

UGANDA / JUDGMENT

Uganda v Muhangi (HCT-00-ACD-SC 6 of 2021) [2023] UGHACAD 2 (20 March 2023)

[2023] UGHACAD 2**COURT**

HC: Anti corruption Division (Uganda)

BEFORE

Tibulya, J

CASE / FILE NUMBER

HCT-00-ACD-SC 6 of 2021

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO
HCT_00-ACD_SC_NO.006/202 I**

Uganda:::prosecutor

Ys

Muhangi Kenneth:::Accused

BEFORE: HON. LADY JUSTICE MARCARET TTBULYA**J udgment**

The accused stands charged as follows;

| Counts I to 13 | Embezzlement C/S 19 (b) (iii) of the ACA |

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| Counts 14 & 15 | Causing Financial Loss C/s 20 (l) of the ACA |

| Count 16 | Establishing a school which is not classified and registered C/S
40 (a) (c) of the Education {pre-Primary and Post Primary} Act
200E. |

The facts on which the indictment is based are that in 2017 the supervisory team of which Pw1 (Emmanuel Mwebesa) and Pw2 (Valerian Kahangire) were members, and u.hose roles included ensuring that loans were disbursed and repaid in accordance with the SACCO guidelines, and ensuring that management spent in accordance with the budget, found that the manager (accused) and others including Tusingwiire Julius (the accountant), Basiime (the accused's cousin), the accused's school (M/s Happy Child Junior School which was given a loan of 35m/=),

the accused's son (Aijuka Albright Muhangi) and his wife (Monic Amutuhire) had been granted loans and overdrafts.

The loans and overdrafts were not approved by the Loans committee (Pw5 (Katunda James)) which in any event only approves loans but not overdrafts, and were not paid back to the SACCO. According to the chairman of the Loans committee (Pw5 (Katunda James)) disbursement of approved loans was the responsibility of the accused (the General manager). The supervisory team made a report which was left with the manager (accused) for onward transmission to the Board.

Pw1 and Pw4 testified that nationally, SACCOs don't issue overdrafts. Further that this SACCO's lending manual (exhibit P.20 dated March 2015) specifically prohibits issuance of overdrafts, and did not issue any overdraft facility to any member between 2001 and 2010.

On 3 November 2014 the accused went to Kasana Branch of the SACCO and signed internal vouchers (exhibit P.19 (a)) granting himself an overdraft of 950,000/=. He gave Pw3 (Muhamwe Kenneth) the vouchers for posting on account No 2916 which belongs to the accused's son (Aijuka Albright Muhangi). The accused later called and asked him to make a withdrawal of 500,000/= from that account (No 2916), promising to sign the withdrawal slip later. Pw3 withdrew the money and took it to the accused who refused to sign the slip (exhibit P.19 (b)).

A forensic document examiner (Pw7 (Hashakimana Claire)) in a report (exhibit P.22) opined that the accused wrote and signed original receipts dated 21st July 2015, 13th September 2016, 10th June 2015 and 3rd November 2013, and original withdrawal slips serial numbers 9358, 9357, 1651, 14595, 14593, 14590, 14582 and 9084, dated 21st July 2015, 21st July 2015, 26th June 2015, 18th June 2015, 16th June 2015, 13th June 2015, 10th June 2015, and 13th September 2016 respectively (exhibits 22 (a)). She opined that the handwritings and signatures in issue belonged to the accused.

Pw8 (IP Bwambale) and Pw9 (Muhireza Jason) conducted police and audit investigations respectively. The court will make reference to their findings in so far as they are relevant to the resolution of issues in the case.

The prosecution bears the burden of proving all ingredients of each offence beyond reasonable doubt. (Woolmington Vs DPP (1935) AC 465)

Embezzlement C/S 19 (b) (iii) of the ACA

The state had to prove the following ingredients.

- a. That the accused was an employee of Kitagata Financial Services Cooperative Society Ltd.
- b. That Kitagata Financial Services Cooperative Society Ltd is a company.
- c. That the accused stole the alleged Ugx 34,999,950/-, 15,950,000/=-, 3,155,748/=-, 8,894,302/=-, 8,088,600/=-, 6,150,000/=-, 4,580,000/=-, 4,700,000/=-, 4,700,000/=-, 4,52,7961/=-, 2,00,000/=-, 100,000/=- and 100,000/=- as charged in counts 1 to 13 respectively.

- d, That the above monies belonged to the accused's employer.
- e. That he accessed the monies by virtue of his office.

Whether the accused was an employee of Kitagata Financial Services Cooperative Society Ltd, and whether Kitagata Financial Services Cooperative Society Ltd is a company.

The state sought to rely on M/s Kitagata Financial Services Cooperative Society Ltd's registration documents (exhibits P.1 to P.7), and on the accused's employment record (exhibits P.8 a to k) among other evidence. The accused does not dispute the evidence relating to these two issues. He in fact referred to himself as the general

manager of Kitagata Financial Services Cooperative Society Ltd. Based on this evidence, I find that the state has proved that the accused was an employee of M/s Kitagata Financial Services Cooperative Society Ltd, which is a registered company.

In *Kibiranso John vs Uganda Cr App No 4112006*, it was held that theft is a central ingredient of the offence of embezzlement. Theft is proved when property belonging to another person is appropriated with a fraudulent intent.

Whether he stole the Ugx 34,999,950/= (in count 1), 15,950,000/= (in count 2), 13,155,7481= (in count 3), 8,894,302/= (in count 4), 8,088,600/= (in count 5), 6,150,000/= (in count 6), 4,560,000/= (in count 7), 4,700,000/= (in count 8), 4,700,000/= (in count 9), 4,552,7961= (in count 10), 2,000,000/= (in count 11), 100,000/= (in count 12) and 100,000/= (in count 13).

The accused does not deny that he took some of the loans and overdrafts which are the subject of the charges. He however asserts that he repaid the loans and overdrafts he took, only that the repayments were not captured in the savings ledger cards. He denies knowledge of the rest of the loans and overdrafts which are the subject of some counts in the indictment and maintains that he is being framed due to a disagreement with the SACCO chairman (Pw1 Mwebesa) as evidenced by exhibit D1.

The accused maintains that the SACCO had no lending policy and that overdrafts are acceptable loan products offered by the SACCO since 2010. The court however rejected a document which the accused referred to as the 2014 audited financial accounts, and on which he sought to base this assertion.

Since the state case is partly premised on the assertion that the accused irregularly took the loans and overdrafts, it is important that the court pronounces itself on the issues of whether the SACCO had a lending policy and whether overdrafts were acceptable loan products offered by the SACCO.

Each of Pw's 1 (Emmanuel Mwebesa), 2 (Valerian Kahangire), 4 (Baingana Joram) the SACCO treasurer and 5 (Katunda James) the chairman of the Loans committee, were positive that the SACCO had an approved lending Policy (exhibit P.20), which does not permit taking of overdrafts.

The accused points to alleged misunderstandings with Pw1 (Emmanuel Mwebesa), and claims that Exhibit P.20 was only created to promote the prosecutions narrative. If the accused has misunderstandings with Pw1, he does not claim he has any with Pw's 2 (Valerian Kahangire), 4 (Baingana Joram) the SACCO treasurer and 5 (Katunda James) the chairman of the Loans committee. These witnesses incriminated him as well struck me as witnesses of truth, and their evidence was not even challenged in cross examination. Exhibit P.20 moreover covers a wide range of subjects beyond the issues at bar. It is therefore not possible that the lending manual was made for the sole purpose of incriminating the accused. I accept the prosecution evidence and make findings of fact that the SACCO had a lending policy (exhibit P20), which in the last line of paragraph 2.5.2.2 (page 11/12) excludes overdrafts from products the SACCO was extending to its customers.

Count I (Ugx 34,999,950/=)

With regard to allegations in count 1, the accused merely denies that he owes the stated figure, but doesn't address the evidence that he irregularly authorized an overdraft of the stated amount to his school. He suggests that the overdraft was paid back but that the repayments were not captured in the ledger (exhibit P23 c).

Both Pw9 (Muhireza Jason) the auditor and Pw10 (Atuhaire Benardine) then in charge Kasana Branch of the SACCO testified that the accused got an overdraft of

35m/= on the Account of IWS Happy Child Junior School (exhibit P.23 c) which was neither approved nor paid back. The auditor who found only a photocopy of the ledger explained the discrepancy in figures (34m/= as laid in the indictment and 35m/= as reflected in the ledger), as being a result of rounding off figures. I accept that explanation.

Pw10 (Atuhaire Benardine) also explained that she used to manually transfer information from damaged ledger cards to new cards, and that she would at times attach old cards (if they still bore legible information) to new ones she will have created as replacements.

In asserting that he made repayments which are not reflected in the savings ledger, the accused points to the following anomalies in entries in exhibit P.23 c, the ledger card relating to the 34 m,/= in issue.

- a. the new ledger card bears nil balance brought forward.
- b. wrong figures were entered in the card. The card for example bears an entry indicating that when 350,000/= is deducted from 535,000/= the remainder is 500,000/=.
- c. on the 10th February 2015 there was a balance of 67,000/=, and yet on the 24th February 2015 500,000/= was withdrawn.
- d. 1m/= was withdrawn on the 13th June 2015, but the cheque leaf which was presented in evidence bears the figure of 1.5m/=.

- e. In one entry, when 1,500,000/= is subtracted from 5,567,000/= the balance is 3,567,000/=.
- f. Lastly, there is a mix up of dates on the last page of the card. The first date is 10th June 2015, but along the way the card bears the following dates; 27th June 2016, then 30th May 2015, 3rd July 2015, followed by 10th July 2016-

The ledger card in issue indeed bears unexplained anomalies in entries therein, which coupled with the auditor's evidence that he found only a photocopy of the ledger create doubt in Pw9 (Muhereza Jason) the auditor and Pw10 (Atuhaire Benardine)'s evidence that the 34m/= over draft was not repaid.

Since the ledger card was exhibited by the state, the anomalies it bears must be explained in the accused's favor. And, given that the state has two versions of the same narrative and recalling that they bear the burden of proof, there is no basis for upholding the state case that the over draft was not repaid.

It should be clearly stated that the fact that the over draft was irregularly accessed can only ground a finding that the accused fraudulently took the money but it does not prove that he had the intention to permanently deprive the SACCO of its money' ^akey element of the offence of theft. I don't agree with the assessors' opinion that there is sufficient evidence that the accused stole the 34m/= the subject of count 1. Since a major ingredient of the offence has not been proved I acquit the accused on count one.

Count 2 (15'950'000/=)'

According to Pw9, the 15,950,000/= was an overdraft comprising of 950,000/= (on 13th November 2016) and 15,500,000/- on (13th September 2016) on Aijuka's account, less payment of 500,000/= on 13th September 2016. Pw10 (Atuhaire Benardine) explained that on 21st November 2011 the accused opened account No 2916 at the head office for his son Aijuka Muhangi, which he (accused) operated. He transferred the savings ledger card (exhibit P.23 a & e) to Kasana branch on 25th July 2014.

The transactions in the card include;

- o ^Aloan of 10m/= on 10th June 2015
- o An overdraft of 950,000/= on 3rd November 2014, and
- o An overdraft of 15,500,000/= on 13th September ²⁰¹⁶

Pw9's further evidence is that the accused got the vouchers and gave himself the loan for which he did not furnish security. He paid part of the loan and left a balance of 8,880,600/=. Of the 950,000/- overdraft he only paid 500,000/= which he deducted from the second overdraft. He did not pay the second overdraft of 15,500,000/..

The accused maintains that 15,950,000/= was an overdraft granted to him in consultation with the chairman of the loans committee and the treasurer. He doesn't address the evidence that he has never paid back the money.

The accused's assertion that he was granted an overdraft in consultation with the chairman of the loans committee and the treasurer Pw5 (Katunda James) and Pw4 (Baingana Joram) respectively was however not put to them to give them a chance to agree or disagree. I therefore reject the accused's assertion as an afterthought.. Pw5 (Katunda James) and Pw4 (Baingana Joram) were moreover clear that over drafts are forbidden under the loans policy. The accused admits that he got the overdraft. This was without approval as the available evidence indicates. It is also in evidence (Pw10) that the accused did not pay back the money, which he doesn't deny. He doesn't deny that he opened account No 2916 at the head office for his son Aijuka Muhangi, and he transferred the savings ledger card (exhibit P.23 a & e) to Kasana branch. Further that he got the vouchers and gave himself money and did not furnish security for the loan.

These facts sufficiently prove that he fraudulently took the money and that he had the intention of permanently depriving the SACCO of it. I find that the accused stole 15,950,000/= the subject of count 2.

Count 3 (13,155,748/=)

According to the auditor (Pw9 (Muhereza Jason), the 13,155,748/=) is the balance on two over drafts taken by the accused on account No, 2609. 5,000,000/= was taken on 7th April 2017 and it was an MTN transfer as per the ledger. The 10,534,050/ was taken on 28th April 2017. The ledger shows that as at 31st July 2017, there was 13,155,748/- which was not repaid.

The accused merely denied knowledge of the figure, maintaining that there is no evidence against which he can defend himself.

I believed Pw9 (Muhereza Jason)'s evidence that the accused took the over draft. And, based on evidence that overdrafts are forbidden, and that the over draft was not approved, I find that he fraudulently took the money. I believed the evidence that he has not paid the money back, and I find that he had the intention of permanently depriving the SACCO of it. I find that the accused stole 13,155,748/= the subject of count 3.

Count 4 (8,894,302/=)

According to the auditor (Pw9 (Muhereza Jason) and Pw10 (Atuhairu Benardine) the 8,894,302/= was a loan of 10,000,000/= on the accused's loan account No 12598 of which 8,894,302/= is the outstanding balance as per exhibit P23 e.

The accused denied knowledge of the money, maintaining that the savings ledger for account number 2609 does not show the 8,894,302/= as having been taken on 30th September 2016 (the date mentioned in the indictment).

The assertion that the savings ledger for account number 2609 does not show the 8,894,302/= as having been taken on 30th September 2016 ignores Pw9's explanation that the accused took a loan of 10,000,000/= (which is reflected in the savings

ledger exhibit P 23(b) and that the 8,894,302/= is the outstanding balance on that loan.

Pw1 (Emmanuel Mwebesa) and Pw2 (Valerian Kahangire) testified that the loan was not approved as it should have been, which supports the finding as I do that the money was fraudulently taken. Pw9's evidence that it has not been repaid is not controverted and I believed it. Based on this evidence I find that the accused took the 8,894,302/= with the intention of permanently depriving the SACCO of it. I find that the accused stole 8,894,302/= the subject of count 4.

Count 5 (8,088,600/=)

The auditor (Pw9 (Muhereza Jason)) testified that it was a loan taken on 31st December 2016 on the account of Aijuka Muhangi and that it was not paid. The accused denied the figure of 8,088,600/= maintaining that the indictment mentions that the transaction took place on 31st December 2016 yet the savings ledger card stops at 15th September 2016.

I however scrutinized the Loan Ledger Card (exhibit P23 f) and determined that the accused took the loan of 8,088,600/= contrary to his denial.

Based on Pw1 (Emmanuel Mwebesa) and Pw2 (Valerian Kahangire)'s testimony that the loan was not approved as it should have been, I find that the money was fraudulently taken. Pw9's evidence that it has not been repaid is not controverted and I believed it. Based on this evidence I find that the accused took the 8,088,600/= with the intention of permanently depriving the SACCO of it. I find that the accused stole 8,088,600/= the subject of count 5.

Count 6 (6,150,000/=)

The auditor (Pw9 (Muhereza Jason)) testified that the 6,150,000/= was a loan taken on 31st December 2016 on the account No. 5437 of Besiimira Wilberforce, brother of the accused, and that the accused approved the loan which was not paid. The accused denied knowledge of 6,150,000/=.

The only evidence linking the accused to the money Pw9 (Muhereza Jason)'s evidence that the money was taken on the account No. 5437 of the accused's brother Besiimira Wilberforce, and that the accused approved the loan. The mere fact that Besiimira Wilberforce is the accused's brother and that the accused irregularly approved the loan is not evidence that he stole the 6,150,000/=. I find that it has not been proved that the accused stole the 6,150,000/=, the subject of count 6. Since theft which has not been proved is a major ingredient of the offence, the charge of embezzlement must fail. I don't agree with the assessors' opinion that there is sufficient evidence that the accused stole the 6,150,000/= the subject of count 6. A major ingredient of the offence has not been proved. I acquit the accused on count 6.

Count 7 (4,580,000/=)

The auditor (Pw9 (Muhereza Jason) testified that the accused approved the loan of 4,580,000/= which was taken on the account of Muhwezi Kuraisha, the accused's friend and that it was not repaid.

Based on Pw9 (Muhereza Jason)'s evidence that the money was taken on the account of Muhwezi Kuraisha, there is no basis for the charged of embezzlement against the accused. The mere fact that Muhwezi Kuraisha is his friend is not evidence that he stole the money. I don't agree with the assessors' opinion that there is sufficient evidence that the accused stole the 4'580,000/= the subject of count 7. Since a major ingredient of the offence has not been proved I acquit the accused on count 7.

Count's 8 and 9 (4'700'000/:)

These two counts relate to the same money. It is in evidence that the 4,700'000/= was a loan which was regularly taken by Monica Amutuhaire the accused's wife on 6s October 2016. Monica Amutuhaire is No 93 on the list (exhibit D2) of those whose loans were approved. I agree with the assessors' opinion that there is sufficient evidence that the accused stole the 4,700,000/= the subject of counts 8 and 9. I acquit the accused on each of those counts'

The auditor (Pw9) did not have details of money which is the subject of Count 10 (4,852,796/=) and count 13 (100'000/=). In agreement with the assessors' I acquit the accused on each of those counts for lack of evidence'

Count 11 (2000,000/=)

The auditor (Pw9 (Muhereza Jason) testified that the 2,000,(X)0/= was taken on the account of Byarugaba Henry, a SACCO client, and that the accused signed ^a voucher to pick the money. The accused denied knowledge of the money The withdraw voucher which Pw9 claims the accused signed was however not exhibited' There is no basis for an adverse finding against the accused I don't agree with the assessors' opinion that there is sufficient evidence that the accused stole the 2,000,000/= the subject of count 11. Since a major ingredient of the offence has not been proved I acquit the accused on count 11'

> Count 12 (1'3000'000/=)

The auditor (Pw9 (Muhereza Jason) again testified that the accused withdrew the 1'000,000/= from Kabareebe Simons account. Given that the withdraw voucher was not exhibited, there is no basis for an adverse finding against the accused' I don't agree with the assessors' opinion that there is sufficient evidence that the accused stole the 13000000/= the subject of count 12. Since a major ingredient of the offence has not been proved I acquit the accused on count 12'

In summary, I find that there is sufficient evidence that that accused stole 15,950,000/= as charged in count 2, 13,155,748/= as charged in count 3, 8'894,302/= as charged in 4 and 8,088,600/= as charged in count 5. There isn't sufficient evidence to prove that he stole the monies alluded to in counts 1, 6 to 12'

Whether the above monies in counts 2' 3, 4 and 5 belonged to the accused's employer.

Uncontroverted evidence is that the money in issue belonged to the SACCO and ^I so find.

Whether the accused accessed that money by virtue of his office'

The accused was the General Manager in the SACCO' He was able to steal the money because he was privy to inside information and could access documents such as vouchers without being queried. I find that he accessed the money by virtue of his office.

The prosecution has proved that the accused embezzled Ugx 15'950'000/= as charged in count 2, 13,155,748/= as charged in count 3' 8,894'02/= as charged in 4 and E,088,600/= as charged in count 5.

I agree with the lady and gentleman assessor's advice that based on the available evidence the accused should be convicted on each of counts 2, 3, 4 and 5. I convict him as charged on each those counts.

I was advised to acquit the accused on counts 8, 9, 10 and 13. I agree that there is not sufficient evidence to sustain those charges. I therefore acquit the accused on each of those counts.

For the reasons I gave and in disagreement with the assessors, I find no basis for convicting the accused on each of counts 1, 6, 7, 11 and 12' I acquit the accused on each of counts.

Count 14 (Causing financial loss of 33,518,600/= and 116'705'000/=)

The state had to Prove that;

- 1. The accused was an employee of the SACCO,
- 2. He did an act (disbursing interest free loans of 33'518'600/=)
- 3. The accused knew or had reason to believe that the act or omission would cause financial loss to the Government.
- 4. The SACCO suffered financial loss,

Pw9 explained that the 33'518'600/= is the total amount in loans given out by the accused to himself, Aijuka and others while the 116'705'000/= is the total interest the SACCO lost on those unpaid loans.

That the accused was an employee of the SACCO is common cause' I find that the first ingredient has been sufficiently proved.

Whether the accused disbursed interest free loans of 33'518'600/=

The state's own evidence contradicts the charge as laid' Nowhere in Pw9 (Muhereza Jason) and Pw10 (Atuhaire Benardine)'s evidence do they state that the accused gave out interest free loans. With regard to the accused's Account No 2609 for example, the ledger card (exhibit P.23 b) indicates that the accused got a loan of 10m/= on 30th September 2016 of which he paid only two instalments of 365,000/= and 374,849/=, leaving a balance of 8,894,302/= and interest of 2,365,371/= (exhibit P23 e).

Some of the documents relied on by the prosecution indeed show that some money was paid towards interest, meaning that the loan was not interest free.

A distinction must be made between failure to recover a loan and interest as was the case here, and issuing interest free loans. There is no evidence that the accused gave out interest free loans. The charge as laid contradicts the evidence on record. For those reasons, in disagreement with the assessors' opinion, I find no basis for convicting the accused on count 14 and I acquit him on that count.

Count 15 (Causing financial loss of 71'951'865/= and 215,855'595/=)

It was alleged that the accused caused financial loss of 71,951'865/= and 215,855,595/= by disbursing unauthorized interest free overdrafts for 71'951'865/=. According to Pw9, the 71,951,865/= is the total amount in unauthorized overdrafts taken by the accused, while the 215,855,595/= is the total interest that amount would have attracted at the rate of 2.50% p.m.

It was in evidence that the SACCO prohibited the issuing of overdrafts, yet as was found in counts 2 and 3, he disbursed them. While these were unauthorized disbursements. For similar reasons as for count 14 I don't agree with the charge that they were interest free. The charge as laid contradicts the evidence on record' For those reasons, in disagreement with the assessors' opinion, I find no basis for convicting the accused on each of count 15. I acquit the accused on count 15'

Count 16 (Establishing a school which is not classified and registered).

Section 40 (a) of the Education [Pre-Primary and Post Primary] Act 2008 provides that "A person who establishes or maintains a school which is not classified and registered in accordance with the provisions of this Act commits an offence and shall be liable on first conviction to a fine not exceeding twenty current points and on second or subsequent conviction, to a term of imprisonment not exceeding twelve months".

Pw6 ([Elizabeth Butumba Nabukeera) a Principal Education Officer in charge of Primary education testified that M/s Happy Child Junior School was neither licensed nor registered, and is not on the Ministry of Education's list of private primary schools.

The accused admits that he owned the school and that he had not yet got a license. He however maintains that he was in the process of getting one since the District environment officer, the District Education officer and the Health Inspector visited the school and recommended it for classification. (exhibit D3)

The fact that the accused used the school account to get loans proves that the school was operating. Pw6 (Elizabeth Butumba Nabukeera)'s evidence proves that the school was not licensed and registered. That the accused was in the process of getting a licence is not evidence that he had a licence, and is not a defence to the charge of operating without one. Based on available evidence, and in agreement with the assessors, I find that the accused established a school which is not classified and registered. I convict him as charged in count 16.

In conclusion, convictions are entered against the accused in each of counts 2,3,4, 5 and 16 while acquittals are entered on each of counts 1,6,7, 8,9, 10, 11, 12, 13, 14 and 15.

q Margaret Tibull'a

20th March 2023.

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