

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**ANTI CORRUPTION DIVISION**  
**HCT-00-AC-SC 0004/2015**

**UGANDA       :.....:       PROSECUTOR**  
**VERS**

**A1:MUGERWA DOMINIC**  
**A2:MUHWEZI ABIAS**  
**A3:KANOONYA DAVID**

}

**:.....:ACCUSED**

**JUDGMENT**

**BEFORE:   HON. JUSTICE PAUL K. MUGAMBA**

Mugerwa Dominic (A1), Muhwezi Abias (A2) and Kanoonya David (A3) are jointly charged. All three were employees of Uganda Revenue Authority (URA). A1 was supervisor while A2 and A3 were designated Revenue Officers. They were all charged with Abuse of Office, contrary to section 11(1) of the Anti Corruption Act in Counts 1 to 9, inclusive. In counts 10 to 18, inclusive, they were charged with Causing Financial Loss, contrary to section 20(1) of the Anti Corruption Act. They were further indicted for false claims by officials, contrary to section 24 of the Anti Corruption Act in counts 19 to 27, inclusive. All accused denied the charges. To prove its case the prosecution called 18 witnesses. PW1 was Siraji Baguma Kanyesigye, PW2 was Julie Kiwanuka Njuba, PW3 was Bahiyyih Basemera, PW4 was Agnes Namubiru, PW5 was Goerge Oroma, PW6 was Evelyn Achwo, PW7 was Bernard Byakagaba, PW8 was Satish Ghelani, PW9 was Moses Mabala, PW10 was Tusiime Isaac, PW11 was Diana Mulira Kagonyera, PW12 was Elly Musinguzi, PW13 was Edmund Male, PW14 was Bwire Nelson, PW15 was David Kahwa Kihumuro, PW16 was Gideon Twesigye Timarwa, PW17 was Ismail Sekirabi, while Kitaburaza Kitta Bens testified as PW18. For their respective defences the accused called no witnesses. Both A1 and A2 gave sworn statements while A3 elected to make no statement.

Briefly the prosecution case is that all three accused were at the material time employed by URA at the Domestic Taxes Department at Jinja and that it was within their remit to audit, verify and

approve (in the case of A1) tax payers' claims for VAT refund. It is alleged by the prosecution that between January 2014 and September 2014 the trio were responsible for approving the impugned payments leading to the loss of Shs 6,452,116,773/= in all to URA. It is the prosecution case that in all the cases in issue a company under the name and style M/s Rising Star Commodities Limited allegedly made VAT refund claims purporting to have made exports of brown sugar it bought from Kakira Sugar Works Limited to a company in Kenya said to be Gemini Traders Ltd. Indeed approvals for VAT refund claims were made and those were during particular months of the year 2014. They were given in the following order, with months and number of approvals in a given month:

1. January	7
2. February	11
3. March	22
4. April	22
5. May	22
6. June	25
7. July	23
8. August	24
9. September	25

It was not denied the approvals happened. What is in contest is whether the alleged exports were verified prior to approval of the VAT refunds. The prosecution is under a duty to prove URA incurred any loss. It emerges from the evidence adduced on both sides that the process employed in arriving at the approvals was uniform. A1 was supervisor and station manager. A1 selected A2 as team leader. A3 was a member of the team headed by A2.

The onus is on the prosecution to prove the charges leveled against the accused beyond reasonable doubt. It is not for the accused to prove their innocence. Where any doubt appears in the case for the prosecution that doubt is to be resolved in favour of the accused.

One of the charges brought against the accused is Abuse of Office. To prove that charge the prosecution ought to adduce evidence showing that accused is employed in public service, that accused did the act complained of arbitrarily, that the arbitrary act was prejudicial to accused's employer or other person and that the act was in abuse of power.

Regarding the first ingredient, all the three accused persons agreed they were employees of Uganda Revenue Authority which is a public body created under the Uganda Revenue Authority Act, Cap 196 of the Laws of Uganda. The prosecution has proved this beyond reasonable doubt.

The prosecution must prove the second ingredient of the offence. Did the accused do the act complained of arbitrarily? In **Uganda V Francis Atugonza**, CR.CS 37 of 2010(unreported) this court stated:

*‘ The prosecution must prove whether accused did or directed to be done an arbitrary act. According to the Oxford Advanced Learners’ Dictionary, 7<sup>th</sup> edition “arbitrary” is an action, decision or rule not seeming to be based on a reason, system or plan and sometimes seeming unfair. The other meaning in the definition relates to using power without restriction and without considering other people. It is a reliance on individual discretion rather than going by fixed rules, procedures or law’*

Evidence was adduced that a VAT refund claim was made by a tax payer on line. Consequently A1 would select a team leader who in the cases under review was invariably A2. Invariably again, A2 would have A3 on the team. Evidence was given also that once A1 received a claim which he determined to be suspect he handed it over to the team leader for necessary audit and verification. Following that A2 made an audit plan detailing the tools and methods he would use in the audit. A2 submitted those to A1 for consideration. After A1 was satisfied with the audit plan he returned it to A2 who proceeded with the verification process of the team. At the end of the process the team compiled a report which the team leader passed on to A1. In all the cases under consideration A1 studied the reports and went on to approve the VAT refunds which were being claimed. It was after A1 approved that the approvals were sent to finance to process payment. It was the testimony of A2 and that of A1 that information that was used in verification exercise was that given by the tax payer, Rising Star Commodities Limited. Needless to say for purposes of verification accused would be expected to use the most reliable information possible. It begs the question whether information from a person wanting a tax refund claim is honest, reliable and accurate. Accused however went ahead and had the refund claim on brown sugar alleged to have been exported approved. Yet for any export to take place there was need for there to be a certificate of origin. The taxpayer purported to provide such certificates with his information. PW9 testified as a Trade Promotion Officer with Uganda Export Promotion Board. It was his evidence that M/s Rising Star Commodities Limited was indeed registered by Uganda

Export Promotion Board as exporters but that the company never purchased any certificates of origin to export. This is a matter that could have been checked on by the accused in the process of verification since no legitimate export could take place in the absence of a certificate of origin. There was also the evidence of PW7 the Accountant at Kakira Sugar Works Ltd. It was his evidence that Rising Star Commodities Ltd was registered with Kakira Sugar Works Ltd as their customers. He stated that the company was registered as a local customer, not as exporting customers. This evidence also was not countenanced. Perhaps a check with Kakira Sugar Works Ltd in the course of verification would have been advantageous. Accused persons did not bother to check this out in their effort to verify. It is evident information supplied by the Rising Star Commodities Ltd included Export Entries.

Some companies were shown in the information provided by the taxpayer to have been engaged by the taxpayer in the export of the brown sugar in issue. There was the evidence of PW5 who used to work for A &G Logistics Ltd. He said the company ceased work in 2013 and as such it could not have been in operation in the year 2014 as alleged in Export Entry E 3459 of 17<sup>th</sup> February 2014 and Export Entry E3522 of 18<sup>th</sup> February 2014. PW5 stated further that the person who purportedly signed on behalf of their company was unknown since there was no company staff of such detail. There were 70 Export Entries purportedly involving Panok International Uganda Ltd as the forwarding company for brown sugar being exported by M/s Rising Star Commodities Ltd. That was between December 2013 and April 2014. It was the testimony of PW6 that Panok International Uganda Ltd had not done any clearing business since 31<sup>st</sup> December 2012. Very likely a simple search on the part of the accused would have brought this into focus concerning the credibility of the claim. Another telling observation would have been that details appeared to come from ASYCUDA++ but at the time in issue ASYCUDA ++ was no longer in use according to PW6. It was also the evidence of PW6 that Exhibits P5, P6, P8, P9 and P11 in contention were never generated by M/s Panok International Uganda Ltd. There was also evidence given by PW4 who worked with Inward Africa Forwarders Ltd. He stated that he had worked for the company for 16 years and that the company never handled any business of M/s Rising Star Commodities Ltd. He denied the company generated any of the Export Entries attributed to it such as E22612 of 29<sup>th</sup> September 2014 and E 22676 of 30<sup>th</sup> September 2014. It was the evidence of PW4 that ASYCUDA ++ had not been used since September 2013 and as such it did not exist in their records. There was further denial of alleged clearing and forwarding of the impugned brown sugar by PW10. He testified he was Managing Director of Goodwill

Agencies Ltd. It was his testimony the company had been in existence since 2012. PW10 said his company was not involved in the alleged export in Exhibit P.9 which was Export Entry E6132 of 20<sup>th</sup> March 2014. In addition he denied Exhibits P11, P13 and P14, saying they were not generated by his company. PW11 testified that AFRITRANS INTERNATIONAL LTD last operated in 2012. It was his evidence E4290 of 27/2/2014 and E4339 of 28/2/2014 said to have been done by the company were falsehoods as they had no basis.

There was evidence of PW12 who testified that the Export Entries E5690, E5474, E5548, and E5609 were not genuine.

In the case of verification by the accused all those anomalies could have been obviated by wider checks.

PW3 testified that if one wished to check if the goods left the country one would not rely on ASYCUDA World only. One has to check with customs, she stated. Exhibits D1 and D2 were tendered in evidence as pointers to verification. This was not disputed. It was her evidence that there was no need for express mention of ASYCUDA World in Exhibits D1 and D2 for purposes of verification. PW3 added that in the course of verification one could check with staff of customs or with those at Compliance Headquarters. On his part PW2 testified that if the audit team relied only on documents supplied by the taxpayer it would be contrary to the guidelines. The guidelines require the audit to ascertain validity and accuracy. She added that a check with ASYCUDA World would involve checking of the Export Entry quoted on the bill. Doubtless that would lead to checking on other details which could help establish the genuineness or otherwise of the claim. Instead they took it upon themselves to do the exercise without proper basis, casually.

According to A1 and A2 they did not have to go beyond information supplied by the VAT refund claimant. They did not go for information outside that and by such failure they fell short of what could credibly be regarded as verification. There is no evidence to show the role A3 played. Indeed in his testimony DW2 testified that there was none. On the other hand A1 and A2 were involved in the exercise when they acted the way they did. I am satisfied the prosecution has proved this ingredient beyond reasonable doubt against all save A3.

The prosecution ought to prove that the act was prejudicial to accused's employer or other person. It is the case for the prosecution that there was resultant loss of over Shs

6,400,000,000/=.

This is the evidence of PW1, PW2, PW14, PW16 and PW18. It was not denied that that sum of money was credited to M/s Rising Star Commodities Ltd from Uganda Revenue Authority following verification and approval by A.2 and A.1. I am satisfied this ingredient is proved by the prosecution beyond reasonable doubt given the casual way in which verification was purportedly done. Had the accused persons used due diligence the financial hemorrhage that happened would most probably not have occurred.

Finally it must be shown by the evidence that accused abused their power. It has been stated on behalf of the prosecution that refund would be made after verification. There would be a refund where the output exceeded the input. According to A1 in order to check on the output he looked on the physical documents provided by the taxpayer. He added that besides looking at information provided by the taxpayer there was nothing else he would look for. In his evidence A2 said he used the Refund Process Guidebook (Exhibit D1) and the Audit Handbook (Exhibit D2). It was the testimony of A1 that all the cases in issue had evidence of exports since the taxpayer did not declare any local sales and no taxpayer had claimed from M/s Rising Star Commodities Ltd as seller. A1 was positive there were no local sales. He said he had seen tax invoices, packing lists and East African Community Certificates of origin to prove exports had occurred. It was contended by A2 that no requirement existed for him to go to Customs to find out the credibility and accuracy of a document such as an Export Entry. He added however that Customs are best placed to give information whether or not an export happened. Despite the fact Customs Department operated in the same premises as Compliance Department in Jinja he did not find it necessary to consult Customs regarding verification. It was his admission however that he would not have approved the VAT refund claims he did if Customs had made him aware that the exports in issue did not take place. A3 did not testify as already noted, and it was the evidence of A2 that A3 was never involved in planning and reporting, saying that that is the role of the team leader. There was no input by A3. It was the evidence of PW2 that if the audit team relies only on documents supplied by the taxpayer they would be going contrary to the guidelines which require audit to ascertain the validity and accuracy of the VAT refund claim. A proper audit therefore required those involved in it to go beyond the information supplied by the taxpayer claiming VAT refund who had every reason to massage what evidence he could to reach his selfish ends. A1 and A2 clearly abused their power when they failed to go beyond information supplied by the taxpayer when making verification. Yet they could have checked with Customs Department officials or requested for information on ASYCUDA World.

The prosecution has proved all ingredients of the offence of Abuse of Office. I agree with the assessors in their opinion that I should find A3 not guilty of the charges but convict A1 and A2. A1 and A2 are convicted on all counts where the offence is charged. A3 is acquitted on all counts where the offence is charged.

The offence of Causing Financial Loss is also faced by the three accused persons. To prove the offence the prosecution must show that accused is employed in a public office, that there was loss of money and that accused caused the loss.

Earlier on in this judgment it was shown that the fact that each of the accused persons was employed in a public office is not contested. This is an ingredient that has been proved beyond reasonable doubt.

The prosecution must prove that there was loss of money. This ingredient has also been canvassed given the testimonies of PW1, PW2, PW14, PW16 and PW18. The money alleged to have been lost is upward of Shs 6,452,116,773/=. It is the defence evidence that the money was properly expended as a VAT claim refund. The prosecution on the other hand insists that amount was lost and ought not to have been expended as refund. It is the prosecution case that money came to be expended because the accused did not properly verify the taxpayer's VAT claims for refund. Evidence of this is contained elsewhere concerning the charges of Abuse of Office. However A3 is not cited in any of these as being responsible.

It must be proved by the prosecution that accused caused the loss. Evidence was adduced regarding the part each of the accused played in connection with the various VAT refund claims. A1 determined whether or not the claim made online was suspect in order to set up the audit team. A1 reviewed the audit plan and studied the audit report. In the end it was A1 who approved the VAT refund claim. He relied wholly on information furnished by the taxpayer making the VAT refund claim. A2 on the other hand was on all occasions in issue appointed by A1 as team leader. The team was set up to verify the tax refund claim. In that respect A2 made the audit plans which indicated the means and tools intended to be used in the process of verification. After the audit exercise A2 submitted both the plan and the report to A1. The onus was on A2 to verify the claims employing established methods evident in Exhibits D1 and D2. It is the prosecution case that where necessary the process of verification entailed going beyond the guidelines in Exhibits D1 and D2. One would then have to search for relevant information from

Customs Department or from whoever had access to ASYCUDA World. It is the contention of the prosecution that had A2 gone beyond information supplied by the taxpayer, M/s Rising Star Commodities Ltd, he would have found red flags in almost all the instances under review and would have sooner discovered that the claims for refund lacked probity. A2 does not contest this. No evidence was led to indicate what the role of A3 was in the various charges ranged against him relating to this offence. As noted earlier A3 elected not to testify.

Needless to say A1 and A2 did not exercise due diligence. Consequently there was loss of colossal sums of money to Uganda Revenue Authority. The loss would not have resulted had it not been for the casual approach to verification by A1 and A2. I agree with the two assessors in their joint opinion that A1 and A2 be condemned for committing the offence of causing financial loss in all counts involved. I also agree with the assessors in their opinion that A3 be acquitted on all counts where he is charged with the offence of causing financial loss. Ultimately A1 and A2 are convicted of the offence of causing financial loss wherever charged. Conversely A3 is acquitted on all counts where the offence is charged.

In counts 19 to 27 of the indictment, all inclusive, the three accused were charged with making false claims, contrary to section 24 of the Anti Corruption Act. To prove the charge the prosecution must prove that accused was employed by a public body. It must prove also that accused made claims that were false in form of returns or statements. The first element of the offence should not detain us given that it has been agreed elsewhere in this case that indeed all three accused were employees of a public body which the Uganda Revenue Authority is.

Regarding the second limb of the offence, a false claim is an assertion or statement that is not true. A typical example is overbilling. The prosecution should adduce evidence showing the offensive statement was made to another person and the maker must have knowledge that the statement is false in any material particular. In the cases at hand there is no argument it was incumbent on the accused persons involved to verify the VAT refund claims. Various tools were available to enable whoever was involved make verification. Some of the tools were not given a second glance. Those others include, but are not limited to, checking with Customs Department, checking with Uganda Export Promotion Board regarding the certificates of origin or with Kakira Sugar Works Limited to verify not only the relationship of input and output but also the status of the taxpayer, whether the taxpayer was local or an exporter. No heed was taken to all this. Nevertheless approvals were given for the VAT refund claims. There is no doubt that the



standards used to justify verification and approval fell short of expected probity. In all this both A1 and A2 are adamant and blissfully acknowledge that they saw no need to go beyond the information supplied by the taxpayer, however self serving. One may pose and wonder what the purpose was they were assigned to serve through verification if the taxpayer making the claims could give them all they needed to do the work they were employed to do. According to **Black's Law Dictionary**, 8<sup>th</sup> Edition, to verify is to prove to be true; to confirm or establish the truth or truthfulness of something. A1 and A2 did not go anywhere to prove the truthfulness of what the taxpayer claiming refunds placed before them. Instead they pliantly endorsed the claims. They had no reason to show that they were satisfied in the truth of the impugned statements by way of verification.

Consequently A2 purported to verify the VAT refund claims and A1 went ahead to give his approvals. Yet they were false. I note also that there is no evidence A3 was involved regarding this offence wherever charged in the indictment. In his defence A2 testified that A3 had no role in it all.

The two assessors in their joint opinion advised me to find A1 and A2 guilty as charged, but to find A3 not guilty. For the reasons I have given in the course of this judgment I agree with that advice. I find A1 and A2 guilty of the offence of making false claims contrary to section 24 of the Anti Corruption Act in counts 19 to 27(all inclusive) and convict them according. Conversely A3 is acquitted on the counts in which the offence is charged.

In sum A3 is acquitted on all the charges instituted against him in this indictment. A1 and A2 are convicted on all counts they are charged under.

.....

**Paul K. Mugamba**

**Judge**

**5<sup>th</sup> November 2015.**