

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ANTI CORRUPTION DIVISION

CR.CS 075 OF 2010

UGANDA PROSECUTOR

VERSUS

KASOZI SAMUEL(A1)
KALULE IRENE (A2)
NTALE SHARIFA (A3) } **.....ACCUSED**

BEFORE: HON. JUSTICE PAUL K. MUGAMBA

JUDGMENT

Kasozi Samuel (A1), Kalule Irene (A2) and Ntale Sharifa (A3) are jointly indicted. Initially there were three counts to the indictment. A subsequent amendment reduced the charges to two. In Count 1 the three accused are charged with embezzlement, contrary to section 19(a) and (d) (ii) of the Anti Corruption Act. Then there is the alternative count in which they are charged with causing financial loss, contrary to section 20(1) of the same Act. To prove its case the prosecution adduced the evidence of eleven witnesses. PW1 was Patrick Kyakulaga, PW2 was Robert Mutyaba, PW3 was Sarah Nansubuga, PW4 was Kyasimire Caroline, PW5 was Asiiimwe Joy Byarugaba , PW6 was Muhumuza Moses, PW7 was Joseph Mwanja, PW8 was D/IP Joseph Elyanu, PW9 was Barbara Najjemba Musoke, PW10 was Apollo Mutashwera Ntarirwa, while D/Sgt Anthony Wafula testified as PW11. In defence A1 gave a sworn statement while A2 and A3 gave their statements unsworn. They called no other witnesses.

It is the prosecution case that all the three accused were employees of the National Drugs Authority at the time material to this case. A1 worked as Senior Accountant, A2 was Assistant Accountant, while A3 was Accounts Assistant. It was discovered following a routine audit in 2006 that some anomalies existed. Accordingly a special audit was carried out in 2007. It revealed in turn that for several years the three accused had received money from various pharmaceutical companies but some of this money they had not appropriated or banked. It was

discovered that the accused persons issued receipts to the companies involved but reflected false reports of banking . It was in this process false journal vouchers were raised. In all the amount discovered missing was US\$232,011 which was estimated at Uganda Shs 410,000,000/= . Following the audit, the three accused persons agreed they had been involved in the heist and undertook to refund the amounts involved. Nevertheless NDA went ahead and handed the matter to police for management. This prosecution resulted.

It is the duty of the prosecution to prove the charges against the accused persons beyond reasonable doubt. The two charges are in the alternative in which case accused persons can be convicted on only one of the offences, not both. It behoves this court therefore to sift the evidence pertaining to each of the charges and relate it to the law before deciding whether or not a conviction can be sustained. Where any doubt exists in the case of the prosecution that doubt should be resolved in favour of the accused.

In count 1 accused persons are charged with embezzlement and it behoves the prosecution to prove the following ingredients of this offence particularly:

- (i) that accused were employees of a public body
- (ii) that they stole their employer's money
- (iii) that they stole the money by virtue of their work.

Regarding the first ingredient it is not contested that all the three accused were employed by the National Drugs Authority which is a public body established under the National Drug Policy and Authority Act, Cap 206 of the Laws of Uganda. This ingredient is proved by the prosecution beyond reasonable doubt.

The second ingredient relates to theft. Theft involves fraud and the thing said to have been stolen must have been taken fraudulently and in this case it must belong to the employer, who National Drugs Authority was. In this respect accused must have no claim of right over it. The prosecution adduced evidence regarding this ingredient. There was no evidence of fraud following the statutory audit. Nevertheless the auditors made adverse remarks regarding delayed banking. However a forensic audit was subsequently called for, which in particular highlighted the findings of the system audit by PW2. In this respect Exhibit P1 reveals that there were mispostings and that reversals instead of going to the collection account, as would be usual, went to the creditors. The evidence of PW2 helps to show that postings were done by someone with

initials 'S.K'. He added that he did not find out who it was who raised the vouchers. PW1 testified that the initials 'S.K' were those of A1 who was authorized to enter the system and do the postings. There was no dispute A1 was responsible for bank reconciliation. Reconciliation statements, banking slips and summary sheets were woefully missing in evidence however. It was the evidence of PW1 that journal vouchers in hard copy should correspond with entries in the system. Strangely no journal vouchers were availed in evidence. PW7 said there were many unposted receipts where payment was made and receipts issued. He said failure to post means money was not banked. Evidence was not led to show A1 stole any money belonging to National Drug Authority or anyone.

Evidence given against A2 revolves around banking because she was responsible for banking National Drugs Authority revenue. It was the evidence of PW1 in cross examination that no receipt was availed to show A2 stole any money belonging to National Drugs Authority or anyone.

There was A3 who was employed by National Drugs Authority as Accounts Assistant. Her duties included receipt of cash both in Uganda shillings and United States dollars. It included receipt of drafts and cheques. After receipt she counted the revenue, balanced and handed it to banking staff. It was stated in evidence that her role included issuance of receipts for revenue collected and that those receipts were done in triplicate. There was evidence given also that Sandra Nanyonjo shared the same responsibility as A3 at the same place. It was the evidence of PW7 that there were instances of duplication of receipts which is a sign of poor control of accounting documents and could result in under declaration of revenue and /or misappropriation of funds. He testified that the amount receipted is the amount which was banked but added that the amount posted on the cash control account was less than what was receipted and banked. He said wrong posting was to cover up funds which had been misappropriated. It was his evidence in all US\$232,011 was in this category. No direct evidence of theft of any of the money alleged was adduced against A3.

It is sought to prove that accused persons stole the money by virtue of their work. There was no evidence on behalf of the National Drugs Authority to show any money was stolen from it. There was evidence by PW2 and PW7 to the effect they could not trace the paper trail of some of the money and that from the postings in the system they could not comprehend the way postings had been done. It was pointed out that bankings were delayed or done in bulk but no evidence was

led to show those bankings were not done. Evidence was adduced of receipts which looked suspect but no original receipts were availed for necessary comparison. Indeed the handwriting expert's evidence was to the effect that there was no evidence A3 disguised her signature. In all this litany I find nowhere any of the accused individually or in concert with others stole the alleged money by virtue of their work. This ingredient has not been proved by the prosecution beyond reasonable doubt.

All in all I find the prosecution has not proved the charge of embezzlement against any of the accused in count 1. In his opinion the gentleman assessor advised me to find all accused persons not guilty on count 1 and to acquit them. For the reasons I have given in this judgment I agree with that advice. I find A1, A2 and A3 not guilty on count 1 and acquit them.

That leaves the alternative count. The charge there is causing financial loss. To prove the offence the prosecution must show the following elements to be present:

- (i) that the accused persons were employed by a public body
- (ii) that there was an act or omission by the accused
- (iii) that accused's employer (Government) suffered financial loss
- (iv) that the accused knew or had reason to know that the act or omission would result in financial loss to the employer

It is not contested the accused persons worked for the National Drugs Authority, a public body. As for the second element it is the prosecution case all the three accused in the performance of their duties omitted to ensure US\$232,011 was banked on the accounts of the National Drugs Authority. In the event A1 was Senior Accountant. As such he kept the receipts, deposit slips as well as summary sheets. He did banking reconciliation. Where A1 found any error in the accounting system he was to rectify it using a journal voucher. Indeed he did the posting. As for A2 it was her duty to do banking. Evidence was led that there had been banking delays, as noted in the management letter. It was however the testimony of A2 that by the end of the financial year all revenue had been banked. Indeed no summary sheets or deposit slips were produced as evidence of money not banked. There was no evidence to show A2 had received revenue she did not bank. It was noted concerning count 1 that A3 worked in the Accounts Department as Accounts Assistant. I hasten to add that she worked together with one Sandra Nanyonjo. One of her duties was to issue receipts. The receipts were in triplicate. Evidence was led on behalf of the

prosecution regarding discrepancies between details on the original receipts and details on duplicates. Those variations related to names, dates and amounts of money involved. Exhibits P.2 and P.3 contain those receipts and PW3 as well as PW4 gave testimony concerning them. There were revelations also hinting at postings which were said not to have gone to the bank due to reversals made. The argument was that reversals or mispostings should have gone to the cash collection account rather than go to creditors. I note however that the prosecution for uncertain reasons did not produce in court original receipts for necessary comparison with those A3 allegedly fraudulently made. As such no basis exists to hold her culpable for the questioned duplicates. I have noted earlier that no evidence was led to show A2 did not bank all the revenue she was entrusted with banking. Regarding A1, he was the person who was responsible for banking reconciliation, journal vouchers, reversals and posting generally. It is evident that the person posting depends on the raising of the voucher. But we ought to bear in mind that in the scheme of things what is apparent in the system must have a basis in primary documents such as reconciliation statements, banking slips and indeed summary sheets. It is from those that one can predicate what banking was done, when and how. Evidently those were missing. One cannot say there was anything amiss with banking in the absence of those documents. It is not disputed the postings could have been unorthodox but evidence of non-banking would be required especially where no complaint exists from the employer alleged to have suffered loss.

It has been noted that the alternative count is premised on the failure of the accused persons to ensure US\$232,011 was banked. Prosecution submitted that when the money was not banked loss ensued. No evidence was adduced by the prosecution to show that money was not banked. The onus is on the prosecution to prove its allegation beyond reasonable doubt. I find the prosecution has failed to prove beyond reasonable doubt that any loss resulted to the employer of the accused persons A1, A2, or A3.

Having found as I do regarding loss it is moot to speculate on the knowledge of any of the accused regarding financial loss. No proof has been made of any loss.

All in all the prosecution has not adduced evidence to prove any of the accused persons culpable on the alternative count either. In agreement with the assessor I find the accused not guilty on the alternative count also.

In consequence I find none of the accused is culpable on any of the charges indicted. They are accordingly acquitted.

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Paul K. Mugamba
Judge
9th September 2015