

UGANDA / JUDGMENT

Uganda v Tindyebwa & 2 Others (Criminal Case 8 of 2018) [2025] UGHCACD 5 (18 March 2025)

[2025] UGHACD 5

COURT

HC: Anti corruption Division (Uganda)

BEFORE

Gidudu, J

CASE / FILE NUMBER

Criminal Case 8 of 2018

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THE REPUBLIC OF UGANDA THE HIGH COURT OF UGANDA ANTI-CORRUPTION DIVISION CRIMINAL CASE NO. 8 OF 2018

UGANDA

VRS

TINDYEBWA JONATHAN AND 2 ORS

BEFORE GIDUDU, J

JUDGMENT

Introduction

Jonathan Tindyebwa, herein after referred to as A1; Ssalongo Abdul Lubowa, herein after referred to as A2 and Ronald Kavuma, herein after referred to as A3 are indicted with several counts as follows: -

Count one: Obtaining money by false pretence \$C/S\$ 285 of the PCA, Cap 128. The three and others still at large are accused of obtaining Shs. \$1,270,000,000=\$ from Dauda Katende by falsely representing that the money was required to unfreeze Shs. 18,500,000,000= purportedly held on the bank account of A2 in DFCU bank whereas not.

Count Two: Conspiracy to defraud C/S 289 of the PCA, Cap 128. The three and others still at large, between April and July 2018 in various places in Kampala, are accused of obtaining Shs. \$1,270,000,000=\$ from Ssuna Dauda Katende by fraudulent tricks.

Count three: Money Laundering C/S 3(c), 119 and 139(1) (a) of the AMLA, Cap 118. A1 and A2 are accused of possessing Shs. \$1,270,000,000\$ = knowing at the time of receipt that the money was a proceed of crime.

Count four: Money Laundering C/S C/S 3(c), 119 and 139(1) 30 (a) of the AMLA, Cap 118. A2 is accused of constructing a house for Najjemba Aisha using part of Shs. 1,270,000,000= which he obtained from Ssuna Dauda Katende by fraudulent tricks knowing at the time of receipt that the money was a proceed of crime.

Count five: Money Laundering C/S C/S 3(c), 119 and 139(1) (a) of the AMLA, Cap 118. A2 is accused of acquiring \$M/V\$ UAU 056G Toyota Hiace using part of Shs. 1,270,000,000=obtained from Katende Ssuna Dauda by fraudulent tricks, knowing at the time of receipt that the money was a proceed of crime.

Count six: Money Laundering C/S C/S 3(c), 119 and 139(1) (a) of the AMLA, Cap 118. A2 is accused acquiring \$M/V\$ UBD 195M Toyota Raum using part of Shs. 1,270,000,000= obtained from Katende Ssuna Dauda by fraudulent tricks, knowing at the time of receipt that the money was a proceed of crime.

Count Seven: Money Laundering C/S C/S 3(c), 119 and 139(1) (a) of the AMLA, Cap 118. The three and others still at large are accused of administering Shs. \$1,270,000,000\$ = knowing at the time of receipt that the money was a proceed of crime.

Count Eight: Money Laundering C/S C/S 3(c), 119 and 139(1) (a) of the AMLA, Cap 118. A3 is accused of administering Shs. 173,152,806= on DTB bank account 7036184001 in his names held at Ndeeba Branch knowing at the time of receipt that the money was a proceed of crime.

Count Nine: Money Laundering C/S C/S 3(c), 119 and 139(1) (a) of the AMLA, Cap 118. A3 is accused of using Shs. 90,000,000= to purchase Block 264 Plots 1533 and 1537 land at Mutundwe Kyadondo using part of Shs. 1,270,000,000= obtained from Katende Ssuna Dauda by fraudulent tricks, knowing at the time of receipt that the money was a proceed of crime.

Count Ten: Money Laundering C/S C/S 3(c), 119 and 139(1) (a) of the AMLA, Cap 118. A3 is accused of acquiring M/V UBD 939J Toyota Alphard using part of Shs. 1,270,000,000= obtained from 30 Katende Ssuna Dauda by fraudulent tricks, knowing at the time of receipt that the money was a proceed of crime.

Prosecution case

The prosecution case is like a movie script revealing how some human beings can be so gullible as to lose a lot of money over a period of four months without realising that they are being conned. The victim fell hook, line and sinker for every lie he was fed on by fraudsters. He lost UGX. 1,270,000,000= which he paid in instalments over a period of four months before he realised his folly.

In April 2018, Ssuna Dauda Katende, (PW1) was approached by his good friend Martin Sabiiti- now deceased who told him of an old man in dire need of financial help to unfreeze his money amounting to UGX. 18,500,000,000= in DFCU bank. The money was compensation for his land on which UNRA had built a road plus his terminal benefits from UNRA since the old man was said to be an ex-employee. The old man turned out to be A2.

In a scheme of things, PW1 was made to pay money in instalments on various dates between April and July 2018 to A2 at the prompting of Martin Sabiiti and A1 in the presence of their driver Nziine formerly a co-accused. Using various tricks and reasons PW1 was made to pay more money to the group until it hit a total of UGX. 1,270,000,000= before he reported to the police. The police arrested the group at Sheraton hotel in Kampala where they had gone to collect more money from PW1.

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Defence case

The accused denied the charges contending that PW1 was fabricating a story because no serious person with money can lose it over a period of time without sensing early that it was a scam.

A1's defence was that he was a victim of the same fraud by A2 and A3. It was his evidence that he was first approached by Nziine Allan Sabiiti formerly a co-accused about this deal. Nziine told him of an old man whose man had been held by the bank and needed funds to bribe or influence those in charge to unfreeze it.

The old man who was being called Abraham Mukiibi, turned out to be A2. A2's real names are Ssalongo Abdul Lubowa. Nziine was acquitted at no case to answer because there was no evidence adduced against him at the closure of the prosecution case.

He paid various sums of money through mobile money and to A3 totalling about 52 million. Some of the money (13 million) was borrowed from Martin Sabiiti a family friend of PW1. Martin Sabiiti

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is now deceased. He was co-accused but died before giving his defence.

After A1 and Martin Sabiiti could not raise any more funds, the later proposed to bring PW1 on board to finance the deal at an expected good return. A1 and late Martin Sabiiti were to get 10% of the money whilst PW1 was to get 6.8 billion for his "investment". A1 confirms that PW1 paid money to A2, A3, Allan Kantu and Martin Sabiiti allegedly to influence government officials to unfreeze the money.

When A1 realised they had been conned he advised PW1 to report the matter to the police. A trap was laid to arrest A2, A3 and others who had joined in acting as brokers for the officials in government who were supposed to order for the unfreezing of the funds. PW1 called A1 to go to Sheraton Hotel to identify the suspects who had been arrested. As he went to check on the suspects in company of Martin Sabiiti, the two were arrested at the gate of Sheraton hotel and charged.

A2 in his unsworn statement, denied using the names of Abraham Mukiibi. He contended that he is a case of mistaken identity §20 because the person who defrauded PW1 was Abraham Mukiibi yet he is Ssalongo Lubowa Abdul.

He denied getting any money from PW1. It was his defence that such colossal sums of money would not have been given to him without first ascertaining his true identity as Ssalongo Lubowa Abdul and status.

He denied what A1 said about him or having any deals and also denied ever meeting him. He contended that he could not borrow such huge sums of money without an agreement. He denied meeting PW1 before his arrest. He denied charges of money laundering contending that he bought the vehicles from his own resources and not from money obtained from PW1. He insisted that A1 and PW1 dealt with Abraham Mukiibi and not Abdul Lubowa.

A3 also denied getting money from PW1. Like A2, he also starts his defence with the time of his arrest. He stated that he heard that CMI operatives were looking for him. He contacted his friend Col.

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Asiimwe of CMI to establish the reason why he was wanted. Asiimwe finally delivered him to CPS Kampala after confirming the police wanted him.

At CPS Kampala, Sgt Aumo, PW6, informed him of the charges which he denied. He denied ever meeting PW1 or getting any money from him. Like A2, he denied charges of money laundering. He stated that he bought the vehicles and land from his own resources. He also stated that he had operated a bank account much earlier than alleged. He dismissed PW1's complaint as a foolish story which the court should not believe contending that a person can pay all that money for such an unbelievable deal. He denied knowing all those governmental officials because he has never worked in government.

Burden and standard of proof

The burden of proof is upon the prosecution to prove all the essential ingredients of each offence beyond reasonable doubt.

The accused have no duty to prove their innocence. The case is proved on the strength of the prosecution case and not on the weakness of the defence.

"The onus of proving everything essential to the establishment of \$20\$ a charge against an accused is upon the prosecution as every man is presumed innocent." See. Kiraga Vrs. Uganda (1976) HCB 305. See Art. 28(3)(a) of the Constitution of Uganda.

What then is the standard of beyond reasonable doubt?

"The degree of beyond reasonable doubt is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of Justice. If evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with a sentence of course it is possible but not in the least probable- the case is proved beyond reasonable doubt but nothing short of that will suffice." Per Lord Denning in Miller V Minister of Pensions (1947) 2 All E. R 372 at p. 373.

Representation

Ms. Safina Bireke, CSA, represented the State whilst M/S Gilbert Nuwagaba represented A1. A2 and A3 were unrepresented.

Resolution of issues/offences charged.

I shall resolve each count separately in the order of the indictment.

Count One: Obtaining money by false pretence C/S 285 PCA Cap 128

- The prosecution is required to prove the following elements of the 10 offence beyond reasonable doubt.
- That there was a representation by words, writing or \$(i)\$ conduct of a matter of fact either past or present.
- That the representation was false \$(ii)\$
- That the person making the representation knew it \$(iii)\$ was false or did not believe it to be true.
- That the false pretence was made with intent to \$(iv)\$ defraud
- That it is the accused who committed the crime. \$(v)\$

Ms Safina Bireke, CSA, submitted that all the ingredients of the offence were proved against the accused in count one. She submitted that there was a false representation in words by Sabiiti, A1, A2 and A3 made to PW1. PW1 was led to believe that A2 had money in **DFCU bank** that was frozen and needed funds to influence government officials to unblock it. This was false because A2 did not have 18.5 billion shillings in his account.

She submitted that A2 had never worked in UNRA nor did he have any terminal benefits or compensation which could be frozen or unfrozen. Further, that the accused knew that the representation was false or did not believe it. The purpose of making the false representation was to defraud PW1 of his money. The total amount is UGX. 1,270,000,000=. PW1 believed the false representation

and paid money which he lost. She submitted that it was the accused and others that committed the crime.

She dismissed A1's defence that he was also a victim having been fleeced of 52 million. PW7, Lubambula also projected A1 and late Sabiiti as victims of A2 and A3's trickery. Ms Bireke, asked court to dismiss PW7's evidence as hearsay and believe that all the accused without exception were active participants in obtaining money from PW1 by false pretence.

She referred to the CCTV footages from HFB which showed A1 and A2 in company of PW1 receive the money. She also referred to 10 telephone print-outs which confirmed that the accused and the complainant-PW1 were in constant communication. Another piece of evidence relied on by the prosecution are the undertakings that A1 and A3 signed to guarantee the money PW1 was giving them. A1 signed defence exhibits D1, D2 and D3 on behalf of A2. A3 signed as a witness.

Ms. Bireke submitted that by giving PW1 documents that the accused signed, meant they were committing to a deal they knew was false. She contends that A1 could not be a victim because he signed documents promising to pay the complainant. Exhibits D1-20 D3 are written by A1 on his own behalf and on behalf of A2 undertaking to pay PW1 3.3 billion, 6.8 billion and 500 million respectively. This money was to be paid after receiving money they were expecting to be unfrozen from the bank. They were tendered on behalf of A1 during cross examination of PW1.

The defence disagreed with the prosecution submissions in regard to participation of the accused in the alleged crime. Mr. Nuwagaba submitted that PW1 was approached by the late Martin Sabiiti who made false representations to him about the deal. Mr. Nuwagaba submitted that none of the accused was proved to have known PW1 before so as to make false representations to him.

Mr. Nuwagaba also referred to the testimony of PW7, Lubambula, whose evidence is that A1 and Martin Sabiiti were victims of A3 trickery. A3 presented A2 as a sick old whose money was frozen and needed assistance to not just treat himself but also get his money from the bank.

As regards video footages, the defence admits A1 and A2 were seen in the bank but there was no evidence explaining their presence there. Specifically, it was submitted that the footage did not show PW1 giving or handing money to either A1 or A2. As for A3, he was not seen in the footage and so was not culpable.

In law, PW7 is treated as an accomplice. An accomplice is a competent witness under section 132 of the Evidence Act, Cap 8. But as a practice, courts require that such evidence be corroborated with other independent evidence unless it is established that such evidence is true.

It is not in dispute that a false representation was made to Ssuna Dauda Katende, PW1. The intention was to defraud him of money. It is not in dispute that PW1 paid out money with the false hope that he would recoup with a huge profit. It never came to pass.

Two issues to resolve are **who made the false representation and who took the money?** The accused deny making any false representation or taking PW1's money calling his story unbelievable.

Evidence adduced especially during cross examination of PW1, PW6, PW7, PW13 and PW14 connects the accused to the scheme from which PW1 was made to pay money to A1 and A2 which was shared with A3- the master planner or script writer.

The defence tendered documents in form of exhibits D1 to D11 which were signed by the accused and PW1. These invoices created a relationship between PW1 and the accused. The invoices created a creditor-debtor relationship which assured PW1 that he would get back his money with interest when A2 gets paid. It is strange for learned defence counsel to distance A1 from making false representations to PW1 even after tendering exhibits

which A1 signed for himself and on behalf of A2! See exhibits D1 to D3\$.

Exhibit D1 of \$30th\$ May 2018 reads as follows –

" I Tindyebwa Jonathan have committed myself to bring a cheque to Mr. Ssuna Katende Dauda to the tune of 3.3 billion \$(3,300,000,000=)\$ on Monday date of 4th June 2018. Signed *Tindyebwa.* 30th/05/018."

Exhibit D2 reads as follows: -

"On behalf of Mr. mukiibi Abraham and on my own behalf(Tindyebwa Jonathan) we do commit ourselves to Ssunad Ltd to clear the outstanding debt of 6.8 billions (6,800,000,000)..... paid in full without fail..... 0774288233. 2. Tindyebwa Jonathan 0701000549. A person to be paid is Mr. Ssuna Dauda Katende. Witness Sabiiti Martin 0772646362 dated 6/6/2018"

Exhibit D3 of \$26th/06/2018\$ reads as follow: -

" On behalf of Mr. mukiibi Abraham and on my own behalf (Tindyebwa Jonathan) we do commit ourselves to clear him the outstanding debt of 500,000,000 *(five* hundred *million*)..... **Mukiibi \$Abraham 0774288233. 2. Tindyebwa Jonathan 0701000549. A person to be paid is Ssuna Dauda Katende. Witness Sabiiti Martin 0772646362"**

Exhibit P61 is the subscriber details of phone number 0701000549 which belongs to A1. It is plainly clear from the above three defence exhibits that A1 was part and parcel of the false pretence meted out on the gullible PW1.

I should point out that the false representations were not a single transaction because PW1 did not give out money at once. It was a series of false representations which caused PW1 to give out different sums of money depending on the nature of the lie and the purported person to bribe.

When late Sabiiti approached PW1 with the false story, PW1 insisted on seeing the so called old man and was taken to a Guest House where A1 and A2 were. He spoke to both and "bought" the story. He paid 10 million. Later he paid another 10 million. Then 100 million. Later 500 million. Then 250 million and so on until it hit \$1,270,000,000=\$. The accused were arrested when they had gone to Sheraton Hotel to pick another 180 million.

Money was being withdrawn from the bank and according to CCTV footages A1 and A2 were ever present in the bank with PW1 and the late Sabiiti.

Evidence of PW1, PW6, and PW7 is that A2 always presented himself as Abraham Mukiibi. This was a pseudo name A2 had adopted to perpetuate the fraud. The false identity card of Abraham Mukiibi was exhibited as P50

The false representation was that A2 had \$18.5\$ billion in DFCU bank which was frozen and he needed money to influence the

unfreezing of the same. He was prepared to pay profit to whoever would lend him money. PW1 was such a gullible person who trusted his family friend late Martin Sabiiti and paid out colossal sums of money to fraudsters.

Evidence of PW6 is clear that the accused and Ssuuna were in constant communication and in the same places as confirmed by the CCTV footages (**exhibit P51**) and telephone print-outs (exhibits P52 to P62).

The accused and the complainant Ssuuna were in contact and met

physically according to the analysis of the police IT officer, ASP, 20 Nkonge Simon-PW13.

Evidence of Asimwe PW14 from MTN(U) Ltd confirmed the telephone numbers that belong to the accused and the complainant through KYC documents- exhibits P52-62

Evidence of PW7, Lubambula, is that A3 was the planner of the fraud. It was PW7's evidence that A3 recruited him into the crime of faking sickness as an old man to ask for money from targeted people.

Whilst A1 and late Sabiiti were said to have fallen victim to A3's fraud, once they run out money, Sabiiti now deceased, in company 30 of A1 introduced PW1 to a script authored by A3 purporting that A2 had money in DFCU bank which he needed to unfreeze by influencing people in public offices. As soon as A1, A2 and others were arrested A3 went into hiding. He surfaced after being flushed out in his hiding at the CMI military unit. He was delivered to the police by his military friends. His conduct betrays his innocence. He had authored a script which had led to obtaining money from PW1 by false pretence.

In short all the three accused were active and principal participants with a common intention to obtain money from gullible people such as PW1. It is no defence that A1 was also a victim. His participation as against PW1 renders his past experience irrelevant. The fraud was that A2 had money present in DFCU bank.

That representation was false. Based on that whatever money was received from PW1 was taken with the intention to defraud him since there would be no refund. Documents such as written undertakings by A1 and A3 to repay the money with interest were part of the fraud. It was intended to give false assurance to compel PW1 pay out more money which he has since lost.

A2 and A3's submission that PW1 should not be believed because no sensible person can pay such huge sums of money without collateral is defeated by the documentary evidence in **exhibits D1 to D3** and invoices in D5 to D11. The accused gave false documentary security to PW1 to obtain money from him. PW1 swallowed the lies hook, line and sinker.

They also gave him bogus cheques of a non-existent company 20 called AMWISA QUALITY ENGINEERING LIMITED which were not of value since the drawer was non-existent and had no account in Stanbic bank. **See exhibit P6**. All this was fraud.

Further, **exhibits P7 and P8** is documentary evidence from UNRA denying ever having A2 as their employee or a project affected person who was to be compensated. This was fraud.

All the ingredients in count one against A1, A2 and A3 were proved beyond reasonable doubt. This was a complex web of fraud authored by A3 which succeeded because PW1 was gullible in excess proportions. He trusted his family friend, the late Sabiiti too

much. I find the three accused guilty on count one.

Count Two: Conspiracy to defraud C/S 289 of the PCA, Cap 128. The prosecution is required to prove the following elements of the offence beyond reasonable doubt.

- That two or more persons agree to defraud any \$(i)\$ person of property.
- The agreement must be made by deceit or fraud \$(ii)\$

There must be an intention to defraud \$(iii)\$

To defraud is to deprive a person of his/her property by dishonest means.

Before I delve into resolving the contest in count two, I wish to deal with an aspect of the defence submission that since PW1 was giving money to be used for paying bribes, the charges should not stand.

With respect, this argument is flawed and misconceived. PW1 was asked to give money to people who were to use it to bribe government officials to unfreeze money in the bank. PW1 did not interact with any government officials mentioned in the script such as M/S Mitala, Salim Saleh, Tumusiime Mutebire, Matia Kasaija, Ruhaka Rugunda, Kasekende and others in security.

PW1 was a gullible person who lost colossal sums of money to fraudsters and the only way the culprits can be found is to use his evidence to burst them. To say that PW1 paid money for criminal purposes so he should lose it is to promote crime and gift fraudsters with money they never earned legitimately. Even in bribery cases, courts use the giver's evidence to punish the receiver. This is common sense and or logic.

Ms. Bireke submitted that A1 and A2 were ever present whenever PW1 paid out money to Sabiiti. The meetings used to be at a Guest House in Lubaga and the bank where PW1 would draw the money. As regards A3, the call data reports (**exhibits P52 to P62**) disclose his presence in the locality where money would be paid.

A3 was physically identified by PW7 who testified that he was recruited for the purpose and confirmed that PW1 paid money to the accused through a fraud scheme authored by former. It was submitted that the three were acting as conspirators to defraud PW1 and indeed did so to the tune of UGX. \$1,270,000,000=\$ by use of deception like faking sickness of A2, claiming to have money in DFCU bank and using fake names like Abraham Mukiibi.

Both A2 and A3 in their joint submissions stated that evidence adduced fell short of showing that there was an agreement to defraud PW1. It was their contention that A2 was at the bank but did not receive money. They submitted that there was no evidence

that A1 was an authorised agent of A2 to receive money on his behalf. As regards A3, it was submitted that he was not present at any meeting so his participation in any conspiracy was not proved.

For A1, it was submitted that evidence of PW7 excludes him from being a conspirator. That A1 was a victim just like PW1. That A1 believed that A2 had money in the bank that is why he undertook on behalf of A2 to pay PW1 as shown in exhibits **D1-D3**.

Evidence of the meeting of minds by the three and others at large is not hard to find.
Documentary evidence in defence exhibits D1

to D11 is a set of undertakings by A1 and A2 to refund PW1's \$10\$ money. PW1 paid money after he had been made to believe that A2 actually had a huge amount of money in DFCU bank. These documentary exhibits speak for themselves that the accused met and agreed to defraud PW1.

A1 and A2 were present in the bank whenever PW1 withdrew money! What were they doing there? Were they his escorts? Of course not. A3 was operating mainly by remote but at Hotel Equatorial parking lot, he was seen in a car by PW1. The telephone printouts in exhibits P52 to 62 betray his denials. He would always be in the same locality with his co-accused whenever PW1 was going to the bank to pick money. This version is confirmed by PW7 who stated that A3 was the architect of the scheme to defraud \$PW1.\$

PW8, SP Hillary Nuwahereza, was the arresting officer. When he searched A2, he found him with a fake ID in the names of Dan Mukiibi. He exhibited it (exhibit P50). This is consistent with evidence of PW1 and PW7 that A2 was passing by pseudo names in this conspiracy. Evidence

from PW9, Solomon Turyahebwa, is that **exhibit P50** in the names of Dan Mukiibi is not genuine. The NIN (CM590681016Q6H) found on the fake ID is the same as the genuine NIN for Abdu Lubowa Salongo, who is A2. A2 did not challenge PW9 on this evidence by way of cross examination.

I have already held that even if A1 was originally defrauded by A2 and A3, his conduct in writing documentary undertakings and being physically present in the Housing Finance Bank whenever PW1 went to withdraw money means he had joined the fraudsters and his being victim was a thing of the past. A1 should have

warned PW1 that he is a victim already. This would have saved PW1 from squandering money on fraudsters which A1 had chosen to join. It is no defence to the present charges.

There is abundant evidence that the three and others crafted a scheme to defraud PW1 of huge sums of money. Their conduct was consistent with an agreement to defraud and deprive PW1 of his money. The fraud succeeded. A crime was committed. A conspiracy to defraud has been proved beyond reasonable doubt. I find the three accused guilty on count two.

Counts Three: Money Laundering C/S 3(c), 119 and 139(i)(a) 10 of the AMLA Cap 118.

A1 and A2 are accused of possessing UGX. \$1,270,000,000=\$ knowing it was a proceed of crime.

The prosecution is required to prove the following elements of the offence beyond reasonable doubt.

- That the accused intentionally acquired, possessed, \$(i)\$ used or administered property knowing at the time of receipt that the property was a proceed of crime.
- Proceeds of crime is defined as- any property or \$(ii)\$ economic advantage derived from or obtained directly or indirectly through the commission of a crime and includes property later successfully converted, transformed or intermingled as well as income capital or other economic gains derived from such property at any time after the commission of a crime.
AMLA Cap 118
- (iii) Money laundering is defined as the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under **section 3 of the AMLA Cap 118**

The prosecution did not make any submissions on this charge in count three. The implication is that there was no evidence on how

money was found in their possession. I dismiss the charges in count three.

Counts Four: Money Laundering C/S 3(c), 119 and 139(i)(a) of the AMLA Cap 118.

A2 is accused of constructing a house for Aisha Najjemba at Kiwawu Namungo in Mityana district using part of UGX. \$1,270,000,000\$ = which he obtained from PW1 by fraudulent tricks knowing they are proceed of crime.

The prosecution is required to prove the following elements of the offence beyond reasonable doubt.

- \$(i)\$ That intentionally the accused acquired, possessed, used or administered property knowing at the time of receipt that the property was a proceed of crime.
- Proceeds of crime is defined as- any property or \$(ii)\$ economic advantage derived from or obtained directly or indirectly through the commission of a crime and includes property later successfully converted, transformed or intermingled as well as income capital or other economic gains derived from such property at any time after the commission of a crime.

AMLA Cap 118

- \$(iii)\$ Money laundering is defined as the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under section 3 of the AMLA Cap 118

No submission was made by Ms. Bireke on this count nor was evidence adduced from Mityana or Najjemba about the existence and ownership of this house except Sgt Oumo's evidence which is essentially hearsay. I dismiss the charges in count four for lack of evidence.

Counts Five: Money Laundering C/S 3(c), 119 and 139(i)(a) of the AMLA Cap 118

A2 is accused of acquiring M/Vehicle UAU 056 G Toyota Hiace using part of UGX. 1,270,000,000= which he obtained from PW1 by fraudulent tricks knowing they are proceeds of crime.

The prosecution is required to prove the following elements of the offence beyond reasonable doubt.

- That the accused intentionally acquired, possessed, \$(i)\$ used or administered property knowing at the time of receipt that the property was a proceed of crime.
- Proceeds of crime is defined as- any property or \$(ii)\$ economic advantage derived from or obtained directly or indirectly through the commission of a crime and includes property later successfully converted, transformed or intermingled as well as income capital or other economic gains derived from such property at any time after the commission of a crime.

AMLA Cap 118

- Money laundering is defined as the process of turning \$(iii)\$ illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under **section 3 of the AMLA Cap 118**

The prosecution submitted that the vehicle was bought from Makki Investments by Kavuma Vincent who re-sold it to A2. PW6 testified that when he called Kavuma Vincent about this vehicle, he said he 30 had sold it to A2. Kavuma Vincent did not testify. PW6's evidence is hearsay in this regard. Hearsay evidence is inadmissible. See section 59 of the Evidence Act, Cap8

A2's plain police statement (**exhibit D13**) was tendered through PW8, Hillary Nuwahereza a superintendent of police who arrested

the accused at Sheraton Hotel. A2 admits in the plain statement that he bought the vehicle from money he received as his share from PW1 in **exhibit D13**. But in his defence he denied the contents of the statement contending that it was not read over to him before he signed it. He also objected to its admission in evidence because he was not free when he signed it. It was actually tendered by counsel for A1 trying to deflect the case to a coaccused.

\$10\$

The law is that A2's plain statement can be used to corroborate or contradict an earlier statement by the same accused. But since it is not a charge and caution statement, it cannot of its own prove charges. Further, even if it was a charge and caution statement, it would require to be verified through the process of a trial within a trial. It was not an un-equivocal admission of the contents. It requires other independent evidence to prove the charges.

In his defence, A2 admits the vehicle is his but that he bought it with his own money.

In short, there was no other independent verifiable evidence to prove charges in count five. There was no sale agreement or evidence from a seller or evidence of the date when it was bought. \$20\$ The charges in count five are not proved beyond reasonable doubt. They are dismissed.

Counts Six: Money Laundering C/S 3(c), 119 and 139(i)(a) of the AMLA Cap 118.

A2 is accused of acquiring M/Vehicle UBD 195 M Toyota Raum using part of UGX. 1,270,000,000= which he obtained from PW1 by fraudulent tricks knowing they are proceeds of crime.

The prosecution is required to prove the following elements of the offence beyond reasonable doubt.

- That the accused intentionally acquired, possessed, \$(i)\$ used or administered property knowing at the time of receipt that the property was a proceed of crime.
- Proceeds of crime is defined as- any property or \$(ii)\$ economic advantage derived from or obtained directly or indirectly through the commission of a crime and

includes property later successfully converted, transformed or intermingled as well as income capital or other economic gains derived from such property at any time after the commission of a crime. AMLA Cap 118

\$(iii)\$ Money laundering is defined as the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under **section 3 of the AMLA Cap 118**

The prosecution contends that the vehicle was purchased by A2 as **per exhibit P44** which shows he bought the vehicle on 4th June 2018. This period is between April and July 2018 when PW1 was defrauded. It was submitted that A2 had no other source of money except the proceeds of crime obtained from PW1. A2's bank statement in **exhibit P.47** showed he had no money in DFCU bank.

The defence submitted that there was no evidence that the money used to purchase the said vehicle was proceeds of crime. On the contrary, A2 claimed the car was his and not a proceed of crime.

A2 described himself as a vendor of second hand clothes in Owino Market. His known Bank account according to evidence from Financial Intelligence Authority(FIA) provided in **exhibit P47** which is a bank statement from DFCU bank of \$25/11/2016\$ to \$20/02/2019\$ shows that A2 last made a deposit of 1,000,000= on \$30/11/2017\$ and by \$20/1/2019\$ had only 189=. He did not make any deposit between April and August 2018 which is the period the fraud happened.

Whilst it can be said that there is no digital trail to the purchase of M/Vehicle UBD 195 M Toyota Raum at 16 million from JAPAN AUTO TRADERS (U) LTD, its purchase on \$4/6/2018\$ and registration in his names on \$6/6/2018\$ during which time PW1 had just paid 500 million to the accused from Housing Finance Bank

leads to an irresistible inference that rather than bank his share, A2 chose to launder it so as to conceal and disguise the true source of the money. I am fortified in this belief because, for reasons I gave when dealing with counts one and two, A2 and others were guilty of defrauding PW1 of his money in a well calculated conspiracy based on a false representation that A2 had 18.5 billion in DFCU bank which he wanted to unfreeze.

I should add that the uncontroverted evidence of PW6, Sgt Oumo, is that when M/Vehicle UBD 195 M was tracked down, it was involved in a police chase because its driver, who happened to be A2's son, refused to stop and chose to flee. He abandoned the vehicle after hitting a road side pavement. He fled leaving the car. The vehicle was towed to the police. The question is why did he refuse to stop or why did he flee? This conduct is not innocent. The inference is that the vehicle being a proceed of crime was being taken into hiding.

I find that the prosecution has proved count six beyond reasonable doubt. A2 is guilty of intentionally acquiring and administering 16 million to purchase M/Vehicle UBD 195 M Toyota Raum knowing it was the proceeds of the crime.

Counts Seven: Money Laundering C/S 3(c), 119 and 139(i)(a) of the AMLA Cap 118.

A1, A2 and A3 are accused of administering UGX. 1,270,000,000= knowing it was proceeds of crime.

The prosecution did not make any submissions on count seven. The implication is that there was no evidence on how they administered money for consideration by court. I dismiss the charges in count Seven.

Counts Eight: Money Laundering C/S 3(c), 119 and 139(i)(a) of the AMLA Cap 118. 30

A3 is accused of administering UGX. 173,152,806= on bank \$a/c\$ number 7036184001 in his names in DTB Ndeeba branch, knowing at the time it was proceeds of crime.

Ms. Bireke submitted that A3 was active in depositing money on his account and also in same period opened an account for his wife

Bukirwa where she also deposited sums of money in the same Diamond Trust Bank(DTB). This money was said to be proceeds of a crime the same having been obtained from PW1 by fraud.

The prosecution tendered exhibits **P21- search certificate; P23**cash deposit slips for 13 million on \$11/8/2018\$, 8.5 million on 14/8/2018 on Bukirwa's A/c; P24- cash deposit slip dated 15/5/2018 for 25 million, 1.95 million on 11/8/2018, 11 million on \$17/8/2018\$; P28- A/C opening form for Bukirwa in DTB which showed A3 and his wife Bukirwa active in making deposits on their bank accounts with money which A3 was getting from the trickery he was masterminding on PW1.

The defence did not respond to this submission. A3 in his unsworn statement denied ever meeting PW1 or getting any money from him. He stated that his bank account was opened long ago but did not explain allegations that huge sums of money were deposited on it between May and August 2018.

Exhibit P34, which is A3's bank statement shows he opened the A/C in 2013. But it was only between \$7/5/2018\$ and \$17/8/2018\$ that he actively had deposits on his account for amounts like 3 million on \$7/5/2018\$; 25 million on \$16/5/2018\$; 15 million on \$25/5/2018\$; 70 million on \$1/6/2018\$; 45 million on \$7/6/2018\$; 11 million on \$17/8\$ 2018. This is the period PW1 was being deprived of his money through fraud. By October 2018 when A3 was arrested, his account had \$60,325\$ = only.

The implication of this type of banking is that there was a sudden source of money that equally dried up after a given period. The money deposited in a space of 4 months was all withdrawn before A3 handed himself to law enforcement. This is abnormal. It was not normal trading neither was it normal saving.

When read together with PW1's testimony together with that of 30 accomplices like PW7, Lubambula and co-accused A1, it is clear that the banking A3 made was from funds fraudulently obtained from PW1 by fraud.

I am persuaded to believe that the prosecution has proved charges of money laundering against A3 beyond reasonable doubt in count eight.

Counts Nine: Money Laundering \$C/S\$ 3(c), 119 and 139(i)(a) of the AMLA Cap 118.

A3 is accused using UGX. \$90,000,000=\$ to purchase Block 264 plots 1533 and 1537, land at Mutundwe, Kyadondo using part of the money obtained from PW1 knowing at the time it was proceeds of a crime.

Ms. Bireke submitted that evidence of PW12, Naluwu Brenda, is that in June 2018 she sold land (Block 264 plots 1533 and 1537) to A3 and his wife Bukirwa at 90,000,000=. The prosecution contends that this was the same period money was being obtained fraudulently from PW1.

She identified the titles and transfer forms with her photos and those of the purchasers. Photos of the house A3 was constructing on this land were **exhibited as P37**. Her evidence was not challenged in cross examination. But A3 in his defence stated that the building site was his.

A3 had no defence to this charge. He said the land and building are his. That is not in dispute. What is in dispute is that the source of money for buying the plot was money obtained fraudulently from PW1 which makes it a proceeds of crime within the meaning of money laundering. The charges in count nine were proved beyond reasonable doubt. I find A3 guilty on count nine.

Counts Ten: Money Laundering \$C/S\$ 3(c), 119 and 139(i)(a) of the AMLA Cap 118.

A3 is accused of acquiring M/vehicle UBD 939J Toyota Alphard using part of UGX. \$1,270,000,000\$ = obtained by fraudulent tricks from PW1 knowing at the time it was proceeds of crime.

The prosecution relied on evidence of PW6 to the effect that A3 bought the car from Waleed Motors on 23/5/2018 in the time money was being obtained from PW1 by fraudulent means.

The defence did not respond to this submission. M/S Waleed Motors did not testify. The vehicle was at the time of testimony in the names of one Kataira Tony. There was no evidence connecting A3 to the vehicle. PW6's testimony is hearsay. He played the role an investigating officer but did not compile evidence from the

sellers of the car or the registered owner to connect A3 to the vehicle. I should add that the vehicle was not exhibited in court. The charges in count ten were not proved. They are dismissed.

In conclusion and in agreement with the gentleman assessor, after evaluating evidence adduced and the defences made thereto vis a vis the documentary evidence tendered by both the prosecution and the defence, I am find that the prosecution proved the charges against the accused beyond reasonable doubt in **counts one**, two, six, eight and nine. A1, A2 and A3 are each guilty and convicted on counts one and two. A2 is guilty and convicted on count six. A3 is guilty on counts eight and nine and is convicted on each of those counts.

The charges in counts three, four, five, seven and ten are dismissed because evidence adduced did not prove them against the accused beyond reasonable doubt. Each of the accused is acquitted on those charges.

Gidudu Lawrence

JUDGE 20

\$17^{TH}\$ MARCH, 2025.

UGANDA VERSUS TINDYEBWA AND 2 ORS

REASONS AND SENTENCE

The convicts are first offenders. They have no known previous records of conviction.

Ms. Bireke (CSA) asked for a deterrent sentence contending that the offences were grave and impacted negatively on the complainant whose business was severely affected by the fraud since he paid them up to 1,270,000,000 which he never recovered.

On count One she asked for a sentence of 4 years' imprisonment for each of the convicts.

On count Two she asked for a sentence of 18 months'imprisonment for each of the convicts.

On count Six she asked for a sentence of 3 years' imprisonment for 42.

On count Eight, she asked for a sentence of 8 years'imprisonment for A3.

And on count Nine, she asked for a sentence of 8 years'imprisonment for A3.

Mr. Gilbert Nuwagaba, learned counsel for A1 asked for court to exercise lenience contending that A 1 acted in ignorance not to alert the complainant to be careful since he himself had been defrauded. He asked for a non-custodial sentence to a-llow A1 reorganize himself in life.

A1 aged 55 asked for a pardon. I understood him to ask for a caution. He stated that he believed A2 to have money in bank when he committed to repay PW1.

42 stated he was 64 years and is sickly. He spent 3 years ltve months and seven days on remand before court granted him bail out a

security deposit. He asked that the period on remand be taken to be the sentence so that he is freed. He has two wives, children and grandchildren who need his support.

A3 aged 44 spent the same period as A2 on remand before being released on bail on same terms. He stated he has a dependent mother of 80 years plus young children who need his support.

I have taken into account submissions from both sides. It was my finding that the complainant, Dauda Ssuna Katende, lost money to fraudsters which affected his business severely to the tune of UGX. \$1,270,000,000=\$

All the convicts are first offenders who took advantage of the gullible character of the complainant to fleece him of his business finance. His business in Kikuubo a Kampala business hub, went down with debts because of the fraud.

The maximum punishment on count one is five years' imprisonment. The State has asked for 4 years for each convict. But A2 and A3 had been on remand from 3rd May 2019 to 10th May 2022 when court granted them court bond. That is a period of 3 years, five months and seven days on remand. That period is supposed to be deducted from any imprisonment sentence.

Since the convicts are first offenders, they are spared of the maximum sentence of five years' imprisonment on count one. The prosecution asked for four years whilst the defence asked for a caution. Weighing both options against the impact of the crime on the victim/complainant, I find that a sentence of three years imprisonment for A2 and A3 on count one would be appropriate.

But since A2 and A3 spent more than 3 years on remand, if I deduct that period, I find that the two have already served the sentence on count one of obtaining money by false pretence.

Similarly, A2 and A3 have already served the maximum sentence on count two of conspiracy to defraud.

For A1, his role was not as prominent as that of A2 and A3. A3 was the master planner and architect of the whole scheme to defraud PW1

$\overline{\$2}$

of his money. A2 offered himself as the owner of non-existent funds in the bank. If A1 was genuine, he should have reported A2 and A3 to the police for conning him of his alleged money. Instead, he joined the fraudsters to rip off PW1 of his legitimate business capital. I do not consider him for a non-custodial sentence as prayed. His ever present behavior when PW1 was withdrawing money to give to fraudsters renders him a candidate for prison. He gave false assurances in writing to PW1 which induced him to bleed more money.

A1 is sentenced to two years' imprisonment on count one. If I deduct the period he spent on remand which is eight months, **A1 will serve** a sentence of one year and four months in count one.

On count two, he is sentenced to one year's imprisonment. When I deduct the period of eight months which he spent on remand, I sentence A1 to a term of four months on count two. The punishment is consecutive for A1.

On count six, where A2 is convicted of money laundering, the maximum sentence is 15 years' imprisonment or a fine not exceeding 1000 currency points. I was asked to impose a sentence of 8 years. A2 asked for lenience because of age, sickness and previous remand.

I consider that A2 who is the father of A3 offered himself to be used as a bait to lure unsuspecting people like Dauda Ssuna Katende to lose money to conmen purporting to use the money to influence public officers to unfreeze money in the bank. He is of advanced age but allows his son (A3) to use him for criminal purposes. A2 should have advised his son against such a scheme but joined in with a fake identity card in the names of Abraham Mukiibi which had his genuine National Identification Number (NIN).

If A2 had not offered himself as a bait, perhaps the crime would not have happened. Because of his advanced age I sentence him to Five years' imprisonment. If I deduct 3 years, five months and twenty-two days he spent on remand, I sentence A2 to serve 18 months on count six.

On count eight, A3 who I consider the script writer of the fraud. He played the role of author of the crime. The prosecution asked for a term of 8 years' imprisonment. A3 asked for lenience because of the burden of family dependents he has to look after. But considering the financial depth he caused PW1 to sink in, I find that at 44 years he betrayed his energy to work gainfully to earn his own money. Consequently, I accept the prosecution prayer to impose a term of 8 years' imprisonment. When I deduct the period of 3 years, five months and twenty-two days that A3 spent on remand, I sentence A3 to serve 4 years and six months in prison on count eight.

On count nine I apply the same reasoning as in count eight. I deduct the period of 3 years, five months and twenty-two days that A3 spent on remand, I sentence A3 to serve 4 years and six months in prison on count nine. The sentence on counts eight and nine will be served concurrently.

Since it has been proved that Ssuna Dauda Katende lost UGX. \$1,270,000,000=\$ to the fraud committed by the convicts and others not in court, an order of compensation is made against each of the accused jointly and severally to pay UGX. \$1,000,000,000=\$ to him. This is because other fraudsters like Allan Kantu and Martin Sabiiti (deceased) took some of the money.

All the convicts have a right of appeal to the Court of Appeal within 14 days from today against the conviction and or sentence.

Bail deposit by A1 of UGX. \$5,000,000=\$ is ordered to be refunded.

Gidudu Lawrence JUDGE 18th March, 2025.

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