

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**ANTI CORRUPTION DIVISION**  
**HCT-00-AC-SC-0022-2012**

**UGANDA ::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**KEBBA ISAAC ::::::::::::::::::::::::::::::: ACCUSED**

**BEFORE JUSTICE PAUL.K MUGAMBA**

**JUDGMENT**

In the indictment Isaac Kebba is charged on three counts. The charge in Count I is embezzlement, contrary to section 19(b)(i)(iii) of the Anti Corruption Act wherein it is alleged that accused between August 2010 and October 2011 within Kampala, being employed as an accountant of Oceanfreight (EA) Ltd, stole US\$199,062.80, the property of his employer which came into his possession by virtue of his employment. Count II alleges forgery, contrary to section 347 of the Penal Code Act. Therein it is stated that accused between January 2011 and October 2011 within Kampala, with intent to deceive or defraud, forged bank statements of Account No.01002999001 of Oceanfreight (E.A)Ltd purporting them to have been issued by Citibank Uganda Ltd whereas not. Uttering false documents, contrary to section 351 of the Penal Code Act is the offence charged in Count III. It is alleged therein that between January 2011 and October 2011 at Bweyogerere in Wakiso District accused knowingly and fraudulently uttered false documents, to wit forged bank statements of Account Number 01002999001 to the Accounts Department of Oceanfreight (E.A) Ltd Mombasa purporting them to have been issued by Citibank Uganda Ltd in respect of the said account, whereas not.

Eleven witnesses testified for the prosecution. Those witnesses featured as follows:

PW1: Issa Muslim, Managing Director Oceanfreight (EA) Ltd

PW2: Leonard Oscar Mugenyah, Chief Finance Officer, Oceanfreight (EA) Ltd

PW3: Evanson Mkoji, Accountant Oceanfreight (EA) Ltd

PW4: John Mulwa, Accountant, Oceanfreight (EA)Ltd

PW5: Lillian Babirye, Manager, Oceanfreight (EA) Ltd

PW6: David Sekirembeka, Banker, Citibank (Uganda) Ltd

PW7: Kibwota Jolly Joe Radin, Accountant, Kenfreight (U) Ltd

PW8: Semwogerere Jude Thadeus Borgue, IT Specialist, Kenfreight (U) Ltd

PW9: Priscilla Busingye, Cashier, Kenfreight (U) Ltd

PW10: Muhereza Yason, Auditor, BMR Associates

PW11: Mary Anyango Oriwo, Chief Accountant, Oceanfreight (EA) Ltd.

In his defence accused gave his evidence under oath. He called no witnesses.

The prosecution has the burden to prove the charges brought against the accused person beyond reasonable doubt. See *Sekitoleko V Uganda [1967] EA 531*. It is not the duty of the accused to prove his innocence.

The case for the prosecution is that accused was an employee of M/S Oceanfreight (EA) Ltd. He was the company's accountant at its Kampala branch office. This was between 6<sup>th</sup> October 2003 and 12<sup>th</sup> December 2011. Accused was responsible for collections, banking, facilitating remittances to the head office in Mombasa, preparation of monthly accounts, management of debtors, bank agent and ensuring prompt collection and banking of proceeds of rent. Evidence was given also that Oceanfreight (EA) Ltd operated two accounts with Citibank (U) Ltd. One account was a Uganda shillings account which was number 01002999002, while the other, a US Dollar account was number 01002999001.

It was expected of the accused to bank all company collections on either of the two accounts. During October 2011 it appeared there were some inconsistencies in the accounts submitted by the accused to the head office in Mombasa. When accused was asked for clarification he did not

do so to the satisfaction of his employers. An internal audit was done followed by an investigation audit in consequence. Queries which were not resolved were blamed on the accused and prompted this prosecution.

Regarding the charge of embezzlement in Count I there must be evidence that Oceanfreight (EA) Ltd exists and that accused was an employee of that company. It must be established accused had access to the company money and that he stole that money because of the access available to him. It was not disputed the company exists in fact and that accused was employed by it at its Kampala branch as accountant between 6<sup>th</sup> October 2003 and 12<sup>th</sup> December 2011. In his testimony PW1 said that as accountant accused received money paid to the company, did receipting, banking and collected statements from Citibank (U) Ltd where the company had accounts. It was stated also that accused sent reports to Mombasa head office and that they included bank statements obtained from the bank and summaries of reports regarding the accounts in the branch office. According to PW1 accused physically collected the bank statements from the pigeon hole at Citibank Uganda Ltd. It was further evidence of PW1 that customers would pay for shipping services either by cash or cheques and that accused had to ensure that the money collected was banked. Both PW2 and PW3 related to a report contained in Exhibit P.9 which showed discrepancies in the accounts at the Kampala branch office. Over US\$192,000 could not be accounted for. PW4 testified that he made some observations when he was sent to Kampala to make an internal audit. He noted there were banking slips with no receipts attached, there were receipts in the files with no bank receipts and there were delayed bankings. He stated that bank reconciliations for the Uganda shillings account had not been done for the period January 2011 to September 2011 and noted the banking statements for that period were not available. As for the US Dollar account the bank reconciliations for January 2011 to September 2011 had been done. It was the evidence of PW4 that debtors in some cases had not had their funds remitted to the head office in Mombasa. He cited as an example receipt number 2559 issued in June 2011 which at the time of his report had not been remitted to the head office. He noted then that a bill of lading could erroneously be released to a client without the requisite money having been reflected as collected. Exhibit P.10 is a report concerning his overall observations on the occasion. PW4 went on to state that later in January 2012 he observed an anomaly in the bank statement he was using when reconciling the accounts. It was to do with the transfer of funds from the US Dollar account to the Uganda shillings account. A cheque for

US\$6000 issued to Citibank Uganda Limited was debited in the bank statement PW4 had as US \$9000. Inquiry with Citibank revealed that it was only US\$6000 debited in fact. When the bank statement available to PW4 was sent to Citibank for verification that statement was said to be a forgery. Exhibit P.13 are Citibank statements said to have been issued on 23<sup>rd</sup> March 2011. The false bank statement shows US\$9000 entry yet the Uganda shillings account shows shs 14,280,000/= the equivalent of US\$6000. The genuine bank statements were also tendered in evidence as Exhibit P.14. It was his (PW4) finding also that some money had not been banked. That money was to the tune of US\$199062, he said. Some of the receipts he found reflected in the forged bank statements. The witness mentioned receipt number 2217 for US\$11044 issued to a customer known as Forever living. The receipt appears in the forged bank statement for January 2011. Besides, he observed other receipts appearing in the forged bank statements relating to some US\$145688. Evidence of all this is in the schedule PW4 prepared which along with the attached receipts comprises Exhibit P.15.

In his evidence PW10 stated that he is Managing Partner in BMR Associates. Their firm was hired to carry out an investigative audit on the mismanagement of funds in Oceanfreight (EA) Ltd for the period 1<sup>st</sup> August 2010 to 31<sup>st</sup> December 2011. He said work involved analysis of receipts of the company, banking statement details, all cash books, the reconciliations as well as the management reports which accused prepared as accountant. At the completion of the assignment they put their findings in a report which was tendered as Exhibit P.19. PW10 testified that original receipts could not be traced for verification of receipts said to have been cancelled. As an example at page 6 of the report a sum of US\$19632 where the receipt is said to have been cancelled but for purposes of verification this can't be done as no original receipt is available. There is evidence of plucking out of receipts from the book regarding receipts 2164, 2165 and 2166. It was the opinion of PW10 that responsibility for the missing receipts should be borne by the keeper of the book - the accused. He stated further that of the US\$2,185,125.43 collected only US\$2,170,432.47 was reflected in the cash book. Attention was also drawn to page 7 of the report where out of the collected US\$2,394,965.27 the amount banked was US\$2,179,812.27. He thus realized a discrepancy of US\$199617 he proposed accused should account for. While this is the sum indicated by the audit and the report, I find no basis for the amount US\$199,062.80 apparent in the indictment.

PW11 testified that accused was responsible for the operations of Oceanfreight (EA) Ltd in Uganda. She said accused was expected to receipt funds he received, bank the money received and prepare management accounts. She said in 2011 it was realized Uganda debtors were increasing instead of decreasing. In this connection PW11 cited a client named Foreverliving who got receipt 2217, earlier referred to, on 7<sup>th</sup> December 2010. His payment was not remitted to the head office yet the client maintained he had made payment and received a receipt for it. It was much later accused confirmed he issued the receipt but added that he forgot to release the money.

In his defence accused testified that as accountant for Oceanfreight (EA) Ltd he was not the sole collector for money from the company clients. He mentioned PW9 as well as two other cashiers and three accountants of Kenfreight (U) Ltd as people who collected and receipted money besides banking it. In this connection PW9, in her testimony, agreed she had received some funds on behalf of Oceanfreight (EA) Ltd for which she had issued receipts. She mentioned also that on rare occasions she had banked funds on behalf of Oceanfreight (EA) Ltd. She admitted that besides accused she was banking agent of Oceanfreight (EA) Ltd with Citibank Uganda Ltd. The three Kenfreight (U) Ltd accountants mentioned by accused as involved in handling cash for Oceanfreight (EA) Ltd included Kibwota, Oyao and Muhereza. Remarkably when Kibwota testified as PW7 this piece of evidence was not elicited, even in cross examination. Kibwota stated however that no arrangement existed for Kenfreight (U) Ltd staff to assist accused in his work. In other words what was done was done informally.

As accountant for Oceanfreight (EA) Ltd accused was responsible not only for receipt of funds on behalf of his employer but also for banking that money on his employer's bank accounts. Other duties were mentioned by witnesses such as PW1 and PW11. Accused's employment entailed having access to company funds. This is nowhere disputed. Exhibit P.19 embodies evidence of missing company funds. The prosecution alleges accused embezzled the money. In order to prove embezzlement there must be proof that theft happened. The person accused must have stolen the funds. Section 254(1) of the Penal Code Act states that a person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen steals that thing. From the evidence there is no gainsaying company money could not be

accounted for by the accused. He prevaricated when he was first requested by PW2 to make accountability. He never quite made it. He prevaricated when his services terminated and he was asked to hand over to PW5. Admittedly there is no direct evidence accused stole the money. What is available is circumstantial evidence. In order to convict on circumstantial evidence it is instructive to bear in mind the wisdom in *Simoni Musoke V R [1958] EA 715*. It was held there that in a case depending exclusively upon circumstantial evidence, the court must before deciding upon a conviction, find that the inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of guilt. Accused was the branch accountant in Kampala and he was charged with the safety of his employer's money. Even where accused elected to delegate his responsibilities the onus remained on him. Then there is evidence by PW2, PW3, PW4 as well as PW10 showing various accounting irregularities. What can explain missing original receipts, delayed bankings, delayed fund remittances and false bank statements? PW10 testified that under accused's watch there was no strict control over receipt books, which were kept by Kenfreight (U) Ltd cashiers. Exhibit P.6 is noteworthy. It is an email accused wrote to PW2 regarding receipts like 2550, 2556,2608,2609,2610 and 2629. Accused stated therein that the receipts had been cancelled and that those cancelled receipts had not been issued to clients. Amazingly those receipts the accused said to have been cancelled were nowhere to be seen. Instead accused asked PW2 for forgiveness and understanding given that he had not followed proper procedure. Yet prior to PW2 asking for accountability accused had taken his time and submitted what accounts he deemed sufficient. He it was who prepared all accountabilities submitted to head office from Kampala, the exception being bank statements which originated from Citibank Uganda Ltd. There is nowhere accused brought it to the attention of anyone that there was anything amiss along the way. The mixup regarding the dollar exchange way back in March 2011 should have raised a red flag to him were he so minded. Instead false bank statements were submitted. Of course delay to submit the accounts by accused was caused by fear that funds which he had stolen would be discovered as they eventually were. Accused had had his hand in the till, nay he had stolen his employer's money. And that explains the various irregularities testified to by various prosecution witnesses.

I am satisfied accused was involved in the theft of his employer's money. The gentlemen assessors advised me to find accused not guilty on this count. Respectfully I differ with that advice. I find accused guilty of embezzlement and convict him on Count I.

It is forgery accused is charged with in count II. There is undisputed evidence PW2 requested accused to send accountability to him. The false bank statements were sent to PW2 electronically through an account at Kenfreight (U) Ltd which accused used as administrator. The offence of forgery involves the making of a false document with intent to defraud or deceive. Accused denied making the offensive statements. No evidence was led to show that accused forged the false documents. The gentlemen assessors advised me to find accused not guilty of the charge. I agree with their opinion and acquit accused on count II.

In count III accused is charged with uttering false documents. The charge states that anyone who knowingly and fraudulently utters a false document commits an offence. The statements are the false bank statements. They were sent to the head office in Mombasa after PW2 had asked accused for accountability. They were sent in answer to the request. They were sent electronically from accused's email account at Kenfreight (U) Ltd. The statements related to accused's work in the Kampala office. They related to data which was in issue. In fact the statements were sent to PW2 in the wake of his request for accountability through an email address accused used. It is curious to note that the inquiry by PW2 evoked details of events that had taken place much earlier in March 2011 (over ½ a year earlier) and which had, according to PW4, strangely not been submitted to head office. The statements related to a transaction where US\$6000 had supposedly been withdrawn from Oceanfreight (EA) Ltd United States dollar account at Citibank to purchase Uganda shillings. Instead the amount withdrawn turned out to be US\$3000 in excess. Needless to say accused was the company accountant in Kampala at the time of the transaction and the reasonable inference is that accused knowingly submitted the false statements in issue in order to defraud his employer. If any explanation is sought for the delay in submitting accountabilities it should be that he was aware of the discrepancy between the actual and the sham bank statements he eventually submitted. In his position accused should have detected and if necessary mitigated the queries that eventually became obvious. He did not. On the evidence available no one else except accused could have submitted the false statements in issue. He did so as a stratagem to defraud his employers since he was being asked hard questions. I am satisfied the prosecution has proved this charge beyond reasonable doubt. The gentlemen assessors advised me to find accused not guilty. I respectfully disagree with their opinion. I find accused guilty on Count III and convict him accordingly.

In the result accused is acquitted on Count II but convicted on Count I and Count III.

**SENTENCE**

I have heard the submissions of the learned State Attorney as well as those of learned counsel for the convict regarding possible sentence. I have heard also what the convict himself had to say on the issue. Besides consideration of the offences involved I have taken into account what effect any sentence passed will have on the convict and society as a whole. It is not in issue the convict is a young man who before this matter came up had led his life apparently without blemish. He had managed to keep his job as accountant for about 8 years. By his admission he has several dependants who look to him for saccour. One hopes they were not the reason for his transgressions. The fact is he was placed in a position of trust for so long by his employer. He betrayed that trust by dishonestly applying money due to his employer to himself and to purposes suiting himself instead. Such behavior should be eschewed at any rate.

It is for the above reasons I find a custodial sentence suitable to remind the convict and persons of similar attitude that crime does not pay. A sentence of 5 years' imprisonment on Count I and 4 years' imprisonment on Count III should be appropriate. They are to run concurrently. In addition the convict is to pay compensation of US\$199617 to M/S Oceanfreight (EA) Ltd. These are the missing funds.

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**Paul K. Mugamba**

**Judge**

**25<sup>th</sup> April 2013**