

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA.
(ANTI CORRUPTION DIVISION)
CRIMINAL CASE NO.300 OF 2009

UGANDA	PROSECUTOR
VERSUS		
ANNALIZA MONDON	ACCUSED
ELIZABETH NGORORANO	ACCUSED

BEFORE HON. JUSTICE J.B.A KATUTSI

JUDGEMENT

The two accused persons stand indicted for embezzlement an offence contrary to section 268 (b) and (g) of the Penal Code Act on Count 1, making false entries in a document an offence contrary to section 323 (b) (ii) of the Penal Code Act, on counts 2, and 3, uttering a false document an offence contrary to section 351 of the Penal Code Act on counts 4 to 25 inclusive.

On count 1 the particulars allege that between March and August 2005, in the Kampala District being Directors of Valued Health Ltd stole 38,369,000 (thirty eight million three hundred and sixty nine thousand shillings only) the property of the Government of Uganda to which they had access by virtue of their office in Valued Health Ltd.

On count 2, the particulars allege that in May 2005 in Kampala District, being Directors of Valued Health Ltd with intent to defraud made false entries in the monthly accountability report dated 4-05-05 to Project Management Unit (PMU) indicating some activities done whereas not.

On count 3, the particulars allege that between May and June 2005 in Kampala District, being Directors of Valued Health Ltd with intent to defraud made false entries in the monthly accountability indicating some activities had been done whereas not.

On count 4, the particulars allege that in August 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a Bat Valley Hotel Ltd (BATIVA) Receipt no. 317 dated 10th May for shs 7,360,000/= purporting to be payment for meals, break tea, evening tea and refreshments for ten days at the Hotel where as not.

On count 5, the particulars allege that in August 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a Bat Valley Hotel Ltd (BATIVA) Receipt no. 318 dated 10th May 2005 for shs 1,600,000/= purporting to be payment of the conference room hire for ten days whereas not.

On count 6, the particulars allege that in August 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a Done way car hire receipt no. 877 dated 16th May 2005 for shs 1,500,000/= purporting to be payment for car hire for ten days whereas not.

On count 7, the particulars allege that in August 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a Done way car hire receipt no. 853 dated 4th May 2005 for shs 150,000/= purporting to be payment for car hire for one day whereas not.

On count 8, the particulars allege that in August 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a Done way car hire receipt no. 869 dated 13th May 2005 for shs 1,500,000/= purporting to be payment for car hire for ten days whereas not

On count 9, the particulars allege that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt /invoice for Total House Service Station dated 23rd April 2005 purporting that motor vehicle no. UDC 362 had drawn fuel worth Ug shs 40,000/= whereas not.

On count 10, the particulars allege that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt /invoice for Total House Service Station not clearly dated purporting that motor vehicle no. UDC 362 had drawn fuel worth Ug shs 20,000/= whereas not.

On count 11, the particulars allege that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt/ invoice for Total House Service Station not clearly dated purporting that motor vehicle Reg no. UDA 509 had drawn fuel worth Ug shs 40,000/= whereas not.

On count 12, the particulars allege that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt/ invoice for City Centre Service Station dated 16th April 2005 purporting that motor vehicle no. UDC 362 had drawn fuel worth Ug shs 30,000/= whereas not.

On count 13, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt for City Centre Service Station not clearly dated purporting that motor vehicle Reg no. UDC 362 had drawn fuel worth Ug shs 40,000/= whereas not.

On count 14, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt for City Centre Service Station dated 27th April 2005 purporting that motor vehicle Reg no. UDA 509 had drawn fuel worth Ug shs 50,000/= whereas not.

On count 15, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt/ invoice for City Centre Service Station dated 26th April 2005 purporting that motor vehicle Reg no. UDA 509 had drawn fuel worth Ug shs 40,000/= whereas not.

On count 16, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to

wit a fuel receipt/ invoice for Total House Service Station dated 12th April 2005 purporting that an unknown motor vehicle had drawn an unspecified amount of fuel worth Ug shs 40,000/= whereas not

On count 17, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt/ invoice for Total House Service Station purporting that an unknown motor vehicle had drawn an unspecified amount of fuel worth Ug shs 40,000/= whereas not.

On count 18, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt for Shell City Square dated 20th April 2005 purporting that Motor Vehicle Reg. No. UDA 509 had drawn fuel worth Ug shs 40,000/= whereas not.

On count 19, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt for Shell City Square unclearly dated purporting that motor vehicle Reg no. UDA 509 had drawn an unspecified amount of fuel worth Ug shs 50,000/= whereas not.

On count 20, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt / invoice for Total House Service Station dated 14th April 2005 showing that an unknown vehicle had drawn an unspecified amount of petrol worth Ug shs 40,000/= whereas not.

On count 21, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt for Shell City Square unclearly dated purporting that an unknown motor vehicle had drawn an unspecified amount of shell petrol worth Ug shs 30,000/= whereas not.

On count 22, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to

wit a fuel receipt for Shell City Square unclearly dated purporting that motor vehicle no. UDC 362 had drawn an unspecified amount of fuel worth Ug shs 40,000/= whereas not

On count 23, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt for City Centre Service Station dated 28th April 2005 purporting that motor vehicle Reg no. UDA 509 had drawn an unspecified amount of fuel worth Ug shs 40,000/= whereas not

On count 24, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt for Shell City Square dated 29th April 2005 showing that motor vehicle no. UDA 589 had drawn an unspecified amount of shell petrol worth Ug shs 40,000/= whereas not.

And lastly on Count 25, the particulars offer that in May 2005 at Project Management Unit (PMU) at Crested Towers in the Kampala District knowingly and fraudulently uttered a false document to wit a fuel receipt for City Centre Service Station dated 3rd May 2005 purporting that motor vehicle Reg no. UDA 589 had drawn an unspecified amount of shell petrol worth Ug shs 40,000/= whereas not

The case for prosecution admits of being stated with a fair amount of brevity.

- (1) Valued Health Ltd is a limited liability company having been incorporated on the 7th day of July 2003. The two accused ladies with one SIMON KAHERU are its directors. Annaliza Mondon A1 was the Managing Director.
- (2) In 2004, Annaliza Mondon the Managing Director applied on behalf of Valued Health Ltd to the Uganda Global Fund to fight AIDS, Tuberculosis, and Malaria Project (UGFATMP) to be awarded a contract to train service providers on how to deliver youth friendly services in line with Global Fund objectives. Work to be done in the five Divisions of Kampala

- (3) In January 2004 ELIZABETH NGORORANO (A2) signed a contract with the Government on behalf of Valued Health Ltd for shs 45,500,000/= for the above stated purpose.
- (4) Valued Health Ltd submitted a work plan and budget for carrying out the following activities:
 - (a) To identify delivery sites for youth friendly services in Kampala District.
 - (b) Develop and implement training programmes with stake holders in service delivery.
 - (c) Integrate information, education, communication (IEC) into youth friendly Health Services.
- (5) On 2nd February 2005, Valued Health Ltd entered into tripartite memorandum of understanding with Kampala City Council to the effect that the company and Kampala City Council would work as a team in implementing the objectives of the Project.
- (6) A Bank Account was opened in the Nile Bank Jinja Road. (Ac No NB 1070457614004) with the two accused as signatories and in March 2005 the money was wired on that Account.
- (7) In order to access the money both signatories i.e. the accused had to sign.
- (8) Accused prepared and submitted Accountability Reports to the Project Management Unit (PMU) which were suspect.
- (9) Police investigations revealed the following:
 - (a) Out of a total of shs 45,500,000/= that had been wired on the Account, shs 44,102,000/= was withdrawn by the accused by August 2005.
 - (b) Most of the service providers allegedly engaged by the accused to provide services denied having ever offered services to the accused.
 - (c) These include the following :(i) Bat Valley Hotel, (ii) Done Way Car Hire.

It is for prosecution to prove the commission of the act alleged to be a crime, and to prove as well the guilty intent of the accused in all cases where intent is essential. In her final address to the Court learned counsel for the state invited Court to find both accused guilty and to convict them as charged.

Learned counsel for the defence submitted in equal force that prosecution failed to prove the charges against the accused who should be entitled to as acquittal.

On Count 1, prosecution has to prove to the following ingredients of the offence of Embezzlement.

- (a) That the accused are Directors of a Company.
- (b) That between March and August 2005 they stole shs 38,369,000/= belonging to the Government of Uganda and
- (c) To which they had access by virtue of their office in Valued Health Ltd.

The above burden must be discharged on proof beyond reasonable of doubt.

There is no doubt that there was a Company with limited liability and that the two accused at the bar were Directors of that Company.

That Company had a Bank Account and the two accused were signatories of that Account.

It goes without saying therefore that the accused had access to the funds deposited on that Account by virtue of their office. In my humble judgment the first and third ingredients of the offence of embezzlement have been proved with the accuracy of mathematics.

The only question left to be answered is did the accused steal money from the Account of Valued Health Ltd, money that had been wired on the said Account by the Government of Uganda?

In order to account for that money an Accountability Report was submitted by the accused to the Project Management Unit. (PMU). See exhibit. P8.

In the Accountability Report for the month of April 2005, it is stated that Valued Health Ltd organized a ten days workshop at BAT VALLEY HOTEL (herein after referred to as “BATIVA”).

The amount stated to have been spent is shs 7,360,000/= (seven million, three hundred and sixty thousand only). This money is stated to have been spent on meals for participants for ten days of the workshop. It was further stated that a sum of 1,600,000/= (one million, six hundred thousand only) was paid to the Hotel for the Conference Hall hire for ten days. Receipt Nos 317 and 318 dated 10th May 2005 were submitted alongside the Accountability report.

SENGENDO PHILIP appeared as PW3. He swore that he was at the material time and still is the Manager of BATIVA. He was shown Receipts Nos 317 and 318. (Exhibit P9) which according to the Accountability report submitted by the accused to the Project Management Unit (herein after referred to as PMU) were issued by BATIVA.

SENGENDO in language lacking all forms of ambiguity denied knowledge of these Receipts. Receipt No 317 is for shs 7,360,000/= (seven million three hundred and sixty thousand shillings only) allegedly for meals supplied to the participants for 10 days, while receipt No 318 is for shs 1,600,000/= (one million six hundred thousand shillings only) allegedly being for hire of a Conference Hall for ten days. In her examination in chief A1 ANNALIZA MONDON denied having been issued with these two receipts.

She said: *“these two receipts exhibit P9 I did not receive from BAT Valley Hotel”* instead she asserted: *“I have photocopies of the receipts I was issued. I got them from BATIVA. This is 318 for 1,600,000/= and 317 for 7,360,000/= these are the certified copies I got from BATIVA”*

These were tendered and marked exhibit D11. Exhibits D11 were shown to SENGENDO (PW3). He categorically disowned them. When these were shown to him by counsel for the accused in cross- examination; he said *“what you are showing me are photocopies. I don’t understand them.*

I am not supposed to be with the originals. Originals are with customers i.e. your clients bring them here. I did not certify these copies.”

Exhibit P9 were submitted to the Government analyst and handwriting expert by police and marked as exhibit “2A” and “2B” respectively. See exhibit P24. The same expert received sample documents: specimen handwriting / signature of ANNALIZA MONDON dated 6th November 2008 was marked by the expert as exhibit “S 3” and “S 4” and that of Elizabeth Ngororano dated 5th February 2009 marked exhibit “S 5”and “S 6”.

The handwriting expert was requested to examine and determine whether or not the author of specimen handwriting and signatures marked S3 and S4 respectively - that of ANNALIZA MONDON also wrote and signed on questioned document marked 2A and 2B respectively i.e. exhibit P9 in this case.

His observation was;

“ I have observed similarities in both general and individual handwriting characteristics between the specimen hand writing of ANNALIZA MONDON on exhibit S3 and the questioned handwriting enclosed red on exhibits ---2A,2B,---in this case. Letter design and combinations, (H,A,M,D,HE,TH, etc)” the peculiar writing of “T” dot on upper case letter “I” skill spacing, pen pressure, care abandon, line quality and other handwriting habits as observed in the specimen given are equally found in the questioned hand writing red enclosed.....

Based on these findings, I am of the OPINION that the person whose specimen hand writing and signatures have been given on exhibits S3 one ANNALIZA MONDON wrote the questioned body hand writing red enclosed on exhibits 1A, -----2A, 2B----in this case.”

As can be seen this expert witness gave his opinion with great candour. In Court he was not assertive but gave his evidence with great humility and I take liberty to add honesty.

The fact that the specimen hand writing that was compared with exhibit P9 was that of Annaliza Mondon was not challenged. Its genuineness therefore is not in doubt. The requirement first established in the case of R.V.SLIVER (1894) Q.B., 766 namely that the document to be compared must be proved to have been written or signed by the person whose handwriting or signature is in issue first, and this compared to the writing which is being considered by the court has been fully satisfied. The case of MATHI V.R.86 I.C.344 is authority for proposition that an attempt to fabricate evidence is strong evidence against the accused. The attempt of the defence to assert that exhibit D 11 is what was received from BATIVA speaks volumes.

The attempt to submit photocopy receipts that have been proved to be fictitious falls in line with the case of MATHI V.R.86.I.C.344 supra. See also U, V, TOMAS MWASE (1976) HCB 217.

This now brings me to DONE WAY CAR HIRE. STEVEN MBOWA appeared as PW2. He testified that he is a transporter with a registered business known and styled as DONE WAY CAR HIRE. He operates this business in partnership with JOHN MAWANDA, FRED KAGWA and RICHARD NYOMBI. He is conversant with the hand writing and signatures of his co-partners he swore. He was shown receipts Nos. 877,869 and 853. Receipt No 877 is for shs 1,500,000/= (one million five hundred thousand shillings only) said to be for car hire for ten days. Receipt No. 869 is for shillings 1,500,000/= (one million and five hundred thousand only) also said to be for car hire for ten days. While receipt No 853 is also for shs 150,000/= (one hundred and fifty thousand only) also for car hire for one days.

In language lacking any form of ambiguity this Mbowa denied his company issuing those receipts. He swore that neither he nor any of the three partners wrote or signed let alone issued these receipts. He in no uncertain terms swore that his company has never hired out any vehicle to Valued Health Ltd.

LUCY SANG (PW7) swore that these receipts were part of the Accountability Report submitted by Valued Health Ltd. In her evidence ANNALIZA MONDON swore that she paid KYESIMIRA and was issued with receipts. She asserted that KYESIMIRA introduced her to MBOWA PW2.

A claim denied by MBOWA in no uncertain terms. The defence exhibited the police statement by this STEVEN MBOWA. Exhibit D6. In that statement he states inter alia:

“the company is registered and started operating in the year 2003, today I was in office when three detectives who introduced themselves as police officers from C.I.D approached me. They said they had come on inquiries to verify some receipts and invoices issued by my company. They showed me the documents which are as follows:

- (i) *Original receipt No 869 dated 13th may 2005, issued to Valued Health Ltd in respect of car hire for ten days at shs 1,500,000/= (one million one hundred and fifty thousand only) with heading DONE CAR HIRE”*
- (ii) *Original receipt No 853 dated 4th May 2005 issued to Valued Health Ltd in respect of car hire for one day at shs 150,000/= (one hundred and fifty thousand shillings only) with heading “DONE CAR HIRE”*
- (iii) *original receipt No 877 dated 16th may 2005 issued to Valued Health Ltd in respect of car hire for ten days at shs 1,500,000/= (one million five hundred thousand shillings only) with heading “DONE CAR HIRE”.*
- (iv) *Original receipt No 891 dated 2nd June 2005 issued to Valued Health Ltd in respect of car hire for three days at shs 450,000/= (four hundred and fifty thousand shillings) with heading “DONE WAY CAR HIRE”*

I have carefully examined the above four receipts and wish to comment that they are not receipts issued by my company.

The police have also shown to me the following invoices:-

- (a) *An invoice with unclear serial numbers dated 20th may 2005 issued to VALUED HEALTH LTD in respect of hiring motor vehicle Reg. No UAA 200F for ten days at shs*

1,500,000/= (One million five hundred thousand shillings only) with heading “DONE WAY CAR HIRE”

(b) an invoice with unclear serial numbers dated 20th may 2005 issued to VALUED HEALTH LTD in respect of hiring motor vehicle Reg No UAF 033R for ten days not indicated at shs 1,500,000/= (One million five hundred thousand shillings only) with heading “DONE WAY CAR HIRE”

(c) an invoice with unclear serial numbers dated 2nd June 2005 issued to VALUED HEALTH LTD in respect of hiring motor vehicle Reg No UAF 033R for three days at shs 450,000/= (four hundred and fifty thousand shillings only) with heading “DONE WAY CAR HIRE”

I have carefully examined the above invoices and wish to comment that they were not issued by my company because of the following:

- My company has never owned the above vehicles.
- The hand writing and signatures appearing on the photocopies of the above invoices do not belong to any of us in the company.

There is then an additional statement I only reproduce the relevant part:

“The staffs who handle documentation in my company are I, MBOWA STEVEN, RICHARD NYOMBI, JOHN MAWANDA and FRED KIGWE.” Exhibit D6 was put in by the defence. It is therefore their document. One cannot approbate and reprobate.

Be that as it may: LUCY SANG swore that these invoices/ receipts were part of the Accountability Report submitted to PMU by Valued Health Ltd.

MBOWA swore that he gave a sample of his genuine receipts to police. The police in turn submitted these receipts to the handwriting expert. The handwriting expert was requested to compare the receipts issued in respect of Motor Vehicle Reg No UAF 033R, UAA and 200F with the sample supplied by Mbowa as his genuine receipts. The handwriting expert marked the specimen receipt submitted by Mbowa as the genuine receipt as S1. he marked the receipt in respect of Motor Vehicle Reg No UAF 033R as 12A and 12B respectively and receipt in respect

of UAA 200F. He was asked to compare and determine whether or not the questioned documents marked exhibits 12A, 12B and 12C had the same features as the genuine sample documents from DONE WAY CAR HIRE.

He was of the opinion that the questioned INVOICES marked as exhibit 12A, 12B and 12C were not from DONE WAY CAR HIRE. Thus agreeing with the testimony of Mbowa PW2. I had Mbowa before me. I subjected his demeanor while in the witness box to meticulous and anxious examination and I have no doubt in my mind that he was nothing but a truthful witness. This brings me to the issue of fuel receipts.

LUCY SANG PW7 swore that these receipts were part of the Accountability Report submitted by Valued Health Ltd for the month of April 2005. these receipts show that on 23rd April 2005 Motor Vehicle Reg No UDC 362 at Total House Service Station drew fuel worth shs 40,000/=.

On 30th April 2005, the same vehicle at the same fuel station drew fuel worth shs 20,000/=.

On 13th March 2005 Motor Vehicle Reg No UDA 509 drew fuel worth shs 40,000/=.

On 16th April 2005 Motor Vehicle Reg No UDC 362 drew fuel worth shs 30,000/=.

On 24th April 2005 the same vehicle at City Centre Service Station drew fuel worth shs 40,000/=

On 27th April 2005 Motor Vehicle Reg No UDA 509 at City Centre Service Station drew fuel worth shs 50,000/=.

On 26^h April 2005 at City Centre Service Station Motor Vehicle Reg No UDA 509 drew fuel worth shs 40,000/=.

On 12th April 2005 at Total House Service Station Motor Vehicle Reg No UDA 509 drew fuel worth shs 40,000/=

On 19th April 2005 Motor Vehicle not indicated at Total House Service Station drew fuel worth shs 40,000/=.

On 20th April 2005 Motor Vehicle UDA 509 at Shell City Square drew fuel worth shs 40,000/=.

On 22nd April 2005 at Shell City Square Motor Vehicle No UDA 507 drew fuel worth shs 50,000/=.

Unknown Vehicle on unknown date at Total House Service Station drew fuel worth shs 40,000/=.

On 15th April 2005 at Shell City Square Petrol unknown Vehicle drew fuel worth shs 30,000/=.

On 18th April 2005 at Shell City Square Petrol Motor Vehicle No UDC 362 drew fuel worth shs 40,000/=.

On 28th April 2005 at City Square Service Station Motor Vehicle No UDA 509 drew fuel worth shs 40,000/=.

On 29th April 2005 at City Centre Service Station Motor Vehicle No UDA 509 drew fuel worth shs 40,000/=.

Lastly on 3rd May 2005 at City Centre Service Station Motor Vehicle No UDA 509 drew fuel worth shs 40,000/= . See exhibit 19.

PATRICK MUHEIRWE works with URA as in-charge of Central Registry for Motor-Vehicles. He appeared as PW4 and swore that Motor vehicle Reg Nos UDA 509 and UDC 362 are not registered with URA. (Uganda Revenue Authority). In other words they are non-existent.

He swore that no other organization or body is responsible for vehicle registration other than URA. Faced with this embarrassment the defence came out with a bizarre version. It is this; *“yes we are aware that Motor Vehicle UDA 509 and UDC 362 are non-existent. What happened here is a mistake in recording. What was meant are Motor Vehicle Reg Nos 509 UDA and 362 UDC which actually do exist in fact”* This is a weird situation. It is ridiculous to say the least.

They are inviting Court to hold that on 23-04-05 a mistake was made. Motor Vehicle Reg No 362 UDC was written in the reverse as UDC 362. This was at Total House Service Station. That on 30-04-05 at the same Service Station the same mistake was repeated.

On 16-04-05 at City Centre Service Station a similar mistake was made.

Then on 24-04-05 at the same Service Station a similar mistake was repeated.

Then on 18-04-05 at Shell City Square the same mistake was repeated!

In respect of Motor Vehicle Reg No 509 UDA was at Total House Service Station mistakenly recorded as UDA 509. The same mistake was made on 27-04-09 at City Centre Service Station.

On 26-04-05 at the same Service Station and in respect of the same vehicle a similar mistake was made. Then on 12-04-05 at Total House Service Station a similar mistake was made.

On 19-04-05 this time only later “u” was written – a grave mistake! Carried out at Total House Service Station.

Then on 24-04-05 at Shell City Square a similar mistake was made, repeated on 24-04-05 at Shell City Square, repeated on 28-04-05 at City Square Service Station and again on 29-04-05 at the same station, and repeated on 3rd May 2005 at the same station.

Who could believe such nonsense! The devil must have cracked his ribs laughing at such trash!

With the greatest respect this theory of mistake is dismissed with the utmost contempt it deserves.

I do accept the evidence of PW3 SENGENDO that Valued Health Ltd did use his hotel facilities for a day or two. I also accept the evidence of Dr. Mubiru that he did attend a function at BATIVA hosted by Valued Health Ltd. The claim by the accused that they were at the hotel for ten days is dismissed as sheer lies meant to derail the course of justice. Prosecution has proved beyond doubt that the Accountability Report they did present was a mere false hood. This falsity is brought home by false receipts and invoices presented. Not only that; there is credible and impeccable evidence from Total House Service Station that the receipts attributed to them did not originate there. See evidence of PW------. The question here is where is the money represented on these false receipts? The answer is simple. It was stolen by the two accused.

This brings me to IMPROVE UGANDA LTD. DAVID SERWANDA NSUBUGA appeared as PW8. He testified that he and Margaret Kakande were the Directors of a Company known as Improve Uganda Ltd that was registered in 2003 to undertake monitoring and evaluation of development projects. This Company had an Account in STANBIC BANK IPS branch to which he and Margaret Kakande were the only signatories.

At the time material to this case ANNALIZA MONDON (A1) was managing the affairs of the Company on their behalf and Accountable to the two Directors of the Company.

He was shown a receipt dated 9th May 2005 for shs 800,000/= (eight hundred thousand only) indicating that it originated from Improve Uganda Ltd. He disowned this receipt because he said it did not have the features of their genuine receipts which according to him are: TIN and VAT numbers and the impression of a company stamp. He was shown a payment requisition form shs 2,000,000/= (two million only) he said as Director of Improve Uganda Ltd he had not made such a requisition and that the Company Improve Uganda Ltd had not applied for this payment. He swore that one DAN MUSOKE was not an employee of Improve Uganda Ltd. He was shown another payment requisition form for shs 3,000,000/= (three million only) and an invoice dated 04-05-05 for shs 5,000,000/= (five million only) being payment to Improve Uganda Ltd. In all he swore that Improve Uganda Ltd has never ever received any payment from Valued Health Ltd.

In her defence ANNALIZA MONDON (A1) said this Nsubuga was a liar. She had paid shs 5,000,000/= (five million only) to REDDY on the instructions of this Nsubuga. She had not banked the money but had paid cash to REDDY as instructed by NSUBUGA DAVID. I had Nsubuga before me. I subjected his demeanour while in the witness box to a meticulous and anxious examination. With respect he appeared to me to be a truthful witness and there is no earthly reason why he should have denied his Company having been paid by Valued Health Ltd, if indeed this was the case. In any case the claim by Annaliza Mondon defeats logic. She was managing the affairs of Improve Uganda Ltd.

Improve Uganda Ltd had a Bank Account with Stanbic Bank IPS branch. What reason would prompt Nsubuga to instruct her to pay cash to REDDY when the company had a Bank Account in Stanbic Bank? This claim is dismissed with the contempt it deserves. I accept the evidence of Nsubuga that Valued Health Ltd has never paid any money to Improve Uganda Ltd.

The question now is where is money which the accused claim they paid to Improve Uganda Ltd? The answer is simple. It is with the accused and in the language of section 268 of the Penal Code Act it was EMBEZZLED. They are accordingly found guilty on Count 1 and convicted.

On Count 2 and 3 I am of the view that the charge here is bad for uncertainty as it does not disclose the activities said to have been done. The accused can therefore be said to have been embarrassed and prejudiced in their defence. I would have them acquitted on count 2 and 3.

As regards Counts 4-25 inclusive I have herein about in graphic detail set out the falsifications in the documents the subject of each count.

Prosecution evidence has proved beyond reasonable doubt that these documents were false. The evidence of LUCY SANG put the accused on the ground as having uttered these documents to PMU alongside their Accountability Report.

In agreement with the gentleman assessor, I have no slightest hesitation in finding them guilty on each count and convict them as charged.

Before I put down my pen I would like to say a word or two about the conduct of the defence Counsel in this case. First there is the issue of the defence witness. Section 75 of the Trial on Indictment Act provides as follows:

“the accused person shall be allowed to examine any witness if the witness is in attendance, but he or she shall not be entitled as of right to have any witness summoned other than the witnesses whom he or she named to the Magistrate’s court committing him or her for trial as witnesses whom he or she desired to be summoned.”

Despite the above clear provision of the law I granted adjournment to the defence to summon witnesses even though they had not been named at the committal stage.

When hearing resumed Counsel Mbabazi said they had failed to trace one of the key witnesses for the defence. This was said to be one KYESIMIRA MOSES.

During her cross-examination A1 had been asked about this Kyesimiras’ whereabouts. She had replied in no uncertain words that Kyesimira could not be traced and that he had switched off his phone. It was very surprising therefore to hear Mbabazi mouthing me Article 28 clause (g) of the

Constitution that the court had violated his clients constitutional right by not facilitating her to have her witness in court.

But not only that: when it came to his client to give her side of the story this same Counsel insisted that he wished to examine her witnesses first before she could give her defence. After that during the defence the same counsel called witnesses who had appeared for prosecution this time as witnesses for defence only to say what they should have said during cross-examination.

Let me take this opportunity to remind counsel that although they should have the interests of their clients at heart, they should also remember that they are officers of the Court.

J.B.A KATUTSI

JUDGE

14/07/2009

Court as before

Judgment delivered

J.B.A KATUTSI

JUDGE

14/07/2009

Khankha (Mrs):

The accused have been convicted of Embezzlement. The offence provides for a minimum of 3 years and maximum of 14 years. The rest of the counts the maximum sentence is three years. I have no record as to their criminal record. I presume that they are first offenders. The offences with which they have been convicted are grave in nature. Considering the circumstances of the

entire case. Money had been given to them with a view that it was going to assist on sensitizing about the scourge of HIV/AIDS, TB and Malaria. It is unfortunate that these convicts chose to be insensitive to this course and decided to use the money as they wished.

I humbly submit that the convicts have no remorse at all. They are not sorry for what they did. This is evidenced by the way they conducted themselves during the trial. They went out of the way to fabricate evidence. Even during the trial they were dishonest. They have no respect for anybody, even for this court. Given the above I pray that the court passes a stiff sentence.

J.B.A. KATUTSI

JUDGE

14/07/2009

Mbabazi:

Under Section 108 T.I.A. I pray that the facts stated by prosecution be put in mind. The convict be considered as first offenders. The accused is a single mother with three children one of them is less than a year. Until recently she had a miscarriage – she has a trauma. The accused is the sole bread winner for the family. Her parents are retired citizens and she fends for them. In that respect, the accused prays for leniency. As to restoration, we pray that if the order is to be made it should be commensurate to what was proved.

J.B.A. KATUTSI

JUDGE

14/07/2009

Nkurunziza:

The second accused has no previous record of any criminal activity. She has a clean record throughout her life. From the record she is an old woman of advanced age. She is a widow. In all those circumstances I pray that leniency be envisaged.

SENTENCE AND REASONS FOR THE SAME:

I have heard what has to be said from both sides. This is yet another case of where greed has taken an upper hand in administering public funds. A culture has developed where plunder of public funds is lionised. Fraudsters are looked at with admiration and awe. They are seen as achievers and those who try to lead an honest life as failure. While in other countries like USA Fraudsters own their frauds, here even those who have gone to the highest court in the land and still found guilty still insist on professing their innocence. The Judge is seen as an idiot. Why punish a person who is trying to lead a happy life using public funds which after all is not yours? The fraudsters seem to be asking. We cannot have the likes of mood off owning up their iniquity. An indication that rehabilitation of offenders is nigh impossible. What do we do with people who show no remorse for what they have done? May be we go to SHAKESPEARE'S admonition that:

**“ For pity is the virtue of the law.
And none but tyrants use it cruelly”.**

With that in mind I find that a sentence of 5 years on Count 1 and 2 years on each Count from Counts 4 – 25 inclusive to be on the side of leniency. Sentences to run concurrently.

The court is enjoined to make an order for compensation. Accordingly the accused are to pay to the Government of Uganda Shs. 30,000,000/= (thirty million) as compensation jointly and severally.

I so order.

J.B.A. KATUTSI

JUDGE

14/07/2009