

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO  
NO.HCT-00-AC-SC -0088/2013**

**UGANDA:..... RESPONDENT  
VERSUS**

**LUBOWA MICHEAL:..... ACCUSED**

**BEFORE: HON.LADY JUSTICE Margret TIBULYA**

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

The accused stands charged with Embezzlement c/s 19 (b) (i) and (ii) of the Anti-Corruption Act. In the alternative he is charged with Causing Financial Loss c/s 20 of the same Act. He pleaded not guilty to the charges.

The brief facts are that he is a banking officer with the Centenary Bank, the complainant here-in.

On the 25<sup>th</sup>/2/2013 he was working as the Chief Teller, Muhanguzi Gideon (PW2) was an Assistant Manager and Kugonza Ronald (PW1) was the Acting Manager.

The accused with PW2 in the process of lodging cash into the treasury at the end of the day discovered that the system figure was bigger than the physical cash by twenty million Uganda shillings.

The accused as Chief Teller was responsible for giving cash to the Tellers at the beginning of the day and receiving cash from them at the end of the day.

The process of issuing out cash to tellers and the tellers lodging in cash to the Chief Tellers seems not to be in contention.

Issuing out cash the tellers involved the chief teller preparing "Treasury-out" vouchers which show the amount, denominations of the money and the name of the teller. The chief teller and the receiving teller would sign the voucher after which the teller would take the money and start the day's business.

At the end of the day, each Teller would balance the money in their drawers, fill in treasury-in-vouchers" which indicate the total amount by denominations and the name of the Teller, then hand over the money to the chief Teller. The Chief Teller would verify the money and if found correct would sign the voucher, retain the original copy of it and give the carbon copy to the responsible Teller.

On the 25<sup>th</sup>/2/2013 the above procedures were followed by the accused when he gave out money to the Tellers (PW4-7) and when he received money from their evidence was that his duty was to remit the cash levels of the Tellers and if a Teller had big amounts of money, he could tell them to lodge it to him. He and his admission went and collected money from PW4 in this regard.

PW4 (Mary Catherine Katusiime) following the same procedure received money from the accused, which she issued to customers.

She was a bulky Teller-that is handled big amounts of money that day. At the end of the day, she lodged money in three batches to the Chief Teller (accused). The first was 89,100,000/= the second was 90,000,000/= and the last was 5,802,300/=. The accused picked the first two batches from her cabin from where he verified it. She took the last batch to him in his office and he verified it from there.

PW5 Karungi Diana, pursuant to the same procedure received 17,500,000/= from the accused and lodged in 67,692,200/= with the accused, on either occasion after verification was done.

PW6 (Kasule Steven Kyemwa) also received 21,488,100/= from the accused and lodged 10,361,850/= with the accused at the close of the day.

On the same day, Kamusiime Enid Mugisha (PW7) received 16,500,000/= from the accused and gave him 20,495,100/= at the end of the day.

As Chief Teller, the accused would at the end of the day call the Assistant Manager, in this case Gideon Musingunzi, who would open the safe and they would verify the cash given to him. According to Musinguzi(PW) the accused handed to him cash denomination by denomination, but the twenty thousand denomination had a problem-the

physical cash did not tally with the system figure. It was discovered that the cash book figure was bigger than the physical cash by twenty million.

A physical cash counting involving PW1 (Kugonza) PW2 (Musinguzi), PW8 (Akugizibwe) and the accused did not yield anything. They searched the pre-confirmation area and all teller cabins, and they did not get the money. By that time the Bank computer system was off.

The next morning, the system was checked for any mis-posting/errors, but there was none. It was concluded that the money (20million) was lost, and they reported the matter to police. The accused was arrested. Other evidence was that only the accused as the Chief Teller had the sole key to the pre-

Confirmation area (PW1 Kugonza and PW8 Akugizibwe Steven) the Security Officer testified to this effect.

No one else could therefore access this area without the accused's consent. Further this area had the entrance to the ATM lobby and another to the treasury. The same area has a safe where money could be kept temporarily before being lodged to the treasury. The accused was the only one with the key to the safe.

In his defence the accused said he was Chief Teller at the bank, but had worked in that position for three days when this problem arose.

He first worked as a sales executive,(since February 2012) then as banking officer trainee from June 2012,and was confirmed banking officer in December 2012. On the 25<sup>th</sup> February/2013 he issued out money to tellers, and at the end of the day he called the assistant Manager so that they can lodge money to the treasury. Since the money was much, the accused took it to PW2(Musinguzi) in bits. The accused's role was to hand over to PW2 money he had received from the tellers. It was PW2'S role to verify it. The accused did not know how much he gave to PW2 and how much was in the safe. But PW2 told him about the shortage, after he verified the money in the accused's presence.

The accused's further evidence was that PW could not verify all the money in the safe because it was much. That money was not verified even the next day.

On his part, the accused had verified note by note, all the money he had received from the tellers, the time he lodged it to the treasury. Moreover, he handed over all the money that he had so received.

The next day, the system was cross checked for possible errors but the money in the safe was not counted note by note but only by bundles. Yet, by then that money had been mixed with the money he had lodged in the previous night.

As a Chief Teller, he had challenges;

1. He was not given the policy manual which showed his functions, because he was moved from the front line desk as a teller, to the customer service desk, and three weeks later he was made the Chief Teller. He complained to the Assistant Manager that he needed more experience ,and that more experience people could execute the task of Chief Teller but he was not heeded to.
2. He was not given the relevant training, yet front line tellers handle much less cash than the Chief Teller.
3. His office was exposed to risk. It had the main entrance to the office, a desk inside it, a counting machine, computer, an outer safe, the door to the ATM, a door to the treasury but had no camera.
4. The door to the ATM is next to his desk, the same area where he puts money for verification before it is lodged to the treasury. People going to service the ATM go through his office.

On the 25<sup>th</sup>/2/2013 the ATM people came twice or thrice and went to the front of the ATM i.e to serve the ATM.

He had to lock them inside when he went to call the Assistant Manager to post the treasury-in vouchers in respect of eighty nine million and ninety million.

Further to this, every evening all tellers lodge cash and it requires a lot of observation, while taking on many tasks at ago. In the mean time, the accused could not use the safe because he had not

verified the money he had received. Moreover the Assistant Manager had one of the keys of that that safe so the accused could not use the safe alone.

The possible ways in which the 20 million could have gone missing are;

1. Mis-posting i.e posting a wrong figure.
2. Giving more money to a Teller than intended,or receiving less than declared.
3. Out right theft from the pre-confirmation area.

In re-examination,the accused said he was a trainee for 6 months. When he was appointed, a trainee he signed key result areas enumerating his duties. He confirmed receiving the money indicated in the exhibited treasury in-vouchers on 25<sup>th</sup>/2/2013, and said that he counted it note by note and he confirmed it. He also said that he had control over the pre-confirmation area-he had the key to the entrance and over who would come in and get out. He also said that he never complained to his supervisor over the risky condition of his office.

The Prosecution bears the burden to prove beyond reasonable doubt;

1. That the accused was an employee of Centenary Bank Ltd.
2. That the accused stole 20m/= being the property of the bank.

3. That he received the 20m/= by virtue of his office.

### **The accused's employment**

It was common cause that the accused was employed by the bank as a banking officer and by deployment the Chief Teller, on the day in issue. These facts were admitted by the defence and to that extent proved.

### **The theft of the 20m/=**

The sub-issues which go hand in hand with the issue of theft are;

1. The ownership of the 20m/=.

Whether, if he stole it, he did so in the course of his employment.

Throughout the trial it was not disputed that the 20m/= was bank property, and that the accused got custody of it as Chief Teller, i.e. by virtue of his employment. These issues were therefore sufficiently proved.

On thefts, the State is relying on the evidence of PW1 and 2 (Kugonza and Musinguzi) that the bank records, a physical count of the money available and the treasury book all showed that 20m/= was missing. PW4-PW7 all said they received money from accused, and they handed over money to him at the end of the day.



The accused does not deny the above evidence. He infact said he counted all the money he received from each of the tellers and confirmed that it was the true amount.

The accused as was the procedure had to lodge all the money he had received to the treasury. He had to do this with the Assistant Manager- Mr. Musinguzi. It was in the process of lodging in the money that the shortage was discovered.

The accused's evidence was that he lodged in all the money he had received from the Tellers. He said that his duty was to hand over the money to the Assistant Manager, who was to verify it. Also, that the money he gave to the Assistant Manager was mixed with that which was in the Treasury before verifying it.

Mr. Musinguzi (PW2) however said that the verification was procedurally done.....with the accused handing over the money denomination by denomination.

First of all,when PW2 (Musinguzi) gave evidence on what the verification exercise entailed, he was not challenged by the defence. The accused's version was that he (accused) was not involved in the verification exercise was not put to PW2, to give him a chance to deny it. I therefore take the accused's version as an afterthought.

Even then, it would, in the ordinary be illogical to say that the accused only had to hand over money to PW2,and it was PW2's duty to verify it.

Such a procedure would be .....to basic accounting procedures. Considering that we are dealing with a banking institution a claim that a responsible officer had no obligation to participate in the verification of money he is handing over to another is so illogical as to be..... The accused's evidence in this regard it is not credible and I reject as such.

The defence advance some theories in a bid to explain the loss.

1. The theory of error or mis-posting. It was contended that it was possible that there could have been an error or a mis-posting. The accused said that he was arrested hasting and not given time to exhaustively pursue that line.

It was however his evidence that he counted the money received from the tellers note by note and found no problem with it.

Secondly, there is ample evidence that when the shortage was discovered, a physical search was conducted to no avail, counting and re-counting of the available cash was done, and the money was not seen, and then system was checked for possible errors but none was discovered. Before this, it was in evidence, at the close of business on 25<sup>th</sup>/2/13, each Tellers work for the day was "called" i.e, reviewed for possible errors by colleagues and no errors were found for each error.

The endeavors made as explained above effectively rule out any possibility of error or mis-posting.

## 2. The theory of theft by other people

The defence contended that the office that the accused sat in was risky-it could be accessed by many people e.g those who service the ATM, the Tellers and others. These could have taken the money from the accused's office.

The state evidence, which the accused does not deny was that he had the only key to that office and that for any other person to access it, he had to have the accused's consent. Further to this, the accused had a safe in his office where he was supposed to keep money received by him before lodging it to the Treasury.

The evidence of the state portrays the picture of security measures having been put in place to ensure the safety of monies in the accused's possession.

On the other hand, the defence portrays a picture of a vulnerable and helpless accused person who was running a risky office. He at one stage even sounded naive, saying that he could not use the safe to keep money which he had not yet verified and that when he lodged the money to the Treasury, he did so bit by bit, since it was much and as such, someone could have accessed and stole it.

Other issues that came up during trial were;

1. Some vouchers which were procedurally supposed to be signed by the accused, did not bear his signature.

The state explained that though accused's signature was missing the money was proved to have been received by the accused, and moreover, the money appearing in the vouchers was also reflected in the cash book and therefore confirmed as received. Yet the none signature was an anomaly that was to be rectified by the accused signing the vouchers later.

The accused does not deny receipt of the monies in the vouchers. Moreover for one voucher, it is only the original he did not sign. He signed its copy. There is therefore no adverse inference to be made from the absence of the signature of the accused.

2. The accused's defence was that when he lodged money to the Treasury, it was mixed with the uncounted money that was already there. This however ..... counter to the evidence that verification entailed the accused giving money, denomination by denomination to PW2-meaning that the money could not have mixed with that already in the Treasury before it was verified.

Also most important PW2 (Musinguzi) was in court and no such thing was put to him.

Moreover such procedure would be contrary to logic. It cannot be logically said that in order to verify money, it has to first be mixed

with unverified monies. This cannot be a logical procedure and less so for a banking institution.

I therefore dismissed the two lines of argument for the reasons I have given.

I did not believe that a person working for a bank and running an office that handles big monies could be as naïve as the accused sought to portray himself. His evidence that he left the money on the floor of his office when he took money to the treasury cannot be believed. Neither is the evidence that he could not use the safe which by evidence was available for that purpose believable. He mentioned that PW2 had the other key to that safe and as such he “accused” could not use the safe in PW2’s absence. First of all, this would run counter to the evidence (which was not challenged) that the safe was put there for the accused’s use). Secondly the contention that PW2 had the other key to the safe was not put to him. I dismiss it as an afterthought.

The issue of Mwebembezi the office attendant who was captured on the CCTV camera pushing a chair from the accused’s office was a major one for the defence.

Evidence was brought through the security officer that this issue was followed up and found;-

1. The accused was the one who asked Mwebembezi to take the chair. This confirms the evidence that no one could access the accused's office without his permission.
2. That the chair was faulty and was removed from the accused's office and taken to the store where such chairs are kept.
3. Mwebembezi was arrested and released after investigations exonerated him.

The possibility of Mwebembezi stealing the money was in my view sufficiently ruled out through investigation.

On the whole, there is sufficient evidence to rule out the possibility of any other person having stolen the money.

4. Giving more money than intended to a Teller or a Teller lodging in less money than intended. This ties in with the possibility of misposting. The accused on his own evidence said that he counted the money he received and confirmed it correct. Moreover the system was checked and no error including that of possibly giving a Teller more than intended was found.

5. The accused's inexperience and lack of training.

The accused sought to portray himself as vulnerable-a person who was incapable of running the office he was given. Evidence was however adduced that he was given six months training and that he could have in any event complained to his immediate boss that he was incapable of

effectively running the office which he did not do. In his defence he maintains that he in fact complained but he was not assisted. His bosses- the Assistant Manager and Acting Manager testified but this was not put to them. Moreover, the state evidence was that the post of Chief Teller was a professional one in which case, the accused was deployed there as a recognition of his capability.

On the basis of the fact that the defence version that the accused protested his deployment was not put to the responsible officers to give them a chance to accept or deny it. I reject it as an afterthought and with it, the who version of inexperience and lack of training. Indeed there is unchallenged evidence that he was given six months training.

Going back to whether the accused stole the money, he does not deny that he had custody of it. There is ample evidence that 20million went missing from his custody.

All possible explanations for the loss have been ruled out.

### **The accused's participation in the theft**

The defence maintains that no one saw or said that he saw the accused steal the money. Also that the fact that there was a shortage is not proof that the accused stole the money.

The state case is hinged on circumstances that the accused received the money and by evidence that money was not stolen by any other person

as I have found since the accused had the key to his office and access to it was restricted and that there was no system error which can explain the loss.

### **Circumstantial evidence**

In *Simon Musoke Vs R (1958) EA 175*) it was held that in a case depending on circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. This means that the circumstances should be such as to create a strong conclusion of guilt.

In this case, there is unchallenged evidence that the accused had custody of the money. There is evidence that the money went missing under circumstances when no other person other than the accused could access it. Also no other explanation can be made for the loss.

I find that these facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.

In *Kibirango John Vs Uganda Cr App No.41/2006*, it was held that theft is a central ingredient of the offence of embezzlement. Theft is committed when property belonging to another person is appropriated with a fraudulent intent.

I have already found that 20million belonged to the bank.



The money having been in the accused's custody and him having failed to account for it raises an adverse inference that he took it under circumstances amounting to asputations and with a fraudulent intent.(see *Natubha 1 Bapubha1 Thakor V R (1957) 1 EA 632*).

Contrary to counsel for the accused's submission, the loss was not a mere anomaly. Rather it was an anomaly caused by theft of the money and by the accused.

All ingredients of the offence of Embezzlement have been sufficiently proved. In agreement with the lady and gentleman assessors, there is sufficient ground for conviction and I accordingly convict the accused of Embezzlement c/s 19(b)(i) and (ii) of the Anti-Corruption Act. I dismiss the alternative charge of causing financial loss.

.....  
**HON.LADY JUSTICE  
MARGARET TIBULYA  
JUDGE OF THE HIGH COURT**  
3<sup>rd</sup> /12/13

## **SENTENCE**

I have considered the submissions of both sides; with the prosecution seeking 7 years imprisonment to deter the accused and like offenders.

The defence submitted that the accused is a first offender and has been on remand for 2 months. Also that he is only 31 years old and should be given chance to reform.

I have considered that the sentencing guidelines indicate a sentencing range of 2 years to 14 years. The law under which the accused was charged however gives an alternative of a fine. Given that the accused is a first offender, is of a relatively young age and has been on remand for 2 months, I sentence him to a fine of 2million or 5 years imprisonment.

In addition I order that he pays compensation of 20million to the complainant bank and exhibits be returned to rightful owners.

Right of appeal explained.

.....  
**HON.LADY JUSTICE  
MARGARET TIBULYA  
JUDGE OF THE HIGH COURT  
4<sup>th</sup> /12/2013**

