

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT ANTI- CORRUPTION DIVISION AT KOLOLO
HCT- 00- SC- 0138- 2012

UGANDA.....PROSECUTOR

VERSUS

GEOFFREY KAZINDA.....ACCUSED

BEFORE: HON. MR. JUSTICE D. K. WANGUTUSI

JUDGMENT

Geoffrey Kazinda was a Principal Accountant in the Ministry of Finance deployed at the Office of the Prime Minister. His duties at the Office of the Prime Minister which are not disputed included, heading the accounts section, advising the accounting officer on financial matters, guide and direct payment process in the office of the Prime Minister, supervising staff, co- signatory of Office of the Prime Minister accounts, bank financial reconciliation, responses to financial audit queries.

In June 2012 the accused fell sick and sought permission from his Permanent Secretary PW9 to stay away from office to go and seek medical attention. His request was granted but the two days were not enough because his sickness was prolonged and he had to travel to Nairobi to seek further medical attention. According to PW9 the Accused was expected back in office by the 20th June 2012 but he did not return nor communicate. On 9th July, PW9 classified the absence as AWOL and wrote to Accountant General Exh D11 giving copies to the Auditor General and the Permanent Secretary/ Secretary to the Treasury. By the time PW9 wrote this letter, he had already received another Principal Accountant PW1, replacing the Accused.

On the 18th July PW9 wrote to the Inspector General of Police a letter Exh D12 headed “ABSENCE FROM OFFICE BY PRINCIPAL ACCOUNTANT MR. KAZINDA GODFFREY AND SUSPICIOUS TRANSACTIONS”. In the letter he complained among other things that he had received information that, a week before the letter, the Accused had sent his driver to smuggle some files from the office which prompted PW9 to put a second lock on the door of Accused’s office. PW9 also complained that the Accused was involved in manipulation of transfer of funds from some programmes. He therefore sought appropriate action from the police.

On the 22nd July 2012 the police are said to have gone to the Accused’s home searched his house and that of his mother Nanfuka. Court was told that in the course of searching Nanfuka’s house they came across Office of Prime Minister’s office documents which bore PW9’s signature. These documents were recovered and shown to PW9 who denied ever signing them. The police concluding that criminal acts had been committed by the Accused charged him with a total of 30 counts, namely one of Abuse of Office c/s 11(1) of the Anti- Corruption Act 2009, one of Making Document Without Authority c/s 355(a) of the Penal Code Act, twenty six of Forgery c/s 342 and 347 of the Penal Code Act and two of Unlawful Possession of Government Stores c/s 316(2). The accused denied all the charges and the Prosecution insisting that it conducted a search and found the documents which formed the basis of the trial in the possession of the accused called evidence in the matter.

Search

Before dealing with the charges it important to find out whether the search took place and what was recovered if any. As to whether the accused’s home was searched, several witnesses testified to that effect. PW7 Ochama Ronald a carpenter told Court that on the 22nd July 2012 he was at his workshop when he was approached by PW8 Steven Kiiza who asked him to go with him and open a door in a house near his workshop. They went

and entered a gate and then into the house and he was led down the corridor where he broke open a door in the presence of a policeman who had come to conduct a search. This evidence received support from PW8 who told Court that he was an area leader and was asked by police to witness a search they intended to carry out at the home of the accused. That he accompanied the police and since the accused was not there, they begun the search at one Nanfuka mother to the accused. The search led them to a locked room, so PW8 went with a policeman and brought PW7 who broke the door in the house and the police conducted a search recovering several documents and a laptop. PW10 Wamala Fred a biological brother to the accused and son to Nanfuka also confirmed that the police searched the house in his presence. He said in his mother's house one of the rooms was locked so they went and collected a carpenter who opened the door, they entered the room and came out with a laptop and some documents. He witnessed and he showed Court where he signed. The room belonged to Peter Lubulwa a nephew to the accused.

PW13 Tusiime Bamanyindo Patrick was the police officer who led the investigation. He told Court how he and PW13 David Orone of the CID Head Quarters and PW14 Samary a Scene of Crimes officer SOCO went together with PW8, broke into a room in Nanfuka's house leading to a recovery of documents and a laptop. This evidence received support from PW13 and PW14. PW14 a SOCO told Court that he took photographs of the scene including the room where documents were recovered.

The photos which also showed some of the documents were tendered in exhibit as Exh P15.

All the witnesses gave straight forward answers and their evidence withstood the rigorous cross examination of a defense counsel. I have no doubt that a search was conducted at the home of Nanfuka mother to the accused with whom they shared a compound.

I am also satisfied from the evidence of all the Prosecution witnesses that documents were recovered from Peter Lubulwa's room.

Documents and Expert Reports

Counsel for the Accused submitted that the experts report should be rejected on the grounds that;

- a) PW11 produced two reports and so it was not possible to tell which of the two was genuine.
- b) PW11 was aware of the source of the Questioned documents and Specimens. Furthermore he knew that PW11 had declared that the signatures on the Questioned documents were not his and for that reason it influenced his findings.

On the ground that PW11 produced two reports and so it was not possible to rely on any of them, PW11 explained that the Questioned documents were used on several cases concerning the offences allegedly committed by the accused and generally the Office of the Prime Minister. Explaining what had happened, PW11 under cross examination said;

“In the first place the whole matter started with one big case and at the same time all the samples were in one big file. It only came at the time of separating the files that the issue of some samples going here and there arose. When we extracted for the first case here, still later on the same day the detectives said some of those samples had to go to the other. That is why some of these that appear here had to be removed; basically that is what prompted the last report.”

He explained that in a crash program to investigate the several allegations of loss of money in the Office of Prime Minister there were several requisitions concerning several transactions coming one after the other, all in respect of the accused. He said that when he handed in the first report he was still dealing with other requisitions.

From that statement it's clear that several demands were made on the same Questioned documents. The answers were in response to the questions in the different cases. The relevance of the report Ex P7 cannot be vitiated because they were more than one report. Handwriting experts could have produced even 3 reports naming them preliminary, draft, final and so on depending on the inflow of requests and questioned documents. That would not be sufficient ground for rejection of a final report.

In any case PW11 had examined the same documents in both requests. In particular he examined documents in respect of PW9's signature and those of the accused.

Asked whether he had made any reference to Q10 he replied,

“Yes my Lord. In the first request the signature of the PS Pius Bigirimana was also queried and my finding was that these signatures were simulations not written by the authors of specimen S1 to S5”.

For avoidance of doubt S1 to S5 is exhibit P6, Specimen signatures of PW9.

All in all, in the absence of anything showing breach of neutrality, I do not see any reason for rejecting the report.

On the ground that prior knowledge by the expert would vitiate his neutrality its necessary to examine the manner in which documents are sent to the handwriting expert.

Documents for examination of handwritings or signatures can be sent to the expert in two ways. The first one and which is preferable is through a responsible person like a police officer. The second one is by registered post. Even where the document is sent through a responsible person, it should be accompanied by a forwarding letter stating the type of forensic services required and the details of enclosures sent. In case of disputed signatures they should be marked “Q” and those sent as standard or specimen for comparison should be marked “S” on receipt of those documents they are registered and the examination process commences.

In the instant case counsel for the accused submitted that since PW9 had written on the document that the signature was not his, it interfered with the neutrality of PW11.

Since the documents are sent with the disputed ones bearing “Q” and the specimen sent for comparison bearing “S” it is easy for the expert even without being informed that the author has denied writing it to infer from the type of services required by the police whether the author has denied the question documents or not.

So even where in the instant case PW9 pointed out noticeably on the documents that he was not the signatory, PW11 would still have known that the purported author had denied the signature.

PW11's findings were to the effect that the questioned documents Exh P5 a-f, P3 and P10 were not signed by PW9. The relevant part of his report Exh P7 reads;

“I have very carefully and thoroughly examined and compared the questioned and specimen documents as required and found the following;

1. There are several fundamental differences between questioned signatures attributed to the permanent secretary in exhibits Q1, Q2, Q3, Q5, Q6, Q7, Q9, Q10, Q13, Q14, Q15, Q16, Q17-Q20, Q22-Q25, Q27-Q34, Q36, Q41-Q49 and Q52-Q53 and the specimen signatures provided in S1-S5. The questioned signatures individually show differences in design of characters, character combinations, character functions, fluency, handwriting skill, retrace, speed, pen lifts.

The differences between them are such that in my opinion, all the questioned signatures on exhibits listed are simulations resulting in pictorial resemblances with specimens and they are therefore not genuine signatures of the writer of specimen signatures.

He concluded thus

“In my opinion the questioned signatures and specimen provided were not written by one and the same person.”

Critically looking at the report and the explanations in court by PW11, the handwriting expert had no difficulty in distinguishing the forged signatures from the genuine ones. He described the differences between them with ease and I have no reason to disbelieve him.

I have considered him as an independent witness who was not for or against either the prosecution or the accused.

Osborn on Questioned Documents 2nd Edition on p288 lays out the procedure to be adopted when submitting questioned and specimen documents to a handwriting expert.

In the procedures Osborn advises that the questioned document should not be accompanied with, or have nothing in them that would suggest that they were the ones suspected.

While it is prudent to follow the procedure I have in this instant case not found anything that would cast suspicion on the neutrality of PW11.

In that regard I am unable to accept the defense's suggestions that PW11 lacked neutrality, and that therefore his evidence was of no probative value in the case. The suggestion by counsel for the accused that the report be ignored is rejected for lack of support.

PW11 denied that he signed the questioned documents; his denial was supported by several things. One of them was that he as accounting officer was supposed to sign the documents last and after the principal accountant in this case the accused had signed. This was the laid down procedure. There was no reason for PW9 to divert from them and sign first, worse still sign blank ones at that. Secondly as the documents as I shall explain latter were not kept by the accused in his house but another house coupled with denial, made it clear that they were hidden. The only person they could have been hidden from was PW9 because if he had signed them there was no need of hiding them.

Thirdly PW11, the handwriting expert after comparison of P9's specimen signature and that purportedly written by him, found after a thorough examination that the signatures on the questioned documents were not made by P9.

Having considered all that evidence, I am satisfied that the purported signatures of Pius Bigirimana PW9' on the documents under consideration for forgery were forged.

POSSESSION

These documents were found in the house of Nanfuka in Peter Lubulwa's room. Can one say that they were in the possession of the accused?

Possession is defined in section 2 of the Penal Code Act as

S. (2)

“includes not only having in one's own personal possession, but also having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person; if there are two or more persons and any one of more of them with the knowledge and consent of the rest has or have anything in his or her or their custody or possession, it shall be deemed and taken in the custody and possession of each and all of them”.

While the Penal Code Interpretation in 2(v) makes it look simple, certain elements must be met before a thing not in actual possession can be said to be possession.

It is necessary to distinguish actual and constructive possession at this point,

In a case of possession, the Prosecution may prove either actual or constructive possession. Actual possession is easily recognized because it is having physical custody or control of an object. The possessor in such a case has immediate contact.

If possession stopped at being in actual contact, it would have been very limited and occasion a lot of injustice in respect of things kept at a distance. Many times a collection of facts will clearly indicate that a person has possession of an object and yet he or she does not have physical contact with it or not even within sight. It was against such background that legislation, see 2(v) of the Penal Code Act, and Court decisions played a role to extend possession beyond actual possession. This is what has led to what is called constructive possession which broadens possession to situations where the person has no hands on custody of an object. It however only happens where the person has knowledge of the object and the ability to control it.

The documents that were recovered in Bukoto were not in the house of the accused. They were in his mother's house. He was at the time they were recovered not in physical or actual contact with them. He could only be in constructive possession if so proved.

Where the case is of constructive possession rather than actual possession, the following must be proved beyond reasonable doubt;

1. That the accused was aware of the presence and character of the documents.
2. That the documents were subject to the Accused's dominion and control.

Looked at critically, a constructive possession case is almost always circumstantial.

Circumstantial evidence as we know it can lead to conviction as long as it produces moral certainty to the exclusion of all reasonable doubt, Uganda vs Leo Mutabazi and 2 others(1972) 2 ULR 3. Manyindo J in Tumuhurwe vs Uganda (1967) EA 328 had earlier quoted from R vs Taylor Wear and Donovan (1928) 21 CR App R 20 that

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial”.

I must add that since evidence of this nature may be fabricated to cast suspicion on the accused, the Court should be warned, as it is that before drawing an inference of the accused's guilt from circumstantial evidence, it has to be such that there are no other circumstances in existence which would weaken or eliminate that inference, per Lord Normand in *Teper Vs R* (1952) AC 489

The foregoing standard is well summarized by Gordiner J in *Alfred Z Rubashoka Vs Uganda* (1971) ULR 17 that

“The inculpatory facts must be incompatible with the innocence of the accused and they must be incapable of explanation in any other reasonable hypothesis than that of guilt”

This is even more important because the standard of a felony conviction of someone who does not actually possess something should be high in order to protect that truly innocent person from framed up circumstances

Turning to the instant case it is the duty of the Prosecution to link the accused to the documents by showing that although the accused was not in actual possession he knew about them, exercised dominion and control over them.

Since there were no eye witnesses who saw him carry the documents to the room, the Prosecution could only link them to the accused by establishing evidence of acts, statements or his conduct, including circumstances that pointed at the Accused's awareness of the presence of the documents and that they were subject to his dominion and control.

So what was his link to the house? What was his relationship with his mother Nanfuka? What was his relationship with his nephew Peter Lubulwa?

His relationship and link to the household in question was described by PW10 Wamala Fredrick, a brother to the Accused. PW10 told Court that in March 2008 after their father

died, they decided to move their mother near the Accused's home. This can only be interpreted, that she moved near the Accused's home for purposes of protection and maintenance. She was in a rented house paid for by the accused. From the words of PW5 his contribution was in respect of food and socially. He did not explain what socially meant.

So who could have brought OPM documents into the house? This was again answered by PW10 when he said,

“None of us works in the office of Office of Prime Minister apart from Kazinda”

The only person in the home who had opportunity to bring and keep the documents in the house was the Accused.

The accused was the bread winner, the provider of shelter and medical care for his sick mother. His nephew Peter Lubulwa stayed therefore under his care and direction. Peter Lubulwa was not there and could not be found, the person with access to the house and the only one who had access to the OPM documents was the Accused.

Furthermore to establish dominion and control one may look at personal possessions found together with the documents recovered. Most important are documents that identify the accused. In the instant case, amongst the documents that were recovered from Nanfuka's house was Exh P3 which was in respect of payments to suppliers for deliveries of food stuff to disaster areas. The Accused had processed the document and he labored at length during his defense to justify its genuineness as a document PW9 and he had acted upon. Also shown in the room are letters addressed to him. These were found together with the other documents in issue.

Under these circumstances the documents found together with Exh P3 in his nephew's room could only have been taken there by the accused. Considering his relationship with his mother and his nephew who were his dependants, I am convinced that the accused had dominion and control of the documents

Counsel for the accused submitted that the documents that were brought to court might have been those that were recovered from the Accused's office since it was also searched.

The Prosecution however through PW14 took photographs of the exterior and interior, as well as the room from which the documents were recovered. These photographs were exhibited, Exh P15.

There was no objection from the defense either through cross examination of PW7, PW8, PW10, PW12, PW13, or PW14 or even by the accused during his unsworn statement that the photos were not of the house of Nanfuka. It is just correct to hold that the photos were of Nanfuka's house.

Amongst them, photo "G" showed the room from which the documents were recovered. It showed the documents displayed on the bed. In photo "J" there is a close range shot of a document requesting the Director of Bank of Uganda to serve OPM with foreign exchange to the tune of USD 37,500. It had one signature and bore serial number 1163118. This document is EXH P5 (f). The yellow material which forms part of the background is also seen clearly in photo "G" which shows the bed on which the documents are displayed. Photo "P" is a close range shot of documents amongst which is a letter addressed to the accused.

The foregoing evidence proves that the documents were recovered during the search of Nanfuka's house.

Furthermore the letter to the accused was a personal possession to the accused. This letter played a major role in showing ownership and thus the dominion and control from which this Court can safely find that the accused was in constructive possession of the documents found in his mother's house

Before I leave the issue of documents, my view is that, the by keeping such important documents such as those exhibited away from his office, and even after taking them home, away from his immediate contact, and away from the house in which he resided,

the Accused can only be said to have hidden them from whoever might have come looking for them. He wanted them away from his office and away therefore from the prying eyes of PW9. The act was illegal and the possession ceased being lawful under those circumstances.

FORGERY

When the questioned documents were recovered and shown to PW9, he denied ever signing any of them. Most of the documents bore only one signature purportedly that of PW9 and a few others bore two signatures purportedly that of the Principal Accountant who is the accused and Permanent Secretary who is PW9.

These documents were sent to the handwriting expert as questioned documents Q1 to Q53. Others sent to the handwriting expert were Exhibit S1-S5, which were specimen signatures of PW9, Exhibit S6 which were sample stamp impressions taken from the stamp of the Permanent Secretary of OPM, Exhibit S7-S8 which were specimen handwriting of Byekwaso Musiho and exhibit S11- S12 which were specimen signatures of the accused.

The handwriting expert was required to examine and compare specimen signatures S1-S5 against Q1, Q2, Q3, Q5, Q6, Q7, Q9, Q10, Q13, Q14, Q15 and Q17- Q20, Q22-24, Q27- Q34, Q36, Q41- Q49 and Q52-Q53.

PW1 did the examination and found that there were fundamental differences between the QS and Ss. He wrote in his report Exh P7

“There are several differences between questioned signatures attributed to the Permanent Secretary in exhibits Q1,Q2,Q3,Q5,Q6,Q7,Q9,Q10,Q13,Q14,Q15,Q16,Q17- Q20,Q22- Q25,Q27- Q34, Q36, Q41- Q49 and Q52-Q53 and the specimen signatures provided in S1-S5.”

In an examination of this nature a handwriting expert should point out the particular features of similarities or dissimilarities between the forged signature and the specimens, Hassan Sahim Vs Republic (1964) EA 126.

PW11 fulfilled that requirement when he wrote in Exh P7

“The questioned signatures individually show differences in design of characters combinations, character formations, fluency, handwriting skill, retrace, speed, pen lifts.

In his opinion;

“All the questioned signatures on exhibits listed are simulations resulting in pictorial resemblances with the specimens and are therefore not genuine signatures of the writer of the specimen signatures”.

He concluded

“In my opinion the questioned signatures and specimen provided were not written by one of and the same person”.

This opinion of a handwriting expert is not water proof as Sammata J wrote in Ibrahim Matuhi Vs Republic (1978) LRT N10 that;

“That the most a handwriting expert can properly say is that he does not believe a particular person or, positively that the two handwritings are so similar as to be indistinguishable”.

See also Hassan Salum Vs R (1964) EA 126, Kit Smile Mugisha Vs Uganda (1976) HCB 246.

It is seen therefore that a handwriting opinion gains strength when supported by eye witnesses or circumstantial evidence.

The opinion of PW11 received support from evidence of the purported author PW9 who said he never signed the documents.

It also received support from the circumstances surrounding the documents Exh P5. According to PW1, it was the Principal Accountant who signs the security papers first and then sends to the accounting officer for the second signature. This position also received support from PW4, who said the Principal Accountant would first sign and then the Permanent Secretary. Court received the same evidence from PW9 himself. None of the documents in Exh P5 a - f was signed by the accused. This was not the established order of processing requests for funds. Furthermore the documents were found at Nanfuka's home where PW9 could not have taken the papers for custody.

Furthermore having signed them, he could not have kept them at Nanfuka's.

In my opinion taking into account the opinion of PW11 and the circumstances surrounding the documents, I am convinced that PW9 was not the author of the signatures on the questioned documents. The signatures were forged.

That being the case, then who committed the forgery?

There was no eye witness to the signing of the documents. The answer again can only be found in circumstances surrounding them. These circumstances as said earlier must irresistibly point at the person and leaving no possible alternative.

The circumstances under which these documents were found and where they were found have been dealt with above. The accused denied knowledge of the documents. Exh P3 which he acknowledged, personal letters, the photographs, the evidence of PW7, PW8, PW10, PW12, PW13 and PW14 put the documents squarely in the room of the accused's mother's house, a house in the same compound as that of the accused. A house whose

rent he paid and a mother dependant on him. It has been established earlier in this judgment that the accused was in constructive possession. It was also the finding of this Court that taking highly sensitive papers home, not keeping them in his own residence but in a room normally used by his nephew who was not available at the time amounted to hiding them. Why would he have hidden them unless they bore something wrong?

Most of Exh P5 and P10 were blank with only one signature. The only wrong thing on the document was the signature. The only person the documents were traceable to was the accused. He was the custodian of the documents at the office. He was the only one from that home who worked in OPM. He denied knowledge of the documents which as has been found earlier in this judgment was a lie.

In Juma s/o Ramadhani Vs Republic Criminal Appeal No.1 of 1973 the Court of Appeal held that lies told by an accused person could amount to corroboration implicating him. It is my view that the lie here was to cover up an act occasioned by him.

All the evidence points' irresistibly at him as the one who forged the documents and it is the finding of this Court.

ABUSE OF OFFICE

In count 1 the accused was charged with Abuse of Office c/s 11(1) e(2) of the Anti-Corruption Act 2009.

The allegation was that the accused did an arbitrary act to the prejudice of his employer, the Government of Uganda by keeping in a private residence computer generated letters namely security papers and cash withdrawal authorization forms bearing a forged signature of Pius Bigirimana the Permanent Secretary, Office of the Prime Minister.

Abuse of Office is committed when the office holder acts (or fails to act in a way that constitutes a breach of the duties of that office.

In such a case the Prosecution must prove;

1. That the accused was an employee of a public body
2. That the accused performed the arbitrary act
3. That this act was in abuse of his authority.
4. That the arbitrary act was prejudicial to the interests of his employer.

Lord Mansfield in R Vs Bembridge (1783) 3 Dong K.B 32 referred to a public officer as one

“Having an office of trust, concerning the public, especially if attended with profit by whomever and in whatever way the officer is appointed.”

He is therefore;

“A public office holder who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of fund provided by the public”

R Vs Whitaker (1914) KB 1283

The accused as a Principal Accountant in OPM was such an officer. He discharged duties which the public was interested in, and he was paid out of funds provided by the public.

More so both the Prosecution and Defense agreed that he was public officer. In the absence of contention to the contrary, it's this court's finding that he was a public officer.

An arbitrary act is,

“ an action, decision or rule not seeming to be based on reason, system, or plan and at times seems unfair or breaks the law”.

It is therefore an action or decision that is based on personal will or discretion without regard to rules or standards.

It is a decision that may be made outside the existing law.

The arbitrary act or omission must be done willfully.

Willful in this case is;

“Deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not”.

Earlier in this judgment Court found that the accused carried to his mother's house very sensitive office documents normally used for transferring large sums of money. It was also this Court's finding that the accused kept the documents in a student's room instead of his house an act which pointed at an attempt to hide them.

Furthermore it was this Court finding relying on compelling circumstantial evidence that it was the accused who forged PW9's signature on Exhs P5, 6 and 10. Keeping the documents in an insecure place was a misuse, mishandling and misapplication of the authority the accused had. More over committing forgery of PW9's signature was breaking the law which on its own was an arbitrary act. He did this willfully and intentionally. He had no justifiable excuse. His actions were arbitrary encased in recklessness and indifference, the sum total of which can only be concluded as Abuse of Office.

It is therefore this Court finding that the Prosecution has proved beyond reasonable doubt the charge of Abuse of Office contrary to section 11(1) and (2) of the Anti- Corruption Act 2009, with which the accused is charged.

FORGERY

The accused stands charged in 26 counts of Forgery c/s 342 and 347 of the Penal Code Act.

The particulars which run throughout counts 2 – 16 are that the accused with intent to defraud or to deceive forged the signature of Pius Bigirimana the Permanent Secretary, Office of the Prime Minister contained in Cash Withdrawal Authorization Forms purporting to show that the same was signed by Pius Bigirimana whereas not.

While in counts 17 to 27 the particulars were that the accused with intent to defraud or to deceive forged the signature of Pius Bigirimana the Permanent Secretary Office of the Prime Minister contained in the Computer Generated Letters (security papers) addressed to Director Banking Bank of Uganda purporting to show that the same was signed by Pius Bigirimana whereas not.

Count 23 has an alternative count which I shall deal with later.

In a case of forgery, the Prosecution must prove the following,

1. That the document is forged /false
2. That it was made with intent to deceive or to defraud.
3. That it was done by the accused.

To forge a document means to make or alter or deal with the document so that the whole or part of it;

(a) Purports to be what, or of an effect that, in fact it is not

(b) Purports to be made, altered or dealt with by authority of a person who did not make, alter or deal with or by or for some person who does not , in fact exist or

(c) Purports to be made altered or dealt with by authority of a person who did not give that authority.

(d) Otherwise purports to be made, altered or dealt with in circumstances in which it was not made, altered or dealt with.

In cases such as this one the meaning of a *document* at times arises.

In my view the word *document* includes anything on which there is writing and anything on which there are marks, figures, symbols, codes, perforations or anything else having a meaning for a person qualified to interpret them.

Such a document need not be complete or have legal force.

This forgery as I have said earlier must have been done with intent of fraud or deceive.

Intent to defraud here means the intention to practice fraud on another person as long as that person shall be prejudiced by the fraud.

The intention to defraud is established even where there is no intention to cause pecuniary or economic loss, *Welham Vs DPP* (1961) AC 103

In the instant case the Prosecution submitted that you need not ascertain the person to be defrauded.

On forgery he submitted that for a writing to be false, it had to be a writing of a party other than the party that makes it and it must indicate attempted deception or similarity. That since the questioned signatures that appeared on the various security papers and Withdrawal Authorization Forms purported to be those of Permanent Secretary Office of the Prime Minister the ingredient was fulfilled. He further submitted that the accused had been proved guilty by circumstantial evidence.

In reply Counsel for the accused submitted that the false documents referred to were security papers and cash withdrawal forms which were simply documents upon which

payments were authorized. He added that they were serialized and that it was clear that they were issued from Bank of Uganda. He contended that there was no proof that the documents had been made by the accused. He relied on *Uganda Vs Kilama Deus CR Case No 169 of 2010* in which the accused was charged with forging signatures of account holders in ledger books. He was cautioned by His Lordships holding that,

“Forgery is making of an instrument purporting to be that which it is not, and not the making of an instrument which purports to be that what it really is but which contains false statements, telling a lie does not become forgery because it is reduced in writing”.

Counsel also cited another *Uganda versus Kavuma No.68 of 2008*.

I am alive to all those authorities and others like *Baignamu Vs Uganda (1973) EA 26* where the Court held that a forged document must tell a lie about itself. In the instant case the security papers and the withdrawal authorization forms which were documents frequently used to transfer and withdraw money had blank spaces specifically for the Permanent Secretary and Principal Accountant or Head of Accounts and the Accounting Officer.

These documents with the exception of Exh P3 had only the signature which purported to be that of the Permanent Secretary in case of the security papers and Accounting Officer in respect of the cash withdrawal authorization forms.

In the filling of the documents the accused had a limited authority in that he could not fill in the Permanent Secretaries part by signing worse still by a forged signature.

In *R Vs Potter and Another (1958) 2 ALL ER 51* William Potter put on a piece of document a signature which represented that of his brother.

It was a standard document usually filed when seeking a driving certificate. The question that arose was whether the document was false since it bore a forged signature. Paul J asked himself and wrote;

“When William Potter put that signature on the document, was that document then a genuine one or a false document? I hold that it was a false document because it was falsely filled in. It was falsely filled in because William Porter knew he had no right to fill it in, he knew that in filling it in the name of A F Potter, he was doing something to deceive, and he knew that he did that with intent that his brother could defraud.

I hold therefore that it is a forgery because it was the making of a false document.”

The above quotation seems to say that the answer lies in the intent of the person forging. He must intend to defraud or deceive and it must be a signature which is not his.

This is important because whenever a person places a signature on a document he is implying intent on his part to agree with the circumstances that are provided in the document.

There are times when even a valid signature might have been fraudulently acquired, or affixed to the document or sequence of events involved in its use are fraudulent.

When one speaks of a document telling a lie about itself, the purpose of the document should not be forgotten.

Standard documents are not intended to defraud. The moment the innocent intent of a standard document becomes fraudulent, it means the author is exceeding his limits and the lie in the document emerges.

The question that arises is whether after the documents had been signed by the accused they purported to be exactly what in fact they were. If that was the case then they were not forged documents because writing is not a forgery when it merely contains statements which are false, but only when it purports to be itself that which it is not.

The answer again seems to lie in whether the author of the signature had or lacked the authority to do what he did. If one with authority signed the document, he would not be guilty of making a false document because the document would be within his authority

In the instant case evidence has it on record that the accused as the Principal Accountant would originate documents like security papers and cash withdrawal authorization forms. He would fill in the requirements and sign his part leaving the other part for PW9 the Permanent Secretary who would sign last. The authority extended to the accused did not exceed that. He could not sign on behalf of PW9 as well. To go beyond his authority would change the face of the document by inserting a fictitious signature. When the accused signed the documents in a place where he was not supposed to sign and used a signature that belonged to PW9, the documents were forgeries in that the details contained therein were inserted without or in excess of authority.

Because the accused had only limited authority which he exceeded, the security papers and Cash Withdrawal Authorization Forms told lies about themselves in material particular, that is that they were valid Security Papers and Cash Withdrawal Authorization Forms on behalf of Office of the Prime Minister which they were not, Mbande Vs Republic (1971) EA 553.

The fact that after the forgeries the accused took the documents home and jealously guarded them is indicative of their importance to him.

He must have intended to deceive or defraud people.

It was immaterial whether the documents were put to use or not. What was important was whether they were deceitful or capable of defrauding anyone.

In Count Two the accused was alleged to have forged the signature of Pius Bigirimana on cash withdrawal form serial number 49251.

This Prosecution exhibit P10 was examined by PW11 against specimen signatures of PExh6 and found not to have been signed by PW9.

Circumstantial evidence pointed irresistibly at the accused as the person who did the forgery. From the above, this Court is convinced that the Prosecution has proved the charge against the accused to the required standard in Count 2.

Count 3 was in respect of Cash Withdrawal Form serial number 49252 Exh10.

It was also earlier in the proceedings proved beyond reasonable doubt that the accused did commit forgery of the document.

Count 4 was in respect of Cash Withdraw Authorization Form SN 49254 and I dealt with it earlier in the judgment where in the accused was found guilty of forging Pius Bigirimana's signature.

Count 5 was in respect of Cash Withdrawal Authorization Form serial No. 49255, EXH P10 and the Prosecution did prove through circumstantial evidence that the accused forged the signature of Pius Bigirimana.

Count 6 was also a charge of Forgery contrary to sections 342 and 347 in respect of cash withdrawal Form serial No. 49257 Exh P10 also earlier proved to have been forged by the accused by signing on to it Pius Bigirimana's signature.

Count 7 was also Forgery C/S 342 and 347 in respect of Cash Withdrawal Form serial number 4928 Exh P10 also proved to have been forged by the accused by placing thereto Pius Bigirimana's signature.

Count 8 was a charge of forgery C/S 342 and 347 of the Penal Code Act, accused proved guilty of forging onto Cash Withdrawal Form SN 49259 EX P10 the signature of Pius Bigirimana.

Count 9 was in respect of cash withdrawal Form SN 49260 Exh P10. The Prosecution also proved that the accused forged the documents by signing PW9'S signature thereon.

Count 10 was forgery C/S 342 and 347 in respect of Cash Withdrawal Form SN 49261 Exh 10. The Prosecution proved beyond reasonable doubt that the accused with intent to deceive or to defraud forged the signature of Pius Bigirimana PW9.

Count 11 was Cash Withdrawal Form SN 49267 EX P10. The Prosecution proved beyond reasonable doubt that the accused in whose possession the document was found with intent to defraud or deceive forged the signature of Pius Bigirimana.

Count 12 in respect of forgery C/S 342 and 347 in respect of Cash Withdrawal Form SN 49269 Exh P10 was proved against the accused that he forged the signature of Pius Bigirimana.

Count 13 also forgery C/S 342 and 347 in respect of Cash Withdraw Form serial No 49270 Exh P10 was proved against the accused that he forged the signature of PW9 Pius Bigirimana.

Count 14 also charge of forgery in respect of Cash Withdrawal Form SN 49271, was earlier proved to have been forged by the accused when he affixed Pius Bigirimana's signature on it.

Count 15 also charge of forgery C/S 342 and 347 in respect of Cash Withdrawal Form SN 49272, was proved earlier in the judgment

Count 16 of Forgery C/S 342 and 347 in respect of Cash Withdrawal Authorization Form SN 49275, was also proved against the accused earlier in this judgment.

Count 17 also of Forgery C/S 342 and 347 in respect of security paper SN 110359, was proved against the accused earlier in the judgment.

Count 18 also a charge of Forgery C/S 342 and 347 of the Penal Code Act in respect of security paper SN 110360 Exh P5, was proved earlier in the judgment.

Count 19, a charge of Forgery in respect of security paper SN 110361, was proved to the required standard against the accused.

Count 20 the allegation was that the accused forged the signature of PW9 Pius Bigirimana on security paper SN 116318, this charge was proved against the accused earlier in the judgment.

Count 21, the accused is charged with Forgery C/S 342 and 347 that he forged the signature of Pius Bigirimana on security paper SN 116319,

Count 22 the accused is charged with intent to defraud and deceive, forged the signature of Pius Bigirimana on security paper SN 116320,

Count 24, the accused is charged with Forgery C/S 342 and 347 that he with intent to defraud and deceive forged the signature of PW9 Pius Bigirimana on security paper dated February 24, 2012,

Count 25 he is charged with forging PW9, Pius Bigirimana's signature on security paper dated November 10, 2011 and lastly in Count 27 the accused stands charged with Forgery C/S 342 and 347 of the Penal Code Act that he with intent to defraud and deceive, forged the signature of PW9 Pius Bigirimana the Permanent Secretary Office of the Prime Minister contained in Bank instruction dated 10 November 2011 purporting to show that the same was signed by Pius Bigirimana.

All these documents were examined by PW11. They were found in the possession of the accused.

Every circumstance as I have already shown earlier in this judgment proves irresistibly that he is the one who forged those signatures. Being the finding in this case that the affixing of PW9's signature to the documents was in excess of his authority, this Court finds that the Prosecution has proved the guilt of the accused in counts 2 – 22 and

24 – 27.

COUNT 23

Making a document without Authority C/S 355(a) of the Penal Code.

This charge emanates from security paper serial number 243607 EX P3.

The Prosecution witnesses PW8, PW10, PW12, PW13 and PW14 told Court that in the course of that search they recovered several documents and that one of the documents was EXH P3.

EXH P3 was a security paper which sought a transfer of funds out of Crisis Management Account No. 000030088000030 of Shs 564,570,000/= . It was intended for payments to suppliers of food for disaster affected areas. The claimants to be paid were extracted from a claimants list EXH D13. In the document accounts section of OPM wrote to PS,

“please find a list of 57 relief food suppliers who have completed delivery and are due for payment totaling Shs 1,691,200/=(shillings one billion six hundred ninety one million and two hundred thousand only).

The purpose therefore is to request you to authorize the accounts unit to pay the suppliers according to their respective tax invoices”.

The Accounts section received the authorization on March 2012 from PS. EXH P3 was based on that authorization.

A critical look at Exh P3 however reveals that it was not strictly on the claimants list Exh D13. Two other suppliers unknown to EXH D13 were included. These were Kawesi Dauda and Sons for 32,430,000/= and St.Paulo Agencies Limited for 36,660,000/=.

The accused in his defense told Court that he later received a verbal authorization. PW9 denied that such authorization was given. He even denied that he signed Exh P3. This exhibit was taken to a handwriting expert PW11 as Exh P10, together with the specimen signatures of PW9 namely S1 – 5 which are EXH P6 and those of the accused S11 –S12 which are Exh P13. It was the finding of PW11 that PW9 did not sign the document EXH P3. As for the accused he himself told Court he signed the document. PW9 also admitted

the authorization. There is nothing in the evidence to show that the accused was authorized to alter the list of claimants.

On the contrary Exh D13 makes it clear that the two companies Kawesi Dauda and St.Paulo Agencies Limited were additions which made the security paper Exh P3 a forgery in that the details contained therein were inserted without or in excess of authority. The accused had only limited authority which he exceeded turning Exh P3 into a lie, Mbande Vs Republic (1971) EA 553.

Furthermore the accused as earlier stated forged the signature of PW9 on Exh P3.

The resultant document made in excess of authority and affixed with a forged signature, can only be said to have been made without authority in breach of section 355(a) of the Penal Code Act.

It is Court's finding that the Prosecution has proved the charge beyond reasonable doubt.

Since Court has found the accused guilty on the charge of making a document without authority C/S 355 (a), the alternative count of Forgery C/S 342 and 347 of the Penal Code in count 23 is abandoned.

COUNT 28

In this the accused was charged with unlawful possession of Government stores, namely security papers with serial numbers 110359,110360,110361,116318,116319,116320,243607 belonging to Office of the Prime Minister.

He was also charged in count 29 with Unlawful possession of Government stores, to wit, Cash Withdrawal Authorization Forms with serial numbers 49251, 49252, 49254, 49255, 49257, 49258, 49260, 49261, 49267, 49269, 49270, 49271, 49272, 49275 belonging to Office of the Prime Minister.

In a charge of unlawful possession of Government stores, the Prosecution must prove,

1. The accused was in possession of the stores
2. That they were reasonably suspected to have been stolen or unlawfully obtained.
3. That the accused had failed to give a satisfactory account of how he had come by the stores.

This type of offence only arises if an accused when brought to court fails to give an account to the satisfaction of the Court how he came by the property.

The legal position is that mere possession of official stores, reasonably suspected of having been stolen or unlawfully obtained, is not in itself an offence, R Vs Chaka son of Otenda (1958) EA 220.

It is the failure to give an account in court which makes it an offence. It is also not a defense for an accused to say he gave an account elsewhere.

On possession of security papers this Court earlier in the judgment found that PW7, PW8, PW10, PW12, PW3 and PW14 on the 22nd July 2012 conducted a search in the house of the accused's mother and recovered security papers serial No116319, 110360, 110359, 110361, 116320, 116318 which were produced in court and exhibited as Exh P5 a – f.

It was also Court's finding that the search party also recovered security paper number 243607 Exh P3.

The accused denied possessing them. He said,

“They were not found in my house and they were not found in my possession”.

This Court did however after hearing both accused find that the documents were indeed in his mother's house, but none the less they were in his dominion and control and therefore he had constructive possession.

On whether the accused had them illegally, it is necessary to look at the purpose. This Court has earlier in the judgment held that it was the accused who forged Pius Bigirimana's signature on EXH P5 a – f and Exh P3. The purpose was to deceive and defraud. That possession therefore was unlawful since they were obtained for an unlawful purpose.

The accused denied being in possession and so did not give an account of how he came to possess them.

Counsel for the accused submitted that the security papers were not Government stores because all Government stores are marked.

Section 316(1) provides that the Minister may give directions as to the marks which may be applied in or any stores under the control of any branch or department, and being the property of Government.

Counsel for the accused seemed to submit that the marking was the manner the item would belong to Government. I however do with great respect differ.

The marks that are applied under section 316 of the Penal Code were simply for easy identification of Government stores.

Government property does not cease belonging to it just because it is not marked. In a situation such as the instant case, the documents in Exh P3 and Exh P5 a – f have the natural emblem, have the address of the Office of the Prime Minister, carry its email address and provisions for signature of a Government Principal Accountant and a Permanent Secretary of Government, if they do not belong to Government, who owns them. In such a situation Courts should take judicial notice which I hereby do that they were Government Stores.

The accused having obtained them for an illegal purpose failing to return them even when he was no longer required at OPM and he having failed to give an account of how he

came in possession, is found by this Court to have been unlawful possession of Government Stores contrary to section 316 (2) of the Penal Code Act.

In count 29 the accused was charged with unlawfully being in possession of cash withdrawal authorization Forms. These forms which were Exh P10 were just as Exh P3 and P5 a – f, found in possession of the accused. He had forged the signature of PW9 which meant he intended them for an unlawful purpose. The forms were therefore unlawfully obtained. He failed to give an account of how he came with possession.

The accused having obtained them for an illegal purpose, failing to return them even when he knew he was no longer required at OPM and failing to give an account of how they came into his possession, is found by this Court to be in unlawful possession of Government Stores contrary to section 316(2) of the Penal Code Act.

All in all the Court finds the Prosecution has proved each and all the charges against the accused person.

The gentleman assessor advised the Court to find the accused not guilty but for the reasons I have given herein above, the advise is with respect rejected.

The Prosecution having proved all the charges beyond reasonable doubt the Court finds the accused guilty in all counts.

He is convicted in one count of Abuse of office contrary to section 11(1) and (2) of the Anti-Corruption Act 2009.

Convicted in counts 2 – 22 and counts 24 – 27 of Forgery C/S 342 and 347 of the Penal Code Act.

Convicted in count 23 of Making a Document without Authority contrary to section 355 (a) of the Penal Code Act

Convicted in count 28 of unlawful possession of Government Stores C/S 316(2) of the Penal Code Act

And convicted on count 29 of unlawful possession of Government Stores C/S 316(2) of the Penal Code Act.

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DAVID K. WANGUTUSI

JUDGE OF THE HIGH COURT

19/06/2013

SENTENCE

The accused person was convicted on the 19th June 2013 on the following charges.

1. One Count of Abuse of Office c/s 11(1) of the Anti-Corruption Act 2009
2. Twenty five Counts of Forgery contrary to sections 342 and 347 of the Penal Code Act.
3. One Count of Making Document without Authority c/s 355(a) of the Penal Code Act.
4. Two Counts of Unlawful Possession of Government Stores c/s 316(2) of the Penal Code Act.

The Learned State Attorney sought for maximum sentences of 7 years for Abuse of Office, maximum sentence for Making Document without authority, 3 years for Forgery and 3 years for Possession of Government Stores.

She referred to the documents that were forged as sensitive.

In mitigation the learned defense Counsel submitted that the convict was a first offender, married with children and dependants. That no money was lost in the commission of the

offences and in addition that he was repentant. He prayed that the convict be fined instead of custodial sentence.

I have considered the submissions of both Counsels. The convict is indeed a first offender. He is a married man and from the proceedings, it is clear that he has a sickly mother. He is also sick, he cuts a repentant pose. Court further notes that he has been on remand since 10th October 2012 which is slightly over eight months and this will be taken into account.

That notwithstanding, the offence of Abuse of Office is committed with impunity going by the statistics of convictions in this Court.

Forging a signature of a Permanent Secretary who was in control of huge sums of money, most of it donor funds to alleviate the plight of disaster victims in the country is a serious matter.

Worse still these were applied on Cash Withdrawal Authorization Forms and Security Papers which clearly shows that the target was the money for disaster victims.

As a Principal Accountant, the convict was the custodian of the funds in OPM on behalf of the Public. He was therefore in a position of trust. This trust was breached by him. The manner in which he executed the crime by accumulating a heap of open like cheques for him to fill in the amounts later is frightening. The result would have been disastrous and would have left the OPM in a very embarrassing situation in the country and internationally.

The act was prejudicial to his employer. It was committed with premeditation with a deliberate intent to cause loss and disruption of provision of very essential service to the disadvantaged disaster victims. These are matters that call for a prison term.

Abuse of Office carries a maximum prison term of 7 years. Considering three and a half years as the starting point in sentencing a convict of Abuse of Office, and finding that the aggravating circumstances outweigh the mitigating factors I would find a 6 year prison

term appropriate, which I reduce by a year to cover the 8 months or so he has been on remand.

In all therefore the accused is sentenced to 5 year prison term on Count 1 for Abuse of Office.

On the same grounds taking the starting point of 1 and a half years in an offence of Forgery, I do, because of the premeditated commission of the offence I have mentioned above sentence the convict to two (2) years prison term on each of the counts of Forgery namely 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27.

The convict is also on the same grounds, sentenced to five (5) years in prison for Making a Document without Authority as charged in Count 23.

On Counts 28 and 29 of Unlawful Possession of Government Stores c/s 316(2) of the Penal Code, after consideration of the mitigating as well as the aggravating factors and taking into account the remand period spent, the convict is sentenced to 2 years prison term on each of the counts.

All the prison terms in this matter shall run concurrently.

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HON.JUSTICE.D.K.WANGUTUSI
JUSTICE OF THE HIGH COURT.

26/06/2013