

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

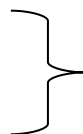
**ANTI CORRUPTION DIVISION**

**CR.CA 18 OF 2010**

**UGANDA :: APPELLANT**

**VERSUS**

- 1. SSEBUWUFU SAMWIRI KISEKA**
- 2. BYARUGABA KAWA**
- 3. CHARLES OMAGOR**



**:::::  
RESPONDENTS**

**BEFORE: HON. JUSTICE P.K. M**

**J U D G M E N T**

The state initiated this appeal against the decision of the Chief Magistrate, Buganda Road Court. That decision, delivered on the 17<sup>th</sup> December 2010, acquitted the first respondent of the offence of Causing Financial Loss. It acquitted the second and third respondents of the offence of embezzlement. Originally the two offences were respectively charged under sections 258(1) and 257(a) of Penal Code Act but following the reprint of the Laws of Uganda the offences came to be charged respectively under section 269(1) and 268(b)(g) of the Penal Code Act. Thankfully the reprint did not affect the charges besides the numbering of the sections.

The three grounds of appeal read as follows:

- 1) The learned trial magistrate failed to properly evaluate the evidence thereby arriving at a wrong decision and acquitting the first respondent of the offence of causing financial loss.
- 2) The learned trial magistrate failed to properly evaluate the evidence thereby arriving at a wrong decision and acquitting the second and third respondents of the offence of embezzlement.
- 3) The learned trial magistrate erred in law and fact when he came to a conclusion that the money embezzled by the second and third respondents (Shs. 48,923,700=) was not the property of NIC.

The submissions of counsel both for the appellant on one hand and for the respondents on the other touching on the grounds of appeal were thought provoking. But I had at my disposal the long record of the trial court, contents of which I had to read through ever so carefully in order to arrive at a conclusion borne of a fresh and exhaustive scrutiny of the evidence, never mind that I had no opportunity to observe the witnesses testify. A court of first appeal is enjoined to do that much. See **Dinkerrai Ramkrishan Pandya Vs R [1957] EA 336**.

The background to this case is not complicated. It revolves around National Insurance Corporation, a body as its name suggests, which dealt in insurance business. The respondents were its officials. At the time material to this case the first respondent Samwiri Kiseka Sebuwufu was Acting Managing Director, the second respondent was Assistant Marketing Manager, while the third respondent was Marketing Manager. The State House shopped around for insurance brokerage services and National Insurance Corporation secured the deal to insure the Presidential

jet for the period 2001 - 2002. Evidence was tendered of Exhibit P8, a communication dated 14<sup>th</sup> December 2001 from the National Insurance Corporation to the State House Comptroller advising on the essentials of the insurance cover envisaged. The first respondent signed it. There is evidence of a letter dated 20<sup>th</sup> December 2001 (Exhibit P7) whereby the Corporation asked for a total of US\$ 348,550 as total premium for the insurance cover. I should mention that on the 15<sup>th</sup> January 2002 there was part payment of the cover amount. Exhibit P6 testifies to that. So much was the transaction between the Corporation on one hand and State House on the other as extends to this case.

The other scenario occurred on the 19<sup>th</sup> February 2002 when the Corporation prepared a voucher in favour of one Bainomugisha. It was endorsed as being for commission earned on aviation business for the month of February 2002. The amount involved was Shs. 48,293,700= and the cheque raised from the voucher was number 480028126, as endorsed on the voucher. The actual cheque was a cash cheque dated 20<sup>th</sup> February 2002 and bearing the name Margaret Tebasooka as payee. Tebasooka testified as PW1. At the time material to this case she worked as a cashier to the Corporation. It was her evidence that she got the cheque mentioned and took it to the bank where she got the face amount on the cheque in cash. PW1 testified that she was directed to pass on the money, Shs. 48,293,700= to the third respondent but that later the second respondent signed for that money for onward transmission to Bainomugisha, whose husband he happened to be. It is nowhere disputed that Bainomugisha was one of the commission agents of National Insurance Corporation nor is it contested that as such agent she was entitled to a commission for business she might have brought in.

Clearly this appeal is premised on twin issues. The first is whether there was re-insurance as claimed by the respondents herein. The other issue is whether the money said to have been paid as commission was that of National Insurance Corporation. **Black's Law Dictionary**, 8<sup>th</sup> edition, describes reinsurance as insurance of all or part of the insurer's risk by a second insurer, who accepts the risk in exchange for a percentage of the original premium. From the above it should be clear that the relationship of reinsurance is between insurers and does not call for involvement of the client whose risk was earlier insured. All the client has to do is pay the premium demanded and in the event of reinsurance the reinsurer gets a portion of it. It was argued on behalf of the appellant that there had been direct business devoid of involvement of any agency. But this contention may be valid regarding initial insurance but dubious in relation to reinsurance. The onus is on the appellant to rule out existence of reinsurance. They have not discharged that onus. They have not rebutted defence evidence that the Shs. 48,293,700= was paid to Bainomugisha. It was shown on behalf of the defence that it was normal in the scheme of things at National Insurance Corporations for someone to receive money and sign on behalf of an agent. This was not contested. It was not contested the second respondent was husband to agent Bainomugisha and that he had signed for the Shs. 48,293,700= on her behalf. Indeed no evidence was led that Bainomugisha, the agent, had complained to anyone that she had not received her commission. I am satisfied she received her commission. What then was there for the second and third respondents to steal? I find naught.

Turning to the money paid out to the agent, the process is clear. The first respondent in his evidence at page 62 of the record indicated that a commission was payable to Bainomugisha and that a premium which State House was advised to pay comprised the commission. This evidence

was not rebutted. There is no evidence of wrong doing on the part of the first respondent adduced. Having established the source of the commission as narrated above there is no basis to allege the money involved belonged to National Insurance Corporation, the erstwhile employer of the three respondents. In the circumstances the charges of causing financial loss and embezzlement each lack a vital ingredient to prove the offences and I so hold.

Consequently, I find no ground to disturb the findings of the trial court, whose decision I uphold. The appeal is dismissed accordingly.

**P. K. MUGAMBA**

**JUDGE**

**05/05/2011**