

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
ANTI-CORRUPTION DIVISION
HOLDEN AT NAKASERO**

CRIMINAL SESSION CASE 3 OF 2022

UGANDA PROSECUTOR

VRS

KYAMBADE ALEX ACCUSED.

10

BEFORE: GIDUDU, J

JUDGMENT

Introduction

Kyambade Alex herein after called the accused was originally charged with another called Kyeswa Stephen who passed on during the trial. Kyeswa operated Revero Investments Ltd, a bank agency business with Centenary Bank.

20 The accused is a banker with Centenary Bank. He was deployed as a banker teller at Moroto and later at Kireka branches. His work methods at both branches constitute charges before the court.

In count one, the accused is charged with **Embezzlement C/S 19(b) (iii) of the ACA, Cap 116**. He is accused of stealing UGX. 103,156,900= between 28th Feb 2019 and 31st May 2019 at Kireka branch which he accessed by virtue of his office.

In count two, the accused is charged with **Embezzlement C/S 19(b) (iii) of the ACA, Cap 116**. He is accused of stealing UGX. 21,290,000= between 28th Feb 2019 and 31st May 2019 at Kireka branch which he accessed by virtue of his office.



In count three, the accused is charged with **Money Laundering C/S 3(a), 116 and 136(1)(a) of the AMLA, Cap 118**. He is accused of intentionally transferring UGX. 103,156,900= equivalent to USD 21.350. and Euros 5.700. between 28th Feb 2019 and 31st May 2019 to Revero Investment Ltd for purposes of concealing its origin.

Prosecution case

The prosecution case is that in June 2019, Centenary Bank management discovered that the accused, had made suspicious transactions regarding forex business at its Kireka branch between
10 28/2/2019 and 31/5/2019.

Investigations revealed that in that period, the accused engaged in a series of fraudulent transactions purporting that Revero Investments was selling **US Dollars** and **Euros** for Uganda Shillings whereas not.

The accused would deposit Uganda currency into the account of Revero Investments Ltd. Money from the Revero Investments account would be transferred to other accounts including that of the accused in a scheme intended to conceal the origin.

To sustain the fraud, the accused would not close his till (**KA 3824**). He would not return untraded forex to the vault thus accumulating
20 USD 21.350. and Euros 5.700. which is equivalent to UGX. 103,156,900=. The fraud was detected by head office when the accused closed his till to proceed on a transfer to another station. That is when the imbalance reflected on the system.

As investigations progressed, Moroto Centenary bank branch also raised a complaint that its customer accounts had been drained through withdrawals at Kireka branch. It was discovered that the accused who had worked in Moroto before had posted withdrawals on the system as if the Moroto customers withdrew money from Kireka branch whereas not. The total withdrawal on the Moroto
30 customer accounts amounted to UGX. 21,290,000=

The bank has never recovered this money even though it refunded money stolen from customers in Moroto.

Defence case

The accused denied the charges and contending his teller limit was 3million so he could not have stolen the money. He dismissed the bank manager's (PW2) testimony who had attributed a higher transaction limit to the accused. He denied manipulating transactions to perpetuate fraud contending that the daily cash book did not show any discrepancies at the Kireka branch to justify the accusations. His defence was that brief.

Burden and Standard of proof

10 "The onus of proving everything essential to the establishment of a charge against an accused is upon the prosecution as every man is presumed innocent." **See. Kiraga Vrs. Uganda (1976) HCB 305.**

"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..." **Per Lord Denning in Miller V Minister of Pensions (1947) 2 All E.R 372 at p. 373**

Ingredients of the offences charged

To prove embezzlement on counts one and two, the prosecution must prove the following ingredients beyond reasonable doubt.

- 20
- (i) That the accused is an employee of a company
 - (ii) That the accused stole money from his employer.
 - (iii) That the accused accessed the money by virtue of his employment.

To prove charges of money laundering on count three, the prosecution must prove the following ingredients beyond reasonable doubt.

- 30
- (i) That the accused transferred UGX. 103,156,900= to Revero Investments Ltd.
 - (ii) That the money was a proceed of crime.
 - (iii) That the accused had knowledge that the money (UGX. 103,156,900=) was a proceed of crime.

The Law.

Embezzlement is theft by an employee from his/her employer. Theft is, therefore, a key ingredient in the charge of embezzlement.

The prosecution must prove beyond reasonable doubt that a person is an employee who stole his/employer's property by virtue of employment.

10 To steal is to take without a claim of right property of another with a fraudulent intent. A fraudulent intent is the permanent deprivation of the owner of the stolen property. The slightest movement called asportation accompanied with a fraudulent intent is sufficient to constitute theft. **See section 237 of the PCA, Cap 128.**

Money Laundering is 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. **See section 1 of the AMLA, Cap 118.**

Resolution by court.

Ms. Gertrude Apio, Senior State Attorney represented the **ODPP** whilst the accused was unrepresented by counsel.

20 **Count One:**

The accused is charged with stealing UGX. 103,156,900= between 28th Feb 2019 and 31st May 2019 at Kireka branch which he accessed by virtue of his office.

Ms. Apio, submitted that it is not in dispute that the accused was an employee of Centenary Bank. She referred to his employment contract in **exhibit P1** as proof of employment.

30 On the issue of theft, she referred to evidence of PW1, PW2 and PW3 whose evidence is that the accused manipulated the forex till by receiving foreign currency from the vault and also from customers but would return less to the vault after the day of trading. He would retain the balance in cash and never closed his till in order to avoid system query.

PW1, Alot Geoffrey, was the bank internal investigator on whose report the matter was escalated to the police for charging and prosecution. PW2, Katumba David, was the branch manager of the accused at Kireka and gave a long testimony of how fraudulent transactions went on undetected. PW3, Sewanyana Ronald, was the chief teller at Kireka branch and the immediate supervisor of the accused. He explained how the system failed to give him alerts if a teller did not return balances to the vault.

10 She concluded that evidence of PW4, Tom Ssemugooma, a reconciliation specialist was able to notice the imbalance once the accused closed his till on 18th May 2019. PW4 generated a report which was tendered as **exhibit P48**.

In reply, the accused maintained his denial. He submitted that there was no query raised by his supervisors at Kireka that his till was not balancing or was not being closed. He insisted that if he was not returning money to the till, his supervisors at Kireka such as PW2, would have raised the matter.

20 As regards posting money onto Revero Investments account, he argued that other tellers such as Biira Benjamin (BB 4160); Nampiima Grace (NG 1800) and Kisaalu Olivia (KO 3783) also posted money to Revero Investments. He wondered why they are not charged with him.

He concluded that the bank core system was faulty so he should not be held accountable for reports generated from such a system.

Although the prosecution called so many witnesses, on count one the most clearer witness is PW5, Dennis Kabali Rawnly, a business relationships management supervisor at Centenary Bank. He testified as follows: -

30 *"I queried the profits data base. I saw a till 3824. This drawer was neglected. It had money that was missing from the vaults. I traced the user of the drawer. The drawer belonged to Kyambade Alex. He had switched to another drawer which also had 900 Euros.*



The drawers on the system are created by the user tellers. Kyambade Alex was using two drawers concurrently. Both drawers were for forex. Kyambade would receive forex, change it to UGX. The common customers were Stephen kyeswa, Victor Ninshaba and Shakira Nalukwago. These were sellers of forex to get UGX.

The branch was balancing because the system had the money in Kyambade's drawer. It is only when kyambade abandoned that drawer 3824 that the flag was raised. The user detached himself from the drawer so the drawer hung. That is how the alerts came in."

10 When cross examined by the accused, PW5 stated thus: -

"You can have three drawers but you operate one drawer at a time. You cannot close a drawer with money in it. You were not closing the drawers. I believe you tried to close but failed because there was a balance. The system keeps the balances as long as the drawers are open. The GL captures the money in the drawer. It is only in May 2019 when you detached yourself from the drawer that the finance team got an alert."

20 PW5 attributed the occurrence of this fraud to the Assistant Manager who failed to supervise the vault which would have showed that less money was declared for custody. He also explained that the system allowed a teller to log out without closing the drawer and that the teller could keep the "system drawer open day in day out"

30 PW5's evidence when read together with evidence of other witnesses demonstrates how vulnerable the bank's core system was. It was exploited by the accused to withhold forex which he converted to credit to accounts of Revero Investments to create money that Revero Investments never legitimately earned. The supervisory function at the Kireka branch was also weak which allowed the accused to manipulate transactions without restriction. The accused's denials are against the weight of evidence and create no doubt in the prosecution case.

Although Stephen Kyeswa died before going on defence, there is clear evidence by PW2, Katumba who was the branch manager that

deposit slips for funds deposited on Revero Investments Ltd was done by the accused in his own hand writing and transacted using his drawer **3824** and teller stamp **number 8**.

Victor Ninshaba, PW7, a former employee of Stephen Kyeswa testified that she was instructed by her boss Kyeswa to move float from the machine to the accused's account without receiving cash in exchange as it is supposed to be. It was her evidence that she made about 30 such transactions which were not backed up by cash. These transactions consisted of funds between 2,000,000= to 2,500,000=. She would as a result incur a shortage which she used to balance off as "**boss**"

PW7 went on state that she never sold any forex to Centenary bank and any transactions attributed to her are false. She also stated further, that the accused was a regular visitor at their bank agency station where he would come to see Kyeswa.

The hand writing expert report contained in **exhibit P65** ruled out other players whose names were used on the deposit/withdrawal slips such as Nalukwago and Ninshaba. Mr. Sebuwufu, PW19, was emphatic that the documents on which transactions were made had the hand writing and signature of Alex Kyambade, the accused.

The long and short story is that the prosecution has adduced sufficient evidence to prove beyond reasonable doubt that Alex kyambade manipulated the weak banking system at centenary bank to retain forex which he converted to local currency, deposited on the accounts of Revero Investments Ltd and its employees which money was re-deposited on his account **3710200653** in Centenary Bank, held at Mapera House mainly through agency banking deposits as demonstrated on **exhibit P19**- the bank statement of the accused.

The act of taking the forex with fraudulent intent, and converting it into local currency amounted to asportation which act constituted theft in count one. The accused was able to do this by virtue of his employment as a banking officer with Centenary Bank

Count two: -



The accused is charged with stealing **UGX. 21,290,000=** between 28th Feb 2019 and 31st May 2019 at Kireka branch which he accessed by virtue of his office.

Ms Apio, submitted that the accused as banker with Centenary Bank accessed the money by virtue of his employment. She referred to evidence of witnesses from Moroto who denied withdrawing money from their accounts from Moroto or any other branch as proof that their money was stolen.

10 She submitted further, that the accused was culpable because his hand writing was confirmed on withdrawal vouchers by PW19, Mr Sebuwufu, the document examiner. The table below illustrates a summary of evidence of key witnesses on count two.

PW 13, Aleng	St. Jacob Naoi Solidale	Exhibits P.43 and P.49	2,500,000=
PW16, Teko	St. Julius Naoi Solidale	Exhibits P43 and P51	2,500,000=
PW15, Angolere	St. Job Naoi Solidale	Exhibits P.44 and P.55	1,000,000=
PW17, Iriama	St. Phillip Naoi Solidale	Exhibits P.44 and P.53	2,500,000=
PW14, Longora	St. Perpetua Community	Exhibits P.46 and P.50	2,400,000=
PW11, Longole	St. Claudio Community	Exhibits P.45 and P.50	2,430,000=
	Abunyo Stella	P.42	6,960,000
	Loput Dino	P.44 and P.54	1,000,000=
Total			21,290,000=

The accused submitted that the state did not adduce evidence of Abunyo and Loput to confirm that they did not withdraw money. He also contended that some vouchers were not produced to prove he is the one who withdrew the money.

This submission ignores the fact that the till sheets exhibited in the table above show it is the accused that transacted and posted debits on the Moroto accounts as if customers had withdrawn the money from Kireka branch. It is a straight forward matter to which no defence was raised.

10 Witnesses from Moroto who could not read or write testified how they went to the bank with their helpers to assist them to withdraw money only to be told money had been withdrawn from Kireka. They had never been to Kampala or nearby. They cannot withdraw money on their own. They are always assisted by people who can read such as PW10, Kiyonga Agnes and Longole Daniel PW11, to fill withdraw forms. In this scenario withdraw forms were not available at Kireka to support the withdraw except daily till sheets in the accused's hand writing which connect him to the crime. PW10 and PW11 denied assisting customers to withdraw money from Kireka branch.

20 Besides, the accused's till is the one that served the purported customers that withdrew the money. All these are important pieces of circumstantial evidence which point to the irresistible inference that the accused is the one that stole the money. The accused's argument that the prosecution should have produced withdraw forms is not sustainable because he filled in till sheets confirming the withdraw of money from his station. Only the accused knows what vouchers were used if any to withdraw the money of Moroto customers.

30 It is my conclusion that there is abundant evidence on record to place the accused at the scene of crime for the theft of UGX. 21,290,000 from Moroto customers. There was no credible defence to this evidence. The act of debiting customer accounts without their instructions using his credentials was an act of asportation by the accused. He moved money from customer accounts with a fraudulent intent thereby committing an act of theft. The prosecution proved charges in count two beyond reasonable doubt.

Count three: -



The accused is charged with intentionally transferring UGX. 103,156,900= equivalent to USD 21.350. and Euros 5.700. between 28th Feb 2019 and 31st May 2019 to Revero Investment Ltd for purposes of concealing its origin. The prosecution contends that this was an act of money laundering.

10 Ms Apio, repeated her submissions on count one. It was her view that the money was stolen from the bank which employed the accused. The money was not directly taken by the accused but routed through the account of Revero Investment Ltd from where it was wired back to his bank account through agency banking which was the business of Revero Investments Ltd. This was to disguise its origin having created a false impression that Revero Investments Ltd had purchased forex whereas not. This scheme falls within the definition of money laundering.

20 She submitted further, that workers of Revero Investments Ltd such as PW7, Ninshaba, denied ever purchasing forex from Centenary bank. Deposit vouchers on Revero investment accounts were written by the accused. This was confirmed by PW19, Sebuwufu, a document examiner. The vouchers are **marked B1-B9**. They are contained in **exhibit P65**.

It was her view that the accused knew the money was a proceed of crime that is why he disguised it as a purchase of forex by Revero Investment Ltd.

30 In response, the accused offered no defence to the charges of money laundering. He wondered into a complaint such as the Bank not giving him a fair hearing in this matter. But evidence from PW2, Katumba, the then bank Manager is that the accused disappeared when he was confronted with the shortage of forex in his drawer. He never reported for duty and his landlord complained that the accused had run away after defaulting on rent.

The conduct of running away from accountability for the missing forex betrays the accused's innocence. By running away even from his rented tenancy without notice only confirms he was aware of the crime he had committed.

I have already found in count one that the accused is guilty of stealing money from his employer by manipulating the forex sales and banking the Uganda equivalent onto the account of Revero Investment Ltd.

The accused laundered this money in a crafty scheme which PW1, Alot Geoffrey- the bank supervisor investigations, described in his testimony as follows: -

10 *"A1 created an artificial scenario as if customers had sold dollars to the bank yet he was just stealing UGX and depositing it on A2's company account. He would not close the Dollar/Euro trading account. They were left open. He would start from where he stopped the previous day. The Assistant branch manager was supposed to monitor and ensure all accounts had been balanced but she slept on her job and was fired"*

A1 is the accused whilst A2 was the late Stephen kyeswa who was the proprietor of Revero investment Ltd. Revero Investment Ltd was used as the vehicle or conduit through which the accused executed his criminal scheme. This is a classic case of money laundering within the definition in **section 3 of the AMLA, Cap 118.**

20 There was no defence to this evidence by the accused. The two lady assessors in their short joint opinion noted thus: -

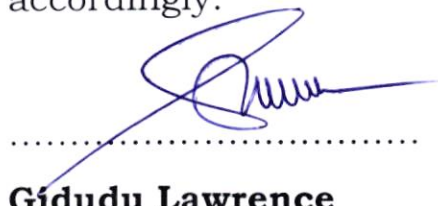
"... the accused is a fogging (sic) expert who could confuse the top management and could even manipulate the system so it was not easy to detect his fogged (sic) transactions.....after analyzing the evidence that the State has brought , it has proved all the ingredients beyond reasonable doubt, we therefore, advise this honourable court to convict the accused as charged."

30 I agree with the opinion of the two lady assessors that the prosecution has proved all the essential ingredients of the charges preferred in the three counts beyond reasonable doubt. The accused was able to manipulate his supervisors because of a weak core banking system at the time that would allow a teller to keep open his/her drawer without balancing the accounts on the system. The accused filed

daily reports in the hard copy- **General Ledger and till sheets** creating a false picture yet on the system the accounts were not balanced off.

After reviewing the lengthy evidence adduced by the prosecution and the scanty evidence by the defence, it is my conclusion that the prosecution has proved all the three charges against the accused beyond reasonable doubt. I find him guilty of embezzlement in count one and two. I also find the accused guilty of money laundering in count three. I convict the accused on each of the three counts accordingly.

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A handwritten signature in blue ink, appearing to read 'Gidudu Lawrence', is written over a dotted line. The signature is stylized with a large loop at the beginning and a series of smaller loops at the end.

Gidudu Lawrence

JUDGE

24th June 2025.

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