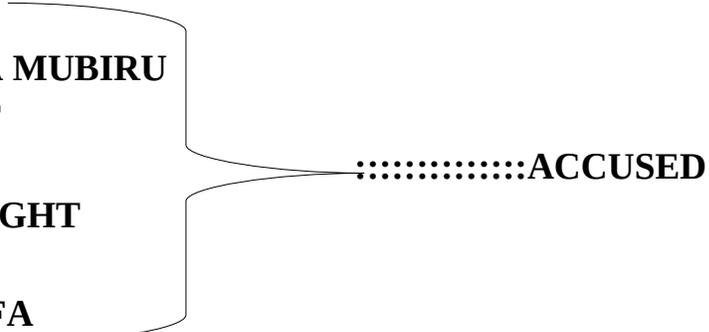


THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
SESSION CASE NO. HCT-00-SC 0014/2014
UGANDA (DPP) :::PROSECUTOR

VERSUS

A1. MPANGA DENNIS
A2. NALUMANSI AISHA MUBIRU
A3. MUHOOZI ROBERT
A4. MULINDWA FRED
A5. TWINAMASIKO BRIGHT
A6. ABAINE MOLISTO
A7. NAKANJAKO HANIFA

::::::::::::::::::ACCUSED



RULING

20TH JUNE 2014

There were preliminary objections raised by Max Mutabingwa counsel for A6 which were to the effect that;

- (i) The prosecution was not possessed with all the documents it intended to rely on like the handwriting expert's report. That it was not proper for the accused persons to have been indicted before the investigations were completed.
- (ii) The other objection was that the accused persons were wrongly joined in the indictment and in contravention of the law. The offences they are charged with do not arise in the same transaction as they were committed in different places and on different accounts. That hence this as a misjoinder.
- (iii) The particulars of the indictment were not sufficient to enable the accused persons understand the nature of the offence and that contravened S.22 of the Trial on Indictment Act. The charges did not show who took the money, who was paid and hence reasonable information was lacking.

Tom Walugembe for the state in reply conceded that he was not in possession of the Handwriting expert's report but it was not all they were relying on for the prosecution's case and it would only buttress their case.

On the issue of misjoinder, counsel for the state submitted that he did not agree with counsel for accused as S.24 (d) of the Trial on Indictment Act provided for “*persons accused of different offences committed in the course of the same transaction may be tried together in the same indictment.*”

Counsel for the state submitted that despite the accused persons being at different branches they used the same identification documents of the account holders to commit the offences. He stated that these were in the same transaction.

On the issue of particulars of the offence being insufficient, counsel for the state submitted that the basis of the case is that it is not known to whom this money was paid and that the accused persons did not act with due diligence and money was just paid out.

That procedures expected to be done were not followed hence money paid to wrong persons.

On the issue of whether the prosecution was not possessed with all the documents it intended to rely on like the handwriting expert’s report, this point was conceded too though to the effect that it was not the only report the state was to rely on. However it was not ruled out that it would be relied on. It would appear the disclosure of documents to be relied on by the prosecution was not done to counsel for the accused. At this stage of trial, it is expected that documents to be relied on by the prosecution should have by now been disclosed to counsel for the accused. That would ideally be at the stage when the accused persons are being committed for trial in the High Court. Article 28(3) (c) of the Constitution provides that

“Every person who is charged with a criminal offence shall – be given adequate time and facilities for the preparation of his or her defence.”

It was held in case of **Soon Yeon KongKim (2) Kwanga Mao Vs Attorney General** –Constitutional Reference No.6 of 2007 that;

A right to a fair hearing contains a right to pre-trial disclosure of material statements and exhibits. In an open democracy, courts cannot approve of trial by ambush. The right to a fair hearing envisages equality between the contestants in litigation. This disclosure is however subject to some limitations like state secrets, protection of witnesses, protection of identity of informers or that due

to the simplicity of the case, disclosure is not justified for purposes of a fair trial.

In summary the accused is entitled to disclosure of the following:

- (a) Copies of statements made to police by the would be witnesses for the prosecution
- (b) Copies of documentary exhibits which the prosecution is to produce at the trial.
- (c) The disclosure is subject to limitations to establish through evidence by the prosecution.

Article 44(c) of the Constitution states that a right to a fair hearing is absolute. It must never be denied in any circumstances whatsoever.

I therefore order that the prosecution must disclose and avail copies of all documents it intends to rely on in this case before the trial begins. I order that this process of disclosure should be done before the Deputy Registrar of this court. This will enable this court to expeditiously handle this case and avoid trial by ambush.

On Joinder of the accused on the same Indictment, under S.24 of the Trial on Indictment Act provides that the following persons may be joined in one indictment and may be tried together-

- (a) Persons accused of the same offence committed in the course of the same transaction;
- (b) Persons accused of an offence and persons accused of abetment on an attempt to commit that offence;
- (c) Persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code Act or any other written law) committed by them jointly within a period of twelve months.
- (d) Persons accused of different offences committed in the course of the same transaction;

In this case the indictment indicates different days when similar offences were committed. Those offences were not jointly committed by all the accused on the said days and neither are the different offences committed in the course of the same transaction.

The indictment should therefore be amended to fall within the ambit of S.24 of the Trial on Indictment Act.

On the issue of particulars of the offence not being sufficient, S.22 of the Trial on Indictment Act provides that:

“ Every Indictment shall contain and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.”

The Indictment is all about causing financial loss. The particulars of the offence should reflect the statement of the offence. Ideally one would expect that the particulars of the offence would be clear as to who was paid but if disclosure was made as earlier held, these details would by now be known to the accused persons and hence that would not prejudice them. Reasonable information would have been given to the accused as to the nature of the offences charged as they would by now know who was paid out of the said accounts and how their actions caused financial loss.

In a nutshell, I will uphold the objections raised and order that:-

- (i) The indictment be amended to fall within the ambit of S.24 of the Trial on Indictment Act
- (ii) Full disclosure must be made by the prosecution to the accused persons on material statements by would be witnesses for the prosecution, copies of documentary exhibits which the prosecution intends to rely on at the trial be availed to the accused save for those which fall within the limitations I have talked about or through evidence by the prosecution.
- (iii) The disclosure should be done before the Deputy Registrar of this court.

It is so ordered.

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Hon. Justice John Eudes Keitirima
Judge
20/06/2014