

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA KAMPALA
ANTI-CORRUPTION COURT
HCT-00-AC-SC-0005-2015

UGANDA:.....PROSECUTION

VERSUS

KIGOYE FRANCIS:.....ACCUSED

BEFORE JUDGE LAWRENCE GIDUDU

JUDGMENT:

Mr. Francis Kigoye herein after called the accused is indicted with one count of **Embezzlement contrary to section 19 (b)(i)(ii)(iii) of the Anti- Corruption Act 2009.**

He is also charged with 37 other Counts of fraudulent false accounting contrary to **section 23 (b) of the Anti-Corruption Act.** He denied the charges.

The prosecution case is that the accused who had risen to the rank of Principal Accountant at the New Vision Publishing and Printing Company, while employed in the credit section responsible for collecting debts of the Company stole 336,597,398/= the property of his employer and to cover that theft, knowingly and fraudulently made false entries on the carbon copy receipts purporting that money had been paid by New paper distributors whereas not.

The allegation is that the accused would collect cash or cheques from advertisers to whom he would issue a correct original receipt but in an act of carbon-slitting, would make a false entry indicating that it is the newspaper distributor or agent who has paid for Newspapers supplied instead of the Advertiser.

It is further alleged that the accused would contact the distributor or agent with a statement showing that his or her account has been credited and would demand the money in cash from the agent. In December 2013, the company demanded payments from advertisers for services rendered. It was discovered they had paid money which was instead credited on Newspapers distributor accounts. During an internal audit, carbon copy receipts were traced to the accused's handwriting and signature. This prompted the institution of these charges.

In his defence the accused denied stealing company funds and attributed the fraud to the company's internal control weaknesses such as failure to do bank reconciliations which would have burst the fraud in good time.

Further, he attributed the fraud to possible connivance between advertisers and **New Vision** staff particularly those responsible for reconciliation of revenue. He stated that if there was no connivance the monthly statements issued to advertisers would have revealed the problem.

He attributed some carbon receipts to his handwriting but denied some signatures. He also disputed receipts alleged to have been found in his drawer claiming the search was done in his absence. He faulted the failure by the prosecution to produce the original copies of his specimen signatures claiming the photocopies were not good enough.

Once an accused person denies the offence with which he is charged, the prosecution assumes the duty to prove all the essential ingredients of the offence against the accused person beyond reasonable doubt. The accused has no duty to prove his innocence if at the end of the trial the court is left with a reasonable doubt, then the accused is given the benefit of that doubt and must be acquitted.

Woolmington versus DPP (1935) AC.462 followed .

To prove Embezzlement, the prosecution must adduce evidence that:-

- (i) The accused was an employee of the Company.
- (ii) The accused stole the money.
- (iii) The money belonged to the company to which the accused had access by virtue of his employment.

For counts 2 to 38 regarding fraudulent false accounting, the prosecution must prove that the accused was a clerk or servant, that he made false entries in the books belonging to the Company. It must be proved that he had the intent to defraud.

COUNT 1 : EMBEZZLEMENT

Mr. Tom Walugembe senior state attorney who appeared for the DPP, submitted that between January 2009 and November 2013, the accused stole 336,597,398/= the property of his employer through manipulation of revenue from advertisers which he fraudulently caused to be credited to distributors. He would then go to the distributors and collect the cash equivalent.

The evidence of Mr. Zubair Musoke, PW1 who is the **CFO** of **New Vision**, is to the effect that he received a Report from the credit manager who was responsible for the accused that there was suspected fraud in the credit control section. In the same period, he received an email from the accused that he had resigned his position with immediate effect and was not

available to do a hand over. This prompted PW1 to institute an internal audit to investigate the operations of the credit control section.

Mr. Francis Opoi ,PW3 the manager internal audit, was detailed to investigate. He produced a report exhibited as **P8** in which he discovered that 628,604,821/= had been diverted from the advertisers accounts and wrongly credited on the distributors accounts. The main culprits were the accused and one Peter Mubale. The accused was found to have collected 44 cheques from Advertisers such as **Moringa, Straight Talk, Lowe, Scanad and OMD Uganda** totaling to 336,597,398/=. This money was instead credited through carbon slitting method by the accused to Newspaper distributors accounts for Mr. Jengo, Mr. Giita, Mr. Ssemogerere, Ms. Birungi and Mr. Kiberu. Investigations reveal that these distributors whose accounts were fraudulently credited paid the money in cash to the accused.

Mr. Jengo Edward, PW5 testified that he had been approached by the accused in September 2012 to allow him (accused) credit his account as a News Paper distributor with the **New Vision** so that PW5 could in turn pay cash to him. PW5 resisted but the accused travelled to Jinja to see him personally and after giving him assurances that the deal was proper, he allowed him. A total of 95,490,119/= was deposited on PW5's account which the accused collected as and when money would be deposited. It was PW5's evidence that the accused would bring a receipt showing that the agent has paid the money which the accused would claim from him. He surrendered these receipts to the investigating officer once the matter was due for investigation.

Later he was summoned by the company to explain the fraudulent credits to his accounts. Out of fear he first denied but later admitted that the accused was the one depositing money on his account and collecting the same in cash.

A handwriting expert who examined the specimen signatures of the accused and the signatures on the questioned carbon copy receipts concluded that there was strong evidence to show that the author of the sample signatures is the one that signed the questioned documents. That was the testimony of Mr. Ssebuwufu Erisa a document examiner from the police forensic lab who testified as PW7 and tendered exhibit **P12**.

Mr. Henry Kunya learned counsel for the accused, disputed the submission that the accused stole the money. It was his contention that none of the advertisers testified in court to confirm that the accused person received cheques or cash from them. To him there was therefore no evidence that the accused received money which he could steal.

He also referred to exhibit **D3** which is the financial statements of **New Vision** as a company dated 25th September 2014. These accounts were confirmed by the auditor General. There is no report of a loss of money as contained in exhibit **P8** submitted by PW3.

He criticised the evidence of the investigating officer AIP Othieno James who testified as PW6 for saying that advertisers were not cooperative because they had not suffered any loss. He concluded that there was no evidence of the accused taking possession of the money and any cheques received were banked on the company account meaning there was no loss to **New Vision**.

There is no dispute that the accused was an employee of **New Vision** having risen through the ranks from senior accountant to Principal Accountant. It is not in dispute as well that part of the functions of the accused as part of the credit control unit was to collect cheques or cash from advertisers who owed the company funds for services rendered.

The only contested ingredient in regard to embezzlement is whether the accused stole money from the **New Vision** Company. The prosecution evidence is that the accused manipulated carbon receipts to appear as if Newspaper distributors/ agents had paid money to **New Vision** which led to their accounts being credited by the IT accounts team. These credits were false because they were not backed up with physical cash. Once the distributors' accounts were credited with money they had not paid, the state alleges that the accused contacted the agents to pay him.

One such agent was Mr Jengo, PW5. It was his evidence that he knew the accused well and had met him at a social function. He approached him with a sinister plan and used to deposit monies to his account which he would follow up and collect. It was his evidence that he received a total of 95 million on his account which the accused collected.

The evidence of Mr. Opoi, PW3 the manager internal audit is that 44 transactions were made by the accused totaling to 336,597,398/=. PW5 admitted to refunding the money to **New Vision** because his account had been credited without him paying cash or cheque. PW3's evidence is that other advertisers made part payments such as Giita who received 227,301,434/= out of which he refunded 10,424,488/=. Giita has since disappeared while Bilungi is reported dead.

It was his further evidence that others like Kiberu and Ssemogerere paid back all the money which was 7,230,955/= and 3,762,610/= respectively. Apparently Mr. Giita has gone underground having failed to pay the balance of about 210 million.

The defence asked me to find that in absence of evidence from advertisers, there was no proof that the accused received cheques from them. With respect I did not find the evidence of advertisers relevant to the proceedings in this case because there is no more complaint from them. Their accounts were credited after money was reversed from the distributors. They are not complaining so their evidence is of no value to this case.

In other words advertisers are not complaining because their accounts were eventually sorted. Since they had paid by cheque, the bank statements spoke for themselves. Deposit slips for those cheques are on court record as part of exhibit **P9**.

The accused also in his testimony advanced a theory that advertisers could have connived with staff in **New Vision** to cause the fraud. Again I do not see the relevance of this defence because advertisers are not complaining. I would have been prepared to consider that if the defence had propagated a theory that it is the distributors who must have connived with the IT Accounts staff to credit their accounts without them paying any money to the company.

But again the irrefutable evidence on record is that the accused is the one who approached distributors such as PW5. He called him on phone and when PW5 did not buy the idea, the accused travelled to Jinja to see him physically. After persuading him, money hit PW5's account with **New Vision**. The accused used to call PW5 to inform him of the money. The accused would bring a receipt as confirmation that all was well. In exchange for the receipt PW5 would give the accused money in cash.

Further the evidence of PW7 the hand writing expert, is that the carbon receipts whose entries were falsified were in a hand writing consistent with the signature of the accused.

It was also PW1's evidence that in December 2013 the accused suddenly left the company and sent an email to him saying he had resigned. The email is dated 13th Decembejr 2013 and exhibited as **P5**. When PW1 challenged him, why he was resigning without notice, and without a handover report, the accused said he would hand over in future because he was out of the country and that he could not be contacted by phone.

In his unsworn statement in defence the accused admits tendering a resignation by email. He admits to travelling to Rwanda to look for another job and complains that his salary at **New Vision** was not good enough. The accused's complaint about little salary confirms what PW5 testified in chief that the accused had asked him to allow the accused use PW5's account to draw funds because the accused was getting little salary from New Vision.

When I weigh these factors such as the accused's sudden disappearance from his work station , the accused's handwriting on the carbon receipts which were used to create false credits to distributors, the evidence of PW5 that he acted as conduit for the accused to receive money against the accused's defence that there was lack of evidence from advertisers and that the fraud was a result of the internal weak control systems , I find that the theft of 336,597,398/= has been squarely placed at the doorstep of the accused.

PW3, explained that though the over 600 million lost between the accused and one Peter Mubale was not captured in the auditor General's report to Parliament in exhibit P3, the same was captured in the subsequent Audit Reports.

The theft in this case was done in an intelligent manner. The accused created false money by carbon slitting the receipt books of **New Vision** to read like distributors had paid money whereas not. The accused went to the distributors and collected real or genuine money that the distributors owed to **New Vision**. This was a clever way of stealing what was due to the employer without first waiting for the money to come to the employer. That is what amounts to embezzlement. It is different from ordinary theft by strangers

I am in agreement with the gentleman assessor who opined that the issue in this case was creating false carbon copies which created false money in the accounts of the company that gave the accused the opportunity to collect genuine money from the distributors.

Having accomplished the theft of a period of time, the accused chose to flee the country and only returned once his family had been inconvenienced by the police.

His explanation that he went to Rwanda to look for a job which he never got is too simplistic for this court to believe.

Consequently it is my conclusion that the prosecution has proved the charges of embezzlement in Count 1 against the accused beyond reasonable doubt.

COUNT 2 – 38: FRAUDULENT FALSE ACCOUNTING

Mr. Tom Walugembe senior state attorney submitted that the accused was a servant of New Vision by virtue of his employment status and knowingly made fraudulent entries to deceive the company that it had received the money from distributors whereas not.

He dismissed the accused's defence that the handwriting on the carbon receipts in exhibit P9 only resembled his. He asked me to consider the evidence of PW7 which confirmed the handwriting which was also corroborated by the evidence of PW3 who knew the accused's handwriting very well in the course of their work at the company.

Mr. Walugembe also referred to the accused's testimony that he went to Rwanda to look for a job as total lies. It was his view that this was evidence of running away from the crime he had committed.

Mr. Henry Kunya learned counsel for the accused disputed the carbon copy receipts saying they were not matched with the originals in order to determine the variances. He criticised the evidence of PW6 who testified that the 1st Investigating Officer called Namono lost those originals. He challenged the evidence of PW5 implying that he is an accomplice of sorts. He referred me to the case of **Kanakulya Muhammed versus Uganda Criminal appeal No. 60 of 2003 Court of Appeal** for the proposition that failure to call a material witness creates an adverse inference that such a witness may have given evidence that is unfavorable to the prosecution.

Finally Mr. Henry Kunya submitted that **New Vision** had failed to do reconciliations to detect fraud in good time and that failure to call Mr. Kamba who was the accused's supervisor to explain why reconciliations were not being done monthly meant that the evidence was adverse. He also asked court to consider that the specimen signatures of the accused were photocopies, the originals having been lost by Namono the 1st investigating officer. He justified the accused's trip to Rwanda saying he had gone to look for greener pastures which was normal for professionals.

It was not disputed that Mr. Kigoye was a servant of **New Vision** as a company. **Black's Law Dictionary 8th Edition**, defines a servant in the following terms

"...the word servant, in our legal nomenclature, has a broad significance, and embraces all persons of whatever rank or position who are in the employment and subject to the direction or control of another in any department of labour or business. Indeed it may in most cases be said to be synonymous with employees".

The accused was at the rank of Principal accountant at the **New Vision**, he was assigned duties in the credit control section. To the extent that he was an employee in a company under the supervision of the credit control manager. He was a servant within the meaning given above.

The next ingredient is whether he made false entries with intent to defraud. The accused denied making the false entries contending that the handwriting looks like his but was not his.

Mr. Kunya submitted that the original receipts issued to the advertisers were not produced in order to compare whether they were at variance with the carbon copies.

I have perused the carbon copies in exhibit **P9**. It is not in dispute that these carbon copies belonged to receipt books of **New Vision Printing and Publishing Company**. The names of the payees in these carbon copies refer to persons such as **Giita Ronald, Kiberu Rogers, Birungi, and Ssemogerere Francis**. They are distributors who never paid the money attributed to them.

Interestingly the amounts for each entry correspond to deposit cheques issued by advertisers such as **Moringa, Straight Talk Foundation, and Scanad Uganda Limited**. The **modus operandi** seems to have been that the cheque equivalent from the advertisers would be recorded as a payment by a distributor in the exact figures that the advertiser paid. On the face of it this is clearly a false entry.

It was not necessary for the prosecution to present original receipts issued to the advertisers because copies of waste cheques and bank cheque deposit slips which were attached to the carbon copy receipts forming Counts 2 to 38 of the indictment are very clear on who was the

payee and the amount paid. There was therefore no need to call the advertisers or the police officer Namono who is alleged to have lost some original receipts that had been given to her by the advertisers and witnesses like PW5.

There is sufficient information to draw the relevant conclusion that the entries in the carbon copy receipts did not match the names of the advertisers who had actually paid the money.

PW2 gave evidence that unless the supervisors were keen the accounting system at **New Vision** was such that this kind of fraud would go on un-detected. This is because cheques would be delivered to a cashier for banking, while the carbon receipts are given to IT accounts staff to capture the payments in the internal system.

There seems to have been no correlation between what the IT staff in-put in the system and what the cashiers bank. The accounts of the advertisers were supposed to be credited on the basis of only the carbon copy receipts which strangely read different payees. That was a weak control system by the **New Vision**.

The accounting software should have been able to compare the cheque deposits with the actual credits by the IT accounts staff. The accused exploited this internal control weakness to his fullest advantage. The fact that the handwriting is his according to the evidence of the handwriting expert, the accused cannot run away from the entries in the carbon copy receipts found in **exhibit P9**.

The accused's conduct of running away and resigning in a dramatic style betrays his defence that he was innocent. He fully knew what he was doing and appreciated the consequences that would follow. The admission by agents like PW5 that they gave the accused money which they would have paid to the company is another confirmation of the accused's guilt. The disappearance of agents like Giita leads to an irresistible inference that he benefitted from the accused's sinister scheme.

The evidence against him is so strong that I am left with no doubt that he is guilty of falsifying entries in Counts 2 – 38 and I find him guilty on each of those counts.

In conclusion, I am satisfied that the prosecution has proved the charges of embezzlement and fraudulent false accounting against the accused beyond reasonable doubt. I find him guilty on each count and convict him on each of counts 1 to 38.

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Lawrence Gidudu

Judge

13th, October, 2016