

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
ANTI CORRUPTION DIVISION
HOLDEN AT KOLOLO
CR.SC NO.102 of 2011**

UGANDA:..... PROSECUTOR

VERSUS

1. SHANITA NAMUYIMBWA &

2. MEDDIE SSENTONGO:..... ACCUSED

BEFORE: Hon. LADY JUSTICE CATHERINE BAMUGEMEREIRE

Judgment

This is a case involving private sector corporate corruption and corruption related offences. This is a private-on-private corruption offence. The two accused persons Shanita Namuyimbwa alias Bad Black (A1) and her co accused Meddie Ssentongo were indicted as follows; In Count No.1 Shanita Namuyimbwa was singularly indicted for the offence of Embezzlement contrary to s. 19 of the Anti Corruption Act Of 2009. In Count No.2 and Count No.3 Shanita Namuyimbwa and Ssentongo Meddie were indicted for Conspiracy to Defraud Contrary to s. 309 of the Penal Code Act Cap 120.

The brief facts of this case were that at all times Shanita Namuyimbwa and David Greenhalgh hereinafter referred to as David Green, were shareholders in Daveshan Developments Uganda Limited, a Company Limited by shares. It was a finding of fact that David Green met Shanita Namuyimbwa alias Bad Black at Rock Garden Bar on situate on Speke Road in Kampala District in May 2009 and the two started a romantic relationship which blossomed into a business association. The two erstwhile lovers agreed to float a company whose main objective was Real Estate Development with the aim of undertaking construction of Commercial Apartments for rent and lease. The Company named as Daveshan Developments Uganda Limited, hereinafter referred to as 'Daveshan' was incorporated on 2nd September 2010. The Directors of Daveshan

were David Green and Shanita Namuyimbwa whose alias includes 'Blacky' as per the Company Form 7 Exh P3(1) and Exh. P8 (2) and also alias Bad Black. The registered office of Daveshan was stated as Post Office Box number 28594, Kampala, Uganda. The two shareholders agreed to open a dollar account no. 6002643799 for Daveshan at Barclays Bank, Garden City Branch and by Special Board Resolution Exh. P8 (5) Shanita Namuyimbwa became sole signatory to this account. Over a period of nine months a total of over \$3.9million Us Dollars was deposited on this account. Similarly in the same period over \$ 3.9million was drawn from the above numbered Daveshan Account. When Namuyimbwa requested PW1 David Green for more money to engage in the real estate business he decided to come to Uganda in November 2010. To his horror and utter disbelief, there was nothing to show for all the money A1 had receive. Having failed to trace some alleged Pink and Brown flats built out of the proceeds, the complainant David Green reported the matter to the Uganda Police, moved out of the house he bought for A1 and the two accused were subsequently charged, indicted and prosecuted. The Prosecution called a total of nine witnesses.

PW1 David Greenhalgh, hereinafter and interchangeably referred to as David Green, testified that he met Shanita Namuyimbwa at the Rock Garden Restaurant on Speke Road in Kampala City, Uganda. The casual encounter at 10.00pm in May 2009 turned into a romantic and later a business relationship. The two erstwhile lovers registered a company, Daveshan Developments Uganda Limited, hereinafter referred to as Daveshan (U) Ltd or Daveshan. The objectives Daveshan (U) Ltd included but were not limited to following:

1. To engage in the business of import and export and/or international business transactions.
2. To act as manufacturers' agents and or deal in all kinds of machinery, plant equipment, aeroplanes, helicopters, aviation equipment, weather equipment, hardware, computer hardware and software, peripherals and all types of motor vehicles, accessories and all types of motor vehicles, accessories and appliance and generally used by civil engineers ...
3. To carry on the business of acquiring by purchase, exchange or otherwise, either for commercial premises or residential for any interest, certain land, houses and buildings and any other land and premises of tenure whether

subject or not to any change or encumbrances and to hold or to sell, let, alienate, mortgage, change or otherwise deal with all such lands or premises.

According to PW1 the main reason for setting up the business was to engage in real estate business. Consequently through another business associate, one Gershom, PW1 wired Two Million Dollars to account No. 6002643799, a Dollar Account set up for Daveshan (U) Ltd. By a Special Resolution dated 30th August 2010, Shanita Namuyimbwa A1 was named the Sole Signatory of the said Bank Account. PW1 further stated that between 14th September 2010 and 24th May 2011 a total of USD 3,924,370.30 (Three Million, Nine Hundred and twenty four thousand, three hundred seventy dollars and thirty three cents) was wired to account No. 6002643799. The funds were wired through various entities owned by or connected with David Green. The entities included Air Services (UK domicile), Air Services MK Ltd (domiciled in Hong Kong) and Gimex Uganda Ltd, the latter being PW1's connection to a local agent, one Gershom. David Green further testified that the intention of wiring the large amounts of money was so that Daveshan (U) Ltd could carry on the business of purchasing, construction and disposal of real property. For this and other personal reasons, PW1 travelled to Uganda once every month and on each occasion spent three to four days.

During cross-examination PW1 stated that he was aware that A1 had not completed secondary education. The highest level of education A1 had attained was S1 in the Ugandan education system. Despite A1's academic limitation PW1 entrusted A1 with managing a multi million fortune on his behalf. He also made an open offer to A1 of 25% share-holding not paid up. David Green retained 75% paid up shares. Green further stated in cross examination as he had done in examination-in-chief that in November 2010 A1 requested him to remit additional funds. In response, Green asked A1 how the funds previously remitted had been utilised but A1's response was not satisfactory. Green further stated that there had been no prior agreement on how the money would be spent but neither had he been consulted as majority shareholder. PW1 further testified that he soon returned to Uganda towards the end of 2010 to review the business performance. On arrival, A1 showed him some Pink and Brown Houses which Daveshan had purportedly purchased. To his disappointment, David Green found that the houses he was shown did not reflect the alleged cost. Further in cross-examination, Green testified that

when he checked with the Bank, he found that the account balance was zero - totally wiped out. He further told Court that when he returned to Uganda in November 2010 he asked A1 for documentation to support the expenditure but found none. This was in addition to the numerous requests made while he was still abroad. PW1 then asked for evidence of land titles but again there were no land titles to prove that any land had been purchased for Daveshan neither any paperwork to show that titles were in the pipeline being processed. David Green added that at this point, his relationship with A1 became 'fractious'. He consulted his Lawyers who advised him to move out of the house he had bought for A1. He was further advised to report the matter to police and as the saying goes the rest is history.

PW2 Peter Michael Lule, a civil engineer, testified that he was introduced to Meddie Ssentongo by Tom Mukomazi (PW4). Lule stated that Meddie introduced himself as a Director of Daveshan Development Uganda Limited and informed him that Daveshan had expressed a desire to construct a multi-million dollar hotel in Entebbe worth about USD 9 million dollars. Meddie further stated that he needed a bill of quantities and a project proposal within the shortest time possible. In response, PW2 stated that he was able to produce two documents. The first was the Daveshan Hotel Project (PID8) document and the other was a Daveshan Hotel Nkumba plan (PID9). The documents were never tendered as exhibits due to alterations which were irreconcilable with the copies tendered earlier in Court for identification. Lule also stated that he attributed the documentation to the authorship of Alkon (U) Ltd on the advice of his client in order to associate his firm with the stronger brand 'Alcon'. When court inquired into his qualifications, Lule revealed that he is not a registered engineer. In assessing the evidence adduced by this witness dear lady assessors, feel free to take into account views expressed by the defence lawyers about this witness. The defence contended that this witness was unreliable because the authenticity of the documents he testified about was questionable. In addition the lawyers noted that the dates on his documents do not tally with the dates on which he claims to have met A2. Defence counsel for A1 and A2 were united on this issue and did refer to the inability by this witness to produce the original documents he claimed to have authored. Attention was further drawn to the alterations in the duplicate documents this witness attempted to produce in Court. On the other hand,

the prosecution submitted that this is crucial to the case because serves the purpose of proving that A1 and A2 conspired to defraud one David Greenhalgh of nine million dollars. The prosecution submitted that this witness' testimony provided all the necessary ingredients to prove that a fraudulent business transaction had been conducted and that all the parties involved knew that it was a sham designed to entice PW1 into releasing more funds to the accused persons.

PW3, Mariam Nabatanzi a Senior Registration Officer at the Uganda Registration Services Bureau (URSB) testified about documents she certified. She stated that the documents in question were in respect of a company referred to as Daveshan Developments Uganda Limited. During examination-in-chief, Nabatanzi informed court that the URSB copy of this company file had gone missing from the Registration Bureau. Ms Nabatanzi stated that she relied on the copies provided by the client to certify the company documents. The client had obtained duplicate originals of the documents from the Bank. The witness exhibited Company Form VII which contains the particulars of directors and the Secretary for Daveshan Developments. Ms Nabatanzi stated that the two directors named in the form were David Greenhalgh and Shanita Namuyimbwa while the company secretary was stated to be a one David G. Mushabe. These details were confirmed in cross examination. The witness further stated in cross-examination that someone had signed Form 7 on behalf of Mr. Greenhalgh. She confirmed that she had certified the client's originals.

PW4 Tomasi Kabogoza Mukomazi testified that he had known A2 since the year 2000. He also stated that they had become good friends and openly shared about their personal lives. The witness stated that it was during one of these moments of personal interaction that A2 confided in Mukomazi about his new girlfriend called Shanita Namuyimbwa. He stated that Shanita was also dating white man at the material time. He further testified that Meddie disclosed that the white man intended to make investments in Uganda. In response, the witness advised A1 and A2 to invest in hotels and apartments. PW4 further stated that subsequently A2 informed PW4 that he (A2) had also discussed the matter with an Engineer by the name Peter Lule. He further stated that between September and October 2010, on a date he could not exactly recall, PW4 accompanied A2 to Entebbe where they picked documents from PW2. PW4 was informed that these documents were

to be given to Shanita for onward transmission to an investor called David. PW4 later heard from A2 that David had started remitting funds to Shanita. This witness further told Court in examination-in-chief that he noticed a significant change in A2's spending patterns which he attributed to the newfound relationship between A2 and Shanita. He stated one of the changes in A2's lifestyle change was A2's purchase of a new Range Rover and a C class Mercedes Benz.

PW4's character came under sharp focus. The defence vehemently opposed his evidence and cast doubt on his credibility. The prosecution on the other hand submitted that it is those very attributes of a dodgy but colourful character which in the first place made him attractive to a couple who seductively planned to defraud an unsuspecting foreigner. The prosecution argued that PW4's character was a proper case for the court to apply an exception to the hearsay rule. Under the Ugandan law of evidence courts do not entertain rumours. Courts however pay attention to direct evidence relating to what a witness saw, heard or felt with their normal human senses. The bulk of PW4's evidence is a reflection what he perceived to be A2's character and state of mind.

The Defence invited Court to regard A2 as an opportunistic friend of the rich or a city rogue whose character is in question and to disregard his evidence altogether. The account of what PW4 saw, heard and felt at the material time is of value to this case and that his personal demeanour and style is of no consequence to the veracity of his testimony.

PW5 Kigonya Mutebi Ronald is a Structural Engineer with Sam par Consult Limited testified that PW1 David Greenhalg was looking for some one who could over see both technical and administrative activities on one of his projects at the time. PW5 got to know that the Project was in respect of Daveshan Development.

The evidence of PW6 was presented in tabular form and is recorded below.

PW7 Pontiano Kaweesa Ssengendo was an auditor with Peekay Steve Associates Certified Public Accountants. He stated that he was asked by a lawyer, Adrian Mubiru to review the accounts of his client Daveshan Developments (U) Limited in order to ascertain whether they presented any matters of concern and to present a professional report of the findings.

PW8 Henry Joe Kibuuka, a Banker with Barclays Bank stated that he first met Shanita Namuyimbwa at the Kansanga Barclays Bank Branch. That on a day he could not recall she appeared in the company of A2 at the Garden City Branch of Barclays Bank and inquired about opening a business account. The witness asked the two, A1 and A2 to take to show him some documents:

- An incorporation Certificate,
- Company Form 7,
- Company resolution of the Devashan developments Uganda limited showing details of the Directors' agreement to open an account with Barclays Bank
- A resolution to show that Miss Shanita Namuyimbwa was the sole signatory to the said bank account,
- Articles and Memorandum of Association of the company.

Shanita stated that she needed a shilling and Dollar account. PW8 then asked her to provide details of Directors which she did. He was shown documents indicating that David Greenhalgh and Shanita Namuyimbwa were the Directors. In addition he requested David Greenhalgh to personally sign on the Bank documents since his signature was not appended to the documents the witness previously saw. PW1 complied and duly signed on the documents. The witness also stated that Shanita took him for a site visit to Maganjo, Kawempe Division where she showed him around a site. She explained that she planned to construct residential holdings but that a floor would be dedicated to an office which would become the head office of Daveshan Developments (U) Ltd. The witness also stated that an Enhanced Due Diligence was carried out on this account to ensure that there was ethical conduct and clean sources of funding. In cross-examination PW8 reiterated that A2 showed him the registered office of the company. He also affirmed that A1 made visits to this Bank in the Company of A2.

PW9 was Detective Inspector of Police (DIP) Kalema Morris formerly attached to the fraud squad at CID Headquarters at Kibuli, Kampala. He appeared in Court only after a warrant of arrest had been issued against him. DIP Kalema informed this court that he obtained a plain statement from A1. She described the complainant as her husband who had bought her a house at Munyonyo and also that he gave her a lot of money which she

used to enjoy herself. He added that A1 informed him that the money was sent in dollars an assertion the complainant agreed with. This witness also tendered into court a copy of a PF28 the particulars of four vehicles which he believed were purchased by A1 using the money the complainant sent. They included one BMW, UAPL 304D, A Range Rover UAPL 838P, A Mercedes Benz with personalized numbers BLACK GAL and a Mitsubishi Morano which A1 said she had sold off. This witness also found that no money had been transferred to A2s accounts from the DAVESHAN Development (U) Ltd account. He however found that there was a transfer of fund from A1 to A2's accounts. The witness also performed a rather shallow investigation on assets. For instance he agreed in cross examination that he did not ask A1 and A2 to also verify the assets that PW1 had talked about. He further stated in cross-examination that A2 had done nothing wrong. He added that no evidence was available to incriminate A2 and that the evidence gathered did not point to A2's culpability. That apart from a general inquiry file opened by Commissioner Odongpiny, no other file was opened on A2 and further that the complainant did not complain about A2 in E/361/2011. He further said that he did not establish a relationship between A1 and A2. He further distanced himself from the prosecution witnesses saying he only took down three police statements from three out of the nine witnesses and that he knew nothing about any audit report. He thought that was probably a private matter. In submitting upon this witness, Mr. Walukagga for A2 prayed that Court considers that the evidence of this witness is regarded as vital in establishing the innocence of A2. I did inform the Defence then and did the same to the lady Assessors that I found parts of the evidence and demeanour of this witness biased, unhelpful and unprofessional of a Police officer. I did say then and I repeat that he was not useful to anybody and his work as an investigator has come under scrutiny. I do not need to say any more about this witness.

The Prosecution called nine witnesses altogether. For their defences; A1 gave a sworn defence while A2 gave evidence not on oath. In a graphic defence, Shanita Namuyimbwa, mother of three, revealed that she had been a sex-worker and was practising this trade when she met David Green. She further added that the sexual relationship she had is what conceived the Daveshan Development Uganda Limited.

Namuyimbwa further stated that pursuant to forming Daveshan Development (U) Ltd an account was opened which she referred to as a 'love account'. DW1 (A1) added that it was for this reason she was designated a sole signatory. A1 stated further that the funds were intended for her to spend as she willed. In cross examination Shanita stated that David Green showered her with so much money that she grew to love money very much and to spend a lot of it. She also stated that she refused to accept money in exchange for incriminating A2.

DW2 (A2) Meddie Ssentongo informed this Court that he was a business man involved in Property Development and Car Sales. In an unsworn defence he denied ever conspiring with A1 or anyone else to defraud David Greenhalgh. A2 defended his association with A1 as strictly a business relation. Ssentongo implored the court to ignore and discount claims by PW4 that he was romantically linked to A1 and fraudulently connected to PW2. Ssentongo stated that this case had greatly affected his social life and disrupted his business which he referred to as a going concern.

Tabulation of the evidence of PW6 Grace Kigozi Kyomuhendo:

Cheque No.	Date	Payee	Amounts	Bank Statement	Amount Withdrawn
16155	15/09/2010	Shanita Namuyimbwa	One Hundred Twenty US Dollars \$120,000	Withdrawal 15 /09/2010	One Hundred Twenty Thousand US Dollars \$120,000
167158	16/09/2010	-do-	One Hundred Thousand USD \$100,000,000	Withdrawn 16/09/20120	One Hundred Thousand USD \$100,000,000
000004	04/10/2010	Daveshan Developments (U) Ltd	Ten Thousand USD \$10,000	Credit	Ten Thousand USD \$10,000
000017	04/10/2010	Daveshan Developments	Ninety Thousand	Credit	Ninety Thousand

		(U) Ltd	USD \$90,000		USD \$90,000
000001	05/10/2010	Daveshan Developments (U) Ltd	One Hundred Thousand USD \$100,000	Withdrawn by Shan Nam 06/10/2010	One Hundred Thousand USD \$100,000
000005	11/10/2010	Daveshan Developments (U) Ltd	Thirty Thousand USD \$30,000	Daveshan 11/10/2010	Thirty Thousand USD \$30,000
000020	13/10/2010	Shanita Namuyimbwa	Fifty Thousand USD \$50,000	Withdrawn 13/10/2010	Fifty Thousand USD \$50,000
000049	20/10/2010	Shanita Namuyimbwa	Fifty Thousand USD \$50,000	Debited 21/10/2010	Fifty Thousand USD \$50,000
000009	21/10/2010	Shanita Namuyimbwa	One Hundred Thousand USD \$100,000	Debited 21/10/2010	One Hundred Thousand USD \$100,000
000010	25/10/2010	Shanita Namuyimbwa	Four Hundred Thousand USD \$400,000	Debited 25/10/2010	Four Hundred Thousand USD \$400,000
Cash Withdrawal Slip	25/10/2010	Shanita Namuyimbwa	Ten Thousand USD \$10,000	Charged Bank fee USD \$75	Ten Thousand USD \$10,000
000015	26/10/2010	Shanita Namuyimbwa	Eighty One Thousand USD	Debited 27/10/2010	Eighty One Thousand USD \$81,000

			\$81,000		
Cash Withdrawal Slip	02/11/2010	Daveshan Developments (U) Ltd	One Hundred Thousand USD \$100,000	Withdrawn 02/11/2010 Bank charges	One Hundred Thousand USD \$100,000
Cash Withdrawal Slip	08/11/2010	Daveshan Developments (U) Ltd	Ten Thousand USD \$10,000	Withdrawal Same day	Ten Thousand USD \$10,000
Cash Withdrawal Slip	18/11/2010	Shanita Namuyimbwa	Fifty Thousand USD \$50,000	Withdrawal Same day	Fifty Thousand USD \$50,000
Cash Withdrawal Slip	19/11/2010	Shanita Namuyimbwa	Fifteen Thousand USD \$15,000	Withdrawal Reflected 20/11/20	Fifteen Thousand USD \$15,000
000051	23/11/2010	Daveshan Developments (U) Ltd	Fifty Thousand USD \$50,000	Withdrawal Same day	Fifty Thousand USD \$50,000
000052	2/11/2010	Shanita Namuyimbwa	Seventy Thousand USD \$70,000	Withdrawal Reflected 02/12/2010	Seventy Thousand USD \$70,000
000058	01/12/2010	Shanita Namuyimbwa	Twenty Thousand USD \$20,000	Withdrawal reflected same day	Twenty Thousand USD \$20,000
000053	02/12/2010	Shanita Namuyimbwa	Fifty Thousand USD \$50,000	Withdrawal Same day	Fifty Thousand USD \$50,000
000054	04/12/2010	Shanita Namuyimbwa	Fifty Thousand USD \$50,000	Withdrawal Same day	Fifty Thousand USD \$50,000

Cash Withdrawal Slip	06/12/20	Shanita Namuyimbwa	Ten Thousand USD \$10,000	Withdrawal same day	Ten Thousand USD \$ 10,000
000055	08/12/2010	Shanita Namuyimbwa	Ten Thousand USD \$10,000	Withdrawal same day	Ten Thousand USD \$ 10,000
000056	09/12/2010	Shanita Namuyimbwa	Forty Thousand USD \$40,000	Withdrawal same day	Forty Thousand USD \$40,000
000064	13/12/2010	Shanita Namuyimbwa	Twenty Thousand USD \$20,000	Withdrawal reflected same day	Twenty Thousand USD \$20,000
000057	17/12/2010	Shanita Namuyimbwa	One Hundred Thousand USD \$100,000	Withdrawal reflected same day	One Hundred Thousand USD \$100,000
000059	17/12/2010	Shanita Namuyimbwa	Fifty Thousand USD \$50,000	Withdrawal same day	Fifty Thousand USD \$50,000
000060	20/12/2010	Shanita Namuyimbwa	Seventy Thousand USD \$70,000	Withdrawal reflected same day	Seventy Thousand USD \$70,000
000061	21/12/2010	Shanita Namuyimbwa	Fifty Thousand USD \$50,000	Withdrawal same day	Fifty Thousand USD \$50,000
000065	04/01/2011	Shanita Namuyimbwa	Six Thousand USD \$6,000	Withdrawal same day	Six Thousand USD \$6,000
000066	17/01/2011	Shanita Namuyimbwa	Three Thousand	Withdrawal reflected	Three Thousand USD

			USD \$3,000	same day	\$3,000
000067	20/01/2011	Shanita Namuyimbwa	One Hundred Fifty Thousand USD \$150,000	Withdrawal reflected same day	One Hundred Fifty Thousand USD \$150,000
000069	21/01/2011	Shanita Namuyimbwa	Ten Thousand USD \$10,000	Withdrawal reflected same day	Ten Thousand USD \$10,000
000070	22/01/2011	Shanita Namuyimbwa	Thirty Thousand USD \$30,000	Withdrawal reflected 24/01/2011	Thirty Thousand USD \$30,000
000071	24/01/2011	Shanita Namuyimbwa	One Hundred Fifty Thousand USD \$150,000	Withdrawal reflected same day	One Hundred Fifty Thousand USD \$150,000
000072	27/01/2011	Shanita Namuyimbwa	Seventy Thousand USD \$70,000	Withdrawal reflected same day	Seventy Thousand USD \$70,000
000073	29/01/2011	Shanita Namuyimbwa	Thirty Thousand USD \$30,000	Withdrawal reflected same day	Thirty Thousand USD \$30,000
000074	31/01/2011	Shanita Namuyimbwa	Two Hundred Thousand USD \$200,000	Withdrawal reflected same day	Two Hundred Thousand USD \$200,000
000075	02/02/2011	Shanita Namuyimbwa	Thirty Thousand	Withdrawal reflected	Thirty Thousand USD \$30,000

			USD \$30,000	same day	
000076	03/02/2011	Shanita Namuyimbwa	Eighty Thousand USD \$80,000	Withdrawal reflected same day	Eighty Thousand USD \$80,000
000080	09/02/2011	Shanita Namuyimbwa	Thirty Thousand USD \$30,000	Withdrawal reflected same day	Thirty Thousand USD \$30,000
000077	12/02/2011	Shanita Namuyimbwa	Thirty Thousand USD \$30,000	Withdrawal reflected same day	Thirty Thousand USD \$30,000
000078	14/02/2011	Shanita Namuyimbwa	One Hundred and Twenty Thousand USD \$120,000	Withdrawal reflected same day	One Hundred and Twenty Thousand USD \$120,000
000079	19/02/2011	Shanita Namuyimbwa	Five Thousand USD \$5,000	Withdrawal same day	Five Thousand USD \$5,000
000081	24/02/2011	Shanita Namuyimbwa	One Hundred Thousand USD \$100,000	Withdrawal Reflected Same day	One Hundred Thousand USD \$100,000
000082	25/02/2011	Shanita Namuyimbwa	Ten Thousand USD \$10,000	Withdrawal Reflected Same day	Ten Thousand USD \$10,000
000083	26/02/2011	Shanita Namuyimbwa	Fifty Five Thousand USD \$55,000	Withdrawal Reflected Same day	Fifty Five Thousand USD \$55,000
000084	21/03/2011	Shanita Namuyimbwa	Two Thousand USD \$2000	Withdrawal Reflected Same day	Two Thousand USD \$2000

000085	22/03/2011	Shanita Namuyimbwa	Five Thousand USD \$5000		
000086	28/04/2011	Shanita Namuyimbwa	Ten Thousand USD \$10,000	Withdrawal Reflected Same day	Ten Thousand USD \$10,000
000087	02/05/2011	Shanita Namuyimbwa	Seventy Thousand USD \$70,000	Withdrawal Reflected Same day	Seventy Thousand USD \$70,000
000100	06/05/2011	Shanita Namuyimbwa	Ten Thousand USD \$10,000	Withdrawal Reflected Same day	Account balance 9,754
000089	19/05/2011	Shanita Namuyimbwa	Nine Thousand USD \$9000		
000091	24/05/2011	Shanita Namuyimbwa	Sixty Thousand USD \$60,000	Withdrawal Reflected Same day	Sixty Thousand USD \$60,000
000092	27/05/2011	Shanita Namuyimbwa	Forty Thousand USD \$40,000	Withdrawal Reflected Same day	Forty Thousand USD \$40,000

Standard of Proof in criminal cases:

Whereas in cases of a civil nature a party who asserts a fact must prove it and the standard is met when and if a fact is more probable than not, this is not true of criminal trials. The standard in criminal trials is much higher as the prosecution is required prove every ingredient of the beyond reasonable doubt. Cases referred to include: Miller v. Minister of Pensions [1947] 2 All ER 372.

Woolmington v DPP 1935 AC 462 HL now SC, Uganda v Oloya 1977 HCB 4, Uganda v DC Ojok 1992 HCB 54 and Akol Patrick and others V Uganda (2006) HCB 6.

Burden of proof in criminal cases

Accused No.1 is indicted for the offence of Embezzlement c/s 19 (b) of the Anti Corruption Act of 2009. Similarly accused persons are indicted on two counts of conspiracy to defraud c/s 309 of the Penal Code Act Cap 120. The Prosecution bears the burden to prove every ingredient of the offence beyond reasonable doubt and the burden never shifts to the accused persons. See Okethi Okale & others v R 1965 EA 559, Sekitoleko v Uganda 1967 EA 531 and Seuri v R 1972 EA 486.

I will proceed to review the offences charged in the chronological order laid out in the indictment. Count No.1 is the offence of Embezzlement c/s 19(b). The relevant law provides as follows:

S.19 (b) ii of the ACA provides as follows:

“A person who being... an officer or employee of a company or corporation...

Steals a chattel, money or valuable security...

Received or taken into possession by him or her for or on account of his employer, company or corporation commits an offence and is liable to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty six currency points or both.”

In order to prove the offence of Embezzlement as charged, the prosecution is required to prove the following ingredients beyond reasonable doubt.

1. That the person is a Director, Officer or employee of a company or corporation
2. That the person steals a chattel, money or valuable security
3. That the person receives or takes into his possession by himself such chattel, money or valuable property on account of his employment.

The first issue was whether Shanita was a Director of the Company Daveshan Developments Uganda Limited: Before the latter question could be resolved Counsel for A1 challenged the very existence of Daveshan Developments Uganda Limited. The case of Uganda v Mahdi Miir High Court Criminal Case 202 of 2010 (unreported) was applied. This question was answered in the affirmative by the prosecution. Daveshan Developments Uganda Ltd is a company limited by shares. The State Counsel submitted that a certificate of incorporation is conclusive evidence of registration and proof that all matters precedent and incidental thereto have been complied with. He relied on the case of Fam International Limited and Another v Mohamed Hamid El-Fatih Supreme Civil Appeal No. 16 of 1993. This case is still good law.

In submitting on this count, Defence counsel for A1 averred that the very existence of Daveshan Developments Uganda Limited is in contention. Mr Caleb Alaka invited court to view Daveshan Developments Uganda Limited as a sham and none existent entity. He argued that in his opinion the formation of this company flouted all company registration procedures. Royal British Bank v Turquand (1856) 6 E and B 327, Hammond v Prentice Bros Ltd 1920 Ch 201 and Bowman v Secular Society (1917) AC 406 were referred to. Mr Alaka also referred to the absence of David Greenhalgh's signature on what he considered vital company documents. Reference was also made to the fact that some of the documents were signed before the incorporation date and no physical address for the company was registered with the registration bureau. Indeed both the State and Defence have submitted extensively on the status of the Daveshan Development Uganda Limited. Lady Assessor agreed with the defence Counsel and advised me to acquit Shanita accordingly. I respectfully disagree with the Lady Assessor and here is why. While summing up to the Lady Assessor I did direct her that she was only to advise me questions of fact as laid out in the evidence. The question of incorporation is one of law and not of fact and therefore with all due respect the assessor that advice was unwarranted. Moreover the Lady Assessor did not take into consideration the fact that the parties to the incorporation of Daveshan Developments Uganda Limited were in mutual agreement regarding every step of the process. For example David Green did agree that in his absence their Lawyer D Mushabe signs him on as a Shareholder and by conduct Green ratified the actions of this lawyer when he later personally signed the Bank

Documents. PW1 stated that A1 talked him into starting a construction company. The intention of the two parties PW1 and A1 was never in doubt. It was clearly to form a company limited by shares. Besides, evidence of PW8 shows that A1 was fully aware and part of the incorporation process when she ably responded to the questions this executive Banker put to her and she produced the requisite documents when asked. Having said so, I acknowledge that the lawyer, Mushabe D did not act with the proficiency expected of a lawyer in the incorporation process. He could have done a more professional and thorough job. Be that as it may, Mushabe registered a corporation as required of him by his clients and that is not in dispute. No fraud is imputed on the part of the parties. They set out to start in good faith albeit in a hurry. Further, regarding the law on incorporation the case of Fam International Limited and Another v Mohamed Hamid El-Fatih Supreme Civil Appeal No. 16 of 1993 is applicable though it is distinguishable. The case is the controlling authority on the Certification of Incorporation and this case is still good law. A certificate of incorporation is considered conclusive evidence of registration and proof that all matters precedent and incidental thereto have been complied with unless it was procured by fraud. I did not find any evidence that PW1 and A1 acted fraudulently in the set up of this company. I therefore find that a Daveshan Developments Uganda Limited was duly formed and registered.

The Prosecution further submitted that Shanita Namuyimbwa was a Director of Daveshan Developments Uganda Limited. The Prosecution relied on the Companies Act to make this assertion. On the other hand, the defence argued that if Daveshan exists as a Company, which assertion they doubted, then Shanita Namuyimbwa was not a Director of this Company and that neither was David Greenhalgh a valid shareholder. The defence placed Shanita Namuyimbwa's Directorship and David Green's shareholding in doubt based on the shoddy job done during the registration process. I have already found that the two parties were agreeable to forming a company limited by shares and did form Daveshan Developments Uganda Limited. I agree with the State Counsel. In the absence of an express resolution appointing a director it is deemed that the pre-incorporation promoters of that company are by law the default directors. I therefore find that Shanita Namuyimbwa and David Greenhalgh were the lawful directors of Daveshan Developments (U) Ltd.

I now turn to the next issue.

Whether the person stole a chattel, money or valuable security

The Prosecution submitted that when Daveshan Developments (U) Ltd was formed, a Barclay's Bank account no. 6002643799 was opened in its name both in United States Dollars and Uganda Shillings. This submission is based on the evidence of PW1 David Green. In his evidence David Green stated that while he had been advised to open an account at Stanbic, A1 convinced him in crossing out the named Bank and inserting Barclays Bank. Unknown to PW1 Shanita had gone ahead of him and talked to Barclays about opening a corporate account in that Bank. This is corroborated by Exh P 3(3) which named Stanbic Bank (U) Ltd as the first Bank. This decision was changed at the at the instance of A1 when she later opened a Barclays Bank as shown in Exh. P8 (5) and Exh. P8 (6). It was further submitted by the Prosecution that a Company Resolution Exh. P3 (3), Exh. P7 (1 and 3) to which PW1 was agreeable, were passed designating Shanita a Sole-signatory to this account. During cross-examination of PW6, Kigozi Kyomuhendo, she stated that on 14th September 2011 the first deposit of one million nine hundred and ninety nine thousand one hundred and fifty eight Dollars \$1,999,158 was made on account number 6002643799. This was followed by a series of other deposits. However in parallel, a number of withdrawals of funds were made from the same account. In total, three million nine hundred and twenty four three hundred and seventy five US Dollars was withdrawn from the account according to Ms Kigozi Kyomuhendo. This was the equivalent of Nine Billion Uganda shillings. PW6 then gave a breakdown of the debits on account number 6002643799 all made by one person; DW1 (A1). In addition, PW1, David Green did inform this Court that he opened personal accounts for DW1 (A1) on which she deposited funds for her personal use. PW7 an auditor informed this court that indeed A1 received over one million dollars wired from Air Services onto her personal accounts. His audit reports Exh. P9 and Exh. P10 present a tabulated form of these accounts. The prosecution submitted that with the agreement of PW1, a Company Resolution Exh P3 (3), Exh. P7 and Exh. P8, designated A1 a sole signatory to the bank accounts because he (PW1) was frequently absent from jurisdiction which could cause undue business delay. PW1 stated that construction was a brisk business which needed cash on hand. This he said was the reason he was agreeable to granting A1 the sole signatory status. It was the

prosecution case that A1 used her position to wantonly withdraw and that she used funds belonging to Daveshan Developments Uganda Limited. The prosecution further submitted that when A1 was challenged to explain what she used the money for she stated that the funds were used for her enjoyment and pleasure. The State submitted that A1 had no claim of right over Daveshan's money and therefore her appropriation of the same constituted theft. The prosecution invited this court to find that the ingredient of theft was proved beyond reasonable doubt. The State further submitted that A1 had access to the funds by virtue of her position in the company of Director. The Prosecution invited this court to find A1 guilty of embezzlement. In reply Mr Alaka for A1 implored this Court to have due regard to A1's trade, occupation and low level of education. A1 testified in her sworn defence that she dropped out of school at the start of Senior Two, which renders Senior One her highest level of education. A1 further stated that two or three years after dropping out of school, whilst still a minor and teenager she became a sex worker. It is on account of her sex trade that she met PW1 at Rock Bar Restaurant, located in Kampala City's proverbial red district. Defence Counsel once again prayed that Court compares and contrasts A1's circumstances of life with those pertaining to PW1. PW1 was described as; 54year old British national, an International Businessman, a British trained Engineer with a Bachelors Degree in Engineering and a Master's Degree in Business Administration who owned a host of multi-national companies and enjoyed business relations with a host of well-placed partners. Defence counsel further invited Court to inquire into how and why a fifty four year old highly educated man could trust a twenty year uneducated, naive Ugandan girl with the sole custody of over three million dollars without any safeguards. In addition defence counsel submitted that A1 was entitled to Daveshan's money since in her mind the funds did not belong to the company but rather, to her partner. She therefore felt entitled to it. He further submitted that her sense of entitlement to the funds was based on the assorted services she rendered to PW1. The salacious details of the nature of PW1 and A1s affair are not worth recounting here as they have already been well documented during the trial. They are a matter of record. However, the Defence Counsel appears to have abandoned that line of argument and adopted the position that the funds in question did not belong to Greenhalgh in the first place. Defence Counsel for A1 invited the Court and Assessors to find that Greenhalgh was not even a share holder and therefore was a stranger at law.

A claim of right has been flagged in defence of the actions of Shanita Namuyimbwa. While the prosecution has made a case for theft, the Defence contends that there is a perfectly reasonable explanation to A1's behaviour. The legal definition of theft is laid down in S.254 (1) of the Penal Code Act and states as follows:

“A person who fraudulently and without any claim of right takes anything capable of being stolen or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.”

And under sub-section (2) of the above section theft is deemed committed if a person who takes anything capable of being stolen does so with;

“(a) an intent permanently to deprive the general or special owner of the thing of it;

(e) in the case of money, an intent to use it at the will of the person who takes or converts it, although he or she may intend afterwards to repay the amount to the owner.”

A claim of right is a defence to an offence of theft. This defence is normally available to legal and biological persons and married couples. A married couple is at law deemed to be one person and the property they acquire during the subsistence of their marriage is viewed as the property of one person, the married couple. This legal position implies that a spouse cannot steal from him or herself. This privilege is available to marriages recognised under Uganda Law. The question then is whether the relationship between David Greenhalgh and Shanita Namuyimbwa constituted a marriage as recognised by our laws. In some jurisdictions there exist such marriages as *sui juris* marriage, informal marriage or marriage by habit and repute; these are irregular forms of marriages. These arrangements are also often referred to as a presumption of marriage. It is presumed that where a couple being of a legal age to contract a marriage or have parental consent to marry, having no disability or impediment to make choices, freely accept to

hold themselves out to the world as husband and wife without going through a formal ceremony of marriage such a couple is presumed married. In jurisdictions where this conduct is recognised, such couples are presumed married. What then is the position in Uganda? Uganda law does not recognise as married, parties who hold themselves out to the world as husband and wife. Marriage in Uganda is not presumed. Marriage must be contracted in one of the prescribed forms; Church marriage, Mohamedan, Hindu, Civil or Customary Law. We may also recognise a marriage which was contracted as such outside this jurisdiction under clear circumstances. In the case before me now, David Greenhalgh and Shanita Namuyimbwa were acquaintances who bumped into each other at the Rock Garden Cafe on Speke road and in a fairy tale encounter started a romantic relationship which progressed into a business arrangement. They moved into a rented house together, cohabited soon after David Green bought a house at Munyonyo which became Shanita Namuyimbwa's residence. Greenhalgh was a lawfully married man in the United Kingdom and could not legally enter into another marriage whilst his first marriage was still subsisting. He is also reported to have spent long periods away from Uganda. A1 complained that gave her an engagement ring. Despite all these overtures the relationship did not constitute a marriage under our law. This means that the two, PW1 and A1 are separate individuals and not one person. This all means that the two are each capable of stealing one from the other. For arguments sake even if I had found that the two were a married couple would Shanita have had a claim of right over the money? The answer to that question is No. The stolen money belonged to Daveshan Developments Uganda Limited an entity separate from David Green and from Shanita Namuyimbwa. Taking money from the account of this firm without any claim or colour of right amounted to theft. Did Shanita Namuyimbwa have a right to the money she lavishly enjoyed? The answer is no. As a Director Shanita had a responsibility not to spend company funds for purposes to which it was not intended. The activities to which Shanita Namuyimbwa applied the money which applied the funds were not neither profitable nor charitable. In her defence she stated that she thought the account was a love account and that the money was for lavish living and that it had been at her disposal to spend as she wished. I do not agree. Namuyimbwa knew that this was a business account. According to PW8 at the opening of this account Namuyimbwa, in the company of A2 asked her personal Banker to set up a business account. The distinction between a business and a personal account was very clear to her because she already had personal accounts. Shanita's benefactor had clearly distinguished to

Shanita that funds remitted to her personal accounts were for her personal use but funds remitted to the business account were strictly for purposes of advancing the business objectives as stated in the memorandum and as she herself restated to the bankers. Namuyimbwa was therefore fully aware that the fund she was expending was not from her personal account but that she was encroaching on the business fund. With all due respect to the lady assessor and the defence submission that the company was a sham and a device used by PW1 to take advantage of Ugandan girls and that A1 was entitled to utilise the funds on the strength of the romantic nature of relationship between A1 and PW1 in which they treated each other as husband and wife; I disagree.

Additionally, I respectfully disagree with the lady assessor and find that Shanita Namuyimbwa stole money belonging to Daveshan Developments Uganda Limited

The Defence Lawyer further introduced the notion that PW1 probably needed the Daveshan (U) Ltd as a vehicle and device for money laundering. The Defence further invited this court to note that PW1 had no access to the funds while they were in Europe but that when the money was remitted to Uganda, the Daveshan Account became a money laundering platform. The Defence argued that the scheme was so well orchestrated in order to shield the identity of the complainant. In my summing up I invited the lady assessor to ignore the elements of the defence submission in regard to unsubstantiated money laundering tales because the claims amount to hearsay evidence from the bar. I find that there was no evidence to support the above assertions.

The evidence adduced at the trial was in respect of the alleged relationship A1, as a Director, might have had with Daveshan a company limited by shares. Regarding the remaining of the ingredients I am convince beyond reasonable doubt that the money deposited on Daveshan account belonged to a company and was not for personal use and that the prosecution has proved beyond reasonable doubt that the funds were unlawfully withdrawn and stolen from the company account by A1, a Director of Daveshan, without any colour of right. I therefore find (A1) Shanita Namuyimbwa guilty of the offence of Embezzlement c/s 19(b)ii and Convict her accordingly.

I now turn to the last two counts- Count No.2 and Count No.3 of Conspiracy to defraud c/s 309 of the Penal Code Act Cap 120 I will commence by restating what the law of Conspiracy is.

“309. Conspiracy to defraud.”

“Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold or to defraud the public or any person whether a particular person or not or to extort any property from any person commits a misdemeanour and is liable to imprisonment for three years.”

Regarding Count No.2 and No.3 in general, A1 and A2 are jointly indicted for Conspiracy to defraud c/s 309 of the PCA. To secure a conviction for conspiracy, the prosecution must prove that there were two or more persons involved. There cannot be conspiracy without the involvement of at least two people. It must also be proved beyond reasonable doubt that these persons agreed to pursue a course of conduct with intent to perform an unlawful thing even if that unlawful purpose is impossible to achieve. The unlawful purpose is not limited to matters criminal. This crime can be committed by persons who intend to get involved in unlawful purposes of a civil nature.

I referred to the cases of R v Mulji Jamnadas and Others (1946) 13 E.A.C.A. 14, Seriiso v Uganda 2004 KA LR 67 and Ongodia v R 1967 EA 137.

Briefly stated, the ingredients of the offence of Conspiracy to defraud are as follows:

1. Existence of two or more persons.
2. Agreement to pursue an unlawfully purpose. It does not matter if the purpose is criminal or amounts to a civil wrong.

The defence argument on conspiracy was that A1 and A2 could not have been in agreement since they did not know each other until A1 bought a vehicle from A2. The defence averred that there was absolutely nothing in common between A1 and A2 save a casual business encounter which was completed when A1 bought a highly priced motor vehicle, a Range Rover from A2. In addition the defence implored court to deem the prosecution witnesses PW2, PW4 and PW8 as discredited and unworthy of belief. The prosecution evidence is that A2 introduced himself to PW2 Peter Lule as a Director in Daveshan Developments. PW2 Peter Lule told this Court that Meddie Ssentongo approached him with the idea to construct a hotel and that he urgently needed

documentation about how much it would cost and what it takes to construct a hotel. The witness stated with some measure of detail his encounter with A2. Here is a verbatim account of this encounter:

“He told me that he is among the Directors in Daveshan.I asked him what is Daveshan, the he told me it is Daveshan Development Uganda Limited. He told me it is a real estate company which is going to invest here in Uganda and he was among the Directors.So he gave me the details of Daveshan Development Uganda Limited and they wanted to construct Daveshan International Hotel.”

PW4 also told court that A2 asked for advice on how they, A1 and A2 should put to use the money A1’s European (Mzungu) boyfriend intended to send. PW4 said he advised that they get into apartments and hotel construction business. Additionally the evidence of PW4, Tom Mukomazi was that A1 and A2 being boy friend and girl friend normally went travelling and clubbing with PW4 together on many occasions. The evidence of PW8 Kibuka Henry Joe a personal and executive Banker was that when A1 went to consult him on opening the Daveshan Company Account, she was in A2’s company.

The evidence of PW2 and PW4 as I had earlier observed was vehemently objected to by the defence. I can understand why. PW2 and PW4 provide the clearest link available in establishing a relationship between A1 and A2. Despite their own personal flaws, they came through as truthful and therefore I find them believable in this regard. Regarding their flaws, PW2 was stated to be an unregistered engineer who even held out as working on behalf of a reknown Alcon company. PW4 was described as a town lout who was fond of causing trouble. Although it is not the intention of this Court to profile individual who appear before it, it is apparent from the storyline of this case that A1 and A2 always sought help from within their circle of friends. I have taken the view that the character, behaviour and value system of PW2 and PW4 is consistent with the inner and broader circle of friends of the two accused persons. When A2 needed documentation with a semblance of professionalism he naturally defaulted to the backstreet engineering firm to which PW2 belonged. This documentation we needed in order to convince PW1 to wire eight million dollars to Daveshan Developments a company to which A1

was sole signatory. Inchoate crimes are legislated so as to prevent actual occurrence and therefore it immaterial that the money was not wired. It is enough if a plan was put in place to defraud. A1 and A2 were in this together every step of the way. It is not difficult to discern that PW4 was not lying when he said A2 confided in him that he had a new girlfriend who had a rich (European) Mzungu boyfriend. PW4's courage in spelling out life style changes in A2's behaviour should be applauded and not discouraged. I do not support the attempt to muzzle PW4. Courts must encourage a more truthful and transparent society. These individuals were birds of the same feather joined at the hip. On Count No.2 I am therefore convinced that the evidence of PW2, PW4 and PW8 is cogent and convincing. The evidence establishes that A1 and A2 enjoyed a close relationship, were several times at the bank and clearly pursued a joint purpose. I therefore do not accept A1's attempt to absolve A2 from this transaction. The lady assessor advised me to acquit A1 and A2 of the offence of conspiracy to defraud. Am unable to do so in the light of the overwhelming evidence before me and referred to above. I therefore find A1 and A2 guilty of the offence of Conspiracy to defraud and Convict in Count No.2 each of A1 and A2 accordingly.

“As we went through the analysis comparing the drawings of the company account Daveshan Uganda Limited and the banking, we noted an interesting phenomenon when on the 2nd/September/2010 Daveshan Developments' account was credited with one million nine hundred ninety nine thousand five hundred and eighty eight US Dollars. On the 15th/September using bank counter leaf 167155 the signatory to that company account withdrew a hundred and twenty thousand Dollars as noted earlier in cash. On the very same day 15th/September Meddie Ssentongo's personal account in Standard Chartered Bank Garden City branch was credited with shillings two hundred sixty nine million fourty thousand .

Again on the 16th/September using bank cheque number 167158 the signatory that company account withdrew a hundred and eighty thousand Dollars from the company account and on the same day Meddie's account was credited with three hundred fifty eight million, eight hundred and eighty thousand .”

Count No. 3 mostly relies on the evidence of PW7 Ponsiano Kaweesa Ssengendo of Peekay Steve Associates, a private Audit firm. PW7 testified about what he called a financial relationship between A1 and A2. He noted a pattern which revealed that whenever A1 withdrew funds from Daveshan accounts, huge sums of money were credited on A2's account on the same day. Once again I will reproduce what PW8 said in part.

And the story goes on and on. The above evidence speaks for itself. Could it be a coincidence that whenever funds were withdrawn from Davenshan Dollar account, equivalent amounts of money in Uganda currency was deposited on A2's account? The evidence also clearly revealed that Meddie received money withdrawn by A1 from the Daveshan accounts, on some occasions recycled through her personal account or on most occasions banked directly onto A2's account by A1. The evidence of PW8 was contested by the defence who questioned how PW8 came into the picture. I have already stated that PW9 one of the investigators in this case proved that he was not interested in getting to the bottom of this fraud. I am therefore not in any way surprised that the prosecution procured this witness PW8 through private means. I am inclined to think that hiring of private investigators and auditors by public bodies should be encouraged rather than discouraged, so long as the other side is made aware of the evidence and given ample time to defend himself. In this trial the defence had ample time to make out their case. This is a Court of law and our duty is to hear and decipher all evidence which is presented before us. We cannot turn away people who come to us in the manner in which PW8 was brought to us. It would not be just and fair. Indeed there is no direct evidence to show that the funds withdrawn from the Davenshan accounts was the very cash deposited on a2s account. However there is overwhelming circumstantial evidence to show that this was the case. The evidence of PW8 A1 and A2 presents a plain pattern and a sneak peak of the modus operandi of A1 and A2. A2's defence was that the only transaction he had with A1 was the sale of a range rover vehicle for just over two hundred million. I do not believe that claim. The evidence of PW8 was not rebutted when he asserted that A2 received over a million dollars on his account in the same period in which Daveshan accounts were credited with 3.9m dollars. I have pondered as to why the prosecution did not indict A2 for theft and I suppose it will remain a mystery. Clearly A1 was stealing from Daveshan and channelling money to A2 who was obviously not entitled to it. That is theft and is covered under our laws. The prosecution chose to offer a misdemeanour. I find that

indeed A1 and A2 conspired to defraud and did defraud Daveshan U Ltd of Uganda. I find A1 and A2 guilty of Conspiracy to Defraud in Count No.3 and Convict each of A1 and A2 accordingly.

Signed 6/07/2012

Catherine Bamugemereire

JUDGE 6/07/2012

Both Accused Persons Present in Court

Paul Lakidi together with Robert Mackay (State Attorneys) for State.

Muyizzi and Galisonga (entered after) for A1 Present

Sulaiman Ajungule for A2 (entered after) Present

Court: Judgment Delivered in Open Court in the presence of both accused and their lawyers. Interpreter Provided.

Signed 6/07/2012

Catherine Bamugemereire

Judge

12/07/2012

Both Accused Present

Pail Lakiddi State Attorney assisted by Robert Mackay for State

Mr. Muyizzi and Mr. Galisonga for A1, Walukagga and Ajungule for A2

Sentence

This was a case involving private sector corporate corruption and corruption related offences. This was a private-on-private corruption offence; a case where private individuals committed acts of corruption and corruption related crimes against a private entity, Daveshan Developments Uganda Limited.

Shanita Namuyimbwa (A1) and Meddie Ssentongo were convicted of two counts of conspiracy to defraud c/s 309 of the Penal Code Act, while Shanita Namuyimbwa was convicted of Embezzlement c/s 19 (b) iii of the ACA Cap 209

The Prosecution prayed that court impose a stiff sentence in order to send a clear signal to likeminded individuals to desist from callous acts that occasion gross loss to others. On the other hand, the Defence drew the court's attention to the fact that that the two convicts were first offenders, The Defence urged court to exercise leniency on grounds that Shanita Namuyimbwa is a mother of three children who need her love and care. The Defence also pointed out the dangers of imposing a custodial sentence as it would inadvertently condemn the convict's 2 month baby to time in prison with the mother. Defence Counsel also prayed that Court imposes a non custodial sentence such as a fine so the young convicts can continue with their normal lives.

It is a declared policy to attract investment to Uganda. That stated foreign investment requires partnership with local players. Local partners should therefore be seen to act with impeccable integrity and utmost trust. This case is a sad tale and reflection of the breakdown of key tenets of our society. We cannot build the trust of people whose financial resources our economy requires if local partners engage in behaviour that puts the very investments at risk. It is also important that those who have been fortunate to be entrusted with stewardship of both public and private resources act in the best interest of those on whose behalf their principals.

The learned State Attorney highlighted the growing trend in the country for people to aspire to get rich quick. This group is fast growing into a large and lucrative industry. This Court would like to send out a clear signal that such bad business practices will not be tolerated.

It is painful to note that the two convicts are vibrant, young people in the prime of their youth whose future held a lot of promise. They stumbled into a huge fortune which could have changed their lives and those of many others. But with reckless abandon they unscrupulously pilfered funds and in an unprecedented manner wiped away an eleven billion fortune within a record

period of nine months. Whilst it is not this Court's duty to regulate how private individuals spend their resources on this occasion we frown upon the behaviour of the two convicts because the funds did not belong to them. This Court will not take lightly the growing decline in public morals and social values.

I have refrained from making orders of compensation because evidence has been led to show that PW1 David Greenhalgh did not exercise sufficient due diligence in the selection of development/business partners. Secondly having identified the development/business partner he did not put in place measures and controls to safe guard his investments. Last but by no means the least, no asset recovery investigation was carried out in order to verify existence of ill-gotten assets upon which recovery orders could be made.

In view of the above, the convicts will be sentenced as follows:

1. Count No.1 Shanita Namuyimbwa is Sentenced to Four Year' Imprisonment
2. Count No. 2 Shanita Namuyimbwa and Meddie Ssentongo are each sentenced to 18 Months' imprisonment
3. Similarly in Count No.3 Shanita Namuyimbwa and Meddie Ssentongo are each sentenced to 18months' imprisonment.

The Prison Sentences shall run concurrently.

Right of Appeal fully explained: Each of the Convicts is informed of her/his right to appeal against the conviction and sentence within Fourteen days.

Signed on this 12 Day of July 2012

Catherine Bamugemereire

Judge