

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(ANTI CORRUPTION DIVISION KOLOLO)
CRIMINAL CASE NO 0008 OF 2014

UGANDA:..... PROSECUTOR

VERSUS

A1 KALUMBA CHARLES)

A2 KASULE DAVID) ACCUSED

A3 KYEYUNE MITALA JULIUS)

JUDGMENT

BEFORE: HON JUSTICE JOHN EUDES KEITIRIMA

The Accused persons Kalumba Charles, Kasule David and KyeyuneMitala hereinafter referred to as A1, A2, and A3 respectively are indicted with the following offenses:

Count 1 is Causing Financial loss c/s 20(1) of The Anti-Corruption Act 2009.

The particulars of the offence are that A1 on the 6th day of December 2013 at Centenary Rural Development Bank Ltd, Kabale branch in Kabale district, being a person employed by the said bank as a banking officer, in performance of his duties, did an arbitrary act of fraudulently crediting a/c no. 3410800002 of Global Research Network with Uganda shillings 975,070,000/= knowing or having reason to believe that the act would cause financial loss to Centenary Rural Development Bank Ltd, and did cause financial loss of Uganda shillings 300,000,000/=.

A1 pleaded not guilty to the first count of the indictment.

Count 2 is causing financial loss C\S 20(1) of The Anti-Corruption Act 2009.

The particulars of the offence are that A2 on the 6th day of December 2013 at Centenary Rural Development Bank Ltd, kikuubo branch in Kampala district, being a person employed by the said bank as a branch manager in performance of his duty, authorized fraudulent withdrawal of shs 300,000,000/= (three hundred million shillings) from account no.341080002 knowing or having reason to believe that the act would cause financial loss to the said bank.

A2 pleaded not guilty to the second count of the indictment.

Count 3 is theft c/s 254(1) and 261 of the penal code act.

The particulars of the offence are that A3 on the 6th day of December 2013 at Centenary Rural Development Bank Ltd kikuubo branch, Kampala central division in Kampala district stole cash Uganda shillings 300,000,000/=(three hundred million shillings) the property of the said bank.

A3 pleaded not guilty to the 3rd count of the indictment.

The alternative count is receiving stolen property c/s 314(1) of the penal code act.

The particulars of the offence are that A3 on the 6th day of December 2013 at Centenary Rural Development Bank Ltd, kikuubo branch in Kampala district, received cash Uganda shillings 300,000,000/=(three hundred million shillings) belonging to the said bank from a/c 3410800002 knowing or having reason to believe the same to have been feloniously stolen or obtained.

A3 pleaded not guilty to this alternative count.

Count 4 is conspiracy to defraud c/s 309 of the penal code act.

- i. The particulars of the offence are that all the accused persons and others still at large, during the month of December 2013 in the districts of Kabale and Kampala and other diverse places in Uganda, conspired to

defraud the said bank of Ug.Shs 300,000,000/=(three hundred million shillings).

All the accused persons pleaded not guilty to the 4th count of the indictment.

The prosecution called a total of 18 witnesses to prove their case.

With regard to Count I, the Prosecution had to prove beyond reasonable doubt the following ingredients of the offence:

- I. That A1 was employed by the said bank by the 6th December 2013.
- II. That A1 must have done an act of crediting account no.3410800002 of Global Research Network with Uganda Shillings 975,070,000/=(nine hundred and seventy five millions, seventy thousand shilling).
- III. That A1 must have done so knowingly or having reason to believe that such act of crediting the said account in issue would cause and did cause financial loss to the said bank in the sum of shs 300,000,000/=(three hundred million shillings).
 - i. **Whether A1 was an employee of Centenary Rural Development bank limited as at 6th December 2013.**

The evidence adduced by PW1, Julius Tumuramy, PW2 Mucunguzi Dennis Matsiko and PW6 Florence NamataMaweje who tendered in exhibit P7 the appointment letter of A1 and which evidence was never disputed by A1 was proof beyond reasonable doubt that A1 was indeed employed and was an employee of Centenary Rural Development Bank Limited as at 6th December 2013.

- ii. **Whether A1 did an act of crediting account no. 3410800002 of Global Research Network with Uganda shillings 975,070,000/= (shillings nine hundred seventy five millions and seventy thousand shillings only).**

Evidence led by the prosecution was that A1 was a teller of the said bank at Kabale branch. According to the evidence of PW1, he noticed at around 1:30pm of the 6th day of December 2013 that A1 had a huge balance in his teller drawer in excess of Uganda shillings 1,000,000,000 (one billion shillings). According to

PW1's evidence, this was as a result of numerous credits of Uganda shillings 50,000,000/= (fifty million shillings) entered on A1's computer. According to PW1 this was abnormally high value in A1's tiller as a teller should not have over 30 million shillings because anything in excess should go to the treasury. That when he went to A1's till he never found him but found him in the corridor and when he asked A1 what amount of money he had in his till, A1 told him that he had 20,000,000/=(twenty million shillings). That when PW1 informed him that he had over 1 billion shillings in his till, A1 responded that he was not aware of that and added that his computer had problems. That together they went back to A1's till and found when his computer was logged off. That he then asked him to log on again which A1 did. That when A1 tried to enter the equinox system, it denied him access and according to PW1 he got the impression that A1 had not logged off equinox properly. That he then rushed back to his table to check the details of the deposits and noticed that 300,000,000/= (three hundred million shillings) had already been withdrawn from Kikuubo branch on the account of Global Research Network. That he then put a halt because A1 had denied knowledge of those deposits. That PW1 then called one Nansubuga Winnie the supervisor of kikuubo branch and asked her not to allow the client to take the money as he suspected there was a fraud.

PW1 further testified that he then called the business technology department to find out the source of the transactions. That he then talked to Robert Kerumundo(PW5) who asked for the IP address of the computer, which he then gave him and after a short time PW5 called back and told him that there was no external interference with the computer and that the transactions were internal. That he then recorded the time the transactions were made and went to the supervisor so that they could go to the CCTV camera and see what was happening during the time the transactions were made. That he also called the general manager one Tugume Robert and informed him of what had transpired. PW1 further testified that when they played the camera for the time the transactions were made, they were able to see A1 pick a piece of paper from his pocket and was posting something on his computer which he did several times. That A1 was posting on his computer without vouchers and at the time there were no clients

on his till. That they were also able to observe that A1 was making some communication on his phone.

The evidence of PW2, Mucunguzi Dennis Matsiko the Kabale branch supervisor was to the effect that on the 6th December 2013 he was the acting supervisor of Kabale branch. He then received a call from the branch manager kikuubo to confirm a deposit by A1. That it was around midday plus. That the said manager asked him to confirm a deposit of 975,000,000/= by A1 on A3's account. That when he went to crosscheck the deposit with A1, A1 confirmed the deposit and he confirmed the deposit to A2 on phone. That later on when together with PW1 they asked A1 for the physical cash, A1 informed them that he had problems with his computer and when they later checked his vouchers there was none reflecting the said amounts of money and that the figures were just on A1's computer.

PW5, Kerumundu Robert who used to work for Centenary Rural Development bank limited as a core banking supervisor confirmed what PW1 had testified about him with regard to what happened at the bank's branch in Kabale. He also stated that he found out that the fictitious postings on A1's computer were between 9:00am and 11:00am. This witness then tendered in court the transaction detail report which indicated that A1 was the officer who had credited the account of Global Research network with 975,000,000/=. The said report was tendered in court and marked as exhibit P6. This report indicated that the posting officer was Kalumba Charles (A1); the depositor was one Wamba Jean Pierre Goma. It also shows that the said postings were made between 9:28 AM to 10:08 AM. On cross examination PW5 testified that he extracted exhibit P6 from the audit trail.

The prosecution also adduced evidence of PW8 Jane Mbabazi the manager core banking system who testified that she was given A1's name and his user ID and she was able to get the teller transactions report for A1 showing A1's user name and transactions on Global Research Network account which was showing a deposit of 975,070,000/= on the 6th December 2013. This teller transaction report was tendered in court and marked as exhibit 10. It was her evidence that it was A1 involved in the posting of the transactions on exhibit 10.

The other prosecution evidence on this ingredient was that of PW10 Henry Senkenzi the manager in charge of security investigations. He testified that he went to Kabale on 10th December 2013 to secure the digital closed circuit television footages for the 6th December 2013 covering A1's cabin. This witness then displayed the CCTV footages and the court was able to observe the following:

- A1 is seen in his cabin at 8:43am on teller 3 and seen texting on phone.
- The first customer appears at 8:49 am.
- At 9:05am A1 is seen pulling out a paper from his shirt and posting something on his computer. He is seen operating the computer normally and also attending to some customers by 9:25am. A1 then continues to post something on his computer referring quite often to the piece of paper he has.
- At 9:38am A1 is still seen working normally and still seen posting something on his computer with no client at his till. This goes on with few client interruptions who clearly are without any bulk deposits.
- At 10:05am A1 is seen making a phone call in his cabin.
- At 10:20am A1 is seen switching off the system from down and leaving the cabin.
- A1 comes back to the cabin at 10:42am and seen counting money.
- At 11:11am A1 is seen texting on his phone.
- At 11:24am A1 is seen directing a client who had come to his till to go to another till.
- A1 is seen operating the system occasionally and also attending to some clients. He continues to text on his phone.
- At 1:44 PM A1 switches off his system from down the counter.
- PW1 comes to A1's cabin at 1:47pm.

The CD'S of these footages were allowed in evidence and marked as exhibits P.13 and P.14.

The prosecution also adduced evidence of PW15 Francis EkemuOboyo the Chief Manager core banking and IT controls who explained exhibit D1 for A1 and

testified that the bank's equinox system was free from any external attack and had zero vulnerability. He testified that the banking applications were secure.

PW16 Lawrence Buwembo the Forensic internal auditor of the said bank also testified that he investigated the fraud by interviewing the branch manager, the assistant branch manager, the branch supervisor and head teller. He testified that he also visited the cabin the fraud was carried out from and he checked the core banking system. That he then confirmed that that the questioned postings were done within a short period of time without a client. That in all there were 21 transactions one of 70,000/= the other of 25,000,000/= and 50,000,000/= 19 times. That he was able to conclude after viewing the camera footages that the information posted was from a piece of paper. He also testified that tellers have limits of 50,000,000/= per transaction and that is why the whole amount could not be posted at once and had to be split. In all what had been fraudulently posted was 975,070,000/=. This witness stated that he produced a report of his findings. He testified that basically he concluded that it was a fraud initiated by A1

at Kabale branch and that the fraud would have been stopped if A2 had not disregarded some policy guidelines. That there was a loss to the bank to the tune of 300,000,000/= (three hundred million shillings). That he also found that there was no cash back up for the said transactions. That he then presented the report to his supervisor PW12 who reviewed the report and commissioned it. That by the time he wrote the report PW12 was on leave. Earlier on PW12, Michael Nyago testified that he had instructed PW16 to establish the facts behind the said incident. He had also stated that PW16 came out with findings which were contained in a report. He confirmed what PW16 had presented to him. This report had been signed PW17 Patrick Mayanja an auditor of Centenary Bank who testified that he had signed the report since his General Manager (PW12) was on leave. The report was tendered in by the prosecution and marked as exhibit P17.

The evidence of the investigating officer PW14 Makhoha Samson who purported to take a charge and caution statement from A1 was summarily rejected by the court when it out in evidence that A1 had spent beyond the statutory time in police cells and therefore one could not accept a charge and caution statement obtained in violation of A1's constitutional right. This was especially so when the

statement indicated that it had been taken on 11th December 2013 and yet A1 had been arrested on 6th December 2013 five days in police custody! This was a clear violation of the constitution provision under **article 23(4) (b)** which provides that ***“A person arrested or detained-shall if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.”*** Therefore a charge and caution statement taken from a person who has been detained in the police cells beyond the said time frame as provided in the constitution, is a violation of the constitution and that statement is illegally obtained and hence inadmissible in our courts of law. The courts should not be seen to admit such evidence for if they did they would be condoning the violation of the constitutional provisions with regard to the timeframe of arrest and detention of suspects in police custody.

A1 in his defense stated that he had never worked with A2 or dealt with A3. That he only got to know A2 on 11th December 2013 in prison and knew A3 on 13th December 2013 at kireka special investigations unit (SIU). He also testified that it was true he informed PW1 that his computer had a defect and was hanging. He stated that his computer would freeze and at times it wouldn't receive any commands when it was static. He stated that this problem had been on for a long time ever since he joined the bank and that they would call the IT personnel to intervene. He further stated that he had reported this problem to management and specifically the manager and IT supervisor. He further testified that the IT supervisor took action and she gave him the application software to use in case equinox shut down. That the IT supervisor also gave him the commands to use to see whether the computer was communicating or available on the network.

A1 further testified that on the 6th December 2013, his computer was experiencing unstable connections and at times it would hang. That given that the computer had hang or frozen he decided to shut it down from the socket. That he switched it off because it was one way of troubleshooting. That equinox denied him access because the previous session had not been logged off properly. That the computer was hanging and the mouse cursor could not move anymore. That the computer was static and could not receive any command.

A1 further testified that he never had any knowledge of the transactions on Global Network Research account that morning and only knew about it that afternoon at around 1:45pm-2:00pm when PW1 came and asked him how much money he had. That when he told him that he had around 30,000,000/= (thirty million shillings) PW1 informed him that he was seeing more than one billion shillings in his drawer. That PW1 then moved to his cabin and when he logged on, he realized it was true as more than a billion shillings was being reflected as being on his banking drawer. That he, PW1 and the banking supervisor went through the transaction history and that is when he got to know that the said amount of money had been posted on Global Research account. A1 denied having posted the said amount and that he never even knew the owners of that account. He also stated that he never saw the said Jean Pierre and neither did he know him. He further stated that there were 8 computers used by tellers and the computers were in cabins which were not under key and lock all the time. He also stated that at times user names and passwords were shared on a personal basis.

A1 further stated that his computer was not forensically examined and that the IT supervisor Nagayi was not present on that day as she had taken her annual leave 2 days before the incident.

A1 further stated that the piece of paper seen during the footage of the video recording contained computer commands given to him by the IT supervisor before she left for her leave. That the commands were to test and see whether the computers were communicating well with the rest of the computers on the network. A1 emphasized that the paper had no details of Global Research network. That PW1 ordered the security officer to search him and everything on him was retained including the said piece of paper. That his two phones were also removed as well as his wallet and UTL simcard. That he only got them back when he was released on police bond at Kireka on the 14 December 2013 but that he never got the said piece of paper. A1 further stated that he was also chatting via outlook and equinox. He testified that they were going to have the end of year party and he was chatting with colleagues from Rukungiri and Kanungu who were coming for the end of year party.

A1 further testified that on phone he was talking to his brother called Sam Kabuye and that they were allowed to use their phones as long as it did not take long and not in front of their managers. He stated that he never knew the telephones of A2 and A3 at that time.

A1 further stated that PW2 came to his till to inquire whether he had received a deposit of about 9,000,000/= (nine million shillings) and he replied in the affirmative. He stated that by then he had received a deposit of 9,158,000/=. He denied having been asked by PW2 about Global Research Network account. A2 also stated that he was referring customers to his colleagues as seen in the video footage because his system was not working at that time. He also stated that he was allowed to use services of mail and outlook in absence of customers. He denied having conspired with A2 and A3 as he never knew them before. He also testified that he was able to post what he received and it could have been a third party who posted the other postings (fictitious).

A1 called a witness DW1 for A1, Semakula John who stated that he was a forensic examiner. He was shown exhibit P6. He stated that the exhibit did not show the computer that was used for the transaction. That exhibit P6 should have had the IP address of the computer, the mark address of the computer name that was used and hence exhibit P6 could not wholly inform you that A1 posted the said transactions. He also testified that if one had the username and password of A1 and logged into the system and used the same credentials, the system would still show that it was A1 who was the posting officer.

When DW1 for A1 was shown exhibit P10 he again stated that he could not conclusively confirm that the transactions indicated on the said exhibit were indeed of A1. He further testified that when the system captures the user account details without capturing the user account machine details, it becomes impossible to tag a physical person using a particular computer to the transactions as reflected in the back end of the system.

DW1 for A1 further testified there were many ways through which a user's password can be compromised. That such means could include usage of key loggers which capture the user's password and that once the user's password is

captured anyone with the user's password and name can log onto the system and appear as if it is the stolen user's account that has been used.

DW1 for A1 was shown exhibit D1 which is the Vulnerability Assessment and Penetration Testing Report (VAPT). This witness pointed out from the report, use of weak and default credentials and that the report also indicated that some of the user names and passwords were being transmitted in clear texts which meant that anyone spying on the network or monitoring it could compromise any user's account details.

Dw1 for A1 concluded by testifying that without the computer used by A1 being subjected to forensic examination it cannot be confirmed that the computer used by A1 is the one that was used to post the transactions referred to in exhibits P6 and P10.

Counsel for A1 then submitted that the prosecution's evidence was largely based on suspicions and at most circumstantial evidence against A1. That this was clearly indicated from the testimonies of PW16-the forensic investigator and PW18 the police investigating officer and PW10 who retrieved the CCTV footages (exhibits P13 and P14). It was counsel for A1's submission that the principle of criminal law is that a suspicion however strong it may be cannot fix an accused person with criminal responsibility and hence the evidence of the prosecution which is largely based on suspicion of A1 must not be relied on to convict A1 but rather to set him free.

Counsel for A1 further submitted that the said evidence can at most be referred to as circumstantial evidence and the where evidence is circumstantial, it must be such that it produces moral certainty beyond reasonable doubt that it is the accused who committed the offence with which he is charged. That the facts proved by the prosecution must be such that there is no other co-existing circumstances which would destroy the inference of guilt. That in order to support a conviction based on circumstantial evidence it must point irresistibly to the accused as the one who committed the offence. Counsel cited the case of **Obwana& others versus Uganda (C.A)** reported in **East African Law Reports Vol 2 at pages 333-341** to support his submission.

Counsel for A1 further submitted whether exhibit P6 (the transactions details verification form) proves that A1 posted the transactions with such certainty beyond reasonable doubt. It was counsel for A1's submission that though PW5 testified that he had extracted exhibit P6 from the audit trail from within the system, PW5 never produced the audit trail itself. That according to the evidence of DW1 for A1 who is a forensic examiner, exhibit P6 could not conclusively connect A1 to the postings of the transactions in issue. Counsel invited Court to look at "En Case Legal Journal-The practitioner's guide to legal issues related to digital investigations and electronic discovery" 2011 edition-Wonder share PDF Editor.

That the said publication gives the most update provisions on authentication of computer evidence and among the key requirements is forensic examination of the computer in issue. That for the computer to be forensically examined it has to be seized and the forensic examiner must show the process used to retrieve the print data form the computer, technology used results. He refers to pages 32-34 of the Journal.

Counsel for A1 further submitted that the principles of the said journal had been cited with approval by Hon. Justice Paul. K. Mugamba in **HCT-00-AC-SC 0084-2012 UGANDA VERSUS GUSTER NSUBUGA & 3 OTHERS** where the learned Judge emphasized the need to adduce primary evidence as the best evidence. That with regard to this case it was clear that;

- i. PW5 was not a forensic examiner and never forensically examined any computer.
- ii. Exhibit P6 was not connected to any computer forensically examined.
- iii. The rules as to computer forensics and authentication of computer evidence, recovery thereof as enunciated in the said journal were never followed by PW5.

Counsel for A1 invited court to find that the evidence of DW1 for A1 on exhibit P6 was more credible and casting doubt on whether A1 was responsible for the postings. That in event any doubt was raised then that doubt should be resolved in favour of the accused person.

Counsel for A1 further submitted whether exhibit P10 (The Teller Transactions Report) proves beyond reasonable doubt that A1 posted the transactions in issue. Counsel submitted that the evidence of PW8 raises the possibility of an imposter who after illegally accessing a user's credentials can steal data and that PW8's evidence corroborates that of DWI for A1. That according to the evidence adduced, one Mark Nkurunungi knew A1's password and the said Mark Nkurunungi was never called to testify. That therefore the actions of a third party have not been ruled out by the prosecution.

On the use of the phone by A1 counsel submitted that the prosecution evidence clearly showed that there was no prohibition on the use of phones in the cabins but that it was rather discouraged and advised that it be minimally used. That in any case A1 had testified that he was only calling his brother called Sam Kabuye. That the arresting officer who arrested A1 and seized his phones and Robert Tugume the manager who reviewed the phone calls dialed were never called as witnesses to confirm or deny A1's story. That no call data of A1's phones was tendered in evidence and hence the prosecution had failed to connect A1's phone calls he made and received to the postings in issue.

On whether the use of the keyboard by A1 and working on the computer without clients was evidence of posting of the said transactions in issue, counsel for A1 submitted that A1 testified that he had used the computer to chat with colleagues logged onto the same equinox network and in particular referred to the following day annual staff party. That this fact was never challenged by the prosecution. That the footage shown in court could not show what was being posted on the computer and that this fact was conceded to by PW10 and PW16.

On whether the piece of paper used by A1 contained the information of the account number of Global Research Network, counsel submitted that there was no prosecution evidence adduced on what was written on the said paper although the paper had been retrieved from A1 at the time of his arrest.

Counsel further submitted that with regard to A1 switching off the computer it was because A1's computer had problems and that A1 had testified that he had

been advised by the IT supervisor to switch off the computer from the socket as one of the ways of trouble shooting.

On referring customers to other tellers, counsel for A1 submitted that evidence had been led to show that A1 had problems with his computer. On being denied access to equinox counsel for A1 submitted that as adduced from the evidence on record, A1 had not properly logged off from equinox.

On confirmation by the deposit by PW2, counsel submitted that there was a contradiction from PW2 on what exact figure he was asked to confirm. That it was PW2'S word against that of A1 and that there was no documentary proof to the effect.

Counsel for A1 further cited the Kenyan case of **KABIRU VERSUS REPUBLIC (C.A OF KENYA) 2007 [1] EALR pages 107-111** where it was held by the learned Justices of appeal that motive is a factor to be taken into account as part of circumstantial evidence on the culpability or otherwise of an accused person.

Counsel for A1 concluded by stating that there was no evidence adduced to hold A1 guilty of having knowledge or reason to believe that crediting such an account would cause and did cause loss to the said bank.

A1 acknowledges in his defence that he was able to see the fictitious postings when PW1 came to his cabin and together they logged on his computer and found the said postings. This was also done in the presence of PW2. A1 claims in his defense his computer had developed problems in the morning and that is why he had decided to log it off. Apparently from the evidence on record the IT manager was away on leave and I would have expected A1 to report this problem to the top management as early as when he found out the problem. However from the evidence of PW1 it was only at around 1:30pm when he realized that A1 had over 1 billion shillings in his drawer and when he later found him in the corridors of the bank having failed to initially find him in his cabin, that A1 told him that his computer had problems! One wonders why A1 had to wait until he was confronted by Pw1 at around 1:30pm for him to state that his computer had problems! Much as A1 claimed he had reported this matter earlier to

management, there was no other evidence he adduced to back up his defence. From the CCTV footages that were shown to court by PWI this Court was able to observe the following:

- A1 was seen in his cabin by 8:43am on the said date.
- A1 is seen texting on his phone and attends to the first customer at 8:49am.
- At 9:05am A1 is seen pulling out a paper from his shirt and posting something on his computer. A1 is also seen attending to some clients. He is also seen to continue posting something on his computer. Time check is around 9:25a.m.
- At 9:38 A1 is seen to continue working normally and still seen posting something on his computer with no client being attended to. This goes on with a few clients being attended to and no one is seen with heavy deposits of money.
- A1 is then seen making a phone call at 10:05a.m.
- At 10:20am A1 is seen switching off the system from down and he leaves the cabin.
- A1 comes back at 10:42a.m and is seen counting money.
- At 11:11am A1 is seen texting on his phone.
- At 11:24am A1 is seen directing a client to another till and still seen operating the system and occasionally attending to some clients. In the absence of clients he is also seen texting on his phone. This goes on till 1:45p.m when A1 switches off his system.
- PWI comes to A1's cabin with A1 at 01:47:32 and A1 finally leaves his cabin at 2:13P.M.

This footage evidence was tendered in court by form of CD'S and marked as exhibits P.13 and P.14.

In his defense A1 seems to justify the entries as computer commands that were given to him by the IT supervisor before she left for her leave and that the commands were meant to test and see whether his computer was communicating well with the rest of the computers on the network. This is what

A1 would want this court to believe he was doing all that time. A1 however does not explain as seen from the footage why he was able to attend to some clients and some of their transactions on his computer if his system was faulty! In his own evidence A1 states that when PW2 asked him whether he had received any deposits worth 9,000,000/= (nine million shillings) he admitted that he had those deposits in his drawer. This draws the inference that A1 was still able to post some transactions on his system and that is why he was able to have the balances he acknowledged he had to PW2. Indeed exhibits P.6 and exhibits P.10 which were A1's teller transactions and most especially exhibit P.10 clearly indicate that A1 was able to post some other transactions from genuine clients apart from the fictitious ones as the CCTV footage clearly reveals. That is why some of those transactions can clearly be reflected on A1's daily transaction of 6th December 2014. That is also why I do not agree with counsel for A1's submission that the prosecution should have despite the above glaring evidence, still gone ahead to forensically examine the computer A1 was using. I do not see any other value that would have added. Much as I agree that it was not possible to visibly see from the footage what A1 was posting on his computer, the activities of A1 seen from the CCTV footage produces certainty beyond reasonable doubt that A1 made the postings as reflected in exhibits P.6 and P.10. I do not believe his defence therefore that he was simply posting commands he had been given by his supervisor for all that time he was seen working on his computer. I equally do not believe in his defence that he was chatting with his friends in preparation of a party they intended to have. The actions of A1 reveal that he was engaging in some "serious" business and would be seen continuously consulting on his phone. No one else was seen from the footage as having entered his cabin. Even if A1 claims that other people had access to his password, there was no evidence from the footage to show that some other person had entered his cabin to post the said fictitious transactions.

It was also not enough for A1 to claim that the security system was susceptible to external hackers. A1 should have adduced evidence to show how the hackers had penetrated his system to make those fictitious postings. The prosecution's duty was to prove that the said postings originated from A1's computer and this they did.

A1 acknowledges in his defense that he saw those postings on his computer when they were shown to him by PW1. No other person is seen from the footage as having entered his cabin at the time the postings were made. The prosecution also adduced evidence that there was no external hacker. I think the burden was now on A1 to show that indeed on the said day there was an external hacker who had penetrated his system. It was not enough for him to only allege that the system was susceptible to external hackers.

The evidence revealed on exhibit P.6 show that the said fictitious transactions were posted between 9:00am-11:00am. A1 should have been in position to see those transactions then and report to management immediately this was because during that time A1 was seen making some postings on his computer and attending to some clients. It had to take PW1 at around 1:30pm to show the said transactions to A1 and A1 feigned that he was seeing them for the first time! The irresistible inference I can draw is that A1 was in the know of what he was doing, the court was able to see that he was busy doing something on his computer. The time tallies with what exhibits P.6 and P.10 indicate what he was all along doing. A1 some money in his till which he acknowledges he had and he could not have had that money unless his system was operating normally.

As to why the paper seen used by A1 was not retrieved and adduced in evidence or his data call produced, the footage clearly shows that A1 was moving in and out of his cabin. The said transactions were posted from around 8:00am-11:00am. PW1 was able to discover this anomaly around 1:30p.m. So unless A1 was a fool, he could not have been expected to keep that trail on him as am sure he well knew that he would be discovered soon. That was ample time to destroy all the evidence on him. So it is very possible that by the time A1 was arrested, that vital evidence may have been destroyed by then.

Evidence can either be direct or circumstantial. The direct evidence we have as to what A1 posted on that day are in exhibits P.6 and P.10 which are the daily teller transactions as posted by A1. There is also direct evidence to show that between 8:30AM and 11:00am A1 was in his cabin and clearly seen posting something on his computer and attending to some customers as between 8:30AM and 11:00am.

But since A1 denies having posted the said figures the court has to rely on the circumstantial evidence to infer that it was indeed A1 who made the said fictitious postings. In a case where circumstantial evidence is to be relied on the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged. These are the circumstances which I believe point to the guilt of the accused as charged.

- He is seen operating his computer normally and attending to some clients and yet he claims his computer had problems.
- There is direct evidence in form of exhibits P.6 and P.10 that he indeed posted the said transactions.
- A1 is seen in his cabin making postings on his computer which tallies with the time the alleged transactions were made.
- A1 is seen referring clients to other tellers and yet he is seen from the footage still operating his computer normally.
- A1 acknowledges that he indeed has some balances (deposits) in his drawer which is an inference that he carried out some genuine transactions on that day and which gives credence to exhibit P.10.
- From the footages no one else is seen entering his cabin to operate the computer.
- A1 acknowledges having seen the said fictitious transactions on his computer but having been brought to his attention by PW1 who saw them at around 1:30PM
- Inability by A1 to show that there was an external hacker who penetrated his system on that day.

These are circumstances from which an inference can be made that indeed the said fictitious transactions were posted by A1. The said circumstances form a chain which is so complete that there can be no escape in concluding that with all human probability the said crime was committed by A1 and no one else.

The defences of the accused are therefore rejected for the reasons already given.

There was therefore evidence beyond reasonable doubt that it was A1 who posted the said figures to the tune of 975,070,000/= and credited them on account no. 3410800002 of the Global Research network account. Those postings were not supported by any deposits.

The 2nd ingredient of this offence is therefore resolved in the affirmative.

- iii. Whether A1 must have done so knowingly or having reason to believe that such act of crediting the account in issue would cause and did cause financial loss to the said bank in the sum of 300,000,000/=(three hundred million shillings)**

Evidence was adduced by A2 and even A3 to show that the said amount was withdrawn and has not yet been recovered from A3. A1 in his defense acknowledged that he never received the said deposits to justify the said fictitious postings. I have already resolved that it was A1 who posted the said figures from the evidence adduced. A1 must have known and had reason to believe that his actions would cause and they did cause financial loss to the said bank and in fact the bank suffered loss to the tune of 300,000,000/= (three hundred million shillings). A1 had to post figures to the tune of 50,000,000/= (fifty million shillings) or less because according to the evidence adduced by PW1 that was the limit for A1 to receive per transaction.

I therefore resolve the third ingredient in the affirmative.

I therefore find and in agreement with the assessors opinion that the prosecution has proved beyond reasonable doubt the offence of causing financial loss against A1 contrary to S.20(1) of the Anti- Corruption Act 2009 and I hereby find A1 guilty of the said offence on Count 1 of the indictment and convict him accordingly.

With regard to count 2 of the indictment, the prosecution had to prove the following ingredients beyond reasonable doubt:

- i. That A2 on the 6th day December 2013 was an employee of Centenary Rural Development Bank as a Manager Kikuubo branch.
- ii. That A2 acted or omitted to act knowing or having reason to believe that his actions or omissions would cause loss to the bank. In respect of this case by authorizing the fraudulent withdrawal of shs 300,000,000/= (three hundred million shillings) from account no.3410800002 of Global network research knowing or having reason to believe that the said act would cause financial loss to Centenary Rural Development bank.
- iii. That the actions of A2 caused financial loss to the said bank.

With regard to the first ingredient it is not in dispute that by the 6th December 2013 A2 was an employee of the said bank as a branch manager at Kikuubo. This ingredient was therefore proved by the prosecution beyond reasonable doubt.

With regard to the 2nd ingredient of this offence, the prosecution led evidence to show that A2 had a withdrawal authorization limit of 100,000,000/= (one hundred million shillings.) PW4 James Katamba an employee of the said bank as regional manager and a supervisor to A2, testified that A2 effected a payment of 300,000,000/= (three hundred million shillings) to A3 the proprietor of Global Research Network without following some policies. PW4 testified that the bank had a policy on disbursement limits and that the policy provided that a branch manager could pay up to 100,000,000/= (one hundred million shillings) and any transaction beyond 100,000,000/= (one hundred million shillings) had to be referred to the regional manager. He further stated that even if cheques were split but exceeded the limit, the excess should still been sent for authorization. He stated that the said transaction effected by A2 was never authorized by him. The Prosecution was able to tender in a document which indicated the bank's authorization limits and disbursement limits, the document was tendered in court and marked as exhibit P.15.

The prosecution contends that A2 knew his limits but to escape detection by the system, he advised A3 to split the transactions into three and that as a result this A3 was able to withdraw 300,000,000/= (three hundred million shillings) thereby causing loss to the bank.

In his defence, A2 stated that when A3 came to make a withdrawal of 300,000,000/= (three hundred million shillings), he crosschecked the account and found a deposit to the tune of 975,000,000/= plus. That he then asked A3 the source of the money and A3 informed him that the money was as a result of sale of his land and he also showed him the sale agreement. That he then called the branch supervisor of Kabale to confirm the deposit and the supervisor (PW2) told him that that the deposit was ok. That he then went to the teller (PW3) and instructed her to pay. That then A3 withdrew the 300,000,000/=. That he never suspected anything then. He also stated that it was very normal for the branch to pay 300,000,000/= or more and several incidents of that nature (withdrawal over limits) had occurred. He acknowledged though that his limit was 100,000,000/= (one hundred million shillings.) A2 further stated that the practice was in place because he never wanted to delay clients and ensure that clients were served on time. A2 further testified that the approval office was taking time and as a result the bank was losing customers. He further stated that this was the practice even in other branches. He also stated that it was not his first time to split cheques and he was never reprimanded by management for that practice. He further stated that he knew about the anomaly in the afternoon when the supervising manager informed him that the transaction going to A3's account was a result of hacking and when he inquired from the IT department he was told that there was no hacking in the system. He stated that he was informed by PW1 about the problem of hacking in the system. That he then alerted the security team and called A3 to try and lure him back to the branch so that he could be apprehended. A2 contended that he never received any benefit from A3 and that even when his home was searched, nothing was recovered. He also denied having any discussions with A1 and A3. A2 also stated that he ignored the limit guidelines for expedition but regretted why he was overzealous on that day.

It was submitted by counsel for A2 that the admission of PW4 (the regional bank manager) as to what would have transpired if the request for approval was sent to him and not varying from what was done by A2 shows that the said fraud would have still gone on undetected until the Kabale branch would have noticed the discrepancy.

It was also submitted by Counsel for A2 that the fact of splitting cheques was known within the bank and that it was not intended to cause any loss but quicken the process of handling corporate clients. That A2 carried out due diligence before making the payment by seeking clarity and confirmation from the Kabale branch when he placed a call that was received and confirmed by the Kabale supervisor (PW2) who after going to the till of A1 to verify that the monies were actually deposited in the system and hence there was no way A2 could have known that the transaction was fraudulent and fake after having been given a go ahead by Kabale branch to pay. That the innocent actions of A2 were the desire to impress and keep good customer relations and can only be summarized as overzealous. That A2 never had the Mens Rea or Actus Reus to commit the offence.

A2 acknowledges that he breached the bank procedures in authorizing payment of which he needed approval from the regional office but that he did so to serve the client fast as the bank was losing customers due to the approval delays. Apart from what he stated there was no evidence to back up this assertion that the bank was losing customers. A2 as an employee of the bank and had to follow the regulations set by the bank to the letter without compromise. There is nothing to show that A1 was in such a hurry to get his money even if the normal procedures were followed. There was nothing that anything would have happened to A2 if he had followed the normal process to enable A3 access his money. There was equally nothing to show that the bank would have lost A3 as a client if A2 had not done what he did. A3 from the evidence available had had act in his names but opted to channel the money on a business account of which he was the purported sole signatory! He came to withdraw money immediately it was posted and this is an account that was not even so active according to the evidence adduced by the prosecution! What does he instead do, he allows A3 to split the withdrawal cheques so that he could not be easily detected and avoid seeking approval! There is an inference of bad motivation by A2's actions. Why the hurry? What was at stake? Was it a matter of life and death? Could A2 have lost his job or salary if he had not done what he did? Nothing reveals that A3 had put A2 on a lot of pressure to facilitate him withdraw the said amount of money. The bank as I

have already stated was not at a risk of losing A3 as a client. So why did A2 take all that risk? As I have stated one can infer bad motive on part of A2. He could only do what he did because he knew he would benefit from it. I see no other motive on part of A2 for doing what he did unless he was going to benefit from it. Again A2 suggests that the authorization of payment was a practice even done by other branches and hence seems to justify his actions. It is like one saying that if many men were engaged in the practice of defilement one's act of defilement should be exonerated since the others were doing it anyway! The regulations on authorization limits and disbursement limits as contained in exhibit P.15 were very clear. Any cash withdrawal exceeding the limit of 100,000,000/= would require head office approval even where cheques had been split (see page 6 of exhibit P.15). The said regulations were put in place to check frauds as were exhibited in this case. The regulations were not cosmetic for A2 to either implement or ignore. There were there to be followed in order to avoid what the bank experienced in this case. A2 who had been employed in the bank for over 14 years should have known this better.

The other defense raised by the A2 was that he called Kabale branch and they confirmed that indeed A3's account had been credited to the tune of 975,000,000/= plus. Exhibit P.6 shows that the amount withdrawn by A3 was withdrawn at 11:26AM; 11:27AM; 11:28AM. Exhibit P11 which was call detail of PW2 from the bank network showed that he received his first call at 12:31:23pm. This corroborates the evidence of PW2 that he received the call from A2 at midday plus! This was after the money had been disbursed! This only confirms to show that A2 had a sinister motive. What was the value of seeking confirmation for the said deposit when the money had already been disbursed! Even his subsequent actions cannot mitigate what he subsequently did. He had been discovered and so he had to pretend as if he was innocent. That reaction should therefore not construe that A2 was innocent. He only became cooperative after he was discovered.

A2, s actions are clear. He knew or had reason to believe that he had authorized a wrongful withdrawal and hence knew that his actions would incur loss to the said bank.

I therefore resolve the second ingredient in the affirmative.

In resolution of the third ingredient to this count, it goes without saying that A2's actions indeed caused financial loss to the said bank to the tune of 300,000,000/=(three hundred million shillings).

I therefore find A2 guilty of causing financial loss C/S 20(1) of the Anti-Corruption Act 2009 and convict him accordingly.

With regard to Count 3 of the indictment, the prosecution had to prove the following ingredients:

- i. That there was property (money) to the tune of shs 300,000,000/= (three hundred million shillings).
- ii. That the said money belonged to Centenary Rural Development Bank.
- iii. That the said amount of money was stolen by A3 with intention to permanently deprive it of the said bank.

With regard to the first ingredient it is acknowledged by A3 that he indeed withdrew 300,000,000/= (three hundred million shillings) though he contends that the said money was his and the bank also lays claim on it as well. So the property (money) is ascertainable.

On the 2nd ingredient, the prosecution adduced evidence that the money credited on A3's account was fictitious. I have already given reasons why I found this version true. A3 in lengthy defense justified the withdrawal of the said amount stating that he legally withdrew it. A3 contended that the money was deposited on his account and he genuinely expected it to have been deposited since he had sold his land to a one Jean Pierre Wamba. A3 tendered in Court a sale agreement exhibit D3 which was a sale of land comprised in Kibuga Block 26 Plot 783. A3 was the seller and One Wamba Jean Piere was the buyer. According to the said sale agreement, A3 sold the land to the said Wamba at 1,100,000,000/= (one billion, one hundred million shillings) of which 975,000,000/= (nine hundred and seventy five million shillings) was to be deposited or transferred by RTGS to A3's account in the names of Global Research Network account no. 3410800002 in Centenary bank limited. The balance of ugshs 125,000,000/= (one hundred and twenty five

million shillings was to be paid upon the completion of processing a lease title in the names of the said purchaser. A3 also produced a witness one MumpiSemwezi (DW1 for A3) a broker of land who testified that he witnessed the said transaction.

The agreement that was tendered in court by A3, indicated that it was made on the 5th of December 2013 and the buyer at the execution of the agreement (5th December 2013) was to deposit or transfer by RTGS to the vendor's account 975,000,000 (nine hundred and seventy five million shillings). The vendor A3 was upon execution of the agreement, to hand over duly signed transfer forms, the Original certificate of title for the property and a duly executed lease agreement over the property in the names of the Purchaser. In his defence, A3 states he was paid the following day! So was the agreement telling a lie on this fundamental term of agreement? One wonders how A3 could risk accepting to transfer property to a foreigner unless he was certain that he was paid! DW1 for A3 who claimed to have witnessed the agreement and sale does not appear anywhere on the agreement as having witnessed the same. Although A3 claimed that DW1 for A3 had witnessed the sale which claim DW1 for A3 affirmed, when cross-examined, the said witness denied having seen the said buyer Wamba Jean Piere and even stated that he didn't know him!

A3 could not secure any other witness to claim that they indeed saw the said buyer and he could not even secure the said buyer as his witness! He could not even secure his advocate who purported to have witnessed the said transaction although this court had given him all the opportunity to do so. This all leads to one logical conclusion, that the said buyer, Wamba Jean Piere is all fictitious and a concoction of A3 in this grand scam that sounded more like a fairy tale. It is now common knowledge that before any land sale transaction is effected, passport photographs of the vendor and buyer are required before the said transfer could be effected. At least A3 should have been in position to secure such passport photograph of the buyer and furnish it to police to assist them in their investigations. As I have already stated, Wamba Jean Pierre is just a fiction of A3's imagination and he thought he would hoodwink the whole world with his fairy tale. A3's evidence that he got confirmation of the deposits through his mobile

phone the following day from Kabale branch, only confirms the prosecution's evidence that they were from the fictitious postings by A1 made on the account solely owned by A3! The money was hot air and A3 withdrew the bank's money in collusion with the bank's employees! A3's intention was to permanently deprive the bank of the said money and that is why he insists to date that the said money was his even after proof that the whole transaction and deposits were a scam. This therefore resolves the 2nd and 3rd ingredient of this offence in the affirmative. I therefore disagree with the opinion of the assessors and instead find A3 guilty of the offence of theft C/S 254(1) and 261 of the Penal Code Act and I hereby convict him accordingly.

The alternative count of receiving stolen property therefore, remains superfluous, A3 having been convicted on the indictment of theft.

With regard to the 4th Count of the Indictment, the Prosecution had to prove the following ingredients:

- i. That the accused persons entered an agreement,
- ii. That the three accused persons did so by deceit or any fraudulent means.
- iii. They did so to defraud the said bank.

According to Black's Law Dictionary 8th edition at page 329, conspiracy is defined an agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective and action or conduct that furthers the agreement; a combination for an unlawful purpose.

Section 9 of the Evidence Act Cap. 6 provides that "***where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by one of those persons in reference to their common intention, after the time when that intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy and for the purpose of showing that any such person was a party to it.***"

It was the prosecution's submission that A1, A2 and A3 flouted all procedures with the sole purpose of enriching themselves. That A3 was fully aware that there was no genuine deposit on his account but he was prepared to withdraw Ug .Shs 300,000,000/= (three hundred million shillings) immediately the account was credited. That this withdrawal was made possible by A2 who was in position to view the account balance before the fictitious credit. That furthermore A2's actions of verifying the deposit only after the fraud had been detected points to a fraudulent intent on his part.

Counsel for A1 submitted that there was no evidence led by the prosecution of acquaintance between A1,A2 and A3 and that there was no evidence found of collusion between the three accused persons and hence there was no scintilla of evidence on record to prove existence of any agreement between A1,A2 and A3. Counsel for A1 cited the case of **Uganda versus Stephen Onyabo&others 1979 HCB page 39** which held that ***"in every criminal prosecution, a conviction should only be based on actual evidence adduced and not on any attractive or fanciful theories of reasoning since doing so there is a grave danger of being led astray by that type of mental gymnastics when drawing any utterances or reaching conclusions."*** That from the statements of especially PW5, PW10, PW16 and PW18 it was clear that the prosecution's evidence was largely based on fanciful theories and that is why they relied on suspicions and tried to flavor them as facts.

Counsel for A2 submitted that for A2 to be found guilty and convicted of this offence, the state must have shown that A2 had a common intention with A1and A3 in conspiring to defraud the said bank. That common intent was defined as a known pre-arranged plan and acting in concert pursuant to the plan. That in the present case A2 did not know A1 prior to the 6th of December 2013 and the state witnesses failed during the trial to show and prove a relationship and or common intent between A2 and the co-accused as required by section 101 of the Evidence Act Cap.6 hence failing to discharge the burden of proof. Counsel cited the case of **Santosh Desai versus State of Gao (1997) 2 crimes 666 (BOM)** which held that , ***"where there is an offence sought to be proved only on circumstantial evidence,***

the allegation of common intention normally cannot be established in the absence of meeting of minds.”

Counsel for A2 further cited the case of **Birikade versus Uganda (1996) HCB 6 (court of Appeal)** which held that “in order to prove common intent it is not necessary to prove a prior agreement between the assailants. It is sufficient if the intention can be inferred from their actions”. That hence from the above authority, though one may not show prior agreement, the intention can be inferred from the conduct of the accused. That it was important to note that the immediate conduct and action of A2 after having been informed of the possible fraud from Kabale, in stopping the RTGS payment, working closely with the bank security officers and Uganda police in tracking and arresting A3 shows actions of an innocent party trying to disassociate himself from the events.

A3 submitted that there was no report or proof whatever implicating him or even connecting him to the communications of the bank officials in an attempt to conspire or defraud the said bank. That no witness was produced to implicate him of conspiracy and not even phone call data was presented before the court. That he never made any agreement with A2 and bank officials to deposit the said money on his account. That even the circumstantial evidence available does not infer his guilt since there was a reasonable explanation on how the said money got to the account of A3. A3 maintained that it was the bank officials who were responsible in depositing the said amount of money on his account. That it was A2 who authorized the cheques and even advised A3 to split the transactions for easy payment. That A2 himself testified that A3 never showed any signs of guilt during and after the said transactions. That he has never been on the run. A3 further submitted that in order for court to rely on circumstantial evidence, the inculpable facts must be incompatible with the innocence of the accused person and incapable of any other reasonable explanation but the guilt of the accused. A3 cited the case of **Musoke versus Uganda 1957 EA** to stress his submission.

It is my considered view that to prove the ingredients of this offence, it is not necessary to prove an agreement between the accused persons in the strict sense required by the law of contract. Even a fool involved in such a conspiracy would

not do that. What purpose would it serve since such an agreement can never be enforced in any court of law? It is only important for the prosecution to prove that the accused persons must have reached a decision to perpetrate their unlawful object. In my considered opinion it may not even be necessary to show that the accused persons were in direct communication with one another (though this may be desirable evidence). It may be that the conspiracy revolves around some third party who is in touch with all the accused persons though they may not be in touch with one another, provided that the result is that they had a common design. In this era of technology the accused persons may not even need to meet each other and they could have even met for the first time in the dock as some of them claim. What has to be ascertained is whether the acts of the accused persons were done in pursuance of a criminal purpose held in common between them. The authority of **Birikade versus Uganda (1996) HCB 6** as cited by counsel for the A2 supports this observation. In this case, the accused persons knew that one had to post money on A3's account before A3 could withdraw it. It had to take the actions of A2 who never had the authority to sanction the withdrawal of that amount of money to enable A3 to access it. Surely what would motivate A1 to post the said fictitious amounts of money on A3's account unless he was to benefit from that transaction? What would motivate A2 to sanction the withdrawal of such amount by flouting clear guidelines of the bank unless he had the intention of benefitting from that transaction? The common intent therefore of the accused persons can be inferred from their actions. The accused must have pre-arranged this plan as I am sure they never just acted on instinct or by coincidence. Being master planners of this grand scam they tried their level best not to leave any direct trail between themselves and that is how the only way to prove common intention between them is to infer it from their actions. Their actions were fraudulent and meant to defraud the bank as it lost 300,000,000/= (three hundred million shillings).

I therefore disagree with the assessor's opinion with regard to this count and I instead find all the accused persons guilty of the offence of conspiracy to defraud C/S 309 of the Penal Code Act and I convict them accordingly.

In summary therefore, I find A1 guilty of Causing Financial Loss C/S 20(1) of the Anti-corruption Act 2009 and I hereby convict him on count 1 of the indictment.

I find A2 guilty of Causing Financial Loss C/S 20(1) of the Anti-Corruption Act 2009 and I hereby convict him on the 2nd count of the Indictment.

I find A3 guilty of the offence of Theft C/S 254(1) and 261 of the Penal Code Act and I hereby convict him on the 3rd count of the indictment.

I find all the accused persons guilty of the offense of Conspiracy to defraud C/S 309 of the Penal code Act, and I hereby convict them on the 4th count of the indictment.

Hon. Justice John Eudes Keitirima

15/01/2015

