

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
ANTI CORRUPTION DIVISION
HCT-00-AC-SC 0001/2015

UGANDA :::::::::::::::::::::::::::::: PROSECUTOR
VERSUS

A1:NALUMANSI AISHA MUBIRU
A2:MPANGA DAVID
A3:MULINDWA FRED



::::::::::::ACCUSED

JUDGMENT

BEFORE: HON. JUSTICE PAUL K. MUGAMBA

Nalumansi Aisha Mubiru (A.1) was Team Leader, Customer Service, with Stanbic Bank, Kikuubo Branch. Dennis Mpanga (A.2) was Branch Manager with Stanbic Bank, Kikuubo Branch. Fred Mulindwa (A.3) was a Teller / Cashier with Stanbic Bank, Kikuubo Branch. All the three accused are charged with causing financial loss, contrary to section 20(1) of the Anti Corruption Act. In Count 1 A.2 and A.3 are jointly indicted for the loss of Shs 55,000,000/= said to have occurred on the 4th December 2012. On the other hand in Count 2 the joint charge is against A.1 and A.3 for the loss of Shs 4,400,000/= said to have occurred on the 8th December 2012. To prove the offences the prosecution called nine witnesses. PW1 was Vincent Kitutu, PW2 was Lubega Omar, PW3 was Pius Okullo, PW4 was Karim Kibuuka, PW5 was Pario Lawrence, PW6 was Richard Andruma, PW7 was Charles Omara Bizimungu, PW8 was D/CPL Francis Oluka, while Sylvia Chelangat testified as PW9. In their defence accused persons gave sworn statements. They called no witnesses.

The facts in this case are not complicated. They revolve around the operations of two bank officials on 4th December 2012 and two bank officials on 8th December 2012. The venue of the operations was Stanbic Bank, Kikuubo Branch, Kampala. The account in issue was that of Pario Lawrence. I have earlier on specified the particular count applying to each of the accused and the

fact that the offence current to the charges is causing financial loss. That offence essentially reads:

(1) Any person employed by a bank.... who in the performance of his or her duties, does any act knowing or having reason to believe that the act or omission will cause financial loss to thebank.... commits an offence and is liable on conviction to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty six currency points or both.'

It is the duty of the prosecution to prove the above offence beyond reasonable doubt in both charges if a conviction is to be secured. In so doing the state should prove the following ingredients:

- (i) that accused was employed by the bank at the time in issue
- (ii) that the bank suffered financial loss
- (iii) that the financial loss resulted from an act or omission by the accused
- (iv) that accused knew or had reason to believe that the act or omission would cause financial loss to the employer.

The first ingredient is applicable to both counts and is not contested. It is that all three accused were employees of Stanbic Bank posted at its Kikuubo Branch. I find this ingredient proved by the prosecution beyond reasonable doubt.

The second ingredient relates to whether or not there was financial loss to the bank. Evidence was adduced on behalf of the prosecution by PW3, PW5, PW6, PW7 and PW8 to the effect that the bank lost money on 4th December 2012 when Shs 55,000,000/= was paid out to an unknown person. Evidence of this is contained also in Exhibits P.8, P.14 and P15A. It is evident that the Bank did credit the account of PW5 which had on the occasion been debited. PW3, PW5, PW6, PW7 and PW8 also testified regarding the event of 8th December 2012 when Shs 4,400,000/= was paid to an unascertained person. That evidence is in exhibits P7, P14 and P.15B. Here again PW5 testified that the money debited from his account on the occasion had been made good by the bank after he complained. There was no evidence adduced to counter the loss aforesaid. I am satisfied the prosecution has proved beyond reasonable doubt that the bank did suffer financial loss.

Having dealt with the above elements it is to examine the various roles of each of the accused persons I turn next. In both counts A.3 features. He was the cashier/teller who later passed on the withdrawal voucher and identity document to his supervisors for further verification and authorization. Evidence was given of what is expected to be done by the teller upon receipt of a cash withdrawal voucher from a customer. Instructions were published on 1st February 2012. The details are in Part 5 of Exhibit P.5. I find the following instructions contained therein material to this case:

‘ On receipt of the cash withdrawal slip from the customer, the Teller should perform the following duty of care as follows:

- Account number where customers must indicate their account number and this should be verified against what is captured on the system
- Signature where customer must sign on the cash withdrawal form and the Teller must verify customer’s signature against what was captured on the system.
- Teller should ensure the customer has indicated the correct domicile branch
- Identity. Teller is to ensure the details on the form are the same as those appearing on the identification document. All identification documents provided must be originals and bear a photo of the bearer and this should be verified against the photo captured on the system/file.
- For amounts above Teller’s limit the teller should forward the cash withdrawal form and identification document of the customer to the Teller’s immediate supervisor for authorization.’

It is the prosecution case however that the Teller A.3, did not perform the expected duty of care. This is contested by A.3. He stated in his defence that the account number on the cash withdrawal voucher was the same as that on the system and that on both occasions in issue the signature the customer appended to the voucher was similar to that on the identity document and the one captured on the system. Evidence was led to show that there was variation between the account domicile branch indicated on the cash withdrawal voucher on one hand and what was captured on the system and was actually PW5’s account domicile branch. A.3 as well as A.1 and A.2 testified that at the time in issue the domicile branch code appeared by default when the account number was logged on the system but that instead of the name of the branch appearing it was a

code representative of the branch which defaulted. What came out clearly is that the Duty of Care instructions were given for a Bankmaster system. In the event one could not say whether the code represented Arua as should have been the case or Gulu as it came to be assumed to be. At the time, it was urged, there was transition from the old system known as Bankmaster to a new system called Finacor. The old system defaulted the branch name right away. The new system defaulted a code number. It was assumed the code given was that of the branch of domicile for the account. That was the reason, the defence argued, no issue was taken with the forms bearing Gulu as the branch of domicile for the account in issue. Indeed in cross examination PW2 conceded that at the time in issue upgrading was ongoing but that he was not sure if it affected the process of verification.

It was alleged that A.3 did not ensure that the details on the identity document agreed with those on the system, particularly since the driving permit presented was a forgery. It was the contention of the defence that there was no way of knowing that the driving permit presented by the customer was a forgery. It was submitted that details on it were similar to those on the system and that the appearance of the customer looked like the photograph on the identity document which in turn looked like the picture captured on the system. Unfortunately it was not possible during the proceedings to secure the photo which was on the system at the material time. In the circumstances I see no reason to fault the testimony of A.3 when he states that he was satisfied with the identity of the customer. I should add also that the prosecution case would have been much assisted by production of a CCTV footage relating to the two events, 4th December 2012 and 8th December 2012, showing the identity of the customer. Sadly none could be produced. Indeed on both occasions A.3 went ahead and forwarded the cash withdrawal forms and identity documents to his immediate supervisor, first A.2 and later A.1, for further verification and authorization. Here again I find A.3 did what he was expected to do where the cash sought exceeded the amount he was limited to. This is as regards the occasion mentioned in count 1 and that mentioned in Count 2.

On 4th December 2012 A3 had forwarded the cash withdrawal voucher and identity document of the customer to A.2. On 8th December 2012 A.3 had forwarded the cash withdrawal voucher and identity document to A1. Both A.2 and A.1 were in the capacity of supervisor to A.3. Regarding cash withdrawals over the counter the bank provided for the supervisor to perform a duty of care. It is contained in Part 5 of Exhibit P.5 and requires the supervisor to:

- Scrutinize the cash withdrawal form and customer identification the same way as stipulated in the case of the Teller
- When satisfied , authorize payment by stamping and signing on the cash withdrawal form and accepting the referral on the system
- Forward cash withdrawal form and customer identification to the Teller for encashment.

It is with the first instruction argument here lies. Here the supervisor is required to scrutinize both the form and customer identification the same way stipulated in the case of the Teller. It was argued on behalf of the prosecution that if scrutiny is to be done similarly the supervisor must also physically look at the customer the same way the Teller does to ascertain verification. It was the evidence of PW2 that at Stanbic Kikuubo Branch the seating arrangement is such that the supervisor sits in a vantage point near the Teller, which allows for the supervisor to look at the customer. No other witness, not even the accused, who works at the place, agreed with this. Supervisors sit separately from Tellers was the preponderance of evidence. It was not disputed that both on 4th December 2012 and 8th December 2012 respecting the charges in issue all the respective supervisor did was to follow the instructions alluded to without need to look at the customer. This evoked the contention by the prosecution that failure to look at the customer physically meant the supervisor had not performed his or her duty of care. The supervisor should do just what the Teller did, it was urged. In this regard I find it gainful to lay out this instruction as it is printed for the Teller:

‘ Identity: Ensure the details on the form are the same as those appearing on the identification document. All identification documents provided must be originals (not photocopies) and bear a photo of the bearer and this should be verified against the photo captured on the system/file.’

With due respect, I find nothing in Part 5 compelling the supervisor to look at the customer physically. I hold that it is not necessary for the supervisor to look at the customer and that the supervisors were not at fault when they did not look at the customer in issue.

Concerning other aspects of duty of care both A.1 and A.2 stated that they gave respective authorization and proceeded to forward withdrawal forms and identity documents to A3 for encashment. In that they acquit themselves well. I must note however that the non- availability of evidence concerning the opening documents of the account in Arua does not affect the fortunes

of this case in a small measure. Their availability would have shown what it was accused looked at. Both the photograph and the signature current then.

Given the evidence available I do not find A.2 and A.3 severally or jointly did anything or omitted to do anything that resulted in the loss of the Shs 55,000,000/=. Similarly on the evidence available there is nothing to show A.1 and A.3 severally or jointly did anything or omitted to do anything that resulted in the loss of the Shs 4,400,000/= is issue. This ingredient is not proved either in Count 1 or in Count 2 of the indictment.

The prosecution has got to prove also that the accused in both Count 1 and Count 2 knew or had reason to believe that their respective acts or omissions would cause financial loss to the employer. When knowledge is related to in an indictment it suggests the accused knew what he or she was going to do and that that knowledge notwithstanding the accused went ahead and engaged in the act or omission for which he or she is indicted. I am persuaded by the opinion in United States V Kisting, 159 Fed. Appx 725, 728(7th Circ.ILL. 2005) . It was stated there that when the word ‘knowing’ is used, it means that the defendant realized what he was doing and was aware of the nature of his conduct and did not act through ignorance, mistake or accident. Knowledge may be proved by the conduct of the accused and by all the facts and circumstances surrounding the case. The task facing A1, A2 and A3 throughout was to make verification. As noted what was expected of them is all contained in Exhibit P.5. No evidence was led to show that any of the accused on any of the occasions subject of Count 1 or Count 2 knew or had reason to believe that their act or omission, if any, would cause financial loss to the employer. In the event I do not find this ingredient proved either in Count 1 or Count 2 of this indictment.

The two assessors gave a joint opinion. In Count 1 they advised that the prosecution had not proved the charge against either A.2 or A.3 and that the accused should be acquitted. The assessors were of the same verdict regarding the culpability of A.1 and A.3 in Count 2. For the reasons I have given earlier on in the course of this judgment I agree with their opinion. Accordingly A.2 and A.3 are acquitted on Count 1. On Count 2, A.1 and A.3 are acquitted.

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Paul K. Mugamba

Judge

25th September 2015