

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
ANTI CORRUPTION DIVISION
CR.CS 71 OF 2010

UGANDA =====

PROSECUTOR

VERSUS

WAKWEYA STEPHEN =====

ACCUSED

BEFORE: HON. JUSSTICE P.K. MUGAMBA

JUDGEMENT

In the indictment there are eight counts preferred against **WAKWEYA STEVEN**. The first count is of embezzlement contrary to Section 19(d)(iii) of the Anti Corruption Act. The remaining seven counts relate to uttering a false document, contrary to Section 351 of the Penal Code Act. Fourteen witnesses were called by the prosecution to prove the charges. PW1 was Mohammed Kezaala, PW2 was Caroline Nasamula, PW3 was Rosmary Wamimbi, PW4 was David Namanya, PW5 was Olanya Joseph Okonga, PW6 was Bagala Eunice Kawesa, PW10 was Teddy Namatovu Naava, PW11 was Malo John, PW12 was Gerad Kasigwa, PW13 was Mausou Humphrey and Detective Assistant of Public Mfitundinda Didas testified as PW14. Accused gave an unsworn in his defence. He had no witnesses.

The prosecution led evidence to show accused together with eight others registered a non Government Organization with the Ministry of Internal Affairs. The date of registration was 1st October 2004 and the name of that Organization was MURUMBA UGANDA. It was to operate in Tororo and Mbale Districts. On 9th February 2005, account number 0102012866300 was opened in the names of Murumba Uganda Inc – UGFATMP with Standard Chartered Bank, Speke Road, Kampala.

The Business of the account holder was given as Poverty Alleviation and Community Development. Two signatories were to approve cheque payments and those were accused and one Martha Gimbo were. On 11th February 2005, a contract central to this case was signed between the Government of the Republic of Uganda represented by the Ministry of Health on one hand and Murumba Uganda Inc on the other, whereby the latter was granted Shs. 38,824,900= on terms specified in the contract. Significantly the contract was signed by PW1 on behalf of the

Government and accused as the Executive Director, Murumba Uganda Inc, the designated Implementing Partner.

Therefore, the Shs. 38,824,900= granted under the Uganda Global Fund to Fight Aids, TB and Malaria related to in the agreement was deposited on the account in Standard Chartered Bank alluded to already. The date of deposit was 7th March 2005. By 30th November, 2005 the account had a balance of Shs. 169,450=. The prosecution contends that the accused embezzled Shs. 31,915,040= and that in his effort to account for the money in issue he uttered false documents. The onus is on the prosecution to prove all the charges against the accused person beyond reasonable doubt. I refer to the case of **Sekitoleko Vs Uganda [1967] EA 531**.

Count 1 charges accused with embezzlement. The prosecution ought to prove that the accused was a member of an association, that he stole the money and that he had access to that money by virtue of his office. It is not contested accused was Executive Secretary/Program Coordinator of Murumba Uganda Inc, to which money had been granted to carry out Global Fund activities. A total Shs. 38,824,900= was deposited on the accounts specific to the activities and accused was one of the two signatories to the account. In his defence the accused does not deny receiving that Shs. 31,915,040= and failing to account for it. In fact in his defence accused admitted he had failed to properly account for the money and had no reliable evidence or relevant documents to submit. This was also the evidence of PW12, the Senior Auditor, Auditor General's department.

I agree with the joint advice of the assessors that on the evidence available the prosecution has proved beyond reasonable doubt that accused committed the offence alleged in count 1 and that I should find him guilty and convict him. Accordingly, I find him guilty and convict him.

Count 2 and count 3 relate to accused uttering a false document pertaining to the Joint Clinical Research Centre on two occasions. Receipts purporting to have been issued by Joint Clinical Research Centre (JCRC) were presented by accused to the Project Management Unit (PMU) for purposes of accountability. He knew or had reason to believe they were not genuine. In Count 2 receipt no 091301 dated 20th June 2005 purporting to have been issued by JCRC in acknowledgement of receipt of Shs. 1,525,000= for Voluntary Counseling Training Services to Bubuto, Bumulika, Sibanga and Bugobero was presented to PMU by accused. Count 3 concerns receipt no. 091307 dated 14th July 2005 purporting to have been issued by JCRC in acknowledgement of receipt of Shs. 330,000= for counseling and training of staff and community Aids workers.

Evidence by PW4, an employee with JCRC at the time in issue who had been in charge of finance activities at the JCRC was to the effect that the activities alleged in Count 2 and Count 3 never took place and that there were no transactions between JCRC and Murumba Uganda Inc, he knew of. He said documents presented as receipts in Count 2 and Count 3 were not genuine. There was also evidence by PW5, an expert at questioned documents. His evidence was that he compared the documents presented as receipts in Count 2 and Count 3 with samples of a genuine

receipt issued by JCRC. His conclusion was that the purported receipts no. 091301 and 091307 were not genuine receipts issued by JCRC. In his defence all accused could say regarding the documents presented as receipts in Count 2 and Count 3 was that he was betrayed by the person who gave him those documents. He acknowledged he submitted them to PMU for accountability though they were false. There was no evidence the alleged activities took place. This was PW12's testimony. It was the verdict given jointly by the assessors that the prosecution had proved Count 2 and Count 3 beyond reasonable doubt and that court should find accused guilty on both counts and convict him. I agree with that verdict.

I find accused guilty in Count 2 and Count 3. He is convicted on both counts.

In count 4, it is the prosecution case accused knowing and fraudulently presented for accountability to PMU receipt no 2056 dated 11th June, 2005 purporting to have been issued by Marie Stopes Uganda for community training. The amount involved is Shs. 2,200,000= but the prosecution case is that the activity never happened and Marie Stopes Uganda did not issue the purported receipt. To support its case the prosecution presented the evidence of PW10 who testified that at the material time Marie Stopes did not do community mobilization. She added that no community training relating to reproductive health was done in 2005 either. She said the receipt she was shown as purporting to have been issued by Marie Stopes was not genuine. It was her evidence payments to Marie Stopes are paid directly to the support office but not to the various centres or individuals.

There was also the evidence of PW12, the Senior Auditor, Office of the Auditor General. His evidence was that from the accountabilities presented by the accused to PMU there was nothing to show that the alleged activity took place, such indicators being a list of attendance or a report. Accused in his defence could not positively give such evidence. Instead he regretted he had submitted a document he was not sure was genuine. The joint verdict of the assessors was that the prosecution had proved this charge also against the accused and that the accused should be convicted. I agree with that advice and find the accused guilty on Count 4. He is accordingly convicted.

Count 5 and Count 6 both charge accused with uttering a false document in the respective counts which concern Bududa Hospital. In Count 5 it is alleged that the accused knowingly and fraudulently presented for accountability to PMU cheque payment voucher no.108865 dated 05/06/2005, showing that Bududa Hospital had received cheque no.00031 in the sum of Shs.

386,000= from Murumba Uganda Inc, as payment for HIV/AIDS baseline Analysis and Production of Data. In Count 6 it is alleged that accused knowingly and fraudulently presented for accountability to PMU cheque payment voucher no. 108865 dated 6th June 2005 showing that Bududa Hospital had received Shs. 240,000= from Murumba Uganda Inc, for Tuberculosis Counseling Services to sub projects analysis and production of data.

According to PW5, the expert on questioned documents, he examined payment voucher 108865 alluded to above and came to conclusion, after due examination, that was not genuine. The Senior Hospital Administrator Bududa Hospital testified as PW6 the activities alleged to have taken place and paid for in Count 5 and Count 6 never actually happened. According to PW12, there was no evidence of the activities allegedly paid for in Count 5 and Count 6 having taken place as there was no attendance registrar or report available. In his defence accused regretted he could not establish the documents were genuine though he admitted he had submitted them to PMU for accountability. He blamed the people who had given the documents to him. I agree with the joint opinion of the assessors that the prosecution has proved Count 5 and Count 6 beyond reasonable doubt and that I should find accused guilty on both counts and convict him.

I find accused guilty on Count 5 and Count 6 and convict him on both counts.

In Count 7 the charge is uttering a false document wherein it is alleged that for his accountability accused submitted a document styled a letter of understanding between Murumba Uganda Inc, and Bumulika Sub County purporting to have been signed by one Makasi Peter. The document shows Makasi Peter acknowledged receipts of 2 pigs, 13 chicken and 7 goats but the prosecution insists the document is false and that accused knowingly and fraudulently submitted it to PMU. Makasi Peter testified as PW7. He stated in his evidence that he knew accused as well as an organization related to as Murumba Uganda Inc. He said all that his organization called Bumulika Tuban Association received in form of assistance for the orphans under his care were cold clothes donated to the orphans by visitors from overseas who had been introduced to them by the Murumba Organization.

He said afterwards the visitors had taken photographs of the occasion. PW7 denied ever receiving the alleged livestock let alone signing for it. He said the signature on the form was definitely not his.

Evidence was given also by the expert on questioned documents, PW5, whose conclusion was that the signature on the questioned documents purporting to be that of Makasi Peter was after all not his. He said he had compared the questioned signature alongside samples tendered by Makasi. Evidence by PW12, and a Senior Auditor, showing there was nothing to justify alleged expenditure. In his defence accused did not argue that the questioned signature was that of Peter Makasi. He said he had wanted to submit proper documents for accountability but he had been let down by his social workers, It was the joint opinion of the assessors the prosecution had proved the charge in this count against the accused beyond reasonable doubt. They advised me to

find the accused guilty and convict him. I agree with that verdict. I find accused guilty of the charge in Count 7 and convict him accordingly.

Uttering a false document is also the charge in Count 8. The particulars show that accused knowingly and fraudulently uttered a document called a letter of understanding between Murumba Uganda Inc, and Bumulika Sub County purporting to have been signed by Peter Lumbuku acknowledging receipt of 2 pigs, 13 chicken and 7 goats. The persecution alleges accused submitted the document alluded to PMU for his accountability for money advanced to Murumba Uganda Inc under Global Fund facilitation. The document in issue bears a stamp purporting to be that of LC1 Buwasibi accompanied by a signature showing it was that of Masolo John, PW11. PW5 testified that the stamp impression said to be of LC1 differed from what was proffered to him as genuine.

PW11 in his testimony said he was Vice Chairman of Buwasibi LC1 and that while the stamp on the questioned document had a stamp impression for Buwasibi LC1 adding the name of the Parish, the genuine stamp of Buwasibi LC1 does not include particulars of the Parish. He said the stamp impression on the alleged letter of understanding was false. He stated also that the signature on the document was not that of the Chairman LC1 and added that the alleged livestock was never distributed in the area. The evidence of PW12 was that there was nothing to show that any distribution had taken place since no list of distribution or report is available. The defence of accused was that he had trusted his staff to do a good job but that they had let him down. He added that he never took time to cross check the document with relevant authorities.

The assessors in their joint opinion advised me to find accused guilty and convict him as charged. They said the prosecution had proved this charge beyond reasonable doubt.

I agree with their verdict. I find accused guilty as charged in Count 8 and convict him accordingly.

In the result accused is convicted on all 8 counts in the indictment.

P.K. MUGAMBA

JUDGE

12/11/2010

