

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
INTERNATIONAL CRIMES DIVISION
HCT-00-ICD-SC-002-2020
(ARISING FROM CR NO.631 OF 2019 CM ENTEBBE)

UGANDA ::
PROSECUTOR

VERSUS

- 1. **KYALIMPA GODFREY**
 - 2. **KUNYWANA BENON** ::
- ACCUSED**

BEFORE: HON JUSTICE SUSAN OKALANY
CONFIRMATION OF CHARGES RULING

BACKGROUND

[1]The Director of Public Prosecutions indicted Kyalimpa Godfrey (A1) and Kunywana Benon (A2) with ***Promoting Trafficking in Persons contrary to Section 7(b) of the Prevention of Trafficking in Persons Act, 2009*** in Count 1 of the indictment. It is alleged that on 12th February 2019, between Kampala City and Entebbe International Airport in Wakiso District, A1 and A2 (hereinafter referred to as the accused) produced, printed, issued, and distributed a clearance list for migrant workers for purposes of trafficking 50 migrant workers from Uganda, purporting it to have been issued by the Ministry of Gender, Labour and Social Development.

[2]In Count 2 of the indictment, the accused persons are charged with ***Promoting Trafficking in Persons contrary to Section 7(c) of the Prevention of Trafficking in Persons Act, 2009***. It is alleged that on 12th February 2019, between Kampala City and Entebbe International Airport in Wakiso District, the accused persons tampered with and falsified a government document relating to immigration regulations or requirements, to wit, a clearance list for migrant workers, referenced LEI 74/286/11, purporting it to have

been issued by the Ministry of Gender, Labour and Social Development.

[3] In Count 3 of the indictment, the accused persons are charged with **Promoting Trafficking in Persons contrary to Section 7(d) of the Prevention of Trafficking in Persons Act of 2009**. It is alleged that the accused on 12th February 2019, between Kampala City and Entebbe International Airport Wakiso District, uttered and aided the uttering of a false document relating to immigration, to wit, a clearance list for migrant workers, referenced LEI 74/286/11, purporting it to have been signed by Egulu Lawrence of the Ministry of Gender, Labour and Social Development, for purposes of facilitating the exit of 50 migrant workers from Uganda.

[4] In Count 4 of the indictment, the accused persons are charged with **Attempt to Traffic in Persons contrary to Section 8(a) (b) and (c) of the Prevention of Trafficking in Persons Act, 2009**. It is alleged that on 12th February 2019, at the departures lounge Entebbe International Airport in Wakiso District, the accused persons attempted to traffic 50 migrant workers.

[5] Lastly, in Count 5 of the indictment, the accused persons are charged with **Forgery contrary to Section 349 of the Penal Code Act**. It is alleged that on 12th February 2019, at Entebbe International Airport in Wakiso District, the accused persons forged an official document, to wit, a clearance list for migrant workers referenced LEI 74/286/11, for purposes of trafficking 50 migrant workers from Uganda, purporting it to have been signed by Egulu Lawrence of Ministry of Gender, Labour and Social Development.

[6] It is the prosecution's case that the accused were working at Middle East Consultants Ltd, a licensed labour recruitment company, (hereinafter referred to as the company) which exports labour outside Uganda as recruitment/vetting officer and general manager respectively.

[7] On 12th February 2019, A1 had in his possession a letter dated 6th February 2019, addressed to the chief executive officer of the

company by Egulu Lawrence, an officer of the Ministry of Gender, Labour and Social Development (MGLSD), (hereinafter referred to as the ministry). The said letter contained a list of 277 names of migrant workers processed by the company, who had purportedly been cleared by the ministry.

[8] A1 transported to Entebbe International Airport fifty-six (56) of those migrant workers, who were scheduled to travel to the United Arab Emirates (UAE). Upon arrival at the airport, A1 handed over the said letter to a one Ekaba Godfrey (PTW4), an airport operations officer. PTW4 in his statement avers that after comparing the names listed on the said letter and establishing that they corresponded with the names on a clearance list that had been sent to him by the Joint Intelligence Committee (JIC)/Internal Security Organisation (ISO), he proceeded to make a clearance that was forwarded to the immigration desk counter.

[9] By coincidence, that same day Egulu Lawrence (PTW2) the Commissioner in-charge of employment services with the ministry was at the airport, enroute to the Philippines for official work. A one Kanuma Robert (PTW3) who is a principal immigration officer at the airport, invited PTW2 and his colleague to tour the airport and inspect the status of service delivery there. While at the immigration counter, PTW2 picked interest in some of the documents that were originating from the ministry and which bore his signature. Upon examining the letter tendered by A1 to PTW4, he noted that he had not participated in clearing the migrant workers listed therein and realized that his signature on the document had been scanned and pasted on it. He subsequently instructed PTW3 to stop the said migrant workers who had already been cleared from travelling to their destination. He communicated to officials of the ministry, whom he asked to halt all immigration activities of the company until further notice.

[10] The migrant workers whom A1 accompanied to the airport together with A1 were handed over to the Aviation Police for further

investigations. A1 was charged with the offence of forgery. A one Tindiwegyi Gorreti (PTW1) a Detective Assistant Superintendent of Police (D/ASP) the officer in charge of the Criminal Investigations Department (CID) of the Aviation Police in Entebbe, wrote to the Permanent Secretary of the ministry, in a letter dated 13th February 2019, requesting his office to verify the authenticity of the document uttered by A1 to immigration officers at Entebbe International Airport.

[11] In a reply dated 18th February 2019, addressed to PTW1, a one Benon Kigenyi of the ministry confirmed that the said document was forged and PTW2's signature had merely been scanned and affixed on it.

[12] Following further investigations, a forensic document examiner confirmed that the letter uttered by A1 was forged.

[13] In his defence, A1 stated that it was A2 who gave him said document. A2 denied the allegation.

LIST OF STATEMENTS

- [14] The prosecution proposes to call the witnesses at the trial:
1. PTW1 -Tindiwegyi Gorret (D/ASP), the OC CID Aviation Police;
 2. PTW2 - Egulu Lawrence, Commissioner Employment Services of the ministry;
 3. PTW3 - Kavuma Robert, a Principal Immigration Officer attached to Entebbe International Airport;
 4. PTW4 - Ekaba Godfrey, an Airport Operations Officer attached to Entebbe Airport;
 5. PTW5 - Mugenyi Gordon, the Managing Director of Middle East Consultants Ltd;
 6. PTW6 - Ayamba Owen, a part-time trainer and vetting officer of Middle East Consultants Ltd;
 7. PTW7 - Detective Constable Acen Annet, a police officer attached to the Aviation Police Station; and

8. PTW8 - Kemigisha Nusura, a police officer attached to the Criminal Investigations Department Headquarters.

[15] The following statements of the accused will also be relied on:

1. PTDW1 - the statement of Kyalimpa Godfrey (A1), the recruitment and vetting officer of Middle East Consultants Ltd; and
2. PTDW2 - the statement of Kunywana Benon (A2), the general manager of Middle East Consultants Ltd.

LIST OF EXHIBITS

[16] The following documents were identified as documents that the prosecution intends to adduce in evidence:

- 1) PTEX1 is a letter dated 12th February 2019, addressed to the Managing Director of the company by Denis Mupeyi on behalf of the Permanent Secretary of the ministry, informing him that the vetting exercise of migrant workers from Middle East Consultants Ltd was carried out and that 227 migrant workers were cleared for work;
- 2) PTEX2 is a letter dated 6th February 2019, addressed to the Chief Executive Officer of Middle East Consultants Ltd by PTW2 on behalf of the Permanent Secretary of the ministry, informing him that the vetting exercise of migrant workers from the company was carried out and that 277 migrant workers were cleared for work;
- 3) PTEX3 is an exhibit record of the Uganda police, dated 13th February 2019, bearing serial number 33621, in respect of a clearance list of 277 migrant workers cleared by the ministry;
- 4) PTEX4 is a letter dated 1st October 2019, addressed to the Acting Director Forensics Services, Uganda Police Force by Nalubega Rose the Acting Commissioner of Police in charge of Sexual and Children Related Offences at CID Headquarters in Kibuli, requesting him to authorise a forensic examination of a

clearance list of 277 migrant workers issued by the ministry, vide Aviation Police CRB 42/2019;

- 5) PTEX5 are 6 specimen signatures of PTW2's obtained on 06/02/19;
- 6) PTEX6 is a letter dated 12th June 2020, addressed to the Director, CID by Chelangat Sylvia, Ag. Deputy Director Forensic Services at the Directorate of Forensic Services, forwarding to the director of CID a laboratory report made by Sebuwufu Erisa a forensic document examiner;
- 7) PTEX7 is a letter dated 13th February 2019, addressed to the Permanent Secretary of the ministry by PTW1, requesting him to verify the genuineness and authenticity PTEX2, which was intercepted from A1; and
- 8) PTEX8 is a letter dated 18th February 2019, addressed to PTW1 of the Aviation Security Police by Benon Kigenyi of the ministry, informing her *inter alia* that:
 - 1) PTEX2 intercepted from A1 is a forged document;
 - 2) The names of candidates presented in the said clearance are not in the standard used the ministry;
 - 3) The signature of Egulu Lawrence seemed to have been scanned and pasted on the document; and
 - 4) Some of the candidates were only cleared by the ministry on 12th February 2019, 7 days after the purported clearance was written and the total number of candidates cleared on 12th February 2019 by the ministry was only 227 and not 277.

[17] PTDEX1 was identified as a document that the accused persons intend to adduce in evidence, and it is an apology letter dated 4th March 2019, addressed to the Permanent Secretary of the ministry by Mugenyi Gordon the Managing Director of the company, in which he is expressing regret over the actions of a one Ayamba Owen a vetting and verification officer of company, for allegedly scanning the signature of PTW2.

REPRESENTATION

[18] At the pre-trial hearing, Ms. Jackline Okui represented the State, while Mr. Caleb Amanya represented the accused persons on private brief.

BURDEN AND STANDARD OF PROOF

[19] It is trite law that the prosecution bears the burden to prove all the elements of the offence charged, except in specific offences, which are not charged in this case. As I have already opined in my previous decisions, particularly in ***Uganda Vs Miria Rwigambwa HCT-00-ICD-SC-0006-2021***, and ***Uganda Vs Nsungwa Rose Karamagi HCT-00-ICD-SC-0007-2021***, the standard of proof in a pre-trial hearing is not stipulated by the *ICD Rules* or in the *High Court (International Crimes Division) Practice Directions, 2011*, which provide for trial procedure in ICD matters. Those instruments do not stipulate any standard that the prosecution must meet in its evidence to make the case ready for confirmation of charges.

[20] I have previously determined that the court would in such circumstances apply is the ICC standard, which is the standard of *substantial grounds to believe* that the accused committed the crimes charged, as provided for by the *Rome Statute in Article 61(7)*. Uganda being a party to the Rome Statute, which has undertaken considerable steps to fulfil its obligations therein, by domesticating the Rome Statute and establishing this court to try international and other serious crimes of a national and transnational nature, the application of relevant provisions of the Rome Statute and of the ICC Rules of Procedure and Evidence *mutatis mutandis*, by this honourable court, in order to fill procedural gaps in the laws establishing this court, is within the

powers of this court, as the government of Uganda is bound by all its obligations under the Rome Statute.

[21] This standard of substantial grounds to believe is lower than the *prima facie case* standard used by our courts to determine whether an accused person should offer a defence to an indictment, after the prosecution has closed its case during a trial. Applying the Rome Statute standard to this pre-trial will not prejudice the rights of the accused or of the prosecution as both parties will still have the chance to present their respective cases and be heard at the trial of the accused.

[22] The concept of “substantial grounds to believe”, was defined in the judgement of the European Court of Human Rights (ECHR) of 7th July 1987 in ***Soering v. United Kingdom, Application No. 14038/88*** (cited in the case of ***The Prosecutor Vs Thomas Lubanga Dyilo, ICC-01/04-01/06-803-tEN 14-05-2007 1/157 SL PT***). The court defined this standard as meaning that “**substantial grounds have been shown for believing**” and also cited with approval, the joint dissenting opinion appended to the judgement in ***Mamatkulov and Askarov v. Turkey***, of 4th February 2005, (***Applications Nos. 46827/99 and 46951/99***) by Judges Bratza, Bonello and Hedigan in which “**substantial grounds to believe**” were defined as “**strong grounds for believing**”.

[23] According to ***Rule 6 of the ICD Rules***, the purpose of the pre-trial hearing is: to prepare the case for trial by examining the facts of the case; marking for identification the evidence of the parties; considering any waiver of objections to admissibility of evidence; the settlement of some or all of the issues between the parties; the determination of the status of victims and witnesses and any special needs of the witnesses, the accused person and the defence witnesses, if any; the making of necessary orders and directions to ensure that the case is ready for trial, and that the trial proceeds in an orderly and efficient manner; the modification of the pre-trial order if the accused admits the charge but interposes a

lawful defence; and consideration of any other matters that will promote a fair and expeditious trial of the case.

[24] The pre-trial hearing under the ICD Rules does not entail hearing of witnesses. See **Rule 12 (10) of SI 40/2016**. Apart from the Summary of the Case, the court is expected to rely on the evidence disclosed to the court under **Rule 21(1) of the ICD Rules**. It must decide on the sufficiency of the evidence available before confirming or dismissing the charges preferred.

[25] It is thus plain to me that for the prosecution to meet the burden of proof above mentioned, it must offer adequate proof that demonstrates its specific allegations. The court must assess as a whole the evidence presented to it for purposes of the pre-trial hearing before deciding whether to confirm charges or not.

DETERMINATION

[26] Before I examine the facts presented in this pre-trial, I should address my mind to the prayers made by Ms. Okui in her submissions, when she asked this court to allow the prosecution amend the particulars of the offences in all counts of the indictment, under **Section 50(2) and (3) of the Trial on Indictments Act, Cap 23**. She prayed that the phrase “50 migrant workers” be replaced with the phrase “4 migrant workers”, because doing so would cure some defects. She did thus without naming any defects in the current indictment.

[27] In his reply, Mr. Amanyana objected to the proposed amendment and prayed that the court dismisses the prosecution’s prayer, as according to him, the said amendment would prejudice the accused persons to whom charges had been read and who had made statements in regard to the allegations made, based on the facts contained in the indictment. He also argued that Ms. Okui’s application was wrongly made before the court, relying on **Rules 13 (1) and (2) of the Judicature (High Court) (International Crimes Division) Rules, 2006 (the ICD Rules)** to support his

argument that an application to amend an indictment should be made formally through a notice of motion. He contended that the court at this stage is only bound to pronounce itself on the charges that the accused persons were originally charged with, basing on the evidence supporting or disputing the said charges and not on new particulars which are not backed up by the evidence on record. He prayed that the court acknowledges the proposed amendment as an admission by the prosecution that it does not have the requisite evidence to prove the charges originally brought against the accused persons and dismisses the prosecution's application to amend the charges.

[28] Rule 13 of the ICD Rules provides:

1) Where the Prosecution, during the pre-trial hearing, seeks to amend charges already confirmed before the trial begins, the Prosecution may make a written request to the pre-trial Judge, and the pre-trial Judge shall notify the accused. (Emphasis is mine).

2) Where the pre-trial Judge determines that the amendments proposed by the Prosecution constitute additional or more serious charges, the pre-trial Judge may allow or disallow the proposed amendments.

[29] Obviously, **Rule 13(1) of the ICD Rules** does not specify that a request for an amendment of the indictment shall be made by notice of motion as averred by counsel Amanya. In fact, the phrase "may make a written request" implies that the prosecution is not mandated to apply in writing for an amendment of charges to be effected. The request can either be written or oral and the practice of the High Court has been making of oral requests for amendment with the defence being given the opportunity to be heard on the prayer for amendment of charges. Under **Rule 13(1) of the ICD Rules**, it is however mandatory for the pre-trial Judge to notify the accused persons of the said prayer for amendment of charges. Because of that requirement, it is good practice for written requests

for amendment of charges to be made by the prosecution to allow the court time to give an accused person adequate notice of such request and a time frame within which to respond.

[30] Ms. Okui did not in this case give this court any opportunity to notify the accused of her prayer, as pleadings were closed when she made her request casually, during her written submissions on confirmation of charges. Also, she did not give any reasons for the proposed amendment, apart from citing **Sections 50(2) and (3) of the Trial on Indictments Act** as the law under which her prayer for amendment was brought. The said section provides as follows:

“Where before a trial upon indictment or at any stage of the trial it is made to appear to the High Court that the indictment is defective or otherwise requires amendment, the court may make such an order for the alteration of the indictment (by way of its amendment or by substitution or addition of a new count) as the court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required alterations cannot be made without injustice; except that no alteration to an indictment shall be permitted by the court to charge the accused person with an offence which, in the opinion of the court, is not disclosed by the evidence set out in the summary of evidence prepared under section 168 of the Magistrates Courts Act”.

[31] This provision requires the party asking for an amendment of the indictment to justify the proposed alterations, a requirement which the prosecution failed to meet in this case. This court heard this matter between 15th September 2020 to 28th April 2021. It is strange that state counsel only realized that the charges needed amendment while preparing her submissions. In its decision on the prosecutor’s request to file an amended indictment of 5th March 1998, the trial chamber in **Prosecutor versus Milan Kovacevic (IT-97-24)** held that to allow what amounts to the substitution of a

new indictment at this late stage in the proceedings would infringe the right of the accused to be informed promptly of the charges against him, thus placing him at a disadvantage in the preparation of his defence. It opined that the only way to redress the unfairness suffered by the accused would be to allow the defence substantial additional time to prepare his defence.

[32] In this case, this court has had no chance to inform the accused persons about the proposed changes in the indictment since the said changes have been brought irregularly when it was in fact expected to rule on whether to confirm charges or not. Without a reason given to justify the amendment, the prayer for amendment, moreover at this stage, is unlawful.

[33] The prosecution is however at liberty to apply to this court for amendment of charges after confirmation of charges, in the event that charges are confirmed, as provided for under **Rule 14(2) of the ICD Rules**. Also, if the case is confirmed for trial, the prosecution will still have a window of opportunity to pray for an amendment of charges to the trial court under **Rule 14 (4) of the ICD Rules**. In the circumstances, I dismiss Ms. Okui's prayer for an amendment.

COUNT 1 - PROMOTING TRAFFICKING IN PERSONS CONTRARY TO SECTION 7(B) OF THE PREVENTION OF TRAFFICKING IN PERSONS ACT, 2009

[34] According to **Section 7(b) of the Prevention of Trafficking in Persons Act, 2009**, the offense of promoting trafficking in persons is defined as follows:

“Any person who produces, prints, issues or distributes, any document or information of any Government agency, which relates to immigration, for purposes of trafficking commits an offence and is liable on conviction...”

[35] The following elements must be established by the prosecution to prove the offence of promoting trafficking in persons in this case:

1. The act of producing, printing, issuing, and distributing any government document relating to immigration;
2. The fact that the purpose of the said act is trafficking; and
3. The participation of the accused.

The act of producing, printing, issuing, distributing any government document relating to Immigration.

[36] From the indictment, the acts of promoting trafficking in persons complained of are that the accused persons produced to immigration authorities a clearance list bearing the reference LE1/74/286/11, herein after referred to as PTEX2 and issued it to PTW4. This fact is not contested. What they each of them contests is the responsibility of making PTEX2.

[37] In his police statement, A1 denies the offence but admits receiving the list in issue from A2, escorting 56 migrant workers to Entebbe airport and handing over the said list to an airport official at the clearance desk. PTW3 notified A1 that PTEX2 was a forgery.

[38] PTW4 acknowledges receiving PTEX2 from A1. The migrant workers in the said document were supposedly cleared by PTW2, a commissioner of the ministry, which is charged with the responsibility of clearing migrant workers for their deployment abroad as stipulated in ***Regulation 49 of the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005***.

[39] PTEX2 the document uttered to immigration officers by A1 is an immigration document purporting that the Permanent Secretary of the ministry had vetted 277 migrant workers and cleared them to work in Dubai, when that was in fact not the case. Thus, the proposed evidence of the prosecution implicates A1 in uttering PTEX2 to immigration officers.

[40] Regarding who produced PTEX2, the evidence of PTW2 is that he did not participate in the making of PTEX2, and he confirmed the fact that it was a forged document. That alone proves that A1 had in his possession a forged document, which was not produced by the ministry as alleged. A1 claims in his defence that he got it from A2. A2 in his own defence, denies that he gave A1 the said document, but states that he was aware that migrant workers were supposed to travel to the United Arab Emirates on 12th February 2019 through Entebbe Airport and that it was A1's responsibility to do the relevant paperwork and transport them to the airport. He is the general manager of the company who from his own statement is in charge of the day-to-day running of the company.

[41] Strangely, PTW5 blames PTW6 for the forgery. The former is the managing director of the company and his roles, from his own statement, include ensuring that all migrant workers are well documented to travel. According to him, A1 and PTW6 are responsible for the clearing and recruitment of migrant workers. His evidence on PTW6's involvement however, is mere hearsay, since he never gave the DPP the evidence he allegedly got out of his private investigation of PTW6's involvement in forging PTEX2. Had he done so, the DPP would not have hesitated to charge PTW6. In fact, I think that he is complicit in the said forgery, being the person in charge of the documentation of all migrant workers who are processed by the company.

[42] On his part, PTW6 denies participating in the said forgery and confirms A1's participation in the vetting of the migrant workers in PTEX2. The prosecution is relying on the evidence of PTW6 in this case.

[43] As for A2, from his own statement denying participation in the offences charged, he admits knowledge of the fact that A1 was transporting migrant workers to the airport on 12th February 2019, which implies that he came to know that fact by virtue of his position in the company. Notably, day is the same day that PTEX1,

which is the authentic letter clearing 227 migrant workers some of whom A1 accompanied to the airport was made. How could the company secure travel documents, including air tickets for the 50 migrant workers whose clearance to travel, the ministry had not yet granted? Both accused persons and PTW5 knew this fact by virtue of their responsibilities in the company. The circumstantial evidence on record indicates that the accused person knew where PTEX2 originated from. In the result, substantial grounds to believe have been established by the prosecution that the two accused produced and distributed PTEX2.

For the purpose of trafficking

[44] The offence of trafficking in persons is defined in **Section 2(r) of the Prevention of Trafficking in Persons Act, 2009** as follows:

“trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

[45] The question that begs an answer under this count of the indictment is: Has the prosecution adduced evidence to prove that any of persons on PTEX2 were being trafficked to Dubai?

[46] **Section 3 of the Prevention of Trafficking in Persons Act** provides:

(1) A person who-

(a) recruits, transports, transfers, harbours or receives a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or

receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;

(b) recruits, hires, maintains, confines, transports, transfers, harbours or receives a person or facilitates the aforementioned acts through force or other forms of coercion for the purpose of engaging that person in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude, death bondage, forced or arranged marriage; commits an offence and is liable to imprisonment for fifteen years.

[47] The following elements must be established by the prosecution to prove that the accused were trafficking in the 50 migrant workers:

- 1) The **ACT** of recruiting, harbouring and transporting migrant workers by the accused persons;
- 2) The performance of the above acts by **MEANS** of fraud and deception; and
- 3) For the purpose of exploitation of 50 migrant workers by the accused persons

The act of recruiting, or harbouring or transporting migrant workers by the accused persons.

[48] The prosecution has through the statements of PTW5 and PTW6 provided evidence to show that A1 was the officer in charge of recruiting and vetting persons who intended to work abroad. The fact that A1 transported migrant workers who appeared on PTEX2 to the airport establishes that he participated in the recruitment and transportation of the said workers.

[49] As for A2, as stated above, he admitted knowledge that some migrant workers were supposed to travel on 12th February 2019 and stated that it was A1's duty to transport them.

[50] Mr. Amany submitted that there was no evidence adduced by prosecution to show that the migrant workers in issue were recruited without their consent or under duress. I agree with him entirely. This element is thus not established at all.

Performance of the above acts by means of fraud and deception

[51] No statements were obtained from the migrant workers who were supposedly trafficked. Those statements ought to have been obtained from the purported victims of attempted trafficking to establish this element. The evidence adduced by the prosecution shows breaching government requirements in the processing of migrant workers through falsifying an immigration document but not attempts at trafficking. In the result, the prosecution has failed to adduce evidence that A1 and A2 recruited the migrant workers by means of fraud or deception as alleged. The element of means remains unestablished.

For the purpose of exploitation of 50 migrant workers by the accused persons

[52] Since the prosecution never obtained evidence from the migrant workers in issue, it has fallen short of establishing this element as the purpose of recruiting those workers remains unknown. In the result, the prosecution has proved this element to the required standard.

Participation the Accused

[53] It goes without saying that the prosecution has failed to establish this element offence as well. This count has not been proved to the required standard and is therefore dismissed.

COUNT 2 - PROMOTING TRAFFICKING IN PERSONS CONTRARY TO SECTION 7(C) OF THE PREVENTION OF TRAFFICKING IN PERSONS ACT, 2009.

[54] The prosecution claimed that the accused persons tampered with and falsified PTEX2, a government document relating to immigration regulations or requirements and purported the said document to have been issued by the ministry, whereas not.

[55] **Section 7(c) of the Prevention of Trafficking in Persons Act, 2009** provides:

“Any person who tampers with, or falsifies any government or government agency’s document or information relating to the immigration regulations or requirements commits an offence ...”

[56] The ingredients of this offence are:

- 1) The fact of tampering with or falsifying a government document;
- 2) The fact that the document relates to immigration regulations or requirements; and
- 3) The fact of participation of the accused persons.

Tampering with or falsifying a government document.

[57] The prosecution is relying on the evidence of PTW2 who states that while he was at the airport enroute to the Philippines, he came across PTEX2 at the immigration counter and realised that his signature had been scanned and pasted on it. Migrant workers listed on the said document were purportedly cleared by him and yet he had not participated in the process of clearing them. He subsequently informed PTW3 and PTW4 that the signature on the said document was not his. The migrant workers were stopped from travelling. He informed officials at the ministry to halt all the activities of the company.

[58] On this ingredient of the offence, Mr. Amanyana argued that there was no forgery, since PTW4 in his statement stated that he verified the names, passport numbers and the date of clearance on PTEX2 with the list that he had received from ISO/JIC and found out that they were corresponding.

[59] PTW7 the investigating officer attached to the Aviation Police Station states that when she inquired from a staff member of ISO/JIC about the procedure for clearing migrant workers, he explained that the officers from ISO cannot ascertain the authenticity of the Permanent Secretary's signature on the clearance lists brought by the company agent. She further stated that the Deputy Chief Liaison Officer explained to her that when the clearance lists are taken to the ministry, some workers are removed from the list for not fulfilling immigration requirements, which explains why the list of members in PTEX1 reduced to 227 migrant workers from the original 277 migrant workers whose clearance was sought.

[60] I find it strange that the list sent to the airport officials by ISO/JIC matches with PTEX2, which is a forged document. PTW7's statement that the list forwarded from ISO/JIC is handed in by a company agent, contradicts the statement of PTW4 who states that the list from ISO/JIC is verified by an ISO agent in the ministry, before it is forwarded to the Airport Operations Officer. Since this court has not heard the witnesses, which witnesses have to be cross-examined on their claims, it cannot at this point make a conclusion on those apparently contradictory police statements. Also, one is left wondering what the role of ISO/JIC is, if they cannot establish the forgery of documents sent to them for verification, by say, calling the issuing officer to confirm his signature on the document.

[61] That fact notwithstanding, I find that the evidence of PTW2 is corroborated by PTW1, PTW3, PTW4, PTW7, PTW8 and supported by exhibits PTEX1, PTEX2, PTEX6 as well as PTEX8, which exhibits respectively are: the original clearance list from the ministry; the alleged forged clearance list; the report of the forensic document examiner; and the letter of the ministry addressed to PTW1. That evidence confirms that PTEX2 is a forged document, which is sufficient in my view, to establish the fact that the document in question - PTEX2 is a falsified document.

The fact that the document relates to immigration requirements.

[62] ***Regulation 49 of the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005*** provides:

“The administration shall act as a one-stop processing centre to provide expeditious clearing system for migrant workers and facilitate their deployment abroad”.

[63] The ‘administration’ is defined in ***Regulation 3 of the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005*** to mean the external employment unit of the ministry responsible for employment. It is clear from the above-cited provisions that it is only personnel of the external employment unit of the ministry who are charged with the responsibility of clearing migrant workers for their deployment abroad.

[64] PTEX2 is a list of 277 migrant workers from the company who were said to have been vetted and cleared by PTW2, who is a commissioner at the ministry. Similarly, PTEX1, which is the authentic list, is a list of 227 migrant workers from the company who were cleared by Denis Mupeyi, an official of the ministry. It is the direct duty of both PTW2 and Denis Mupeyi to vet and clear migrant workers for deployment abroad.

[65] In effect, the evidence adduced by PTW2, PTW3, PTW4, PTW7 supported by PTEX1, PTEX2 and PTEX8 shows that PTEX2 was not the authentic list that was required at the airport for the migrant workers to travel abroad for deployment. This document, uttered to immigration officers by A1 is an immigration document purporting that the Permanent Secretary of the ministry had vetted 277 migrant workers and cleared them to work in UAE, when that was in fact not the case. This element has established by the prosecution to the required standard.

The fact of the participation of the Accused Persons.

[66] Ms. Okui submits that it was the accused persons who committed the offence, while Mr. Amanyia pointed out in his submissions that PTW5's statement implicates Ayamba Owen (PTW6) for falsifying PTEX2.

[67] In his police statement, PTW5 avers that although A1 was the recruitment and vetting officer of the company, he had found out through his own independent investigations that it was PTW6 who forged the said list, because he usually helped A1 with ICT related matters during recruitment processes. He also states that as a result of the said forgery, he terminated the services of PTW6. I have already found above, the statement of PTW5 is hearsay and diversionary as it now stands, as no proof of PTW6's forgery of PTEX2 was provided to the relevant authorities. Also, from the evidence of PTW2, the alleged termination of PTW6 is a farce as the company later on sent PTW6 to meet A2 and deliver money to him for compensating some of the company's clients. In any case, PTW6 in his statement asserts that he is still a part time employee of the company.

[68] Whatever the case, the evidence of the rest of the prosecution witnesses directly involved in the discovery of forged document implicates A1 in this offence and A1 is directly involved in processing the company's migrant clients for employment abroad.

[69] A2 denies the offence, but acknowledges the fact that he knew that A1 was supposed to transport some migrant workers to the airport on 12th February 2019, the same day that PTEX1, the authentic travel document in which some of those migrant workers listed in PTEX2 was made by the ministry. His acknowledgement as I have found above confirms that the fact that he was aware that the said migrants were fully ready to travel and yet the ministry had not yet issued documents of their travel. Preparations for their travel were concluded before the ministry authorised them to travel. By virtue of their positions in the company, A2 supervised A1, being the general manager of the company and that is how he must have

come to know that A1 was accompanying migrant workers to the airport on that day. He cannot deny knowledge of the documentation workers who were allowed to travel that day, as the main business of the company revolves around ensuring proper documentation of their clients whose labour is being exported abroad.

[70] In the circumstances, I find that the prosecution has established this element to the required standard for confirmation of charges.

COUNT 3 - PROMOTING TRAFFICKING IN PERSONS CONTRARY TO SECTION 7(D) OF THE PREVENTION OF TRAFFICKING IN PERSONS ACT OF 2009.

[71] In this count, it is the prosecution's case that the accused persons uttered a false document relating to immigration for migrant workers.

[72] **Section 7(d) of the Prevention of Trafficking in Persons Act** provides:

"Any person who utters or aids any person to utter any false document relating to immigration for the purpose of facilitating that person's entry or stay in Uganda, or exit from the country commits an offence".

[73] The ingredients of the offence are as follows:

- 1) The fact that the accused persons uttered a false document or aided another person to utter a false document; and
- 2) The fact that the said document was uttered for the purpose of facilitating the exit of persons from Uganda.

The fact that the accused persons uttered a false document

[74] As I have already established above, the evidence adduced by PTW2, PTW5, which is supported by PTEX1, PTEX2, PTEX6, PTEX8 and PTDEX1 demonstrates that PTEX2 is a false document.

[75] The word utter is not defined by the Prevention of Trafficking in Person's Act. However, **Section 2 of the Penal Code Act, Cap 120** defines it as follows:

"Utter" means and includes using or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with or act upon the thing in question".

[76] By uttering the said document to PTW4, A1 expected all the migrant workers on the said list to be allowed to travel abroad.

[77] Again, as per my conclusion above, A2's admission of the fact that migrant workers were supposed to travel on 12th February 2019 accompanied by A1 and his position as general manager of the company, deprive him of innocence in the fact of uttering of PTEX2, as none of those clients of the company scheduled to travel on that day had received clearance from the ministry and yet their travel documents, including tickets had been processed by the company before that date. Both A1 and A2 knew this fact by virtue of their roles and responsibilities in the company. The evidence disclosed by the prosecution is sufficient to establish this element against the accused persons for purposes of confirmation of charges.

The fact that the said document was uttered for the purpose of facilitating the exit of persons from Uganda

[78] As the ministry is the one-stop processing centre that clears migrant workers and facilitates their deployment abroad, the uttering of PTEX2, which was purportedly signed by PTW2, to PTW4, was obviously done to facilitate the exit of the 56 migrant workers on the said list, from Uganda.

[79] The proposed evidence to be presented by PTW2, PTW3, PTW4, PTW5, PTEX7, PTW8 together with PTEX1, PTEX2, PTEX6 and PTEX8 sufficiently establishes this element.

COUNT 4 - ATTEMPT TO TRAFFIC IN PERSONS CONTRARY SECTION 8(A) (B) AND (C) OF THE PREVENTION OF TRAFFICKING IN PERSONS ACT, 2009.

[80] It is alleged that on 12th February 2019 at the Departures Entebbe International Airport Wakiso District, the accused persons attempted to traffic 50 migrant workers.

[81] **Section 8 of the Prevention of Trafficking in Persons Act** provides:

“A person who—

(a) attempts to traffic in persons;

(b) conspires with another person to do an act of trafficking in persons;

(c) recruits, transports, transfers, harbours, provides or receives a person for domestic or overseas employment or training or apprenticeship with the intention of trafficking; ...

commits an offence and is liable on conviction to a fine, not exceeding three thousand currency points or to a term of imprisonment not exceeding three years or both...”

[82] Ms. Okui submitted that the evidence of possession and presentation of PTEX2 by A1 to Ekaba Godfrey as well as the fact that he transported the migrant workers to the airport shows that he attempted to traffic the said migrant workers. She insisted that since A2 was the general manager of the company, he was aware of what was transpiring and condoned or acquiesced to it.

[83] Counsel Mr. Amanyia submitted that this count of the indictment is a failed attempt to initiate the offense of trafficking of persons. According to him, there has to have been an act committed by the accused persons coupled with the intent of trafficking, in order for an accused to commit the offence of attempting to traffic in persons. He asserted and rightly so, that the prosecution had failed to adduce evidence that showed that the accused persons had committed the offence of attempting to traffic.

[84] An attempt is defined in **Section 386 (1) of the Penal Code Act**. It provides:

“When a person, intending to commit an offence, begins to put his or her intention into execution by means adapted to

its fulfilment, and manifests his or her intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence, he or she is deemed to attempt to commit the offence”.

[85] It is clear from this section that for the offence of attempting to traffic to be proved, there should be clear evidence that it was the accused persons’ intention to traffic the migrant workers in this case. I have already found above that no such evidence has been produced by the prosecution. As a result, the prosecution has not proved this count of the indictment to the required standard. It is thus dismissed.

COUNT 5 - FORGERY CONTRARY TO SECTION 349 OF THE PENAL CODE ACT.

[86] It is alleged that the accused persons forged an official document PTEX2 purportedly signed by PTW2 from the ministry.

[87] The offence of forgery is defined in **Section 342 of the Penal Code Act**, which provides:

“Forgery is the making of a false document with intent to defraud or to deceive.”

[88] It is trite that the elements of forgery are:

- 1) Making a false document;
- 2) The intent to defraud or deceive; and
- 3) The participation of the accused.

Making a false document

[89] Ms. Okui submitted that the statements of PTW4, PTW2 and PTW5 supported by PTEX6 and PTEX8 show that PTEX2 is a false document. Mr. Amanya in his reply submitted that PTEX1 and PTEX2 are similar in content, names and number of immigrant workers save for the arithmetical errors in its numbering where PTEX2 has 277 migrant workers instead of 227. He contended that PTW4 in his statement admits that the PTEX2 is the same list sent by ISO/JIC and therefore the said document should not be questioned since the

prosecution had not adduced evidence to show that the intelligence agencies also had a forged clearance list of the said migrant workers. According to him, the fact that ISO/JIC and the company had a similar list of clearance of migrant workers disproves the allegations of forgery. He further contended that PTW5's statement is that it was PTW6 who altered the signature of PTW2 and not the accused persons.

[90] Mr. Amanyia is pushing the narrative that there is a mere minor error on either PTEX1 or PTEX2. This is not the case. On examining PTEX1 and PTEX2, I find that PTEX1 is dated 12th February 2019 and is addressed to the Managing Director of the company. It contains a list of 227 migrant workers. PTEX2 is dated 6th February 2019 and is addressed to the Chief Executive Officer of the company. It contains a list of 277 migrant workers. Moreover, I cannot buy Mr. Amanyia's argument that the discrepancy between the two documents was caused by an employee who messed up with numbers on PTEX2, as he does not explain why PTEX1 and PTEX2 were addressed to different persons, on different dates and signed by different officers, namely Denis Mupeyi and PTW2 respectively. Furthermore, a comparison of PTEX1, which is the authentic list of migrant workers cleared by the ministry to work in UAE and PTEX2, which is the forged clearance list, exposes the fact that the names of four people on the latter list namely: Abigaba Innocent, Muhumuza Julius Masengesho, Ntale Joseph and Ssenyonjo Gerald are not on PTEX1.

[91] Additionally, Benon Kigenyi an official of the ministry in PTEX8 clearly explains that PTEX2 is not in conformity with the standards of the ministry, and that the signature of PTW2 appeared to have been scanned and pasted on PTEX2 and also that the total number of candidates shown in PTEX1 were only cleared on 12th February 2019, which was seven (7) days after their having purportedly been cleared on 6th February 2019.

[92] Again, the forensic document examiner's report admitted and marked as PTEX6 further confirms the fact that PTEX2 is indeed a forged document.

[93] Most importantly, PTW2 who is purported to have signed PTEX2, asserts that he did not participate in clearing the migrant workers listed on the said document.

[94] In agreement with Counsel Okui, it is my view that the statements of the prosecution witnesses and exhibits PTEX1, PTEX2, PTEX6, PTEX8 and PTDEX1 establish that PTEX2 is a false document to the required standard.

[95] Regarding Mr. Amanya's further argument that PTEX2 was the same as the list forwarded by the JIC/ISO and can thus not be a forgery, the prosecution has not availed enough evidence to this court on the subject. PTW7 states in her police statement that she was informed by the Deputy Liaison Officer that after vetting is completed by the ministry, the number of persons in the list handed to security organisations for vetting reduces due to failure by some applicants to meet the necessary requirements for immigration. This evidence will remain hearsay evidence if prosecution does not produce a direct witness of that fact. All the same, this element has in my view been established to the required standard.

The intent to defraud

98) Ms. Okui submitted that the fact that A1 transported the migrant workers to the airport and presented PTEX2 to an immigration official at the airport is enough to show that it was his intention to defraud. I agree, that the aim of making PTEX2 was to get the additional four persons on it to leave the country, purporting that they had been cleared on 5th February 2019, the same date as the authentic migrant workers on the authentic list (PTEX1) were properly cleared by Denis Mupeyi of the ministry.

99) The prosecution's case from the statements of PTW2, PTW3 and PTW4 considered with supporting exhibits PTEX6 and PTEX8 demonstrates that the makers of PTEX2 intended to defraud immigration personnel. This element has been established to the required standard.

Participation of the accused

100) As already mentioned, A1 denies forging PTEX2 but admits to transporting the migrant workers who were scheduled to travel to UAE to the airport on 12th February 2019 and presenting PTEX2 to the airport officials upon his arrival. His statement concerning his accompanying of migrant workers to the airport is supported by the statements of A2, PTW2, PTW3, PTW4, PTW7 and PTW8 and exhibits PTEX1, PTEX2, PTEX6 and PTEX8. I have already explained in my discussions on counts 2, 3 and 5 that the prosecution has established the participation of both A1 and A2 in the fraudulent making and utterance of PTEX2 to the required standard.

101) Consequently, this court finds that the prosecution has provided sufficient evidence to this court that establishes substantial grounds to believe that A1 and A2 are responsible, for the crimes charged in counts 2, 3 and 5 of the indictment. A1 and A2 are for that reason committed to the Trial Court on the said charges as confirmed.

102) Counts 1 and 4 stand dismissed for reasons already given above.

I so order.

Susan Okalany

JUDGE

4th October 2022