

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

**ANTI CORRUPTION DIVISION**  
**CR.SC 23 OF 2011**

**UGANDA** .....  
**PROSECUTOR**

**VERSUS**

**KALUUMA ABDUL KHARIIM**.....  
**ACCUSED**

**BEFORE JUSTICE PAUL.K MUGAMBA**

**JUDGMENT**

The indictment against the accused comprises of a substantive count and an alternative count. In count I it is embezzlement, contrary to section 19(b) (i) of the Anti Corruption Act. Therein it is alleged that between May 2009 and December 2010 at Stanbic Bank, Kampala Operations Processing Centre, being an employee of Stanbic Bank as a clerk, Consolidated Payments, accused stole shs 787,518,500/=, the property of Stanbic Bank. Causing Financial Loss, contrary to section 20(1) of the Anti Corruption Act is the

charge in the alternative count. Therein the state alleges that between May 2009 and December 2010 when accused was employed by Stanbic Bank as clerk, Consolidated Payments, he diverted bank commissions amounting to shs.787,518,500/= when he had reason to believe that the said act would cause financial loss to Stanbic Bank.

Basically the case for the prosecution is that at the time material to this indictment accused was employed by Stanbic Bank in its Consolidated Payments Unit as a clerk. He was part of the Consolidated Payments team. As clerk he was a recipient of files for processing payments of salaries or allowances to clients. The service attracted a commission on each transaction. The Commission thus derived was to be credited to the Commission account of the bank. It is alleged however that instead accused credited on some individual accounts money meant for the bank commission account.

To prove its case the prosecution called nine witnesses.PW1 was Luwambya Asaad, the Manager Kampala Operations Processing Centre.PW2 was Kakuba Kenneth Keith, a consolidated payments clerk with Stanbic Bank.PW3 was Namugambe Nancy, an Electronic Funds Transfer clerk.PW4 was Joseph Mulindwa, an IT Specialist with Stanbic Bank.PW5 was Ntairaho Edison, Team Leader Back Office Support.PW6 was Jimmy Owot, Systems Administrator, Stanbic Bank.PW7 was Richard Andruma, an internal investigator, Stanbic

Bank.PW8 was Kyazze Robinah, manager Stanbic Bank, IPS Branch.PW9 was D/AIP Kato Moses, Special Investigations Unit, Kireka.

The onus is on the prosecution to prove the charge brought against an accused person beyond reasonable doubt. I refer to **Sekitoleko v Uganda [1967] EA531**. Needless to say where a charge is in place and an alternative also appears on the indictment a verdict is to be given on either the substantial charge or the alternative, not on both. This reality was brought to the attention of the assessors accordingly. Where the charge is Causing Financial Loss the prosecution ought to prove the ingredients of the offence. It must prove that during the relevant period accused was an employee of Stanbic Bank .The prosecution ought to prove also that accused in the performance of his duties did an act knowing or having reason to believe that the act or omission would cause financial loss. Needless to say there must be proof of resultant loss also.

Agreed evidence between the prosecution and the defence under S.66 of the Trial on Indictments Act was the appointment letter written to accused showing he was to be employed as a General Ledger Clerk with StanbicBank. That letter was dated 9<sup>th</sup> December 2004 and was signed by the accused, accepting that employment .The date was 10<sup>th</sup> December 2004.This evidence is contained in Exhibit P.1 .There is no evidence disputing employment of accused as a Stanbic Bank clerk. This ingredient is proved by the prosecution beyond reasonable doubt.

The prosecution alleges that accused was the person responsible for facilitating the diversion of money meant for the bank commission account to individual accounts. This the defence contests. To buttress its case the prosecution tendered in evidence of e-mail messages which show they were sent from the Consolidated Payments desk, accompanying files for the IT department to download. Clearly the e-mails show who the sender was. Exhibit P.3 contains the e-mail messages. They indicate they were sent by Kaluuma Abdul-Kharim. It is worth noting at this stage that the contents of individual e-mails vary. Document W1 simply states, 'Hello, I've dropped Riley file in unprocessed folder titled Riley 221210 please process. Regards, K Abdul-Kharim, Consolidated payments 0414343151.'

The e-mail contained in L1 indicates it is from Kaluuma Abdul Khariim. It states, 'Hi all, I have dropped SFI file for Boueftcom 040809. Please process. Regards A.K.Khariim Consolidated Payments.0414343151 KOPC Yes, we can.'

The defence on the other hand disputes accused's responsibility for the authorship of the e-mail messages in issue. In his defence accused stated that the user name he gave was Kharim and that for his identity he gave Kharim A. This of course varies with what is contained in the e-mails which indicate a different person sent them. Jimmy Owot, PW6, is Systems Administrator with Stanbic Bank. He testified that it was he who entertained accused's application and subsequent admission into the data system of the bank. He was emphatic accused was the author of the e-mails in issue. It was the evidence of PW6 that accused's user name was Kaluuma A and that it

was created by the Data Centre. He added that in the application accused had used the names Kaluuma Abdul Kharim. The evidence of PW6 was lent support by that of PW4 who testified that user name is a creature of the IT department at the Bank.

The prosecution alleges that accused used a predictable stratagem to cream off money meant for bank commission to credit individual accounts. There would be an e-mail to the IT department introducing a given file and advising what IT should do with the file. Customarily IT would then comply with whatever instructions were contained in the file thus forwarded to them by the accused. In the result certain individual accounts came to be credited with money that should have been credited on the bank's commission account. Several instances of this were brought to light. The author of the files was Kaluuma A. The gateway files involved, as noted earlier, were sent to IT thereafter. For purposes of this trial they were received as exhibit P6 and they are contained in distinct documents under that exhibit item.

Document A shows that account number 0121006878001 was credited with shs 6,002,000/=.The instructions were contained in a gateway gw29021.The file was sent to IT by Kaluuma A and he was the person who last saved it. The account holder is Ntege Umar.

Document B was also generated by Kaluuma A. Gateway GW 29051 bears the instructions. The instructions were for account number 0121023828401

to be credited with shs.4,292,000/=.It was so credited. Kaluuma last saved the file. The account holder was Swaib Lutalo.

Document C relates to gw 28081.Kaluuma A created it. The instructions were for shs 20,002,000/= to be credited to account 0140598996401.The account belonged to Namugera Denis.

Document D was created and saved by Kaluuma A. He sent file gw 07031 to IT with instructions to credit shs 4,020,000/= derived from pension commission to account 0121006878001 instead of the bank's commission account. The account holder was Ntege Umar.

Kaluuma A was the person who generated Document E. This was an Excel file advising Data Centre to upload several files with Bank master system. The file is gw05061 for shs 8,002,000/= meant for UPDF Commission. Instead the money was credited on account 0121006878001.The account holder was Ntege Umar.

Another creature of Kaluuma A is Document F. The file is gw29051 under file description Boueft commission. It bore instructions to IT to credit shs 30,000,000/= to account 0140598996401.The account holder was Namugera Denis. Then there are other files under Document F. There was a commission file gw29041 under description Boueft commission involving shs 9,410,000/=.Instructions were that IT credit that sum to account number 0121098430701 rather than the commission account. The account holder was Barongo Willy. File gw29141 under description Boueftcom bore

instructions for shs.9,000,000/= due to be credited on the bank commission account to be credited instead on account 0121023828401. That account belonged to Swaib Lutalo. There was also file gw29151 under description UPDF Commission .It involved shs 9,004,000/= which should have been credited on the bank commission account. Instead the instructions were for the amount to be credited on account number 0121023828401. The account belonged to Swaib Lutalo.

Other documents comprised in Exhibit P.3 are revealing. Take for example Document K.K1 is the e-mail message which shows it was generated by Kaluuma A. The message relates to file Boueft com 050809. A commission of shs 5,563,500/= appears in the file. Instructions in K3 are to the effect account number 0140598996401 in the names of Namugera Denis is to be credited. Statement G is the bank statement of Namugera Denis. It shows that on 5<sup>th</sup> August 2009 shs 5,563,500/= was indeed credited on that individual account.

Then there is Document L. In the e-mail which is L1 file Boueft Commission 040809 is mentioned. The gateway (gw) is L2. A figure of shs 4,516,500/= was instructed to be credited to account 0121098430701. That account belonged to Barongo Willy. Reference is made to Document H which is the bank statement of Barongo Willy. It is manifest on 5<sup>th</sup> August 2009 the account increased by shs 4,516,500/=.

Document M contains an e-mail, M1. The e-mail relates to two files Kaluuma sent to IT to process. The first file is Boueft com 040909. The other is Boueft com 040909a. Instructions were for shs 6,262,500/= to be credited to account 0121098430701. M3 shows the instructions were complied with and the money was deposited on that account held by Willy Barongo. M4 relates to the second file. Therein a commission of shs 6,265,500/= which ordinarily should have been credited on the bank commission account was directed to be credited on account 0140598996401. M5 shows the sum was credited to that account, which is in the names of Namugera Denis on 4<sup>th</sup> September 2009. The statement of account of Namugera Denis which is comprised in Document G confirms the account became fatter by shs 6,265,500/= on 4<sup>th</sup> September 2009.

We examine Document N. The e-mail is marked N1. It was sent by Kaluuma A. It mentions file pension com 150909a. In N2 a figure of shs 6,238,500/= is given as commission and the account to be credited is shown to be 0140598996401. N3 shows the outcome from IT. The instructions were complied with on 16/09/09 and the account credited was that of Namugera Denis. Document G is the bank statement of Namugera Denis. It shows shs 6,238,500/= was credited to the account on 16<sup>th</sup> September 2009.

Then there is Document O. The e-mail is O1. It was sent by Kaluuma A and refers to file Boueft pen com 160109b. The commission figure mentioned in O2 is shs 6,745,500/= and it was to be credited to account 0140598996401

according to the instructions.O3 shows the said commission amount was credited to account 0140598996401 on 16<sup>th</sup> October 2009.Bank statement G is the bank statement of Namugera Denis. It confirms that on 16<sup>th</sup> October 2009 that account was bolstered by the sum of shs 6,745,500/=.

In Document P the e-mail is P1.It refers to file Boupencom 151009b. Kaluuma A prepared P2 with the commission as shs 5,245,500/= .The commission sum was to be credited to account 0140598996401.P3 shows IT complied with those instructions. The account is in the names of Namugera Denis. Indeed Bank statement G of Namugera Denis confirms that information.

In Document Q the e-mail is Q1.It is from Kaluuma A to IT concerning file Pension 150310b.Q2 which was prepared by Kaluuma A shows commission of shs 6,002,000/= was to be credited to account 0121006878001. Q3 shows that on 16<sup>th</sup> March 2010 those instructions were effected. Bank statement I is that of Ntege Umar. It confirms shs 6,002,000/= was credited to that account on 16<sup>th</sup> March 2010.

There is Document R where the email, R1, was sent by Kaluuma A to IT respecting file pensioncom 170310b.R2 shows that that day Kaluuma A worked out commission as shs 6,012,000/= to be credited to account 0121023828401.R3 shows IT complied with the instructions and on 18<sup>th</sup> March 2010 credited the account of Lutalo Swaib. The bank statement of Lutalo Swaib is statement J. It shows that on 18<sup>th</sup> March 2010 shs 6,012,000/= was credited to that account.

As for Document T, the e-mail from Kaluuma A to IT is T1. It concerns file ntgmopyt 140510. Kaluuma A prepared T2 which shows shs 4,002,000/= was to be credited as commission to account 0121006878001. T3 shows that on 14<sup>th</sup> May 2010 IT complied by crediting the account of Ntege Umar. Ntege's bank statement is statement I. It bears evidence of being credited.

In Document U, U1 is the e-mail Kaluuma A sent to IT concerning file Nda 221210. Kaluuma processed U2 as well as U3. Shs 20,000,000/= was computed as commission figure and the account to be credited was determined as 0121006878001. U4 shows that on 22/12/2010 IT credited that sum to the account as instructed. The account belonged to Ntege Umar. Bank statement I is the bank statement of Ntege Umar. It confirms the above.

In Document V, V1 is the e-mail message sent by Kaluuma A to IT. It concerns file Pensioncom 221210a amongst others. Kaluuma A prepared both V2 and V3. The commission figure was determined at shs 20,000,000/= and instructions given to IT were that that sum be credited to account 0121023828401. V4 shows IT complied with the instructions Kaluuma A gave on 23<sup>rd</sup> December 2010. Bank statement J is the bank statement of Lutalo Swaib. It shows that on 23/12/2010 the account was indeed credited.

There is, in addition, Document W. The e-mail Kaluuma A sent to IT is W1. It is in respect of file RILEY 221210. The generator of W2 and W3 is Kaluuma A. The commission amount was worked out to be shs 20,000,000/= and

according to instructions sent to IT that sum was to be credited to account 0121098430701.W4 shows that on 23/12/2010 IT complied with the instructions. Document H is the bank statement of Barongo Willy. It confirms the account received funds of shs 20,000,000/= on 23<sup>rd</sup> December 2010.

It is noteworthy in all the instances above money which should have gone to the commission account of the bank instead went to individual accounts. It is equally remarkable the impugned emails and accompanying gateways were sent by Kaluuma A. In sending those documents Kaluuma A sought to have them put into effect. We have related to the evidence of PW4 and PW6 earlier on. That evidence was to the effect Kaluuma A was the user name of the accused himself. Accused was responsible for the impugned instructions therefore.

Further evidence is contained in the extra judicial statement of the accused. That statement was admitted in evidence. In the extra judicial statement accused admitted to having manipulated the system and given instructions which led to money that should have gone to the commission account of the bank to be diverted to a number of private accounts. The charge and caution statement reveals that this was by design. I am mindful of the fact that accused retracted the confession. That notwithstanding, there is some other evidence on record to support the contents of the extra judicial statement showing that accused actively participated in this nefarious activity leading to loss of money which should have been on his employer's account.

It was stated in **Tuwamoi v Uganda [1967] EA 84** thus:

“The present rule then as applied in East Africa in regard to retracted confession is that as a matter of practice or prudence the trial court should direct itself that it is dangerous to act upon a statement which has been retracted in the absence of corroboration in some material particular, but that the court might do so if it is fully satisfied in the circumstances of the case that the confession is true”.

I have no doubt in my mind that the confession is true and that while the charge and caution statement is corroborated by the evidence adduced, the charge and caution statement also corroborates the evidence adduced. Money was indeed lost to the bank and taken by others not entitled through the aegis of accused.

In the course of hearing I gave a ruling regarding computer evidence and promised to comment further on it at the time of judgment. This should be the occasion. The prosecution sought to have admitted evidence of a computer printout. The defence objected relying on the rule relating to primary evidence long invoked by lawyers and courts and underwritten by the Evidence Act itself. Times have overtaken that dogma in the Evidence Act so that printouts can now, where well handled as testified by PW4 and PW7, be admissible in evidence. Relevant to the instant case are the provisions of the Electronic Transactions Act, Act 8 of 2011 particularly sections 5, 7 and 8. There is always something new to learn.

The assessors in their joint opinion stated that since there were no auditors to show how losses came to be created in the bank the prosecution never proved that accused caused any financial loss. While I agree with the assessors that no audited sums were presented in evidence, which should have been the case, there was certainly evidence of loss of amounts credited to private accounts instead of the commission account of the bank. The omission was never the less unfortunate. In the result I respectfully differ with the verdict of the two assessors and find instead that the prosecution has proved beyond reasonable doubt that accused caused financial loss to his employer StanbicBank. I must note that for purposes of the charge so long as it can be proved that accused caused some loss of the money as has been the case in the instant matter it is immaterial that an elaborate report from auditors is missing.

In the result accused is convicted on the alternative count of causing financial loss, contrary to section 20(1) of the Anti Corruption Act.

**PAUL.K MUGAMBA**

**JUDGE**

20<sup>TH</sup>March 2012

## SENTENCE

The convict is about 33 years old now. He chose a career of a banker which involves being a steward of public finances. It is a career that calls for probity and honesty. A promising young man that the convict appeared to be instead elected to be the opposite of what his family, friends and the public expected him to be. He was lured by the temporary delight of fleecing off the unweary. So it was that eventually he got caught on the wrong footing after hundreds of millions had found their way into the wrong hands. This should not be allowed to prosper if commerce and banking are to thrive in this country. It must be punished by the rigours of our law. I have on the other hand heard about the family concerns of the convict and his anxiety he be treated with leniency because of those dear to him.

While I feel for those persons I also feel for the public so exploited without remorse by the same convict. I take into account the fact that he is a first offender and that he is still a young man who could reform. I sentence him to seven years' imprisonment.

In addition I order as follows:

1. That the land at Block 203 Luby village, Rubaga Division, Kampala District together with its developments be confiscated pending the outcome of any court action by Stanbic Bank to recover money lost through the convict's culpability .

2. That all that money on Barclays Bank account 0115000705 in the names of the convict be frozen pending the outcome of any court action by Stanbic bank to recover money lost through the convict's culpability.

3. That his tomato sauce making machinery be confiscated pending the outcome of any court action by Stanbic Bank to recover money lost through the convict's culpability.

The above orders are to last for six months from today if no action is in existence by then.

4. That the convict is hereby barred from holding public office for 10 years pursuant to S.46 of the Anti Corruption Act.

**PAUL.K MUGAMBA**

**JUDGE**

**23/03/2012**

Court: R /A explained.

**PAUL.K MUGAMBA**

**JUDGE**

**23/03/2012**

