

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO
NO.HCT-00-AC-SC -0015-2014

UGANDA::: RESPONDENT

VERSUS

NAKIWUGE RACHEL MULEKE::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON.LADY JUSTICE MARGARET TIBULYA

J U D G M E N T

The accused was indicted with twelve Counts. The first Count relates to Embezzlement, the second one is for False Accounting while the rest relate to forgery, with alternative Counts of Uttering False Documents.

The gist of the State case is that the accused stole 34,690,000/=, then forged and uttered the false accountabilities relating to those monies.

In or about 2011/12 there was a financial scam in the office of the Prime Minister, here-in-after referred to as the “**OPM**”. Accountability documents which included ones which relate to this case were recovered from the office of the then Principal Accountant OPM, Mr. Geoffrey Kazinda.

The accused was working with the OPM as a coordinator of the **Crisis Management and Recovery Program**. The contract she signed and her confirmation in service are exhibits P.1 and 2. The accountabilities in issue were rendered to PW20 (**Kumumanya Benjamin**), then Under Secretary OPM by the accused and they related to **4m/=; 5,480,000/=; 8,900,000/=; 13,970,000/= and 1,650,000/=** separately advanced to the accused. Accountability documents including payment sheets bearing names of payees and receipts from Hotel Africana, Speke Hotel, M/s Shuric Ltd with a value of 2,250,000/= and Mulwany traders with a value of 8,370,000/= were allowed in court as exhibit P15 – 24.

PW21 (**D/IP Christian Balaba**) interviewed the accused and contacted the various people whose names appeared in the accountabilities as having received money or paid money for services

rendered to the accused. These people however denied having participated in the activities reflected in the documents and disowned the signatures attributed to them. Others disowned receipts attributed to their Institutions/ Companies.

The graph below is a summary of the evidence of the witnesses who denied signing for and receipt of the money reflected in the indicated exhibits.

Particulars of the witness.	Amount	Description of Document
Dr. Issa Makumbi (PW2)	560,000/=	Exhibit p.21
(David Sempijja); Barbara Kyomugisha (PW3) of Uganda Broad casting services (UBC), said that David Sempijja , who signed for 50,000/= as an employee of UBC is not their employee. PW8 Andante Okanya testified that David Sempijja works with the New Vision.	50,000/=	Exhibit P.20
Benon Tumusiime (PW4) Hotel Africana receipt.	4,450,000/=	Exhibit p. 17
Isaac Matanda (PW5)	500,000/=	Exhibit P.24
Teresa Namwachi (PW6)	110,000/=	Exhibit P.19
Micheal Sentongo (PW7)	120,000/=	Exhibit P.20
Andante Okanya (PW8)	50,000/=	Exhibit P.20
Omony George William (PW9)	120,000/=	Exhibit P.20
Beatrice Namaloba (PW10)	120,000/=	Exhibit P.20
David Matovu (PW11)	220,000/=	Exhibit P.21
Mulwanya Eriab (PW 12)	8,370,000/=	Exhibit P.22
Robert Sekate Kakooza (PW13)	120,000/=	Exhibit P.20
Immaculate Nyangoma (PW14)	440,000/=	Exhibit P.23
Kalule Ibrahim (PW15)	220,000/= (Twice)	Exhibit P.22 and P.23
Shailander Kumar (PW16) He said that the correct receipt (Exhibit	2,250,000/=.	Exhibit P.24 (<i>a receipt attached to the</i>

P 12) bore a value of 25,000/= in relation to sale of a weighing scale. The disputed one bore two items; a weighing scale and a sterilizer with a value of 2,250,000/= .		<i>fifth page of exhibit P18)</i>
Obubu John Peter (PW17)	110,000/=	Exhibit P.19
Lugayizi Issa (PW18)	120,000/=	Exhibit P.20

I P Balaba (PW21) inspected the accused's bank account No **01023000107411** at DFCU and found that some of the money in issue went through that account. The accused's bank statement is exhibit P.27.

Here below is a graph reflecting the dates on which the money transfers were made, the EFT details, the amounts involved and purpose of the money.

DATE	EFT NO.	AMOUNT	PURPOSE OF FUNDS	PW21s COMMENT/EVIDENCE
5/1/2011	1820747	25,730,000/=	To facilitate the set up to a medical Aid post in Panyadori.	<i>The accountability for this money is one of the questioned ones and it bears signatures that were disowned by the purported signatories.</i>

22/2/2011	1728574	3,845,000/=	Delivery & distribution of relief items and food in Kiryandongo for February 2011.	
7/3/2011	1352083	8,900,000/=	Carrying out monitoring activities in Panyadori camp	
15/4/2011	1740631	1,300,000/=	Maintenance & rent of space in Kiryandongo	
15/8/2011	1780257	1,650,000/=	Travel to Kiryandongo for relief distribution.	

PW22 (**Erisa Sebuwufu**) a forensic document examiner examined documents sent to him by the police and made a report (exhibit P28) whose findings are summarized in the graph below;-

	DESCRIPTIO N OF SPECIMENT DOCUMENTS	Lab and Court Exhibit NOS.	DESCRIPTIO N OF QUESTIONED DOCUMENTS	Lab and Court Exhibit NOS.	NATURE OF EXAMINATION REQUESTED/DONE .	FINDING OF THE EXPERT.
1	Specimen signatures of Recheal Muleke (accused).	AR1 to AR4 / Court Exhibit P.14	Internal memos signed by Racheal Muleke and addressed to the Under Secretary.	RNM 3 to RNM 7/ Court Exhibits P23, P22, P16, P17, and P18 respectivel	Examine, compare and establish whether the author of specimen signatures on exhibits AR1 to AR4/ Court Exhibit P.14 is the same as in questioned signatures in RNM 3 to	The specimen signatures in exhibit P.14 share the same authorship with the

				y	RNM 7/ Court Exhibits P23, P22, P16, P17, and P18 respectively	ones attributed to Racheal Muleke in exhibits P.23, 22, 16, 17 and 18.
2	Specimen hand writing of Racheal Muleke (accused).	AR1to AR4/ Court Exhibit P.14	List of names of participants for Hotel African workshop.	RNM 6(a) & RNM 6(b) / court Exhibits P.17 & p.19	Examine, compare and establish whether the author of specimen writings on AR1 to AR4/ Court Exhibit P.14 is the same as in questioned writings in RNM 6(a) & RNM 6(b) / court Exhibits P.17 & p.19	Exhibits P.14, 17 and 19 share the same authorship i.e. Rachel Muleke wrote the list of workshop participants
3	Specimen signatures of; Micheal Sentongo (PW7), George Omony	AR5, AR 6, AR7(a), AR7(b), AR11(a) AR11(b), AR12(a), AR12(b), AR14(a),	Attendance list for a workshop in Speke Hotel.	RNM 5b / Court Exhibit P.20.	Examine, compare and establish whether the author of specimen signatures on exhibits AR5, AR6, AR7(a), AR7(b), AR11(a) AR11(b), AR12(a), AR12(b), AR14(a),	The signatures in exhibit P.20 do not belong to the witnesses listed here-

	(PW9) Robert Sekate (PW13) Beatrice Namaloba (PW10) Isa Lugayizi (PW18) Teresa Namwachi (PW6) Kalule Ibrahim (PW15) Andante Okanya (PW8)	AR 14(b), AR16(a), AR16(b) and AR21 respectively . / Court Exhibits P.4, 6, 9, 7, 13, 3, 11 and 5 respectively			AR 14(b), AR16(a), AR16(b) and AR21 respectively. / Court Exhibits P.4, 6, 9, 7, 13, 3, 11 and 5 respectively, is the same as in questioned signatures in RNM 5b / Court Exhibit P.20.	in.
4	Specimen writings of; Robert Sekate (PW13) Ibrahim Kalule (PW15)	AR7(b), AR16(a), AR11(a), AR12(a), AR14(a) respectively , / Court	Attendance lists for Speke Hotel workshop. Attendance lists for Hotel African workshop.	RNM 5 RNM 6 RNM 11 RNM3(b), RNM 4(c) / Court Exhibit P.20	Examine, compare and establish whether the author of specimen writings in AR7(b), AR16(a), AR11(a), AR12(a), AR14(a) respectively, /	The listed people (PW's P.13, 15, 10, 18 and 6) did not write the questioned

	Beatrice Namaloba (PW10) Issa Lugayizi (PW18) Teresa Namwachi (PW6)	exhibits P.9, P11, P.7, P.13, P.3, respectively .	Document titled “ opening the Panyadori Health centre, ” Documents titled....” Relief distribution. ”	P.19 P.2 P.23 & P.22	Court exhibits P.9, P11, P.7, P.13, P.3, respectively, is the same as in questioned writings in RNM 5 RNM 6 RNM 11 RNM3(b), RNM 4(c) / Court Exhibit P.20 P.19 P.2 P.23 & P.22	documents.
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In her defense she said that her salary and NSSF benefits were being paid by UNDP as evidenced by exhibit D. 1, and that she was therefore not an employee of O.P.M.

The accountabilities she gave to **Kumumanya** (PW20) were never queried by the Principal Accountant (**Geoffrey Kazinda**), the Auditor General, Internal and External Auditors and the UNDP Accountants. They were genuine accountabilities. The activities reflected therein took place.

For Count 3, PW14 (**Nyangoma**) and PW15 (**Kasule Ibrahim**) got the money, only that their signatures were not examined by an expert.

For Count 4, **Matovu David** (PW11) signed for the money, but his signature was not examined.

For Count 5, there was no forgery of the documents and no evidence was adduced to support the charges.

For Count 6, one **Dennis Tumwine** of Speke Hotel sent her the receipt. PW8 (**Andante Okanya**) lied to Court. A newspaper print showing pictures taken during the workshop is exhibit D2.

She denied the allegation in Count 7 and exhibited D.3 saying that there was value for money.

For Count 8, PW2, (**Dr. Isa Makumbi**) participated in the activity. The activity took place as evidenced by exhibit D.4. She did not make the questioned signatures or embezzle the money.

For Count 9, PW8 (**Andante Okanya**) attended the function and signed for the money. Exhibit D.2 Evidences the fact that **Andante** participated in the activity. One **David Sempijja** of UBC also participated in the activity. **Anita Twesigomwe** whom she trusted is the one who paid out the money and gave her the accountability.

For Count 10, she only paid allowances to people from Karamoja and Teso Region and none of them testified in court. Their signatures and handwritings were not subjected to expert analysis.

For Count 11, the Hotel African receipt was not subjected to expert analysis. She was given the receipt upon payment of the money. No internal Auditor of the Hotel testified.

For Count 12, the Shuric Ltd receipt was also not subjected to expert analysis. One **Reddy Varsh** gave it to her.

DW2 (**David Karugusu**) testified that he painted the Health centre at Panyadori with one Isaac and the accused paid him 1,200,000/= . He gave 500,000/= to Isaac who signed for it in exhibit P.18. The accused gave him an advance of 400,000/= and later a balance of 800,000/=.

DW3 (**Eldam Tuta Johnson**) said that DW2 painted the Health centre with **Isaac Matanda** (PW5). PW2 (**Dr. Isa Makumbi**) attended the opening of the Health centre as evidenced in exhibit D7, a picture taken at the opening of the Health Centre.

DW4 (**Wabomba Michael**) of Panyadori states that a driver called **Matovu** delivered to them posho, beans, cooking oil, salt and sugar. Further that **Isaac Matanda** painted the Health Centre. He testified that he signed delivery notes (Exhibit D.8) for the items that were delivered by **Matovu**.

Count 1: Embezzlement

The state has to prove:

1. That the accused was an employee of the Government or a public body.

2. That she stole the money in issue.
3. That the money was the property of her employer.
4. That it was received or taken into possession by her for or on account of her employer, or that she had access to it by virtue of her office.

The employment status of the accused:

The state exhibited the contract under which the accused was given the job, and a letter confirming her in the position, (**exhibits P.I. and 2**). The contract was signed between the Government of Uganda and Ms Nakiwunge Rachael Muleke.

The defence has argued that the accused can't be said to have been an employer of government given that she was being paid by U.N.D.P. The existence of the contract between government and the accused however suffices to show that her employer was the government. Who and how her salary was paid did not redefine her employment status. I find that she was an employer of the government.

b) Whether she stole the 34,698,000=.

There is uncontroverted evidence that **25,730,000=** was wired to the accused's account on 05/01/2011, **3,845,000=** on 22/02/2011, **8,904,000=** on 07/03/2011, **1,300,000=** on 15/04/2011 and **1,650,000=** on 15/08/2011. This totals to **41,425,000=**.

The state's complaint is that the accused stole part of that money and rendered false accountabilities for the stolen amount, i.e., (**34,698,000/=**).

The accountability documents that the accused rendered to her bosses are the basis of these charges. It is significant that the accused does not disown the documents. This helped to narrow down the issues. The only issue now is whether the accountabilities are genuine; put another way, whether she used the monies for the intended purpose.

The state is relying on the same evidence to prove all the counts. To establish whether the accused embezzled the money for example, it will be important to establish whether she forged the accountability documents, and / or whether the documents are false. The process of

evaluation of the evidence in relation to the rest of the issues of the embezzlement and false accounting charges will of necessity cover the rest of the counts laid in the indictment.

Since each of counts 3 to 12 relates to a particular set of documents, it is important that each set of documents be linked to the count it relates to.

COUNT	DESCRIPTION OF EXHIBIT	COMMENT		
3	Exhibit P.23 dated 19 th September 2011, attached to accountability for 1,650,00/=			
4	Exhibit P.22, Dated 5 th August 211, attached to accountability for 13,970,000/= for purchase of food and no-food items.			
5		No accountability document exhibited.		
6	Exhibit P.16, Receipt of Speke Hotel.			
7	Exhibit P.16, accountability form attached to			

	accountability for 5,548,000/= dated 19 th September 2011.			
8	Exhibit P.15, accountability form, attached to accountability for 4,225,000/=, dated 25th March 2011.			
9	Exhibit P.23, accountability form attached to accountability for 1,650,000/=, 19 th September 2011.			
10	Exhibits P.17 and 19 accountability forms attached to accountability dated 2 nd August 2011, for 8,903,600/=.			
11	Exhibit P.17, Receipt of Hotel Africana, attached to accountability			

	for 8,903,600/= dated 2 nd August 2011			
12	Exhibit P.24, receipt of M/s Shuric Limited appearing on the fifth page of Exhibit P.18 batch.			

Exhibit P. 23, (Count 3,)

This related to 1,650,000= for facilitating the accused to go to Kiryandongo for relief distribution. The issue is that PW14 (**Nyangoma Immaculate**) and PW15 (**Kalule Ibrahim**) disowned the signatures attributed to them and denied receipt of the monies reflected in the documents.

The defense maintains that the signatures belong to them and that they were paid the 440,000= and 220,000= respectively. The accused pointed out the fact that the signature of PW14 (**Nyangoma Immaculate**) was not subjected to expert analysis.

It is not mandatory to subject disputed writings and signatures to expert analysis. The two witnesses appeared truthful. Moreover PW15 (**Kalule Ibrahim's**) signature was actually analyzed and the result was that he did not write the questioned signature. There is no reason why PW14 could have told lies. The two witnesses came from different social backgrounds and with no plausible reason to deny their signatures, or to conspire to incriminate the accused. I believe their evidence and with it, the fact that accountability for the 1,650,000= is false.

Exhibit 22 (Counts 4).

P.22 relates to 13,970,000= for purchase of food and non-food items. The issue here is the signature which was attributed to PW15 (**Kalule Ibrahim**) who the defense maintains that he (a driver) delivered relief items to land slide victims. He disowned the signature and denied receipt of the 220,000= appearing in the documents. The signature in issue was subjected to expert analysis and found not to belong to him. This goes to support his evidence that he did not write the signature or receive the money in issue. He appeared truthful and I had no reason to doubt him. Since the person who is alleged to have delivered the items denied this, there is sufficient basis for a finding that the accountabilities are false, and the items worthy 13,970,000= were never delivered as the documents purport.

Count 5. No evidence was adduced to prove this count.

Exhibits P.16 and P 20, (Counts 6, and 7)

Exhibits P.16 and P.20, relate to 5,548,000= meant for the humanitarian profile, 2012. The accountability includes a Speke Hotel receipt for 2,948,000= for a workshop and a list of participants (**Exhibit 20**), among whom were PW18 (**Lugayizi Isa**), PW7 (**Michael Sentongo**), PW10 (**Beatrice Namaloba**), PW13 (**Robert Sekatte**), PW8 (**Andante Okonya**), PW3 (**Barbara Kyomugisha**). Pw's 3 and 8 were clear that David Ssempijja does not work for UBC as the accountability documents indicate.

The evidence of all these witnesses is that they did not attend the workshop. They neither signed for, nor receive any money as portrayed in the exhibit. The handwriting expert (**Erisa Ssebuwufu**, PW 22) compared the signatures attributed to the witnesses in the accountability document with specimen signatures they availed to the police during investigations and opined that they did not make the questioned signatures.

The accused insists that the workshop took place and that those witnesses signed for the money indicated against their signatures. She further said that one **Dennis Tumwine** of Speke Hotel sent her the receipt. She further said that **Anita Twesigomwe** whom she trusted is the one who paid out the money and gave her the accountability. The investigating officer (Balaba PW5) testified that the hotel denied issuance of the receipt. It cannot be a mere coincidence that the various witnesses said that they did not attend the workshop. These were independent witnesses and from all walks of life and varied social backgrounds. There is no possibility that they

conspired or were influenced to deny their signatures. Moreover, all of them appeared truthful. Their evidence as backed by that of the independent expert leaves no doubt in my mind that they did not attend the workshop. David Ssempijja who does not work for the company indicated in the documents did not get the money indicated against his name. They did not sign for or receive the monies reflected against their signatures. Though the accused said that the state did not bring a witness from the hotel to disown the receipt, the evidence of the investigator (**IP Balaba** (PW21) that the Hotel disowned the receipt must be believed, it having been lent credence by the witnesses who testified that they did not attend the workshop. There is sufficient basis for the conclusion that the workshop never took place, and that the receipt and the whole accountability (exhibit P.16 and P20) is false.

Exhibits P.15 and P.21, (Count 8)

This is the accountability for **4,225,000=** meant for supervision of the Panyadori Hill Health centre 11 infrastructure set up. **Dr. Issa Makumbi** (PW 2) and **Matovu** (PW11) denied having signed for and received the monies indicated against their signatures in Exhibit **P.21**. The defence maintains that PW2 and 11 were involved in the activities reflected in the documents. To prove her argument, the accused tendered in a Newspaper page (Exhibit P.7) bearing a picture portraying the handing over of a sterilizer to a Nursing Officer. Her argument was that the picture was taken at the function in which PW's 2 and 11 participated and were paid.

I have looked at the exhibit and it is noteworthy that the news report below the picture is about one **Dr. Imaam Mutyaba** who was quoted as making comments relating to the operations of the Health Centre.

The accused's letter forwarding the accountability shows that the 4,225,000= was advanced to her and a Medical Team from the Ministry for supervision of Panyadori Health Centre II infrastructure set up, so that they approve the set up standard and the Health centre to state operating. Exhibit P.7 which portrays the handover ceremony of a sterilizer clearing bears no relevance to the allegation that money meant for "**supervision and approval of set up, and the Health Centre**" were not used for that purpose.

DW3 (**Eldam Tuta Johnson**) testified that PW2 (**Dr. Issa Makumbi**) attended the opening of the Health Centre. The opening of the center however is not in issue here, given that the funds

weren't meant for such ceremony. DW4 (**Wabomba Michael**) gave evidence that PW11 (**David Matovu**) delivered relief items. **David Matovu** indeed said that he delivered some items and was paid his allowances for that. He denied that he participated in the activity in issue and said that he didn't get or sign for any money in that regard. It is noteworthy that the queried accountability which was meant for supervision work by a Medical team had nothing to do with delivery of relief items. PW2 (**Dr. Isa Makumbi**) and PW11 (**David Matovu**) appeared to be witnesses of truth and I believed their evidence.

The money was meant for supervision of Panyadori Health Centre II infrastructure set up, PW2 (**Dr. Isa Makumbi**) and PW11 (**David Matovu**) testified that they did not participate in that activity. The defense exhibit reflects a function relating to the handover of a sterilizer. DW3 (**Eldam Tuta Johnson**) and DW4 (**Wabomba**) testified about the opening of the health centre and delivery of relief supplies, which activities are not in issue.

In the circumstances the state evidence that **Dr Isa Makumbi** (PW2) and **David Matovu** (PW11) did not participate in the activity must be believed. That evidence forms sufficient basis for a finding that the activity for which the 4,225,000= was released did not take place, leading to a further conclusion that the accountability in Exhibit P15 is false.

Exhibits P.17 and 19(Counts 10 and 11)

Exhibits P.17 and P.19 relate to 8,903,600= meant for a workshop. The accountability bears a Hotel Africana receipt which was disowned by PW4 (**Benon Tumusiime**) a debt collector with the Hotel. There are attendance lists (**Exhibit P19**) bearing several names including those of **Namwachi Teresa** (PW6) and **Obubu John Peter** (PW17) who both denied having attended the workshop, signing for and receiving the monies reflected against their names.

The defence maintained that the workshop took place and that PW6 and 17 made the signatures attributed to them and got the monies reflected against their names.

There is evidence (**PW22 Erisa Sebuwufu's**) the handwriting expert that the list of names was written by the accused – a fact she does not seem to deny (for the experts report was tendered in without objection).

The evidence of PW4 (**Benon Tumusiime**) disowning the receipt, that of PW6 and 17 that they did not attend the workshop, and that signatures attributed to them are not theirs, PW22's evidence that it is the accused who wrote the list of participants and the figures in the sums of money reflected in the documents leads to the following conclusions:-

- 1- That the workshop did not take place – and as such the receipt and list of participants are false.
- 2- That the lists were written with intent to defraud and by the accused.

Exhibits P.18 and 24(Count 12).

P.24 is a receipt from Shurik Ltd (**separately marked**) which appears on page 5 of Exhibit P.18 and bears the value of **2,250,000=**. PW16 (**Shailandar Kumar Sharma**) of M/s Shurik Limited testified that his company issued that receipt in relation to the sale of a weighing scale at 25,000=. He tendered the carbon copy of the receipt (**Exhibit P.12**). Exhibit P.24, the original copy of the receipt with the same serial number as the carbon copy, bears the sum of 2,250,000= and two items; a weighing scale and a sterilizer. The serial number the two receipts share gives connectivity to the two receipts.

The accused maintains the one **Reddy Varsh** issued the receipt to her. This however does not explain the differences in the two receipts. The difference in entries as to the items purchased and the purchase price means that the original receipt was falsified, rendering the accountability false.

The other issue is the signature of one **Matanda Isaac** (PW5), (**appearing in Exhibit P.24**) who is said to have received 500,000= (**see second last page of exhibit P.18**). He disowned the signature attributed to him and denied receipt of the 500,000= indicated against his name. He said that he painted the Health Centre at Panyadori and was paid only 50,000=, and in installments. He got 20,000= from the accused.

DW's 2 (**Karugusu**), 3 (**Tuta**) and 4 (**Wabomba**) were right that **Isaac Matanda** painted the Health Centre, but i did not believe their evidence that **Matanda** received 500,000=. In the first

place DW2 seemed unsure of what he was saying. He said that he was the one who was contracted by the accused to do the job. If that was so it would be unusual for a sub-contractor- PW5 (**Isaac Matanda**) to directly sign for and be given money by the principle who in the first place contracted with another person- (DW2 **Karugusu**). That fact supports PW5 (**Matanda's**) evidence that he did not sign the documents. DW3 and 4 only said that **Matanda** painted the Health Centre a fact which **Matanda** does not deny. Their evidence does not add value to the defense case.

I believed **Isaac Matanda's evidence** that he did not write the signature in issue or receive the 500,000= as shown in the documents. I also believed the evidence of PW16 (**Shailandar Kumar Sharma**) of M/s Shurik Limited that his company issued a receipt in relation to the sale of a weighing scale at 25,000= and that therefore the questioned receipt is false. I find that the accountability in (exhibit P.18) is false.

On the whole I find that the monies reflected in Exhibits P.15 to 24 were not used for the purpose for which they were released to the accused. There is evidence that false documents were used to account for the money and since the account to which the money was wired belongs to the accused, it is her who accessed the money, and since it was not used for the intended purpose, she must have stolen it and that is my finding.

(c) Whether the money belonged to her employer:

The letters by which the accused forwarded the accountabilities indicate that she was accounting for money advanced to her by the addressee of the letter – the **Under Secretary Finance and Administration O.P.M**, (PW 20) **Kumumanya**, who also testified to this effect. There can be no doubt that the money belonged to the government, the accused's employer.

(d) Whether the accused had access to the money by virtue of her office.

The accused said that she was working for the **Crisis Management and Recovery Program under the Department of Disaster Preparedness and Management in O.P.M**. She signed the accountabilities as the “**NC/DRR**”, i.e., “**National Coordinator Disaster Risk Reduction**” – the office she bore at the time. There can be no doubt that she accessed the money by virtue of her office.

All ingredients of the offence of embezzlement been proved and i convict the accused as charged in Count I.

COUNT II – FALSE ACCOUNTING

The ingredients;

- 1- The accused must be proved to be a public officer charged with receipt, custody or management of the money.
- 2- That she knowingly furnished a false statement or return of the money.

The fact that the accused was a public officer has been satisfactorily proved. The money in issued was released to her to execute specific activities – she was therefore charged with its management.

Whether she knowingly furnished false returns.

I have already found that the exhibited accountabilities were/are false.

Whether the accused knew this:

There is evidence that the activities reflected in the exhibited documents did not take place, and that the Shurik Ltd receipt for 2,250,000/=, the Mulwanya receipt for 8,370,000/=, the Hotel Africana and Speke Hotel receipts were all false. Witnesses whose signatures were forged testified to this effect. The accused was certainly aware of the falsity of all these accountabilities, since she knew that the activities did not take place. She wrote the list of participants for the Hotel Africana workshop and therefore knew that it was false since none of the alleged participants attended the workshop. The accused argued that she only paid allowances to people from Karamoja and Teso Region and none of them testified in court. Their signatures and handwritings were not subjected to expert analysis. Also, that the Hotel African receipt was not subjected to expert analysis. She was given the receipt upon payment of the money. No internal Auditor of the Hotel testified.

She did not pay out any allowances since the workshop did not take place. This conclusion is based on the evidence of **PW4 Bennon Tumusiime**, and all the witnesses who denied attending

the workshop. It was not necessary to subject the receipt to expert analysis or call the evidence of Internal Auditors since the evidence that the workshop did not take place is overwhelming.

Her evidence that the Speke Hotel receipt was sent to her by one **Dennis Tumwine** and that **Anita Twesigomwe** whom she trusted is the one who paid out the money and only gave her the accountability is not helpful. **Tumwine** could have indeed sent her the receipt, but that does not change the fact that the workshop, to the accused's knowledge, did not take place. I don't believe the evidence that **Anita Twesigomwe** or even the accused herself paid out any money since the workshop did not take place.

She also argued that the Shuric Ltd receipt was also not subjected to expert analysis and that one **Reddy Varsh** gave it to her. Both the Shuric Ltd and Mulwanya receipts were disowned by witnesses whose evidence I believed. There was no need for expert analysis. That an unknown **Reddy Varsh** gave the accused the Shuric receipt is not extraordinary because the accused, obviously, got the receipts from someone! That does not mean that it is authentic or that the accused did not know that it was false.

I find sufficient evidence to make a finding of guilt on Count 2.

FORGERY- COUNTS 3 TO 12.

Forgery is the making of a false document with intent to defraud or to deceive. **In R.V. WINES {1953} 2 AER 1497** cited in **Supreme Court Appeal No.32/2010 Teddy Sseezi Cheeye Vs Uganda**, to “defraud” was defined as...“*to deceive and to deceive is to induce a man or woman to believe that a thing is true which is false*”.

Mere possession of a forged document is not proof that the bearer is its forger. But under S. 19 (2) of the Penal Code, a person who procures another to commit an offence will be guilty of the same offence the one procured commits. See (**Uganda Vs Teddy Seezi Cheeye, Criminal case No 1254 of 2008**). Also, circumstances that point to the fact that it is the accused who forged the document in issue, and leaving no other reasonable alternative may be relied on to infer the guilt of the accused, **Uganda vs. Geoffrey Kazinda, HCT 0138 of 2012**.

In this case, there is evidence that the accused wrote the accountability documents relating to the Hotel Africana Workshop (Count 10). The uncontroverted evidence of the Handwriting expert (PW 22 **Erisa Sebuwufu**) is instructive on this. In making the documents complained about in

count 10, the accused had the intent to make it appear that the workshop had taken place whereas not - she therefore had the criminal intent, and is guilty of forgery as charged in count 10.

With regard to the rest of the forgery allegations, the fact that she was the one responsible for making the accountabilities since she was the recipient of the funds, and the fact that she in fact submitted the accountabilities in issue is sufficient to ground a conclusion that she forged them, if not by herself, by instructing whoever wrote them to do so in the manner they were presented. I will however not enter convictions for forgery on counts where the evidence is only circumstantial given that there are alternative counts of uttering false documents which attract a similar punishment, and where there is direct evidence. I accordingly acquit her on each of counts 3, 4, 5, 6, 7, 8, 9, 11 and 12. The document forming the basis of Count 5 was not tendered in court. There is therefore no evidence to support the allegations in count 5.

Uttering false documents:

I have found sufficient evidence that the exhibited documents were false. The key factor in a charge of uttering false documents is the guilty knowledge by the accused. This has been sufficiently proved as I have already ruled. Her own evidence was that she handed the documents to PW20 (Kumumanya) the Under Secretary OPM then, which he testified to.

There can be no doubt that she uttered the false documents with guilty knowledge. I therefore convict her with uttering the false documents on counts 3, 4, 6, 7, 8, 9, 11 and 12.

I have found sufficient evidence to ground convictions for Embezzlement, False Accounting, and Forgery in counts 1, 2, and 10 respectively and to support convictions for uttering false documents in the alternative counts 3, 4, 6, 7, 8, 9, 11 and 12.

The accused is accordingly convicted on each of those counts.

Margaret Tibulya

JUDGE

08/07/2015