

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**HCT-00-CR-SC- 0169 OF 2012**

**UGANDA.....PROSECUTOR**

**VERSUS**

**MUWAWU DDUMBA EDWARD.....ACCUSED**

**BEFORE: HON. MR. JUSTICE RUGADYA ATWOKI**

**JUDGMENT**

The accused person Muwawu Ddumba Edward was charged with the offence of obtaining money by false pretences contrary to section 305 of the Penal Code Act. The allegations were that Muwawu Ddumba Edward and others not in court between December 2010 and December 2011 in various places between Kampala in Uganda and in the European Capitals of Amsterdam, Brussels and London, with intent to defraud obtained Uganda Shillings 360 Million, Danish Kroner, British pounds and Euros with a total value of 560,000 Euros which is approximately equivalent to Ushs.1.68 billion from Leaty Byesenje Ssebbowa and Carstine Jespersten by falsely pretending that he were selling them gold and transporting it to Europe whereas not.

The accused person denied the offence. The prosecution adduced the evidence from 10 witnesses in the attempt to prove the indictment. I will set out the evidence of the complainant PW1 in fair detail and from this the facts as alleged by the prosecution from which the case arose will in the process emerge.

PW1 Leaty Byeganje Ssebbowa sometimes called Byesenje was the complainant. She told court that she was a resident of Fredericia in Denmark. She has lived in Denmark for 24 years. Her husband Carstine Jespersten PW2 is the 2<sup>nd</sup> complainant in the case. While in Denmark she is a caretaker of kindergarten school children. That she knows the accused person. She was introduced to him as a dealer in gold. She first talked to him in July 2010 and eventually met

him in January 2011.

In January 2011 she met the accused Muwawu Ddumba Edward at his home in Naalya, Ntinda in Kampala. She was with her husband Carstine Jespersten. Also present was one Egesa who introduced her to the said Muwawu. The said Muwawu was with a man whom he introduced as someone from Zaire and a brother of President Kabila of Congo.

That the accused person told them his Zaire contact has a quarry of gold in Zaire and they get it from there and bring it in Uganda for sale. The accused informed them that the gold was in his home in Masaka.

The party accordingly drove to Masaka to view the gold. The witness gave details of what transpired during the journey, including how they sat in the vehicle. They used Muwawu's car a Mark X, with personalized number plates, 'MUWAWU 1'.

At his home in Masaka, Muwawu took the party directly into a shrine where he showed them a large wooden box with lots of polythene bags. He assured them they contained gold from different sellers. Most of it was gold dust. He offered them a meal from the home and discussions on the gold deal commenced in earnest. He even showed them nuggets of gold.

Muwawu offered to sell to them 70 kilograms of gold at a price of \$ 27,000= per kilogram. They told him they could only take 25 kilograms. But they did not have cash and this did not please Muwawu as it was delaying the return home of his Zaire contact, who needed immediate cash.

The witness and her husband insisted that they needed a gold dealer's licence first in any case. Muwawu offered to secure it for them in one day at a cost of sh. 12 million, but the witness declined. A now irate Muwawu refused to drive them back to Kampala and they had to get a special hire vehicle for the return journey.

The witness told court that she paid sh. 2 million for the mineral dealers licence. The receipt from URA was exhibited as exhibit PI. The payment receipt from Diamond Trust Bank was exhibited PE2. A certified copy of the minerals licence was exhibited PE3. She told court that she gave the original licence to the accused person, that he had to show it to the people who were going to buy the gold, but she remained with a photocopy which was exhibited. It

matched the certified copy exhibit PE3.

The witness told court that the accused now gave them a sample which they took to Entebbe for testing to ascertain its genuineness. It was found to be genuine. The witness testified that the accused was from this time on calling her not less than 10 times daily asking the progress of the deal.

In February she went back to Denmark to secure the funds. She returned to Uganda in April and met the accused at his Naalya home. The accused showed her and her nephew Andrew Busuulwa PW4 a silver briefcase and this was said to be containing the gold. They were shown round nuggets and assured that the gold was now ready for transportation to Europe. There was a white man who was introduced as an official with the UN who would transport the gold to Brussels for a fee using a UN plane. It was agreed that the fee would be paid after the gold was sold in Europe. The accused asked for a payment of \$4,000= for the Zaire brother of Kabila so he could clear the border entry duties for the gold.

From that point started the series of what one could describe as incredible payments, if the complainant Leaty Sebowa is to be believed. The presentation to court by the complainant of these alleged payments was done in a confused manner making it difficult to appreciate fully the significance of the payments. What was more; most of them were not backed by documentary evidence. The dates when the payments were made in most cases were not easy to come by. We shall get to the analysis of this evidence later.

It worth noting the following; the monies were allegedly sent or delivered to the accused Muwawu in Uganda and in Europe. The monies were allegedly sent by PW1 or PW2 or PW4 or the mother of PWI. The monies were sometimes not for the accused, but they were always received by him.

PWI told court that the arrangement for the delivery of the gold as agreed during that meeting at the home of the accused in Naalya on 12<sup>th</sup> April 2011 was that the gold would be moved to Europe by the accused person together with the UN official and her nephew Andrew Busuulwa PW4. That party was supposed to take the gold to Belgium on or around 24<sup>th</sup> April 2011. The witness was to pay the UN gentleman upon arrival in Belgium after delivery of the gold, and

after sale of the same. The UN man was a national from Holland.

She paid to the accused \$ 4,000= for the Zaire man to pay for border entry dues, the air ticket for the accused \$ 1,800=, the air ticket of her nephew PW4 \$ 1,200=, and the air ticket for the UN official \$ 1,800=. She handed over all this money in cash to the accused at his home in Naalya in the presence of her nephew Andrew Busuulwa PW4.

The witness told court that she was to travel back to Denmark on Brussels Airline but the accused and his European friend changed her ticket so she could travel by KLM. That way they avoided travelling on the same plane with her.

She reached Denmark on 24<sup>th</sup> of April 2011. The accused and his party were to arrive two days later, but on 25<sup>th</sup> April 2011, the accused rang her that they landed at the wrong airport with the gold. They were supposed to land in Belgium but they landed in London Heathrow. The accused demanded for money and she sent him money to clear the gold at London Heathrow Euros 4,000=, air ticket for the accused from London to Brussels British Pounds 800=, and air ticket for the European man Euros 800=.

She told court that the accused told her the nephew PW4 would arrive later. She told court that when she next communicated with the accused, he told her that they once again landed at yet another wrong airport and so wanted further funds to clear the gold taxes before it could arrive in Brussels. She sent him Euros 4,800= for that purpose as he demanded.

She was assured that the gold would be sold in Brussels and so she should move from Denmark to Holland by car so she load it and continue to Brussels where they would meet the buyer.

The witness told court that after waiting for the accused for a whole day in Holland, he appeared and they moved to Brussels Hilton hotel where one Suzan came in as a purported gold buyer, a white man who was not the one they met in Kampala came in carrying a leather suitcase covered with a blanket. He was accompanied by a Rwandese man. Inside the suitcase was a silver coloured briefcase similar to the one she saw in the accused's home in Naalya in Kampala.

The witness said that the accused had the key to the briefcase and the white man had the key to the leather suitcase. Both used their respective keys to open. The accused assured them that this

was the gold they saw in Kampala. Suzan the buyer wanted to test the gold to ascertain its authenticity. She and Carstine Jespersten were given a sample from the side of the briefcase and they went to test the same. Upon their return they said it was genuine.

The witness told court that the white man who was said to have replaced the one seen in Kampala demanded for payment for his services. He wanted \$58,000=. This was not available immediately and he closed the cases and went away. Later the accused told the witness that if they raised half of the amount required the gold would be released to them. The witness with her husband and her father in law raised Euros 21,000= and gave the money to the accused. He returned saying the white man wanted the full amount before he could release the gold. They somehow found the money and gave the accused Euros 28,000=.

When they next got to the accused, he told the witness that the gold was already bought by the boss of Suzan. He took them to a bank in Brussels so they could open an account where the money from the sale of gold would be deposited.

The witness told court that she gave the accused Euros 2,800= for opening the account in what she called Net Bank. The accused told her and her husband to return to Denmark where they would access their money on their account. When they opened the net they saw that half of the gold money was on the account. This was \$ 1,280,000=.

When they tried to access the money the computer would always ask for codes which required Euros 20,000= before the account could be activated. If it was so activated the computer would demand for taxes of the same amount of Euros 20,000=. The bank manager in Brussels one Rene Vinco advised them to make sure the money is given to Muwawu who would pay it into their account, as any other means would take longer, and their gold money could end up being blocked in what she called 'incastle'. However, much as they tried as advised and this entailed driving all the way to the border with Holland to hand over the money to Muwawu at the railway station, the money in the Net bank account in Brussels was not accessed. They paid this money for accessing the money eight times and each time they would pay to the accused Euros 20,000=.

In August 201 1, the accused advised her to fly to Uganda and access the money from Kampala. The computer still asked for more money to activate the account. The witness told

court that by this time she had no more money anywhere. Her husband Carstine Jespersten was also broke, as was her mother Harriet Christensen her father-in-law Hansi Damigo.

The accused advised her to borrow sh. 250 million from one Joyce Natamba and that this would sort out the computer codes and other problems. The said Joyce Nantamba whom the witness did not know previously availed the money and it was sent in batches to the accused. Each of 5 people that is Leaty Ssebowa, Allan Kazibwe, Andrew Busulwa, Nantambi Joyce and Kaweesa Ronnie each sent Euros 4,333= to the accused. This was on 23<sup>rd</sup> September 2011.

That did not solve the problem. On the 28<sup>th</sup> November 2011, she boarded a plane from Denmark together with Carstine Jespersen and met the accused in Belgium. The witness told court that the accused asked for more Euros 9,800= as the final figure. Her father in law Hansi Damigo gave them the money and they gave it to the accused. He put it in his bag and told them that he was taking it to the banker Rene Van Vinco. The accused told them that he found the bank closed, they went back to Denmark. That the accused called them again and told them to add another 3800 (three thousand eight hundred pounds) and at that time he was in London and they told him they had no more money. After all these payments, still the money could not be accessed.

According to the witness, the accused was not yet done with her and her husband. He called Carstine Jespersen on a phone that had a Ugandan number in her presence, yet 30 minutes earlier he had called her on a line for London. When they discovered this impossibility, the witness again called the accused on the London number and he picked. She confronted him with the dubious calls and accused him of being a thief and liar. When they called him after that, all his phones were switched off.

She came back to Uganda to see the accused person, but even here all his phones were off. She told court that she involved a police officer and the accused was eventually traced and arrested from his home in Naalya in January 2012.

She told court that at the police station, she was also arrested for the reason that she had borrowed money from a certain woman Joyce Nantamba and did not pay it back. She was detained at CPS where she spent five days before being taken to court. She was remanded in

Luzira prison.

The witness told court that the accused came to the door of the women's wing where she was detained, because they were in the same cell and told her that he indeed stole her money. But if she wanted to get her money back, she had to look for and introduce to him other people whom he could con and get money to pay her.

The accused was granted bail and he came to her with a lawyer while she was still in prison. He told her that he was in position to get her out of jail but on two conditions. 1<sup>st</sup> she had to give him sh. 3 million to give to the Magistrate so as to be granted bail, and 2<sup>nd</sup> that soon as soon as she got out of prison on bail, they would transport her to the airport so that she runs away to Denmark and escapes from the case against her of Joyce Nantamba.

The witness told court that she did not comply with either of the accused's requests. She eventually appeared before the court as scheduled and was granted bail. After 8 months in and out of court, she appealed to the police Chief and the DPP, and her case was withdrawn. She asked that her complaint against Muwawu be heard in this court. Hence his committal for trial in the high court.

The witness gave details of some other sums of money which she allegedly sent or gave to the accused on top of what she stated above over which there was no documentary evidence. There were other sums where there was documentary evidence and that are what I will here set out here below.

1. 1/1 1/2011 Busuulwa Andrew PW4 sent to the accused Pounds 517.23 equivalent to sh. 2,196,300/= by money gram from Stanhope Forex Bureaux. Exhibit PE4.
2. 7/11/2011 Leaty Sebowa PWI sent to the accused Euros 250.11 equivalent to sh. 930,900/= by money gram from Stanhope Forex Bureaux, exhibit PE5.
3. 26/10/2011 Leaty Sebowa PWI sent to the accused Pounds 8,050 equivalent to sh. 35,903,000/= from B.M. Forex Bureaux Ltd. exhibit PE6.
4. 29/10/2011 Kazibwe Allan sent to the accused Pounds 2,160 equivalent to sh. 9,180,000/= from B.M.Forex Bureaux Ltd. exhibit PE7.
5. 21/11/2011 Busuulwa Andrew sent to the accused Pounds 850 equivalent to sh.

3,602,000/= from B.M. Forex Bureaux exhibit PE8.

6. 23/9/2011 Allan Kazibwe sent to the accused Euros 4,333.00 equivalent to sh. 17,181,386/= by money gram from Housing Finance Bank, exhibit PE9.
7. 24/11/2011 Leaty Sebowa PW1 sent to the accused Euros 1,300 equivalent to sh. 5,164,469/= by money gram from Housing Finance Bank, exhibit PE10.
8. 4/4/2011 Leaty Sebowa PW1 sent from Denmark to the accused sh. 871,366/= equivalent to Danish Kroner 2,000 by Western Union. Exhibit PE11 was the certified copy of the receipt from Diamond Trust Bank on which the accused received/withdrew the money.
9. 6/6/2011 Leaty Sebowa PW1 sent to the accused from Denmark sh. 896,500/= equivalent to Danish Kroner 2,000 by Western Union. Exhibit PE 12 was the certified copy of the receipt from Diamond Trust Bank duly signed by the accused upon which he withdrew the money. Attached thereto was his identity card from The Netherlands complete with his photograph and his signature.

The evidence of PW1 was that all the above sums and the sums she mentioned which I have not listed here was paid to the accused for the sole reason that he was selling to them 25kgs of gold. The gold was supposed to be delivered to the witness and her husband in Belgium by, the accused person, a UN official and her nephew Busulwa Andrew PW4 in April 2011.

PW2: Carstine Jespersten was the second complainant and the husband of the first complainant PW1. He was a Danish national. He met the accused through Issa and Egesa in 2011 at the home of the accused in Naalya. They discussed the possibility of buying minerals, after all his father had been a minerals dealer back in Denmark. The witness told court that he arrived in Uganda with his wife PW1 on the 4<sup>th</sup> of January 2011. They met the accused in Naalya in the company of Egesa and a man who was said to be Kabila's brother.

They left for Masaka where the gold was kept. In Masaka, they went into a small house next to the farm house where there were mats and baskets with coffee beans and money. He was shown a box which was said to contain 70 kilograms of gold.

The accused warned him not to touch anything in the shrine. He asked for a sample and the accused went to the small house and got the sample which the witness later had tested in



Entebbe and it was found to be 91.6% pure. The witness told court that they negotiated the price and agreed on \$ 27,000= per kilogram. The accused offered to secure a mineral dealer licence for them but they realised they could get it cheaply in Kampala. After getting the licence, he returned to Denmark and the wife stayed sorting out the details.

On the 25<sup>th</sup> of April 2011 the accused called them from London. He said that he had arrived and was in London but he didn't have enough money to take things through customs so he wanted some money for getting the 25 kilos of gold through customs in the airport.

The witness and his wife PWI decided to meet the accused in Amsterdam which was the middle ground from Denmark and from London. That they met near the train central station and gave the accused 4800 Euros in cash to clear the Gold and bring it to Brussels in Belgium since he assured them that it was at the airport.

The witness told court that the accused assured them that there was a buyer in Belgium and he would take the gold to Brussels and they sell it there. They followed him to Brussels and in Hilton Hotel, he took them to a room where they met a woman Suzan said to be the buyer. A white man came with a suitcase and inside was a silver briefcase. The accused had a key and they opened the briefcase and found it contained gold nuggets. The said Suzan took a sample for testing and it was 96% pure.

The white man wanted payment for transporting the gold and when it was not given, he locked the briefcase and went out with it. The accused asked them for Euros 21,000= part payment for the release of the gold and they paid it to him. He demanded for the balance to complete the sum of Euros 50,000=. They eventually paid it to the accused.

They were then asked to open a bank account which they did in Brussels, so that the money could be transferred into that account. The account went into 'incastle' several times and they paid eight times to activate the account and each time they paid Euros 20 000 for the codes but they failed to access their money.

PWI then travelled to Uganda but she still failed to get the money. The witness told court that he paid the accused person a total of 434.000 Euros and that his wife PWI gave the accused 186.0 Euros plus 360 million shillings in all for this transaction which failed.

The witness told court that they paid for the gold but failed to get the money from the account in Belgium. His father contacted the bank and it appeared to be well. Then his father made further contacts and inquiries about the bank as he used to work as an IT specialist and he discovered that the computer system which the accused got them onto as the Net Bank was a con man's trick and the whole thing was fake. They confirmed this when the accused called him from a London line yet a few minutes earlier had called his wife PWI claiming to be in Kampala.

PW3: Sayyed Jaffar Ali; was the manager of Stanhope Forex Bureau in Kampala. He told court that a money transaction was done on 1<sup>st</sup> of November 2011. One Andrew Busuulwa sent to Edward Ddumba Muwawu in Great Britain a sum of GBP 517.23 Pounds, under Reference number 54498527, exhibit PE4.

The second transaction was to the same beneficiary Edward Ddumba Muwawu and the sender was Leaty Byeganje Ssebbowa on 7<sup>th</sup> of November 2011. She sent Euros 250.01 under reference No. 98870172, exhibit PE5. Both transactions were at Stanhope Forex Bureau in Kampala. He confirmed that the money reached the intended recipient when he called Money Gram International by means of call back service.

PW4: Busuulwa Andrew was the nephew of the complainant PWI. He told court that he got to know the accused in March 2011 from his Auntie in Denmark called Leaty Byeganje Ssebbowa.

He met the accused at his home in Naalya, and was warned to be very discreet as the business of gold was sensitive and involved huge sums of money. The accused secured for him a passport in a record four days and told him to be ready to travel with him to Congo to pick up gold and later to Brussels.

The accused rang Leaty in Denmark and told her that they needed 50 million to give the Congolese before he could release the gold to them. She needed to come to Uganda to arrange for that money urgently and she came in April 2011.

The witness PW4 told court that when his aunt PW1 arrived, they went to the bank and withdrew sh. 25 million in batches of 10 and 15 million. The accused refused to take Uganda

currency and the witness went and exchanged the same into dollars which he handed over to the accused. He later travelled with the accused to Masaka where they met one said to be Kabila's brother who was waiting for the money.

The witness told court that the Kabila brother wanted more money and the witness informed PW1 accordingly. She withdrew 10 million and the witness changed this into dollars and took \$1,000= to the accused. While PW4 was still in Masaka, the accused took him through a ritual in the shrine for good luck since he would be travelling with them (the accused and the white man) to Europe.

The witness told court that the accused showed him and PW1 a European man who would carry the gold to Europe. He demanded and PW1 gave him \$ 1200 for air ticket for him (accused), \$ 1,800 air ticket for the European, \$ 1,800 air ticket for the accused and \$ 1200 air ticket for the witness PW4. The accused further demanded for \$ 120 for the visa and \$ 150 insurance fees for the witness. The accused kept the passport of the witness PW4 for preparation for the trip. The witness told court that he even assisted in loading the case with gold into the accused's car for the journey to the airport. The arrangement was that the accused would call him and inform him when to travel to the airport. He never called and the witness therefore never travelled with the accused, and to date his passport has never been returned.

The witness told court that PW1 had a ticket to travel on Saturday but the European and the accused altered her travel arrangements and she had travel by KLM rather than Brussels Airlines and on a Sunday rather than Saturday. They did not want the witness and PW1 to know their travel date.

PW4 told court that he gave a lot of money to the accused from his aunt which he handed over in cash. In 201 1 he pledged his plot of land because the accused wanted sh. 1,5m and his aunt was out of the country. However the aunt sadly never got the gold.

He narrated details of the sums which PW1 gave him to send to the accused. Such included :

Pounds 517.23 equivalent to sh. 2,196,300/= which he sent by money gram from Stanhope Bank on 1/1 1/201 1, exhibit PE4.

Pounds 850.00 equivalent to sh. 3,602,000/= which he sent from B.M. Forex Bureaux

Ltd, on 21/11/2011, exhibit PE8.

The witness told court that the accused informed him that he opened a bank account in the names of his aunt PWI where the proceeds of the sale of gold were supposed to be deposited. He witnessed PWI sending money to the accused for supposedly activating the bank account until the father PW2 found out that the bank account was nonexistent and that the whole scheme was a sham.

PW5 Egesa Harrison told court that he knew the complainant PWI as his god mother and the accused as a businessman. He was introduced to the accused by his then boss Issa Arinaitwe as a gold dealer with connections to men from Zaire who included relatives of President Kabila.

He told court that at a meeting at the house of the accused in Naalya attended by the accused, PWI, PW2, the Zaire owner of the gold, and himself, it was agreed that they move to Masaka where the gold was. The entire group so moved and in Masaka they were shown what was said to be gold in polythene bags. The accused gave them a sample and the issue of a licence came up, but PWI and PW2 opted to pursue that matter themselves in Kampala.

The witness told court that PW2 had a buyer in Europe offering \$ 28,000= per kilogram and at this point, the accused insisted that his own Suzie in Holland would take it at a higher figure of \$ 36,000= per kilogram. All that he required of PWI and PW2 was for them to pay the Zaire man and the transport to Europe and he would handle the rest. The Muzungu PW2 fell for the tricks of the accused and went back to Europe to get money to the accused. He was to pay a deposit on 25 kilograms at a price of \$ 27,000= per kilo.

The witness told court that he saw through the trickery of the accused and for his wiseacre antics, he was dropped from the deal.

PW6 Bintubizibu Mpagi was a business man running B.M. Forex Bureau. He narrated the process of sending money out of the country. He identified a photocopy of the receipt issued by his bureau acknowledging that Ssebbowa had paid for 8050 pounds to be collected at their correspondent's office in Forest Gate London on 26<sup>th</sup> of October 2011 and it was Uganda shillings 35,903,000/=. The beneficiary was Edward Ddumba Muwawu. Exhibit PE6.

He told court that when they transfer money, it is normally collected from the destination point by the recipient within a week, and they get a report from their correspondents informing them whether or not the money was picked. They got such a report, though he did not have it in court, for the reason he was not aware that it was required. He however told court that he never received any report that any money sent from his bureaux was not picked by the recipient and he would have been so informed if this had happened.

He identified another receipt from the B.M. Forex Bureau confirming that a one Kazibwe Allan requested them to transmit 2,160 pounds to their correspondent in London at Forex Gate on 29<sup>th</sup> of October 2011 and the beneficiary was the same as the previous one, Edward Ddumba Muwawu. Exhibit PE7.

He identified a receipt of 21<sup>st</sup> November 2011 for 850 pounds equivalent of 3,502,000/= from his forex bureaux and the beneficiary was Edward Ddumba Muwawu. The sender was Busuulwa Andrew, exhibit PE8. All this money was received by the named recipient according to their reports from the correspondent within 7 days of its despatch.

PW7 Detective Inspector Wabibiri Paul of Kira Road police post told court he was stationed at Kampala Metropolitan police. In February, 2012 he was allocated a file where one Leticia Bwejenge was reporting a case of obtaining money by false pretence. She alleged that the said money was about 500,000Euros and that it was obtained from her by a one called Muwawu Ddumba Edward in a gold deal or business.

So he started investigations, she gave some documents upon which she had deposited some money which money was delivered to Muwawu Ddumba Edward. Some was through Western Union; some other money was through Money gram and some other money through BM Forex Bureau. However she claimed there was some other money she gave Muwawu which was not documented.

So upon the documents he was given by her, he inspected those accounts in the respective institutions which had handled the transactions and extracted certified copies from them. These institutions confirmed that those transactions were indeed true. Unfortunately some transactions were done outside the country so he was not able to inspect those particular transactions. The financial institutions he visited included B.M. Forex Bureaux, Housing

Finance bank, Diamond Trust Bank and Stanhope Forex Bureaux. He identified the documents on court record. He also secured a copy of the minerals licence which authorised the complainant to deal in gold. This was also put on the file and he identified the same in court. From those investigations the accused was arrested and charged.

PW8 Esther Muthoni a banker with Housing Finance identified the receipt from her bank where money was sent by money gram, exhibit PE9. The sender was Allan Kazibwe and the recipient was Edward D. Muwawu on 23<sup>rd</sup> September 2011. The sum sent was sh. 17,781,386/=. It was to be received in Euros which amounted to 4333 Euros. The destination was Belgium.

She also identified another receipt from their bank where PW1 sent Euros 1,300 to the accused on 24/9/2011, exhibit PE10. The witness identified a receipt from their bank where PW1 sent money to one Pierre Nsibambi in Belgium Euros 4334.00 on 23/9/2011. This was exhibit PE13.

PW 9 Rose Nanyonga Bashabe a teller at Diamond Trust Bank told court on the 6<sup>th</sup> of June 2011, Mr. Ddumba Edward Muwawu the accused came with a filled in form and received money sent from Denmark by Leaty Byeganje Ssebowa amounting to eight hundred ninety six thousand five hundred (896,500/=). She identified the completed form duly signed by the accused, plus the corresponding ID he presented which had a valid photo matching the accused person. She duly paid him on the strength of those documents. These were exhibit PE 12 in court.

PW10: AIP Muwanga Joshua told court that he is attached to Economic Crimes Department in the Uganda Police Force. He investigated the case when there was a complaint that the matter was not receiving proper attention. He found that the DPP withdrew the case against PW1. The one against the accused was to proceed. When the file was called by the DPP for purposes of committal he ceased the investigations.

That was the evidence from the prosecution. The accused person opted to give a statement from the dock. He did not call any witnesses.

DW1 Muwawu Ddumba Edward, the accused person told court that he has two homes, one in

Naalya and another one in Kibinge Masaka. He used to work abroad but was a farmer in Uganda. He was a witch doctor, though not officially one and had a shrine for that purpose at his home in Masaka.

He knew Leticia Byeganje PWI as his client. She was introduced by one referred to as Kadogo, meaning PW5. She was having marital problems. She lost a husband, and other men after that were unsatisfactory. She sought to stick onto her new found catch, a muzungu whose father was stinking rich.

He took her with Kadogo to Masaka and in the shrine she explained her problems. He advised her to return with the man and a few months later, she did so, having deceived him (upon his advice) that she was taking him where she was born. They found him in his Naalya home. Together with the said Kadogo, they proceeded to Masaka and on the way; they purchased goat, chicken and other items necessary for the occasion.

In the shrine in Masaka, he gave them including the muzungu coffee beans as is the practice. PWI asked for wealth and blessings. After doing all that, she asked for wealth and blessings. He did what was required and they returned to Kampala leaving him in Masaka.

He was shocked when that they told him about selling gold. He has never bought or engaged in selling gold. He was surprised that he brought them a European. He did not know any white friend. He only had them when he was abroad. He was surprised that he got for them gold with prices.

Since they had the license they ought to have bought their gold and proceeded with it. He did not have a license for the gold, and the reason they acquired the license was to take gold.

He told court that he has never been to London on the days as alleged. The complainants did not show any evidence that he was in London on the days as alleged. They failed to bring evidence of any phone print outs showing the alleged phone calls.

He was shocked to hear that he gave them somebody to sell the gold and yet they are the same people who said that they bought gold from here and they were taking it abroad for selling. He did not know what their intentions were. He was surprised that they complained that they bought the gold from him, yet he was the one who took it and the one who brought someone to

buy it from them. He denied all the allegations which were being put on him.

He denied opening an account for them. He was aware that to open an account, one personally enters the bank, and opens the account personally. They failed to bring evidence to prove that he was the one who did this for them.

He denied switching his phone off and getting any money from them pertaining to gold and he denied ever getting a lot of money as they claimed. He told court that these were thieves who wanted to steal from him. What they could complain about which he was aware he took from them were the goats and the hens which they bought for coming into his shrine in Masaka. That was the prosecution case.

The prosecution bears the burden of proof of all the ingredients of the offence. The burden of proof is beyond reasonable doubt. See *Woolminston v. DPP [1935] A. C. 462* where it was held that,

*".....it is not till the end of the evidence that a verdict can properly be found and that at the end of the evidence it is not the prisoner (accused) to establish his guilt just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner (accused) which may cause a doubt as to his guilt. In either case, he is entitled to the benefit of the doubt. But while prosecution must prove the guilt of the prisoner (accused) there is no such burden laid on the prisoner (accused) to prove his innocence and it is sufficient for him to raise a doubt as to his guilt, he is not bound to satisfy the judge of his innocence"*

See also *Okale v. Rep. [1965] E. A. 55*.

In the discharge of this burden, the burden does not shift to the accused at any stage of the proceedings. The prosecution is enjoined to prove all the ingredients of the offence charged.

The accused was charged with the offence of obtaining money by false pretences. That is an offence under Section 305 of the Penal Code Act and provides that;

‘any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to



any person anything capable of being stolen, commits a felony and is liable to imprisonment for five years.'

To prove the offence obtaining money by false pretences the following ingredients must be proved;

- 1) Obtaining money from the complainant by the accused.
- 2) False pretence.
- 3) Intent to defraud.

### **1. Obtaining money from the complainant by the accused.**

The offence charged was obtaining money by false pretences. One needs not labour the point that money is something capable of being stolen. The evidence of PW1, PW2 and PW4 was to the effect that various sums of money were given to the accused for purposes of buying gold. The mode of payment was by delivery of cash directly to the accused, or by transfer through financial institutions using the international money transfer systems including Money gram and Western Union.

Leaty Byesenje Sebowa PW1 told court that on 6/6/2011, she sent by Western union through Diamond Trust Bank Danish Kroner 2,000 the equivalent of sh. 869,500/- to Muwawu Edward Dumba. The recipient is the accused herein. The evidence of PW9, the teller at Diamond Trust Bank was that she paid the same amount of money in Uganda shillings to a person answering the description of Muwawu Edward Dumba, with an Identity document of a national on Netherlands which had his photograph and also his signature. This recipient filed and signed the form for receiving the money. After checking out these details, the teller PW8 paid the recipient. The documents including the identity document from Netherlands clearly showing the accused as the recipient were exhibited as PE 12.

This evidence was not controverted. The only question put to the teller was whether she knew the purpose of the money and naturally she answered in the negative. The evidence of PW1 was that this money was part of the payments for the gold transaction as agreed with the accused.

Busuulwa Andrew the nephew of the complainant testified as PW4. He told court that he sent to the accused by money gram from Stanhope Forex Bureaux Pounds 517.23 on 1/1 1/2011. This was exhibit PE4. Exhibit PE5 was for Euros 250.0 (two hundred and fifty point zero one). This sum was sent by PWI to the accused in Belgium from Stanhope Forex Bureaux on 7/11/2011.

PW3 Jaffer Ali was the Manager of Stanhope Forex Bureaux. He identified the receipts from his forex bureaux exhibits PE4 and PE5. He further testified that the reference number generated in the transfer is always given to the sender who passes it on to the beneficiary. The beneficiary named on the transfer is the only person who could withdraw money transferred on presentation of proper identification documents. He testified that money gram confirmed to him that the beneficiary received the money and the beneficiary on those transactions was the accused person. I found this witness to be credible. He was an independent witness with no interest in the matter. He was in court only to testify as to the daily operations of his money transfer business. I believed him.

Exhibit PE6 for Pounds 8050 sent by PWI on 26/10/2011, exhibit PE7 for pounds 2160 sent by Kazibwe Allan on 29/10/2011 and PE8 for pounds 850 sent by Busuulwa Andrew on 21/11/2011, all were transferred through B.M. Forex Bureau and the beneficiary was the accused person.

PW6 Bintubizibu the Manager of B.M. Forex Bureau confirmed that the above three transactions passed through his Forex Bureau and that his correspondent in London confirmed to him that the beneficiary who received the money was the one named in the transfers. The witness testified about the process of sending and receiving money through Forex bureaux. He confirmed that only the beneficiary named in the transfer can withdraw the money. The accused person was the person named as the beneficiary in each of the above transfers.

Prosecution exhibit PE9 in the sum of Euros 4333, equivalent to sh. 17,181,386/- was sent by Allan Kazibwe on 23/9/2011 by money gram to the accused. Exhibit PE 10 in the sum of Euros 1,300 was sent by PWI on 24/9/2011 by money gram to the accused, and exhibit PE13 in the sum of Euros 4334 equivalent to sh. 17,185,351/- was sent on 23/9/201 lby PWI to one Pierre Nsibambi also by money gram. All the above three sums went through Housing Finance Bank.

PW 8 Esther Muthoni an employee of Housing Finance Bank told court that these transactions passed through their bank. The destination was Brussels and the beneficiary was the accused. The money was sent by PWI, save for that in exhibit PE9 which was sent by Allan Kazibwe the now deceased son of PWI. PWI further testified that she called the accused each time and he confirmed receipt of the money aforesaid.

There was evidence that the complainant handed over cash to the accused. She told court that she withdrew sh. 25 million from her account and handed it over to the accused at his Naalya home, but he rejected the Uganda currency and PWI got her nephew PW4 to exchange the money into dollars which they handed over to the accused.

PW4 corroborated that evidence. He told court that a further sh. 10 million was withdrawn and turned into \$1000 which he took to the accused. PW4 told court that his aunt PWI paid the accused dollars for his visa, insurance and air ticket, as well as air tickets for the accused and the European man who was supposedly transporting the gold to Europe. PW4 never travelled to Europe and so the money paid for the air ticket, visa and insurance was in vain.

PW4 confirmed exhibit PE8 where he paid Pounds 850 to the accused through B.M. Forex Bureaux on 21/11/2011. He told court how he mortgaged his plot of land and raised sh. 1,500,000/- so as to pay the accused as his aunt was abroad, all in respect of the gold deal.

The defence wondered where PWI and her people were getting all this money, considering that the complainant was earning not more than Euros 3,000 per annum. Her husband was a former taxi driver while her nephew was a lorry driver in Kampala.

PWI told court that she lost her husband and through that loss, she had a sizeable inheritance. Her husband told court that his father used to deal in minerals and so often lent the son and daughter in law money. In his unsworn statement, the accused confirmed and in effect corroborated the above assertions. He stated that PWI went to his shrine in Masaka with issues including having lost her husband. He was aware that PWI's current husband had a father who was stinking rich.

The lorry driver did not allude to having paid to the accused the huge sums from his own funds. It was only when the accused harassed him as his aunt was abroad that he mortgaged his plot,

with his modest contribution which he hoped would salvage his aunts gold deal from collapsing.

The defence argued that the sh. 250 million could not be said to be money from the complainants as the evidence moreover from the prosecution was that it belonged to Joyce Nantamba. I did not base my decision on that sum. There were other sums as I have shown above which clearly the accused received from the complainants in respect of the gold deal.

It was submitted that the workers in the financial institutions where the money was sent from did not know the purpose for which the money was sent to the accused. That was not only true but expected. Their business was not to extract from those sending money the purpose for which monies were being sent. In any event the evidence on record was that the complainants secured a minerals dealers licence exhibit PE3. Neither its validity nor its appropriateness for the transaction which the complainants were involved in ever came into question.

The case of *Uganda v. Oketcho* [1976] HCB 16 was cited where Allen J., (as he then was) dismissed a charge of obtaining money by false pretences holding that the complainant handed over the money on his own free will. Unfortunately I was not availed the full report of the judgment to see the circumstances under which the complainant handed over the money to the accused. That notwithstanding, in the present case, the complainant was under the belief that she was buying gold. She was shown what her husband sampled and had tested and found to be 91.6% pure gold. Her belief in parting with her money was grounded on visual evidence of what she and her husband saw and were made to believe was part of 25 kilograms of gold.

I had the opportunity of seeing the witnesses as they testified. I was impressed by the apparent truthfulness of the bank and forex workers. The complainant and her husband came through as people who were gullible to an extremely incredible degree. That however did not mean they were liars. Their gullibility was only or nearly surpassed by their desire to make quick money.

The evidence adduced by the prosecution proved beyond reasonable doubt that the accused person obtained money from the complainants for the purpose of selling to them 25 kilograms of gold at the agreed price of \$ 27,000 per kilogram and transporting it for them to Europe.

However all this does not make the accused guilty, as the prosecution had to prove all the

ingredients of the offence charged beyond reasonable doubt. This could only be arrived at after a consideration of all the ingredients. I will therefore proceed to a consideration of the next ingredient.

## **2. False pretence,**

The evidence of PW1 was that the accused was introduced to her by Egesa PW5 as a person who was dealing in gold. She went to his home in Naalya and later to his shrine in Masaka where the gold was allegedly kept. Egesa told court similarly. The accused in his statement to court stated that PW1 and Egesa whom he referred to as 'Kadogo' went to his shrine in Masaka.

The evidence of PW1 was that she was in the company of her husband and one referred to as the brother of Kabila. Egesa confirmed that in his testimony. PW2 stated that indeed they went to a small house of the accused in Masaka. The accused was in agreement in his testimony in court that indeed the muzungu entered his shrine in the company of PW1, and he performed his rituals of among other things giving them blessings for wealth.

The accused denied showing them or promising to sell them gold. He denied being in company of a Zaire man said to be the brother of Kabila. Egesa told court that while he was being introduced to the accused by his boss Issa, he was informed how the accused used to deal with men from Congo who were related to Kabila. The evidence of Egesa corroborated that of both PW1 and PW2 that the accused took them to his shrine in Masaka and showed them polythene bags with what he called gold.

The evidence was that the accused told the complainants he could sell them 70 kilograms of gold. He even showed them nuggets and told them that what was in the polythene bags in the shrine was gold dust.

The price was negotiated at \$ 27,000 per kilogram and they agreed to buy only 25 kilograms. The accused gave them a sample which PW2 had tested in Entebbe and it was found to be 91.6% pure gold.

The evidence of Egesa PW5 was that when PW2 informed the accused that he would sell the

gold to one who was offering \$ 36,000 per kilogram the accused immediately rejected that and told the complainants how he had one Suzan who would buy at an even higher price. He would not have insisted if he knew there was any gold to sell, after all he was not the buyer, but the complainants.

The evidence of PW1 was that the accused asked for sh. 10 million to secure a minerals licence yet she obtained one for just 2 million. That was evidence of falsity right from the beginning.

The evidence of PW4 was that the accused arranged for the travel and transportation of the gold. He brought in a European for whom PW1 paid an air ticket. She paid for the accused and for PW4, but yet the accused had intimated that the travel was by a UN plane. The accused travelled on a commercial plane.

PW4 was to travel with the party as a protection of the interests of the complainants, but the accused left him behind when all travel requirements were paid for. That was evidence of the falsity of the whole deal. The accused did not want PW4 to know that there was no gold being transported after all. He would no doubt have known had he travelled with the accused.

The accused informed the complainants that he landed on the wrong airport two times. In this age of flying, how would such a situation arise unless there had been some emergency, and none was reported. That was evidence that there was no gold to sell or transport to Europe.

When the alleged gold arrived, it was with another European, not the one seen in Kampala. The terms were clear, that payment would be made after the sale. But even when the alleged buyer was present, the so called gold was snatched and taken away for failure to raise mere Euros 58,000. When just half of the proceeds amounted to at least \$ 1,280,000. Surely no sensible party to a trade deal would cut it off in those circumstances.

The so called buyer was allegedly ready to pay once the gold was delivered to her. But she was reportedly in the hotel room with all the gold allegedly present. She tested a sample and it was of the purity of 96%. If she was genuine, if the accused ever intended to sell gold to the complainants, and he was the one who knew the said Suzan, and also knew so very well the so called European transporter, with who they had allegedly travelled all the way from Uganda and got lost together twice in Europe, surely the accused would have prevailed on both these

two, and Suzan would have paid the transporter. After all, the goods were present and everyone was ready to deal. In any event, the transporter could not, on his own open the briefcase, as the evidence was that the accused had the key to the same, and would have to agree to open before the transporter could access the gold.

Egesa PW5 testified that the accused mentioned Suzan as a profitable gold buyer in Europe and so she would offer a better price than those known by PW2. She was his confidant if not accomplice. The events in the Hilton Hotel room in Brussels show clearly that the accused did not have any gold to sell. It was all a falsity.

When the Suzan debacle in the Brussels Hilton Hotel room could no longer be sustained the accused concocted the story that Suzan's boss after all bought the gold. Why did he sell what did not belong to him? The terms were for him to deliver the gold to the complainants in Europe. They paid the Euros 58,000 for the service of transporting it to Europe. They were entitled to the gold. He failed to hand it to them for the simple reason that he had no gold to hand over. He instead fleeced them further with opening a bank account and posing that Euros 1,280,000 was deposited in that account. With that scheme, he was able to fleece them of more money.

In *Re London and Globe Finance Corporation Ltd.* [1903] 1 Ch. 728 Buckley J., said that a person acts with intention to deceive when he induces another to believe that a thing is true, which is false, and which the person practicing the deceit knows or believes to be false. I could not agree more.

The accused all along was aware that he had no gold to sell. He simply had some snippets of the same which he splashed around as samples and duped the unsuspecting complainants, willing and ready to make a quick financial kill, that he had 70 plus kilograms of gold for sale. He was all the time aware he had no gold to sell and he sold none. The offer to sell gold was false. He made it knowing its falsity.

It was argued that the false pretence must be one of past or present and not future. The cases of *Mubiru Charles and Wasswa v. Uganda* [1994-95] HCB 46 and *Uganda v. John Kategaya* [1977] HCB 283 were relied on. In each of these cases it was held that to constitute an offence

under this (Section 305) the obtaining of money or anything capable of being stolen must be a false pretence as to the past or present and such obtaining must be with intent to defraud.

In the *Kate nay a* case (supra), the appellant promised to buy fish for the complainants and was advanced money for that purpose. He did not buy the fish as promised and on appeal he was acquitted.

In the present case, the accused person offered to sell gold to the complainants. He did not offer to buy it from elsewhere or in Zaire, though he always was in company of a man from Zaire. The accused was dealing with the present. He showed them what he claimed was gold dust, but that he even had gold nuggets, and he even showed them a sample of the same when they were in his home in Masaka having dinner. He gave PW2 a sample to take and test.

In his Naalya home, the accused produced a silver briefcase before PW1 and assured her it contained the goods she had bought. This was in the present. On the strength of having seen the 'gold'. PW1 proceeded to pay for the air tickets of the accused, the European, and her nephew. She even paid for the nephew's visa and insurance.

In the Hilton Hotel in Brussels, the accused and his accomplices carried a suitcase inside which was a silver briefcase containing what was said to be gold. PW1 had seen a similar briefcase in Kampala and the assurances from the accused were that this was the gold. Even in Brussels the accused removed a sample and it was tested and found to be pure gold. All were transactions in this case were of the present. This was not a promise of a deal in future. This case is therefore to be distinguished from the two cases cited above.

The actions of the accused above show that from the onset, the accused never intended to sell and deliver gold to the complainants. He however led the complainants to believe that he was selling them gold and delivering it to Europe and would assist them to have it sold. These were false representations on the part of the accused. The prosecution proved this ingredient beyond reasonable doubt.

### **3. Intent to defraud.**

In the case of *Terrah Mukinda v. Rep.* [1966] EA 425 (CA) it was held that an intent to defraud is an essential ingredient of the offence of obtaining by false pretences. To defraud means to



cheat, deceive, con, swindle, fleece or even take advantage of. Lord Radcliffe in *Welham v. DPP* [1960] 1 ALL ER 805 stated that;

*“deceit can involve a reckless indifference to truth or falsity as well as the deliberate making of false statements; and in all cases it may involve the inducing of a man to believe a thing to be false which is true as well as to believe to be true what is false.”*

The accused in this case the accused told the complainants that he was selling them 25 out of his 70 kilograms of gold. The price was agreed. The complaints secured a mineral dealers licence and transport arrangement were completed. The complainants paid for the air tickets of these travelling with the consignment to Amsterdam. Instead the accused called to say they landed on a wrong airport in London. On top her nephew who ought to have been present to protect her interest and whose air fare and other necessary travel details were paid for was left behind.

The accused asked for money to clear the gold from Zaire or Congo which gold was already in his shrine in Masaka, and which he purported to show them. He asked for more money to clear taxes at London when he was never meant to land there. He asked for yet more funds to clear taxes in Holland.

The accused presented a European in Brussels as the one who transported the gold when in Kampala he showed a different person. Travel was meant to be using a UN plane but instead they used a commercial aircraft.

The accused told the complainants that they landed on wrong airports twice during the trip from Kampala to Brussels. How this was possible when one was using a commercial scheduled flight in the absence of an emergency, is difficult to imagine, and it would be a suspicious coincidence if there were to occur two emergencies forcing the landing on two different unscheduled airports during a single trip. That was deceit pure and simple.

In the charge of obtaining money by false pretences, the deceit must be directly connected with false act or promise stated in the charge. The indictment stated that the accused promised to not only sell but to transport the gold to Europe. He deceived the complainant when he alleged that he transported gold to Europe and in the process landed on two unscheduled airports. On that

falsehood, the complainants paid him money allegedly to clear the gold at these two airports and they even paid for other air tickets for the accused and the European accomplice to move from London to Brussels.

The evidence on record was to the effect the complainants trusted the accused person and paid him money to help them sell and transport gold. However no gold was received or sold to the complainants, whereas the evidence was that money was received by the accused from the complainants. The accused defrauded the complainants by the series of acts shown above.

In his defence the accused person made a total denial of the charge, that he never promised to sell gold to the complainants and neither did he obtain money from them.

The accused wondered why there was no evidence of his presence in London as alleged. That was not the only aspect of the case showing the intention to deceive. There was evidence including presenting a Suzan to buy gold, and being presented with the same, and having tested a sample and found the same to be what was required, but failing to buy the gold, yet later telling the complainants that Suzan's boss bought the same.

The accused person was a liar. He lied about not being a witch doctor initially, but later accepted that he was one and with a shrine in Masaka. He lied when he told court that he was never in the company of a Zaire man, yet even before meeting him, Egesa was aware that the accused was always in company of people from Zaire including those claiming to be related to the President of that country.

The accused denied ever receiving money from the complainants. Evidence on record for example exhibit PE 12 properly and squarely placed him at the scene of receiving money from PW1 on 6/6/2011 in Diamond Trust Bank. There was no denying his ID, complete with his photograph and signature.

Lies are not consistent with innocence. They corroborate prosecution evidence. See *Chesakit Matayo v. Uganda* Crim. App. No. 95 of 2004 (CA) (unreported).

The accused person was arrested and detained in Luzira before being released on bail. The evidence of PW1 was that she was also detained in the same prison at the same time but the accused went out before her. Her evidence was that when he was out of prison, he came to visit

her. He told her that if she wanted to be paid back her money which he swindled from her, she should get for him other people with money whom he could equally con and from them she would get back her money.

Her further evidence was that the accused assured her that he could arrange for her to get out of prison. He asked for sh. 3 million to secure her safe passage out of prison. There was a condition attached to this. The accused and his accomplices would immediately drive her out to the airport so she would fly out of the country and avoid the suit against her from Joyce Nantamba, as that was the reason she was arrested. She told court that she rejected the accused's terms and she appeared before a magistrate as was originally scheduled. In due course the charges against her were withdrawn by the DPP.

The defence evidence of denial was to be rejected as nothing but a pack of lies. This prosecution evidence was further corroboration that the accused person with intent to defraud the complainants obtained from them money by falsely pretending to sell them gold and transport the same to Europe. The prosecution proved that ingredient beyond reasonable doubt.

A lot was said about the matter being more of a civil dispute than a criminal case. I agree with the holding in *Bushin Brothers v. Rep* [1971] EA 111, that the existence of a contract of sale between the complainant and the accused does not preclude or negative criminal liability for false pretences.

I noted some contradictions as was rightly pointed out by the defence. These were in respect of the sums sent to the accused. The sums were sent by various people and at different times. This was way back in 2011. There was always the possibility of forgetting the exact details which was natural. I was not satisfied that there was any intention to deceive court.

The law on contradictions and discrepancies in the prosecution case is that grave inconsistencies and contradictions unless satisfactorily explained will normally though not necessarily lead to the rejection of the evidence of the witness. Minor inconsistencies will not result in the evidence of a witness being rejected unless there has been deliberate untruthfulness. See *Usanda v. Kisule Ibrahim* SC. Crim. App. No. 297 of 1998.

I found that the inconsistencies in the prosecution case could not lead to rejection of

prosecution evidence. I accordingly ignored them.

The sole assessor who remained till the close of the case was of the opinion that all the ingredients of the offence were proved to the required standard. He advised court to find the accused person guilty as charged.

I had no reasons to differ from that opinion. I therefore found the accused person Muwawu Ddumba Edward guilty of the offence of obtaining money by false pretences c/s 305 of the Penal Code Act and I convict him accordingly.

RUGADYA ATWOKI

JUDGE

2/8/2013