

UGANDA:..... RESPONDENT
VERSUS
ADAKUN GRACE:..... ACCUSED

3. Account No.3120033660 of Caroline Neumba.
4. Account No.3120020288 of Tino Mercy Ruth.
5. Account No.4510400064 of Pax Land Motel.
6. Account No. 3120020529 of Comfort Apoo
7. Account No. 3120029061 of James Agii.

All the above transactions were posted but the accused. One Jeffrey Muhezi a banking officer was the one supposed to have made the posting and the process should have involved more than one person but the accused did it sole handedly. All the transactions were done by a person who had a 30million limit which was the accused's limit.

PW3 (Acen Elizabeth Ogwang), proprietor of Pax Land Motel, the owner of one of the above seven accounts said that the accused asked her to help her withdraw 15million she (accused) had allegedly received through the Motel's account. She requested PW3 to write a cheque in her names and open it so that she (the accused) could draw the money. PW3 did this for the accused (see exhibit P4) and the money was withdrawn.

Jane Mbabazi (PW4) Manager core banking system at the bank said that the accused was created into the bank system as AG0775 and password was 775. When a person posts a transaction, the system stamps the person, the branch from which the transaction was posted, the description of the transaction and the person who authorized it. (i.e a snapshot can be printed or viewed).

Further, that bank data is archived. The data date will be indicated if a snapshot is printed.

The bank system is virus protected- a system called Fire wall was installed. There are measures in place to guard against comprising passwords. These include;

When one logs in, the system keeps track of the time one logs out. If a different person logs in your system you will know.

Every 30 days passwords have to be changed and one can change a password if they suspect it has been compromised. A report to risk department has to be made in that case so that investigations are conducted. The accused never made and such report.

PW5 (Christopher Geriga), then Forensic internal Auditor was part of an Audit team that conducted an audit at Soroti branch. They compiled a report exhibit P.5 after confirming that a loss of 540,796,510/= was occasioned to the bank. The above money comprised of 429,125,715/= got from a suspense inter-branch account and 111,670,795/= comprising of Principal and accumulated interest due to some customers whose fixed deposit accounts were fraudulently debited and the bank now had to refund the money.

The money was traced to seven accounts listed herein, but 791,982 could not be accounted for and 3,664,908/= the balance in the accounts was netted off to reduce the loss.

PW5 (Geriga) scrutinized the impugned bank statements and separated the genuine transactions from the fraudulent ones. He highlighted the fraudulent transactions to show details of the transactions. Through this process he found that the accused passed the impugned transactions and that they can be traced to the suspense account.

He printed screenshots that were allowed in evidence as exhibits H1-H150 and D1-D260. The screenshots show transactions done by the accused on various accounts. They involve various amounts of money debited or credited into the suspense and individual accounts of various persons.

PW6 (D/IP James Anyonga) recorded a charge and caution statement from the accused (exhibit P.7) on the instructions of PW8 D/SP Okello Bura.

In her defence the accused denied the charges. She said that when she was transferred from Soroti branch she made a hand over report and she was cleared to move to Tororo branch. She was paid her terminal benefits, her NSSF claims and even given back her land title she had deposited in the bank for a loan without querying her about the lost funds. The bank has never sued her for recovery of the lost funds.

She was supervised by her manager who would have queried her in the event of any problem. She was never implicated in any audit report.

She denied that she withdrew the 15million from the Pax Land Motel account as PW3 (Acen) testified. PW3 is the one who drew that money. The accused only signed the cheque as a bank official.

The screenshots (H1-H150 and D1 –D260) are not genuine. They are edited and the date of their printing is 1/1/09 which was a public holiday.

She knows Mercy Ruth Tino and Comfort Apoo her daughters but she did not authorize the opening of their accounts. She knows her sister Acio but she did not authorize the opening of her account. She does not know Caroline Neumbe, James Agii and Iddi Abasi.

She did not authorize the opening of their accounts either. The charge and caution statement was taken in the absence of her advocate.

The Equinox system which the bank operates is vulnerable. It led to the loss of 2.4 billion/= in August 2009 and 900million in Kabale branch. She was not in charge of the bank records. Moreover, someone else could have accessed her password.

She adduced the evidence of her lawyer (Emmanuel Wamimbi) who said that she was detained for more than 48 hours and he was banned from seeing her. She made a statement in his absence.

Niwagaba Bright (DW2) a consultant Digital Forensic Analyst /Examiner impugned the screenshots that were exhibited saying that they were authorized by anonymous persons on an unspecified date and location.

DW2 (Niwagaba) pointed out several other inadequacies in the screenshots as follows;

- There is no log of all actions conducted on the suspects running computer.
- No photographs of the scene of crime
- No identity of the operating system
- No time and date
- No random access memory
- No volatile operating system data and there is no specification of the plan of action.
- No complete report from the time the incident was detected through the incidence responses, evidence collection, preservation and analysis no information on hour the evidence was collected, the forensic tools used to collect, preserve and analyse it, no time of its collection, who handled it, the travel record and storage record.

The screenshots are hearsay evidence because the person who collected them was not at the scene of crime. Equinox system is unstable and has many bugs, can be easily simulated to produce similar screenshots and can be bought from Neptune.

Exh D has differing dates. 16th/5/2008 and 27th/8/2008 as the account opening date for Ongaria Francis.

Exhibit D(6) shows that the transfer was on 27th/10/2008 but analysis shows that it was on 22/1/2009.

The screenshots merely indicate that a user with Grace Adakun's details logged in the system but that is not proof that she commissioned the transactions. System administrators and network administrators have control over those details.

DW2 however admitted that he did not interact with the person who printed the screenshots and he did not have access to the original data. Also that had he had that access he would probably come up with a different report. He also said that one does not have to be at the scene of crime to retrieve screen shots. That there is no evidence that there was population and simulation to get the exhibited screenshots.

He also said that it is standard practice that a password is personal and that the discrepancy in exhibit D and D(6) only relate to the description given but not to the information in the screen shots.

The burden of proof lies with the prosecutions and the standard of proof is that beyond reasonable doubt- see ***SEKITOLEKO Vs UGANDA 1967 EA 531 and WOOLMINGTON Vs DPP 1935 AC 462.***

Embezzlement

The state had to prove;-

1. That the accused was an employee of a company.
2. That she stole the money complained of.
3. That the money belonged to the bank.

4. That she received or took possession of the money from or on account of the bank or she had access to it by virtue of her office.

The fact that Centenary Rural Development bank is a company and that the accused was an employee of the Bank were not contested and I find those ingredients sufficiently proved.

Theft of the money

The prosecution adduced five categories of evidence to prove that the accused stole the money.

The categories of evidence are;-

1. Screenshots exhibits P6H- H150 and P6D-D260
2. Bank statements of accomplice accounts.
3. The accused's confession.
4. PW3's evidence
5. An Audit report.

The screen shots

The background to the screenshots evidence is that the bank was operating a system under which every employee had personal details only known to them. It was in evidence (see PW4(Jane Mbabazi's evidence), that if an employee posted a transaction, the system automatically captured that person's details, the branch from which the transaction was posted the person who authorized the transaction, amounts involved and so on.

Those details are archived and can be retrieved and printed anytime.

PW5 (Geriga) retrieved and printed the details with regard to the lost funds in this case. He explained that he scrutinized the impugned bank statements, highlighted the fraudulent transactions in the statements and was able to see that it was the accused person who passed the transactions and that the transactions could be traced to the suspense account. He then printed these details/ screenshots that were exhibited as P6H to H150 and D1 – D260.

The defence assailed this evidence on the basis that PW5 (Geriga) lacked the requisite qualifications to retrieve the screenshots. Geriga testified that he was a Forensic Internal Auditor

when he retrieved the screenshots. He explained the process of retrieving the evidence and in my view, it is a fairly easy process not requiring specialized skill.

Indeed DW2 (Niwagaba) who described himself as a Consultant Digital Forensic Analyst/Examiner said that recovering a screenshot is not as complicated as imaging a computer or a hard drive. The defence's line of argument was therefore self defeating.

The defence also argued that Geriga (PW5) did not follow the standard procedures when gathering the evidence. In this regard they said that he did not show the tools he used to extract the evidence and that the evidence does not have information such as where it was got the time and date of its collection the random access memory and many other anomalies as highlighted here-in.

DW2 (Niwagaba), whose evidence the defence relied on to counter PW5's (Geriga) however was clear that he did not say that the evidence was tampered with or fabricated. This to me is key. Geriga (PW5) was clear about the procedure he adopted in gathering the evidence. He was cross-examined and no-where did it come out that the omission to indicate the scene of crime and the time and date of retrieval of the evidence for example watered down the quality of the evidence. It was DW2's evidence that a person with the accused's user rights commissioned the impugned transactions. I do not think that this conclusion would have been changed by indicating the time and date of retrieval of the information or by including all the information that the defence says is missing in the screenshots.

I have scrutinized the screenshots (H to H150 and D-D260) and in all of them the name of "Adakun Achan Grace" appears as that of the person who entered the transactions. No amount of argument can change that.

This takes me to the next level of argument which is that any other person could have used the accused's particulars to transact.

PW4 (Jane Mbabazi) was clear about the measures in place against the compromising of personal passwords, key of which was that a password was only known to holder.

I was satisfied that in view of the measures outlined by PW4, it was not possible that another person used the accused's password to transact and I find the screenshots (H-150 and D1-D260) a genuine record of transactions.

Bank statements

The State relied on seven bank statements. The first of these was of James Agii in which 4million was sent on 05/09/2008. The same amount was withdrawn on the same day.

The second account was of Christine Asio Napakol in which 200,000/= was deposited on 5/9/2008, 393,354/= sent on 20/12/2008, 4,010,532/= on 29/12/2008, 177,757/= on 27/01/2009 and 893,743 on 7/9/09. There were several ATM withdraws from the account between those dates.

The third account was that of Iddi Jhomy Abass in which funds were deposited about 71 times between 10/09/2008 and 16/6/2009 and withdrawn via ATM many times.

The forth account was that of Caroline Newumbe in which various amounts of money were deposited 23 times and withdrawn via ATM.

The fifth account was that of Mercy Ruth Tino in which 10,317,715/= was sent On 12/2/2009.

The sixth account was that of Paxland Motel in which 115,020,000/= was deposited on 22/06/2009 and the seventh account was of Comfort Apoo in which 340,000/= was sent on 30/08/2008, 350,791/= was sent on 05/09/2008, 850,000/= was sent on 10/09/2008 and 2,221,379/= was sent on 10/9/2008.

The transactions in these accounts are represented in the screenshots. The 4,000,000/= in James Agii's account No. 3120029061 is evidence in screenshot H4 and the entry was by Adakun Grace. Screenshot H5 which shows transactions in Comfort Apoo's account and H6 of Christine Asio Napakol's account were all transacted by Adakun Achan Grace.

All the transactions in the exhibited account were made by Adakun Achan Grace as seen from the screenshots.

Other than evidencing the authenticity of the screenshots, the seven bank statements go to further link Adakun Achan Grace to the entries/ transactions in issue.

The Audit Report

An Audit was conducted by a team of which PW5 (Geruga) was part. He explained the methodology they adopted and the findings they arrived at. He said that they traced all the money involved to seven accounts, but that most of it had been withdrawn. The total amount involved was 540,004,528/=.

Again the exhibited screenshots and bank statements support the findings of the auditors.

For the defence it was argued that the report/audit was not done by experts. PW5 (Geriga) however described himself as a Forensic Auditor. I wonder what expertise the defence required.

It was argued that the report does not explain why the fraud was not detected fast. The reasons were however given by PW5(Geriga) and these were;-

The fact that the person who executed the fraud was a bank staff and an Assistant Manager with custody of bank documents. In addition, there was the issue of the trust the person enjoyed with the supervisor, which trust was abused.

The defence raised the issue of possible collusion with other bank staff but there is no evidence to support that proposition.

The fact that the audit findings are supported by other evidence- such as the screenshots and the seven bank statements persuades me to believe the findings of the auditors.

PW3's evidence

Ahen Elizabeth (PW3) gave an account of how the accused who had apparently used M/S Pax Land Motel account to receive funds asked her to help her draw the funds. She asked her to write a cheque in her own names but open it so that the accused could draw the money. PW3 said that she did this and the money was withdrawn. She was later arrested on allegations of fraud.

I was invited to pronounce myself on whether PW3 (Acen) was an accomplice in the commission of the offence. My understanding of an accomplice is one who is involved in the commission of a crime. Acen's evidence was that the accused told her that she had received money which she asked her to draw for her. Acen was not involved in the fraud and cannot be labeled an accomplice. She struck me as a witness of truth. Indeed even the accused said she had no grudge against her. I believed her evidence and with it the fact that the accused was the one who moved the 15020000/= from the system generated inter branch suspense account to account No. 4510400064 of Paxland Motel.

Since the same methodology was used in the transfer of the rest of the money, PW3's evidence lends credence to the contention that the accused is the one who posted all the other transactions.

The accused's confession (exhibit P7)

The State adduced a charge and caution statement in which the accused is said to have admitted to have transferred 500m/= to Newumbe and Iddi Abasi's account. The defence maintains that the statement was not made voluntarily. I hereby warn myself as I did to the assessors, that it is dangerous to act upon the statement in absence of corroboration in some material particular.

In this case however, there is abundant corroboration:-

1. The names of the account holders given in the statement are some of the names of the account holders to whose accounts some of the funds were traced.
2. The mode of transfer of funds and source of funds are the same as those in the audit findings.

The above facts go to support corroboration to the statement.

Since it has been sufficiently corroborated, I believe its contents, particularly the admission of the accused to the transfer of 500m/=

Going back to the question of whether the accused stole the 540,795,510/= the evidence in the screenshots, the seven bank statements, the Audit report, PW3 (Acen) evidence and the confession all go to show that it was the accused who posted the transactions that led to the money being withdrawn.

There is the defence argument that there is no evidence that the accused signed the payment vouchers and withdrew the money from the suspense and fixed deposit accounts.

Three pieces of evidence satisfy me that the accused stole the money in issue;-

1. PW3 (Acen's) evidence that the accused asked her to write cheque which she gave her and she draw the 15,000,000/=
2. The charge and caution statement in which the accused admitted to drawing the money 500m/= and giving it to one Iddi Abasi to buy trucks for her.
3. Three of the account owners through whose accounts the money went were the accused's close relatives- children and sister.

All that evidence viewed in the light of the fact that it is the accused who originated the transactions and moreover even did the unconventional, the making of manual transactions on suspense accounts leaves no doubt that she stole the money complained of.

Whether the money belonged to the bank

I can do no more than cite the authority supplied by the learned Prosecutor (thanks to him) which lays down the principle that once a customer deposits money in a bank, that money becomes the property of the bank- see *Edward Thomas Foley Vs Thomas Hill & others (1848) 2 HLC pg 28*.

The capacity in which the accused accessed the money.

That the accused was an employee of the bank was not contested. Evidence was given that the transfers were within the accused's 30m/= limit- underlining the fact that she managed to access the money because of her office/position in the bank.

On the whole I found sufficient evidence that the accused embezzled the 540,796,510/= and I convict her as charged in Count 1.

Causing Financial Loss

I Count 2 to 8 the State had to prove;-

1. That the accused was employed by the bank.

2. That the accused did an act or omission that she knew or had reason to believe would cause financial loss to the bank.
3. Loss indeed occurred.

I have already found that the accused was an employee of the bank.

The act complained of

In each of Counts 2 to 8 the complaint is that the accused fraudulently diverted the amounts of money indicated in each count from the bank's suspense accounts and customers' fixed deposit accounts to the accounts of the persons indicated in each count.

Her confession (exhibit P.7) is that she transferred money from suspense and fixed deposit accounts to accounts of named persons- Iddi Abasi (count 2) and Newumbe (count 3).

The Audit report, screenshots and statement of account for the seven accounts show that the accused diverted funds from the suspense accounts and fixed deposit accounts to each of the accounts mentioned in counts 2 to 8.

I have already dealt with the defences raised e.g the denial. I was convinced that she is the one who posted the transactions. On the evidence available I said and I repeat that there is no possibility that another person used the accused's particulars to post the transactions.

In her confession she said that she gave 500m/= to Iddi Abasi to buy trucks for her. The evidence of PW5 (Geriga) was that the bank lost 540,796,510/=. The seven statements of accounts each show that the monies were withdrawn. No doubt is left that the bank suffered financial loss.

The prosecution has proved that the accused diverted the monies reflected in each of counts 2 to 8 and the bank suffered loss. I accordingly convict the accused as charged in each of counts 2 to 8.

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**HON.LADY. JUSTICE
MARGARET TIBULYA
JUDGE OF THE HIGH COURT**

9/03/2015

MITIGATION

PROSECUTION: We have no previous criminal records in respect of the convict. She has been on bail. The offences are very serious as reflected in the maximum penalties. On count 1, she is liable to a maximum of 14 years imprisonment and the same on counts 2-8.

The sentencing guidelines – paragraph 42, the factors to be considered when sentencing for corruption related offences include the method used in commission of the offence. The method here was sophisticated. It involved manipulation of IT systems where money was diverted from suspense accounts and fixed deposit accounts to accomplice accounts. Also breach of trust- the convict breached the trust that had been put in her by her employer. She was assistant manager and head of banking section. She was a custodian of the funds in that branch. This was the least her employers could have expected from her.

Also the amount of money involved. Over 540m/= was lost, a high amount of money.

The impact of the crime should be considered. There is evidence that the bank had to compensate some of the customers whose accounts were affected by the fraud.

Aggravating factors

-The degree of premeditation. This fraud was carefully planned by the convict.

-Offences of corruption are on the rise in the country- particularly case where bank employees steal from the bank that employs them.

It is the duty of court to clamp down on such criminal activity.

The convict through-out the trial did not show any remorse for her conduct. She merits no mercy.

I pray for a deterrent sentence- a custodial sentence. We propose at least seven years imprisonment. We also pray that the complainant bank is compensated by the accused- S.126(2) of the T.I.A.

We so pray My Lord.

COUNSEL FOR ACCUSED:

The convict is a first offender. She suffered from HBP and has problems with her nerves. She is now 53 years of age. We pray that you consider that. We pray for a lenient sentence.

That is all.

COURT:

Sentence on 16th/03/2015.

Accused's bail is canceled.

**HON.LADY. JUSTICE
MARGARET TIBULYA
JUDGE OF THE HIGH COURT**

10th /03/2015

SENTENCE

I have considered both the mitigating and the aggravating factors that have been brought to my attention.

The aggravating factors such as that the offences are some of the most serious economic crimes seem to out weight the mitigating ones which include the fact that the accused is a first offender and of advanced age.

One particular aspect of the accused's actions struck me;- the reckless manner in which she behaved to the extent that she involved her children in the commission of the offence a bad example of mother hood. It left me wondering about how some people make choices in life.

No doubt she knew the scam would soon or later be unearthed. This is evident from the dispatch with which the funds were drawn by her accomplices. She is an adult and therefore is presumed to have known that once discovered, the legal process would take its course to the full extent, but nonetheless went ahead and posted the transactions. I believe she readied herself for this moment and as such I thought that counsel for the accused's submission about how she is of advanced age and with high blood pressure (the only mitigating factors drawn to my attention) was just because he had to say something.

Having observed the accused's demeanor from beginning to end of the trial, I did not at any moment think she regretted what happened, (not surprising, knowing that she made a deliberate choice between taking the money and having her freedom).

The prosecution pointed out the fact that the offences were premeditated, the amounts involved (540m/=) colossal and that the convict abused the trust the employer put in her as an assistant manager- quite valid concerns by the prosecution.

To this I add the effect the conduct such as this is having to the economy. The prosecution sought seven years imprisonment term. I thought the circumstances of the case called for a much more serious punishment, but not to be thought as vindictive, let the accused serve seven years imprisonment on each of the eight counts. Sentence concurrent.

Order:

In keeping with the law, I hereby order that she compensates the complainant bank in the sum of 540,796,510/=.

Exhibits be returned to prima facie owners. Right to Appeal is explained.

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**HON.LADY. JUSTICE
MARGARET TIBULYA
JUDGE OF THE HIGH COURT
13th/3/2015**