REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

ANTI-CORRUPTION DIVISION HOLDEN AT KOLOLO

CRIMINAL CASE 79 OF 2019

UGANDA ..... PROSECUTOR

VRS

1. **ASIIMWE WILFRED MUGANGA**
2. **MABIIHO PATRICK NYAKAANA**
3. **WAMALA TADEO ..... ACCUSED**

BEFORE: GIDUDU, J

JUDGMENT.

The three accused persons, herein after referred to as **A1**, for Asiimwe Wilfred Muganga; **A2**, for Mabiiho Patrick Nyakaana; **A3**, for Wamala Tadeo are indicted with various criminal charges as follows:-

A1 is indicted for **Abuse of office C/S 11(1) ACA, 2009** in counts 1 to 4. He is accused of doing an arbitrary act prejudicial to his employer to wit requisitioning for UGX **25,000,000**= in each count purporting that the funds were for official field activities at Mbarara, Hoima, Jinja and Central Regional Human Rights Offices whereas not. Total of UGX 100 million was requisitioned for the four **UHRC** offices.

A1 is additionally charged with conspiracy to defraud **C/S 309 PCA, Cap 120** in count **13**. He is accused of conspiring to defraud **GOU** of **UGX**. **100,000,000**=

A2 is indicted for **Abuse of office C/S 11(1) ACA, 2009** in counts **5 to 8.**

He is accused of doing an arbitrary act prejudicial to his employer to wit approving payment of UGX.**25,000,000=** each to the personal accounts of Atim Rose, Tino Rebecca Agnes, Nassuuna Rebecca and Agirembabazi Willy purporting that the funds were for official field activities at Mbarara, Hoima, Jinja and Central Regional Human Rights Offices whereas not.

A2 is additionally charged with conspiracy to defraud **C/S 309 PCA, Cap 120 in count 13**. He is accused of conspiring to defraud **GOU** of UGX.**100,000,000=**

A3 is indicted for Abuse of office **C/S 11(1) OF The ACA, 2009** in counts 9 to 12.

He is accused of doing an arbitrary act prejudicial to his employer to wit processing payment of UGX. **25,000,000=** each to the personal accounts of Atim Rose, Tino Rebecca Agnes, Nassuuna Rebecca and Agirembabazi Willy purporting that the funds were for official field activities at Mbarara, Hoima, Jinja and Central Regional HROs whereas not.

A3 is additionally charged with **conspiracy to defraud C/S 309 of the PCA, Cap 120** in count 17. He is accused of conspiring to defraud **GOU** of UGX.**100,000,000.**

Tino, Nasuuna and Agirembabazi were originally charged with the accused but they were acquitted on a no case to answer. At the closure of the prosecution case, there was no prima facie against each of them for lack of evidence of mens rea on their part. Whilst there was evidence that they received money on their respective bank accounts, there was no evidence to show that it was with their prior knowledge or consent. They were victims of other peoples'

actions. On the contrary, they would have made useful witnesses for the prosecution and perhaps shortened the trial.

The gist of the prosecution case is that **A1** initiated a requisition for funds he was not mandated to do because those activities fell within the mandate of other directorates such as Research, Education and Documentation **(RED)** and Complaints, Investigations and Legal **(CIL)**.

Further, it was stated that the activities were not planned for by the Regional Human Rights Officers **(RHROs)** of Mbarara, Hoima, Jinja and Central. The prosecution also contends that the budget was insufficient to provide for the said activities and as a result funds for other items in the **JLOS** budget were mischarged to pay. Besides, the stated activities were not carried out. Instead the disbursed funds were withdrawn and sent back to **A1** through his private bank account. **A1** was also faulted for being a *requester* and *recommender* of the payment.

As regards **A2**, the prosecution complaint is that he authorized and approved payment of UGX 25 milllion to each of the personal accounts of the four Regional Human Rights officers namely Atim Rose, Nassuuna Rebecca, Tino Rebecca Agnes and Willy Agirembabazi purporting the funds were for field activities whereas not.

The complaint against **A3** is that he, being in charge of in putting or uploading payments onto payee accounts in the **BOU** system, deposited the requisitioned funds on the private accounts of the **RHROs** instead of the official **UHRC** accounts in these regions.

All the three are accused of conspiring to defraud the **UHRC** of the requisitioned funds because of the complimentary roles they played in ensuring that funds were exited and returned to **A1**.

The accused denied the charges. **A1** defended his actions contending that it was his mandate to raise requisitions for funds to

facilitate the **UHRC** work in the Regions. This is based on the fact that **A1** as director regional services supervised **RHOs** and appraised their performance. He referred to his appointment letter which he said gave him a wide mandate.

As regards signing the requisition as *requester* and *recommender*, it was his evidence that this was not an anomaly provided one held two office functions. He gave an example of **PW3** who singed exhibit **D7** in two capacities as requester and recommender whilst he was holding the same position as **A1** to show that it was normal to do so.

It was **A1's** further evidence that he applied for the disbursement of money to Regions and expected them to use it to do **UHRC** work and file reports in the 3rd or 4th quarter of the Financial Year. As regards refunds to his personal account, it was his evidence that **PW2** was not ready to implement the work and refunded 20 million which he paid back to **A3** and was issued with a receipt (**P4**).

A1 also explained that the other 20 million he received was his money. He stated that it was his turn to receive contributions from group members.

He denied being a conspirator contending that when he made the requisitions, he did not follow the paper work from desk to desk. He did not press his colleagues to ensure it is passed. He let the process flow naturally. It was his evidence that the requisition was verified and approved normally and was based on the needs gathered from field inspections he had done earlier.

He stated that he had no control or user rights in the **BOU** payment system in order to influence the money to be paid to individual instead of official accounts.

A2 also denied the charges and contended that he received and approved the requisitions from **A1** normally like he did to others that came to his desk. It was his evidence that he had no particular

interest in any particular requisition and relied on other officers to verify, examine and pre-audit the payment before he gave his final approval. It was his evidence that the Commission would then wait to receive field reports.

It was his evidence that the budget was sufficient to cover the activities requisitioned. The senior accountant confirmed availability of funds, the requisition was pre audited and so there was nothing wrong with his actions. The funds were approved from items **2.1.1.3** and **2.2.1.1** of the **JLOS** budget on **exhibit D1**.

He defended the mandate of **A1** to requisition for the funds reason being that the activities fall under the directorate of Regional Services which was headed by **A1**.

As regards payment of funds into personal bank accounts for official work, his evidence is that this was normal at the **UHRC**. Specifically, Central and Mbarara regions had no operational official bank accounts at the time.

He denied being in conspiracy with **A1 and A3** in regard to these funds because he clears many payments as accounting officer and only waits for accountability of funds otherwise operations would grind to a halt if he mistrusted every requisition.

A2 insinuated that it is **PW3** who wrote the concept paper to create the office of directorate of Regional Services and became the first holder of office. He afterwards went for studies and when he returned he was redeployed and turned around to literally fight the office he had created.

A3 also denied the charges and contended that he only did his job to up load funds which had been properly processed and approved. He was not involved in processing the money and only came in to upload funds into the **BOU** system to facilitate payment.

Like **A2**, it was evidence of **A3** that Central and Mbarara Regional Offices had no active official bank accounts into which to send money. That is why he used the option for private bank accounts. For consistence, he chose to send all funds to private accounts.

A3 admits receiving **20** million from **A1** which was part of money that had been sent to **PW2** in Mbarara. He issued a receipt **(exhibit P4)** and kept the money in his drawer. Even after he was asked to report to the Police, he kept the money in his drawer.

He eventually left office on 13th June 2019 leaving the money in the drawer because he was not allowed to hand over. But before he was interdicted, he had given the key to the safe to his assistant Scola kabaligwa to continue office operations.

A3 denied interacting with **A1 and A2** in any conspiracy. He only interacted with **A1** when he (A1) returned **20** million from Mbarara.

The burden of proof is upon the prosecution to prove all the essential ingredients against each of the accused beyond reasonable doubt. Proof beyond reasonable need not reach certainty but must carry a high degree of probability. It does not mean proof beyond the shadow of doubt but must be strong so as to leave only a remote possibility which can be dismissed as possible but not in the least probable. See **Woolmington Vrs DPP(1935) AC 462; Miller Vrs Minister of Pensions (1947) 2 AER 372**

Counts one to four are in respect of **A1 for Abuse of office C/S 11(1) of the Anti-Corruption Act, 2009**. He is accused of requisitioning for **UGX. 25,000,000=** in each count purporting the funds were for filed activities in Jinja, Central, Mbarara and Hoima Human Rights Offices whereas not. **UGX. 100,000,000=** was disbursed to the personal accounts of the four **RHROs** which the prosecution contends was a fictitious payment because the bulk of the money was withdrawn and sent back to **A1**. It is further alleged that **A1** did not have the mandate to requisition for the money.

The offence of **Abuse of Office C/S 11(1) of the ACA, 2009** requires proof of the following elements beyond reasonable doubt.

(i) Proof of employment in a public body or company where Government has shares.
(ii) An arbitrary act
(iii) Abuse of authority of office
(iv) The arbitrary act must be prejudicial to the interests of the employer.

It is not in dispute that **A1** was an employee of the **UHRC** as Ag. Director Regional Services (see **exhibit P1**- the appointment letter). The **UHRC** is a Constitutional Commission operationalized by an Act of Parliament. It is a public body which is defined in **section 1 of the Anti-Corruption Act, 2009** to include Government.

Did **A1** do an arbitrary act prejudicial to his employer in abuse of the authority of his office? The prosecution accuses A1 of making requisitions for money for items he had no mandate to do so. Besides, the money when released to the responsible officers, **A1** telephoned them to return 20 million each to him and keep the balance. These were said to be arbitrary acts prejudicial to the employer in that **A1** made personal gain from government funds using or abusing the authority of his office.

Mr. Baine, chief state counsel submitted that on the basis of the evidence of Commissioner Meddie Mulumba (PW1), Mr. Bonabye Kamadi, director Research, Education and Documentation (PW3, Ms. Aida Nakiganda director Complaints, Investigations and Legal(PW4), Ms. Margaret Lucy Ejang, director finance and administration(PW5) and Mr. Kahuma Jimmy Byaruhanga Internal auditor(PW6), the activities **A1** requisitioned funds for in exhibits **D2-D5** namely, Case load reduction and Human Rights Awareness fell under the mandate of the directorate of Research, Education and Documentation (**RED**) headed by PW3, whilst caseload

reduction was the mandate of the directorate of Complaints, Investigation and Legal Services (**CIL**) headed by PW4.

Mr. Baine referred to the **Financial Policies and Procedures Manual** (**Exhibit P16**) at page 93 which requires the **user** to request for funds. He contends that **A1** was not the **user** of the funds and acted arbitrarily to request for the money.

Further, Mr. Baine faults **A1** for making requisitions without budgetary provisions. There were no funds sufficient to cover the money requested for. He submitted that Human Rights Awareness under **JLOS** budget line item **2.2.1.1** had been allocated 70 million which according to evidence of **PW1, PW3, PW4, PW5 and PW6** had been utilized whilst caseload reduction funds under **JLOS** budget in item **2.1.1.3** was for Tribunal Hearings and not investigations which was being funded by **DGF**. There were no funds for investigations from **JLOS** according to evidence of **PW4**.

Mr. Baine contends that **A1** abused the authority of his office when he initiated a request for money under a vague heading namely, field activities, when he was aware he was not a director of **RED** or **CIL** which were mandated to supervise Human Rights Awareness and investigations respectively. He faulted **A1** for not involving the responsible directors or the recipients of the funds during the requisition process. He dismissed **A1's** claim about a needs assessment he had done as an afterthought. He was of the view that the alleged reports contained in **exhibit D18** were a review of activities funded under a 3 year **DGF** project and had nothing to do with **JLOS** activities. In short, Mr. Baine submits that the activities of **A1** broke the law and were arbitrary.

Mr. Mwesigwa Caleb, learned counsel for **A1**, did not agree with the submissions of the **DPP**. He did not contest the fact that **A1** is a Government employee but submitted that the requisition for funds followed due process and was not queried at any stage of verification. It was his view that **A1** did not act arbitrarily because

the process of payment went through different checks that found nothing wrong as shown on the endorsements on **exhibits D2-D5**. He relied on evidence of **PW5**, director finance who testified that verification by internal audit rendered the payment legitimate.

On the mandate of **A1** to requisition for the money, counsel relied on **A1's** appointment letter which he said gave him wide powers especially the power *to support and supervise Regional Human Rights Officers.* It was his view that, *support to Regional offices included financial facilitation* hence the act of requisitioning for funds for activities in the Regions. He gave an example of **PW3** who while in same office as **A1** requisitioned for money in **exhibit D7** for an activity in Gulu.

On the issue of lack of funds in the budget, counsel submitted that the senior accountant verified and confirmed existence of funds that is why the payment was not stopped. It was his view that the practice of a person requisitioning and also being recommender was not unique to **A1**. Even PW3 had ever done in exhibit **D7 and D15**. It was counsel's conclusion that there was no arbitrary act proved against **A1** and that charges in **counts 1-4** cannot stand.

Further, counsel submitted that there could not be abuse of authority of office when **A1's** appointment letter permitted him to do what he did.

On the issue of the needs assessment report, counsel submitted that the team used the opportunity of doing **DGF** activity assessment to carry out a needs assessment of the Commission's mandate. The field activities for which he requested for the money fell in that mandate.

On the issue the 20 million that Rebecca banked on **A1's** private bank account, counsel contended that it was personal and not part of the 25 million that Rebecca had received in her account. He

disagreed that there was any threat to any Regional Human Rights Officer to return money to **A1**.

On whether, the act of requisitioning 100 million was prejudicial to the employer, counsel was of the view that there was no investigation to establish if the activities were not done as per funds released. He asked court to find that there was no evidence adduced to show that 100 million was lost.

Since the issues/questions in counts one to four are the same, I will dispose of the four counts concurrently for brevity and logic.

ARBITRARY is an English word. It means an action or decision or rule not seeming to be based on a reason, system or plan and sometimes seem unfair. (See Oxford Advanced Learners' Dictionary). Black's Law Dictionary states that if the act is a judicial decision, it is classified as arbitrary if it is founded on prejudice or preference rather than reason or fact.

In other words, an arbitrary act is action that is capricious and unreasonable to the point of breaking rules, procedures or the law.

*Did **A1** have the mandate to requisition for the disputed funds or not? Was this a legitimate transaction with a budget line or not? Did the **UHRC** lose the **UGX.100 million** or not? Was money paid to **A1** by Rebecca Nassuuna personal or part of the **UHRC** funds?* These are issues that will determine whether **A1** committed a crime of abuse of office or not. I have to examine the transaction from beginning to the end in order to answer the above questions one way or the other. The manner in which the money was utilized informs the decision to determine if the acts of **A1** were arbitrary or not.

The prosecution adduced evidence of PW2 who was the whistle blower. She testified that on 30th November 2018 she got a notification from the bank that her account had been credited with 25 million. On 1st December, 2018 **A1** called her but she did not pick the call. The following day **A1** called again and when she

picked he informed her about the payment to her account. He instructed her to wait for instructions on its use.

On 4th December, 2018, **A1** called her and instructed her to withdraw and deposit 20 million on his personal account in Housing Finance Bank and keep the balance for her personal use. On 5th December 2018, she did as instructed but feared to use the 5 million on her personal needs suspecting the transaction was fraudulent and would put her in trouble because she had not initiated the requisition.

PW2 eventually confided in PW1 about the matter. PW1 took up the issue with the Chair of the **UHRC**, the late Meddie Kaggwa. After 3 months of inaction by the Chair, PW1 decided to escalate the matter to the Anti-corruption Unit of State House which investigated and filed these charges.

Evidence of PW1, PW3, PW4, PW5 and PW6 is that the requisition by **A1** was irregular because he was not the budget holder. They stated that case backlog reduction fell in the directorate of **CIL** headed by PW4 whilst Human Rights awareness was the mandate of the directorate of **RED** headed by PW3.

The import of their evidence is that the activities stated in the requisition as shown in defence exhibits **D2-D5** were vague and misleading. For example, caseload reduction was not a budget item. It should have been case backlog reduction which is a budget item with code **2.1.1.3**. This is money for tribunal hearing which is paid to the Commissioners, process servers, drivers, legal assistants etc as per diem. The budget holder is the director **CIL**

As regards Human Rights awareness, PW3 specifically stated that 70 million was released from **JLOS** in quarter 2 and was utilized for Community awareness, barazas and community out reaches by the directorate of **RED**.

In quarter 2 under the **JLOS** work plan (**exhibit D1**), only 15 million was released for Tribunal hearings and 70 million for Community awareness, barazas and community out reaches. This was utilized.

It means, therefore, that apart from 15 million for Tribunals, there were no funds to do caseload reduction. PW5 testified that caseload reduction means Tribunal hearing and investigations. But investigations still fall under the directorate of **CIL** and not Regional services. Besides, investigations were not funded under JLOS in **2018/19 FY**. It was funded under **DGF** facility.

The effect of evidence of these prosecution witnesses is that there was no money in the budget to cover 100 million requisitioned by **A1**. Only 15 million existed in the budget in that quarter as per **JLOS** work plan in exhibit **D1**. The requisition should not have been passed for payment. When asked why she, as director Finance and Administration certified this payment when it was irregular for lack of mandate and funds, PW5 stated that once **A2** directed "**process**" she let it pass. In other words PW5 certified a payment she knew was irregular but let it go so as not to offend **A2**.

In his defence, **A1** insisted he was mandated to facilitate regional officers as per the terms in his appointment letter. It was his view that facilitation included requisitioning for money for activities to be performed in the regions. Besides, he was not the payee. It was his view that he expected Regional heads to file activity reports and accountability in the 3rd or 4th quarter. He admits that by the time he left office on 13th June 2019, there were no activity reports filed.

As regards the signing as recommender when he was the initiator of the request for the money, he defended himself that it was normal because he held both functions just like PW3 and PW5 had ever signed in both capacities in **exhibits D7** and **D15** respectively. On the issue of depositing money on the personal accounts of the Regional officers, he stated that it was not his duty to direct where

money should go. It was also his defence that money deposited on his personal bank account on 5th December, 2018 as reflected in **exhibit P18** by Atim, PW2, was returned to the Commission for which A3 issued a receipt (**exhibit P4**) whilst that deposited by Rebecca was money due to him from a group saving scheme where he was a member.

Having stated the case for both sides, I now resolve the issues I posed at the beginning. *Did **A1** have the mandate to requisition for the disputed funds or not?*

The key functions of the director Regional services are contained in **A1's** appointment letter which is **exhibit P1**. The relevant functions include (i) supervising **RHROs** (ii) providing advice, support and facilitation of the planning process for regional/field offices (iii) supporting and supervising regional offices in the execution of the Commission's mandate. (iv) Monitoring the activity performance of regional offices (v) recommending and reviewing coverage and location of regional /field offices. Other functions are internal to the directorate of regional services.

The above stated key functions, without more, do not in my view include initiating a requisition for funds for activities at regional offices. The functions are restricted to work performance, work planning and assessment of outputs. It does not require an expert in Human Resource Management to interpret these functions. Financial facilitation is not one of the functions of the director regional services to regional offices.

A1 stated that when PW3 was a director regional services he requisitioned for money for the Regional Office in Gulu. He claimed this is similar to what he also did. I have examined documents in **exhibit D7**. This is a payment to a contractor/consultant following a procurement process.

The payment was not initiated by PW3 but by the consultant, who raised an invoice dated 15th December, 2016. It was for an Environment Impact Assessment for constructing **UHRC** offices in Gulu. PW3 requisitioned for funds and also signed as recommender to have the consultant paid. It is a mandate of director regional offices to recommend setting up of offices. Money was paid to the consultant as per contract between **UHRC** and Strategic Sustainable Consult LTD dated 7th December 2016. This transaction is not by any stretch similar to what **A1** did. The money was paid to a third party and not commission staff. Besides the transaction is founded on a contract between **UHRC** and a service provider who is not a Commission employee. The two don't compare. **Exhibit D7** does not offer any useful defence to **A1**.

Similarly **exhibit D15** which is a disbursement of quarter one funds from headquarters to regional offices by the **UHRC.** It is not comparable to the requisitions by **A1**. Quarterly releases are automatically sent to expenditure units following finance committee allocations. PW5 as director Finance and Administration is mandated to disburse quarterly releases and by signing as requester and recommender, she is just implementing a finance committee allocation. PW5 is in charge of budget execution. I find that **exhibit D15** is of no assistance to **A1's** defence.

Perhaps I should observe that merely signing as requester and recommender is not by itself irregular provided one has the mandate to request and a budget line to charge the payment exists. **Exhibits D7 and D15** fall within this criteria.

Was this a legitimate transaction with a budget line or not? Government funds are sourced from budget lines supported by work plans. This payment is sourced from **JLOS** 2nd quarter release. Items **2.1.1.3 and 2.2.1.1** are the primary source of funds in the **JLOS** as per **exhibit D1**.

Prosecution witnesses such as PW1, PW3, PW5 and PW6 testified that there were no sufficient funds to cover the requisition. **A1** insisted that there was sufficient money on items **2.2.1.1** for Human Rights awareness and **2.1.1.3** for investigations.

Item **2.2.1.1** had 70 million broken down as follows; 20 million for community barazas and kraal meetings whilst 50 million was for Human Rights awareness. PW3 testified in chief that between October and December, 2018, he as director **RED** received 70 million from **JLOS** and carried out the activities in the work plan. In cross examination, he was not challenged on the assertion that the 70 million **A1** purported to requisition for had already been sourced and spent. It means that there were no more funds in quarter 2 for **A1** to requisition!

Item **2.1.1.3** in quarter 2 had only15 million. This money was for Commissioners' facilitation (per diem) during tribunal hearings. It has nothing to do with investigations. PW4, director **CIL** testified that investigations were not funded from **JLOS**. Investigations were donor funded through **DGF** facility. It means that it would be a mis-match to charge that money for investigations.

In cross examination PW4 was emphatic that **A1** does not supervise investigations in the regions. She stated that **A1's** support to regional offices is administrative only and any cross cutting issues in **A1's** appointment letter relates to issues of refugees, HIV and gender main streaming. As director regional services **A1** did not supervise core functions in the regions that fell in other directorates. This to me makes sense otherwise there would be confusion in the Commission.

It is a fact that the requisitions in exhibits **D2-D5** do not have a work plan and budget. The payment was not supported by critical documents which according to the testimony of director Finance and Administration (PW5) should have included the budget and work plan. It follows that any money paid to honour exhibits **D2-D5**

was a mis-charge. Under **S.22 of the Public Finance Management Act, 2015** authority by way of Virement was a prerequisite.

On the basis of the unchallenged evidence of PW3, PW4 and PW5 I find that this transaction was not legitimate for want of a budget line and work plan.

*Did the **UHRC** lose the **UGX.100 million** or not?* Having found that **A1** had no mandate to request for this money and having found that there was no budget line for it, was the transaction prejudicial to the **UHRC**? Did the commission lose money or not?

A1's defence is that this money was received by the four named **HROs** and except for PW2 who refunded 20 million paid to A3 against **exhibit P4,** he was waiting for accountability and activity reports from the other three regions when he was interdicted on 13th June 2018.

Mr. Mwesigwa submitted that there was no audit done to establish if the activities were not done in the regions. He rubbished an internal audit report (**exhibit P17)** done by PW6 contending that it was made without in-put of the concerned **HROs** of Jinja, Hoima and Central. These officers had already been charged in court.

I have perused **exhibit P17**. It was commissioned after the police had received PW2's complaint through PW1. It recommended the charging of the **RHROs** of Jinja, Hoima and Central in addition to the present accused. As a result, the prosecution missed useful evidence from Tino, Nassuuna and Agirembabazi in relation to the fate of the entire money. Exhibit P17 failed the test of a forensic report. It did not point out who was responsible for what breaches. It was too general yet it was commissioned to help identify the loss of public funds and by who.

Exhibit P18 shows that PW2 and Rebecca deposited 20 million each on **A1's** bank account in Housing Finance Bank on 5thDecember, 2018. PW2 testified that this was on instruction of

A1. On the contrary, **A1** says part of this was his personal money that he received as his turn in a money saving scheme by staff of the **UHRC**. Strangely PW2 was not cross examined on this aspect since she as a staff must have been in **A1's** money saving group.

Having found that **exhibit P17** did establish the final destination of the money, I turn to evidence of the investigating officer- Ochaya Kinyera Bernard (PW10). He testified that he interrogated Rebecca Nassuuna , formerly a **RHRO**, Jinja admitted receiving 25 million on her personal account. Upon instruction by **A1** she withdrew 20 million and gave it to him but had no evidence to support it. But when in cross examination PW10 was shown **Exhibit P7** which is a cash deposit receipt by Rebecca Nassuuna of 20 million on the personal account of Asiimwe Muganga Wilfred (**A1**) dated 5th December 2018, he admitted it was the money Nassuuna had banked.

Tino Rebecca formerly a **RHRO** Hoima is also said to have admitted paying 20 million to the office upon instructions of **A1**. This money was meant for **A2**. She also retained 5 million as instructed.

As for Agirembabazi formerly **RHRO** Central, PW10 testified that he too withdrew 20 million and upon instructions of **A1** took it to **A2**. He retained 5 million. PW10 stated there was no evidence that A2 received that money. In absence of evidence of Agirembabazi and Tino, PW10's evidence on this aspect remains hearsay.

What is clear from the evidence as it appears unchallenged is that Atim and Nassuuna Rebecca paid 20 million each to the account of **A1** as per **exhibits P18 and P7**. Another 40 million was supposed to be conveyed to **A2** but there is no evidence to support it. The balance of 20 million remained with each of the **RHROs**. **A1** admits he received 20 million from PW2 and passed it to A3 who issued a refund receipt, **exhibit P4**

The conclusion I draw is that the entire **UGX 100** million was not deployed to the job for which **A1** wrote the memos in **exhibit D2** to **D5**. Even the 20 million received on the Commission receipt by A3 is not known where it is since. A3 testified that he received 20 million from A1 on 10th December, 2018 and issued a receipt. He kept the cash in his drawer until 13th June 2019 when he was interdicted. He left it in the drawer whose keys he gave to his assistant. Nobody knows the fate of this 20 million. The fate of this money is anybody's guess. The **UHRC** did not benefit from this transaction. No activity was carried out with that money. The only activity done was to withdraw 20 million by each of the recipient officers and deal with it in a manner **A1** instructed. Those that have this money are known to **A1**. The payment was, therefore, prejudicial to the **UHRC**.

*Was money paid to **A1** by Rebecca Nassuuna personal or part of the **UHRC** funds?* There is over whelming and uncontroverted evidence that money received by **A1** via his bank account on 5th December 2018 deposited by Nassuuna was part of the 25 million received from the Commission. The theory by **A1** that it was his money from group contributions is false. It is an afterthought. Unlike Nassuuna who was not called as a prosecution witness, Atim was called as PW2. She was not asked about any savings group among **UHRC** staff so as to justify A1's claim that Nassuuna conveyed group funds to A1 as his turn to receive.

On the basis of evidence adduced by the prosecution weighed against **A1's** defence I find that the requisition by **A1** was irregular and arbitrary for lack of mandate. He was not a budget holder and acted arbitrarily by requesting for money to for himself using **RHROs** as a smokescreen to steal government funds. He raised a dubious memo to ask for funds under vague headings such as case *load reduction* and *Human Rights Awareness*. These terminologies were broad and misleading. The actual work plan in **exhibit D1** is specific on activities such as tribunal hearings, community barazas,

outreaches, kraal meetings, civic education to create Human Rights Awareness etc.

Rules of financial management were broken to actualize this payment. The needs assessment report **A1** claimed to have relied on is an afterthought. But even if was true that there was a need, **A1** had no right to usurp the mandate of other directorates to satisfy that need. He should have just brought it to the attention of the concerned directorates to take action to address those needs.

Having answered all the framed questions in the negative, I have found, just like the lady and gentleman assessors did that the prosecution has proved all the essential ingredients of the offence of abuse of office against A1 in counts 1 to 4 beyond reasonable doubt. I accept the assessors' advice that A1 is guilty of abuse of office.

Counts five to eight are in respect of **A2 for Abuse of office C/S 11(1) of the Anti Corruption Act, 2009.** He is accused of doing an arbitrary act prejudicial to his employer to wit approving payment of UGX.**25,000,000**= each to the personal accounts of Atim Rose, Tino Rebecca Agnes, Nassuuna Rebecca and Agirembabazi Willy purporting that the funds were for official field activities at Mbarara, Hoima, Jinja and Central Regional Human Rights Offices whereas not.

The offence of **Abuse of Office C/S 11(1) of the ACA, 2009** requires proof of the following elements beyond reasonable doubt.

(i) Proof of employment in a public body or company where Government has shares.
(ii) An arbitrary act
(iii) Abuse of authority of office
(iv) The arbitrary act must be prejudicial to the interests of the employer.

It is not in dispute that **A2** is a secretary of the **UHRC** now on interdiction. His appointment letter and contract of service is on record as **exhibit P2**. He is a government employee just like I said about A1. Did he do an arbitrary act in abuse of the authority of his office?

Mr. Baine Chief State Counsel submitted that **A2** approved payment of 25 million each to personal accounts purporting the funds were for field activities at Mbarara, Jinja, Central and Hoima Human Rights Regional Offices whereas not. It was his view that **A2** as accounting officer should have rejected the requisitions because it was not the mandate of **A1** to ask for those funds. Besides, it was his view the disputed activities were the mandate of other directorates namely **RED** and **CIL**.

He relied on **exhibit P16 (a UHRC Financial Policies and Procedures Manual)** to submit that **A1** was not the **user** and was not the responsible director either to request for funds. Further, the work plan did not disclose availability of those funds which was reason **A2** should have rejected the requisition. He faulted **A2** for approving a payment for case load reduction which had no budget as per work plan in **exhibit D1**.

He dismissed **A2's** claim that item **2.1.1.3** provided for investigations yet it was for Tribunal Hearings which clearly was not **A1's** mandate.

Mr. Baine faulted **A2** for abusing the authority of his office in that he in effect re-allocated funds for tribunal hearing of 300 cases under item **2.1.1.3** to investigations which authority he never had because of the provisions of section **22(1) PFMA 2015 and the 2016** Regulations made under which vested such authority to the **PS/ST** Ministry of Finance.

A2 was also faulted for approving funds to *individual accounts* instead of to official Regional Office bank accounts. This exposed the funds to abuse.

Whether this was prejudicial to **A2's** employer, Mr. Baine contends that the alleged field activities were never done yet money was drawn out of the budget. It was his view that **UGX 100** million from **JLOS** was lost. He concluded that while initially wiring money to private accounts appeared not to be a crime, the subsequent use of the money shows that it was planned to be spent for private gain instead of official work which makes it criminal.

Mr. Gilbert Nuwagaba, learned Counsel for **A2** submitted that his client was not at fault to approve funds initiated by **A1** because **A1** had the mandate to request for that money as Ag Director Regional Services. He submitted that **A1's** appointment letter (**exhibit P1**) gave him that mandate.

It was his view that since **A1** was mandated to supervise Regional Human Rights Officers in the performance of their duties it was immaterial that the activities appeared to fall within the directorates of **RED and CIL**. The regional Officers were still answerable to **A1** so he had to facilitate them through the questioned requisition.

Like his colleague Mr. Mwesigwa, Mr. Nuwagaba submitted that the payment was subjected to the normal financial processes of verification and pre audit which rendered it to be a clean payment. It was, therefore, not arbitrary he concluded.

The key issue for resolution is whether **A2** acted arbitrarily when he approved funds to be paid into personal accounts of the four **RHROs**? That is the accusation contained in the amended indictment sheet of 13th September, 2021 to which all the accused pleaded not guilty on the same day.

I should observe that the submission from both sides were concentrated on whether **A1** had the mandate to request for the

money and whether there was a budget for it from the **JLOS** work plan. These are matters that were relevant to the charges faced by **A1** and not **A2**.

I am surprised that even after the prosecution had amended the charges as late as 21st September, 2021 when it had closed its case, it did not focus its final submissions to the issue of approving funds to private accounts.

There was a contest as to whether Central region and Mbarara had official operating bank accounts at the time.

Most prosecution witnesses testified that those accounts existed. PW5 stated that Mbarara used to have an account in Standard Chartered bank which closed its branch in Mbarara causing the Commission to open fresh accounts in Barclays bank- now Absa bank. On the other hand, **A2** and **A3** maintained the account in Mbarara was not operational by November 2018 when funds were processed.

The prosecution did not tender bank opening documents of Barclays bank in Mbarara to confirm its allegations. PW5 also stated that Central region had a functional account in Bank of Uganda (**BOU**). But A3 who was in charge of uploading payments in **BOU** banking system testified that the Mbarara bank account in Barclays was not activated at the time whilst the account for Central region had been closed at the time (November 2018). Documents pertaining to the **BOU** account for Central region were not tendered to prove the accusations.

*Did **A2** act arbitrarily by approving official funds to private accounts?* Prosecution witnesses such as PW1, PW3, PW4, PW5 and PW6 faulted **A2** for this act. They found it irregular. It was their view that it was a deliberate scheme to steal money. But none of these witnesses cited any law, rule or guideline that prohibited depositing official funds on private accounts of officers.

On the contrary when PW5 was cross examined by Counsel for A2 she stated thus "It is not strange for money to be paid to personal accounts. Reasons exist to pay money to personal accounts. Money has ever been paid to my personal account". By this testimony PW5 had removed the sting out of the charges against **A2**. This was on 10th November 2020 when she testified. The charges were amended on 21st September 2021.

Further cross examination of PW5 by Mr. Ochieng counsel for Agirembabazi and Nassuuna who were A4 and A5 on the original indictment, she stated thus "***exhibits D2 to D5*** *did not contain instructions to pay money to personal accounts.* ***Exhibits D2 to D5*** *have hand written details of the account where money went. It must have been the accountant who initiated the payment who did it. The payee was known but only A3 can explain the reason money went to a personal account*"

The above excerpt by PW5, shifts the blame from **A2** to **A3**. Indeed, **A3** gave reasons why he uploaded all funds to private accounts in his defence.

Enos Kamanyire, PW8, a supervisor from **BOU** testified that **A3** was the **initiator** of the payment process in the **BOU** banking system whilst **A2** was the *authorizer*. This piece of evidence points to **A3** and not **A2** as the person who should explain why he did that.

The submission from both sides were over shadowed with issues of whether **A1** had a mandate to make the disputed requisitions, whether there were sufficient funds from the budget to support the request, whether the documentation was proper etc. These are matter for which **A1** was charged. I have already disposed of these issued when I found **A1** culpable.

The prosecution contended that **A2** should have rejected the request for money upon first sight because it was irregular. But he was not charged with authorizing an illegal payment. **A2** is charged

with approving payment of official funds to personal accounts which act is said to be prejudicial to the Commission. That is the gist of **A2's** charges. There was no evidence that **A2** broke a particular rule, regulation or law in doing so. Indeed, PW5 who is was director Finance and Administration and currently the Ag. Accounting officer at the Commission rightly in my view testified that it is not strange for official funds to be paid to private accounts. I take Judicial Notice that several **MDAs** pay duty facilitation funds to private accounts of individuals. Individual officers use this money and file accountability plus activity reports.

The long and short of my evaluation of the evidence against **A2** is that his action was not arbitrary. The lady and gentlemen assessor advise me that paying money into private accounts was okay if the official account is not active. But where accounts are active it was not proper. The assessors did not give me reasons why it is not proper where accounts are active. I accept part of their advice but no not agree that where there are active accounts it is improper to send money on private accounts. As PW5 stated, there are reasons why that is done. It is usually for convenience of the user of those funds and to avoid the risk of first withdrawing cash from the official account and moving around with it. This is common practice not peculiar to the **UHRC**.

The prosecution grounded the charges against **A2** on the basis that the money which was sent to personal accounts was withdrawn and used for private gain instead of the Commission work. It was implicit that the money was deliberately wired to these accounts for easy access by **A1** who is believed to have shared it with **A2** to the prejudice of the Commission.

There is no dispute that funds were not deployed for the work A1 requested for. I have already discussed this when dealing with charges against A1 and need not repeat myself here.

The question that arises, is **A2** culpable for this prejudice? I have in a number of cases in this court reasoned that a person may be proved to have acted arbitrarily but without causing prejudice to his or her employer. Such a person is not guilty of abuse of office but could be disciplined administratively for exposing the employer to risk of loss although there was no none.

Equally, we have scenarios where an accused did not act arbitrarily but caused prejudice or loss to the employer. Such a person is not guilty of abuse of office but is charged with the actual loss caused provided the requisite mens rea is proved ie the prior knowledge that such action would lead to or cause financial loss.

But once the prosecution failed to prove that sending money to private accounts was an arbitrary act, the subsequent loss is a different crime which is not covered under **section 11 of the Anti-Corruption Act, 2009.**

Be that as it may, there was no evidence adduced to suggest that **A2** acted the way he did in order to benefit from the scheme. Agirembabazi and Tino Rebecca who are said to have been instructed by A1 to give 20 million each to **A2** were not called as witnesses. Instead they were charged for stealing the balance which they had been instructed to keep. No charge and caution statement from Agirembabazi and Tino was tendered to support that allegation

To that extent, PW10's evidence is hearsay which offends section **59(a)(b)(c) of the Evidence Act, cap 6**. It provides as follows.

59. Oral evidence must be direct.

Oral evidence must, in all cases whatever, be direct; that is to say—

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw it;

(b) if it refers to a fact which could be heard, it must be the evidence

of a witness who says he or she heard it;

(c) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he or she perceived it by that sense or in that manner;

It follows that PW10's allegations against **A2** are not admissible in regard to what Agirembabazi and Tino did with the money they received on their bank accounts.

A2 was also faulted for directing "**Process**" on exhibits **D2 to D5** the moment the received the requisition. But the evidence of PW5 when read together with **exhibit P16 at pgs. 93 to 94**- the **UHRC** finance manual demonstrates that after the Accounting officer has received the request, he refers it to technical officers to subject it to verification and certification. The senior accountant confirms availability of funds, ensures relevant supporting documents are attached; director Finance and Administration reviews and authorizes; internal audit pre-audits the request before forwarding it to the Accounting Officer for final approval. "Process" is not the same as "pay". It simply subjects the request to financial and budgetary verifications.

When cross examined why she certified an irregular payment, PW5, said she was not satisfied but there are things you let go and deal with them later. This in my view is a betrayal of her role. She chose not to discuss the anomaly with the Accounting officer thus giving a false sense of legitimacy to a payment she would have helped to save. I would have been persuaded to believe that **A2** was part of this syndicate if PW5, or the senior accountant or internal auditor had raised red flags which **A2** ignored. Many Accounting Officers approve payments which technical Finance Managers have helped unscrupulous persons to generate but are not held liable. It requires evidence to connect an Accounting officer to financial fraud. That evidence is lacking. **A2** remains a suspect. It is trite

that suspicion however strong does not lead to a conviction. **See Israel Epaku Vrs. R (1934)1 E.A.C.A 166**.

It would be unfair to hold **A2** liable for a fault that PW5 and her finance team failed in their duty to advise the Accounting Officer correctly. The assumption that **A2** was part of the scheme is not supported by evidence. If **A2** was to fall then the entire team comprising PW5, the senior accountant and internal auditor would have to fall with him. None of them said he/she acted under duress.

In his defence, **A2** tried to justify the payment by claiming A1 had the mandate and there were funds in the budget sufficient to cover the request. I have already discussed this defence when dealing with the charges in counts one to four against **A1**. I have already made a finding and taken a decision on this evidence. I believe that **A2** was gullible with little experience in financial matters. The team that verified and certified the payment did not assist him. Many Accounting Officers are not schooled in matters finance but rely on accountants, auditors and finance managers to advise them on the legitimacy of payments. **A2** was vulnerable. He had a hypocritical team that looked the other way to let him fall. PW5 testified that she deliberately let the payment pass when she knew it was wrong. She failed to advise **A2**. It is trite that an accused person should be convicted on the strength of the prosecution evidence and not on the weakness of his/her defence.

The lady and gentleman assessor opined that **A2** should have done due diligence on this payment before approving. It was their opinion that he failed to do so and as a result caused prejudice to his employer. With respect an accounting officer depending on the level of his or her experience should not be seen to be doing the work of technical staff employed to assist him or her do work. That would be duplication of roles and a source of conflict at work places. The Commission lost the bulk of the 100 million but **A2** was not charged with causing its loss. Since he never acted arbitrarily, he is

not guilty of abuse of office. The fact that there is actual loss during **A2's** term as accounting officer may be addressed by the employer administratively. The prosecution did not charge him with causing Financial Loss.

In conclusion I find that the prosecution did not prove the charges in counts five to eight against **A2** beyond reasonable doubt. Approving money to private accounts is not by itself an arbitrary act. Charges of abuse of office cannot stand without proof of an arbitrary act on the part of the accused.

Counts nine to twelve are in respect of **A3 for Abuse of office C/S 11(1) of the Anti-Corruption Act, 2009.** He is accused of doing an arbitrary act prejudicial to his employer to wit processing payment of UGX. **25,000,000=** each to the personal accounts of Atim Rose, Tino Rebecca Agnes, Nassuuna Rebecca and Agirembabazi Willy purporting that the funds were for official field activities at Mbarara, Hoima, Jinja and Central Regional Human Rights Offices whereas not.

The offence of **Abuse of Office C/S 11(1) of the ACA, 2009** requires proof of the following elements beyond reasonable doubt.

(v) Proof of employment in a public body or company where Government has shares.
(vi) An arbitrary act
(vii) Abuse of authority of office
(viii) The arbitrary act must be prejudicial to the interests of the employer.

There is no doubt that A3 is an accountant with the UHRC which is a government body.

Did he commit an arbitrary act when he processed funds to personal accounts? Did he abuse the authority of his office to the prejudice of his employer?

Mr. Baine submitted thus "*A3 without any basis or authorization using the **BBS** system did input the transactions of UGX. 25,000,000= funds to be remitted to each of the regional heads of four regions, namely; Mbarara, Central, Jinja and Hoima in total disregard of the clear instructions on the paper work which was to post funds on the official accounts as evidenced by **D2-D5**. According to PW8 Enos Kamanyire, the supervisor internet banking, **BOU** and **(exhibit P19)**, **A3** was the initiator of the transactions*".

Mr. Baine faulted **A3** for issuing a receipt (**exhibit P4**) for 20 million as money refunded by PW2 but chose to keep it in his drawer for months. He insinuated that **A3** put money on private accounts in order to benefit from the subsequent withdrawals.

Mr. Baine faulted **A3** for using personal accounts yet according to PW1 to PW6 each region had official bank accounts on which to deposit **GOU** funds. He asked court to find **A3** liable for abusing the authority of his office when wired money to private accounts.

It was his view that **A3's** arbitrary action caused the **UHRC** to lose **UGX. 100,000,000=.** This, he submitted was prejudicial to **A3's** employer.

Mr. Mwesigwa learned counsel for **A3** asked court to find that there was evidence from PW1, PW3 and PW4 that there are instances where money for official work would be deposited on private accounts which renders **A3's** action legitimate.

A3 testified that he sent money for all the regions to private accounts for consistence since Central region and Mbarara region had no operational official bank accounts at the time. This was also the testimony of **A2** regarding lack of official bank accounts at Mbarara and Central region at the time.

Mr. Mwesigwa submitted that the 20 million received by **A3** was receipted and kept in his drawer until he was interdicted. He

faulted the police for not recovering this 20 million from **A3** because it was there.

He further submitted that there was no loss of UGX. 100,000,000= because each **RHRO** was in possession of the money except for 20 million which was left uncollected from **A3's** drawer by the investigators.

I have already found that **A2** did not break any rule or law by approving funds which **A3** had initiated to the personal accounts. PW5 admitted that there was nothing strange about sending official money to personal accounts. It depends on the circumstances. **A3** explained that the official accounts of Central region and Mbarara were not active at the time. The prosecution did not adduce evidence to the contrary. Even PW5 as director Finance and Administration admitted that the original account for Mbarara was in Standard Chartered Bank which closed and the account was re-opened in Barclays Bank. In absence of evidence to the contrary, **A3's** explanation that the official bank account in Barclays Bank had not been activated creates a reasonable doubt in the prosecution case against him. It is trite that a reasonable doubt is resolved in favour of the accused. It is reasonable for **A3** to say that since two of the official accounts were not active, he chose to send all the money to private accounts for consistence. This was one transaction in the **BOU** banking system.

The lady and gentleman assessor advised that by sending money to private accounts **A3** committed an arbitrary act because this money was withdrawn and not used for the purpose it was requisitioned for. With respect, the two had advised me prior that the act of wiring money to private accounts was not itself arbitrary when dealing with the charges against **A2**. But in respect of **A3**, the two assessors were of the opinion that what followed after the money had been wired is what makes **A3's** act arbitrary. There was no evidence adduced that prohibited wiring official funds to personal

accounts. Besides, there was no evidence that money sent to official accounts cannot be stolen by the official recipients. The prosecution canvassed the view that A3 took 20 million of the stolen funds by claiming it was in his drawer. It was insinuated that it was the reason he sent money on personal accounts. I will elaborate on this aspect when dealing with the charges of conspiracy.

I am not persuaded, for lack of evidence, that money sent to **GOU** accounts cannot be misappropriated. This majority of cases of embezzlement in this court are for funds stolen from official **GOU** accounts. There is no immunity against theft of funds just because they have been sent to a **GOU** bank account. What happened to the money is a subject of other charges but not evidence of charges of abuse of office. I, therefore, respectfully do not accept the advice of the lady and gentleman assessor that **A3** committed an arbitrary act merely by posting money to personal accounts of government officers. There was no law, rule or regulation tendered to show that **A3's** act was prohibited. This is the same conclusion I made of **A2**. Both are not guilty of abuse of office.

Count 13 is Conspiracy to defraud C/s 309 of the PCA, Cap 120. The three are accused of conspiring to defraud their employer of **UGX.100, 000,000=** through requisitions for fictitious field activities in Jinja, Central, Mbarara and Hoima regions.

Mr. Baine Chief State Counsel, submitted that the three acted in a manner that reveals a conspiracy to defraud. He noted that it started with **A1** requisitioning for money where he was not a budget holder. He was requester and recommender. **A2** instructed the senior accountant to process a payment he should have known was irregular because funds for the activity did not exist in the budget.

It was his view that funds on item **2.2.1.1** had already been exhausted whilst funds on item **2.1.1.3** was for Tribunal hearings and not investigations. He also faulted **A2** for directing to charge an item in the budget without a Virement warrant from **PS/ST**. In spite

of this anomaly **A2** with **A3** posted the money to individual accounts of **RHROs** who were directed by **A1** to return a big part of it to him and retain 5 million each for their personal use. He referred to **exhibit P18** which shows money being deposited on **A1's** bank account by some of the recipients.

Mr. Baine contends that even the refund of 20 million on **exhibit P4** was a cover up because even when **A3** was in trouble, he never produced the physical cash to investigators such as PW10. Mr. Baine contends that the accused were executing an agreed plan to defraud **UHRC** of this money and succeeded in doing so.

On the other hand, M/S Mwesigwa and Nuwagaba for the accused do not agree. They submited that there was no conspiracy at all and there are no actions from which a common agreement can be inferred.

Mr. Mwesigwa contends that the requisition was by one person and not all the three. He submits that other officers checked, pre-audited, verified and certified the payments before final approval. To him this means there was no conspiracy.

It was also his view that if there was a conspiracy to defraud how come **A1** returned 20 million received from PW2 back to **A3** and an official receipt issued? He concluded that there was no proof of deceit or fraud by the prosecution to sustain charges of conspiracy.

Mr Nuwagaba added that there was no conspiracy involving **A2** because by signing off the funds he was just doing his job to ensure the Commission work is carried as per **UHRC** mandate. It was his view that there was no evidence to prove that **A2** acted with **A1** and **A3** in prior agreement to commit fraud. He criticized the prosecution for imputing speed in approving the payments as if there is a time frame earlier than which a payment cannot be approved.

A conspiracy is an agreement between two or more people to behave in a manner that will automatically constitute an offence by at least one of them. It is the agreement that constitutes the crime (actus rue). The conspirators must have the intention to defraud (mens rea). The agreement need not be a formal one, but there must be evidence, usually circumstantial, of their conduct from which the court can infer a common agreement of the conspirators to commit a crime.

The prosecution is required to prove that each of the accused played a complimentary role in the execution of the agreement to commit a crime by at least one of them.

I have already expressed my views on the participation of each of these accused when resolving counts one to twelve and for brevity it is un-necessary to repeat it here.

In this alleged conspiracy **A1** is visible when he wrote memos requesting for the money. He recommended himself. When funds are processed and hit the accounts of the recipients, again **A1** is visible when he calls them and instructs them on how to use the money. **Exhibit P18** shows that 40 million is deposited on his personal account by PW2 and Nassuuna. These two were part of the receiving account holders. In **exhibit P4** we again see the name of **A1** as the one refunding 20 million from the original 100 million.

If I use the *"follow the money principle"* I find that **A1** is the originator and destination of the money. As regards **A3** the *follow the money principle* also picks him up. But when he issued **exhibit P4** which is the official receipt of his employer, the chain of the conspiracy is broken. Failure by **A3** to avail the 20 million to investigators after he had issued an official receipt for it is not evidence of a conspiracy but evidence of an offence of embezzlement which, sadly, **A3** is not charged with. When A3 issued a receipt for the money, it became the property of his employer. If he cannot produce the money, becomes a suspect of the offence of stealing

money of his employer that came into his possession by virtue of his office. That is an offence under **section 19 of the Anti-Corruption Act**. He is not an accomplice. He is a suspect of his own crime.

As regards **A2** his actions are not different from those of the senior accountant, the internal auditor and director Finance and Administration who checked, verified and certified the papers launched by A1. I have already found that the senior accountant, internal auditor and director Finance and Administration betrayed **A2** by misleading him to believe, as indeed he did, that everything was okay.

PW5 testified that she knew this payment was irregular but that she let it pass hoping that **A2** would stop it! It would be strange to expect an accounting **A2** officer to reject a payment his technical staff have certified as correct! I am inclined to believe that **A2** was not seasoned as an Accounting Officer and was vulnerable to manipulation by skilled staff below him.

If **A2** was to be held liable in a conspiracy so would the senior accountant, internal auditor and director Finance and Administration. Neither of these officers testified that A2 forced them to endorse the payment as genuine. In fact, PW5 testified that she opted not to even talk to **A2** to verbally about the irregulrity.

I would have found **A2** liable as accomplice if two things had happened. One is if those that endorsed the payment had testified that they rejected it but **A2** prevailed over them to do so. Secondly, if the prosecution had adduced evidence of Agirembabazi and Tino to confirm that **A1** instructed them to give money to **A2** and they did so. The *follow the money principle* would have connected **A2** to the conspiracy if direct evidence had been adduced by people who are alleged to have given the money him. Instead of treating Agirembabazi and Tino as key witnesses against **A1** and **A2**, they were charged for crimes that were not sustainable.

In absence of that evidence I found PW10's testimony mere hearsay. **A2** remains a suspected conspirator and suspicion alone, however strong is not sufficient to convict an accused.

In conclusion, it has not been demonstrated to me in evidence that the three acted in agreement with one supporting another to commit fraud. There are gaps in the prosecution evidence that breaks the chain of conspiracy. The charges in count 13 were not proved beyond reasonable doubt against each of the accused. It was the work of A1 that was proved through other offences for which I have found him guilty.

In conclusion I find **A1** guilty on Counts 1 to 4 and convict him accordingly. I find **A2** not guilty on counts 5 to 8 and acquit him. I find **A3** not guilty on counts 9 to 12 and acquit him. All the three accused are not guilty on count 13 and I acquit them.

Before I take leave of this case, I wish to comment on the practice of arresting and charging several officers indiscriminately. The result is that vital evidence that could have proved specific crimes is lost because would be witnesses are also in the dock. This case demonstrates that fact. The prosecution needs to identify and separate the planners from followers. Followers usually have inside evidence which can prove charges against the planners in a shorter time during the trial.

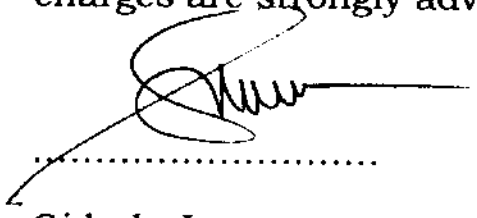
I want to borrow the recent (Sept 2021) observation of the Court of Appeal in the case of **Dr. Yovantino Akii Agel and Omongoo Geofrey Vrs. Uganda Criminal Appeal 149 of 2015 (COA)(Unreported) at P.52** where the court noted obiter thus:-

"*But before we take leave of the matter, we would like to observe that the practice of criminalizing every irregular administrative act has no legal basis at all. In such cases Accounting Officers and other public servants are entitled to administrative hearings before criminal*

charges are brought against them. This ought to be a prerequisite to a police complaint and or investigation by any other relevant bodies"

The **ODPP** needs to take this advice seriously. The growing practice of charging big numbers of people from the same office is indiscriminate. Some of these people can be sorted administratively whilst others can be used as state witnesses.

Of course where clear evidence of criminality exists, then criminal charges are strongly advised.



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Gidudu Lawrence

Judge

14thJanuary, 2022