

**THE REPUBLIC OF UGANDA**  
**IN THE HIGHCOURT OF UGANDA**  
**AT KOLOLO (ANTI-CORRUPTION DIVISION)**  
**CRIMINAL APPEAL CASE NO. 003 OF 2018**

**UGANDA:.....APPELLANT**

**VERSUS**

**OKEE JOSEPH:.....RESPONDENT**

**JUDGMENT: BEFORE GIDUDU LAWRENCE**

This is an appeal by the Director of Public Prosecutions against the acquittal of the respondent on charges of Embezzlement, Forgery and Uttering false documents. Two grounds of appeal were filed and argued.

**GROUND 1**

The Director of Public Prosecutions complained that the Trial Chief Magistrate failed to properly evaluate the evidence on record in regard to the charge of Embezzlement.

**GROUND 2**

The Director of Public Prosecutions complained that the learned Trial Magistrate also failed to properly evaluate the evidence on record in regard to the charge of Forgery.

The facts leading to this appeal are fairly simple. One Otim Ronald who testified as PW1 was a former employee of Gulu Referral

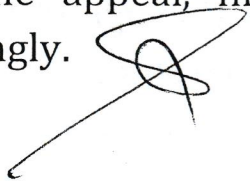
The Chief Magistrate also acquitted him on charges of Forgery because the hand writing expert report exonerated the respondent from writing the receipt and that the Resident State Attorney to whom it was uttered did not testify.

Ms. Harriet Angom who argued the appeal faulted the Trial Chief Magistrate for acquitting the respondent on the charge of Embezzlement contending that since the respondent had produced a receipt of purchase which turned out to be false, it follows that the chair belonged to Gulu Hospital.

It was her view that the evidence of PW1 who was a whistle blower incriminated the respondent since the respondent could not defend his own ownership of the said chair.

It was also her submission that by producing a forged receipt it became clear that the respondent was guilty of embezzlement of the chair. In other words, he was trying to cover up the crime of Embezzlement

On the second ground of Forgery, Ms. Angom submitted that even if the hand writing expert exonerated the respondent, the fact that the respondent produced a forged receipt implies that he is the one that forged it. She relied on the decision of *Wangutusi J* in *Uganda versus Geoffrey Kazinda High Court session case No. 138 of 2012*, wherein the Court found that even if the hand writing expert had exonerated Kazinda of forging the signature on the security papers, in the circumstances of that case, he was the forger. She asked me to allow the appeal, find the respondent guilty and convict him accordingly.





Indeed PW1 left the service after failing to regularize his transfer to Moroto.

It is also a fact from the testimony of PW1, PW5, PW4, and PW6 that the said chair was not engraved as property of Gulu hospital. It would appear that this chair which is strictly speaking an improvised one was donated to the hospital, but was not taken on charge as government property.

The testimony of PW5 who is the hospital Director reveals that asset management at the hospital did not exist. There were no internal controls on the movement of hospital assets and equipment to the extent that when PW5 authorized the respondent to take out two chairs, no one bothered to know if the chairs were taken out or if they were indeed returned.

To prove Embezzlement of the said dental chair, the prosecution is required to prove theft. There should be evidence that the property belongs to the respondent's employer – Gulu Referral Hospital.

The hospital Director who was PW5 did not know the assets of the hospital which he headed. The hospital Administrator, a one Mubiru, was not called to testify, but from the evidence on record he was not interested because according to him the hospital had not lost any property.

What remains of ownership is the testimony of PW1 whose relationship with the respondent was very poor. Since the hospital did not complain about loss of property and in fact did not identify the alleged stolen dental chair in court, the prosecution should have adduced evidence from the NGO that donated the chair so that the issues of ownership which is a requirement in both sections **254(1)**

Regarding the second ground, complaining about the acquittal on the charge of Forgery, the prosecution adduced the evidence of PW8 Mr. Sebuwufu Erisa. This hand writing expert exonerated the respondent from writing the contents of the forged receipt.

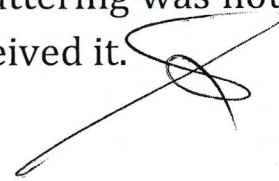
I was asked to consider that in *Uganda versus Kazinda (supra)* the accused was convicted even when the hand writing expert had exonerated him.

I have read that decision, I would not consider that it is a decision of general application. That judgment by *Wangutusi J* did not purport to state a principle that where a hand writing expert exonerates an accused, the court should still convict.

In *Kazinda's case* the Judge was dealing with **security papers** which are signed by Mr. Kazinda as Principal Accountant, and counter signed by Mr. Bigirimana as Accounting Officer. Transactions on those **security papers** were a preserve of both Kazinda and Bigirimana as Principal Accountant and Accounting Officer respectively.

The circumstances surrounding the discovery of those **security papers** in Mr. Kazinda house, and the fact that they had been used to process funds whose invoices were uploaded on the system by Mr. Kazinda, created an irresistible inference that the forged signature to approve the payments created by Mr. Kazinda could only have been forged by Mr. Kazinda himself.

That case is distinguishable from the one before me where the paper complained of is an ordinary receipt whose uttering was not proved by the State Attorney who is said to have received it.

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**Appearances**

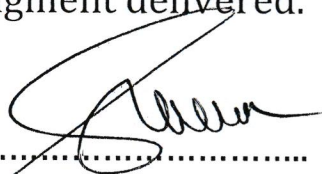
Angom Harriet for Appellant

Odyang for Respondent

Respondent in court

Ritah – Clerk

Judgment delivered.

  
.....

**LAWRENCE GIDUDU**

**JUDGE**

**1<sup>ST</sup> NOVEMBER 2018.**