THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO

HCT-00-ACD-SC-NO.0003/2016

UGANDA::PROSECUTOR

VERSUS

A1: LWAMAFA JIMMY
A2: KIWANUKA KKUNSA
A3: OBEY CHRISTOPHER
A4: BOB KASANGO:::ACCUSED

JUDGMENT

BEFORE: HON.LADY JUSTICE MARGARET TIBULYA

BACKGROUND

A1 (Mr Lwamafa Jimmy) was the Permanent Secretary and accounting officer Ministry of Public Service between the financial years 2011/ 2012 to 2013.

A2 Mr Obey Christopher was the Principal Accountant in charge of pensions during the same period.

The state contends that **A3 (Mr. Kiwanuka Kkunsa)** was the one performing the duties of Commissioner Compensation Department Ministry of Public Service during the same period.

A4 **(Bob Kasango)** was a private legal practitioner with the Marble Law Firm of Advocates formerly known as Hall and Partners.

They stand jointly charged as follows;

COUNT	OFFENCE	ACCUSED	SECTION OF LAW
1	Diversion of public resources	1. Jimmy Lwamafa 2. Christopher Obey 3. KiwanukaKkunsa	6 of ACA
2	**THEFT**	**KASANGO BOB**	**254 &261 PCA**
3	Diversion of public resources	1. Jimmy Lwamafa 2. Christopher Obey 3. Kiwanuka Kkunsa	6 of ACA
4	**THEFT**	**Kasango Bob**	**254 &261 PCA**
5	Diversion of public resources	1. Jimmy Lwamafa 2. Christopher Obey 3. Kiwanuka Kkunsa	6 of ACA
6	**THEFT**	**Kasango Bob**	**254 &261 PCA**
7	Diversion of public resources	1. Jimmy Lwamafa 2. Christopher Obey 3. Kiwanukak Kkunsa	6 of ACA
8	**THEFT**	**Kasango Bob**	**254 &261 PCA**
9	Diversion of public resources	1. Jimmy Lwamafa 2. Christopher Obey 3. Kiwanuka Kkunsa	6 of ACA
10	**THEFT**	**Kasango Bob**	**254 &261 PCA**
11	Diversion of public resources	1. Jimmy Lwamafa 2. Christopher Obey 3. Kiwanuka Kkunsa	6 of ACA
12	**THEFT**	**Kasango Bob**	**254 &261 PCA**
13	Diversion of public resources	1. Jimmy Lwamafa 2. Christopher Obey 3. Kiwanuka Kkunsa	6 of ACA
14	**THEFT**	**Kasango Bob**	**254 &261 PCA**
15	Diversion of public resources	1. Jimmy Lwamafa 2. Christopher Obey 3. Kiwanuka Kkunsa	6 of ACA
16	**THEFT**	**Kasango Bob**	**254 &261 PCA**
17	Forgery of a Judicial document	Kasango Bob	342 & 349 PCA
18	Forgery of a Judicial document	Kasango Bob	342 & 349 PCA
19	Forgery of a Judicial document	Kasango Bob	342 & 349 PCA
20	Conspiracy to commit a felony	Kasango Bob	309 PCA
21	Conspiracy to defraud	1. Jimmy Lwamafa 2. Christopher Obey 3. Kiwanuka Kkunsa 4. Bob Kasango	309 PCA

The prosecution complaint is that A4 (**Bob Kasango**) forged three judicial documents (**in Count 17, Count 18, Count 19**) which he used to claim for payment of 15.4b/= from the Ministry of Public Service. It is common cause that the money was indeed paid to him. A4 is therefore charged with forgery of those documents, theft of the money and conspiracy in **counts 20 and 21.**

The prosecution further asserts that A1, A2, and A3, all of the Ministry of Public Service irregularly and feloniously diverted the money which they paid to A4 from legally budgeted and approved items to payment of legal fees and costs which had not been budgeted for, and which was not the M.O.P.S mandate to pay, hence the charges of Diversion of Public resources and Conspiracy to commit a felony.

The prosecution bears the burden of proof, and the standard of proof is beyond reasonable doubt; **Woolmington V DPP (1935) AC 462 and Kiraga V Uganda (1976) HCB 305** followed.

DIVERSION (counts 1, 3, 5, 7, 9, 11, 13 and 15).

The state complaint is that A1 (then Permanent Secretary M.O.P.S), A2 (then Principal Accountant) and A3 (Commissioner Compensation) diverted public funds when they paid **15.4b/=** from the Pensions budget to M/s Hall & Partners, a defunct law firm as Legal fees and costs which had not been budgeted for.

It is the state case (*based on the evidence of* (***Pw8 Keith Muhakanizi (PS/ST), Pw9 (Lawrence Ssemakula (Accountant General) and Pw14 Birakwate (PS/M.O.P.S),*** that Government institutions access funds through the budgeting process. When

budgets have been approved, Parliament passes the **Appropriation Act, i.e.**, the statutory votes/limits that have been approved. The limits are the maximum expenditure for the financial year. It also highlights what items have been approved and for which vote. It details the funded programs and items and the amounts for each program.

Money is only withdrawn from the Consolidated Fund upon issuance of an Audit warrant by the Auditor General. Based on an approved budget, the Accountant General pays funds from the Consolidated Fund into each Permanent Secretary's Account. Only authorized expenditures already approved through the budget process are funded.

The Permanent Secretary/Accounting officer is to ensure that he spends as per appropriation, i.e., spends what he budgeted for and spends up to the limit that was given to him.

A vote controller is at two levels;-

- Departmental head who spends up to the departmental limit.
- Accounting officer – who is the over-all vote controller.

The Accounting officer/Permanent Secretary such as A1 (**Lwamafa**) manages the ministry finances. This entails preparation of budgets, managing revenues and expenditure. The budget process involves preparing a budget framework paper and the P/S ensures that all core activities within the Ministry's mandate are adequately taken care of. He approves the figures that have been compiled by the Planning Unit.

Heads of Department such as **Kkunsa (A3**), agree on activities and their estimated costs. Being in charge of particular cost centres and particular functions, ensure that they have listed all that they plan to do in a financial year. They must also provide estimates in figures of what each activity will require.

The Principal Accountant such as **Obey (A2)** is consulted to ascertain the figures in terms of accuracy, liabilities and in terms of inclusion of revenues where applicable.

Requisitions for the funds are made by each head of department and approved by the Permanent Secretary who gives instructions to the Principal Accountant to pay. A vote controller (**the P/S and a Head of Department**) ensures that the funds are spent in accordance with the approved budget.

The role of a **Principal Accountant (A2)** in payments is to advise the Head of Department on which cost centre or charge item to charge the money on to ensure that there is no mis-charge, over spending or mis-appropriation of funds. He processes the payments through the financial management system after approval by the P/S.

He is also in charge of preparing the accounting reconciliation and attendant statement of accounts per quarter and final statement of accounts at the close of the financial year.

The state maintains that the accused persons paid legal fees and costs to M/s Hall & Partners out of funds which had been budgeted for pension payment. **A1 (Jimmy Robert Lwamafa**) conceded that he was Permanent Secretary/accounting officer in the Ministry of Public Service at the material time. **He explained that;**

1. He was very busy since he was presiding over three directorates comprising of nine Departments. At that time he was also the accounting officer for 23

million Dollar World Bank Funded Projects known as Uganda Public Service Performance Enhancement Program.

2. When he received **Exhibit P.15** (letters from the minister of justice and PS/ST) and **exhibit P.38** a letter from Marble Law firm which was requesting for payment of professional fees and settlement of an order in **HCS No.1029/1998,** he marked them to the Commissioner Compensation. They were subjected to various internal and external controls and processes before the payment was done.Queries would therefore have been raised had there been any problem.

He maintained that Section 7 of the Pension Act provides that pension falls under Statutory Expenditure and is charged on the Consolidated Fund. Section 15(3) of the Public Finance and Accountability Act provides that statutory expenditure is not subjected to the Appropriation Bill. So the question of reallocation and a supplementary budget would not apply. Section 19(3) of the Government Proceedings Act provides for the satisfaction of orders against the government by the Treasury Officer of Accounts or an accounting officer.

Counsel Ochieng for A1 submitted that;

- The payments involved or were related to pensions since they were triggered by **High Court case No. 1029/1998 Charles Abola and others Vs Attorney General** which involved retrenchment of civil servants.
- Moreover,they were effected pursuant to directives by the Minister of Justice and Constitutional Affairs. The prosecutions failure to call him to testify dented the prosecution case because they were hiding the truth.
- Court orders under which the payments were made are valid until otherwise declared.
- A1 did not benefit in these monies.

- There was a fully-fledged pensions department. This is the technical department that is created to advise the PS on pension matters.

A2 (Obey) said that **Mr Onya (Pw15)** informed him about the claim **(Exhibit P.38)** and asked him whether there was money on Pension Arrears. A2 told him there was Shs 113 billions. Mr Onya gave him a breakdown of how to pay and on the letter he initialed that "**Please Handle**" and gave him a go ahead to pay. **A4 (Mr Kasango)** later took to him Exhibit P.47 (d) **(the memorandum of understanding)** between Marble Law Firm (Hall and Partners) and Augustine Kasirivu, Taka Mubiru and Patrick Kitaka who A2 knew as pensioners.

Each of the 6339 pensioners was entitled to 4.5million as damages. 30% of that meant that 8.5 billion would be the fees. Costs were a direct figure from the order and it was 3.9 billion. The order was also awarding interest which was about Shs 114millions. The total figure payable would be **12.4billions**.

Hall and Partners was not a pensioner. The payments were arising out of deductions from the Pensioners. He used the word "**various**" in the payment schedules to mean that the payment is a deduction from various files. He could not indicate the work station because Hall & Partners was not working in any government department. In the category of payment he indicated **retrenchment** because the payments were arising out of retrenchment.

All the documents that were used to process payment of the shs 15.4billion came into A2's possession by virtue of his being a Principle Accountant and were properly forwarded to him by Mr Onya, the Acting Commissioner. He paid only because he was instructed by Pw15 **(Onya)** to pay.

The payments were in accordance with law. They were properly withdrawn from the Consolidated Fund as confirmed by the Accountant General. No money was diverted.

Mr. Nsubuga Mubiru for A2 maintained that this case arises from the Abola case in which retrenchees' rights to their pensions was recognized by court. The court orders were signed by the Registrar who should have signed them at that time and are therefore valid. A4 acknowledges receipt of the monies arising out of this payment. The payments passed through the hands of Accountant General who cleared them.

A3 (Kkunsa) maintained that he was not the Commissioner Compensation at the time. He was the Director Research and Development as per appointment letter CP55763 dated 5th July 2010 (**Exhibit D6**). He did not participate in any transaction that resulted in the payment of 15.4billion to Hall and Partners. He was informed by the PS (**A1**) that the internal memo (**Exhibit P.39**) meant that he supports and oversees the Pensions department. At a senior level meeting A1 clarified that A3's envisaged role was to offer technical support to the department and to over-see it. **Mr Onya** was to handle the day to day administration in the department and only consult him whenever need arose. He was told that his role specifically could be a hands-off and hands-on. He pointed to the fact that he could not have been an **Acting Commissioner** at the same timewith **Pw15 (Mr Onya)** who admitted in his police statement that he was one. I however need to clarify that **Onya** later clarified that he used to refer to himself as Acting Commissioner only because he was the most senior in the Department at the time, meaning he was not Acting Commissioner by appointment, but by personal reference.

Counsel John Isabirye for A3 emphasized that **Mr Onya Martin** handled the claim in issue, and moreover, the payments were sanctioned by the Honorable Kahinda Otafiire in writing (**exhibit P.15**). In addition the payments were pursuant to valid court orders. Under Section 19(3) of the Government Proceedings Act, Accounting officers are obliged and mandated to make payment in respect to orders of court. The funds belonged to Pw1 (**John Matovu**) as per his evidence. **Exhibit P.47** (**the Retainer Agreement**) indicates that part of money was for fees and the other was for the pensioners who had entered into the agreement with A4.

Since the diversion being complained about in counts **1, 3, 5, 7, 9, 11, 13 and 15**was committed under similar facts,circumstances and transactions I will resolve the issues relating to those countsjointly.

For each of those counts the state had to prove that;

1. There was conversion, transfer or disposal of the funds in issue.
2. it was done by the accused persons
3. the funds were public funds
4. the conversion was for purposes un related to that for which the funds were intended
5. the diversion or transfer was to either the benefit of the accused persons or for the benefit of a third party.

Whether there was conversion, transfer or disposal of funds.

There are three uniform arguments raised by the defence which i will first deal with here;

The first is that the payments were legally made since they passed through the normal processes and controls. This question was put to the Permanent Secretary/Secretary to Treasury (**Muhakanizi**) and his response was that the mere fact that the payments passed through all the normal payment processes and controls is not proof of their validity, and i agree with him.

This trial was not about auditing or assessing the effectiveness of the payment process, in which case we would have probably known why the payments were passed inspite of what the state asserts are irregularities in them. It is therefore not helpful for us to focus on those processes as that would be diversionary. I add that whether or not the payments passed through the normal payment processes does not answer the key issue in this case which is whether the funds were diverted from the activities they had been budgeted for. These are two different issues which should not be confused.

The second common thread in the defence case relates to (**exhibit P.15**), a letter from the Minister of Justice to the Minister of Finance. In the letter the author mentions that General Damages had been awarded and that the Ministry of Public Service which had earlier on handled the Pension payment should handle the issue of payment of damages.

The defence maintains that that letter, which they argue was a directive to the Ministry of public service to pay the damages, triggered the payments.

In order to put **exhibit P.15** in context A4's evidence that he approached **Gen Otafiire** (the author) as his personal friend seeking assistance in settling his claim fast is relevant. Bearing that in mind, the letter must be viewed as only quasi-official since the Minister was only using his position to help a personal friend.

The correct official position (*andit was not challenged*) on payment of damages was testified about by Pw2 (**Bireije**), Pw4 (**Kalemera**), Pw8 (**Muhakanizi**), Pw9 (**Semakula**) and Pw19 (**Komurubuga**) who are quite independent witnesses in this matter. Their evidence is that the mandate to pay damages and costs arising out of court cases is with the Ministry of Justice. Further that even within the Ministry of Justice the Attorney General is the one who handles matters legal such as the payment of damages, and not the Minister of Justice whose role revolves around policy issues.

Their evidence means that the letter by the Minister of Justice, far from being a directivewas driven by personal interest and was administratively irregular. In addition, un-controverted evidence was that the minister who wrote the letter not having been the line minister of the M.O.P.S, could not give directives in that regard. Considering the above, the defence assertion that the letter was a directive is misconceived.

I also note that the accused persons were senior civil servants in terms of their positions and experience. They were fully aware that they were not supposed to divert pension funds to pay damages. A letter from a minister, and I dare say even if it had been the line minister, would not clothe them with authority to act where the law does not. For that matter, Otafiire's letter could not sanitise/legalise an illegality.

The third uniform argument was that the court documents which formed the basis for the payments are valid, and that no criminal liability can arise out of a lawful action.

There are two aspects to this.

First of all, as shall be seen later, there is evidence that the court orders are forged and a forged document cannot be valid. Secondly, the complaint of diversion is not premised on the fact that the court documents which formed the basis for the payments were invalid. The offence of diversion is about conversion of funds to a purpose other than that for which they were meant. Even if the court orders were valid, (*knowing that they were not specifically ordering the **M.O.P.S** to pay*), the issue of whether the funds were diverted by the accused still stands.

On the complaint of diversion of the funds three sub-issues have to be answered;

- **What was the mandate of the Compensation Department?**
- **what was paid in this case?**
- **Who paid it?**

What was the mandate of the Compensation Department?

The evidence that the funds were budgeted for with the participation of A1, A2 and A3 was not challenged and I believed it. The evidence of **PS/ST (Muhakanizi)** and Pw19 (**Mr George Komurubuga**) was that the budget of sub vote 1315

(which was the responsibility of the Commissioner compensation) only covered pension and gratuity, and emoluments of former presidents and vice presidents.

Exhibit P17 (f) at page 95 supports the above evidence. I find that the mandate of the Compensation Department was to pay **pension and gratuity, and emoluments of former presidents and vice presidents.**

What was paid in this case?

The defence contends that the payments to M/s Hall and Partner were costs and legal fees **relating** to Pensions and as such the M.O.P.S had the mandate to pay it.

The Ministerial Policy Statement (**Exhibit P17 (f)** at page 95 indicates the budget items for the Compensation department (*vote function 1315*)and **costs and legal fees relating to pensions** is not one of them.

Pensionis defined in the **Blacks Law Dictionary, 9th Page 1248,** as a fixed sum paid regularly to a person (or to the person's beneficiaries) especially by an employer as a retirement benefit.

Legal fees and costs (*even if they relate to pension as the defence argued)*cannot by any stretch of the imagination fall under the above definition.

The claim letter (**exhibit P38**) is titled "**payment of professional fees and settlement of order…",** and on letter heads of The Marble Law Firm, meaning that some money was clearly being claimed for professional legal services.

Going by their positions and experience (*A3 was even for example retained in the Compensation Department for his wide experience*) the accused persons for sure know what pension means. They could not have confused Pensions with costs and

professional fees. To purport to mix up the two items would be a mark of dishonesty on their part.

Moreover they even tried hard to conceal/ disguise the true nature of the payments, an indication that they knew what they had done. The letters which A1 and A2 signed to forward the payment schedules under which Hall & Partners was paid are variously titled "**Pension payment, Ex-Gratia or gratuity payment**". Not a single one bears the title "**payment of legal fees and costs**". This to me is not a mere coincidence. The accused deliberately concealed the true nature of the payments, knowing that they were not supposed to make them.

Even in accounting for the funds which were released to the department, they did not indicate (***in the trial balance*** **[exhibit P.35]**) the huge sum of money which they paid to Hall and Partners. They instead indicated [in **exhibit P.35**) that all the funds had been spent on paying gratuity and pension as per the approved budget. The motive for concealing the actual item on which they spent the funds was to conceal the diversion.

Other instances of deliberate concealment of the true nature of the payments are;

M/s Hall and Partners, a law firm, was presented as a pensioner in **exhibits P19 to P26** yet its former ministry was not indicated.Although it was paid as a pensioner the purpose for the payment/money would be shown as either costs or legal fees, which is a contradiction of sorts.

Pw19 (**D/SP Komurubuga**)'s efforts at getting the file termed as "**various**" were futile. His further evidence was that there were no source documents for these payments.

A2 (**Mr Obey**) tried to explain that the word "**Various**" mean that deductions had been made from **various** pensioners, ie, that they deducted 1,350,000/= from each pensioner (*the 30% that was referred to in the remuneration agreement between A4 and the Pensioners*).

Pw19 (**George Komurubuga**) however testified that even the files showing the calculations and computations were not anywhere in the Ministry of Public Service. **Pw14 (Tusingwiire [PS/MOPS]** corroborated Pw19 in this regard. In her response to DPP's letter (**Exhibit P.36**) she in fact clearly pointed out that they did not have a file called "**Various**" in the Ministry of Public Service.

A2 (**Obey**) cited several names of pensioners from whom the purported deductions of 30% were made explaining that these deductions were paid to Hall and Partners as costs. But that cannot be true. In **exhibit P.19** for example (a request for payment and payment schedule) in December 2011 a total of Shs 2b/= was paid to Hall and Partner but no claimants are listed in that schedule from whom deductions of **shs 1,350,000/=** were made.The other requests also show no link between the alleged deductions and the payments to Hall & Partners.

Moreover, the total deductions from the eight schedules were only **Shs 228,150,000/=**.Hall and Partner was paid a total Shs 15,487,040,200/=, meaning that a total of Shs **15,258,890,200/=** has no source of deductions in terms of claimants in the eight schedules. It was diverted from the budget items which were budgeted for and approved as pensions and gratuity items.

A2's explanations that these payments were paid as pension is only diversionary, because Section 10 of the Pension Act clearly provides for circumstances under which Pension is to be paid. Pension is paid to persons who have worked in Public Service. Hall and Partners a law firm has never worked in the Public Service,

the reason the space where its former ministry and the file number could not be indicated. A2's explanations are against the weight of evidence. **I find that costs and legal fees and not pension and gratuity were paid.**

The accused's participation.

A1 (Lwamafa) distanced himself from the payment saying that he routed the claim to the Compensation Department where there were Pension payment technocrats who processed it.

The state evidence was however that it was A1 who approved the claim. He in fact signed the payment schedules (**exhibits P19 to P26**) which clearly showed the impugned payments as legal fees and costs. It is not possible that a senior civil servant like him could have signed such documents without reading through them. I reject his defence that he only acted on what technocrats had done, and find that he participated in processing the payments.

A2 (Obey)'s defence was that he was instructed by Onya (**Pw15**) to act on **exhibit P38**. This cannot be true. Onya was in court and A2 did not put to him the fact that he (Onya) called him and gave him any instructions, or that he made calculations and discussed them with him. Onya testified that after he routed **exhibit P38** to A2, he never saw that document again. This was not contested by A2. A2's assertions are therefore an afterthought.

Secondly, A2 cannot be heard to say that he was instructed to commit an illegality, which the action of diverting funds to un-budgeted for items was. No amount of instructions and from whom ever can legitimize an illegality.

A2 (**Obey**) who was the Principal Accountant processed the payments, prepared the payment schedules (*bearing concealed information*) which were the basis for

payment of the funds. Section 17 of the Public Finance and Accountability Act 2003 which he sought to rely on specifically refers to excess expenditure at the close of a financial year. This case is about illegal and not excess expenditure.

I reject his defence that he only acted on Pw15's instructions and find that he (A2) participated in processing the payments.

A3 (Kkunsa) in the first place out-rightly denied that he was the Commissioner Compensation Department. He however later said that though by **exhibit P39** he was asked by A1 to continue supervising and overseeing the Compensation Department, **Pw15 (Onya)** carried out the day to day activities in the department and only consulted him (**A3**) when need arose.

First of all **Exhibit P.39** clearly shows that **Onya (Pw15)** was not the Acting Commissioner Compensation. The document clearly specifies that A3 was to continue overseeing and supervising the department until a substantive Commissioner is appointed.

A1 (**then PS MOPS**) indeed confirmed the position that A3 was the actual Head of Compensation department while Mr Onya was the second in charge. His evidence corroborates that of Pw15 (**Mr Onya**) that he was reporting to A3 who was the Commissioner Compensation Department.

A1, then technical head of the Ministry and author of **exhibit P.39** is the best person to tell court what he communicated to A3 and his (A1's) evidence was that Onya was an Assistant Commissioner who was heading a division and not a department.

The fact that the contents of **exhibit P.39** (the internal memo) were communicated to a high level meeting attended by the Ministers, Directors and Heads of

Departments demonstrates the level of seriousness that was attached to the contents of this letter. **Pw15's (Onya)** uncontroverted evidence is that A3 as Head was the vote controller for the Compensation Department. **Pw14 (Birakwate**) testified that a vote controller had specific budget formulation and implementation roles which ensured that he acted on and was in the know about payments such as the ones in issue.It is true exhibit P38 bears only Onya's signature, but two things are clear;

First of all, Onya routed the document to A2 but it was next seen when it had been attached to payment schedules bearing names of pensioners. Since Pw15 only ended at routing the document to A2, someone other than him in the Compensation Department must have continued to work with A2 to take the claim to the level of submission to the Ministry of Finance.

Secondly, looking at the amount claimed for in the document (12.5b/=) and knowing that 15.4b/= was what was actually finally paid to Ms Hall & Partners, I cannot but agree with the prosecution that exhibit P.38 was not the basis for payment of the money in issue.

That apart, I take judicial notice of the fact that in **Uganda Vs Lwamafa & 2 ors, Session case No. 9/2015 (before Gidudu. J), A3 (Mr Kiwanuka Kkunsa)** was inter-alia convicted of Diversion of Public Funds. He did not contest the fact that he was supervising and overseeing the Compensation Department on assignment under **exhibit P39** by A1. He can't therefore be heard to deny a fact he did not contest before another court of Law.

On the basis of the above and on A1's evidence, the contents of exhibit P39 and Onya's evidence **I find that A3 was the Head of the Compensation Department during the material time, a fact he half admits when he says that Onya was handling the day to day work in the Department and only used to consult him when need arose.**

A3 did not challenge the evidence that he was the vote controller for the Department. Issues relating to vote control can't by any standard be categorized as day to day work. **I find as a fact that the role wasexecuted by A3** and since uncontroverted evidence is that a vote controller acts on and is in the know about payments such as the ones in issue, A3 must have known and acted on these payments.

The fact that exhibit P38 didn't go back to **Pw15 (Onya)** and yet the payment process went on to the end is explained by the fact that A3 was the one who worked on the documents to the end.

I find that A3 (**Kkunsa**) played a key role in the budgeting and implementation process which among other functions included requesting for funds and approval of the requests prepared by A2 (**Obey**). His defence that he never signed anywhere and that nothing links him to this case cannot stand because;

- there is evidence that pension could not be processed for payment without his (**the Head of Compensation Department**) approval. Payments could only be effected with his input as Head of Compensation.
- the Ministerial Policy Statement (**Exhibit P.17 (a)** clearly identifies the responsible officer for vote 1315 (the Public Service Pension Scheme) as the Commissioner Compensation (**Mr Kunsa Kkunsa).** According to the Ministerial Policy statement, this vote function was to manage the pension scheme and A3 was the manager of the Pension budget, its implementation and Accountability.

I find that A3 participated in processing the payment.

Whether the funds were public funds.

That the funds were from the Consolidated Fund was testified to by the Permanent Secretary/Secretary to Treasury (**Pw8**), Accountant General (**Pw9**), Director Banking Bank of Uganda (**Pw10**) and Mr Komurubuga (**Pw19**).

At the instance of A1, A2, A3 and A4, the funds were transferred to the Pension account before being paid to M/s Hall and Partners. These public funds

had been budgeted for and approved under Vote 005, the Ministry of Public Service.

Mr Bob Kasango (A4)'s argument that the funds belonged to Pensioners and not to the government cannot stand. I have found that they were not the funds that were being sought under **exhibit P38.** The 15.4b/= was paid without basis at all.

Secondly, the fact that the money was feloniously accessed (*and from the M.O.P.S, a wrong source for purposes of payment of legal fees and costs*) leaves the government as the lawful owner thereof. **I find that the monies were public funds.**

Whether the conversion was for purposes unrelated to that for which the funds were intended.

According to the **Exhibit P.17 (f)** (***the Ministerial Policy Statement***) and the approved budget estimates (***exhibit P.17 (b)*** no funds were ever budgeted for payment of either legal fees or costs by the Ministry of Public Service. **Pw2 (Dennis Bireije)** the Commissioner Civil Litigation Ministry of Justice, Pw8 (**Keith Muhakanizi [*PS/ST*]** and Pw13 (**Tusingwiire Birakwate**) {***P/S M.O.P.S***) testified that Court awards were budgeted for and paid by the Ministry of Justice, and that budget estimates are supposed to be in consonance with the mandate of a given ministry. The uncontroverted evidence is that the mandate of Ministry of Public Service is to process and pay pension. It did not include payment of court awards. I have already found that Legal fees and costs were paid in this case. This is clearly unrelated to the purpose for which the funds were meant, the payment of pension, **and I so find.**

Whether the diversion or transfer was to either the benefit of the accused persons or for the benefit of a third party.

There is evidence that the **Shs 15.4b/=** was paid for the benefit of Hall and Partners. A4 confirmed this as well. He was the sole signatory of the account to which these funds were paid and from which they were with drawn. **I find that the diversion was for the benefit of a third party, M/s Hall & Partners.**

The lady and gentleman assessor's advice to me was to acquit each of the accused persons based on the view that there was no sufficient evidence to ground a conviction on each of counts **1, 3, 5, 7, 9, 11, 13 and 15.** I respectfully disagree with them. Their advice is against the weight of evidence. **I find that there is sufficient evidence that each of A1, A2 and A3 diverted public funds as charged in** counts **1, 3, 5, 7, 9, 11, 13 and 15.**

FORGERY OF COURT DOCUMENTS (COUNTS 17, 18 and 19).

The prosecution complaint is that A4 (**Bob Kasango**) forged three judicial documents (**in Count 17, Count 18, Count 19**) which he used to claim for payment of 15.4b/= from the Ministry of Public Service. It is common cause that the money was indeed paid to him.

Pw1's (**John Matovu**) evidence was that in the 1990's the Government of Uganda retrenched some civil servants who under the chairmanship of Charles Abola and through M/s Matovu, Kimanje, Nsibambi Advocates instituted a civil suit against the Government for recovery of Pension, damages and costs.

The Attorney General agreed to pay **shs 7, 357, 283,107/=** to the Plaintiffs. The Plaintiffs again successfully sued for damages and costs before Justice Kibuuka Musoke who awarded general damages of 4.5m/= to each claimant. The correspondences and the judgment relevant to this action are **exhibits P2 (a), P.2 (b)** and **P2 (c).**

In order to get the money Mr. Matovu (**Pw1**) sought the assistance of Mr Bob Kasango (**A4**), with whom he signed a Memorandum of Understanding dated 7th August 2011 (**Exhibit P3**). Under the M.O.U, A4 was to collect Pw1's professional fees of 15% from each claimant, **(ie 15% of 4.5m/= x 6339). A4's (Bob Kasango)** commission was supposed to be 1% of Pw1's total professional fees.

In September 2011 **Pw1 (Matovu)** filed a bill of costs dated 7/9/2011 (**exhibit P4**) for a total of 4.6 billion, 3.9 billion of which was instruction fees. He later instructed Kasango (**A4**) to take over the taxation of that bill. A4 later informed him that on 4th October 2011 when the taxation came up for hearing his representative was not allowed to proceed because he was not counsel on record. This aspect of Pw1's evidence was corroborated by Pw3 (**Justice Keitirima)** then tax master, and **Pw4 (Kalemera)** who represented the respondents in the matter. Pw1 advised A4 to file a Notice of joint instructions to enable him handle the taxation.

The state contends that the bill of costs has never been taxed (*Pw1 (**Matovu**), Pw3 (**Keitirima**) and Pw4 (**Kalemire**) testified to this*), and that the documents; **a certificate of Order against Government, a certificate of costs for two counsel, and a Taxation order** which were the basis for the payments are forged documents. A total of 15.4 billion was paid by the Ministry of Public Service to M/s Hall and Partner as both legal fees (**including fees for a second counsel**) and costs on the basis of those documents.

Pw1 got small installment payments totaling to about 1.3b/= from A4. A4 informed him that **Obey and his friends** had eaten the money, and that they were deceiving all the time that the money would be in next vote.

A news report later came out that a fake law firm (**Hall & Law Partners**) had received 15.4 billion in a case they did not participate in. A4 told him that the story was not true and that the **Obeys** had eaten that money. Pw1 however got documents (**from A4's office**) under which A4 had successfully claimed for his (Pw1's) fees.

He discovered that A4 had done taxation and asked for costs for two counsel. He (A4) had infact collected **15.4 billion/=** instead of **4.5 billion/=.** He had presented a certificate of costs for two counsel purporting that he (A4) had participated in the proceedings, and proceeded to obtain the costs from the Ministry of Public Service.

When Pw1 confronted him with the relevant documents, A4 said, ***"my brother I am sorry, I did not mean to do this but I am sorry, I am going to refund all the money".***

Pw1 testified that the **notice of joint instructions** dated **29th/7/2011** filed by Marble Law firm is back dated and obviously fake because it purports that on **29th/7/2011**A4 was on record yet on **4th/8/2011** (much later) Pw1 contacted him to pursue the money for him. The document was not served on him or on his Law Firm. He concluded that the document was intended to pursue the fake certificate of costs for two Counsel.

He was shocked about the certificate of costs for the second counsel because he had argued the matter himself before Justice Kibuuka and there was no second Advocate. Before one can get a certificate of costs for two Counsel, an application

has to be made before the Judge after the hearing. He did not make one and Justice Kibuuka Musoke's Judgment (**Exhibit P.2 (c)** does not bear an order for a certificate of costs for two Counsel. Under **Paragraph 4 of the certificate** the 3.9billion/= was doubled and second Counsel obtained 7.8 billion/=.

The **court order dated 19th/6/2012** which grants a certificate of costs for two counsel purports to have been issued after the Judgment and Decree had been extracted. It is impossible to make an application for costs for two Counsel one year after the proceedings.

As the only counsel in the matter, he did not file a Bill of Costs except the one he had filed in September 2011 when taxation failed to take off. **The Certification of taxation dated 20/6/2012** is therefore false.

Pw1 finally testified that the representative of the claimants was **Charles Abola** and not **Kasirivu** and **Egwaru Sylvester**. The people who signed an agreement with A4 are not representatives of the 6339 claimants, and the purported agreement between them and A4 was not drafted according to the rules of the Advocates Act.

Pw3 (Justice John Eudes Keitirima) then Deputy Registry Civil Division found forged documents; **a Certificate of Order against Government (Exhibit P5 (a), Certificate of Costs for two counsel** (*which bore a stamp not belonging to the Civil Division* **(Exhibit P5 (c)) and a Certificate of Taxation** on the court record. They bore a signature similar to his yet to the best of is recollection he did not sign them.

He decided to report the matter to the police but before he did, A4 (**Bob Kasango**) had a discussion with him. Pw3 recorded that discussion (**exhibit P.9**). In the conversation A4 revealed the following;

That it is true he got instructions to take over the matter from John Matovu and they even agreed on what each would get if he recovered the money. He actually never got the queried documents himself from the Registry. He got them from an ***agent of Obey*** *who assured him that the documents were authentic because he had got them from Pw3. He used them to access the money. He was assisted by people from Ministry of Finance, Ministry of Public Service and also as a process he would give them kickbacks because he wanted them to assist him.*

Further that all that the police wanted was to know that there was a Judgment in the case. So once Pw3 certified the documents it would be the end of the matter.

*A4 pleaded with Pw3 not to report the matter to police, because if he did, he (A4) will be finished, but thateven if the documents were taken to a handwriting expert it would be established that he (Pw3) signed them. He said that it seems they took the documents and made him to sign them in error "**nebakutomeza**".*

Pw3's further evidence was that the list of retrenchees was not on the court record. There has never been a taxation of costs in Civil Suit No. 1029/98. No Certificate of Order against Government or Order granting a Certificate of costs to two counsel were ever issued.

Pw 6 (Kisawuzi Erias Omar) then Registrar Court of Appeal also disowned the certification signatures attributed to him in **Exhibits P. 5 (c)** and **P. 5 (d),** and said that the certification stamp appearing on the documents is not that of the Court of Appeal where he was working at the time.

In his defence**A4 (Bob Kasango)** maintained that the certificate of order against Government, certificate of taxation and certificate of costs to counsel were taken to him from **Pw1's Law firm**. He did not make any court appearance in **the Charles Abola case.** They,(**A4 and Pw1**) drafted a notice of joint instructions in April. They discussed the terms which were reduced into Memorandum of Understanding.

The nature of his (A4's) involvement in the matter is contained in clause 2 of **Exhibit P.47 (d).**The agreement was signed on the **1st August 2011,** three days before the Judgmentwhich was entered on **4th August 2011**at the instance of Pw1 (**Mr John Matovu**). After the Judgment was delivered Emmanuel Kakenga and Lawrence Omara both of Pw1's firm, took to him (**A4**) a copy of the Judgment with the orders of the court as Matovu had indicated in the Memorandum of Understanding. They later gave him a copy of the bill of costs and informed him that it had been filed, and told him to have it taxed. A4 communicated to Pw1

(**John Matovu**) the fact that his representative **Sebastian Orach** had been barred from appearing for the taxation. Pw1 told him to leave the taxation to him. A4 never personally or through his firm get involved in taxation of the matter. In late September 2011/early October 2011 Matovu (**Pw1**) informed him (A4) that the bill (**Exhibit P.47**) had been taxed at about shs 3.9 billion. It was delivered to his office.

The initial court order, together with the judgment of Justice Vincent Musoke, was availed to him by Emmanuel Kakenga (**Pw1's brother**). The second head of claims against Government was based on the three other orders which were delivered to his office on the 23rd June 2012 by Matovu's clerk Lawrence Omara and his brother Emma Kakenga. He had no reason to believe that these documents were not authentic in view of the seniority of the lawyer who sent them to him.

He metPw3 (**Keitirima**) but he did not ask him to drop any charges or investigation against him since Pw3 had no power under the law to drop any investigation. He believes that (**Pw3**) Keitirima signed and issued the questioned document as Pw3 indeed admitted to him. The forensic report raised a possibility of super imposition of the signature and handwriting on the document, in which case the originals should have been subjected to forensic examination to rule that out.

In cross examination he testified that his specific instructions were summarized in an M.O.U (**Exhibit P.3**) according to which he was to collect fees for Pw1. His (**A4's**) firm filed a notice of Joint instructions **(Exhibit P.5 (b)** after the failure by **Sebastian Orach** to tax the bill on the 4th October 2011.

Exhibit P.47 (c) the Judge Kibuuka judgment is dated 4th August 2011 and that of the Notice of Joint Instruction is 29th July 2011, meaning that by the time the

M.O.U was drafted on 1st August 2011 that notice of joint instructions had already been drafted.

The notice of joint instruction does not have a stamp or acknowledgment of receipt from Matovu's firm. That notice was in fact drafted on 29th July 2011 and by the time Orach appeared in court on 4th October 2011 it was already drafted. His **(A4's)**instructions to appear with Matovu were never withdrawn.

By the time Exhibit P.47(d), the remuneration agreement dated 1st August 2011, between the Marble Law firm formerly Hall and Partners and the second party being Augustine Kasirivu, Taka Mubiru and Patrick Kitaka representing the claimants was signed, the notice of joint instructions had been drafted about 3 days earlier. The notice ofjoint instructions **(Exhibit P.5 (b) / (Exhibit P.47 (i))** which didn't bear Matovu's stamp but which is initialed/signed by A4 is the one which he availed court and to police.

Exhibits P.47 (b) **(a Certificate of Order against Government)** and Exhibit P 47(e) are among the documents he availed to police. The date of its drafting is not indicated.By the 8th September 2011 he had already drafted the notice of joint instruction on 29th July 2011.

The remuneration agreement **(exhibit P47 (d)** is a written summary of what A4 agreed upon with the claimants. It is dated 1st August 2011, before the Judgment was delivered on the 4th August 2011.

Since the forgery being complained about in counts **17, 18 and 19** was committed under similar facts, circumstances and transactions I will resolve the issues relating to those counts jointly.

For each of counts 17, 18 and 19 (*forgery of court documents*) the prosecution had to prove the following ingredients.

1. **Each of the documentsin each count must be proved to be false,**
2. **each of them must be proved to be a judicial document,**
3. **each of the documents must have been made with intent to deceive or defraud,**
4. **each of those documentsmust be proved to have been made by the accused person.**

Whether the Certificate of Order against Government (exhibit P.5 (a), the Order granting a Certificate of Costs for two counsel (exhibit P.5 (exhibit P5 (c)) and the Certificate of Taxation (exhibit P.5 (d) are false documents.

The accused raised two lines of defence. The first was that the documents were given to him by Pw1 (Matovu) whom he trusted given his seniority. This argument however goes more to the issue of A4's participation in the commission of the crime (**which I will handle shortly**) thanto whether the documents are false.

The second line was that the documents were properly signed by Pw3. Citing **Baigumamu Vs Uganda[1972] EA26** (*as restated in the case of **Azolozo Vs Republic [1986-89] EA)*** A4 submitted that if the documents were court orders then however irregularly procured they don't meet the standard and definition of forgery. They were issued by a registrar who was clothed with power and authority to issue such orders (***Bogere Charles Vs Uganda Criminal Appeal No. 10/1996).*** They formed part of the court record and bore the signatures of the lawfully authorized judicial officers. To date they form part of the court record in **High Court Civil Suit No. 1029/1998 Charles Abola and others Vs Attorney General.**

He cited **Bob Kasango Vs John Matovu, Commercial Court civil suit 62/2014** in whichit was held that the fact that a Judgment has been referred to as unlawfully obtained does not vitiate it without a countermanding order. He asserted that the silence of those who could cause the documents to be expunged from the record is consent that they were in fact properly issued and should not be the subject of criminal prosecution.

My only response is that A4's arguments (***e.g., that the impugned documents were properly issued by a registrar)*** are core issues at this trial. The court will certainly pronounce itself on them at this sitting.

The argument that if documents are court orders then however irregularly procured, they don't meet the standard and definition of forgery is fallacious. "**Irregularity"** and "**Court Order"** in the sense that A4 is referring to themcan never comfortably sit together, for it is a contradiction of sorts for an **irregularly procured document** to be referred to as **a court order.** A court order must not be tainted with irregularities. The arguments A4 raises in order to bring the facts and circumstances of this case under the ambit of ***Baigumamu Vs Uganda [supra]*** are patently flawed.

The argument that the impugned documents are valid since they have not been expunged from the court record is also inherently flawed. The finding in **Bob Kasango Vs John Matovu (supra)** which **A4** citesis by a civil court. The issues before that court differed from those in this case, and so A4 is clearly citing that ruling out of context.

It would be absurd and erroneous to take that finding to mean thatthe mere fact that the queried documents have not been expunged from the court record is evidence

of their authenticity or is a bar to inquiring into their authenticity which is the issue here.

Turning to the issue of whether the documents are false, it has to be resolved from a number of angles. First of all since all three impugned documents suggest that taxation was done it is vital to revisit **Pw1 (John Matovu), Pw3 (Keitirima) and Pw4 (Kalemera)**'s evidence that taxation in the Abola case has not taken place to date.

A4 only maintained that the documents were given to him by **Pw1 (Matovu),** meaning that he cannot confirm their authenticity, though in the same breathe he testified that **Pw3 (Keitirima**) signed them.

First of all, contrary to what A4 claims, the registrar (**Pw3**) in fact testified that he ***could not remember*** having signedthe orders. A4's assertion that Pw3 admitted having signed them or that he (**Pw3**) did not deny his signatures being authentically on the documents, is not borne out on the record.

Pw3 is on record as saying that;

"...They were peculiar because ***they had a semblance of my signature and to the best of my recollection I could not remember signing them*** *and it did not occur to me that I had taxed any bill to the tune of 7.8Billion shillings. One of them bore a stamp that did not belong to the Registry".*

His evidence in that regard is more over corroborated as follows;

- **In exhibit P9 (the audio recording which was played in court at the trial)** A4 is heard explaining to Pw3 (**Keitirima**) the circumstances under which the documents were signed. He mentions the fact that **Pw3** was duped ("**nebakutomeza**") into signing the documents. Had he (Pw3) been the one

who signed the documents there would be no need for A4 to offer such explanation. Crucial though is the fact that A4 himself knew that Pw3 was ignorant about how the document was signed, the only reason he volunteered an explanation.

- The Handwriting Examiner in his report (**exhibit P.41**) made two findings which are relevant to this issue;
  - He found a close relationship between the sample signatures and hand writings of **Pw3 (Justice Keitirima**) and the questioned signatures and hand writings in the questioned document.
  - He pointed to the possibility of super-imposition of the questioned signature in the following terms, ("*However the observable faint line crossings on exhibits Q1 and Q2 can be a result of transferring genuine signatures through photocopying to the documents in question*").

None of those findings is conclusive that Pw3 made the impugned signatures and writings. The hand writing examiners findings in fact in a way corroborate Pw3's evidence that he does not remember having signed the impugned documents.A4's assertion that Pw3 admitted that he signed the documents is without basis and is rejected.

Going back to the issue of taxation of the Bill of costs, the evidence that there hasn't been taxation to date was not challenged and I have no reason to doubt it. Pw1 who was the only counsel who could have applied for a certificate of costs for two counsel was positive that he has never made such an application, and the record supports his evidence.

Pw3 **(Justice Keitirima)** and Pw4 **(Kalemera)** testified that the only time this case was scheduled for taxation was on 4th October 2011 when taxation failed to take off. A4 would not have sent **Sebastian Orach** for taxation of the Bill on 4th October 2011 (***he admits he did***) had it already been taxed on 28th August 2011.

I find it as a fact that taxation has never taken place.

That being so, there is basis for a finding that the **Certificate of Order against Government** which shows that the plaintiffs advocates are entitled to a Certificate of Costs for two counsel (**exhibit P5 (a)**), **the Order granting a Certificate of Costs for two counsel (exhibit P5 (c)** and the **Certificate of taxation (exhibit P5 (d)**) are false documents.

Secondly both **the Certificate of Order against Government (exhibit P5 (a))** and the **Order granting a Certificate of Costs for two counsel (exhibit P5 (c)** purport (*in their respective paragraphs 1*) to have been issued pursuant to the ruling and Judgment of Justice Kibuuka Musoke **(exhibit P2 (c).** A cursory perusal of that ruling reveals that it in fact never awarded costs to two counsel. This leaves exhibits P5 (a) and (c) with no legal foundation and therefore false.

Thirdly, it is in evidence **(Pw1- Matovu)** and so does **Rule 41 (i) of the Advocates Remuneration and Taxation of Costs Rules** provide, that a certificate of costs to two counsel has to be applied for and issued at the trial or on delivery of Judgment. It must be certified under the hand of the judicial officer. Pw1 (**Mr John Matovu**) the only counsel who handled this case was positive that he never applied for such certificate. And crucially, while the document purports in paragraph 4 that it was issued over and above the costs that were awarded to the first counsel under a certificate of order dated 29th August 2011, no such order had been previously issued by court.

There is sufficient evidence that **Certificate of Order against Government** which shows that the plaintiffs advocates are entitled to a Certificate of Costs for two counsel (**exhibit P5 (a)**), **the Order granting a Certificate of Costs for two counsel (exhibit P5 (c),** and the **Certificate of taxation (exhibit P5 (d))**, purport to be what they in fact are not**. I find that they are false documents.**

Whether each of the documents in counts 17, 18, and 19 is a judicial document.

The **Certificate of Order against Government, Court order granting a certificate of costs for two counsel** and the **Certificate of Taxation** purport to be genuine judicial documents. Such documents (**had *they been genuine***) are only and ordinarily issued in judicial processes. These in fact purport to have been issued by the court and signed by then Deputy Registrar in **High Court Civil Suit no.1029/1998 (Charles Abola and others Vs Attorney General).**

The fact that they purport to be genuine documents whose type/or kind is only issued in court processes makes them judicial documents for purposes of the offence of **the forgery** of Judicial documents.

I find that the second ingredient was proved beyond reasonable doubt.

Whether each of the documents was made with intent to deceive or defraud.

a. **The Certificate of Order against Government (count 17).**

The document tells the following lies about itself as follows;

1. that in the Judgment of the court costs were awarded to two counsel whereas not,
2. that there was an earlier bill of costs that had been taxed whereas not.

3. that the order or document was properly issued by the Registrar whereas not.

The above falsehoods can only point to an intent to deceive. Also, the fact that A4 accessed funds on the basis of this document evidences an intent to defraud.

b. the Court Order granting a certificate of costs for two counsel *[Exhibit P.5* (c)] (count 18).

It indicates that the application was before **Justice Kibuuka Musoke** on the **28th May 2012** for final disposal. The court's Judgment (**exhibit P2 (c)** was however delivered on the **4th August 2011**. **Justice Kibuuka Musoke** could not have handled the same matter in May 2012 as the impugned Court Order suggests. In that regard the document tells a lie about itself.

It also purports that it was issued in the presence of both counsel for the plaintiffs and the defendants but Mr Kalemera (**Pw4**) testified that the last time he went to court in this matter was on the 4th October 2011 when the taxation failed to take off. The impugned Order again tells a lie about itself in this regard.Moreover it contradicts the Judgment from which it should have been extracted, in that the Judgment never awarded costs to two counsel as the order suggests.

It also purports to have been certified by **His Worship Elias Kisawuzi (Pw6)** whose evidence was that he has never certified it. The hand writing examiner corroborates the fact that the stamp impression used was not for the Court of Appeal where Pw6 was working.

It purports to have been issued by the Deputy Registrar Civil Division Justice Keitirima (**Pw3**) but he testified (**and I believed him**) that he did not sign the document. In the audio recording (**exhibit P9**) A4 actually explained the circumstances under which Pw3's signature was irregularly secured onto the document. **All the above lies only point to an intent to deceive and I so find.**

c. The certificate of taxation [Exhibit P.5 (d)] (count 19).

This document certifies that the bill of costs for two counsel had been taxed and allowed at the Shs 7,835,960,000/=, yet **Pw1, 3 and 4** were positive that taxation has never taken place. It purports that this taxation took place on the 20th June 2012 yet there was no such taxation either on 20th June 2012 or even before that.

When it purports that the bill was taxed on **20th June 2012** it renders the orders that appear under counts 17 and 18 equally forged, since they refer to an earlier taxation for first counsel (**which never took place**). It is in evidence that five of the payments received by A4 were made as follows;

- 5th December 2011 (2,000,000,000/=),
- 3rd February 2012 (3,000,000,000/=),
- 9th January 2012 (3,000,000,000/=),
- 5th March 2012 (3,000,000,000/=), and
- 4th June 2012 (Shs 1,487,040,200/=), **totaling to Shs 12.4b/=,**

The dates of those payments contradict the date in the impugned order. If the above payments were made on those dates, then they were made without basis since taxation took place on 20th June 2012, and so there would be no justification for those earlier payments, (**made between December 2011 and 4th June 2012**).

Significantly, A4 in his request for payments from the Ministry of Public Service (**Exhibit P.38)** claims for the payments that include costs which had not been taxed (**going by the date of the impugned Taxation order**).

In conclusion, I find sufficient evidence that;

- the bill of costs has never been taxed. Pw1 (***John Matovu***), Pw3 (***Justice Keitirima,*** *then Deputy Registrar Civil Division*) and Pw4 (***Kalemera***) testified so and I believed them.
- it was back dated to provide a misleading impression that the payments that were made to A4 had a legal justification whereas not.
- the Judgment of Justice Musoke (**exhibit P2 (c)**) does not in fact award costs to two counsel as Pw1 (**Mr Matovu**) indeed testified.
- it purports to have been certified by His Worship Kisawuzi (**a Registrar of another court**) who testified that he has never certified the document.

All those lies can only point to an intent to deceive, and I so find.

Whether each of the documents in count 17, 18 and 19 were made by the accused person.

I have already made a finding of fact based on **Pw1, 3 and 4's** evidence that the only taxation hearing which had been scheduled did not take off, and the matter has to date not been taxed.

Two counsel are on record as representing the plaintiffs; **Pw1 (Mr John Matovu)** and **the Marble Law Firm**. Although the taxation never took off (**A4**) demanded for payment of costs *and is the only one who used the queried documents in that regard*). I have already commented on the fact that his request for payments from the Ministry of Public Service (**Exhibit P.38)** which includes costs bears a date (**17th October 2011**), which is way before that on the Taxation certificate (**20th June 2012**). This means that he claimed for costs even before they were taxed, an

indicator that he (A4) was the author of the documents, since he must have sought to justify his claim.

Let me comment on A4's assertion that since no prosecution witness saw him at the Civil Registry of the High Court in a very long time, there is no evidence that he forged the documents in issue. Forgery may be committed in other ways one of which is direct involvement. Another method is envisaged by **Section 19 (2) of the Penal Code which provides thus;**

"Any person who procures another to do or omit to do any act of such a nature that if he or she had done the act or made the omission the act or omission would have constituted an offence on his or her part, is guilty of an offence of the same kind and is liable to the same punishment as if he or she had done the act or made the omission; and he or she may be charged with doing the act or making the omission", recognises this fact.

In ***Cheye Vs Uganda Criminal Appeal 32 / 2010****, the Supreme Court citing this section held that a procurer uses the eyes and hands of the person procured to commit a crime as his own. The actions of the person procured become the actions of the procurer.*

The fact that A4 was not seen at the Civil Registry therefore does not automatically exonerate him from the offence. His involvement still remains a question of evidence.

A4 testified that the impugned documents were delivered to his office in his absence by **Pw1 (Matovu)** or on his instructions. **Pw1** on the other hand testified that he got copies of these documents from A4's office.

A4 invited the court to note Pw1's demeanor and intransigence. He quoted Pw1 at page 73 of the record as saying that: "**I authorized the use of documents to**

collect money from the Ministry of Public Service". He argued that Pw1 made that statement without making distinction as to which documents he referred to and yet he was aware of the documents in issue. He again quoted himas saying (at page 73of the record); "**I said the 15.4b/= was rightly paid to A4 because it comes out of the orders of Justice Musoke, he received it and he did not pay me.**"

I have to be clear that throughout his testimony Pw1 (**Matovu**) disassociated himself from the queried documents. He was clear that he got copies of these documents from A4's office, and crucially, A4 does not deny that he gave copies of the same documents to Grace Apio (**Pw18**). This in my view corroborates Pw1's evidence in this regard. Given the above evidence, the excerpts which A4 lifted out of Pw1's evidence must not be read to mean that he (**Pw1**) accepted that he gave the queried documents to A4.

That apart, Pw1's evidence that when he discovered that A4 had got the money he had instructed him to claim and had not given it to him, he confronted him with the now impugned documents, is crucial to the resolution of this issue. Before then, A4 had been telling Pw1 that he had not got the money yet. Pw1's evidence (*which A4 has not denied*) is that A4 when confronted said; ***"my brother I am sorry, I did not mean to do this but I am sorry, I am going to refund all the money".***

It is on record that they thereafter made an agreement under which A4 was to refund the money, and that when he failed to refund it, Pw1 successfully sued him at the Commercial Court.

It is not logical that A4 could have apologized to Pw1 without a cause. From Pw1's evidence it is the fact that he had secured the documents (**the now impugned documents**) which A4 had used to access the money which made A4 concede to having actually got it.

It is significant that the costs to the second counsel which A4 claimed and got (**meaning that he was the so called second counsel after all**) were double those awarded to first counsel (**Pw1-Matovu).** It is not logical that Pw1 could forge documents for the benefit of A4.

It is also significant that other than Pw1's and A4's differing account of events there is exhibit P.9 (**the recording**) which gives the court clear guidance over this issue. Pw3 (**Keitirima**)'s testimony about what he recorded A4 saying is already laid out at **page 23/24**of this judgment.

Suffice it to say that the court listened to the recording (**Exhibit P.9**) and in it, A4 is heard explaining the origin of the impugned documents to Pw3. No where does he say that they were given to him by **Pw1 (Matovu).** Remembering that the recording was made without his knowledge, A4 had no reason to hide such crucial information from Pw3. Had it been that Pw1 gave him the documents it would have come out at that time. The fact that A4 did not mention it to Pw3 galvanizes Pw1's evidence that he was not the source of those documents.

A4 also argues that the recording is incomplete, and that a lot of what was said between him and Pw3 was not captured. Pw3 (**Keitirima**) however explained that the only aspects of their discourse which were not recorded were their interactions at the reception when Pw3 went to welcome and usher him into his office, and the interactions they had as he was escorting him out of the office at the end of their discourse.

Having listened to the recording, I agree with Pw3's evidence in this regard. The conversation flows smoothly without a break. There is no basis for the claim that it is incomplete. I find as a fact that the recording is complete.

In yet another argument, A4 disassociated himself from the documents and the from taxation proceedings. He explained that he only filed a Notice of Joint Instructions to be able to follow up payments in Government offices. But as the prosecution said, this cannot be correct because his instructions were never at any one point withdrawn. It was in alleged pursuit of those instructions that he uses these documents to claim for payments.

Important though is that A4 is the sole beneficiary as second counsel. It is not a mere coincidence. The order moreover caters quite handsomely for him (A4). In paragraph 4 it awards him costs which are over and above the costs of the first counsel. Those facts and circumstances satisfy me that it is not true that Pw1 gave the documents to A4. Moreover they were got in A4's possession (**by Pw1 and the police**) and he is the only one who profitably used them.

The fact that the signatures and writings on the originals of the questioned documents were not subjected to forensic examination (***a fact which A4 maintains created doubt as to who forged the documents***) does not create any doubt in my mind about A4's culpability in the forgery since other evidence, e.g., ***Pw1 (John Matovu), Pw3 (Keitirima) and Pw4's (Kalemera)*** testimonies and information in the recording ***[exhibit P.9]***) squarely links A4 to the forgery.

A4 further argued that every document or file is entered in the court system and recorded on the court file, and that no witness was called from the court I.T department to say that those documents were not entered in the system. He argues that this is a point that creates real doubt and the fact that the physical file was not exhibited denies this court the opportunity to determine when and who placed the questioned documents on record.

For the same reason I have given in the immediately forgoing complaint, the absence of such evidence does not create any doubt over the culpability of A4. Even if, for example, it were proved that the documents had been uploaded on the court system, that fact would not be proof of their authenticity or authorship. And crucially, it would not have changed the evidence in the recorder in which A4 shows that he was aware of the forged state of the documents. It would equally not change **Pw1** and **Pw18's** evidence that A4 was the one with the documents and therefore circumstantially responsible for their forgery, nor Pw1, Pw2 and 3's evidence linking the forgery to him.

A4 exhibited some Emails (**exhibit D.9**) to shown that there was communication between him and Pw1's representative **(Kakenga)** as evidence of the fact that the impugned documents were sent to him by Pw1.

I have perused those emails and note that the first one is dated Tuesday **20th September 2011**, from Emmanuel Kakenga to Bob Kasango. The 20th of September 2011 is however way after the remuneration agreement between Pw1 and the pensioners was signed on 1st August 2011, yet the e-mail bears a draft remuneration agreement as an attachment. That agreement can't be the one that was eventually signed between A4 and the pensioners. From the body of the email the attached draft remuneration agreement was only being sent as a sample, and not for execution purposes. The emails are therefore also obviously falsified to suit A4's narrative, and as the prosecution submitted, the existence of the emails was not put to Pw1 during the cross examination. This was the only way to challenge him, and also to give him a chance to accept, explain or deny the allegations. **I find that A4's assertions were an afterthought.**

A4 argued that these charges are only premised on the fact that he was found in possession of the impugned documents. He sought to distinguish **Uganda Vs Geoffrey Kazinda Session case 0138/2012** which the State cited in this regard, from this case on facts and circumstances. I agree with A4 that Kazinda is indeed distinguishable from this case on the parameters he cites.

That does not mean however that **Kazinda** (supra) is completely irrelevant to the issues at hand. The case is for example authority that particular circumstances surrounding a false document (***they don't have to be the same as those in Kazinda***) are relevant to determining the issue of its authorship.

In this case the relevant circumstances include;

a. A4 was in possession of the documents. This establishes a link between him and the documents which when viewed in the light of other factors like;
b. In the recording (**exhibit P.9**) he voluntarily indicated that he knew that the documents are forged and he seeks the assistance of Pw3 to cover up the forgery. There is no reason A4 would seek assistance to cover up a forgery he was not party to.
c. He used the impugned documents to access the money, he is the sole beneficiary to the monies indicated in the documents and he actually got that money.

The combined effect of the above factors leaves no doubt in my mind that the documents were forged by A4.

The lady and gentleman assessor's advice to me was to acquit the accused person based on the view that there was no sufficient evidence to ground a conviction on

each of counts 17, 18 and 19. I respectfully disagree with them. Their advice is against the weight of evidence.

On the basis of the evidence that the documents bear forged signatures, I find that they are false documents. That they were forged with intent to deceive that they are genuine so as to fraudulently claim for money, I find that they were made with the intent to deceive or defraud. There is sufficient evidence that the documents were made by A4 as I have labored to demonstrate. I therefore convict A4 of forgery of judicial documents as charged in each of **counts 17, 18 and 19.**

THEFT

A4 is charged with theft of the monies reflected in counts 2, 4, 6, 8, 10, 12, 14 and 16 of the indictment. The prosecution assertion is that he claimed for and was paid the money on the basis false court documents **(exhibits P5 (a), P5 (c) and P5 (d)** under circumstances amounting to theft of it.

It is common cause that;

- A4 claimed for and was paid the money through **M/s Hall & Partners (his defunct law firm)** in account number**0341467136** in Barclays bank,
- The money was withdrawn from that account under A4's sole signature,
- He used the Certificate of Order against Government (**exhibit P5 (a)**, the court Order granting a Certificate of costs for two Counsel (**exhibit P5 (c)** and a Certificate of Taxation (**exhibit P5 (d)**-(***documents he has been found to have forged***) to claim for the money.

I will again resolve the issues in counts 2, 4, 6, 8, 10, 12, 14, and 16 jointly since the complaints in each of those counts arise from similar facts,circumstancesand transactions.

The elements for the count of thefts are,

i. the thing or item stolen must be something capable of being stolen,
ii. there must be asportation,
iii. the asportation must have been done fraudulently,
iv. the accused person must have had no claim of right to the stolen property,
v. Prosecution must prove the participation of the accused person.

Whether the money in each of those counts (totaling to shs 15.4b/=) is something capable of being stolen.

The prosecution case is that the Shs 15.4b/=, the total paid to A4 is something of value and is capable of being stolen. A4 does not contest that fact. **That first element was proved beyond reasonable doubt.**

Whether there was asportation or movement of the money.

A4 does not deny having claimed for (**through exhibit P.38)** and received the total sum of **Shs 15.4b/=**.The Accountant General (**Ssemakula-Pw9**), **Pw10 (Chemonges- the Director banking Bank of Uganda), and Pw13 (Arthur Mugweri**) testified about how the funds were processed and eventually paid to Hall and Partners. Their evidence was supported by the requisitions (**exhibit P.19 to exhibitP.26**) which A1 (P.S/MOPS) and A2 (Principal Accountant MOPS) made to Accountant General for payment of Pension and Gratuity to a pensioner called Hall and partners.

The bank statements for the Ministry of Public Service account together with the bank statement of Hall and Partner clearly show that the funds were moved/asported from the Ministry of Public Service bank account to the account of Hall and Partners in Barclays Bank Account No. 0341467136 (**exhibit P.30**). **I find the second ingredient satisfactorily proved.**

Whether the asportation was made fraudulently.

The prosecution maintains that the steps that A4 took to process and receive the payments were tainted with fraud and forgeries from the initiation of the alleged taxation to the actual payment of the money, and that A4 played a critical role in committing the various frauds and forgeries.

I have already found that the accused indeed forged **exhibits P5 (a), P5 (c) and P5 (d)** on which he based his claim. I will not repeat the reasons for my findings which are at **page 42**of this judgment.

The remuneration agreement (**Exhibit P.47(d)**) between A4 and 3 pensioners is invalid and the emails (**exhibit D.9**) which A4 exhibited to evidence the communications between him and **Emmanuel Kakenga (Pw1's brother),** bearcontradictions which I highlighted and which only point to a failed attempt to sanitize A4's actions through yet other forgeries. **I find that the asportation was made fraudulently.**

Whether A4 had a claim of right to the money in issue.

The court has already found that the documents on which the claim for the money was founded were forged. **No right can accrue from such documents**.

A4 further argued that the government willingly parted with the money on the basis of the evidence that the payment went through the right payment procedures. Since there is evidence that the documents on which the claim was based were forged, that submission falls on its face.

Beyond that, the court has found that the money which was paid to A4 was supposed to be paid to pensioners, and A4 admitted that he was not a pensioner.
He claimed and received the money as **legal fees and costs**, but he was not entitled to the legal fees and costs reflected in the forged documents. Mr Matovu testified that he only instructed A4 to handle the taxation but not to receive these costs a fact A4 concedes to in cross examination. Moreover he did not do anything whatsoever to justify the costs he claimed.
He in addition claimed for the payments through a defunct law firm, **Hall and Partners**, though he had signed the M.O.U with Matovu as **Marble Law Firm**

and sent his colleague **Sebastian Orach** to represent **Marble Law firm**, filed a Notice of joint Instructions as **Marble Law Firm.** He only used the account of Hall and Partners, which according to Pw11 (**Margaret Apiny-Secretary to Law Council**) had been de-registered in 2005 to receive the money.

His explanation that he used those Bank Accounts only because he was expectingbig money and the bank was already aware that large amounts of money were transacted through that account and would therefore not query the transactions was only part of the story, given the massive fraud and many forgeries in this case. Moreover, if the payments are from an authentic source, there would be no reason for fearing bank queries as they would be easily answered. **I find that he had no claim of right to the money.**

The accused's participation.

It is common cause that A4 triggered the payment process and received the monies reflected in each of counts (**2, 4, 6, 8, 10, 12, 14, and 16**) totaling to Shs 15.4b/=, through his bank account at Barclays bank. I have found that he used documents he forged to access the money. Since he had no claim of right to the money, I found that by presenting the claim and receiving the money he participated in the theft.

The gentleman and lady assessor again advised me to acquit **A4** on the ground that there isn't sufficient evidence to ground a conviction, but I have demonstrated that there is over whelming evidence to sustain convictions on each count. **I convict A4 of theft as charged in each of counts 2, 4, 6, 8, 10, 12, 14, and 16 of the indictment.**

Conspiracy

In **Count 20 A4** is charged with conspiracy to commit a felony. It is alleged that he conspired with others still at large to forge a judicial document, to wit a Certificate of Order against Government dated 22nd June 2012 which is the subject of Count 17.

The ingredients of the offence are;

I. **That the accused conspired with other person(s),**

II. **That he did so by deceit or fraudulent means,**

III. **That he had the intent to defraud.**

In a charge of conspiracy, the law is that the prosecution does not have to prove that a formal meeting was held. All that is required is evidence to prove actions from which an agreement to commit fraud would be inferred.

The prosecution submitted that the facts of this case clearly show that A4 did not work alone in securing the falsified document.In his conversation with Pw3 for example he even explained that the agents of A2 (**Obey**) assisted him in securing the falsified document. The purpose of securing these falsified documents was to defraudgovernment of funds as has been found was done.

A4 on the other hand maintained that when he told Pw3 that he was duped i.e., ("**nebakutomeza**") in the audio recording (**exhibit P9**) they were brain storming and bringing ideas over the issue. A4 was relaying to Pw3 that a third party was very confident that he (Pw3) had executed the document and that if Pw3 disowns it probably "**Bamutomeza**".

I have found that A4 forged the document in issue. One of the defences A4 raised was that he had not been to the civil registry in a long time meaning that if he was involved in the forgery, he did it through and with the help of other people.

I listened to the audio recording and I know that contrary to what he (**A4**) is now claiming, he in fact explained to Pw3 how he (Pw3) was made to sign the document. He then requested Pw3 to certify the impugned document so that the police would be convinced that it is genuine and stop the investigations. Other evidence is that he was the sole beneficiary under the document. He is the one who used it to claim for money. This evidence shows that A4 conspired with whoever secured the document to forge it. **I find that he conspired with others who are yet unknown.**

Whether he did so by deceit or fraudulent means to defraud another.

I have already found that he forged the document with intent to deceive that the court had granted an application for a certificate of costs for two counsel, with further intent to defraud government of its funds, which he did. I find that he conspired with others still at large by deceit to defraud government of money.

That he had the intent to defraud.

The deceit included that the court documents were genuine and that he had been awarded costs as second counsel. Which costs he fraudulently accessed. **I find that he had the intent to defraud.**

The state has again proved the charges against A4, and contrary to what the assessors found, there is sufficient evidence to ground a conviction. I respectfully disagree with them and convict the accused as charged.

COUNT 21

Conspiracy to defraud contrary to section 309 of the Penal Code Act.

The elements are;

I. **Whether the accused persons conspired with one another,**

II. **Whether they did so by deceit or fraudulent means,**

III. **Whether they had the intent to defraud.**

Whether the accused persons conspired with one another.

The accused raised uniform arguments with each of A1, 2 and 3 denying having ever met with A4 (**Kasango**) with a felonious intent or at all. A2 said that he only met him when he (**A4**) went to follow up his claim in A2's office, and that the accused could not and have never agreed with each other to commit the offence.

I have already restated the legal position that the prosecution does not have to prove that a formal meeting was held. All that is required is evidence to prove actions from which an agreement to commit fraud would be inferred.

In this case as the prosecution submitted and as the evidence shows, each of the accused persons played different but complementary roles. A4 forged judicial documents which he submitted through A1. A1 routed them to the Compensation Department where A3 worked on the by virtue of his position and A2 worked on the schedules which he and A1 signed before submission to the Accountant Generals office.

A4 was aware that the documents he had submitted were forged. A1 to A3 also knew that they were not supposed to pay legal fees and costs which are the claims A4 had made under the documents.

The agreement to commit fraud is inferred from the fact that the accused persons processed payments under documents which clearly showed that they did not have the mandate to pay the category of monies that were being claimed. The argument that the payments were valid and that the accused could not have conspired to do that which is lawful is misconceived. The fact that they did not have the mandate to pay the money makes their action unlawful.

The validity or invalidity of the court orders which the accused based their actions is irrelevant. The orders were not that the MOPS should pay the money. The MOPS is not the only government institution in Uganda, and certainly not the only one which could have made the payments. Most important is that the accused were aware that they did not have the mandate to pay legal fees and costs which they had not budgeted for. Whether or not the courts orders have never been set aside is of no consequence.

I have in here mentioned the fact that the schedules which were submitted by A1 to 3 and the Trial balance bear evidence of deliberate concealment of the nature of payments made to A4. This can only be because the accused knew that the payment of Legal Fees and costs was not in their mandate. There is evidence that there are no source documents at the MOPS, and that although the money was paid to Hall and Partners as costs and legal fees, the accused persons accounted for it as having been paid to Pensioners as Gratuity and Pension. They had no list of claimants. These many irregularities by A1, A2 and A3 cannot be dismissed as honest mistakes in the course of their work.

A4 not only used falsified judicial documents as a basis for the claim. The so called court documents referred to the payments as costs and legal fees but there were no costs awarded in the case, and even if any costs had been awarded they could not have been awarded and allowed on the 20th June 2012 way after the **Shs 12.4b**/= had been irregularly paid to A4. A4 provided an account number for a defunct law firm, a clear indication of the intent to

conceal the irregular payment as they actually did. They cannot therefore claim that they acted on the documents innocently.

The defence desperately clung on Pw14's (Birakwate's) statement that a file containing correspondences on the matter is at the MOPS. Arguing that she meant that the source documents which **Pw19 (Komurubuga)** testified were not there are actually there is missing an obvious point. Pw14 herself testified that there are no source documents, a fact she had earlier on communicated to the DPP in writing. There is a difference between correspondences and source documents.

Going back to the issue of the accused's felonious actions I am satisfied that they each played a complementary role in ensuring that the monies are paid. Since the payments were knowingly illegally made I find that they conspired to defraud.

They argue that they werenot privy to what was being discussed at the Ministries of Justice and Finance where the payments were processed, but the discussions at these places have nothing to do with the fact that the accused processed and sent documents under which legal fees and costs were claimed. What was discussed at those places or even sent to them from there, e.g Otafire's and Muhakanizi's letters were not the Law. Muhakanizi is on record that his letter meant that the accusedwere to act within the law.

The accused cannot argue that they were helpless as if they could not raise the issue of their inability to pay with the people who sent those letters, and moreover as I have already said, Otafire was not even the line MOPS minister. He even wrote the letter in a private capacity as I have found.

The defence has made the fact that Otafiire was not summoned to the court to testify an issue, inviting the court to find that his absence was deliberate, and that his evidence would have been useful to the defence.

First of all the contents of Otafiire's letter are clear. The capacity in which he wrote it is clear (**A4 was clear that he approached him as a personal friend**). His coming to court would not have added value to this inquiry.

It is not that whenever any ones name is mentioned in court proceedings they must be called to testify. The relevance of their evidence to the proceedings should be the guiding factor.

The finding in **Uganda Vs Byandala & 6 ors, Session case No.12/15** that where a party fails to call a vital witness the inference is that evidence of that witness will be adverse to its case must not be understood to mean that witnesses should be called at the slightest mention of their names in court. The ruling is that **VITAL** witnesses should be called to testify.

Otafiire's evidence would not have added value to this case since the letter he wrote and the premise upon which he wrote it are clear. Pw2 and 4 explained that administratively Otafiire had no role in the issue of payment of compensation. There is nothing he would have said that would add value to the inquiry.

The defence argument that the matter was handled in accordance with the legal framework is a misconceived, when viewed in the light of my finding that the documents on which the payment was based are false. That the accused did not financially benefit from the fraud is irrelevant to the issue at hand, which is whether they conspired to commit a felony.

During his conversation with Pw3 (**in the audio recording (exhibit P9**), A4 explained to Pw3 that the people in Public Service wanted their share off the money and mentioned Obey who he indicated worked with others. It is not a mere coincidence that Obey is here today.

Inoted the fact that A1, A2 and A3 were experienced government officials in handling pension matters. All the irregularities that they committed in this case were deliberate, well-calculated and intended to defraud government of the Shs 15.4b/= that they irregularly diverted and paid to A4 as legal fees and costs.

A3 was so experienced in handling pension matters that A1 instructed him to continue overseeing the compensation department. Under normal circumstances this should have been for efficiency and proper service

delivery but the evidence on this file has shown otherwise. A3 was only retained for purposes of perpetrating fraud as he actually did when he worked together with A1 and A2 to process the irregular payments.

I find that A1, A2, A3, A4 conspired with each other.

Whether they did so by deceit or fraudulent means.

There is evidence, as I found that they used forged court documents in this conspiracy. The documents were meant to deceive that the claims were genuine whereas not. **I find that the conspiracy was by deceit.**

Whether they had the intent to defraud.

The only purpose for the conspiracy was to defraud Government as they did by irregularly paying out and receiving (**for A4**) the **Shs 15.4b/=.** A4 had in fact claimed for Shs 12b/= but was paid Shs 15.4b/=. This can only show and emphasize that the conspiracy was with intent to defraud the Government.

I find that the prosecution has proved beyond reasonable doubt that the accused persons conspired to commit a felony.

The lady and gentleman assessors advised me to acquit each accused on each count on the basis that there is no evidence to support the complaints. I disagree with their opinion. There is sufficient evidence to support each count against each accused as I have demonstrated.

The prosecution has proved all the 21 counts against the accused persons. I accordingly enter convictions against each accused person as follows;

A1 (Jimmy R. Lwamafa) is convicted of Diversion of public funds as charged in counts 1, 3, 5, 7, 9, 11, 13, 15. He is also convicted of conspiracy as charged in count 21.

A2 (Christopher Obey) is convicted of Diversion of public funds as charged in counts 1, 3, 5, 7, 9, 11, 13, 15. He is also convicted of conspiracy as charged in count 21.

A3 (Stephen Kiwanuka Kkunsa) is convicted of Diversionof public funds as charged in counts 1, 3, 5, 7, 9, 11, 13, 15. He is also convicted of conspiracy as charged in count 21.

A4 (Bob Kasango) is convicted of theft as charged in counts 2, 4, 6, 8, 10, 12, 14, 16. He is also convicted of forgery as charged in counts 17, 18 and 19 and conspiracy as charged in counts 20 and 21.

Margaret Tibulya

Judge

15th December 2018.

REASONS AND SENTENCE

The prosecution requested for sentences which take into account the fact that each of;

1. A1 (**Jimmy Lwamafa**), A2 (**Christopher Obey**) and A3 (**Kiwanuka Stephen Kkunsa**) has a record of past conviction relating to causing financial loss, abuse of office, diversion of public funds and conspiracy to defraud.
2. the loss caused to the state involves large sums of money amounting to 15.4b/= billion shillings.
3. employed sophistication and pre-meditation in committing the offence.

With regard to A4 (**Bob Kasango**)

1. the prosecution sought a sentence that takes into account that he has a record of past conviction relating to theft of 3b/= by Agent.
2. the loss caused to the state involves large sums of money amounting to 15.4b/= billion shillings.

Asst DPP Namatovu Josephine also asked the Court to be pleased to order compensation in favor of the Government pursuant to Section 7 and article 126 (2) (c) of the Constitution and section 126 (1) of the TIA.

Mr. Ochieng for A1 asked court to be lenient and caution the convict or impose a fine instead of a term of imprisonment on grounds that A1 (**Lwamafa**) had a long illustrious carrier which had not dented by any criminality. This case only arose because of poor judgment. He also pointed to A1's advanced age and the long period he has spent on remand to plead for lenience.

For Mr. Christopher Obey (A2), Mr. Nsubuga Mubiru brought his personal circumstances to the courts attention. These are that has young children to look after, he is the sole bread winner who has been in prison for over 2 years and should be treated with lenience to enable him look after his family.

For Mr. Kunsa (A3) Mr Isabirye drew to the courts attention the fact that A3 is a sickly person who has been to prison for over 2 years, has family responsibilities with dependent sons and daughters and also asked that a caution or a fine be imposed instead of imprisonment.

Counsel also referred to several community service initiatives A3 has and continue to render as a God fearing Christian inside and outside prison, asking the court to consider this community service as a strong mitigating factor that he is a responsible citizen.

A4 (**Bob Kasango**), after highlighting areas in the courts judgment which he felt had been wrongly construed, he prayed that the court exercises its discretion as per the law.

I have considered all the above submissions, prosecution and defence. I also perused the relevant laws, and the Sentencing Guidelines which have been drawn to my attention.

The fact that the accused persons have past criminal records weighs heavily against their plea for lenience. The past criminal records, moreover for financial crimes, are indicators of the fact that the convicts have been leading wayward and pretentious lives and have in fact been liabilities to society.

That A1, A2, and A3 have been in prison for over two years and A4 for about 6 months will be considered in their favor. I also take into account the fact that the accused persons are family heads with responsibilities to their spouses, children and other dependants.

I agree with the prosecution that the government lost a colossal sum of money, 15.4 billion shillings through the fraud. The defence asked me to consider that A1, A2, and A3 did not benefit from the lost funds but I should be clear that it is the failure in their stewardship roles which resulted in the loss.

The level of recklessness and negligence they exhibited in paying out public funds and the concealments I pointed out in the payment documents can only mean that each of them had personal interest in the money being paid out. The submission that none of them personally benefitted is therefore not all that correct.

Balancing the mitigating and aggravating factors which I have highlighted and considering the need to punish corruption as a serious offence, I impose the following sentences against each of the convicts.

A1- considering his advanced age but also the fact that he was the Accounting Officer I sentence him as follows;

1. On diversion of public funds in counts 1, 3, 5, 7, 9, 11, 13, 15 I would have sentenced him to the maximum ten years but I reduced the sentence by the two year remand period and order that he serves 7 years imprisonment on each of those counts. **The sentence shall be concurrent.**
2. On Conspiracy to defraud he will serve 2 year imprisonment.

For the avoidance of doubt, the sentences in parts 1 and 2 above shall be consecutive, meaning that the convict shall serve a total of 9 years imprisonment.

A2 (Obey), I considered that he was the technocrat who generated the schedules through which the funds were paid out and was co-signatory to the schedules. The fact that he has responsibilities and that he has bee on remand are taken into account. I sentence him as follows;

1. On diversion of public funds in counts 1, 3, 5 and 7 would have sentenced him to the maximum ten years but I reduced the sentence by the two year remand period and order that he serves 7 years imprisonment on each of those counts. **The sentence shall be concurrent**
2. On diversion of public funds in counts 9, 11, 13 and 15 he will serve 5 years imprisonment on each of those counts. **The sentence shall be concurrent.**
3. On Conspiracy to defraud he will serve 2 year imprisonment.

For the avoidance of doubt, the sentences in parts 1, 2 and 3 above shall be consecutive, meaning that the convict shall serve a total of 14 years imprisonment.

A3 (**Kkunsa**) considering his advanced age and ill health but also the fact that he was the vote controller I sentence him as follows;

1. On diversion of public funds in counts 1, 3, 5, 7, 9, 11, 13, 15 I would have sentenced him to the maximum ten years but I reduced the sentence by the two year remand period and order that he serves 7 years imprisonment on each of those counts. **The sentence shall be concurrent.**
2. On Conspiracy to defraud he will serve 2 year imprisonment.

For the avoidance of doubt, the sentences in parts 1 and 2 above shall be consecutive, meaning that the convict shall serve a total of 9 years imprisonment.

A4 (Bob Kasango)

He stole funds meant for pensioners, he has never worked for the government and even in his private practice only negative aspects of his practice have been high lighted. He therefore deserves no mercy.

1. On forgery in counts in counts 17, 18 and 19, I would have sentenced him to the maximum ten years but I reduced the sentence by the two years to cover the remand period and order that he serves 8 years imprisonment on each of those counts. **The sentence shall be concurrent.**

2. On theft he will serve 6 years imprisonment on each of counts 2, 4, 6, 8, 10, 12, 14 and 16. **The sentence shall be concurrent.**

3. On Conspiracy to commit a felony he will serve 1 years imprisonment.

4. On Conspiracy to defraud he will serve 2 years imprisonment.

The sentences on counts 20 and 21 (parts 3 and 4) shall be concurrent.

For the avoidance of doubt, the sentences in parts 1 and 2 above shall be consecutive, while those in parts 3 and 4 shall be concurrent, meaning that the convict shall serve a total of 16 years imprisonment.

ORDERS

- Under Article 126(2) (c) of the Constitution read together with section 126 (1) of the TIA and section 7 of the Anti-corruption Act 2009 I order that the convicts shall compensate the Government of Uganda as follows;

A1.....3, 495, 680, 066/=

A2.....3, 495, 680, 066/=

A3.....3, 495, 680, 066/=

A4.....5,000,000,000/=

- **Each of the accused persons is barred from holding a public office for a period of ten years from today.**

Any one dissatisfied with the judgment or sentence of the court is at liberty to appeal within 14 days from today.

Margaret Tibulya

Judge

21st December 2018