

UGANDA / JUDGMENT

Bwambale v Uganda (Criminal Appeal No. 11 of 2016) [2017]

UGHCACD 2 (15 June 2017)

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Criminal Appeal No. 11 of 2016

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THE REPUBLIC OF UGANDA**In the High Court of Uganda at Kampala****(Anti-Corruption Division Kololo)****Criminal appeal no. 11 of 2016****(Arising from criminal case no: 133-2012)****Bwambale Lawrence::::::::::::::::::::::::::::::::Appellant****versus****Uganda::::::::::::::::::::::::::::::::Respondent**

Judgment

Before Hon. Lady Justice Margaret Tibulya**This is a judgment on an appeal arising from the judgment and orders of the chief Magistrate at Kololo.**

The accused was charged and convicted of Embezzlement, Abuse of office and on six counts of forgery.

The appellant laid six grounds of appeal as follows;

1. The learned trial magistrate erred in law and fact when she failed to properly evaluate the evidence on record and as a result she came to a wrongful and erroneous decision.
2. The learned trial magistrate erred in law when she convicted the appellant for the offence of embezzlement without any iota of evidence to support the charge.

3. The learned trial magistrate erred in law when she descended into the arena and considered evidence not adduced by witnesses thereby coming to a wrong conclusion.
4. The learned trial magistrate erred in fact when she held that the receipts tendered as prosecution exhibits 4, 5, 6, 7, 14, 15, 16, and 17 were forged without evidence at all.
5. The learned trial magistrate erred in law and in fact when she convicted the appellant on counts of forgery in an omnibus way without analyzing evidence in respect of each count.
6. The learned trial magistrate erred in law when she failed to consider the inconsistencies in the prosecution evidence which affected the entire prosecution case thereby coming to a wrong conclusion.

This being the first appeal the Court has a duty of re-evaluating the evidence and come to its own conclusion bearing in mind that it did not have the opportunity to see the witnesses testify, see **Kibuuka Vs Uganda, (2006) 2 E. A 140**.

I note that other than ground six, in the rest of the grounds, the appellant's complaints though crafted in differing ways, rotate around the issue of the sufficiency or insufficiency of the state evidence. I will therefore proceed to re-evaluate the evidence with a view to establishing whether it sustains the charges.

Burden and standard of proof.

The state bears the burden of proving the allegations beyond reasonable doubt. The accused person are not under any obligation to prove his innocence. Where any doubt exists in the prosecution case it should be resolved in favor of the accused person, see **Kiraga V Uganda (1976) HCB 305**).

The state evidence was that the appellant was an employee of the URA. **Pw4 (Okello John Eludai)** operates a Rice and Posho mill in Pallisa. Around 7th September either 2012 or 2011, the accused demanded tax arrears of 2.1million shillings from him. He did not know the payment procedure, and so on each of the 11/9/2012 and the 18/9/2012 he sent one **Acan Joan** with shs 500,000/= to take to URA as payment for income tax. On each of those days **Acan** took the money and returned with receipts (**Exhibits P.6 and 7**) which she said were issued to her by Bwambale.

The appellant subsequently issued another demand notice of about 5million for income tax and surcharge to **Pw4 (Okello)** and threatened to close the Mill if was not paid. **Pw4 (Okello)** was advised that the payments were fraudulent. The appellant wrote to the Global Trust Bank and **Pw4's** bank account was frozen and **shs 1.900.000/=** was removed. **Pw4** complained to the URA Commissioner General over the appellants conduct (**exhibit P.8**).

Pw10 (D/IP Nambwere Agnes) recovered two receipts and two demand notices which she analyzed and found that the date of issue of receipt and the date of issue of assessment were inconsistent.

* Receipt BXG 6170226 (**Exhibit P.6**) was issued on 11/9/2011 yet the Bank payment Advise form was issued on 13/9/2011.

* Receipt BXG 6170300 (**exhibit P.7**) was issued on 18/9/2011 yet the bank Advise payment was issued on 23/9/2011.

* Receipt No. 6170491 (**P. Exh.5**) was issued on 29/10/2011 yet the bank advice payment form is dated 31/10/2011.

The assessment had to be issued first before the money was paid to the bank, but in this case it was the other way round.

The appellant (**Bwambale**) was the one who used to prepare receipts and pass them over to **Margaret Nabulumbi (Pw7)** for recording in Issued-receipt register in which tax payers would sign for them. Pw10 recovered a bank statement for relevant period January and the cash book which bore evidence of payment of taxes for Pallisa station.

She compared the Issued-receipt register, the Bank statement and the cash book and established that;

* a receipt that was issued to one **Hajji Soyigi** for shs 200,000/= was not reflected in the cash book and in the bank statement.

* Some receipts that were issued to **Cotifield, Pavel** and **Igor Cozmenko** were not reflected in the cash book (**P. Exh.21**) and in the bank statement (**P. Exh.20**).

* The name in receipt No. **BXG 6170226 (P. Exh.6)** is John Okello c/o Rossam Millers. It is for 500,000/= and is dated 11/9/2011, but in the cash book (**Exhibit 21**) that receipt was issued to Balkutani John for 40,000/= who is shown to have banked the money (as per **P. Exh.20**) on 12th September 2011.

* The bank statement was tallying with the cash book but the amount in receipt that was issued to **John Okello** was not reflected in the bank statement or cash book.

* Receipt No. **BXG 6170300 (Exh. P7)** was issued to Okello John of Passam Millers for 500,000/= but in the bank statement the same receipt is in the names of Kirya Abdallah for shs 50,000/= and the cash book shows that Kirya Abdallah was issued the receipt for 50,000/=.

* Receipt No. **BXG 6170298 (Exh. P.17)** was issued to Cottfield E. A. Limited for shs 464,000/= but in Exhibit P. 21 the receipt is in the names of Kayanja Robert for shs 50,000/= who is shown in the bank statement to have paid shs 50,000/=.

According to the register (**Exh. P11**);

* John Okello T/A Passam Millers was issued receipt No. is 6170226 for 500,000/= on 14/9/2011,

* Cottfield East Africa was issued Receipt No. 6170297 for shs 464,000/= on 27/9/2011,

* Okello John Passam was issued receipt No. 6170300 for 500,000/=, and,

* Victory Secondary School was issued receipt No. 6170491 for shs 802,500/= on 1/11/2011, **but the money paid was not banked.**

Pw2 (Mugalya George) and **Pw3 (Kansiime Immaculate)** testified that on the 31st October 2011 the accused verbally demanded for PAYE of UGX 802,500= from their school and cash payment was affected to him. He acknowledged it by stamping on the requisition and payment voucher with a URA office stamp. He issued a URA receipt No. **BXG 6170491**, for the money (**ExhP.5**).

Pw5 (Haji Karim Soyigi)'s evidence as corroborated in material particulars by that of **Pw6 (Okoboi Justine)** and **Pw7 (Nabulumbi Margaret)** was that in January 2012, the appellant demanded for shs 4million in taxes from him. Pw5 gave him shs 600.000/- which was not receipted and on 8/2/2012 he paid shs 200,000/= which was receipted (**BXG 62074SB - Exhibit P.14**). **Pw6 (Okoboi Justine)** recorded the receipt number and details in the register book (**exhibit P11**).

Pw8 (Odoi Bernard) of URA testified that Receipts of serial numbers 1670001 to 170,500, 6207001 to 6207500 and 625501 to 0254000 were issued to Pallisa, but some of the ones he was shown by the investigators were not falling in those ranges. A photocopy of the URA strong Room Receipt issuing Register for the period 2010 to July 2011 is **Exhibit P.12**.

Pw9 (Liko Yeko) a cashier of M/s Cote field East Africa (U) Limited used to effect payments of PAYE and Withholding Tax to the appellant who would issue him with receipts some of which are;

1. Four receipts for director **Igor Kuzmenko**;

* BXG 6253536 for shs 9,870,000/=

* BXG 6170149 for shs 2,700,000/=

* BXG 6170388 for shs 6,600,000/=

* BXG 5691931 for shs 2,020,000/=, together marked **P. Exh.15**.

1. A batch of four receipts issued to **Pavel Kuzmenko**,

* BXG 5691932 for shs 2,020,000/=

* BXG 6253535 for shs 6,270,000/=

* BXG 6170150 for shs 2,700,000/=

* BXG 617037 for shs 4,200,000/=, together marked **P. Exhibit P.16**.

1. Fourteen receipts issued to **Cotifield East Africa (U) limited**,

* BXG 5959773 – Shs 464,000/=

* BXG 5691933 – shs 464,000/=

* BXG 5691807 – shs 13,417,792/=

- * BXG 5691758 – shs 464,000/=
- * BXG 5691736 – shs 464,000/=
- * BXG 5571416 – shs 464,000/=
- * BXG 5691501 – shs 464,000/=
- * BXG 6170102 – shs 464,000/=
- * BXG 6170103 – shs 464,000/=
- * BXG 6170104 – shs 464,000/=
- * BXG 6170298 – shs 464,000/=
- * BXG 6207441 – shs 464,000/=
- * BXG 6253551 – shs 464,000/=
- * BXG 62535550 – shs 464,000/=, all marked **exhibit P.17**.

His further evidence was that the signatures in **P. Exh.17** receipts are not the same but the names are **Bwambale Lawrence**.

The appellant testified that he used to liaise with the bank to print receipts which would later be issued by tax payer services. In 2009 an automated system, the Electronic cash book (**ECB**) which makes automatic posting and generates its own records was introduced to handle cash office transactions. It is an online program supervised by IT officers in Kampala and monitored by the Revenue Centre. Under the **ECB** they only used to enter raw data as received from the bank. After capturing the information the receipt would be generated and printed. They would not do posting at the station.

They would receive;

- * The Till sheet containing the list of all cleared bank forms,
- * Pink copies of Bank payments, and
- * A Bank statement.

They would print the receipts and the daily cash books (summary of daily transactions) and attach the cash book and send them to the tax payer service desk for separation and distribution to the various destinations.

In 2009 when the manual system were abolished, the manual register was replaced by the Till cash book. The receipts were printed because it was more accurate. With the introduction of the new system there was no need of the Receipt-issued-Register (**Exhibit P. II**). A copy of the Cash Book Till Sheet, Bank payment form and daily cash book are **Exhibit D.1**.

On 7/9/2011 he and **Okoboi Justine (Pw6)** visited **John Okello (Pw4)** and served him a final reminder dated 7/9/2011. That meant that other reminders had earlier been issued. That day Okello gave them his file with receipts similar to those issued by URA. Based on that information they reconciled on the same document. **Exhibit P.9** shows that reconciliation was done on 7/9/2011 meaning that the figures which were being reconciled were those that had been paid prior to 7/9/2011. Anything that happened after 7/9/2011 cannot be part of **P. Exh.9**. He did not go back to Okello after that reconciliation and neither did Okello pay the amount payable.

In December 2011 they compiled all tax payers that were due and forwarded them to the Commissioner Domestic Taxes where recovery by 3rd Party Agency Notice issue to Global Trust Bank was made against Okello on 23/01/2012. This was what sparked off Okello's complaint because he thought the transaction was made by the appellant.

Count 1- embezzlement.

The prosecution had to prove that;

- * The accused was an employee of URA,
- * He stole the 70,378,051/= in issue,
- * The money was the property of his employer,
- * He had access to it by virtue of his office.

That the appellant was an employee of the URA was not disputed. The learned magistrate rightly found that issue to have been proved.

Whether he stole the 70, 378,051/=.

The above money is the total in exhibits **P5, 6, 7, 14, 15, 16** and **17**, the receipts allegedly issued by the appellant to various tax payers.

Pw2 (Mugalya George) and **Pw3 (Kansiime Immaculate)** testified that they gave the appellant 802,500/= and he issued them with URA receipt (**Exh P.5**). The receipt indeed bears his names as the receiving cashier.

Pw4 (Okello) testified about the 1,000,000/= in **exhibits P. 6** and **7** maintaining that he gave it to the appellant. The register (**Exh. P11**) evidences the fact that the two receipts were issued to him (**Okello**) and the two receipts indeed bear the names of **Bwambale Lawrence** as the issuer, which galvanizes **Pw4 (Okello)**'s evidence the appellant received the money. The appellant maintained that Okello complained against him only because he thought that he was the one who had removed his 1.9m/= from his bank account.

The reason why Okello complained is not a matter for speculation. He explained that he complained because the appellant had extorted money and was trying to extort more from him.

Exhibit P14 is one receipt for 200,000/= which **Pw5 (Haji Karim Soyigi)** said he gave the appellant. His evidence was corroborated in material particulars by that of **Pw6 (Okoboi Justine)** and **Pw7 (Nabulumbi Margaret)** that on 8/2/2012 he paid shs 200,000/= to the appellant who gave him a receipt **BXG 6207491 (Exhibit P.14)**. **Pw6 (Okoboi Justine)** recorded the receipt number and details in the register book (**exhibit P11**). The receipt indeed bears the appellants names as the receiving cashier.

Exhibit P15 are receipt Nos. **BXG 6170149** for shs 2,700,000/=, **6170388** for shs 6,600,000/=, **5691931** for shs 2,020,000/= and **6253536** for shs 9,870,000/= totaling to **21,190,000/=**,

Exhibit P16 are receipt Nos. **BXG 6170150** for shs 2,700,000/=, **6170387** for shs 4,200,000/=, **5691932** for shs 2,020,000/= and **6253535** for shs 6,270,000/=, totaling to **15, 190, 000/=**.

Exhibit P17 are receipt numbers Nos. **BXG 5571416**, **BXG 569501**, **BXG 5691736**, **BXG 5691758**, **BXG 5691807**, **BXG 5691933**, **BXG 5959773**, **BXG 6170102**, **BXG 6170103**, **BXG 6170104**, **BXG 6710298**, **BXG 6207441**, **BXG 6253551** and **BXG 6253550** totaling to **31, 995,551/=**.

Pw9 (Liko Yeko) testified that when he paid the monies reflected in the above receipts to the appellant he was issued with the receipts. The receipts indeed bear the appellants names as the receiving cashier.

I note that though receipt Nos. **BXG 6170383** and **BXG 6170382** are part of those queried no evidence was adduced to sustain the complaint over them. They were not even exhibited in court. I excluded them in the total computation of the amount allegedly received by the appellant.

The appellant denied having received the money in issue. He maintained that under the new automated system he could not have accesses the money. This evidence is in tandem with **Pw10 (Nambwere)**'s about the tax payment procedure which is that tax payers are supposed to deposit the money in the URA bank account.

I noted that all the witnesses who testified that they gave the appellant the money knew him very well. He did not deny that fact. There is no plausible reason they could tell lies against him. Moreover their evidence was corroborated by the fact that the receipts bear the appellants names as the receiving cashier. For the money received under **Exhibit P14**, **Pw5 (Haji Karim Soyigi)**'s evidence was corroborated in material particulars by that of **Pw6 (Okoboi Justine)** and **Pw7 (Nabulumbi Margaret)** that **Pw5** paid the shs 200,000/= to the appellant who gave him a receipt No. **BXG 6207491 (Exhibit P.14)** which **Pw6 (Okoboi Justine)** entered in the register. The appellant's co-workers had no reason to incriminate him. Moreover he did not put his account to the witnesses to give them an opportunity to agree or disagree with it. This must be construed negatively, especially since some of them were his co-workers who knew the system and could have been useful to support his account about the procedure of payment of Taxes. I did not believe his account of events. I am satisfied that the appellant received the monies reflected in the receipts comprised in exhibits P.5, 6, 7, 14, 15, 16 and 17. The total received under exhibits 14, 15, 16 and 17 is **Ugx 57,832,292/=** and not **Ugx70, 378,051/=** since two receipts which were not tendered in court are excluded from the computation.

In an embezzlement charge theft of the item in issue must be proved and to prove theft asportation, which is the act of taking away or removing the item must be proved. There is evidence that the money was given to the appellant instead of it being banked by the tax payers. He issued false receipts as shall be found shortly. The fact that he was given the money outside the set procedure, and that he did not bank it supports the contention that he took it away under circumstances amounting to theft of it. **I so find.**

Whether the money was the property of his employer.

The evidence is that it was supposed to be tax. He indeed issued false tax receipts for it. Counsel argued that since there was no evidence that the entity that paid the money was supposed to pay tax, a finding that the money belonged to URA is without basis. The appellant has been found to have issued receipts bearing URA particulars to the payers, and as far as they were concerned they intended to pay the money to URA. The issue that counsel raises was not in contention. The state did not have to prove uncontested issues. On those grounds I find that the money was the property of URA.

Whether he had access to it by virtue of his office.

The evidence is that he received it by virtue of the fact that he was the in charge of the Pallisa URA Station. I find that he had access to it by virtue of his office. I conclude that the appellant embezzled Ugx 57,832,292/= the property of URA.

Count 2- Abuse of office

The prosecution had to prove that;

1. That the appellant was a person employed in a Public Office;
2. That he did or directed to be done an arbitrary act, in that he collected Ugx 70,378, 051/= on account of URA and he did not bank it into the URA accounts,
3. That the act was prejudicial to the interests of his employer; and
4. That the act was in abuse of the authority of his office.

The first issue is not in dispute. The appellant was an employee of URA, a public office.

Whether he did or directed to be done an arbitrary act which was prejudicial to the interests of his employer.

The word “**arbitrary**” is inter-alia defined as depending on individual discretion. The word “**prejudice**” is defined as damage or detriment to one’s legal rights or claims see **Black’s Law Dictionary**.

Pw10 (Nambwere Agnes) testified that the tax payment procedure was that tax payers were supposed to deposit the money in the URA bank account. Her evidence was not challenged and i believed it. In this case the appellant received the money in contravention of the set procedure. **This was an arbitrary act.** The money was stolen as I have already found, and so URA suffered loss and was therefore prejudiced by the appellant's action. The prosecution proved that the appellant abused his office. **I so find.**

Counts 3 to 8- Forgery

It was alleged that with intent to defraud or deceive the appellant forged various cash payment receipts purporting that they had been genuinely issued to the various tax payers whereas not.

The state had to prove that;

1. False documents were made,
2. They were made with intent to deceive or defraud,
3. They were made by the appellant.

Count 3 relates to receipt **Nos 6170226 (exhibit P6)** and **6170300 (exhibit P7)** totaling to 1,000,000/= which according to **Pw4 (Okello)** and to the register (**Exh. P11**) were issued to him (**Okello**). **Pw10 (Nambwere Agnes)** who investigated the case and retrieved the URA bank statement testified that the money that is reflected in the two receipts was not banked.

The appellant denied that he is the one who issued the receipts to **Okello**, maintaining that the URA was operating an automated system (the Electronic cash book (ECB), which makes automatic postings and generates its own records. He maintained that under that system there is no need of the Receipt-issued-Register (**Exhibit P. II**).

He further said that on 7/9/2011 he and **Okoboi Justine (Pw6)** visited **John Okello (Pw4)** and served him a final reminder dated 7/9/2011. That meant that other reminders had earlier been issued. That day **Okello** gave them his file with receipts similar to those issued by URA. Based on that information they reconciled the records as **Exhibit P.9** shows. The figures which were being reconciled were those that had been paid prior to 7/9/2011. Anything that happened after 7/9/2011 cannot be part of **P. Exh.9**. He did not go back to **Okello** after that reconciliation and neither did **Okello** pay the amount payable.

The appellant further testified that in December 2011 they compiled all tax payers who were due and forwarded them to the Commissioner Domestic Taxes where recovery by 3rd party Agency Notice was made by Global Trust Bank against **Okello** on 23/01/2012. This was what sparked off **Okello's** complaint, since he thought that the transaction was made by the appellant.

I considered **Pw6 (Okoboi Justine)** and **Pw7 (Nabulumbi Margaret)**'s testimonies that the appellant as the in-charge of the station was the one who used to issue receipts to tax payers, and the fact that they were the appellants colleagues, and I determined that the appellant's evidence were lies. Their uncontroverted evidence was corroborated by the fact that the two receipts

indeed bear the names of Bwambale Lawrence as the issuer, which galvanizes **Pw4 (Okello)**'s evidence that they were issued by the appellant. I find that the two receipts, the subject of count 3 were issued by the appellant.

Whether they are false documents.

The defence seems to suggest that the two receipts are genuine. I however considered the following evidence and concluded otherwise. **Pw8 (Odoi Bernard)** of URA testified that some of the receipts he was shown by the investigators were not falling in the ranges of receipts issued from the stores. He exhibited a photocopy of the URA strong Room Receipt issuing Register for the period 2010 to July 2011 (**Exhibit P.12**) to drive his point home.

Pw10 (Agnes Nambwere) testified that she analyzed the two receipts and found inconsistencies in their dates of issue and of assessment.

* Receipt BXG 6170226 (**Exhibit P.6**) was issued on 11/9/2011 but the Bank payment Advise form was issued on 13/9/2011.

* Receipt BXG 6170300 (**exhibit P.7**) was issued on 18/9/2011 but the bank Advise payment was issued on 23/9/2011.

I note that her evidence that the proper procedure was that assessment had to be issued first before the money was paid to the bank was not challenged. Moreover it is the logical way of conducting such business since a tax payer can only pay tax which has been assessed. The defence account as to the payment procedure goes against logic and against the weight of evidence. **Pw4 (Okello)**, **Pw6 (Okoboi Justine)** and **Pw7 (Nabulumbi Margaret)**'s testimonies supported **Pw10 (Nambwere Agnes)**'s account. The defence did not put to them its account to give them an opportunity to deny or accept it. Given that **Pw6** and **7** were working with the appellant, his failure to put his side of the story to them and instead choosing to introduce it in his defence must be adversely interpreted to mean that it is not correct.

I did not believe the defence account that the receipts were system generated considering that they bore the appellants names as the issuer. That they bore inconsistent dates can only be taken to mean that they were irregularly issued.

Other relevant evidence was **Pw10's** that the name in receipt No. **BXG 6170226 (P. Exh.6)** is John Okello c/o Rossam Milers, but in the cash book (**Exhibit 21**) that receipt (No. **BXG 61702226**) was issued to Balkutani John for 40,000/=, and that in Exhibit P.20 Balkutani John banked 40,000/= on 12/9/2011. The exhibited documents indeed support her testimony.

The evidence that the amount of money reflected in the receipts that were issued to **John Okello** is not reflected in the bank statement or cash book, and that Receipt No. **BXG 6170300 (Exh. P7)** was issued to Okello John of Passam Millers for 500,000/= but in Exh. P.20 (The bank statement for the month of September 2011) the same receipt is in the names of Kirya Abdallah for shs 50,000/= on 22/9/2011, and in the cash book – Kirya Abdallah was issued receipt No. **BXG 6170300** for 50,000/=, points to only one fact, that receipt No. **BXG 6170300** that was issued to Okello is

false. The above evidence supports a finding as I do, that receipt numbers **BXG 61702226** and **BXG 6170300** are false documents.

Whether they were made with intent to deceive or defraud.

The receipts bear all the trappings of genuine URA receipts but for the above inconsistencies. There is evidence that the money that was received under the receipts was embezzled by the appellant. Those facts back the finding as I do that the receipts were issued with intent to defraud.

Whether they were made by the appellant.

I have found that the accused issued the receipts. I am alive to the fact that there is a big difference between **issuing** and **making** a document but the law, **S.105** of the Evidence Act places the burden of proof of facts especially within the knowledge of person on that person. In this regard the appellant was proven to have issued the receipts. He is the one who knows how he came by the receipts but he offered no explanation to the court. This leaves only him as the first and last person to whom the receipts can be traced. I find that he is the one who **made** the receipts under circumstances that amount to forging them. **I find the complaint in count three sufficiently proved.**

Count 4- FORGERY

The state had to prove that receipt Nos. **BXG 5571416, BXG 569501, BXG 5691736, BXG 5691758, BXG 5691807, BXG 5691933, BXG 5959773, BXG 6170102, BXG 6170103, BXG 6170104, BXG 6710298, *BXG 6170383, BXG 6170382*, BXG 6207441, BXG 6253551, BXG 6253550** totaling to 31, 995,551/=are false documents.

No evidence was adduced to show that receipt Nos. **BXG 6170383 and BXG 6170382** were part of those in issue. They were not even exhibited in court and are therefore dropped from the charge. As for the rest of the receipts, **Pw9 (Liko Yeko)** a cashier with M/s Cote field East Africa (U) Limited testified that he effected payment of PAYE and Withholding Tax to the appellant who issued him receipt numbers;

* BXG 5959773 for shs 464,000/=

* BXG 5691933 for shs 464,000/=

* BXG 5691807 for shs 13,417,792/=

* BXG 5691758 for shs 464,000/=

* BXG 5691736 for shs 464,000/=

* BXG 5571416 for shs 464,000/=

* BXG 5691501 for shs 464,000/=

* BXG 6170102 for shs 464,000/=

- * BXG 6170103 for shs 464,000/=
- * BXG 6170104 for shs 464,000/=
- * BXG 6170298 for shs 464,000/=
- * BXG 6207441 for shs 464,000/=
- * BXG 6253551 for shs 464,000/=:, and
- * BXG 6253550 for shs 464,000/=:, all marked as **exhibit P.17**.

He pointed out that though the signatures in the receipts differ, the name of the receiving cashier is **Bwambale Lawrence**. The witness's evidence that he knows the appellant and used to deal with him was not challenged. The receipts bear the appellants names as the receiving cashier, which supports the evidence that he is the one who issued them. In addition there is no reason why the witness could have told lies against the appellant. I believed the evidence that he got the receipts from him.

The only question is whether they were genuine.

According to **Pw10 (Nambwere Agnes)** the above receipts are not reflected in the cash book and in the bank statement. I perused the bank statements for URA Pallisa Branch A/C No. 014/00/473365/01 (**P. Exh.20**) for the relevant periods and I agree with the evidence that the above receipts are not reflected therein. I addition perused the Pallisa station cash book for July 2010 to March 2012 (**P. Exh.21**) and still agree with the evidence that the monies in the above receipts are not reflected therein. The receipts are at variance with the bank statement and the cash book which can only mean that they are false.

Testifying about Receipt No. **BXG 6170298 Pw10 (Nambwere Agnes)** noted that it was issued to Cottfield E. A. Limited for shs 464,000/= but in the cash book (**Exhibit P. 21**) it was issued to **Kayanja Robert** for shs 50,000/= and the bank statement (**Exhibit P.20**) indeed shows that on 21/9/2011 Kayanja Robert paid shs 50,000/=. This particular one is at variance with the bank statement and the cash book in amounts and in particulars of the payer.

Pw8 (Odoi Bernard)'s evidence that some of the receipts in issue fall outside the serial numbers 6170001 to 6170500, 6207001 to 6207500 and 625501 to 6254000 which were issued to Pallisa. I perused the Receipt issuing Register for the period 2010 to July 2011 (**Exhibit P.12**) and indeed found that other than receipt numbers **BXG 6170102, BXG 6170103, BXG 6170104, BXG 6170298, BXG 6207441, BXG 6253551 and BXG 6253550**, the rest fall outside the range that was officially issued to Pallisa station. This means that those which fell outside the official range are false.

The appellant did not offer any explanation for the fact that the receipts he issued are at variance with information in the bank statement and in the cash book, and did not explain how he came by the receipts which were not officially issued to his station. The only logical conclusion is that the receipts are false. **I so find.**

Whether they were made with intent to deceive or defraud.

The receipts were issued in acknowledgement of monies that were paid for Tax. They bear all the trappings of genuine receipts save for the anomalies I have pointed out. I have already found that the appellant embezzled the monies that he received under those receipts. His intention was to defraud, and I so find.

Whether they were made by the appellant.

He issued them as I have found yet he does not explain how he came by them. In terms of S.105 of the Evidence Act he is the first and last person to whom the receipts can be traced. I find that he is the one who **made** the receipts under circumstances that amount to forging them. **I find the complaint in count four sufficiently proved.**

Count five- forgery of receipt Nos. BXG 6170149 for shs 2,700,000/=, **6170388** for shs 6,600,000/=, **5691931** for shs 2,020,000/= and **6253536** for shs 9,870,000/= totaling to 21,190,000/=, together marked as **P. Exh.15**.

I have already found, on the basis of **Pw9 (Liko Yeko)**'s evidence that these receipts were issued to him by the appellant.

The only question is whether they were genuine.

As with the receipts in count four Pw10's evidence is relevant. These receipts are not reflected in the cash book and in the bank statement (**P. Exh.20**) for the relevant periods and in the Pallisa station cash book for July 2010 to March 2012 (**P. Exh.21**). The receipts are at variance with the bank statement and the cash book which can only mean that they are false.

Receipt No. **5691931** for shs 2,020,000/= falls outside the series which **Pw8 (Odoi Bernard)** issued to Pallisa as per the Issuing Register for the period 2010 to July 2011 (**Exhibit P.12**) meaning that it is false.

The appellant did not offer any explanation for the fact that the receipts he issued are at variance with information in the bank statement and in the cash book, and did not explain how he came by the receipts which were not officially issued to his station. The only logical conclusion is that the receipts are false. **I so find.**

Whether they were made with intent to deceive or defraud.

The receipts were issued in acknowledgement of monies that were paid for Tax. They bear all the trappings of genuine receipts save for the anomalies I have pointed out. I have already found that the appellant embezzled the monies that he received under those receipts. His intention was to defraud, and I so find.

Whether they were made by the appellant.

He issued them as I have found yet he does not explain how he came by them. In terms of S.105 of the Evidence Act he is the first and last person to whom the receipts can be traced. I find that he is the one who **made** the receipts under circumstances that amount to forging them. **I find the complaint in count five sufficiently proved.**

Count six- forgery of receipt Nos. BXG 6170150 for shs 2,700,000/=, 6170387 for shs 4,200,000/=, 5691932 for shs 2,020,000/= and 6,253.535/= for shs 6,270,000/=, totaling to 15, 190, 000/= which were together marked received as P. Exh.16.

These receipts were also issued by the appellant to Pw9 (Liko Yeko) in acknowledgment of PAYE payments as I have already found. They indeed bear his names as the receiving cashier.

The only question is whether they were genuine.

As with the receipts in counts four and five, Pw10's evidence is relevant. These receipts are not reflected in the cash book and in the bank statement (P. Exh.20) for the relevant periods and in the Pallisa station cash book for July 2010 to March 2012 (P. Exh.21). They are at variance with the bank statement and the cash book which can only mean that they are false.

Moreover receipt No.5691932 falls outside the series which Pw8 (Odoi Bernard) issued to Pallisa as per the Issuing Register for the period 2010 to July 2011 (Exhibit P.12) meaning that it is false.

The appellant did not offer any explanation for the fact that the receipts he issued are at variance with information in the bank statement and in the cash book, and did not explain how he came by the receipts which were not officially issued to his station. The only logical conclusion is that the receipts are false. **I so find.**

Whether they were made with intent to deceive or defraud.

The receipts were issued in acknowledgement of monies that were paid for Tax. They bear all the trappings of genuine receipts save for the anomalies I have pointed out. I have already found that the appellant embezzled the monies that he received under those receipts. His intention was to defraud, **and I so find.**

Whether they were made by the appellant.

He issued them as I have found yet he does not explain how he came by them. In terms of S.105 of the Evidence Act he is the first and last person to whom the receipts can be traced. I find that he is the one who **made** the receipts under circumstances that amount to forging them. **I find the complaint in count six sufficiently proved.**

Count seven- forgery of receipt No. BXG 6170491 for shs 200,000/= (P. Exhibit 14).

The evidence relevant to this count was that of Pw5 (Haji Karim Soyigi) as corroborated in material particulars by that of Pw6 (Okoboi Justine) and Pw7 (Nabulumbi Margaret) that on 8/2/2012 he paid shs 200,000/= to the appellant who gave him a receipt BXG 6207491 (Exhibit P.14). Pw6 (Okoboi Justine) recorded the receipt number and details in the register book (exhibit P11). The receipt indeed bears the appellants names as the receiving cashier.

The only question is whether they were genuine.

As with the receipts in counts four, five and six, Pw10's evidence is relevant. This receipt is not reflected in the cash book and in the bank statement (P. Exh.20) for the relevant periods and in the Pallisa station cash book for July 2010 to March 2012 (P. Exh.21). It is at variance with the bank statement and the cash book which can only mean that it is false.

The appellant did not offer any explanation for the fact that a receipt he issued is at variance with information in the bank statement and in the cash book. The only logical conclusion is that the receipt is false. **I so find.**

Whether it was made with intent to deceive or defraud.

The receipt was issued in acknowledgement of monies that were paid for Tax. It bears all the trappings of a genuine receipt save for the anomalies I have pointed out. I have already found that the appellant embezzled the monies that he received under that receipt. His intention was to defraud, **and I so find.**

Whether it was made by the appellant.

He issued it as I have found yet he does not explain how he came by it. In terms of S.105 of the Evidence Act he is the first and last person to whom the receipt can be traced. I find that he is the one who **made** it under circumstances that amount to forging it. **I find the complaint in count seven sufficiently proved.**

Count eight- forgery of receipt No. BXG 6170491 for shs 802.500/= (Exhibit P.5).

The evidence relevant to this count was that of Pw2 (Mugalya George) and Pw3 (Kansiime Immaculate) that on 31st October 2011 the appellant verbally demanded for PAYE of UGX 802,500 = as per requisition form dated 31/10/2011 (Exhibit P3) and the payment voucher (Exhibit P.4). Payment was affected to him in cash and he acknowledged it by stamping on the requisition and payment voucher with a URA office stamp. The school was issued the URA receipt (Exh P.5). They explained that although the payment voucher (Exhibit P 4) erroneously shows that the recipient is **Kansiime**, the appellant received the money as evidenced by his signature and stamp on the Requisition voucher (Exh. P.5). The witnesses had no reason to falsely incriminate the appellant. I believed the evidence that he received the money. The receipt indeed bears his names as the receiving cashier.

The only question is whether the receipt was genuine.

As with the receipts in counts four, five, six and seven, **Pw10 (Nambwere Agnes)**'s evidence that the money that was received by the appellant was not banked and that she found inconsistencies in the dates is relevant.

The receipt is not reflected in the cash book and in the bank statement (**P. Exh.20**) for the relevant periods and in the Pallisa station cash book for July 2010 to March 2012 (**P. Exh.21**). It is at variance with the bank statement and the cash book which can only mean that it is false.

The appellant did not offer any explanation for the fact that a receipt he issued is at variance with information in the bank statement and in the cash book. The only logical conclusion is that the receipt is false. **I so find.**

Whether it was made with intent to deceive or defraud.

The receipt was issued in acknowledgement of monies that were paid for Tax. It bears all the trappings of a genuine receipt save for the anomalies I have pointed out. I have already found that the appellant embezzled the monies that he received under that receipt. His intention was to defraud, **and I so find.**

Whether it was made by the appellant.

He issued it as I have found yet he does not explain how he came by it. In terms of **S.105** of the Evidence Act he is the first and last person to whom the receipt can be traced. I find that he is the one who **made** it under circumstances that amount to forging it. **I find the complaint in count eight sufficiently proved.**

I now turn to the complaints that were laid in the memorandum of appeal.

Ground 1

The first ground was that the learned trial magistrate erred in law and fact when she failed to properly evaluate the evidence on record and as a result she came to a wrongful and erroneous decision. To an extent i agree with the appellant that the learned magistrate did go into details in evaluating the evidence but from the foregoing discussions it is clear that there was sufficient evidence to sustain the convictions. The trial magistrate therefore came to the right decision.

The second complaint that the learned trial magistrate erred in law when she convicted the appellant for the offence of embezzlement without any iota of evidence to support the charge has to fail since I found that there was sufficient evidence to sustain the charge.

The third complaint that the learned trial magistrate erred in law when she descended into the arena and considered evidence not adduced by witnesses thereby coming to a wrong conclusion even if considered will not change anything since I have found that there is sufficient evidence to sustain the charges.

The fourth complaint that the learned trial magistrate erred in fact when she held that the receipts tendered as prosecution exhibits 4, 5, 6, 7, 14, 15, 16, and 17 were forged without evidence at all is without basis since as I have found that there was sufficient evidence that the receipts were forged.

The fifth complaint that the learned trial magistrate erred in law and in fact when she convicted the appellant on counts of forgery in an omnibus way without analyzing evidence in respect of each count has merit. The learned magistrate did not even attempt to show how she arrived at the conclusions she made. I however found sufficient evidence to support her finding. The complaint even if successful will not change the decision of the court.

The sixth complaint was that the learned trial magistrate erred in law when she failed to consider the inconsistencies in the prosecution evidence which affected the entire prosecution case thereby coming to a wrong conclusion. The inconsistency that was pointed out was that Pw3 stated that she paid cash to the accused in her office yet Pw2 said that it was given to the accused from his office. I found sufficient evidence that the money was given to the appellant. The receipts bear his names as the recipient. The inconsistency in evidence as to where he got it from is minor and should be ignored.

I find that while some of the complaints are valid, they don't change the result of the appeal. There was sufficient evidence to support the charges.

The appeal is dismissed for lack of merit. The Judgment and orders of the lower court are upheld.

Margaret Tibulya

Judge

15th June 2017.

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Prepared on 14 October 2026 · Esheria