

UGANDA / JUDGMENT

Uganda v Nalumansi & Ors (Criminal Session Case No.0070 of 2013) [2015] UGHCCRD 41 (9 December 2015)

[2015] UGHCCRD 41

COURT

HC: Criminal Division (Uganda)

BEFORE

Tibulya, J

CASE / FILE NUMBER

Criminal Session Case No.0070 of 2013

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO

Criminal Session Case No.0070 of 2013

UGANDA ::: Prosecution

VERSUS

A1 NALUMANSI AISHA MUBIRU

A2 MULINDWA FRED ::: Accused

A3 NANKANJAKO HANIFA

J U D G M E N T

BEFORE: HON. LADY JUSTICE MARGARET TIBULYA

The brief facts are that during routine checks, Pw4 (Andruma Richard) noticed that the balance on account No 9-030-000-347-433, belonging to Pearl Mutiibwa had reduced drastically to 8000/= in a short period. Over 239,400,000/= had been with-drawn from the account between 12th Dec and 24th December 2012, from the Corporate (4.4m/=), Kikuubo (185m/=), and Mpigi (50m/=) branches.

On the basis of the fact that the account holder denied having performed the transactions and that she did not appear in the CCTV footages of the relevant days and in the 12th December 2012 footage the person who was served at the material time was a man, Pearl Mutiibwa was refunded 239,400,000/= on the 8th Jan 2013, (see her bank statement exhibit (P.2.e) and the bank lost money.

The Kikubo branches withdraws which are the subject of these charges are evidenced by the vouchers and documents comprised in **exhibits P2 (a) to (e)** and bore the following information.

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| **DATE** | **AMOUNT** | **PAYING TELLER** | **AUTHORISING SUPERVISOR** |

| 12th Dec 2012 | 50m/= | Mulindwa Fred (A2) | Nalumansi Aisha (A1). |

| 13th Dec 2012 | 50m/= | Mulindwa Fred (A2) | Nalumansi Aisha (A1). |

| 13th Dec 2012 | 35m/= | Khiisa Moses | Nalumansi Aisha (A1). |

| 17th Dec 2012 | 50m/= | Mulindwa Fred (A2) | Hanifa Nakanjako (A3) |

Each voucher had a photocopy of a driving permit bearing Pearl Mutiibwa's photograph similar to the one in the bank system. Pw4's further evidence was that Pearl Mutibwa denied ever owning a driving permit and **M/s Face Technologies**, the issuers of driving permits in Uganda disowned driving permit number **16682561/1/1 (Exhibit P.12)**, the one that was used in the impugned transactions (see **Pw 9's Karim Kibuuka's evidence**). Pearl Mutiibwa did not testify in this case on account of ill health as testified by Pw8 (**Dr Kazibwe Faisal**).

Other evidence is that the signatures in the vouchers differed from the customer's signature on her personal file in the system.

Pw4 only talked to **Mulindwa (A2)** and **Nakanjako (A3)** since **Nalumansi (A1)** was on leave. **A2** told him that he had paid the customer (**Pearl Mutiibwa Katumba**) whose identification documents were attached. When Pearl Mutiibwa was presented to **A2** however, he admitted that she was not the person that he paid but that he could have paid someone who resembles her.

A3 (Hanifa Nakanjako) said that **A2 (Mulindwa Fred)** took to her the documents after he paid the customer whom she did not see. She only authorized the voucher to balance the books because the entry would not pass in the system.

Pw4's further evidence was that authorization is supposed to be done before payment, and that **A3** should have escalated the issue to her line manager instead of authorizing the transaction. Moreover, the signatures on the documents differed from those on the system. When **A1** was got she insisted that Pearl Mutiibwa was at the branch on the 13th and that she served her from the inquiries section.

Khisa Moses (Pw7) told him, (as was his evidence in court) that **A1 (Aisha Nalumansi)** his Team Leader. She went to him with a bulk transaction of 35m/= at about noon. Before that time he had not seen her at the bank. She wanted 35m/= to take to a customer. She had a voucher and a photocopy of the customer's driving permit. Pw7 did not have the 35m/=. **A1** went away in the hope that he would collect the money in due course, but he still did not have it after 30 minutes. She collected the money from two tellers who electronically sent it to Pw7, since he was the one

who had to pass the transaction as a bulk teller. After the money was transferred to him, A1 got it and first went and paid the customer then she came back and asked him to pass the transaction, which he did. He did not see the customer. He did his duty of care by verifying the signature on the voucher against that on the system and the photo on the identification document, against that on the system and they matched. A1 had authorized the transaction before she went to him. He received the voucher when it was already authorized. Soon after he passed the transaction A1 left the branch.

Pw7's further evidence was that the transaction did not go through the normal procedure which was that the customer had to take the voucher to him. He would then do his duty of care, then pass the voucher over to the supervisor, who would also do her duty of care after which she would authorize the payment and then give the document back to him. He would pass the transaction on the system and she would authorize it again and before he pays the customer.

He allowed the transaction only because he had a good working relationship with A1 whom he trusted as his supervisor. Yet it was not unusual for supervisors to take transactions to bulk tellers, especially if a customer is known to the supervisor or if there are long queues in the bank.

Pw 6 (Bizimungu) noted that in the voucher of the 12th December the name "**Mutiibwa**" was written with a single '**I**' yet in the specimen signature card there are two '**I**'s and that the "**m**" in the name '**Mutiibwa**' appearing in the specimen signature card is different from that in the voucher.

Testifying about the bank procedures **PW1 (Omar Lubega)** who exhibited the staff guidelines (**exhibit P1**), explained that a teller does duty of care on receipt of a voucher from a customer. If the instrument is above two million the teller passes it to the supervisor (**team leaders**) who will do independent checks which involve re-doing what the teller has done. A team leader does deeper analysis of the transaction, looking at where the money comes from and whether it is by cheque or cash. If satisfied she stamps and signs the document before passing it to the tellers make the payment.

The questioned vouchers and sample hand writings and signatures of Mutiibwa and those of the accused persons were subjected to expert analysis by **Pw 12 (Chellangat Sylvia)** an expert. The expert's report is (**Exh P. 16**) and reference will be made to the findings as and when the need will arise.

Nalumansi Aisha (A1) said that she was team leader customer service at Kikubo branch. On each of the 12th and the 13th of December 2012 transactions, A2 (**Mulindwa Fred**) presented to her the vouchers after he had verified the signatures. He wanted her approval so that he could pay the customer.

She did her duty of care by;

* checking to see that the account names, signatures, and account number tallied with those in the system,

* ensuring that the date was the day's date, and that the amounts in words and in figures were tallying,

* whether the branch was the correct one,

* whether there was enough money in the account to process the transaction, and

* whether the identification was the same as one in the photograph in the bank system.

She was satisfied with all those aspects, and she confirmed this by stamping the vouchers and approving the payments in the system.

For the two transactions she as a supervisor was not required to look for the customer. Supervisors are not expected to move from the back office to go and look at the customers. The bank Procedure does not require it. There are many transactions to handle, and one cannot look at each customer, unless there is doubt in one's mind. In this case she had no doubt because the driving permit that had been presented was an original one and the photograph in the driving permit was the same as the one on the system.

With regard to the third transaction of 35m/= of the 13th December 2012, she was helping out at the enquiries counter when an elderly lady told her that she wanted to draw money. The line was long. She gave her voucher and her driving permit which was the same as the one in the system.

The signature was fine, and the person before her was the same as the one in the system. She (A1) went to the teller (Pw7, **Khisa Moses**) who told her that he did not have money, so she asked other tellers for money. She told him to independently verify the signature as well which he did by cross checking details such as the date and branch, the account name, the amount in words and in figures. Pw7 was satisfied so he signed and stamped the document. A1 got the money and took it to Pw7 to confirm. He posted the transaction and she took the money to the customer at the enquiries counter.

She emphasized that on the 13th she is the one who interacted with the customer. She looked at her and at her identification and compared the photograph and the face of the person and found that it was the same person in the driving permit and in the system. She also satisfied herself with the similarity of the signature on the system with that in the voucher and on the identification documents. The customer signed the voucher in front of her and signed twice at the back. She paid the 35m/= late afternoon, around 5:00PM. She had reported to the bank at 8:00 a.m. since she had the bank keys. She left the bank around 9:00 p.m. with the rest of the bank staff.

Pw7 (**Khisa**)'s evidence that she came in late to the bank is false. She had to sit in for the manager who was away, and yet she had the keys to the bank. The events of the 13th Dec 2012 were captured on CCTV but she has never been shown the footage. Pearl Mutibwa Katumba was never taken to her so she could not tell whether she was the person she had served.

The duty of care of a supervisor includes verifying the identity of the customer and it is possible to do this without interfacing with them. The tellers do the first verification and take the papers to the supervisor for approval. It is possible to pay the wrong customer that is why there are two

levels of verification. Sometimes she checks the run of the account to see how the customer has been transacting but at times she does not. On the 12th she checked the run of the account and saw there was nothing wrong with the account. The photograph in the driving permit was the same customer as the one in the system. The photograph in the driving permit was the same as the one in the system. The person in the system was the same as the one in the photograph. The photographs in the system were the same as the one in the driving permit. The bank does not share photographs with Face Technologies which issues driving permits.

For the 35m/= transaction she only took the voucher but not the customer to Khisa Moses. It is not bank policy that at all times the teller does the initial verification of the customer. It is bank policy to help the weak, elderly and disabled.

She did not have any problem with Khisa when she worked with him. She does not know why he implicated her. From 16th Dec 2010 to 2 she was on maternity leave and when her colleague were shown the customer she was on leave.

A2 (Mulindwa Fred) said that on the 12th Dec 2012 Mutibwa Pearl Katumba went to him and she wanted to draw cash. She presented a voucher to him and he checked the date on the voucher, the account number, the account of title, the amount in words and in figures and whether the voucher bore a signature. He then inserted the account number in the system to see the run of the account and checked to see whether the signature on the system and that in the voucher tallied. The photographs in the identification document given to him and that on the system were of the same person who was in front of him and the signature tallied.

He said that the prosecution brought to court a hard copy of the signature card yet in the bank they use the one on the system.

His supervisor (**A1**) did her duty of care and authorized the payment before he paid the customer.

Commenting about the **CCTV footage** he pointed out that the man in the footage did not take anything from him, and that when a referral is made to a supervisor one may continue serving other customers.

The driving permit presented to him bore no problem; it was valid, there were no alterations and photograph was fine. He photocopied it and attached it to the voucher.

On the 13th the same lady (meaning Pearl Mutibwa) went to him to draw 50m/=. He did the duty of care and sent the referral to A1 who also did the verification and returned the Identification documents and the voucher for him to pay the customer which he did.

On the 17th the same customer went to draw 50m/=. He sent the verification voucher to A3 (**Hanifa Nakanjako**) who verified the documents and gave him the voucher to pay the customer.

When on the 31st Dec 2012 Andruma (PW4) told him that they had paid a wrong person and took to him a lady who was said to have been Pearl Mutibwa and asking him whether he knew her, he told Andruma that he did not know her.

A3 (Nakanjako Hanifa)'s evidence was that on the 17th December 2012, A2 took to her a with-draw voucher for 50m/= and the driving permit of Pearl Mutiibwa Katumba. She did her duty of care by checking the account number, date, amount in words and in figures, and the signature. As she was doing the verification on the system A2 went to photocopy some documents. She checked the run of the account which had about 4-5 withdraws from various places like Kikubo and Mpigi. Once she was satisfied she authorized the payment.

Her other evidence was that customers interact with the Tellers who are supposed to identify them. Supervisors only get identification documents and withdraw vouchers which they tally with what is on the system and are not supposed to see the customers.

The sitting arrangement in the bank does not enable the supervisor to identify the customer. They sit a distance away from the Tellers.

For each of the four counts the state is under the duty to prove each ingredient of the offences beyond reasonable doubt, and so;

1. **The accused persons must be proved to have been employees of the bank, and,**
2. **that they did an act or omission, and,**
3. **that they knew or had reason to believe that the act or omission would cause loss, and**
4. **that loss actually occurred.**

That the accused persons were employees of the bank was proved by the evidence of Pw.5 (Kitutu Richard) who exhibited their respective employment records. That the accused described themselves as the banks employees went to strengthen the state evidence in this regard. The first ingredient was sufficiently proved.

Whether they did an act or omission.

As regards the events of the 12th and the 13th of December 2012 (the 50m/=) transactions are concerned, A1 (Nalumansi Aisha) maintains that on both occasions she followed the bank procedures only that she did not interface with the customer before she approved that payment, since it was not one of the requirements. With regard to the 35m/= transaction of 13th however she maintains that she saw and served Pearl Mutiibwa.

A3 (Nakanjako Hanifa) evidence was that on the 17th December 2012, A2 (Mulindwa Fred) took to her a with-draw voucher for 50m/= and the driving permit belonging to one Pearl Mutiibwa Katumba. She did her duty of care by checking the account number, the date, the amount in words and in figures, and the signatures.

Like A1, she said that customers interact with the Tellers who are supposed to identify them. Supervisors only get identification documents and withdraw vouchers which they tally with what is on the system and are not supposed to see the customers. Further, that the sitting arrangement in the bank does not enable the supervisor to identify the customer, since they sit a distance away from the Tellers.

Whether or not a supervisor is supposed to look at the customer is key to the court's decision on the allegations in counts 1, 2, and 4. A cursory perusal of the guidelines, (**Exhibit P.1**) will sufficiently resolve it.

The guidelines (**Exhibit P.1**) require a Teller to inter-alia **“compare the likeness of the person standing before the Teller with the picture of the signatory or authorized agent on the system...”**

*

Under the same guidelines a Team Leader (who A1 and A3 were) is required, **“on receipt of the system referral and the cash with-draw voucher from the Teller...to scrutinize the cash withdrawal form and customer identification the same way as stipulated above”,* i.e., in the same way as the Teller, which is by “compar(ing) the likeness of the person standing before her with the picture of the signatory or authorized agent on the system...”***

Going by A1's response during cross examination she seems to have been aware of the above provision. She for example said that the Teller does the first verification then takes the papers to the Supervisor for approval and that there are **two levels of verification in order to rule out the possibility of paying the wrong customer**. It is not logical that the teller, the first line of vetting is required to see the customer and the second level officer is not required to do so when the aim is to ensure that payment to the wrong customer is ruled out. The second level vetting cannot be by only scrutinizing signatures and photographs and I am sure A1 and A3 were aware of this fact.

Basing on the clear provisions of the guidelines, I have no doubt, and it is my finding that A1 and A3 as supervisors were required to physically verify the customer before authorizing payment.

This however is not the end of the story for them since the prosecution widened the inquiry to include issues relating to the signatures of the customer which are key to the resolution of the case for all three accused persons. I will however go to those issues after clarifying the specific issues touching on A2 (**Mulindwa Fred**).

A2 (**Mulindwa Fred**)'s defense is that he carried out his duty of care and paid the right person in the three transactions of the 12th, 13th and 17th December 2012. He said that on the 12th Dec 2012 Mutibwa Pearl Katumba wanted to draw cash. She presented a voucher to him and like his supervisor (A1), he did his duty of care before paying her.

On the 13th the same lady (meaning Pearl Mutiibwa) went to him to draw 50m/=. He did the duty of care and sent the referral to A1 who also did the verification and returned the Identification documents and the voucher for him to pay the customer which he did.

On the 17th the same customer went to draw 50m/=. He sent the verification voucher to A3 (Hanifa Nakanjako) who verified the documents and gave him the voucher to pay the customer.

When the 31st Dec 2012 Andruma (PW4) told him that they had paid a wrong person and presented to him a lady who was said to have been Pearl Mutiibwa and asking him whether he knew her, he told Andruma that he did not know her.

Commenting on the prosecution evidence he said that they brought to court a hard copy of the signature card yet in the bank the one on the system is what they use. About the CCTV footage he pointed out that the man in the footage did not take anything from him, and that when a referral is made to a supervisor one may continue serving other customers.

Of concern therefore is the issue of whether A2 carried out his duty of care which, he admits, involves the physical identification of the customer and whether he paid the right person.

The discussion of the evidence that follows answers the above issues and is vital to the resolution of issues relating to A1's payment/or non-payment of the 35m/= to Pearl Mutiibwa in count 3, since A1 maintains that she saw and paid her. It finally disposes of the whole question of whether all the accused did an act or omission.

* **Pw4 and 6** said that Pearl Mutiibwa denied having withdrawn the money, and ever owning a driving permit. Pearl Mutiibwa did not come to court by reason of ill health as testified by **Pw8 (DrKazibwe Faisal)** whose evidence I believed, but the assertion that she did not withdraw the money on 12th, 13th (the 50m/= in which A2 was involved) and 17th was sufficiently proved as demonstrated below;

a). **Pw4, 6 and A2 (Mulindwa Fred)** testified that when Pearl Mutiibwa was presented to A2 he confirmed that she is not the one that he paid. **A2 (Mulindwa Fred)** confirmed this in court. A2's testimony at another stage of the proceedings that he paid Pearl Mutiibwa is just a sign of dishonesty and is not to be believed.

b). the CCTV footage played in court showed that on 12th at the time of payment a man was the customer at A2's counter. Pearl Mutiibwa is a woman.

A2's suggestion that since in the footage the man did not take anything from him, and that when a referral is made to a supervisor one may continue serving other customers, an attempt at creating the possibility that Pearl Mutiibwa could have been paid at a different time and not the time captured in the CCTV recording, does not explain away the computer generated record of the time of payment is of Pearl Mutiibwa's account. There is no possibility that a person other than one who was transacting on Pearl Mutiibwa's account was paid at the indicated time. There were arguments about the absence of the recordings of other days, but this was satisfactorily explained that they were misplaced.

c). Pw 9's (**Karim Kibuuka's**) evidence that M/s Face Technologies, the issuers of driving permits in Uganda disowned driving permit number 16682561/1/1 (**Exhibit P.12**), which was used in the impugned transactions, supports the assertion that Pearl Mutiibwa never owned a driving permit. The evidence that the picture used in the driving permit was similar to the one in the bank system galvanize the position that the driving permit was false and raises the possibility that whoever forged it was a bank insider

.

* Pw's 4, 6 and 12 (**Andruma** and **Charles Omara** the investigators, and **Sylvia Chellangat**, the hand writing expert) respectively all testified that the signatures attributed to the account holder in the with-draw vouchers (exhibits P.5 (a) to P.5 (d), differed from those on the bank system.

I have looked at the signatures in issue and I agree with the assertion that the differences between them are obvious. One such difference for example is the fact that the account holder's signature in the bank system (**exhibit P.4**) bears two letter 'i's unlike those in the impugned vouchers (exhibits P.5 (a) to P.5 (d) which bear one letter 'i'. The glaring differences rule out the possibility that she drew the money.

* **Pw 6 (Bizimungu)** further pointed out that in the voucher **exhibit P.5(a)** of the 12th December 2012, the name "Mutiibwa" was written with a single 'i' yet in the specimen signature card it is written with two 'i's and that letter "m" in the name 'Mutiibwa' appearing in the specimen signature card is different from that in the voucher.

Looking at the documents he referred to I again agree with his comments. The 'M' in the name "Mutiibwa" in the account opening documents has sharp 'v'-like edges unlike that one in the vouchers, which has "n"- like ones. That difference does not require one to be an expert to notice it.

* With regard to the 35m/=, Pw7 was clear that the transaction did not go through the normal procedure and that he only allowed it because he had a good working relationship with A1 whom he trusted as his supervisor. This evidence was not challenged and must be believed. Khisa Moses's (**Pw7**) evidence that (**A1**) had authorized the transaction when she went to him, meaning that he received the voucher when it was already authorized, and that soon after he passed the transaction A1 left the branch effectively removes the impression of innocence and good faith that A1 sought to create. Khisa Moses's (**Pw7**)'s evidence depicts an overzealous Nalumansi eager to access the money. She is said to have presented an already authorized document when Pw7 was the one who would normally seek the authorization from her. She went about mobilizing the funds from Tellers. She took the money herself, all this in the absence of the account holder/customer as I have found. She must have had a more than professional interest in the transaction. There were allusions to the fact that A1 was not supposed to be in the bank when she made the transaction, but the evidence did not come out clearly. It would have been interesting and added value to the prosecution case if that line had been followed to the end.

An anxious consideration of the foregoing factors leads to the inevitable conclusion that none of the accused persons compared the likeness of the person who was supposed to have been standing before each of them, with the picture of the signatory or authorized agent on the system as their respective job titles required. I make a finding of fact that Pearl Mutibwa Katumba was not at the bank for purposes of these transactions on the dates and times in issue.

Beyond those two findings even if one were to take the liberal but erroneous position that the accused, by not interfacing with the customer, acted in honest mis-judgment of the likely consequences of their actions, this would fall on its face when the fact that the documents, which they say were their only concern, bore obviously false information. The argument that the account holder's specimen signature on the bank system is different from that in the account opening documents that were exhibited cannot be true. We at least have two sets of samples of Pearl Mutibwa's signatures and writings; the ones in the account opening documents which were taken years back and those specifically requested from her and submitted for expert analysis in this case; these two sets are similar, and therefore represent her true signature and writing. It is unlikely, and not true that the signature on the bank system is different from these others. The defense sought to raise issues relating to the change of the banking system by the bank. I should clearly point out that case is about facts, whether or not the accused identified the customer they were paying, and not the banking system.

I find that the accused persons deliberately authorized and or paid the money against obviously forged documents. This taken together with the fact that they did not ascertain the identity of the customer leads to the inevitable conclusion that they were the beneficiaries in the whole enterprise.

The state has sufficiently proved the above acts and/omissions in each count against the accused persons.

Whether they knew or had reason to believe that the act or omission would cause loss.

All three accused are bankers. Banking business is about money and is therefore prone to fraud, a fact all three are assumed to be aware of. A1's evidence was that to ensure that the right person was paid there were two levels of verification. She knew that the failure to do the proper vetting would defeat the purpose for which that requirement was put in place.

A1 and A3 were senior bankers at the level of Team Leaders/supervisors. It is therefore not farfetched to impute to them knowledge of the fact that loss would occur in the event that they did not execute their roles as required.

For A3 (Nakanjako) there was cause for her to go and report to her boss and or see the customer since the system had failed to be updated. She did not do this. Her conduct cannot be simply swept under the carpet as that of an innocent person. I don't attach any importance to the fact that she was allowed to work for two years after the fraud was unearthed, since that does not remove the evidence that she was involved in the scam in ways that point to dishonesty.

A2 (Mulindwa Fred), a Teller was the gate keeper, the first line protection/verifying officer. His office is such that he knew the importance of correct identification and verification, and the effect that the improper identification or non-verification would have.

Moreover the evidence that forged documents bearing obviously false writings and signatures of the account holder were used points to deliberate fraud by the three accused persons. There can be no doubt that they knew and/or had reason to believe that the above acts or omissions would cause loss, and this is my finding.

Whether loss actually occurred.

There is credible uncontroverted evidence that Pearl Mutiibwa was refunded her money by the bank. This was a loss to the bank and i so find.

All ingredients of each of the four offences have been sufficiently proved. For that reason I disagree with the lady assessor who advised acquittal on all counts, and with the one who advised acquittal of A3. I find each of the accused persons guilty and accordingly convict each of them on the respective counts as charged.

Margaret Tibulya

Judge

19th December 2015

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