

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
ANTI CORRUPTION DIVISION HOLDEN AT KOLOLO
CRIMINAL SESSION CASE 123 OF 2012

UGANDAPROSECUTOR.

VRS

SENTONGO AND 4 ORSACCUSED

BEFORE GIDUDU, J

JUDGMENT.

Sentongo Patrick, A1, Joan Nabugwawo, A2, Brian Okurut, A3, Ayo Angela, A4 and Baryamwijuka Eriya, A5 are all former employees of MTN Uganda, a telecom company.

They were indicted in court for various offences and after the close of the prosecution case; the court put them on defence as follows.

- a) A1 and A2 had a case to answer on **count one** which is embezzlement of UGX 8,000,000= C/S 19(b)(i) of the ACA, 2009.
- b) A1 and A2 had a case to answer on **count two** which is embezzlement of UGX 67,029,000= C/S 19(b)(i) of the ACA, 2009.

- c) A1, A2 and A4 had a case to answer on **count three** which is embezzlement of UGX 3,759,000,000= C/S 19(b)(i) of the ACA, 2009
- d) A1, A3 and A5 had a case to answer on **count four** which is embezzlement of UGX 5,846,000,000= C/S 19(b)(i) of the ACA, 2009
- e) A1, A3, A4 and A5 had a case to answer on **count five** which is electronic fraud C/S 19 of the Computer Misuse Act, 2011
- f) A1, A3, A4 and A5 had a case to answer on **count six** which is unauthorized disclosure of access codes C/S 17 of the Computer Misuse Act, 2011.
- g) A1, A2, A3, A4, and A5 had a case to answer on **count 8** which is conspiracy to defraud C/S 309 of the Penal Code Act.

The prosecution case is that between May and December 2011, the accused while employed by MTN Uganda, conspired to steal money from the MTN mobile money system called **FUNDAMO** by creating fictitious journals and exiting the money through the MTN Public Access shop operated by A2, 17 bogus subscribers created for the sole purpose of receiving funds and some accomplice MTN mobile money agents such as ALWAYS Uganda.

The prosecution contends that the accused shared pass words and created pseudo persons such as Ronald Sebugenyi on the system who transacted as a “ghost” person in draining the money from the **adjustment for discrepancy account** through the **dispute account** to the seventeen subscribers and accomplice MTN agents like A2 at the Public Access shop and ALWAYS Uganda belonging to A1’s wife.

The prosecution evidence is that once the money hit the accounts of the 17 subscribers, the numbers would be deactivated automatically since they would have burst their ceilings. The subscribers were however re-activated by the accused persons without log in incident reports. The accused except for A5 resigned from the company in close succession between October and December 2011. This raised suspicion that they could have committed a crime before leaving. An audit commissioned after their departure revealed mal practices which constitute these charges.

The prosecution further contends that the accused are liable because their user names appear on the fraudulent transactions which were used to steal money from the mobile money

system. The prosecution evidence is that A1 who had **super user rights** to create **other users** on the system abused this trust and manipulated the system to steal money from the MTN mobile money platform in conspiracy with other accused persons. A1 is believed to have created the “ghost” users such as Sebugenyi.

The prosecution case is that the accused persons are culpable by conduct when they resigned in close succession. They are also culpable for re activating the 17 subscribers each time huge sums of money would hit their accounts without an incident report from the call center. The **KYC (Know your customer)** documents of the 17 subscribers were shambolic in that the names of the subscribers did not match the identity documents attached. It was also the prosecution case that A1 went into hiding and had to be stalked in order to be arrested. A1’s wife who operated ALWAYS (U), one of the MTN agent outlets where stolen money was exited has disappeared to date.

Each of the accused persons denied the charges. A1 admits having had **super rights to create other users** on the system. He identified his user name as **senpat231** and denied ever using **sentop121** which was the **user ID** for the fraudulent transactions. He denied making any transactions in regard to Shs 8million in count 1 and Shs 67 million in count 2. It was his testimony that his signatures was forged on the approvals for the Shs 67 million. It was his defence that the Head of the Treasury was responsible for supervising him and others. He contended that whatever he did was with the approval of the Head of Treasury (PW5).

He denied creating **Ronald Sebugenyi** on the system and linking **Sebugenyi to Angella Ayo**. He justified his property estate as having been acquired through loans from various banks which used to finance his real property business.

A1 further stated that the Shs 67 million in count 2 was posted as **sales tax** in the financial statements of MTN although he acknowledges that MTN was not paying **sales tax** at that time. He admits receiving money totaling to Shs 241million through the system and further, admits that **Sauda Nakimbugwe** who was the proprietor of Always Uganda Limited was his wife.

Nakimbugwe has since disappeared from the A1’s home. He admits he was an approver in the money liquidation process to confirm that money existed on the system. He faults the

fraud to lack of daily reconciliations by the **revenue team** which would have burst the fraud in good time.

He however denied creating A3 and A4 on the system although he admits it should have been him to create them. He believes they were created by the IT team.

A2 also denied acting as a conduit for the stolen funds in count 1 and count 2. She justified the receipt of 8 million in count 1 as money she was getting back from an agent she had advanced it to. Her testimony was that agent to agent transactions did not go through the dispute account. She however failed to explain why A1 user name appears on the transaction as the originator of the Shs 8 million. She denied stealing Shs 67 million on grounds that she had no user rights on the **FUNDAMO** system but admitted that sums of e-money sent by A1 would hit her account and that the same would be taken off her account without her knowledge or approval.

It was her evidence that at one time she complained to one **Gasinzi** about float hitting her account and the same being taken off without her control. She denied embezzling Shs 3.7 billion in count 3 on grounds that if float (e-money) hit her account at public access shop she would not know. She would just continue trading normally even after she would realize that she had got more float (e-money) than she had loaded. When she questioned A1 about it, he informed her that they are trying to create a **super agency** on her account so that she could accommodate huge amounts of money.

A2 denies knowing **Sebugenyi** who also sent money to her account. This money would be taken off her account without her knowledge or participation. She admits huge sums used to hit her account but the money would be taken away. It is her evidence that her e-money would increase and reduce all the time and she did not know who was increasing or decreasing it.

A3 also denied stealing money from the system. His main defence was he was not in the **finance team** of the mobile money to be able to transact. He was in **revenue assurance** and was not a user on the **FUNDAMO** system.

He was a user on the **MINSAT** system using the name **okurut.B**. He denied being the user of the name **Brianokurut01** which was used on the **FUNDAMO** system to make fictitious transactions. He admits resigning from MTN in December 2011 on grounds that there was too much work which was repetitive.

A4 also denied stealing money from MTN through electronic fraud. The gist of her defence is that while she had administrative rights on the **FUNDAMO** all her transactions were legitimate.

Her evidence is that **Ronald Sebugenyi** who was created on the system by **A1 on 4th February 2010** shared credentials with her. She was created on the system on **8th March 2010 by Jackie Namyalo of IT**. Her user ID was **ayo2104** but the log trails in Exhibit P.10 shows **Sebugenyi** logging in with **ayoang434, ayoa111, ayoang008, ayoang650** etc and transacting.

It was A4's evidence that even after she had been de activated on 31st October 2011 after she resigned her job, her name which seems to have been **twinned** with **Sebugenyi** continued transacting on the **FUNDAMO** which was strange.

Her evidence was that the system was vulnerable to abuse where 2 users would be created and linked to transact without the knowledge of each other. She faulted the log trails in **Exhibit P.10** for lacking the **IP** address which would have disclosed the **computers** that were being used to initiate fictitious transactions.

Exhibit P10 has several transactions by **Ronald Sebugenyi** using user name **ayo2104** which belongs to A4. Her conclusion is that this **Ronald Sebugenyi** who is a "**ghost**" was created by **A1 and linked** to her user name to perform fictitious transactions. Since the log trails have no **IP** addresses she denies being the author of transactions performed by **Ronald Sebugenyi**.

A5 was Revenue Analyst and the user on **FUNDAMO**. He denied registering the 17 subscribers through which Shs 5.8 billion was stolen. He denied re-activating the 17 subscribers. He explained that the **40 million** attributed to him by PW4 was moved from the **adjustment account** under the user name of **brianokurut** (A3) through the **dispute account**

then A5's user name was used to move the money from the dispute account to the **subscriber accounts**. It was A5's evidence that this transaction was impossible to perform using 2 people because the money having been debited by Brian Okurut(A3) could not be credited by Baryamwijuka(A5).

He concluded there was something fishy about this transaction. He believes like, A4, that his user name was being manipulated by somebody to make fictitious transactions. He denies taking part in fictitious transactions and stated that even when this case was in court he continued working and believes that whoever created the "ghost" **Sebugenyi** on the system must have created other "**ghosts**" that used his credentials to transact in their names.

Once the accused deny the charges, the prosecution assumes the burden of proof. The prosecution is required to prove all the essential ingredients of the offence beyond reasonable doubt. Should there be a reasonable doubt at the end of the trial, then the accused are given that benefit of doubt and must be acquitted. **Woolmington Vrs DPP (1935) AC 462 and Sekitoleko Vrs Uganda (1967) EA 531** followed.

To constitute embezzlement C/S 19(b)(i) of the ACA, 2009, there must be proof that the accused were **employees of a company** and **stole** the money which belonged to the **company**.

To constitute electronic fraud C/S 19 of the Computer Misuse Act, 2011, there must be proof of **deception deliberately performed** by the accused with **the intention of securing an unfair or unlawful gain through a computer network**.

To constitute unauthorized disclosure of access codes C/S 17 of the Computer Misuse Act, 2011, there must be proof that the accused **knowingly and without authority disclosed any password, access code or any other means of gaining access to any program or data held in any computer knowing or having reason to believe that such disclosure is likely to cause loss**.

To constitute conspiracy to defraud C/S 309 of the PCA, Cap 120, there must be proof that two or more persons by agreement or conduct conspired to defraud another of property.

Mr. Elizooba made submissions for the State while the defence had M/S Obed Mwebesa for A1, Sheila Tumwine for A2 and A4, Kakama for A3 and Evans Tusiime for A5.

Count1. Embezzlement section 19(b)(i) of the Anti-Corruption Act 2009 by A1 and A2.

The fact that A1 and A2 were employees of MTN (U) LTD is admitted.

The issue of theft of 8 million is contested. The prosecution contends that A1 who was the creator of other users on the system must have created **sentop 121** which username stole 8 million from the money transfer account to Public Access shop where A2 traded with it normally as her float.

The prosecution dismissed A2's explanation about the 8 million where she said it was loaned to **Sarah Kiyemba** who refunded it.

A1 also denied sending the money to A2 because the username **sentop 121** which was used in the transaction did not belong to him.

In law the slightest asportation is enough. By transferring money from the **money transfer account** to the **Public Access shop agency**, the theft was complete irrespective of whether the mover of the funds had intention of paying it back or not. See **Section 254(6) & (7) Penal Code Act**.

It was also submitted for A2 that she did not participate in moving the money from the money transfer account so she could not steal it.

The evidence of PW4 is that money was stolen from the FUNDAMO system accounts using log in **user ID sentop 121** attributed to A1 and once it hit A2's account she traded with it normally. This means she got cash out of the e-money that she never earned from trading.

At page 6 of exhibits P17 and D7, PW4 noted that thus:-

“The fraud was carried out by intelligently exploiting the weaknesses in the system and internal controls. The culprits had thorough knowledge of the fundamo system, manual controls and procedures. They also had unfettered, unrestricted and unchecked access to the system and administrative powers and rights. The bottleneck in IT by way of capacity

constraints and resultant breakdown enabled them to go about their nefarious activities undetected for a considerable period. The spread of the fraud was further aided by collusion of key personnel and employees charged with the duties as the custodians of the system.”

A2 admits receiving the 8,000,000= but claims it was a refund from her co-agent. Her testimony is that transactions between agents are not made through the dispute account. But the 8 million was created from the system by A1 and was not sent by Sarah Kiyemba's mobile number. She could not explain this. Attempts were made during cross examination by A1's counsel to indicate that the 8 million was for a project called UPLAB because that is the description of the payment in the journal. However, A2 who received the money does not support that view. A1's denial that he never sent money to A2 is against the weight of evidence as captured on the system which is contained in the evidence of PW4. The transactions of 2nd may 2011 on the dispute account contained in exhibit 20 show that A1 moved 8,000,000= through the dispute account. A1's denial can only be false.

In conclusion on count one it is my finding in agreement with the two lady assessors that A1 stole the money from the system. A2 liquidated the same through normal trading as an accomplice. By trading in the stolen e-money, A2 aided A1 to get the proceeds. A2 to that extent is a principal offender within the meaning of section 19(c) of the Penal Code Act, Cap 120.

The prosecution has proved the case against the two accused beyond reasonable doubt on count one.

Count 2. Embezzlement section 19(b)(i) of the Anti-Corruption Act 2009 by A1 and A2.

The fact of employment is admitted.

The prosecution submitted that 67,029,000= was transferred from the money transfer account by A1 to Public Access account managed by A2. Theft was complete as soon as the money transfer account was debited. It was moved in two tranches of 27,130,000= and 39,899,085=. A2 liquidated it as normal trading.

A1 referred to the 67,029,000= as Sales Tax yet MTN was not liable to pay such Tax at the time.

A2 admits receiving the money but claims that soon after 27,130,000= hit her float account, 12,500,000= was scooped off by A1 before she could trade in it. A2 acknowledged receiving 39,899,085= but claimed it was a refund from another center.

Mr. Elizooba for the state submitted that A1 stole this money the moment he moved it to A2 who did not report it but concealed it. She did not report this to her bosses and the claim of a refund from another center is false because there was no evidence of lending before attracting a refund.

An attempt was made by Ms. Tumwiine to contest the issue of ownership of the money claiming it did not belong to MTN. With respect, money whether from subscribers or agents on an MTN platform is held in the capacity of **special owner** within the meaning of section 254(2) of the PCA. It is not held for free. MTN charges for the service.

Ms Tumwine also submitted that A2 did not move the 67 million on the system so she is not culpable.

The law is that a person who aids another to commit a crime is also a principal offender. See section 19(1)(b)(c) PCA. Similarly where a common intention appears, then each participant commits the offence. See section 20 PCA.

Appendix “A” to exhibits P17 and D7 shows that on 7th June 2011 journals created from the money transfer account through the dispute account by **A1** to transaction line **0783 501900** which was operated by A2 at the Public Access shop where a total of **67,029,085= was deposited**. The deposit was described as **Sales tax clearance** on the dispute account. See exhibit **P20**. MTN at the time was not liable to pay sales tax and even then such tax would not be paid to A2 but to URA. This is a fraudulent payment for which both A1 and A2 are liable. A2’s charge and caution statement of 23rd December, 2011 admits that A1 sent this money to her account and immediately took off some without her participation. She claims to have reported this phenomenon to her colleagues or bosses and nothing was done. Her bosses such as PW5 were in court but were not challenged on this aspect. Her defence is false.

I find as a fact that A1 stole **67,029,085=** from the system disguised as sales tax clearance and liquidated it through A2 and other subscribers. The two are guilty are principal offenders under

section 19(c) of the PCA, Cap 120. The prosecution has proved count two beyond reasonable doubt.

Count 3. Embezzlement of 3,759,000,000= by A1, A2 and A4

Mr Elizooba referred to the evidence of PW4 who described the theft of 3.7 billion as the consolidation stage having tested the system with 8 and 67 million and found it working. He submitted that A1 and A4 were identified by their user IDs.

He referred to the evidence of PW3 who testified that A4 was linked to Sebugenyi who had been created on the system by A1 on 4/2/10. Sebugenyi was later linked to A4 under **user ID ayo2104**. A4 carried out both fraudulent and genuine transactions under username **ayo2104**.

It was his submission that A4 was in a position to see fraudulent transactions carried out by Sebugenyi. If she was not part of the scheme she would have reported the same to her bosses.

As for A2 she just continued trading with stolen e-money or float as if she had acquired it from customers whereas not.

Mr. Mwebesa counsel for A1 submitted that the user ID **sentop 121** was created to implicate A1 whose user ID was **senpat 231**. He argued that Sebugenyi was created earlier; it was not possible to link him to A4 who was created later.

MsTumwiine submitted for A4 that she was charged in count 3 for money that includes the 8 and 67 million in counts 1 and 2. She also made reference to 45 million transacted in Dec 2011 forming part of 3.7 billion in count 3 yet A4 had left the company in October 2011.

As regards A2 Ms Tumwiine submitted that not all the money in count 3 went through the PA shop account of A2. Some money was drained through ALWAYS(U) Ltd. ie 291,000,000=.

It was submitted that A4 was not a signatory to the bank account and did not move money on the system so as to be culpable.

It is true that the figure of **3,759,000,000=** in count three includes money charged in counts 1 and 2 ie the 8,000,000= and 67,029,085=. This is shown in table **4.3 of exhibit P17**.

It was PW4's testimony that A1 and A4 created fictitious journals by debiting the adjustment for discrepancy account, crediting the dispute account and then debiting the dispute account and crediting the Public Access account of A2. This was between June and December 2011. Through this process a total of 3,759,000,000= was stolen from the adjustment for discrepancy account. This forms the charges in count three. This money includes money in counts one and two.

Under normal trading, A2 was not supposed to receive money on her account unless it was from a customer she has given cash or money she has exchanged for cash which she has banked. These were the only two legitimate sources.

It was her evidence that she used to receive e-money on her account from A1 and when she queried him he explained that her agency was soon being upgraded to a super agency to receive huge amounts. She believed A1 and continued trading though sometimes the money would reduce without her knowledge. A2's account or mobile line was being manipulated by A1 who was a super user to drain funds from the system which was not backed up with physical cash from customers. Put another, A1 was just stealing from MTN customers who were using the mobile money platform.

In her charge and caution statement, A2 admits cashing the money through liquidations which A1 would collect and put in his bag. Sometimes A1 would give her **500,000=** as a token of appreciation for cooperating.

It is clear to me that A1 and A2 are culpable for draining **3.759,319,389=** from the mobile money system fraudulently. A1 created the fictitious journals which credited A2's account with money she had not earned through trading. Instead of reporting the anomaly she chose to cooperate and hand over money to A1. A2 got some kick-backs for the favour. I am mindful that the figure of 3,759,319,389= includes money already charged in count one and two. This does not in my view diminish the crime. The money in counts one and two totals 75,029,085=. If this figure is subtracted from 3,759,319,389= the result is 3,684,290,304= which represents the money drained in count three.

Mr Elizooba asked me to find that A4 is also culpable because she must have seen the transactions made by Sebugenyi using her credentials and chose not to report. With respect, A4's participation is in the liquidation process when A2 is converting e-money into cash from the

bank was her normal routine. Evidence on record is that A2 would fill the liquidation forms which she would present to A4 to process. A1 and PW5 would approve if money was on the agent's account and payment would be done. I find nothing culpable on A4's part in this process. Money had already been stolen from the money transfer account. A4 would not be in a position to tell it is stolen money. All she was required to do was to confirm if money was on the system.

Besides on count three, it was not shown that A4 created any fictitious journals to steal the money. I am in agreement with the lady assessors that A4 is not culpable on count three. PW3's statement to the police contained in exhibit P11 is clear that A1 is the one who created Sebugenyi and linked him to A4. PW3 exonerates A4 of this crime. Besides, A4 resigned in October 2011 but money was still stolen using her credentials which means somebody else and not A4 was at work. I find her not guilty on count three.

I find in agreement with the lady assessors that A1 and A2 are guilty of the charges in count three. The state proved those charges against the two accused beyond reasonable doubt.

Count 4. Embezzlement of 5,846,000,000= by A1, A3 and A5.

The prosecution submitted that this was the acceleration stage between November and December 2011. A1 and A3 initiated fictitious journals from the Adjustment for discrepancy account through the dispute account to 17 bogus subscribers using letters "L", "M", "O", "N", "J", NULL etc to describe the transactions. 1.8 billion Was transacted in November while 4 billion was transacted in December. When ceilings are busted and the accounts are suspended automatically, A3 and A5 would reactivate the subscribers' lines without any incident being logged in.

It was A1's defence that he did not create the subscribers and the user ID **sentop 121** did not belong to him.

PW3 identified A3'S computer as the one shared with A1 to commit the fraud. Its IP address is **10.156.1.128** yet A3 was not supposed to transact on the FUNDAMO system.

Mr. Kakama for A3 submitted that the user name **brianokurut 01** did not belong to A3. He was not a user on the FUNDAMO. Mr. Kakama was of the view that since "ghosts" like **Sebugenyi** were created on the system, **brianokurut 01** was one such "ghost" created on the system.

For A5, Mr. Tusiime Evans submitted that A5 was not culpable for the 40 million stolen on 2nd December 2011 at 7.13 am by the user name of A3 because A5 logged in at 7.19 am after the money had been debited from the adjustment for discrepancy account. He referred to exhibits P12 and P27 to support his argument. He concluded that since PW3 testified that A5 had no credentials to increase the profile of one Mutungi the receiver of the 40 million, it must have been somebody else and not A5.

I have examined the exhibits and noted the log in times. The evidence of PW3 and PW5 is that subscribers had ceilings of 5 million. If one got more than that the line would be suspended automatically. The same could only be re-activated if the owner filed an incident or report with the call center that would cause the re-activation. The lines were however being re-activated to enable the huge funds to be withdrawn without incident reports. The implication is that this was an inside job and the subscribers were created by those that stole money from the system.

Under the double entry principle in accounting, a debit and credit transaction could only be done by the same person or credentials. In the case of 40 million where A5 is implicated, the debit was done by A3 and credited by A5. This is strange.

On the dispute account (exhibit P20) where all transactions pass to their destination, the 40 million was created by A3 at 7.13.37am and credited by A5 at 7.14.54 am. If A5's IP address is 10.156.1.133 as confirmed by PW3, then according to exhibit P12, A5 logged in at 7.19.23am after the 40 million had been stolen from the system.

There was confusion and manipulation on the system which PW3, an expert in IT with MTN described in his police statement in exhibit P11. I will extensively quote from his statement in order to understand the manipulative capabilities of those entrusted with super user rights on the system.

“Only the finance administrator has rights to create users in the system. From the results returned when the query was run against the data base, I could ascertain that the user Ronald Sebugenyi was created on 4th February 2010 by finance administrator user called Patrick Sentongo using user name senpat 231. He assigned him profile role 3 (RLE003) which relates to the administrator role. He then assigns the following functional authorizations sequentially: Update mobile money name, update transactional authorizations, upload ESR

file, Broadcast SMS, link new PIN, reject pending payment.....Patrick then goes ahead to use the reset login name functionality of the mobile money system to link ayoang434 reference with ayo2104 user newly created. This feature forces the user to reset both their reference and PIN at first log in attempt. He enables the internet channel to grant Ronald (ayo2104) access to use this channel. He then proceeds to link ayong434 reference to Ronald (ayo2104) username. The new user- Ronald (ayo2104) then goes ahead to login at 7.26am at which stage the system forces him to change his reference details from ayoang434 to ayoa11 and the login succeeds at 7.27am. Patrick grants Ronald rights to capture journals without a pre-authorizer or a post authorizer. At 8.31am Patrick resets Ronald's login name updating it from ayoa11 to ayoang650, attempts to login and fails at 8.54am and 8.55am. Patrick enables the internet channel at 10.23am, resets login from ayoang650 to ayoang008, enables internet channel and links the PIN but doesn't attempt to login. On 8thfeb 7.24am Ronald's account is used to login, the system forces him to change his login details to ayo2104 from ayoang008 and this time succeeds logging in. He proceeds to capture a journal at 7.28am. On 31st Oct 9.57, Ronald's account authorizes journals and skips the reset (TAU002:STS064). At 1.20pm he moves select customers to high value subscriber profile from customer account profile to enable them receive higher amounts. He un-suspends a number of customer lines and captures a journal, authorizes it and exits the system. Patrick Sentongo's account is then used on 2nd Nov 2011 9.32am to disable Ronald (ayo2104) account."

The above excerpt shows the manipulative nature of A1. According to PW4's testimony, A1 was the "owner" of the system. He had super user rights and used them to unleash havoc. It is therefore no wonder that A4 was linked to a ghost called Sebugenyi who was not even an employee of MTN to make transactions that were not subject to authorization in the names of A4 since they shared user ID ayo2104.

It creates doubt in the prosecution case against A5 and A3 that they participated in the fraudulent transactions. Other ghosts on the system included **Mariam komulung** and **brianokurut 01**. Since A3 was not a user on FUNDAMO and the login of A5 was after the 40 million had been stolen on the system, it is my finding that both A3 and A5 are not culpable. I attribute the use of their names to the abuse of the system rights by A1.

The dispute account transaction report which is exhibit P20 clearly captures Sebugenyi, a creature of A1 and A1 himself as the fraudsters that stole 5.8 billion from the system between November and December 2011 alone. I was asked to consider that A1's IP address was not tendered in court and therefore he was not proved to have stolen.

With respect, exhibit P20 which is the dispute transaction account takes care of that. Both A1 and Sebugenyi (and they are one and the same person) did steal money from the adjustment for discrepancies account through the dispute account to bogus subscribers who drained the money. One of the exit points was an agent trading as always Uganda belonging to A1's wife called Nakimbugwe. She has disappeared since early 2012 to date.

A1 himself was arrested after he had gone in hiding and was only moving during night time. He and his wife knew they had stolen money and would be made to answer criminal charges. The conduct of A1 and his wife is that of guilt and not innocence.

It is my finding that the prosecution has proved the charges in count 4 against A1 beyond reasonable doubt. I however find that the same charges have not been proved beyond reasonable doubt against A3 and A5. A1's accomplices in count Four were not produced for trial.

Count 5. Electronic fraud C/s 19 of the Computer Misuse Act, 2011 by A1, A3, A4, and A5.

Mr Eliizoba for the state submitted that A1 created Sebugenyi using his user ID **sentop123** and linked him to **ayo2104** as a deception to steal money from the system for his benefit.

The accused used deceptive descriptions such as letters "L", "M", "J" etc to steal the money.

Mr. Mwebesa submitted for A1 that the end user of the money has not been proved and that there was no proof of who was deceived. He submitted further that the exact amount of money had not been proved.

For A3, Mr Kakama submitted that he was not an operator on the FUNDAMO system from which money was stolen. He was a user on **MINISAT** and **ABILITY** systems.

He referred to the computer with IP address **10.156.1.128** attributed to A3 which used ID **okurut 01** (which he denies as his ID) but which was also used by **ellib 608** and **sentop121** as shown in

exhibit P.12 for the transaction of 2nd December 2011 to demonstrate that there were several persons transacting using that address. The implication being that it was the work of one person.

For A4, the submission was that she was linked to a pseudo name **Sebugenyi** and money was stolen using her ID **ayo2104** by whoever created **Sebugenyi** and linked him to her with the same credentials.

For A5 it was submitted that he did not originate the theft of 40 million attributed to him because exhibit P27 shows the 40 million was transacted by Brian Okurut and not Eriya Baryamwijuka.

My conclusions in count three and count four that A1 was the manipulator of the system to link others to the fraud logically leads me to conclude that A3, A4 and A5 are not culpable for committing electronic fraud. They are the victims of A1's machinations.

A1 was very deceptive. He created ghosts gave them pseudo names and obscene rights to do anything without authorization. He benefitted from this scheme because he was shown to have estates which are far beyond his lawful means. His defence that he was a trader is not credible. He was a fulltime employee at MTN. He could have had side businesses but not property of the magnitude found in exhibit P32.

Besides, some of the stolen money in counts three and four were exited through an agency called always Uganda belonging to his wife who has since run away from justice. It was for his gain otherwise why does his wife disappear?

The charges in count 5 have been proved against A1 beyond reasonable doubt. The charges against A3, A4 and A5 have not been proved beyond reasonable doubt in count five.

Count 6.Unauthorized disclosure of access codes C/S 17 of the Computer Misuse Act, 2011 by A1, A3, A4, A5.

This offence relates to knowingly and without authority disclosing passwords. The state submitted that A1 used to share his password with others like PW9, A3 and A4. Reference was made to the evidence of PW9, and PW10 the Investing Officer. The state blamed **A1** as a super user who had rights to create others as the mastermind of the password sharing.

Mr. Mwebesa asked court to consider that even IT staff could create users on the system so A1 should not take the blame alone.

For **A3** it was maintained that **okurut 01** was not the **user ID** for A3 so he is innocent of this charge.

For **A4** it was submitted that PW10's evidence that **A4** admitted to sharing passwords be dismissed because there was no charge and caution statement obtained from her.

For A5 it was submitted that he did not share any passwords. The evidence of PW10 was discredited as against A5 because he did not arrest him so he did not hear him admit to sharing passwords.

In exhibit P34, A1 admits he was the creator of users on the system. It is also true that the IT team could also create users on the system. In fact A4 was created by Namyalo of IT.

For an offence to be committed, the disclosure must be unauthorized and likely to cause loss.

This charge was premised on the assumption that A3, A4 and A5 were complicit in the embezzlement of funds from the system. I have found that on the evidence of PW3, A1 manipulated the system to create pseudo users with similar user names to A3, A4 and A5 to steal money. A3, A4 and A5 did not share pass words with A1 but he linked them to user names like **sentop121**, **brianokurut 01** and **ayo2104** to process fraudulent transactions. The charges against A3, A4 and A5 have not been proved.

The only available piece of evidence on password sharing is that of Odeny Ivan, PW9. He testified that he was given A1's password by A1 himself to help make transactions. A1 admits doing so in his plain statement of 14th Feb 2012. It was not shown that loss occurred or was likely to occur by A1 sharing a password with PW9. While it was not authorized, no loss or likely loss occurred.

There was no evidence to prove count 6 and I acquit all the accused.

Count 8. Conspiracy to defraud C/S 309 PCA by A1, A2, A3, A4, A5.

It was submitted by the state that A1 and A3 were sharing passwords using the same computer (IP Address)

That A1 and A4 processed liquidation forms which were en-cashed by A2 without caring to verify whether any electronic money had been transacted to merit liquidation. They were conspirators with intent to defraud. A2 went on to trade normally in funds stolen from the system because she was a conspirator. A3 was faulted for re activating the subscriber lines that were used to steal the money without any incident being logged in by the subscribers. A5 was held culpable for sending money to the same subscriber that A1 continued to send money to.

For A1 the defence submitted that the offending user ID **sentop 121** did not belong to him so he was not a conspirator.

For A2 it was submitted that she was not proved to be a participant in the conspiracy.

For A3, it was submitted that the user ID **Okurut 01** was not his so he did not participate. His user ID was **okurut.B**

For A4 it was submitted that her participation in the conspiracy was not proved.

For A5 it was submitted that he was not in the conspiracy because while others were arrested or left he kept on the job until much later. It was submitted that he could not conspire to steal 10.2 billion when he was not charged with theft of the 8 billion in count one, 67 million in count two and 3.7 billion in count three which all form part of the 10.2 billion in count 8.

Without much ado, my findings on counts three, four, five and six shows that there was no conspiracy involving **all** the accused. This charge was preferred basing on the belief that **all** the accused participated in stealing this money. I have established that A1 was the manipulator. He was the schemer. He was the owner of the system by virtue of his super user rights. He abused his credentials and stole by exiting it through A2, the 17 bogus subscribers, his wife's agency called **Always** Uganda and other accomplice agents.

The liquidations processed by A4 were made after the money had already been stolen on the system by A1. The participation of A4 was as innocent as the participation of others like PW5 and the signatories in the payment process.

A3 was not a user on the system and his username **Okurut.B** was not captured on the dispute account where funds were transited. A5 is said to have been involved in a transaction of 40 million but his defence that he had not logged in by the time money was debited and could not credit a transaction he had not debited created a reasonable doubt which I resolve in his favour. Besides evidence that he participated in re-activating the suspended numbers of the 17 subscribers is lacking.

A2 assisted A1 to liquidate up to **3.759.319.389=** through the MTN public Access shop. A1 would pay her some money for the assistance. A1 would explain to her that they are creating a super agency in Public Access shop that is why her account was receiving huge sums beyond her limit of 30 million. It is my conclusion that A1 manipulated A2 at the beginning but the fact that A2 who had worked at MTN for seven years did not escalate her complaint beyond A1 and enjoyed the benefits that came with trading and liquidating illegal float or e-money means she was a conspirator.

It would be to naïve to refer to A2 as a victim. She had ample time to report this to her superiors beyond A1 but chose to enjoy the benefits. I find that A1 and A2 were conspirators to steal what amounted to **3.759.319.389=** and not **10.220.178.132=** as charged. A3, A4 and A5 are not guilty of conspiracy. They are the victims of it. A1 and A2 are guilty of conspiracy in count 8.

In conclusion upon full consideration of evidence for the state and the defence, it is my finding that A1 was the architect of this crime. He used his superior rights to manipulate the system to embezzle colossal sums of money from his employer.

According to PW4, A1 took advantage of weaknesses in the system which enabled him to manipulate it without the system itself triggering any alarms as a good system should do. A1 could make several attempts but the system could allow him to amend transactions without blocking him. According to PW3, the FUNDAMO system has since been replaced by an Erickson system that has better fire walls and security features.

A1 was also able to achieve his evil plans because there was no body supervising his activities. There was no approver of A1's system manipulations. No wonder the theft started with **8,000,000=**. Once this succeeded, the next level involved 67 million. Once this succeeded, it was escalated to 3.7 billion. Once this was in the bag, they went for the bull or real kill- that is 5.8

billion. After hitting the bull A1 disabled the ghost of Sebugenyi and the 17 bogus subscribers. He resigned before going into hiding.

Consequently, the prosecution has proved the case against some of the accused beyond reasonable doubt as follows.

Count One:- A1 and A2 are guilty of Embezzlement C/s 19(b)(i) of the ACA, 2009. I convict each of them accordingly.

Count Two:- A1 and A2 are guilty of Embezzlement C/s 19(b)(i) of the ACA, 2009. I convict each of them accordingly.

Count three:- A1 and A2 are guilty of Embezzlement C/s 19(b)(i) of the ACA, 2009. I convict each of them accordingly.

A4 is acquitted of the charges in count three.

Count Four:- A1 is guilty of Embezzlement C/s 19(b)(i) of the ACA, 2009. I convict him accordingly. A3 and A5 are acquitted of the charges in count Four.

Count Five:- A1 is guilty of committing Electronic Fraud C/s 19 of the Computer Misuse Act, 2011. I convict him accordingly. A3, A4 and A5 are acquitted of the charges in count Five.

Count Six:- The prosecution did not prove count Six against all the accused and I acquit each of them.

Count Eight:- A1 and A2 are guilty of Conspiracy to defraud C/s 309 of the PCA, Cap 120. I convict each of them accordingly. A3, A4 and A5 are acquitted of the charges in Count Eight.

.....

Lawrence Gidudu

Judge

14th February, 2017