.

In his report, the auditor found that Shs. 98,191,026/- was received and receipted during the period under review but was not banked.

Out of the said total amount received, Shs. 43,904,499/- was said to have been directly received by Jonathan Kaiso the Accounts Assistant, while Shs. 54,286,527/- was said to have
5 been received directly by the Defendant. The Auditor recommended that action be taken against the Defendant to recover the money, hence this suit.

It should be noted that the Plaintiff withdrew the Special Cash and Audit Report filed on 03. 07. 14 and replaced it with the one filed on 18. 08.14.

10 In her defence, the Defendant contended that the Plaintiff was on a fishing expedition as she neither ever used to receive the money directly from the Plaintiff's clients nor issue receipts to them; and that where she did, the money is reflected in the Cash Register.

The Defendant further stated that the duty to receive cash and issue receipts was the work of the Credit Officers or the Accounts Assistant. That they would record the cash in the Cash
15 Register, and then pass it on together with the Register to her and then she would sign for the money.

The Defendant declined to accept liability for what she claims was neither received or signed for by her, adding that no details or breakdown were given to show how figure of Shs. 54, 286,527/-.

20 In the Alternative, the Defendant pleaded that most expenditures requiring petty cash together with general expenses were met from collections and not from the Bank.

In her counter claim, the Defendant stated that the Accounts Assistant and the Executive Director of the Plaintiff company had a lot of say in financial matters; adding that banking was not part of her job description. Also that there was no financial system as everything lay
25 in the hands of the Executive Director and the Defendant did not receive anything upon taking up office as Accountant.

The Defendant asserted that the Plaintiff Company is a family enterprise out of which she opted and barely a week after her departure, a criminal case was opened up against her even before the audit was carried out.

It is also the Defendant's further contention that the Audit was tailored to tarnish her name and image and to support unfounded claims while exonerating the Executive Director. And that by shifting the alleged loss from Shs. 49,214,300/- to Shs. 54, 286, 527/- without showing how the figures were arrived at is an indicator that there is no genuine case against her.

The Plaintiff called 4 witnesses in a bid to prove its case against the Defendant, while the Defendant testified and also called one witness. The evidence of the parties will be referred to later in the course of this judgment.

Parties filed written submissions.

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During the scheduling conference the Plaintiff raised 3 issues while the Defendant raised 6 issues. The first, second and sixth issues of the Defendant are similar to those of the Plaintiff, while issue number three raised issues of the terms and conditions of the Defendants employment; issue four raised issues do with the Plaintiff's special audit report, and issue five sought to have the report quashed for violating rules of natural justice inter alia. **Court decided to set down the similar issues; noting that the rest of the Defendants issues would be dealt with when resolving the similar issues.**

The issues are the following:

- i. Whether the Defendant received Shs. 54,286,527/-
- ii. Whether the Defendant is responsible for the loss occasioned to the Plaintiff.
- iii. What remedies are available to the parties?

The issues will be dealt with in the same order.

In determining the issues, this court bears in mind the established principle that the burden of proof rests upon the Plaintiff to prove its claim on the balance of probabilities.- **S.101 (1) & (2) and S. 103 Evidence Act.**

It accordingly follows that the burden to prove that the Defendant received Shs. 54,286,257/- and did not bank it on the Plaintiff's Account was on the Plaintiff.

This is because "*the burden of proof rests upon the party, who substantially asserts the affirmative of the issue. The burden is fixed at the beginning of trial by the state of the*

pleadings and it is settled as a question of law remaining unchanged throughout the trial exactly where the pleadings place it, and never shifts in any circumstances whatever” .-
Refer to **Joseph Constantine Steamship Line Vs Imperial Smelting Corporation Ltd [1942] AC 154 at 174**

5 As already mentioned, *“The standard of proof required in civil cases is generally expressed as proof on a balance of probabilities. If the evidence is such that the tribunal can say: We think it more probable than not, the burden is discharged; but if the probabilities are equal it is not. Where one has a case of fraud for instance, if the allegations involve criminal*
10 *reasonable doubt in criminal cases”*. – See **Miller Vs Minister of Pensions [1947] 2 All**

Whether the Defendant received Shs. 54,286,527/-:

The case of the Plaintiff was based on the evidence of 4 witnesses. PW1 the auditor who conducted a special audit to ascertain whether all cash that was received during the period under review was banked, the variance thereof if any, the person responsible for the variance
15 and recommended appropriate action to be taken. The findings of the report were based on evidence gathered from reconstruction of the Plaintiff’s Cash Book for the period, available receipt books, bank statements, Register Book and statement analysis tool kit. Related accounting records and documents were also reviewed; global reconciliation of available financial information was done, and linking amounts receipted with amounts banked.

20 Evidence was also gathered from direct interviews with the Plaintiff’s credit officers and other members of staff but the Defendant was never interviewed before the report was made.

The report indicates that a lot of evidence was tampered with through normalization, hiding documents or parts thereof and cash records by existing staff. The key member of staff responsible for financial loss has since left or was serving suspension from duty.

25 Appendix 1 of the report shows receipt books used during the audit for the period 01.01.09 – 31.03.11, with different remarks. The reconciliation of cash receipts and cash banking for the period in question indicate that Jonathan Kaiso received Shs. 553,163,968- in cash, while the Defendant received Shs. 930,402,772/-. Of these amounts, Shs. 475,665,930/- and Shs. 832,211,746/ respectively was cash for banking for which Kaiso and the Defendant were
30 responsible. The variance of Shs. 175, 689, 064/- is shown as the amount not banked. The amount missing from cash receipts is Shs. 4,041,000/-

The Second Appendix Part 2 shows receipt book range and **items...** indicates many receipts were missing but were reconstructed from Kaiso's Cash Book of 2009/2010- Appendix 1 (b).

Under item 13 the whole receipt book was missing but was reconstructed from customer's files and Kaiso's Cash Book already referred to. However, appendices 1 (a) and (b) do not
5 appear on the substituted audit report. They appeared in the report that was withdrawn by the Plaintiff. Since they do not form part of the record, they cannot be relied upon.

For the period of January, 2009 – 31st March, 2010, Shs. 81,539,038/- not banked is attributed to Kaiso. While Shs. 98,191, 026/- is attributed to both Kaiso and the Defendant.

Appendix 3A indicates cash received but not banked for the period of 01.01.09 to 31.03.10.
10 The amount receipted is Shs. 553,163,968/-; amount banked is Shs. 475, 665,930/- and the total variance not banked is Shs. 77,498, 038/-. The cash ascertained from missing receipts is Shs. 4,041, 000/-

Appendix 3B indicates cash received and receipted but not banked for the period of 01.04.10 – 31.03.11. The amount receipted is Shs. 930,402,772/-. The amount banked is Shs.
15 832,211,746/-. The variance for the year totaled Shs. 98,191, 026/- (but was erased or marked in black). This figure was attributed to both Kaiso and the Defendant.

Out of the Shs. 98,191,026/- Appendix 4 attributes loss of Shs. 43,904, 499/- to Kaiso. And it was then concluded that the balance of Shs. 54,286,527/- is what the Defendant is liable to pay to the Plaintiff.

20 However, the audit report of DW2 that was meant to confirm whether the Defendant misappropriated the said sum of money shows that many other members of staff were involved in receiving and banking cash either collected by the Credit Officers or from clients.

The total amount of cash collected by Credit Officers and handed over to the Plaintiff's staff through the Cash Register from 01.04.10 – 31.03.11 is Shs. 574,736.605/-. Of that said
25 amount, Shs. 428,513,719/- was received by the Defendant through the Cash Register.

DW2 found that the total cash deposits on the Plaintiff's Barclays Bank Account was Shs. 905,661, 746/-, indicating that the cash deposits reported by PW1 were understated by Shs. 73,450, 000/-. PW1 claimed that only Shs. 832,211, 746/- had been deposited on the Plaintiff's Account.

The documents availed to the Defendant by the Plaintiff confirm that the total amount of cash deposited by the Defendant for the period in question was Shs. 505,125,000/-. The sum excluded dash deposits which could not be determined from the bank statements and whose deposit slips were not provided.

5 From the analysis of the 23 receipts queried, whose total amount was Shs. 49,214,300/- and not 54, 286,527/- as indicated in PW1's report, it was ascertained that one of the cheque receipts included a cash receipt. Two out of the 23 receipts amounting to Shs. 5,200,000/- were cancelled and yet they are included in the cash receipts. It was ascertained that 3 of those receipts were not handed over to the Defendant for banking. The remaining 17 receipts
10 amounting to Shs. 40,414,300/- were received by the Defendant and deposited on the Plaintiff's Account.

From the documents provided, no amount of cash was established as having been paid from cash collections. And the report further establishes that the amount of cash deposited by the Defendant in the bank account is higher than the amount of cash received through the cash
15 register.

It is clear from the evidence of both parties that they rely on their respective audit reports to support their cases. It has been established by decided cases that ***“if any party wishes to rely on the validity of any document, then they bear the burden of proving the validity and effect of the document”***. – See **Uganda National Trading Corporation Vs Mwemba**
20 **(1958) 23 EACA 62**

In the present case, the report presented by PW1 on behalf of the Plaintiff was full of contradictions and was also discredited by the evidence of the defence. Out of the total sum of Shs. 54,286,527/- claimed to have been received by the Defendant, Shs. 33,642,450/- was said to have been received directly by the Defendant, while Shs. 20,644,077/- was received
25 by other people and handed over to the Defendant. However, that there was no evidence in the Cash Register indicating that the Defendant signed for the money. The evidence of PW1 in this respect was based on information from staff he interviewed, to the effect that, where there was no signature, the money was handed over to the Defendant. It was on that basis that PW1 concluded that the Defendant as the Accountant was liable for the amount and he
30 recommended that she be held liable; although he stated that the Defendant could not know that money had come into the Plaintiff's control from the various people he interviewed.

While PW1 emphasized that to come to all those conclusions he relied on the Cash Book and the Cash Register, acknowledged copies of receipts, bank slips and interviewing people, he could not explain to Court what he did with the evidence in the Cash Book, and whether any person could receive money as required by the Accounting Manual.

- 5 He admitted that the audit did not come up with the total amount the Defendant physically received but only came up with amounts the Defendant is claimed to have received and did not bank.

There is evidence of unmatched banking, as indicated by Exhibit P2 the entry of 20.02.11, that shows various people lumped together with no reason for doing so. The evidence also
10 shows that Cash Book was reconstructed for use and analysis by PW1 but that he never used it in the report.

The evidence also shows that there was reconciliation of how much was banked by all the people but without a schedule to indicate how much was banked by the Defendant or by Jonathan Kaiso.

- 15 The audit in cash expenses report indicated that the main culprit in receiving and not banking money was Kaiso- per Appendix 4.

From the receipts it can be discerned that other members of staff like Credit Officers received part of the money and issued receipts, whenever the Accounts Department Staff were not available and the money would be handed to them later. However, it is not clear if
20 the Credit Officers were also banking the money.

PW2 stated that the internal controls were compromised as many members of Staff got involved in receiving and banking cash. It is also not disputed that the Cash Book was an Excel sheet kept in the computer that was only accessible to Kaiso.

The fact that many members of staff received money is confirmed by PW3, and while she
25 contended that the money was passed on to the Defendant and received by her as per Pg – of the Cash Register, no attachment was provided to support her contention. Although she says that this is evidenced by the bank statement, her testimony is belied by that of PW4.

PW4 who could have confirmed that the Defendant did not bank the money eventually admitted never looking at the Cash Book or the Bank Statement except when she was called
30 to Court. She said she got all the information from PW1 the Auditor, upon interacting with

him and that she knew nothing about the Defendant banking or not banking the money. This makes her evidence implausible.

It is also not disputed that The Accounts Assistant together with one Marjorie Alinyikira would reconcile the Cash Book with clients' files, on a monthly basis. The Accounts Assistant would then avail the Defendant with printed copies of the relevant pages of the reconciled Cash Book to verify entries. She would sign the same after verification and forward it to the Executive Director for approval. In the circumstances, Court is left to wonder why if money was missing on account of the Defendant, the Plaintiff waited for her to resign before pursuing the issue.

10 It is on record that the list of unaccounted for receipts was given to the Defendant at police by the Accounts Assistant.

In June, 2011, when the Defendant met with the Board of Directors and was introduced to the Auditor (PW1) who had carried out the Special Audit; she was required to get a date to respond to the issues raised in the report without being given a copy of the report.

15 On the agreed date, the Auditor (PW1) without interviewing the Defendant told her he had already gathered enough evidence against her. She was then informed that she was responsible for the loss of the entire sum of Shs. 98,191,026/- but that the Auditor had helped her by only indicating Shs. 54,286,527/-. The failure to interview the Defendant before declaring her guilty of misappropriating the money in question was in breach of the fundamental principle of natural justice, that requires anyone to be heard before being condemned. And the Auditor's decision to indicate that the Defendant was only responsible for misappropriating Shs. 54,286,527/- out of the entire sum of Shs. 98,191,026/- without giving reasons for doing so, raises further issues of credibility of PW1's evidence. Why would the Auditor help the Defendant by reducing the figure to Shs. 54,286,527/-? Could it be that PW1 was trying to protect the Executive Director as alleged by the Defendant?

25 Court also noted that evidence shows that where the Defendant received the money, the receipts indicate that she signed for it. Where money was given to her by the Credit Officers she signed for it in the Cash Register. The Cash book was maintained in soft copy form and was only accessible to the Accounts Officer Jonathan Kaiso. The evidence of PW1 also shows that multiple receipt books were used at a go thereby compromising the reliable handling of cash.

In those circumstances it would not be safe to rely on the evidence of the Plaintiff's other staff that the missing money was handed over to the Defendant. The established principle is that ***"on account of misappropriation of money or conversion of it by a servant, there must be proof that a sum of tangible money had been received by the servant and had been***

5 ***dishonestly appropriated by her"***- Refer to **Mary B. Mugenyi Nalongo Vs Coffee Marketing Board, SCCA No.13/1993 Oder JSC**

In the present case there is no credible evidence that the money claimed by the Plaintiff was received the Defendant. PW1 got information from witnesses whose evidence in this regard was discredited as already pointed out in this judgment.

10 PW1's audit report does not show the amount received by the Defendant from clients, Credit Officers, and members of staff and that the money was not banked. While the evidence of DW2 in appendixes 1,2, 6 & 7 shows in column 3 the amount received and deposited by the Defendant, the breakdown of cash received by the Defendant from the Credit Officers through the Cash Register and then Cash deposited by the Defendant. PW1 and PW2's
15 evidence showed that the money received in the accounts Office would not be banked immediately, yet the amount of money kept beyond 01.04.11 is not indicated. It is evident that PW1 used the amount of money attributed to Jonathan to arrive at the conclusion for the liability of the Defendant in total disregard of the records from which he could have obtained direct evidence against the Defendant.

20 It is also on record that PW1 found out that there was tampering with evidence through normalization, hiding documents or parts thereof and cash records by existing staff.

In those circumstances, Court finds that the burden of proving the validity and effect of the Audit Report presented by PW1 was not discharged. ***"The circumstances appearing in evidence do not give rise to a reasonable and definite inference, instead, they give rise to***
25 ***conflicting inferences of equal degree of probability so that the choice between them is a mere matter of conjecture. "*** –Refer to **Richard Evans and Co. Ltd Vs Astley [1911] AC 674**. The evidence of the Plaintiff's witnesses as it stands raises doubt as to whether the money attributed to the Defendant was ever received and converted by her.

For those reasons this Court finds that the Plaintiff failed to prove on a balance of
30 probabilities that the Defendant misappropriated the sum of Shs. 54, 286,527/-. The validity and effect of the audit report relied upon by the Plaintiff was brought into question by the

inconsistencies in the evidence of the Plaintiff's witnesses and the unchallenged evidence of the Defendant. The first issue is accordingly answered in the negative.

The next issue **whether the Defendant is responsible for the loss suffered by the Plaintiff:**

- 5 **The special audit report indicated that the Defendant was liable as Accountant, had overall responsibility for the cash received and receipted and for immediate banking. Further that the Defendant was responsible for causing financial loss of the entire sum being the difference between cash receipts and the total banked for the period in question; but proposed that she should only refund Shs. 54,286, 527/-.**

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As earlier pointed out in this judgment, the evidence of the Plaintiff was that the total loss occasioned to the Company was Shs. 98,191, 026/- The loss was attributed to both Kaiso and the Defendant.

- 15 However, it was the Plaintiff's assertion that the Defendant as Accountant was responsible for reliability of finances and accounts which duties she failed to perform and was accordingly directly responsible for the financial loss of the Plaintiff.

- It was argued that the Defendant failed to maintain a proper Cash Book and to bank some money yet she was responsible for the overall operations of the Accounts Department. Further that, the Defendant engaged in practices inconsistent with the Plaintiff's accounting policy and procedure by banking less money or not at all.
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- It was asserted that under paragraph 2.6.5 of the Accounting Manual all cheques or cash received had to be banked promptly not later than the working day following receipt thereof. That the Audit report at Page 6 shows that the cause of loss of the money was failure by the Defendant and Kaiso Jonathan to immediately bank the money or at all as indicated by Appendix 3. T
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It was stated that the evidence of PW2 and PW3 was that the Cash Book was maintained by the Defendant; while the evidence of PW1 showed that there were inconsistencies on dates written on receipts and dates in the Cash book. Counsel then contended that this illustrates

that the Defendant failed to maintain the Cash Book in a proper manner thereby facilitating fraud.

Relying on the case of **Kiriri Cotton Co. Ltd Vs Dewani [1960] EA 188**, Counsel for the Defendant argued that she was not liable for the loss suffered by the Plaintiff considering the
5 circumstances already outlined in this judgment.

It has already been determined by this Court that the Defendant did not misappropriate the Shs. 54,286,527/- The Plaintiff 's insistence that the Defendant is responsible for the overall loss occasioned to the Plaintiff Company for failure to maintain the Cash Book and to generally perform her duties as Accountant is not supported by the evidence.

10 The evidence available unmistakably reveals that the Cash Book was maintained by the Accountants Assistant Jonathan Kaiso and it was kept on computer in soft form. PW1 admitted that the pass word for updating the Cash Book could not be shared between the Defendant and Kaiso. It therefore follows that the only person who could account for the money received and entered into the Cash Book was Kaiso and there is no evidence that he
15 ever handed over the money to the Defendant. The reconstructed Cash Book PW1 relied upon was never produced in Court and Jonathan Kaiso never testified.

The Defendant kept the Cash Register and money that was received and recorded in the Cash Register was accounted for. It has already been found by this court that there were too many people involved in the receipt of money from the Plaintiff's clients. While the Credit Officers
20 and other Staff claim they would hand over the money to the Defendant, the evidence of handing over the money was not availed.

In the situation where many different people were involved in receiving and handling cash, it is apparent that the internal controls were compromised.

The Defendant's evidence that she had no access to the office keys, safe, cheque books or
25 collateral and did not even receive bank statements was not disputed by the Plaintiff. Nor was her contention that the closeness of the Accounts Assistant and the Executive Director made her working environment difficult and under mined her performance as they continually receipted and banked money without notifying her.

The difficult work environment was compounded by the fact that a number of members of
30 staff were related to people holding important positions in the Plaintiff Company like the

Debt Collector, Board Chairman and the Auditor. This could explain why the Auditor only interviewed other members of staff before making his report and did not interview the Defendant. And that it was for all those reasons that the Defendant left the Company.

5 As per Appendix 4 and the other evidence of PW1 the main culprit in the saga was Jonathan Kaiso

The Defendant strongly challenged the audit report on the ground that she was never given a chance to be heard. This court has already declared that failure to hear the defendant's side of the story before making the report contravened one of the cardinal principles of the Constitution.

10 The Court also noted that as pointed out by the Defendant no breakdown of the amount received, banked or unbanked was given, yet PW1 in his evidence listed what the Accounts Assistant took, together with particulars. And while admitting that the documents were tampered with, the Auditor all the same went ahead to rely on the report to jump to conclusions that he did.

15 It is the Defendant's assertion that that she demanded for copies of cash receipts, bank statements, bank deposit slips, petty cash books and the special audit report, but the Plaintiff only availed the audit report and the Cash Register. When criminal proceedings for embezzlement were instituted against her in the Ant-corruption Court, the Resident State Attorney availed documents 45-1 – 50, which the Executive Director relied upon.

20 As already stated, there were contradictions in the Plaintiff's evidence which included among other things the fact that Jonathan Kaiso reported to police on 08.04.11 and made a statement that the Defendant received Shs. 49, 214, 3000/- in cash without capturing it in the system or banking it, while Naate Masanganzira stated on 32.05.11 that the Defendant as Accountant was not supposed to Bank any money or touch physical cash.

25 **The Defendant insists that there were no missing funds and that according to PW3 and PW4; it was Kaiso who received the money.** The Plaintiff abandoned what was in Kaiso's statement which indicated that all receipts were accounted for and relied on the Cash Book whose entries are not reliable. The Excel Sheet the Auditor referred to could be altered to vary or remove any entry to give a wrong picture.

The Auditor PW1 testified that he reconstructed the Cash Book. In addition, the Plaintiff's lawyers provided copies of 23 receipts, 18 bank deposit slips and entries of the Cash Book- documents 43-1-43 -3 in April, 2012, but the documents indicate that the pages were printed in September, 2012. The Defendant claims that the said documents are not the same as or
5 similar to the Cash Book Jonathan Kaiso printed to be verified and signed by her. That Cash Book had uniform columns showing: a) date, b) payee/payer, c) details, d) cheque no., e) reference no., f) amount, g) receipt no. and h) income.

The Defendant points out that the Cash Book the Plaintiff is relying on especially documents 43-16-19 the last column on the right does not tally with the rest of the pages of the same
10 document. That while she used to sign on the printed pages of the Cash Book, what is contained in the agreed documents is not signed as it was printed long after she had resigned. She challenged the pages of the Cash Book in the agreed documents as being new to her.

The Defendant's evidence is further reinforced by the evidence of her witness DW2 to the effect that, ***“considering the job description of the Defendant, her contract of employment
15 and the accounting policies and procedures of the Plaintiff Company, DW2 concluded that the Defendant was not responsible for how money paid to the Plaintiff Company was receipted; its custody or banking as she was not the Accounting Officer of the Company, nor was she empowered to be in charge of those duties”.***

It is for all those reasons that this Court finds that the Defendant cannot be held liable for the
20 financial loss occasioned to the Plaintiff Company if any.

What remains for Court to determine are **the remedies available to the parties:**

The Plaintiff sought to recover the Shs. 54,286, 527/- claimed to have been embezzled by the Defendant, together with interest at the rate of 27% from the date of filing the suit until
25 payment in full. General damages and costs of the suit were also applied for.

The Defendant on the other hand sought for dismissal of the Plaintiff's suit with costs and also sought declarations set out in the counter claim.

This Court having found that the Plaintiff failed to prove its claims against the Defendant to the required standard it follows that the Company is not entitled to any of the remedies
30 sought. The suit is hereby dismissed with costs to the Defendant.

The Court also finds that the Defendant's counter claim, has been settled by the findings of this Court already set out in this judgment. The impugned Audit Report of the Plaintiff has been found to be unreliable that no reasonable tribunal can depend on it. That should suffice to take care of the concerns of the Defendant.

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FLAVIA SENOGA ANGLIN

JUDGE

10 **22.02.16**

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PW1 the Auditor who carried out the special audit referred to his report Exhibit P... and testified that his inquiries revealed that Shs. 98,191,026/- was received and receipted but was not banked for the period under review. Out of the said sum, Shs. **43,904 was received and receipted by Jonathan Kaiso and he accordingly concluded that the balance of Shs.**

5 **54,286,527/- was received by the Defendant.**

PW1 asserted that out of that figure of Shs. 54,286,527/- , **Shs. 33,642,450/- was received directly by the Defendant, while Shs. 20,644,077/- was received by other people and handed over to the Defendant. However, that there was no evidence in the Cash Register indicating that the Defendant signed for the money. But that the witness was**
10 **informed by the people he interviewed that, where there was no signature, the money was handed over to the Defendant. It was on that basis that PW1 concluded that the Defendant as the Accountant was liable for the amount and he recommended that she be held liable.**

The records for the year 2010 indicated that the money received by various other staff
15 **from clients and handed over to the Defendant was Shs. 25,990,450/-. In 2011, the amount of Shs.7, 625,000/- was acknowledged and receipted by the Defendant in the Register Book, bringing the total to Shs. 33,642,450/-.**

The total sum of money banked was Shs.132, 000,000/- out of which Shs.34, 810,296/-
20 **could not be traced to either the Defendant or Jonathan Kaiso to other direct banking. It was accordingly deducted from the total sum leaving a balance of Shs.97, 189,704/-**

While the witness emphasized that to come to all those conclusions he relied on the Cash Book and the Cash Register, acknowledged copies of receipts, bank slips and
25 **interviewing people, he could not explain to Court what he did with the evidence in the Cash Book, and whether any person could receive money as required by the Accounting Manual.**

PW1 admitted that the audit did not come up with the total amount the Defendant physically received but only came up with amounts the Defendant received and did not bank.

Commenting on the unmatched banking, he stated that Exhibit P2 the entry of 20.02.11,
30 **shows various people lumped together with no reason for doing so. Adding that the**

reconstructed Cash Book was for his own use and analysis but he never used it in the report.

The witness also said that he has a reconciliation of how much was banked by all the people but had no schedule to indicate how much was banked by the Defendant or
5 Jonathan Kaiso.

Further, it was the evidence of PW1 that he developed an excel sheet that he analyzed and identified money banked and not banked. And in those instances where he was not sure, he subtracted the figure from the amount due. Also that the Defendant could not know that money had come into the Plaintiff's control from the various people he
10 interviewed and they claimed to have received the money and passed it on to the Defendant.

PW2 confirmed that the Board of Directors of the Plaintiff had directed the audit in cash expenses to be done. That the report indicated that out of the 179,000,000/- received and not banked, the main culprit as per Appendix 4 was Kaiso and the balance
15 was attributed to the Defendant.

She pointed out that the receipt books indicated that Credit Officers received part of the money and issued receipts, whenever the Accounts Department Staff were not available and the money would be handed to them later. However, the witness was not aware if the Credit Officers were also banking the money.

20 The witness agreed that the internal controls were compromised as many members of Staff got involved in receiving and banking cash. She also explained that the Cash Book is an Excel sheet kept in the computer.

PW3 Nadong Alison insisted that the money indicated on Pp. 44 -36 of the Cash Register was received by the Defendant, but no attachment was available to confirm
25 receipt of the money. Nonetheless that the Defendant did not bank the money is proved by the fact that the sums are not reflected in the bank statement.

This witness attested that it was the practice for her and other Credit Officers to receive money when the Defendant was away and hand it over to her when she returned. She named all the other staff that would receive money in absence of the Defendant,
30 including PW4.

PW4 Sarah Lukwago confirmed receiving various sums of money and handing it over to the Defendant. She pointed out that the Cash Book Pp. 21,23,25,30, 31 – 43 indicate the money the Defendant ought to have banked , save for one occasion when she PW4 banked it herself. The proof that Shs. 21,434,000/- was not banked is that it is not
5 reflected in the bank statement.

The witness explained that the Cash Register was for cash deposits by clients and they would append their signatures.

The witness also stated that on 15.03.10, she received Shs. 1,478,000/- from MB Maize Millers (U) Ltd and handed it over to one Jessica, who in turn passed it over to the
10 Defendant. Yet, she did not know if receipts were issued. She added that the Cash Book was only used when the Defendant was not in office otherwise receipts would be issued.

Exhibit D2 P.2 –Cash Book documents indicate that Shs. 1,000,000/- was missing and a receipt ought to have been issued. Another Shs. 800,000/- was received by the witness is neither recorded in the Cash Book nor the Cash Register. She contended that when she
15 made police statement Exhibit D3, she did not know where money was missing.

The witness admitted never looking at the Cash Book or the Bank Statement except when she was called to Court. That she got all the information from PW1 the Auditor, upon interacting with him and that she knew nothing about the Defendant banking or not banking the money.

20 Vehemently denying ever taking the sum of money in issue or any other money at all, the Defendant testified that the Plaintiff employed credit officers who directly received money from clients, issued receipts and recorded details in the Cash Register to show who had received the money. Thereafter, the money would be handed over to the Accounts Assistant or Administrator who would the acknowledge receipt by counter
25 signing the Cash Register.

When the Credit Officers began passing over the money to her after one month in office, she explained, she would bank all the money or part of it or not bank it at all depending on the instructions of the Executive Director. Proof of what was banked is indicated on the bank statement.

The Defendant stressed that several members of staff were receiving cash from clients and banking it. Adding that, she had no access to the office keys, safe, cheque books or collateral and did not even receive bank statements.

Further that the Accounts assistant was posting cash particulars in the Cash Book
5 maintained in Excel form on his personal computer and it was protected by a pass word which she did not know.

The Accounts Assistant together with one Marjorie Alinyikira would reconcile the Cash Book with clients' files, on a monthly basis. The Accounts Assistant would then avail the Defendant with printed copies of the relevant pages of the reconciled cash book to
10 verify entries. She would sign the same after verification and forward it to the Executive Director for approval.

It was the contention of the Defendant that the closeness of the Accounts Assistant and the Executive Director undermined her performance. They continually receipted and banked money without notifying her.

15 The Defendant admits receiving some money from Credit officers or Clients; explaining that clients used to issue post dated cheques to the plaintiff , and that receipts would be issued and entered into the Cash Book once the cheques matured. But the entry would not indicate who received the cheque, its source or nature and would not indicate the last recipient of the cheque. It was emphasized that in May, 2010, of the Shs.
20 41,911,500/- entered into the Cash Register, only Shs. 5,507,000/- was passed on to her.

The Defendant accused the Executive Director of influence peddling and dealing directly with the Accounts Assistant, contending that this made her working environment difficult. That the Executive Director's accounting decisions were adhoc and not documented. The bad relationship, she explained, was compounded by the fact
25 that a number of staff were related to people holding important positions in the Plaintiff Company like the Debt Collector, Board chairman and the Auditor. And that it was for all those reasons that the defendant left the Company.

The Defendant resigned on 01.03.11, and her resignation letter was received by the new Executive Director Jennifer Mugalu, who was already in office contrary to the claim of
30 the Plaintiff. It was after her resignation that she learnt of the allegation that she had received Shs. 49, 214, 300/- and failed to bank it.

The list of unaccounted for receipts was given to her at police by the Accounts Assistant, and she denied the theft and made an additional statement.

On 09.05.11, the Defendant also received a letter from Fred Bwanika t/a Frenika General Agencies demanding for Shs. 49, 214, 300/- as money received and not banked.

5 In June, 2011, the Defendant met with the Board of Directors and was introduced to the Auditor Senoga David (PW1) who had carried out the Special Audit. Without being given a copy of the audit report, the Board required the Defendant to agree on a date with the Auditor and the new Executive Director, when she would respond to the issues set out in the report.

10 On the agreed date, the Auditor told the Defendant that it was not necessary to interview her as he had already gathered enough evidence against her. She was then informed that she was responsible for the loss of the entire sum of Shs. 98,191,026/- but that the Auditor had helped her by only indicating Shs. 54,286,527/-.

15 The special audit report indicated that the Defendant was liable as Accountant, had overall responsibility for the cash received and receipted and for immediate banking. Further that the Defendant was responsible for causing financial loss of the entire sum being the difference between cash receipts and the total banked for the period in question; but proposed that she should only refund Shs. 54,286, 527/-.

20 The Defendant strongly challenged the audit report on the ground that she was never given a chance to be heard. Also that no breakdown of the amount received, banked or unbanked was given, yet PW1 in his evidence listed what the Accounts Assistant took, together with particulars. And while admitting that the documents were tampered with, the Auditor all the same went ahead to make the report.

25 It is the Defendant's assertion that that she demanded for copies of cash receipts, bank statements, bank deposit slips, petty cash books and the special audit report, but the Plaintiff only availed the audit report and the Cash Register. When criminal proceedings for embezzlement were instituted against her in the Ant-corruption Court, the Resident State attorney availed documents 45-1 – 50, which the Executive Director relied upon.

Contradictions in the plaintiff's evidence were pointed out, to wit: while Jonathan Kaiso reported to police on 08.04.11 and made a statement that the Defendant received Shs. 49,214,3000/- in cash without capturing it in the system or banking it, Naate Masanganzira stated on 32.05.11 that the Defendant as Accountant was not supposed to
5 Bank any money or touch physical cash.

The Defendant insists that there were no missing funds and that according to PW3 and PW4; it was Kaiso who received the money. The Plaintiff abandoned what was in Kaiso's statement which indicated that all receipts were accounted for and relied on the Cash Book whose entries are not reliable. The Excel Sheet the Auditor referred to
10 could be altered to vary or remove any entry to give a wrong picture.

The Auditor PW1 testified that he reconstructed the Cash Book. In addition, the Plaintiff's lawyers provided copies of 23 receipts, 18 bank deposit slips and entries of the Cash Book-documents 43-1-43 -3 in April, 2012, but the documents indicate that the pages were printed in September, 2012. The Defendant claims that the said documents
15 are not the same as or similar to the Cash Book Jonathan Kaiso printed to be verified and signed by her. That Cash Book had uniform columns showing : a) date, b) payee/payer, c) details, d) cheque no., e) reference no., f) amount, g) receipt no. and h) income.

The Defendant points out that the Cash Book the Plaintiff is relying on especially
20 documents 43-16-19 the last column on the right does not tally with the rest of the pages of the same document. That while she used to sign on the printed pages of the Cash Book, what is contained in the agreed documents is not signed as it was printed long after she had resigned. She challenged the pages of the Cash Book in the agreed documents as being new to her.

25 The Defendant engaged Julius Muloni of White Water Mark Certified Public Accountants (DW2) to audit the documents which the Plaintiff presented and later relied upon in Court.

Mr. Muloni made the report filed in Court on 19.08.14 and his findings were;

- i) Many people other than the Defendant were receiving cash and banking it.
- 30 ii) The people included Jonathan Kaiso, Jessica Tushabe, Sarah Lukwago and Robinah Biribonwa.

- iii) During the period under review Shs. 574,736,605/- was received and recorded in the Cash Register
- iv) The Defendant received Shs. 428,513,719/- through the Cash Register
- v) A total of Shs. 905.661.746/- was banked on the Plaintiffs Barclays Bank Account No. 0341774551

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The claims by PW4 Sarah Lukwago that she gave the Defendant money on instances she pointed out were declared to be lies. Giving a list of dates, receipt numbers, and clients names totaling to Shs. 19,284,00/-, the Defendant contended that the said entries were not declared in the Cash Register by PW4, although they were made in the same period the Defendant received some money from Credit Officers.

Further that PW4 tampered with the Cash Register when she squeezed in the entry of 05.05.10, receipt No. 1534 for Shs. 5,000,000/- from St. Lawrence S.S, below the page, after the date of 07.05.10. The entry did not indicate the receiver.

15

And while PW4 claims to have given the Defendant money on 18.10.11, vide receipt No. 15761 of Shs. 2,350,000/- from Kings College High School, by that date it was more than 6 months since the Defendant had left the Plaintiff Company.

20

The Defendant denied receiving money Nadong Alison (PW) and PW4, save for what she signed for. She insisted that the amount mentioned by the Auditor (PW1) was unknown to her as the document relied upon was made by the said Auditor years after the special audit report and was only intended to bolster the Plaintiff's case.

Commenting about the second Special Audit report, the Defendant averred that it was meant to cover- up none availability of expenses in the report of 27.07.11, without payment vouchers. Adding that, the Auditor relied upon conjecture to come up with monthly expenditures.

25

It was emphasized that the Auditor conceded that many of the Plaintiff's staff were receiving and banking money during the period in question thereby compromising internal audit controls long before the Defendant joined the Plaintiff Company and worked with the Accounts Assistant she found there.

30

While the Defendant admitted receiving and banking some money, she denied stealing any money; explaining that where she did not receipt the money she received it through

the Cash Register. And that depending on the Executive Director's wishes, the money could be used for other purposes. No money was banked without being entered into the Cash Book.

Office expenses included office needs, motor vehicle repairs, processing urgent travel documents, staff welfare and travel upcountry for Credit Officers.

DW2 Julius Muloni confirmed carrying out an audit by going through the documents referred to by the Defendant that included 23 cash receipts, bank deposit slips, Cash Book printed in September, 2012, Cash Register, bank statements, defendant's contract of employment, Defendant's letter of resignation and the special cash and audit reports for the period in question that were written by PW1. In addition to those documents DW2 was availed with the Accounting policies and Procedures Manual of January, 2002.

The Audit report of DW2 –Exhibit D1, has the following findings:

- i) The amount of money deposited on the Plaintiff's Account during the period under review was understated by PW1 by the sum of Shs. 73,459,000/-.
- ii) The Defendant received a total of Shs. 428,513,719/- through the Cash Register.
- iii) It was not the Defendant receiving and banking the money.
- iv) The Defendant banked Shs. 505,125,000/- she received during the period as opposed to Shs. 428,513,719/-
- v) No reliance was placed on the reconstructed Cash Book because of the risk of inaccuracies pointed out by PW1.

Considering the job description of the Defendant, her contract of employment and the accounting policies and procedures of the Plaintiff Company, DW2 concluded that the Defendant was not responsible for how money paid to the Plaintiff Company was receipted; its custody or banking as she was not the Accounting Officer of the Company, nor was she empowered to be in charge of those duties.

The witness emphasized that Shs. 428,513,719/- was received by the Defendant through the Cash Register and 17 cash receipts amounting to Shs. 40,414,300/- were received and banked by the Defendant – Appendix 3, part E.

None of the employees of the Plaintiff Company or PW1 were interviewed by the witness because he says the 2 audit reports were very clear and at the time he made his report the case was already in Court.

5 This court has taken note of the fact that the Plaintiff withdrew the special cash audit report filed on 03.07.14 and replaced it with the one filed on 18.08.14.