

UGANDA / JUDGMENT

Uganda v Kalemere and 2 Others (Criminal Case 7 of 2018) [2022] UGHCACD 4 (21 April 2022)

[2022] UGHACD 4

COURT

HC: Anti corruption Division (Uganda)

BEFORE

Gidudu, J

CASE / FILE NUMBER

Criminal Case 7 of 2018

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REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

ANTI-CORRUPTION COURT

AT KOLOLO

CRIMINAL CASE NO. 7 OF 2018

UGANDA PROSECUTOR

VRS.

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1. KALEMERA DAVID (A1)

2. SSEMANDA IAN PAUL(A2)

3. KAZIBWE RONALD(A3) ::::::::::::::: ACCUSED

BEFORE GIDUDU, J

JUDGMENT.

Kalemera David, hereinafter called A1, Ssemenda Ian Paul, hereinafter called \$A2\$ and Kazibwe Ronald, hereinafter called \$A3\$ were jointly charged with four counts of knowingly using customs 20 documents C/S 203(h) of the EACCMA 2004 in counts 1 to 4 and of conspiracy to commit a felony C/S 390 of the PCA Cap 120 in count 5.

At the close of the prosecution case, the court found that \$A2\$ had no case to answer on counts one to four. Only A1 and A3 were put on 25

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defence on counts one to four. Whilst all three accused persons had a case to answer on count five.

They were accused in counts one to four of knowingly using falsified commercial invoices and packing lists while forwarding and clearing goods in four containers in the URA ASCUDA system purporting they were issued by Guangzhou Sen Mao Development Limited whereas not.

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They are accused of knowingly using the following invoices GNLI-Xii-17578 dated 7/2/2018; GNLI-xii-17596 dated 12/2/2018; GNLI-Xii-17592, 17498 dated 10/1/2018 and GSM/9021 dated \$27/10/2018\$ which are said to be false.

The false packing lists are GNLI-Xii-17578 of \$7/2/2018\$, 17596 dated 12/2/2018, and GNLI-Xii-17592 dated 10/1/2018.

In count five, they were accused of conspiring with others at large to use and indeed used falsified invoices and packing lists with intent 15 to defraud while forwarding and clearing goods from Mombasa and in the URA tax system in respect of four containers, namely PCIU 8634233; PCIU 8822143; PCIU 8656187 AND PCIU 9090345 purporting they were issued by Guangzhou Sen Mao Development **Limited** whereas not. 20

The gist of the prosecution case is that in October 2016 XIE XILIANG alias HAPPY (PW1) and XIE HANMING alias LUCKY (PW3) both employees of Choice International Forwarding Company **Limited** reached an agreement with A1 to arrange transportation of their containers from Mombasa to Uganda, handle all documentation, pay taxes and return empty containers to Mombasa.

They had a business relationship with \$A1\$ until March 2018 when eight containers were seized by URA. Two employees of Choice International Forwarding Company Limited were arrested and

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charged with using falsified documents in an attempt to clear goods.

PW1 came to Uganda and availed documents like **loading lists** and **Bills of Lading** to URA which revealed the following: The invoices

used in the URA ASCUDA system had omitted some goods and $\$S$ were purported to be issued by **Guangzhou Sen Mao Development** Company Limited which is a parent company to Choice Forwarding company Limited International whereas not. Guangzhou Sen Mao Development Company Limited is a shipping company which does not issue commercial invoices because it is not a supplier of goods.

Further, that the invoices declared in the ASCUDA system by A3 who was the clearing agent, were false because they purported to originate from a company that does shipping and not sale of goods. Furthermore, the goods in the containers were more than those declared for purposes of tax.

Investigations revealed according to evidence of PW2, Okova Alfred; PW4, Milton Sabiiti; PW5, Gwokyalya Bridget; PW6 Eric Bagashe; PW7, Ayebare Justus and PW8 D/SP Dorothy Kyobutungi that A1 was the source of the documents used in an attempt to clear goods

in the **URA ASCUDA** system which were false.

Evidence of PW1 is that A1 availed A2's bank account into which Choice International Forwarding company Limited made payments in dollars for A1's services. A1 also provided names of consignees and their addresses used in generating the Bills of Lading and loading lists. Consignees such as Allan Kiwanuka turned out to be a fraud/ghost.

The prosecution case is that **A1 and A3** knew that the documents were false because when the containers were opened, it was clear that there was non-declaration, mis-declaration and under valuation. The taxes to be paid were far more than was declared.

Each of the accused person denied the offences charged. A1 in his statement stated that he is not an Importer, forwarder or clearing agent. He was surprised to be charged with offences related to forwarding and clearing of goods. He denied working for Choice International Forwarding company Limited as a clearing agent.

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A1 is a former employee of **URA** from 2007 to 2016 when he was charged in court before being terminated in March 2017.

A1 attributes his current troubles for stepping on the toes of his bosses in the course of his duty of plugging revenue leakages in URA.

A1 gave details of how he tried to enforce tax compliance against a company called **Sun Belt Textiles** to recover 13.5 billion in taxes and ended up offending the then Commissioner Customs Mr. Kateshumbwa. He ignored threats to drop the investigations and ended up being charged with aiding dumping textiles on the Uganda market and was finally dismissed after his appeals within **URA** structures were dismissed.

A1 stated that the court case regarding aiding the dumping of textiles in Uganda was dismissed by court in 2019.

- A1 admitted in his statement that he met PW1 and another Chinese 20 in Kenya who complained about having challenges doing consolidated cargo business in Uganda. That the Chinese complained about the cost of transport, unreliable transporters and disappearance of goods in Uganda and wanted to be guided on how to mitigate these challenges. 25

Three months after the meeting, Santi- one of the Chinese called him saying one of their containers had been seized by URA in Jinja and sought his help.

The documents used to clear the goods did not tally with the physical goods in the container. The goods were misdescribed, misdeclared and under declared/valued.

A1 declined to intervene and advised them to handle the matter through their clearing agent. But A1 remained in contact with Choice International Forwarding Company Uganda office.

A1 later agreed to do business with Choice International Forwarding Company Uganda. They wanted to do e-commerce like Alibaba (Uganda). He offered his land at Kijabijjo in Gayaza as equity for the Chinese to build a warehouse. They started on the foundation but abandoned it after A1 was charged.

A1 admitted to communicating with one Koye, a Chinese, in China through emails where he advised on codes used on goods, names of consignees and goods description from which the shippers would prepare a Bill of Lading.

It was A1's testimony that Choice International Forwarding Company Uganda office is the one that sourced the name Allan Kiwanuka from the group of traders who used to consolidate cargo.

A1 reasoned that if the name of Allan Kiwanuka was fictitious, then

As regards the commercial invoices, A1 stated that Choice International Forwarding Company Limited as consolidator of

URA would have auctioned the goods instead of giving them to

cargo makes one invoice for all the goods in effect becoming the "Supplier" of the goods.

He denies knowledge of the false invoices and packing lists. He denied knowledge of one Grace Lubinga. He denied paying urban Coast logistics any money for forwarding goods from Mombasa to Ilorin.

In March 2018, when Kiki and Sun- both Chinese workers of Choice International Forwarding Company Uganda office were arrested A1 went to URA offices to find out how he could help. Mr. Kateshumba heard about A1's knowledge of Choice International

Forwarding Company Uganda. A1 got them a lawyer and when they got bail from court, they cut off communication with him.

A1 suspected the worst but chose not to worry because he was neither an importer nor a clearing agent. Later A1 was tracked in Kamwokya and arrested and finally brought to court. He denies falsifying up any documents or using them. He denied signing any agreement with PW1 and that the e-mails in **exhibit P14** were sent by him from information provided by Choice International Forwarding Company Uganda office. He denied giving any documents to PW5, Gwokyalya. He dismissed PW1 as a witness coached to implicate him.

A2 chose to keep quiet in his defence and called no witness.

A3 gave testified that he is a director of Makai International **Agencies Ltd** - a clearing firm. It was his evidence that in 2017, he got business through his clerk Deo Kaggwa who also got it from one Saleh a broker in Mombasa who gives business to several clearing firms.

He forwarded 4 containers from Mombasa to Jinja at an agreed price of 250 USD per container. The consignees were Allan Kiwanuka and Kigopa Enterprises. Saleh gave him packing lists, invoices and Bill of Lading that were used to forward the containers. 25 When the goods were warehoused, he tried to trace Allan Kiwanuka and Kigopa Enterprises in vain. He could not be paid or hand over WT8 and T.1 forms to the consignees because they could not be traced.

Later in March 2018, URA suspended his company for delaying to 30 handle the clients' goods. He was called to a meeting by URA where PW8 took minutes of the meeting. He was asked to explain where Allan Kiwanuka and Kigopa enterprises were. He denied ever meeting the consignees. PW1 and another Chinese were called into the meeting but they denied knowing him.

A3 explained how he got business from one Saleh. Upon 5 instruction by URA officials, PW1 paid him forwarding fees totaling 1250 USD. He handed over the **WT8 and T.1** documents to Happy (PW1). After the meeting, Nabwire, a URA official asked him (A3) to clear the goods where upon the PW1 contracted him to clear the containers. PW8 was present when he (A3) was contracted to clear 10 the goods at 1000 USD per container. URA unblocked his firm for this purpose. He cleared seven containers in total using original documents provided by PW1 and one Sun-another Chinese.

It was A3's evidence that there was no discrepancy between what he had used to forward the goods and what PW1 gave him. He handed the cleared goods to PW2.

The following day PW8 called him and asked him about David Kalemera. He denied knowing him. PW8 asked him \$(A3)\$ to implicate A1 that he is the source of the false documents which A3 used to clear the goods. It was his testimony that PW8 interviewed both Deo Kaggwa and Saleh about the documents. A3 stated that PW8 charged him because of refusing to implicate A1 as the source of the false documents.

During cross examination, A3 stated that there was no discrepancy between the physical goods and the documents but in the same 25 breath said the goods in the container were more than what was declared on the documents. This was true for all the seven containers and that the extra goods attracted considerable taxes. A3 went on to state that what was in the invoices did not tally with what was in the containers. \$A3\$ further stated that the goods being 30 in excess did not

mean that they were not correct and that he had no reason to believe the documents were forged.
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In criminal cases, the burden of proof lies upon the prosecution to prove all the essential ingredients of the offence beyond reasonable doubt. The accused have no duty to prove their innocence. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt but evidence must be so strong so as to leave only a remote possibility which can be dismissed as the least probable.

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To prove charges under section 203(h) of the EACCMA, 2004, the prosecution must prove the following ingredients: (i) that the customs documents used are falsified and (ii) that they were used with the knowledge that they are falsified.

To sustain charges under section 390 of the PCA, Cap 120, the prosecution must establish the following ingredients: (i) that two or more persons had an agreement to commit a crime. The agreement need not be formal but there must be conduct from which it can be inferred that a particular course of action is agreed to be taken by the parties to do an act that is a crime in law.

Counts one to four: Were the customs documents falsified? If so who used them?

Mr. Lomuria counsel for the state contends that there is abundant evidence to prove that the packing list and invoices used were false. 20 He referred to evidence of PW1 who denied issuing the disputed invoices and packing lists because their company is not a supplier but a shipper.

PW1's evidence is corroborated by PW2 who reviewed the documents against the values given and suspected fraud. When the 25 containers were opened it was proved that the documents had declared less goods than was inside the containers and undervalued them compared to the market value in China.

In response It was submitted for \$A1\$ that the falsity of the document was not proved because officials of Guangzhou Sen Mao 30 Development Company Limited were not called to deny supplying

the invoices. It was submitted that mismatch of the goods with what was declared did not make the document false. Counsel for A1 evidence that Choice International and dismissed \$PW1's\$ Guangzhou Sen Mao Development Company Limited are sister companies contending there was no evidence to support it.

Similarly, it was submitted for \$A3\$ that falsity of the document was not proved because its making was not shown to be false. Counsel also contended that the mismatch of the declaration with the actual goods does not make the document false. Counsel for A3 submitted that according to A3's testimony the same documents were used to

clear the goods so they could not be false

Sec 203 of the EACCMA, 2004 provides as follows:

Any person who, in any matter relating to customs-

- (h) counterfeits or in any way falsifies, or knowingly uses when counterfeited or in any way falsified, any documents required or issued by, or used for the purpose of, the customs, commits an *offence.....(emphasis mine)*

The offence charged in the indictment is that the accused knowingly used falsified invoices accompanied with falsified packing lists. Falsified relates to entries in the document whilst counterfeit relates to format or origin of the document. Falsify relates to contents and not to form.

Osborn's Concise Law Dictionary 7th edition by Roger Bird defines the word falsify- where an account is being investigated in the Chancery Division, and the party shows that an item of payment or discharge contained in it is false or erroneous, he is said to falsify it.

Oxford Dictionary of current English 4th edition, 2006 defines falsify as to alter information or evidence so as to mislead. Thur

This is a technical customs offence relating to making false entries whose intention is to cheat tax or pay less than is due. The indictment is not charging the accused with using counterfeit forms but is accusing them of using falsified entries in the invoices.

The offence in the indictment is committed when falsified invoices \$5\$ are knowingly used for the purpose of customs. This implies that the user had prior knowledge of the falsification with the intention to pay less tax than is due on the value of goods.

Both A1 and A3 have denied using falsified documents. A1 denies handing documents to PW5 and PW6. He also denies giving 10 information to PW1 which was used to prepare loading lists and bills of lading. On the other hand, A3 testified that PW1 was the source of the documents that he used to clear the goods in presence of PW2 and that he handed over the goods to PW2.

PW2 gave evidence that he never participated in the clearing of 15 goods and did not receive the goods. PW1, PW5 and PW6 testified that it is A1 that was the source of the documents.

It is a fact admitted by \$A3\$ in his defence that taxes paid when the goods were cleared were much higher than what the disputed documents had declared. PW2 who investigated the scam put the 20 value of additional taxes on each container to be 136 million for each container. This was far above the 33 million declared for each 40-foot container on the IM4 declared by Makai International Agencies and other clearing agents.

- It is clear to me that whoever made the entries in the packing lists 25 and invoices was not just mistaken but deliberately had the intention of cheating a huge tax that was due to URA. The documents used to clear goods were falsified on the basis of the entries that under-declared and under-valued the goods.

- The argument by the defence that the documents may have 30 contained errors but were genuine and not forged is with respect

not valid because of the definitions of what a falsified document is as explained by *Oxford* and *Osborne's* dictionaries above. The falsity of a document for purposes of customs relates to entries and not to the make of the document. It does not necessarily refer to counterfeit. The charges don't relate to counterfeit but to falsified entries.

If the charges were about counterfeit, it would have been necessary to establish from **Guangzhou Sen Mao Development Company Limited** if the letter heads used belonged to them or not. The entries were verified by physical opening of the containers which revealed that the entries were telling a big lie about the actual amount and value of goods. The clear and obvious intention was to cheat on tax in a substantial manner! The tax declared on IM4 forms by the clearing agent was about one fifth of the actual tax payable. These were not minor errors but deliberate acts of tax evasion which is a crime.

The next issue for resolution is who knowingly used these falsified customs documents? The prosecution contends that the three accused did it whilst the defence denies participation.

A1 was emphatic that he was not an **importer**, forwarder or 20 clearing agent. A3 stated that he cleared the goods from documents provided by PW1 but had earlier forwarded four containers from Mombasa from documents provided by one Saleh of Mombasa. A3 stated that the documents he used to forward the goods were the same as those PW1 provided. 25

Evidence of PW2, Okoya Alfred, a data analyst in the **ASCUDA** system at **URA** is that he was detailed to examine documents which had been launched in the **ASCUDA** system by clearing agents such as Makai International Agencies, Meiser Freight, Urban Coast

Logistics and Elite Agencies to clear taxes. He extracted invoices, 30 packing lists and bills of lading and certified them.

PW2 stated that an IM4 form was declared at Jinja by Makai International Agencies for tax of 33 million for container PCIU 8634233. That the documents attached to **IM4** were the same ones attached on the WT8 forms when the goods were being forwarded from Mombasa to Kampala.

PW2 came on board after IM4 forms had been declared in the **ASCUDA** system by clearing agents for purposes of paying tax by the consignees. Given the fact that Alan Kiwanuka and Kigopa fictitious consignees, where did A3 Enterprises were get instructions from to launch papers for tax clearance? \$A3\$ testified that he had got the documents from Saleh to forward goods to Jinja. After that he got stranded with the WT8 and TI because Allan Kiwanuka was no show to even pay for his services! How did A3's company launch the same papers attached on an **IM4** for purposes of paying Tax? Who was going to pay the taxes of 33 to 36 million per container which PW2 found were under-declared? Why were A3's access rights in **ASCUDA** system blocked?

Before I resolve these questions, I have to interrogate evidence of PW5, Gwokyal Bridget former employee of Urban Coast logistics company together with that of Eric Bagashe, PW6 former General Manager of Urban Coast Logistics company and Ayebare Justus, PW7 a former declaration clerk at urban Coast Logistics.

The cumulative import of evidence of PW5, PW6 and PW7 is that A1 was their client who used to give them forwarding and clearing business from his company called Tiaman Logistics. Through his 25 employee Grace Lubinga who was known to PW5 and PW6 very well as A1's errand boy, they received a bill of lading and Invoices in names of Allan Kiwanuka. PW7 made entries no. S12484 on 12th March 2018 and S13446 on 17th March 2018. The consignee was Allan Kiwanuka. Goods were forwarded from Mombasa to Jinja 30 ICD.

It was PW5's evidence that while Lubinga brought documents from A1 on 3rd March 2018, on 7th March 2018, A1 walked into Urban Coast logistics offices in person and brought a bill of lading for Allan Kiwanuka. It was PW6's evidence that by the time URA seized the containers in Jinja, A1 had not yet paid for their services. A1 was later compelled to pay Urban Coast Logistics because Allan Kiwanuka was a no show. This evidence is intact on record. It was not challenged in cross examination. These three witnesses were only asked if they had not been brought to court by force to testify but were not challenged if they had been coached to implicate A1\$.

A witness who refuses to testify may be compelled to do so under warrant. (see sections 33 to 36 of the TIA Cap 23) This is to ensure that a witness does not withhold material evidence to perpetrate a crime. The challenge that these witnesses were compelled to come to court was in vain since the law authorizes it.

Evidence of PW5, PW6 and PW7 renders A3's version that he got the disputed documents of Allan Kiwanuka from a one Saleh at Mombasa to be false. As I noted earlier if A3 had failed to trace Allan Kiwanuka to pay him, how come PW2 found an IM4 form in the system launched by A3 to clear the goods of a fictitious Allan 20 Kiwanuka? A3 was in touch with the "supplier" of the documents right from the beginning. The story of a one Saleh is an afterthought. A3's access rights were blocked for under-declaring and undervaluing goods in the system. This could only be resolved if A3 could produce the consignee that gave him the documents. A3 25 failed to do so and was charged.

The supplier of the disputed documents is A1. Evidence of PW1 and PW3 brings out their business relationship with A1\$. They even signed an agreement which was not admitted on technical grounds but they paid A1\$ for his services and kept in regular touch through e-mails contained in **exhibit P14**. One of the emails of 29th January

2018 shows that the names Allan Kiwanuka were supplied to koey, an employee of Choice International Forwarding Company by A1.

A1 admits being in touch with employees of Choice International Forwarding Company and helping them to use proper codes for description of goods etc. A1 does not deny being an owner of a logistics company. He only denies being paid for his services.

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However, PW1 testified that A1 was paid through an account in the names of A2 whose details A1 provided to PW1. Indeed, exhibit P17 is a dollar account bank statement of A2 in Bank of Africa. Between 29th September, 2016 to 28th December, 2017, A2 received deposits or transfers from Choice International Forwarding Company. What was this money for? A2 kept withdrawing funds deposited on this account. On average money would be deposited twenty times per month for a period of 16 months from only one source! This proves PW1's testimony that A1 was being paid for his logistics services through A2's bank account.

A1 had everything to hide because he was an employee of URA- a tax body so he would not want to be seen doing business with his employer. Besides he was doing the opposite of what he was employed to do! He was helping traders to evade taxes which he was 20 employed to collect. That is why he refused to sign the agreement with PW1 and PW3 and used one Julius. That is why he used other clearing agents to do the job. That is why he used A2's names to operate a bank account to receive payments for brokerage services.

Both PW1 and PW3 were clear that they don't deal in packing lists 25 and commercial invoices because they arrange shipment and not goods supplies.

On the basis of my analysis of evidence for both sides above, I am inclined to believe the prosecution evidence that A1 sourced and provided A3 with the documents which was used in underdeclaring and under-valuing goods in the ASCUDA tax system

which were intercepted before they could succeed in causing a huge tax evasion.

I do not believe A3's version of Saleh being the provider or that he used the same values to clear the goods. Why would higher taxes of \$5\$ up to 165 million be paid above the original 33 to 36 million declared if the same documents were used? Once the containers were opened taxes were paid on physical goods against reference values of similar goods of origin from China. That is what PW2 explained. I believe him.

A3's defence that he used the disputed documents to clear goods 10 and handed them to PW2 is not believable. PW2 was not challenged when he stated that after the discovery that the containers had more goods than what A3 had declared on the disputed documents, other administrative methods were used to assess the tax based on the physical goods. More taxes were paid. 15

A3's access rights were unblocked to ensure the goods were cleared for taxes so that the complaining traders take their goods. A3 was engaged to complete the transaction he had started because traders were complaining. By this time, the crime had already been committed.

One lady assessor advised me to find only A1 guilty of using falsified customs documents and exonerated A3. The second lady assessor advised me to find both not guilty opining that the same documents were used to clear the goods so they were not falsified.

With respect to the two lady assessors, I am unable to accept their 25 advice entirely. I have demonstrated through evidence of PW1, PW3, PW5, PW6 and PW7 that \$A1\$ was the source of these disputed documents. I have also demonstrated through evidence of PW2 that the ASCUDA system showed that A3 was the declarant on behalf of a fictitious Allan Kiwanuka. But as a clearing agent, he uses 30 documents given to him by the importer. \$A3\$ admitted on oath that the importer was not traceable. It was expected that A3 having failed to trace the consignee should have reported this fact to URA to impound the goods since the so called Saleh of Mombasa had also failed to trace the importer.

Instead A3 launched IM4 forms in ASCUDA to clear goods of a non-existent importer which led URA to suspect the under values declared on 40 feet containers. URA suspended A3's access rights. A3 was expected to produce the importer. A3 did not produce the importer to answer for the under declaration and under valuation. A3 chose to carry the cross because he had knowledge about the 10 deal. I have found on the basis of evidence adduced by the prosecution that A1 was the "manufacturer" of the disputed documents.

Whilst it is true to say that \$A1\$ was not a legal importer, was not a legal forwarder or was not a legal clearing agent, he was everything else that was illegal in the transaction. By manufacturing the falsified invoices and packing lists, A1 was an illegal "supplier". By providing the shippers with ghost consignees, A1 was an illegal "importer". A1 used manipulations and remote control to direct the forwarding and clearing processes. He was knowledgeable about the 20 customs system since he was an employee of URA and used it against his employer.

A1 was a broker, manipulator and controller of the transaction. His version that Mr. Kateshumbwa, the then commissioner of customs caused him to be charged falsely is an afterthought. Prosecution witnesses such as PW2 and PW8 were not challenged about Kateshumbwa's malicious role in this case. The evidence on record proves the contrary of A1's allegations about Mr. Kateshumbwa.

I find A3's covering up of A1 as evidence that he knew that the documents were falsified. A3 was as culpable as A1 in using 30 falsified documents in ASCUDA. A1 stood in the position of the fictitious Importer-Allan Kiwanuka and used A3 to commit the

crime. The two had a common intention to commit the crime and are culpable. I find both A1 and A3 guilty of using falsified customs documents in counts one to four.

The charges in counts 5 refer to a conspiracy by all the three accused to commit a felony. Section 390 of the PCA, Cap 120 §5 provides as follows:

390. Conspiracy to commit felony.

Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Uganda would be a felony and which is an offence under the laws in force in the place where it is proposed to be done, commits a felony....

The prosecution contends that there is no direct evidence of conspiracy but through circumstantial evidence the actions of each accused reveals that each played a role in furtherance of the crime. A1 provided the documents and information regarding the names of 15 false consignees to PW1 and falsified documents to clear goods by A3 whilst A2's account was used to receive funds from PW1 for the job.

The prosecution contends that the conspiracy is seen from A1's use of others to do certain things like using Julius to sign the 20 agreement with Choice International Forwarding Company yet he was the contractor of the job; A1 using Lubinga to deliver documents to PW5 and PW6 to forward goods from Mombasa to Jinja; A1 using A3 to clear goods yet he was the contractor; the use of fictitious consignees; the use of A2's bank account instead of his own. That the totality of these actions show a sinister motive to hide from direct involvement and proves prior knowledge that the deal was not clean.

On the other hand, A1 denies being involved beyond just advising the Chinese on how to handle their consignments. He denies knowledge of Lubinga or giving any documents to PW5 and PW6. He

also denies working with A3 to clear any goods. He denies using A2 to receive any money from PW1 or his company.

A2 chose to keep quiet in his defence. It was submitted that there was no evidence to connect him to either A1 or A3. He only met A3 in court and could not conspire with someone he has never met or worked with. It was submitted that there was no evidence that money on A2's account belonged to A1 or was used by A1.

As regards A3 it was submitted that when he got documents from Saleh of Mombasa he believed the documents to be genuine and used them to forward four containers from Mombasa to Jinja. He never dealt with A1 and so could not have conspired with him.

The stage of forwarding goods from Mombasa to Uganda, does not attract scrutiny by URA. It is after the declaration is made for taxes that URA scrutinizes the goods for quantity, quality, classification, origin and valuation.

Circumstantial evidence is evidence of surrounding circumstances. It is evidence which although not directly establishing the existence of the facts required to be proved, is admissible as making the facts in issue probable by reason of its connection with or relation to them. It is sometimes regarded as of higher probative value than direct evidence which may be perjured or mistaken.

Courts have held in a number of cases that in a case depending exclusively upon circumstantial evidence, court must find before deciding upon conviction that inculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt as per Gould J. A) at page 718 in SIMON MUSOKE V R (1958) EA 715.

Another principal laid down is TEPPER V R (2) (1952) AC 480 at \$489\$ is that

It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.

I have already in discussed in detail the roles played by A1 and A3 5 in counts 1 to 4. I need not repeat here for brevity. Suffice to say that A1 was the job holder. He manipulated PW1, PW3 and other employees of **Choice International Forwarding Company Ltd** into believing that he (A1) through his company **Tiaman Logistics**, was doing the job of clearing the eight containers.

A1 was just acting like a broker by sourcing licensed companies operated by people like PW6 and A3 to do the job and retain a huge difference of the money paid to him after under declaring and under valuing goods in the eight containers.

A2 has a strange bank account which receives funds from only one 15 source which is in a business relationship with A1. What a coincidence! A2 received hundreds of thousands of US dollars from Choice International Forwarding Company Ltd for about 16 months during which time A1 was dealing with the company. A2 frequently withdrew or transferred the same to some companies 20 except on 13 November, 2017 when he made a transfer to A1. What services was \$A2\$ providing to a company that \$A1\$ was having business interests with in order to receive colossal sums of US dollars? Over two million USD were received by A2 on this account.

In order to understand A2's role and knowledge of the conspiracy, I 25 examine exhibit P17 which include A2's bank account opening documents. On 27th January, 2017 A2 updated his account details with his National Identity Card and stated that he is an internal auditor with Sites Travels Ltd dealing in tours and travel business earning between one to three million per month.

He states in the update form that the source of funds to this dollar account is from clearing and forwarding business. The expected annual income is UGX 100,000,000=. By 23rd January, 2017 A2 had received USD 480,090 on this account from Choice International Forwarding Company Ltd and by 29th December. 2017 a total of USD 2,640,728.95 had been transacted on A2's bank account. Is it a coincidence that \$A2\$ is receiving funds from clearing and forwarding business from A1's client? It is not difficult to see the relationship between A1 and A2 through money deposited by PW1's company for business contracted by A1. That is the conspiracy which both lady assessors could not see.

If A2 had not updated his account to indicate that he was getting revenue form clearing and forwarding business, his account could have been flagged by the bank. The deposits would fall in the category of money laundering. The bank would have been obligated to report A2 to the Financial Intelligence Authority and Bank of Uganda. The account would have been frozen.

PW1 was emphatic that they paid A1 through A2's account for transportation from Mombasa, warehousing, tax clearance and returning empty containers to Mombasa. In absence of evidence to the contrary, PW1's evidence is unchallenged. It implicates A2 in the conspiracy. Although A2 had avoided sending money to A1 from this account directly, he lowered his guard on 13th November, 2017. A1 received a transfer of USD 26,640 directly from A2's account. A2 provided the conduit for funds from PW1's company to A1 to finance the conspiracy scheme.

I have already discussed how A3 who after forwarding goods from Mombasa to Jinja and getting stranded after failing to find the consignee did the unthinkable. He launched papers to pay taxes instead of reporting to URA that there is an importer that could not be traced. Who gave A3 instructions to clear taxes? Who was going to pay the taxes to URA since A3 could not trace the consignees?

PW2 seized the falsified documents in the system after A3 had launched them for clearing taxes. \$A3\$ was acting for \$A1\$ who was hiding behind a ghost Allan Kiwanuka and Kigopa Enterprises. The finances were coming in via A2's bank account. That is the conspiracy! The agreement is demonstrated from the complimentary roles each played to support the commission of a felony of using falsified documents to cheat on taxes. Each of them had a financial benefit. A1 benefitted from an illegal brokerage, A2 benefitted from hosting funds from shippers whilst A3 benefitted from the clearing business.

A3's defence that he was suspended because he delayed to clear goods is false because in his own testimony there was no importer in sight. Allan Kiwanuka and Kigopa Enterprises were ghost importers. A3's role was to launch falsified documents in the ASCUDA system to enable A1 rip off a huge difference between the actual tax and the under declared values.

The explanation offered by \$A1\$ that he did not benefit from \$A2\$'s account is defeated by the transaction of 13th November, 2017 which was to him. \$A1\$ is connected to \$A3\$ through the evidence of PW1 and PW3 who dealt with him on containers whose falsified documents A3 launched to clear taxes.

It does not require rocket science to see that A1, A2 and A3 were working in a conspiracy to cheat taxes. There is no other explanation on any reasonable hypothesis than to conclude that the three persons were acting in a conspiracy.

Both lady assessors did not find a conspiracy and advised me to find not guilty on count five. With respect, I am unable to accept that advice for the reasons I have discussed extensively above. It would be naïve to think that the accused were acting innocently and independently. Circumstantial evidence is so strong against the accused that there are no other co-existing circumstances which would weaken or destroy the inference of guilt

In conclusion it is my finding upon evaluating the prosecution and defence case that the prosecution has proved all the essential ingredients of the offence of using falsified customs documents \$C/S\$ 203(h) of the EACCMA, 2004 in counts one to four beyond reasonable doubt as against A1 and A3. I find each one of the guilty and convict each one accordingly.

I also find that the prosecution has proved beyond reasonable doubt all the essential ingredients of the offence of conspiracy to commit a felony C/S 390 of the PCA, Cap 120 against A1, A2 and A3 . I find each of the guilty and convict each of them accordingly.

Gidudu Lawrence

JUDGE

21st April 2022. 15

Three Accused present

Lomuria for the state

Nyegenye for A1

Mudde for A2

Kaggwa for A3 20

Judgment-delivered.

Gidudu Lawrence

JUDGE

21st April, 2022 25

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